

1602

NOTES—MONEYS PAID OUT OR DISBURSED BY TOWNSHIP CLERK—TO REDEEM TOWNSHIP NOTES ISSUED IN ANTICIPATION OF ISSUANCE OF BONDS—EXPENDITURES IN COMPUTING COMPENSATION CLERK IS TO RECEIVE—SECTION 3308 G. C.

SYLLABUS:

Moneys paid out or disbursed by a township clerk to redeem township notes issued in anticipation of the issuance of bonds are expenditures within the meaning of Section 3308, General Code, in computing the compensation which said clerk is to receive thereunder.

Columbus, Ohio, March 29, 1950

Hon. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“In January of this year Richfield Township collected from the sale of a bond issue a sum of approximately \$16,000.00. The money was deposited in the account of the township and thereafter a warrant of the township was drawn thereon in favor of the Sylvania Bank in payment of a township note which had been previously issued in anticipation of the sale of the bond issue.

Your opinion is desired as to whether this may be considered an ‘expenditure’ within the meaning of General Code 3308 in considering the compensation of the township clerk for the year 1949.

I desire to point out that in a previous year when the proceeds of the note were disbursed, they were at that time considered as an ‘expenditure’ for the purpose of determining the compensation of the clerk for said previous year. If this fund is to be considered an ‘expenditure’ when the note is paid, then I assume it could be again considered in subsequent years when bonds are redeemed, thus resulting in three separate commissions paid out by the township for the handling of what is in reality one project.”

That portion of Section 3308, General Code, pertinent to your question, reads as follows :

“* * * 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 twelve hundred dollars in any one calendar year for said services as such township clerk.”

The meaning of the word “expenditure” as used in this section was under consideration by my predecessor in office in 1948 Opinions of the

Attorney General, No. 2805, in which the syllabus of said opinion reads as follows:

“Moneys that are paid out or disbursed by a township clerk to redeem outstanding township bonds are expenditures within the meaning of Section 3308, General Code, and such amounts are to be taken into consideration in determining the amount said clerk shall receive for his compensation thereunder.”

In the course of this opinion the then Attorney General presented an exhaustive historical analysis of said section of the General Code, and then commencing on page 102 of said Opinion he applied the following reasoning:

“* * * It cannot reasonably be said that the word ‘expenditures’ is either a technical or legal term. On the contrary it is a word of common usage. Webster’s New International Dictionary, Second Edition, defines ‘expenditure’ as follows:

‘Act of expending; a laying out, as of money; disbursement.’

See also 35 C. J. S., p. 207, where, in respect of the word ‘Expenditure’, it is said:

‘The act of expending; disbursement, expense, money expended, a laying out, as of money, or the spending of money; also, sometimes, payment. The meaning of the word is particularly governed by its context.

It has been held synonymous with “disbursement”’

It is a general proposition of law that when common terms are used in a statute they should be given their common meaning.

See 2 Sutherland Statutory Construction, Sec. 4919.

It is highly significant that the General Assembly, in the enactment of Section 3308, General Code, made no reference whatever to the types or kinds of expenditures on which the clerk’s statutory compensation is to be based. Instead reference is made merely to ‘total expenditures.’ Had it been the legislative intent to exclude from the definition of the word ‘expenditures’ the disbursement of funds to redeem bonds, it is not unreasonable to conclude that some expression to such effect would have been embodied in the statute here being considered.”

I fail to see where any logical distinction might be made between the payments made in redemption of outstanding bonds and those made in the redemption of outstanding notes. I am inclined to the view that this provision in Section 3308, *supra*, was intended as a basis upon which

the township clerks might be compensated in proportion to the amount of work involved in the performance of their duties. While it would not in all instances be a true measure of the work involved, it would under normal circumstances reasonably reflect the amount of work performed. In other words, it is conceivable that payments made on one or two debts or expenses of the township might equal or exceed those of many debt or expense payments of another township. Normally, however, the more money expended a greater number of individual creditors will have been paid. It would seem that the purpose of the percentage computation was to compensate for these greater numbers of payments. With this purpose in mind, it would appear immaterial that more than one separate commission would be paid for the same project.

It is my opinion, therefore, that moneys paid out or disbursed by a township clerk to redeem township notes issued in anticipation of the issuance of bonds are expenditures within the meaning of Section 3308, General Code, in computing the compensation which said clerk is to receive thereunder.

Respectfully,

HERBERT S. DUFFY,
Attorney General.