

I conclude therefore that a city patrolman or policeman is a public officer, from the essential nature of the duties that he is authorized and required to perform; and that under the provisions of Section 4666, General Code, he is required to be an elector of a municipal corporation in and for which he is appointed. It follows from this conclusion on the facts stated in your communication that the appointment of the police patrolman referred to in your communication was, and continued to be illegal, and that his dismissal from the police force of the City of Cambridge could legally be effected without reference to the sections of the General Code relating to the dismissal for specified causes of all policemen legally appointed and in the classified civil service of the city.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2358.

TAX AND TAXATION—MUNICIPAL TAX LEVIES AFTER DATE OF
ANNEXATION OF TERRITORY—COVERS ALL TAXABLE PROPERTY
IN ANNEXED TERRITORY.

SYLLABUS:

Where proceedings for the annexation of territory to a municipal corporation are completed by the adoption of a resolution or ordinance accepting the application for such annexation and its legal publication, tax levies thereafter authorized by the council of the municipal corporation to meet its annual budget under the provisions of Section 5625-25, General Code, and certified to the county auditor before the first day of October, should be extended for collection on all the taxable property in said municipal corporation including that in the territory annexed.

COLUMBUS, OHIO, July 16, 1928.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“The City of Girard has started proceedings to annex contiguous territory in Liberty Township. The County Commissioners have consented to the annexation. The final transcript of the Commissioners and the accompanying map and petition were filed with the City Auditor, under date of June 19th.

Under Section 3550 of the General Code, the City Council cannot by resolution or ordinance accept the application of annexation until after the expiration of sixty days.

If the annexation is accepted by the City of Girard between the dates of August 19th and October 1st, kindly advise me, in your opinion, the city tax rate should be levied on the annexed territory.”

I assume from your communication that the annexation proceedings therein referred to is one on the petition of a majority of the adult freeholders of the territory in Liberty Township, the annexation of which to the City of Girard is desired, and that said petition was addressed to the county commissioners and acted upon by them under the provisions of Sections 3548, et seq., General Code. Section 3549, General Code, provides in effect that when the county commissioners find that the statutory

provisions with respect to such petition have been complied with and the map or plat accompanying the same is correct, and when they further find that it is right and proper that said petition should be granted, they shall make an order to this effect upon the journal and certify a transcript of their proceedings, together with the petition and the accompanying map or plat to the auditor (or clerk) of the municipal corporation to which the annexation of territory is to be made.

Section 3550, General Code, provides that at the next regular session of the council of the municipality, after the expiration of sixty days from the date of such filing, the auditor or clerk, as the case may be, shall lay the transcript and the accompanying map or plat and petition before the council and that thereupon the council, by resolution or ordinance, shall accept or reject the application for annexation.

By Section 3556, General Code, it is provided that when the resolution or ordinance accepting such annexation has been adopted, the territory annexed shall be deemed a part of the municipality and the inhabitants residing therein shall have all the rights and privileges of the inhabitants within the original limits of the municipality.

The annexation of the territory of the township described in said petition and in the map or plat accompanying the same is completed on the passage and legal publication of the ordinance of the council of the municipal corporation, accepting the application for such annexation and accepting the county auditor's apportionment of that part of the township indebtedness to be paid by such municipal corporation as provided for by Section 3557-1, General Code, as enacted in 112 Ohio Laws, page 215. *State ex rel. vs. Craig*, Auditor, 21 C. C. 13.

As I view the question presented in your communication the answer to the same is found in the provisions of the budget law, 112 O. L. 391, et seq. relating to tax budgets of municipal corporations and the final certification to the county auditor for the extension of tax levies thereon.

By the provisions of Section 5625-20, General Code, it is provided that on or before the fifteenth day of July in each year the taxing authority of each political subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. This tax budget is to be prepared in the manner and form provided for by said section and Section 5625-21, General Code.

Section 5625-22, General Code, provides that the budget after adoption shall be submitted to the county auditor on or before the twentieth day of July, or at such later time as may be prescribed by the Tax Commission of Ohio. Under the provisions of Section 5625-23, General Code, the county auditor is required to present such tax budget to the budget commission for its action thereon, and in this connection Section 5625-19, General Code, provides that such budget commission shall meet on the first Monday in August annually and shall complete its work on or before the first day of September annually, unless for good cause the Tax Commission of Ohio shall extend the time for completing the work. Section 5625-25, General Code, provides as follows:

“When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the fifteen mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. If the proposition of levying a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under the provisions of this act, the

budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed."

Applicable to the question here presented it will be noted that under the provisions of Section 5625-25, General Code, above quoted, the council of a municipal corporation as the taxing authority of such political subdivision is required to authorize the necessary tax levies to meet its budget by the adoption of an ordinance or resolution to that end and certify such tax levies to the county auditor before the first day of October, or such later date as may be approved by the Tax Commission of Ohio. With respect to the situation of fact presented in your communication, it is apparent that if after the effective date of the ordinance or resolution of the City of Girard accepting the annexation of the territory described in the petition and map or plat upon which the county commissioners have acted and the legal publication of such ordinance or resolution, the council of said city passes an ordinance or resolution under authority of Section 5625-25, General Code, authorizing the necessary tax levies to meet the budget of said city as allowed by the budget commissioner, such tax levies when certified to the county auditor before the first day of October, or at such later date as may be approved by the Tax Commission of Ohio, will be extended for collection upon all of the then taxable property in the City of Girard including that in the territory annexed to it pursuant to the proceedings referred to in your communication.

This conclusion is supported by the decision of the court in the case of *State ex rel. vs. Craig, Auditor*, supra, which arose out of the annexation of certain territory of Brooklyn Township, Cuyahoga County, to the village of South Brooklyn in said county. In this case the annexation was completed and the territory there in question became a part of the Village of South Brooklyn on April 24, 1900. Under the then provisions of Section 2691, Revised Statutes, the council of a municipal corporation was required to determine and certify to the auditor of the county the tax rates levied on the real and personal property in the corporation on or before the first Monday of June annually. On April 27, 1900, the tax levy for Brooklyn Township was certified to the auditor of the county by the trustees of the township under the then provisions of Section 282 Revised Statutes, which provided that such tax levy should be certified on or before the fifteenth day of May annually. On May 15, 1900, the tax levy for South Brooklyn Village was certified to the auditor of said county as provided by Section 2691, Revised Statutes, which, as above noted, required such tax levy to be certified on or before the first Monday of June annually. In this situation the court in its opinion in the above cited case said:

"The question, then is: should the auditor have entered the levy certified by the trustees of the township or the clerk of South Brooklyn Village, on the property of this territory annexed to the village?"

At this time the annexed territory was included within the boundaries of the municipal corporation, and had been so included since April 24, 1900; and we are of the opinion that it was the duty of the auditor to have recognized that fact, and to have entered the levy certified by the municipal authorities upon all the property within the municipality, as it then was.

By Section 2691, Revised Statutes, provision is made for the assessment of a tax in the discretion of the council, upon the property annexed to the corporation subsequent to the first Monday of June. No special provision is made for the levy of a tax upon property of territory annexed to the corporation between the second Monday of April and the first Monday of June.

It would seem, therefore, that when the boundaries of a municipal corporation are extended prior to the first Monday of June, no special provision is necessary to authorize the levy of the municipal tax upon the annexed property. If it were otherwise, no levy by the municipality could be made on property brought within the corporation between the second Monday of April and the first Monday of June; whereas a levy might be made on the property of the territory annexed subsequent to the first Monday of June of the current year.

We are of the opinion that the levy certified by the municipality should have been entered upon the property of the annexed territory, instead of the levy certified by the trustees of the township."

By way of specific answer to the question submitted in your communication I am of the opinion therefore that tax levies to meet its annual budget certified by the City of Girard to the county auditor after the effective date of the ordinance or resolution of the council of said city accepting the annexation of territory here in question should be extended upon the taxable property in the territory so annexed as well as on the property within the original territory of said city. It may be proper to add that this conclusion is in no wise affected by the fact that the lien of the state for taxes for all purposes attaches to all real property subject to taxes on the day preceding the second Monday of April. *State ex rel. vs. Craig, Auditor, supra; State ex rel. vs. Roose, Auditor, 90 O. S. 345, 351.*

Respectfully,
EDWARD C. TURNER,
Attorney General.

2359.

BOARD OF HEALTH OF DISTRICTS—AUTHORITY OF BOARD DISCUSSED—VACCINATION OF DOGS.

SYLLABUS:

1. *By the terms of Sections 1261-26, 1261-30 and 1261-42, General Code, a district board of health may make such orders and regulations as it deems necessary for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances.*

2. *Whether an order of a district board of health is reasonable or unreasonable is a judicial question. The character of the precautions that may be reasonably necessary depends on the circumstances, and each requirement must be scrutinized in the light of the conditions existing at the time of its adoption.*

3. *A district board of health, if it deems it necessary for the public health, or the prevention or restriction of disease, or the prevention, abatement or suppression of a nuisance may order the vaccination of all dogs within such district with anti-rabic serum.*

COLUMBUS, OHIO, July 16, 1928.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge your letter dated June 30, 1928, which reads as follows: