

years and is granted subject to the conditions and restrictions usually found in leases of this kind.

Upon examination of said lease, I find that the same has been properly executed in accordance with the authority conferred upon the Conservation Commissioner by the provisions of Section 471, General Code, as amended in the Conservation Act passed by the 88th General Assembly, and that the provisions thereof are in conformity with the provisions of said section and of other sections of the General Code relating to leases of this kind.

Said lease accordingly is approved by me as to legality and form, as is evidenced by my approval endorsed upon said lease, and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2942.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF HIS DUTIES
AS RESIDENT DIVISION DEPUTY DIRECTOR—L. H. WISMAR.

COLUMBUS, OHIO, February 13, 1931.

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

2943.

MUNICIPAL ELECTION—APPOINTMENT OF PRESENT ELECTION
OFFICIALS—PROVISIONS OF CITY CHARTER INVALID WHEN AT
VARIANCE WITH STATE LAW.

SYLLABUS:

A city charter provision for the appointment of a different number of precinct election officials, to serve at a regular municipal election to be held on the first Tuesday after the first Monday in November in the odd numbered years, than provided in Section 4785-25, General Code, is invalid, to the extent that it makes provision at variance with that of the general law.

COLUMBUS, OHIO, February 14, 1931.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“This office has received from the Board of Elections of this County a communication requesting the opinion of this office as to which should apply in Municipal Elections, to-wit: provisions of Section 72 of the Home Rule Charter, under which the City of Youngstown functions, or the provisions of Section 4785-25, General Code, both of said sections pro-

viding for the number of judges and clerks who shall constitute the officials of each precinct.

I am inclosing for your consideration a copy of the Home Rule Charter of the City of Youngstown. I would also like to call your attention to the case of *Billings vs. Railroad Company*, 92 Ohio State Reports, 478, at page 484."

The pertinent provisions of the Home Rule Charter of the City of Youngstown are Sections 69 and 72. These sections provide:

Section 69.

"Regular municipal elections shall be held at the time provided by the general laws of the State.

Municipal primary elections are hereby abolished * * *."

Section 72.

"At least ten days before any municipal election the Board of Deputy State Supervisors of Elections shall appoint for each precinct two judges and two clerks or registrars, who shall constitute the election officers of such precinct and who shall perform the duties provided by the general laws of the State in the manner therein provided."

The time for holding elections as provided in Section 1, Article XVII of the Constitution of this state is as follows:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

Pursuant to this section, the legislature has enacted Section 4785-4, General Code, which provides in part:

"General elections in the state of Ohio and its political subdivisions shall be held as follows:

* * * * *

d. For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years.

* * * * *

It will be seen in view of the express provisions of Section 69 of the Youngstown charter, supra, and the foregoing constitutional and statutory provisions that municipal elections in this city shall be held on the first Tuesday after the first Monday in November in the odd numbered years.

Section 4785-25, General Code, with which the provisions of Section 72 of the charter of the City of Youngstown are at variance, provides for the appointment of precinct officials by the board of elections as follows:

"On or before the first day of September before each November election the board by a majority vote shall, after careful examination and investigation as to their qualifications, appoint for each election precinct

six competent persons, four as judges and two as clerks, who shall constitute the election officers of such precinct. Not more than two of the judges and one of the clerks shall be members of the same political party. The term of such precinct officers shall be for one year, but subject to removal at any time by the board. Vacancies for unexpired terms shall be filled by the board. When new precincts have been created the board shall appoint judges and clerks for such precincts for the unexpired term. Any judge or clerk may be summarily removed from office at any time by the board for neglect of duty, malfeasance or misconduct in office."

As members of the board of education are also elected at the regular municipal election as provided in Section 4785-4, *supra*, the case of *State, ex rel. v. Green*, 121 O. S. 301, is directly in point. In that case the City of East Cleveland had provided by charter for the use of voting machines at elections. At the particular election at which it was proposed to use voting machines, not only municipal officers were to be elected but also members of the board of education. The Supreme Court held that the control of elections for members of the board of education is not a city function and that a charter city was not authorized by the Home Rule provisions of the Constitution to prescribe how an election for members of a board of education should be conducted. In the opinion of the court, the language appearing at p. 311 is as follows:

"Under the doctrine laid down in the case of *State, ex rel. Taylor, v. French*, 96 Ohio St., 172, 117 N. E., 173, Ann. Cas., 1918C, 890, the power to regulate and supervise elections is a power of local self-government, and is extended even to the point of permitting a charter city to determine that women may vote at a municipal election prior to their general enfranchisement. However, county and state elections are not a matter of municipal concern. The Home Rule Amendment to the Constitution does not give a municipality authority to provide how elections for county and state officers shall be conducted. The mere fact that as a matter of convenience these elections are at times united does not enhance the jurisdiction of the municipality nor extend its power beyond its own territorial limits.

It is conceded that the coming election in East Cleveland is to cover, not only municipal officials, but members of the board of education. The control of election for members of a board of education is not a city function. We hence conclude that, while the major legal question involved in this record must be decided in favor of the relator, the writ must be denied for the reason that Section 33 of the City Charter, in so far as it relates to county and state elections, is unconstitutional and void."

In view of the fact that members of a board of education are to be elected at the regular municipal elections of the City of Youngstown, and since the control of the election of such persons is not a city function, it must necessarily follow that the appointment of the judges and clerks of elections to serve at such municipal elections must be made in accordance with the provisions of Section 4785-25, General Code, and Section 72 of the Home Rule Charter of that city, in so far as it relates to regular municipal elections, is invalid.

The foregoing conclusion is strengthened by a consideration of the fact that the judges and the clerks of elections are appointed by the county board of elections whose duties in this respect are clearly defined by statute. There is serious doubt as to whether or not the statutory duties of these officers, who are appointed

by the chief election officer of the state, may be altered or set aside by the charter of a city within that county.

In view of the foregoing, the case of *Billings v. Railroad Company*, which you mention, is not in my opinion controlling.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2944.

APPROVAL, LEASE TO STATE LAND AT GRAND LAKE OR LAKE ST. MARYS FOR COTTAGE SITE AND LANDING PURPOSES—MRS. DELIA RUDOLPH.

COLUMBUS, OHIO, February 14, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from the Division of Conservation in your department, submitting for my examination and approval a certain reservoir land lease, in triplicate, which is executed by the Conservation Commissioner on behalf of the State of Ohio, by which there is leased and demised to one Mrs. Delia Rudolph of St. Marys, Ohio, the right to use and occupy for cottage site and landing purposes a certain parcel of State land at Grand Lake or Lake St. Marys.

This lease, which calls for an annual rental of \$90.00, is for a term of fifteen years and is granted subject to the conditions and restrictions usually found in leases of this kind.

Upon examination of said lease, I find that the same has been properly executed in accordance with the authority conferred upon the Conservation Commissioner by the provisions of Section 471, General Code, as amended in the Conservation Act passed by the 88th General Assembly, and that the provisions thereof are in conformity with the provisions of said section and of other sections of the General Code relating to leases of this kind.

Said lease accordingly is approved by me as to legality and form, as is evidenced by my approval endorsed upon said lease, and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General

2945.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS—F. C. BARKHURST-FRED HAMMERLE.

COLUMBUS, OHIO, February 14, 1931.

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