

tuff vs. Weaver, 660 O. S. 621; *Smith vs. Bock*, 119 O. S. 101, 103. If such is the proper interpretation of such section, it would necessarily follow that there is no language in Section 5639, General Code, which would grant preferences to any subdivision as to the distribution of such proceeds except that the one fourth of one per cent payable to the treasurer of state by virtue of the provisions of the first sub-paragraph of such section and the fees to the county treasurer and county auditor by virtue of Sections 2624 and 2685, General Code, would be preferred over all other distributions and likewise the funds payable to the county school tax fund would be subsequent in priority of payment to those of all other taxing subdivisions.

The legislative history would indicate that such was the intention of the legislature for when Senate Bill No. 30, as enacted by the 90th General Assembly at its regular session was introduced into the Senate, it made specific provision that the funds to public libraries were to be paid prior to the share to the county and to the various municipalities. While such a bill was in the process of amendment, it was amended so that the provisions in the third sub-paragraph referred to the one fourth of one per cent payable to the state treasurer rather than to the funds payable to the public libraries which have qualified to share in the classified property tax proceeds.

It is therefore my opinion, in answer to your specific question, that when at the time of the semi-annual settlement between the county treasurer and the county auditor of classified property tax proceeds, it is discovered that there is not sufficient amount of such proceeds to make a payment to the state of Ohio one fourth of one per cent thereof and to public libraries, municipalities and the county, fifty per cent each of the amount allotted to them by the budget commission pursuant to the provisions of Section 5625-24, General Code, the provisions of Section 5639, General Code, do not authorize the payment to public libraries of fifty per cent of the amount set forth on such budget to the exclusion of the municipalities and the county; but rather requires that if such one fourth of one per cent is set aside and paid to the treasurer of state, distribution to the public libraries, municipal corporations and the county, the amount of such receipts pro rata are without priority one over the other.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3197.

SALARY—JUSTICE OF THE PEACE—TOWNSHIP COTERMINOUS WITH VILLAGE—VILLAGE COUNCIL MAY ENACT ORDINANCE FIXING SALARY.

SYLLABUS:

1. *A village council has power to repeal an ordinance enacted prior to the commencement of the term of office of the justice of the peace in the township having identical boundaries with the village, which ordinance places the said office on a salary basis, after the term of office has commenced, when the justice of the peace refuses to serve, providing such repeal is effective before the justice of the peace is appointed to fill the vacancy caused by the failure of such justice of the peace to qualify.*

2. *Where at the time of the appointment of a justice of the peace to fill a vacancy in such office in a township having identical boundaries with a village, there is no municipal ordinance in effect regulating the compensation of justice of the peace but such justice's compensation consists of his statutory fees, village council may legally enact an ordinance placing the office of justice of the peace on a salary basis after the term of office of the justice of the peace appointed to fill the vacancy has commenced, and apply the provisions of the ordinance to said justice appointed to fill the vacancy.*

COLUMBUS, OHIO, September 12, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“This Department has been requested to submit to you for an opinion the following statement of facts:

The Village of Brooklyn is identical in area with the Township of Laurel, so that the provisions of Section 3512 G. C., have application to the matter of justices of the peace in Laurel Township.

In 1933, Charles Rogers was serving as Justice of the Peace for a four year term which expired December 31, 1933. Prior to the expiration of his term, the Council adopted an ordinance, under the assumed authority of Section 3512, placing the office of the justice of the peace upon a salary basis. Rogers was not a candidate for re-election, and a man by the name of Lawrence was elected for the term commencing January 1, 1934. He refused to qualify and so notified the Council. The Council then adopted an ordinance simply repealing the prior salary ordinance, and after this had been done, appointed Rogers for the term for which Lawrence had refused to qualify, and he is now serving as justice of the Peace under that appointment. Subsequent to his appointment, an ordinance was introduced in the Council to place the justice of the peace upon a salary basis. There is doubt as to Council's authority to do this.

Will you please advise?”

Section 3512, General Code, mentioned in your communication, reads as follows:

“When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation.”

Under this section the Brooklyn village council is authorized to regulate the

compensation of justices of the peace of Laurel township, Cuyahoga County, which township is identical with the boundaries of the village of Brooklyn.

It is a general principal of law that public bodies which are given authority to regulate the compensation of public officers may alter such compensation at any time so long as constitutional provisions and statutory provisions inhibiting the changing of the compensation to affect an officer's salary during his existing term are not violated. *46 Corpus Juris*, 1020, Officers, Section 253; *Holcomb, Aud. vs. State, ex rel.*, 126 O. S. 496, 498.

Thus, the village council in the instant case had the power to enact an ordinance placing the justice of the peace on a salary basis prior to the beginning of Lawrence's term of office, and apply the provisions of such ordinance during Lawrence's term of office beginning January 1, 1934.

I presume that prior to enacting the salary ordinance in 1933, the compensation of the justice of the peace in the village of Brooklyn was based on the fee system. The facts of your communication do not disclose whether or not Brooklyn village had any ordinance providing that the justice of the peace be paid on a fee basis prior to the passage of the salary ordinance of 1933, and if so, whether or not such ordinance was repealed by the ordinance of 1933. It may be that the compensation of the justice of the peace prior to the passage of the salary ordinance in 1933 was solely the fees allowed justices of the peace by the statutes.

It may be argued that the power of council to regulate compensation of justices of the peace in townships having identical limits with the village is not exclusive, and that in the absence of any compensation ordinance, the regular state statutes allowing fees for justices of the peace apply. It may also be argued that when the salary ordinance of 1933 was passed, the justice of the peace of Brooklyn village was no longer compensated by the state statutes, but that when such ordinance was repealed in 1934, the state statutes providing fees for justices of the peace came into force again. All of these possible situations will be considered in the argument of this opinion later on.

It seems clear that the salary ordinance of 1933 would ordinarily apply throughout the period covered by Lawrence's term as such salary ordinance was undoubtedly in effect before January 1, 1934, the beginning of the term for which Lawrence was elected. However, the facts as disclosed by you in your communication show that Lawrence refused to qualify for such term and notified the council. I presume from further facts of your communication that council then declared a vacancy, in accordance with the provisions of Section 1714, General Code, which reads as follows:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

The Village council are the corresponding officers of the village to exercise the duties of the township trustees when a township is merged with a village, and the offices of township trustees abolished. See Annual Report of the Attorney General for 1913, Vol. II, Pages 1491, 1493.

Your facts show that the ordinance repealing the salary ordinance was passed

prior to appointment of Rogers to fill the vacancy. I assume it was an emergency measure and effective immediately.

It has been held by the courts of Ohio that the salary of an officer appointed to fill a vacancy is controlled by the form and amount of compensation in existence for such office at the time of appointment rather than that in force at the time his predecessor began the term which he is to complete. *State ex rel. Pugh vs. Tanner*, 27 O. C. A. 385; *Village of Newcomerstown, et al., vs. The State, ex rel. Blatt*, 36 O. App. 434, 440.

Assuming first, for the purpose of argument, that there was an ordinance in existence providing for compensation for the justice of the peace in Brooklyn on a fee basis prior to the passage of the salary ordinance of 1933, and that the salary ordinance repealed such an ordinance, and that the state statutes providing fees for the office of justice of the peace were superseded by the village council's assumption of jurisdiction to regulate the compensation for the justice of the peace of Brooklyn village, it may be argued, as heretofore stated, that at the time when the salary ordinance of 1933 was repealed in 1934, no provision for compensating justices of the peace in Brooklyn village was in existence. If this is so, council possessed power to enact the salary ordinance after Rogers' appointment, as it has been held in Ohio that where a public body has power to provide for compensation of an officer and makes no provision before the term commences, it may legally do so after such term begins, and the inhibition of Article II, Section 20, Ohio Constitution, is not violated.

See 46 *Corpus Juris*, 1025, "Officers", section 262; *State ex rel. vs. Carlisle*, 3 N. P. (N. S.) 544, 547; *Wise vs. Barberton*, 20 C. C. (N. S.) 390, 393, 394, affirmed without opinion, 88 O. S. 595.

If the foregoing situation is not correct, then assume that the assumption of jurisdiction by the village council under Section 3512, General Code, is not exclusive, and that an ordinance providing for fees for the justice of the peace in Brooklyn village was or was not in force prior to the enactment of the salary ordinance of 1933. If such an ordinance was in existence, it certainly must have been repealed expressly or impliedly by the 1933 salary ordinance, and thus when the 1933 salary ordinance was repealed in 1934, the state statutes providing fees for justices of the peace came back into force again. If such an ordinance was not in existence prior to the enactment of the 1933 salary ordinance, when the salary ordinance was repealed in 1934, the state statutes providing fees for justices of the peace having been superseded temporarily by the special provisions of the salary ordinance of 1933, would come back into force again. Thus the situation would be that at the time of Rogers' appointment, the justice of the peace was compensated by the fee provisions of statutes regulating justices of the peace. In this event, council could legally do as they did and enact a salary ordinance for justice of the peace, Rogers, after his term had begun.

It has been held in Ohio that the changing of the compensation of an officer from a fee basis to a salary basis and applying such change to an existing term does not violate the inhibition of Article II, Section 20, Ohio Constitution. See *Theobald vs. State*, 10 C. C. (N. S.) 175, affirmed without opinion, 78 O. S. 426, *State ex rel. vs. Commissioners*, 13 O. D. N. P. 97.

In the case of *State, ex rel. vs. Brooklyn Heights*, 122 O. S. 311, at page 313, it was stated that a justice of the peace in a township having its boundaries coterminous with a village, is not a village officer or employe. Hence, Section 4219, General Code, has no application, but as noted in the Opinions of the Attorney General, 1927, Vol. II, Page 905, Article II, Section 20, Ohio Constitution, applies to a justice of the peace. The syllabus of such opinion reads:

"When the corporate limits of a city or village have become identical with those of a township and the council of the city or village has by ordinance fixed the amount of compensation to be paid to a justice of the peace, elected within the township, as the amount of fees taxed and collected by said justice of the peace in the hearing of state cases, the council of said municipality may subsequently change the amount of compensation to be paid to said justices of the peace by the enactment of an ordinance providing for the payment to the justice of the peace of a definitely fixed salary."

Thus, taking into consideration all possibilities, it would appear that the actions of the council were not illegal.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3198.

APPROVAL, CERTIFICATE OF AMENDMENT TO THE ARTICLES OF
INCORPORATION OF THE GLOBE CASUALTY COMPANY.

COLUMBUS, OHIO, September 12, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the certificate of amendment to the articles of incorporation of The Globe Casualty Company, and finding the same not to be inconsistent with the Constitution and laws of the United States or of the State of Ohio, I have endorsed my approval thereon.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3199.

APPROVAL, CONTRACT BETWEEN DIRECTOR OF HIGHWAYS AND
THE BUCKEYE PIPE LINE COMPANY WHICH RELATES TO THE
ACQUIRING OF CERTAIN RIGHTS IN THE IMPROVEMENT OF S
H. NO. 22, ALLEN COUNTY.

COLUMBUS, OHIO, September 12, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a contract by and between you, as Director of Highways, and The Buckeye Pipe Line Company, which relates to the acquiring of certain rights of way in connection with the improvement of S. H. (I. C. H.) No. 22, Section L-4, Allen County.