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TOWNSHIP TRUSTEES—COMPENSATION—SERVICES PERFORMED UNDER SECTIONS 6603 ET SEQ. G. C.—SUBJECT TO PROVISIONS SECTION 3294 G. C.—PAYABLE OUT OF TOWNSHIP GENERAL FUND—TOWNSHIP DITCHES—TOWNSHIP CLERK — COMPENSATION — SUCH AS TRUSTEES ALLOW UNDER SECTIONS 6603 ET SEQ., SUBJECT TO PROVISIONS SECTION 3308 G. C.

SYLLABUS:

1. *The compensation of township trustees for services rendered under Section 6603, et seq., General Code, is subject to the provisions of Section 3294, General Code, and payable out of the general fund of the township.*

2. *A township clerk shall receive such reasonable compensation as the township trustees allow for services rendered under Section 6603 et seq., General Code, subject to the provisions of Section 3308, General Code.*

COLUMBUS, OHIO, October 7, 1939.

HON. NICHOLAS F. NOLAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

“May we respectfully ask your formal opinion upon the following situation:

The trustees of a certain local township received a ditch petition, under General Code 6603, to establish and construct a township ditch. The proceedings were all had as provided by statute, and construction was completed.

In determining the fees to be paid, if any, to the trustees and clerk for their services, we have serious doubts what may be allowed. General Code Section 3308 fixed a \$250.00 yearly limit for fees payable out of the township treasury, yet under Sections 6468 and 6502 of the chapter on single county ditches, which chapter governs the construction likewise of township ditches, other implications arise, as for instance the fees on one improvement are limited to not to exceed four (4) days at \$5.00 per day for a county commissioner. Does this likewise apply to trustees?

In the proposal of fees submitted to us for inclusion in the cost, each of the trustees claim compensation at \$1.50 per day. The clerk's fee is even less determinable because in Section 3308 it is provided that ‘for any other township business the trustees

require him to perform, such reasonable compensation as they allow'.

1. How shall the compensation to the trustees be computed, and out of what fund paid?
2. How shall the compensation to the clerk be computed, and likewise paid?
3. Are the fees outside the \$250.00 limitation?"

Your first question concerns the allowance of compensation to township trustees for services rendered under Sections 6603, et seq., of the General Code relating to township ditches.

Section 6603, General Code, provides :

"A petition for the improvement of a ditch or drain which is located wholly within a township, which does not pass into or through a municipality, which has an outlet within the township in a public watercourse, which does not benefit or damage land outside of the township, and which has not theretofore been located as a county ditch, may be filed with the clerk of such township instead of with the auditor of the county as provided in chapter one of this title. If such petition is filed with the clerk of the township, the clerk of the township shall at his office, do all things required to be done by the auditor, and the board of trustees of the township shall at their usual place of meeting do all things required to be done by the board of county commissioners in drainage improvements as is provided in chapter one of this title. The proceedings for such improvement shall be had pursuant to the provisions of chapter one of this title, and shall be governed by all the provisions of chapter one of this title, except as modified in this chapter."

It is a well established rule of law that public officials are not entitled to compensation unless specifically authorized by law. The immediate question, therefore, is whether compensation has been specifically authorized for township trustees under Section 6603, supra.

Said section provides that "the proceedings for such improvement shall be had pursuant to the provisions of chapter one of this title, *and shall be governed by all the provisions of chapter one of this tile, except as modified in this chapter.*" (Italics the writer's.)

A part of chapter one, which chapter concerns the improvement and construction of single county ditches, is Section 6502, which provides that each county commissioner shall receive five dollars per day for such services. Your inquiry presents the question as to whether, in view of that part of Section 6603 above in italics, the provision as to fees for county

commissioners would apply to services rendered by township trustees in drainage improvements.

The answer to this question depends upon the proper definition of the term "proceedings," inasmuch as section 6603, *supra*, provides that the "proceedings" for township ditch improvement shall be governed by the provisions relating to county ditches. Bouvier's Law Dictionary states that the word "proceeding" means:

"In its general acceptation, the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments, and of executing."

In the case of *People v. White* (N. Y.), 14 How. Prac. 498, the court said at page 501:

"The word 'proceeding' ordinarily relates to the forms of law, to the modes in which judicial transactions are conducted."

In the case of *St. Joseph Manufacturing Company v. Harrington*, 53 Ia. 380, 5 N. W. 568, the court was called upon to interpret a section of the code which provided that all proceedings prescribed for the circuit court should be pursued in justices courts. The court said at page 382:

"The term 'proceeding' does not relate to matters pertaining to the powers of the court but to the form and manner of the exercise of power."

From the above discussion, I am constrained to the view that the term "proceedings" as used in Section 6603, *supra*, does not contemplate the matter of payment of fees as contained in Section 5602, General Code. Rather, the term "proceedings" has reference to the mechanics of the improvement such as the filing of the petition, the filing of bond, conduct of hearings and other similar steps.

This conclusion is in accordance with a previous opinion of an attorney general rendered in 1924 (1924 O. A. G., No. 1568) wherein the syllabus reads in part as follows:

"Under Chapter 5 of House Bill 569, there is no provision for compensating township trustees under this chapter * * *."

Chapter 5 of House Bill 569, referred to above includes Section 6603, *supra*, and other provisions relating to township ditches.

It appears, however, that such work would constitute "business of the township" as that term is used in Section 3294, General Code. This section reads as follows:

“Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day; in townships having a budget of from ten thousand to twenty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and twenty-five days at said rate of three dollars and fifty cents per day; and in townships having a budget of twenty thousand dollars or over, the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested.”

It should be mentioned that the 93rd General Assembly in House Bill No. 477, effective September 2, 1939, revised the fees in some particulars. Section 3294 is quoted above as it now reads. However, if you are concerned with proceedings completed prior to the effective date of House Bill No. 477, the trustees will, of course, be governed by the provisions of said section prior to the amendment.

Since it has been determined that for services rendered in drainage matters township trustees may receive compensation only under Section 3294, supra, the amount of such compensation must necessarily be subject to the limitations contained therein.

The compensation paid to township clerks is fixed by Section 3308, General Code, which section provides:

“The clerk shall be entitled to the following fees, to be paid by the parties requiring the service: twenty-five cents for recording each mark or brand; ten cents for each hundred words of record required in the establishment of township roads, to be opened and repaired by the parties; ten cents for each hundred words of records or copies in matters relating to partition fences, but not less than twenty-five cents for any one copy, to be paid from the township treasury; ten cents for each hundred words of record required in the establishment of township roads, to be opened and kept in repair by the superintendent; for keeping the record of the proceedings of the trustees, stating and making copies of accounts and settlements, attending suits for and against

the township, and for any other township business the trustees require him to perform, such reasonable compensation as they allow. Provided, however, in those townships having a budget less than five thousand dollars, the township trustees shall determine the salary of the clerk which in no event shall exceed three hundred and fifty dollars per year; and in townships having a budget of five thousand dollars or over, the clerk shall receive two per cent of the total expenditures of such township in excess of five thousand dollars in addition to the amount above provided in townships having a budget of less than five thousand dollars, provided, however, no township clerk shall receive for his compensation in excess of six hundred dollars in any one calendar year for said services as such township clerk."

This section, after setting forth the fees to be paid township clerks in particular proceedings, further provides that for any other township business the trustees require him to perform, the clerk shall receive such reasonable compensation as the trustees allow.

From the above it appears that the trustees shall allow the clerk reasonable compensation for his services rendered under Section 6603, et seq., General Code.

As stated hereinbefore with reference to Section 3294, General Code, Section 3308, supra, was amended by the 93rd General Assembly in House Bill No. 477, effective September 2, 1939. Consequently, the fees to be allowed township clerks would be governed by the provisions in effect at the time such services were rendered.

Inasmuch as it has been determined that Section 3308, supra, is the only authority for the allowance of compensation to township clerks for services rendered in ditch matters, it necessarily follows that such compensation is subject to the limitations contained in said section.

In view of the conclusions herein reached, it is obvious that the compensation of township trustees and township clerks shall be paid from the general fund of the township, since such compensation is controlled by the general statutes, Sections 3294 and 3308, supra.

Therefore, in specific answer to your inquiry, I am of the opinion that: (1) the compensation of township trustees for services rendered under Section 6603, et seq., General Code, is subject to the provisions of Section 3294, General Code, and payable out of the general fund of the township; (2) a township clerk shall receive such reasonable compensation as the township trustees allow for services rendered under Section 6603, et seq., General Code, subject to the provisions of Section 3308, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.