

quoted in sub-section 1 of section 1579-715 is sufficiently broad to include the appointment of a trustee to fill a vacancy. In other words, is such an appointment a "proceeding" as referred to in this section?

Section 26 of the General Code provides in part that a repeal or amendment to a statute shall in no manner affect pending "proceedings" unless so expressed. Under this section there are a number of cases cited which it is believed by analogy apply to the case under consideration. In other words, in construing the section last mentioned, it has been necessary to interpret the meaning of the word "proceeding." In this connection a street improvement has been held to be a proceeding. 58 O. S., 225. In *State vs. Case*, 13 C. C. (N. S.) 449, it was held:

"Plans of a building commissioner are a proceeding within the meaning of this section."

Also a ditch improvement project was held to be a proceeding. *Opinions Attorney-General*, 1920, p. 211.

In view of the foregoing, it would seem to do no violence to the statutes to say that an action taken to appoint a trustee to fill a vacancy as referred to in section 3262 would be a proceeding such as would come under the jurisdiction of the Municipal Court of the city of Springfield. The law does not favor vacancies in office, and if the construction above adopted is not correct, then there is no means of filling the vacancy to which you refer.

You are therefore advised that it is the opinion of this department that under the provisions of section 1579-715 of the General Code of Ohio, the judge of the municipal court of the city of Springfield may fill a vacancy in the board of township trustees of Springfield township, thereby exercising the powers heretofore granted to justices of the peace of said township under the provisions of section 3252.

Respectfully,
C. C. CRABBE,
Attorney-General.

3905.

MAXIMUM COSTS THAT MAY BE CHARGED UNDER THE AMENDED GARNISHEE LAW.

SYLLABUS:

Under the amended garnishée law \$2.50 is the maximum amount that may be charged for costs, including the garnishée fee, in any proceeding to garnish wages: irrespective of the incidental actions instituted to enforce the judgment.

COLUMBUS, OHIO, December 22, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion upon the following inquiries:

"Can a justice of the peace collect ten per cent of the wages of a married man on a bill (not for necessaries) that was incurred prior to July 17th, 1925, when the law changed?"

What fee can be charged where a married man can be garnisheed under the 20% law (fee only \$2.50) when the justice of the peace on that judgment issues an aid of execution. Can the justice and constable charge the same fee as in any other execution?"

In another communication you request my opinion upon the following inquiry, which may well be considered in this connection:

"Shall levy be made on the personal earnings of a debtor for the next preceding thirty days if he has received his pay for the first fifteen days of that time, or only on the amount that is due or may become due from garnishee?"

The questions you present arise on account of the amendment of the garnishee law. Section 10253 sets forth the grounds upon which an affidavit in attachment may issue, and among other things, in sub-section 9 thereof, as amended, provides

"No attachment shall issue by virtue of this chapter against the personal earnings of any defendant for services rendered by such defendant within thirty days before the commencement of the action or the issuing of the attachment, unless the defendant is not the support of a family, or unless the amount of the defendant's earnings for said thirty days exceeds fifty dollars, and then only as to the excess over that amount, or unless the claim is one for work and labor, or necessities, and then for only twenty per cent of such personal earnings."

Section 10271, as last amended, provides:

"The personal earnings now exempted by law, in addition to the twenty per cent for work and labor, or necessities, shall be further liable to the plaintiff for the actual costs of any proceedings brought to recover a judgment for such work and labor, or necessities, and for any proceedings to satisfy said judgment in any sum not to exceed two dollars and the necessary garnishee fee for each suit, attachment, aid of execution or other proceeding. Such garnishee may pay to such debtor an amount equal to eighty per cent of such personal earnings, less the sum of two dollars and the necessary garnishee fee not to exceed fifty cents, if the same is demanded by the garnishee, for actual costs as herein provided, due at the time of the service of process or which may become due thereafter and before trial and be released from any further liability to such creditor, or to the court or any officer thereof, in such proceeding, or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action. Both the debtor and the creditor shall likewise be released from any further liability to the court or any officers thereof in such proceedings or in any other proceedings brought for the purpose of enforcing the payment of the balance of the costs due in said original action."

After consideration it is believed that the only inquiry which this department may logically undertake to answer is the second question in your first letter, which pertains to the amount of costs and fees that may be charged. In other words, this inquiry concerns your Bureau because of your jurisdiction over the examination of records involving such. On the other hand, the other questions are of a judicial nature and concern the civil rights of litigants. Therefore, an answer will be attempted as to only the one inquiry.

Under section 10271 as it existed before amendment, it was held by the Attorney-General, as disclosed by the Reports for the year 1914, page 1035:

"Only ten per cent of such personal earnings, plus court costs, and fifty cents' garnishee fee for the garnishee, if such garnishee demands the same, shall be subject to such attachment. Any additional fees over and above this amount may be legally taxed and collected same as any other cause of action, but cannot be collected from the defendant in such ancillary proceeding."

It was further held in said opinion that the term "costs" employed in section 10271 of the General Code, included magistrate's and constable's fees as well as the fees of witnesses and jurors.

In other words, under this section in its original form, \$2.50 was the maximum amount of costs and garnishee fees that could be charged in any case for the attachment on the ground of necessities. The section, as amended, differs in some respects in the language used, from the old section. Under the old section ten per cent was the amount of personal earnings subject to such attachment, excepting for the costs above mentioned. Under the new section twenty per cent is subject to such attachment, and has as its basis not only necessities, but "work and labor." This distinction, of course, does not affect your inquiry.

In order to more clearly set forth the distinction between the two provisions, a part of the original section is herein set forth, as follows:

"The personal earnings now exempted by law, in addition to the ten per cent for necessities, shall be further liable to the plaintiff for the actual costs of any proceeding brought to recover a judgement for such necessities, in any sum not to exceed two dollars and the necessary garnishee fee."

In analyzing the two provisions there is no doubt in my mind but that \$2.00 is the maximum amount that may be charged for costs in such a case, whether it be in connection with securing judgment alone, or whether there is in connection with the same, other proceedings to satisfy said judgment.

In view of the language used, there seems to be some ground for argument that probably a garnishee fee might be charged for each suit, attachment, aid of execution or other proceeding. In other words, in the first sentence of the amended law it is arguable that the garnishee might be entitled to his fee in issuing the original service, and further, collect his fee in the proceeding in aid of execution, etc. However, it is not believed that this is the real intent of the law. While the law has been amended so as to impose greater burdens upon the wage earner, it is not believed that the language used justifies the conclusion that any additional costs are to be imposed other than the maximum of \$2.50 in any case, irrespective of the incidental proceedings that may be necessary in order to collect or enforce the judgment.

Respectfully,

C. C. CRABBE,

Attorney-General.