

When the limits of a city or an incorporated village become identical with the limits of any township, that city or village assumes the burden of caring for the streets and highways out of the share of the gasoline tax fund which is allotted to municipal corporations as provided in Section 5541-8.

In an opinion of this office found in the Opinions of the Attorney General for 1925, p. 400, the then Attorney General, in discussing Section 6971 which relates to an appropriation by the General Assembly out of the general revenue fund of the State for the use annually in each township, held as follows:

"That part of the appropriation which would be available for the use in the townships of a county, but for which no application is made, may not be divided among the counties making application."

In view of the above considerations and in specific answer to your inquiry, I am of the opinion that when the corporate limits of a city or village become identical with those of a township, such city or village is not entitled to such township's share of the motor vehicle fuel tax except such sum which may be due and payable out of the gasoline tax fund to the township at the time when the corporate limits become identical.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1774.

MERGER—TOWNSHIP WITH CITY—PROPER PERSON TO ISSUE  
HUNTER'S AND TRAPPER'S LICENSES DETERMINED.

*SYLLABUS:*

1. *When a township becomes coterminous with a non-charter city, the city auditor becomes the proper person to issue a hunter's and trapper's license.*
2. *When a township becomes coterminous with a charter city, the fiscal officer of the city, determined by reference to the charter provisions, may issue a hunter's and trapper's license.*

COLUMBUS, OHIO, April 12, 1930.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a communication over the signature of Carl L. Van Voorhis, Assistant Commissioner, requesting my opinion on the following inquiry:

"We have had requests from the auditors or clerks of certain cities for the privilege of issuing hunter's and trapper's licenses. Section 1432 G. C. reads in part as follows:

'Hopper issued. Hunter's and trapper's license shall be issued by the clerk of the Common Pleas Court, village and township clerks,' etc.

The above mentioned auditors and clerks claim that their city limits are identical or coterminous with the township lines in which the said city is located.

Section 3512 G. C. reads in part 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,' etc.

The question which we specifically answered is whether or not we may issue hunter's and trapper's licenses to these officers for disposition and for the accommodation of the sportsmen of the community."

Since you have incorporated in your communication the pertinent parts of Sections 1432 and 3512, General Code, it is unnecessary to recopy them here. This office had occasion to construe the latter section, which has not since been amended, in an opinion reported in Annual Report of the Attorney General for 1914, volume II, page 1228. In the body of said opinion it was stated:

"Looking at Section 3512, General Code, it is apparent that the effect of the territorial identity of the corporate limits and those of a township is not to abolish the township as a territorial subdivision of the state nor as an agency of civil government. It is the township offices and not the township that is abolished.

Furthermore, Section 3512, General Code, provides that after the territorial merger takes place the duties of the township offices which have been abolished thereby shall be performed by the 'corresponding officers' of the municipality with certain exceptions. Giving to this language its exact effect, it would seem that municipal officers, in discharging such duties as might be designated as those of the abolished township offices, would be acting, not strictly as officers of the municipality, but as officers of the township. This may be conceded as a principle. It is true that in *McGill vs. State*, 24 O. S., 228, it was said at page 251, per Boynton, J., who delivered the opinion, that the original form of this section (which, however, was by no means identical in phraseology with the present statute),

'preserves the corporate existence of such township for the sole purpose of electing justices of the peace and constables, evidently to meet the constitutional requirement that justices of the peace shall be elected by townships. But for all other purposes the township organization in this class of cities and villages is abolished.'

This statement, however, was a mere passing remark, and as it is, is subject to more than one interpretation. Thus, while it is true, as Judge Boynton says, that the township organization and its separate corporate existence is terminated for all purposes excepting that of electing justices of the peace and constables, it by no means follows that any functions that might be properly termed township functions are abolished when the territorial limits of the township and the municipality become coextensive; nor is it true that the functions pertaining to township officers necessarily terminate under these circumstances.

Thus it was held in *Curtiss vs. McDougal*, 26 O. S., 66, that under these circumstances chattel mortgages required by law to be filed in the office of the township clerk must be filed in the office of the clerk of the village or city, the corporate limits of which are identical with those of the township. As stated in the opinion of that case, per McIlvaine, C. J.,

'The duties of the office were not remitted, but were transferred to the clerk of the incorporated village.'

And again, speaking of another section of the then Municipal Code, purporting to preserve the corporate existence of the township under these circumstances for the purpose of electing justices of the peace and constables for such township, etc., he says:

'It does not \* \* \* by its terms purport to destroy the township organization in any case or to merge it into that of a city or village.'

So it is apparent that the township as a subdivision of the state and certain functions pertaining to township offices as such, remain technically in existence after the boundaries of the original township become co-extensive with those of the municipality."

From the case of *Curtiss vs. McDougal*, 26 O. S. 66, cited in the above opinion, it would seem that the duties of township clerks are transferred to municipal clerks when a township becomes identical with a municipality. However, at the time said case was decided (1875), what is now Section 3512 was composed of several statutes, one of which specifically provided that the duties of a township clerk should be performed by the clerk of the municipal corporation. See 66 O. L. 229 (1869), Sections 475, 476 and 477 of an act "to provide for the organization and government of municipal corporations." Later, these sections became Revised Statutes 1623, 1624 and 1625.

In 1902 an act (96 O. L. 20) designated as the new Municipal Code was passed "to provide for the organization of cities and incorporated villages, and to restrict the power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such powers, as required by the constitution of Ohio, and to repeal all sections of the Revised Statutes inconsistent herewith." Said act expressly repealed Revised Statutes 1623, 1624 and 1625, mentioned above, effective May 4, 1903. Section 3 of the act read exactly as Section 3512, General Code, now reads.

Hence, it may be noted that in the reorganization act in 1902, the Legislature repealed the statutes specifically providing who the corresponding officers would be when a township becomes coterminous with a municipality and did not undertake to designate them in detail as before. It may thus be presumed that it was intended to leave the corresponding officers to be determined from the similarity of duties.

In this connection, it is noted that you refer to city clerks in your communication. Strictly speaking, there is not now, and has not been since 1902, a city clerk. You probably mean clerks of council elected by council under the provisions of Section 4210, General Code. There is no doubt but that a clerk of council is charged with the performance of certain ministerial duties which are identical with those performed by a clerk of a township. For instance, a clerk of council, under Section 4227, General Code, keeps an accurate record of the proceedings of council, just as the township clerk keeps an accurate record of the proceedings of the township trustees under Section 3301, General Code. However, the issuing of licenses involves financial transactions, and it is believed that for this reason the city clerk of council could not be said to be a corresponding officer to the township clerk.

On the other hand, a city auditor has several duties in common with the township clerk. For instance, a city auditor keeps the books of the city and exhibits accurate statements of all moneys received, expended, etc., by virtue of Section 4276, General Code. Similar to this duty, the township clerk makes and enters in the record of the proceedings of the trustees a detailed statement of the receipts and expenditures of the township for the preceding year. See Section 3304, General Code. In fact, by Section 5625-1, General Code, a section included in the so-called budget law (112 O. L. 391) and amended in 113 O. L. 670, the "fiscal officer" in the case of a township shall be the township clerk, while in a city it shall be the auditor; the single exception being that in charter cities such officer as, by virtue of the charter, has the duties and functions of the city auditor, shall be the fiscal officer.

Since the matter of issuing licenses, as I have mentioned above, involves financial transactions, it is believed that the city auditor would be the corresponding officer

to the township clerk in so far as the duty to issue a hunter's and trapper's license is concerned.

What has been said heretofore has been confined to the general law and without special reference to charter cities. As to the corresponding officers in charter cities it is to be noted from a preceding paragraph that the officers corresponding to the fiscal officers in non-charter cities are the fiscal officers of such cities. Section 5625-1, supra. Hence, it could not be said specifically who would have the right to issue a hunter's and trapper's license in charter cities, but the proper persons would have to be determined from an examination of the charter provisions.

Specifically answering your question, I am of the opinion that:

1. When a township becomes coterminous with a non-charter city, the city auditor becomes the proper person to issue a hunter's and trapper's license.

2. When a township becomes coterminous with a charter city, the fiscal officer of the city, determined by reference to the charter provisions, may issue a hunter's and trapper's license.

Respectfully,  
GILBRET BETTMAN,  
*Attorney General.*

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1775.

APPROVAL, BONDS OF LYONS CENTRALIZED SCHOOL DISTRICT,  
FULTON COUNTY—\$20,000.00.

COLUMBUS, OHIO, April 12, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1776.

APPROVAL, BONDS OF SYLVANIA VILLAGE SCHOOL DISTRICT, LUCAS  
COUNTY—\$35,000.00.

COLUMBUS, OHIO, April 12, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1777.

VACANCY—DEATH OF CLERK OF COMMON PLEAS COURT SHORTLY  
BEFORE BEGINNING OF HIS NEW TERM—HOW LONG APPOINTEE  
HOLDS OFFICE.

**SYLLABUS:**

*When a clerk of courts, who has been re-elected for another term, dies shortly before the time for the beginning of his new term, and the county commissioners, acting under the terms of Section 2870, General Code, have made a temporary appointment to fill the vacancy in the old term and a re-appointment to fill the vacancy in the new term, the appointee continues in office until a successor, who is elected at the first general election for that particular office, has qualified for the unexpired term.*