

1269.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY—\$27,000.00.

COLUMBUS, OHIO, November 2, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1270.

DEPUTY STATE SUPERVISOR OF ELECTIONS—WHERE MEMBER IS DECEASED, HIS SUCCESSOR IS ENTITLED TO COMPENSATION FOR CONDUCTING PRIMARY ELECTION IF NO SERVICES HAVE BEEN PERFORMED BY SAID DECEASED MEMBER IN REGARD TO SAID ELECTION.

SYLLABUS:

Under the provisions of Section 4990, General Code, the compensation to a member of the board of deputy state supervisors of elections for conducting primary elections is fixed at two dollars per each election precinct in his county, and where a member deceases before having performed any services relative to said primary, his successor in office is entitled to said amount named in the statute for conducting the primary election.

COLUMBUS, OHIO, November 18, 1927.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion as follows:

“We desire the opinion of your department in construing Section 4990, General Code.

Peter M. Ragan was a deputy state supervisor of elections of Lucas County during the year 1927 until the date of his death, May 22nd, 1927. He was succeeded in office by J. A. Lehnerts who qualified on May 31st, 1927. During the period of incumbency of Mr. Ragan no action was taken by the board, as disclosed by their records, with reference to the August primary of this year, and we assume that Mr. Ragan as a member of said board rendered no service with reference to said primary election.

Under these conditions and following the opinion of your department as rendered by you August 5th, 1915, and found in the Opinions of the Attorney General for the year 1915, at page 1430, I have concluded that the entire fee to be paid to members of the board, as provided by Section 4990, would be payable to Mr. Lehnerts, and none of said fee provided, to be paid to the estate of Peter M. Ragan.

Your opinion as to the construction of this section will be greatly appreciated."

Section 4990, General Code, provides as follows :

"For their services in conducting primary elections, members of boards of deputy state supervisors shall each receive for his services the sum of two dollars for each election precinct in his respective county, and the clerk shall receive for his services the sum of three dollars for each election precinct in his county, and judges and clerks of election shall receive the same compensation as is provided by law for such officers at general elections."

You will note that the compensation to members of boards of deputy state supervisors of elections provided for in the above section is "for their services in *conducting primary elections*. No compensation is provided in this section for any other services. The compensation to members of the boards of deputy state supervisors of elections for their services, other than those rendered in conducting primary elections, is provided for in Section 4822, General Code, and was the subject of my Opinion No. 886, rendered to you on August 17, 1927.

It will also be observed that under the provisions of Section 4991, General Code, all expenses of primary elections, including compensation of members and clerks of boards of deputy state supervisors of elections, shall be paid in the manner provided by law for the payment of similar expenses of general elections, which is quarterly.

In an opinion of one of my predecessors, Hon. Timothy S. Hogan, issued under date of November 2, 1911, and found at page 1423 in Volume II of the Annual Report of the Attorney General, 1911-1912, it was held :

"Section 4990, General Code, provides for additional compensation to members of the board of deputy state supervisors of elections for services in conducting a primary and where a member has performed services in this connection and resigned before their completion, the compensation authorized for such services should be apportioned between the party resigning and his successor."

The syllabus of Opinion No. 694, referred to in your letter, and found in Volume II of the Opinions of the Attorney General for the year 1915 at page 1430, reads :

"Section 4990, G. C., provides for additional compensation to deputy state supervisors of elections for services in conducting a primary election, and where a member who has performed a part of such services and for any reason ceases to be such officer before the services are completed, such compensation should be apportioned between such member and his successor, but since there is no authority in the county auditor, or the board of elections to make such apportionment, the warrant for the payment of such compensation should be withheld until the persons entitled thereto agree as to the division thereof or the same is otherwise determined according to law."

As disclosed by your letter, and as shown by the records of the Lucas County Board of Deputy State Supervisors of Elections, no action was taken by said board relative to the August primary prior to the death of Mr. Ragan which occurred on May 22, 1927. Such being the case, Mr. Ragan did not perform any official services relative to the August primary, and therefore the problem of division or apportionment of compensation does not enter into the instant question.

Under these circumstances, if no services relative to the August primary were in fact performed by this board of which Mr. Ragan was a member prior to the time of Mr. Ragan's death, it is my opinion that the entire fee to be paid to a member of this board, as provided in Section 4990, *supra*, would be payable to Mr. Ragan's successor, and none of said fee should be paid to the estate of Mr. Ragan, deceased.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1271.

EXCISE TAX—ON MOTOR VEHICLE FUEL SOLD IN TANK CAR LOTS.

SYLLABUS:

When a refining company in Ohio sells motor vehicle fuel which it has refined, in tank car lots, to a purchaser who is a registered dealer, such purchaser is required to pay the excise tax on the amount of such motor vehicle fuel re-sold by him.

COLUMBUS, OHIO, November 18, 1927.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion, as follows:

"In the administration of the gasoline tax act the commission has been construing Section 5526-4 so as to limit the word 'purchaser' to the first vendee from the manufacturer of gasoline. We have been impelled to this view by two considerations.

1. Our belief that strictness of construction is required.
2. Any other method will greatly add to the burden of administration.

We are in receipt this morning of a vigorous protest from The Solar Refining Company which the commission desires should be forwarded to you with a request that you advise us whether the construction followed by the commission or that claimed by the protesting company is correct."

The "protest" which you enclose with your communication discloses that the question presented requires a determination as to who is required to pay the motor vehicle fuel excise tax in cases in which the refiner sells such motor vehicle fuel in tank car lots to a duly registered dealer.

Section 5531 of the General Code provides as follows:

"On or before the last day of each calendar month each dealer shall pay to the treasurer of state the excise tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payment shall be accompanied by a copy of the statement filed with the Tax Commission of Ohio."

This section discloses that the tax imposed must be paid by the "dealer."

The term "dealer" is defined in Section 5526 of the General Code, as follows: