

3903.

AUTHORITY OF CITY BOARD OF EDUCATION TO PAY CITY SOLICITOR FOR SERVICES, DISCUSSED.

SYLLABUS:

A city board of education may not legally contribute a part of the city solicitor's salary for services rendered to them by said solicitor which he is required to perform as a part of his duties. The same would be true of his assistant.

However, it has been held that when the solicitor performs work for the board of education which is no part of his duties in his official capacity, he may be compensated therefor. See *Opinions, Attorney-General, 1923, page 508.*

COLUMBUS, OHIO, December 22, 1926.

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

GENTLEMEN:—In your recent communication you request my written opinion on the following:

"We are enclosing herewith a letter from the Clerk of the Board of Education of the City of Toledo School District in which the question is asked whether it is legal for a board of education to pay a part of the salary of an assistant city solicitor in order to get better service from that source."

Section 4303 of the General Code provides for the election of a city solicitor; and sections 4308 to 4313 relate to the general duties of such solicitor with reference to the work of the city and its officials.

Section 4307 authorizes the council to prescribe compensation for the city solicitor in connection with his duties as police prosecutor, and the county commissioners under said section may allow additional compensation. However, the general salary of the solicitor is provided for in section 4214, which authorizes council to fix by ordinance or resolution salaries and compensation of all officers.

Section 4761 provides that the prosecuting attorney shall be the legal adviser of all boards of education in the county, except city school districts. This section further provides:

"In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education of the county."

In this connection, it may be pointed out that in the *Opinions of the Attorney-General for the year 1923, page 508*, it was held that a city board of education could legally pay a city solicitor for the preparation of abstracts of title to property which was to be purchased by said board. However, this conclusion was based upon the proposition that it was no part of the city solicitor's duties to perform such service for the board of education. It is a well known principle of statutory construction that money cannot be expended from a public treasury except in pursuance to express provisions of law. It further is a well known rule of construction that the legislature in its wisdom may cast additional duties upon public officers without providing additional compensation therefor.

Section 4761 which requires the solicitor to act as adviser to the city board of education, provides for no compensation for such services. It therefore must follow that in

so far as his services are such as he is legally required to perform for such board, there is no compensation provided other than the salary which he receives, which is provided by the city:

In view of the foregoing, you are advised that a city board of education may not legally pay the city solicitor for services rendered to its board when the services are such as the city solicitor in his official capacity is required to perform.

It would logically follow that what has been said herein relative to a city solicitor would be equally applicable to an assistant city solicitor.

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

3904.

JUDGE OF MUNICIPAL COURT OF SPRINGFIELD MAY FILL VACANCY
IN BOARD OF TOWNSHIP TRUSTEES—SECTIONS 1579-715 AND 3262
OF THE GENERAL CODE CONSTRUED.

SYLLABUS:

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 3262.

COLUMBUS, OHIO, December 22, 1926.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion upon the following state of facts:

“A vacancy will exist in the board of township trustees of Springfield township, this county. Section 3262, G. C. provides that such a vacancy shall be filled by the oldest justice of the peace in the township.

There are no justices of the peace in Springfield township since the establishment of the Municipal court of Springfield. Section 1579-715 provides for the jurisdiction of the municipal court of the City of Springfield.

Is the jurisdiction as prescribed in the above section, sufficient to give authority to the municipal judge of the City of Springfield to fill the vacancy in the board of township trustees, and if not, who shall have the appointing power to fill such vacancy?”

Section 1579-715 to which you refer, and which relates to the jurisdiction of the Municipal Court of the City of Springfield, among other things, grants jurisdiction as indicated in sub-section 1:

“All actions and proceedings of which justices of the peace courts, or such courts as may succeed justice of the peace courts, have or may be given jurisdiction.”

Section 1579-759 abolished the jurisdiction of justices of the peace in Springfield township. The only question presented would seem to be whether the language above