

862.

COUNTY TREASURER—NOT DE JURE OFFICER UNTIL COMMISSION  
RECEIVED FROM GOVERNOR.

## SYLLABUS:

*In order to become a de jure officer, a person elected or appointed county treasurer must receive a commission for the office, as provided in Section 138 of the General Code.*

COLUMBUS, OHIO, September 12, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication which reads as follows:

“The treasurer of our county has resigned, and the county commissioners have appointed his successor. The question was brought to me whether it was necessary for the successor to have a commission from the government.

I seem to be unable to find anything in the Constitution or law requiring such a commission in such cases, and have not examined the Opinions of the Attorney General.

As the successor is to take office September 9th, 1929, I will appreciate an early response.”

Section 138 of the General Code of Ohio is pertinent to your inquiry, and reads as follows:

“A judge of a court of record, state officer, county officer, militia officer and justice of the peace, shall be ineligible to perform any duty pertaining to his office, until he presents to the proper officer or authority a legal certificate of his election or appointment, and receives from the governor a commission to fill such office.”

An interpretation of the above section was considered in an opinion of the Attorney General found in Opinions of the Attorney General for 1917, Volume 2, page 1432, a part of which opinion held as follows:

“This is a very old statute, and is so plain in its terms that it has not been necessary that it receive much attention from the courts. It was, however, passed upon at a very early date (in 1832) by the Supreme Court in the case of *State ex rel. vs. Moffitt*, 5 Ohio 358. In that case Moffitt claimed to have been elected associate judge of Ashtabula County, but by reason of an informality in his election he failed to get a certificate thereof, and consequently failed to get a commission from the governor, but the Court of Common Pleas admitted him to take the oath of office and sit as an associate judge. The Supreme Court held that this was illegal under the above statute and that he could prove his title to the office only by the commission therefore. The same statute at that time contained the provision now found in Section 7 in reference to the failure to give bond, and the office then also being deemed vacant for failure to secure the commission. It was not simply held that the commission was evidence of his title to the office but that the obtaining thereof signified his acceptance, so that the commission instead of simply being evi-

dence of his right to the office was one of the steps necessary to entitle him to it. Hitchcock, J., in his opinion, at page 365, says:

'By taking the oath he signifies his acceptance, but he is expressly prohibited from discharging the duty until the "indorsement" is made. This may be considered as a mere trifle, as useless formality. But shall a man who assumes the character of a judge treat any part of the law as insignificant and trivial? It would rather become him to be scrupulously exact in his compliance with every scintilla of law.

Let others, if they will, complain of the unnecessary provision of any statute or of any other principle of law, but such language does not become a judge. Let me be not misunderstood; it is not the commission issued in pursuance of these statutes which confers the right upon the officer. The right is derived from the election or appointment, of which the commission is only evidence. But it is evidence without which the officer cannot proceed to act officially.'

This language would seem to indicate that the commission is evidence alone of his title to the office, but immediately before that it is stated:

' \* \* \* every man before he presumes to exercise the office of a judge must have a commission, must signify his acceptance of the appointment and must take an oath of office, and have the same "indorsed on his commission." '

The whole opinion relates to the proposition that the commission in addition to being a title to office is a requisite to his exercising the same. Of course county officers being provided for in the same section are governed by the same principles. The same section is incidentally considered in a recent opinion in the case of *Bushnell vs. Koon, et al.*, 8 C. C. N. S. 163, in which it is distinguished and held that the date of the term of a justice of the peace, also provided for in said section, is the date of his commission, and where a justice was re-elected before the expiration of his first term but there was an interim between the expiration of that term and the ensuing commission for the second term, that any judgments rendered by him during that interim were absolutely void and their enforcement might be prevented by injunction, there being no provision that he should hold until his successor was elected, etc.

The term of office begins with the receipt of the commission and expires at the end of a period of the term after the date of the commission. He was no officer until he received the commission, and he ceases to be one as soon as it expires. The commission and the office go together. The commission is the evidence that the man is an officer. It is more than that,—it is his muniment of title to the office. It is not the foundation of his right, for that is his election or appointment, but it is a necessary accompaniment of the existence of his right, which neither precedes it nor survives it.

It follows from the above statute and the authorities and principles established and recognized by them that the appointee in the instant case never became coroner; never had any right whatever to exercise the duties of the office, not even an imperfect right; that he simply assumed to be such officer and performed such duties without right, and with nothing more than 'color' of office, even if he had that. \* \* \* "

I am inclined to agree with the opinion of my predecessor, and am further of the opinion that the "commission" seems to be absolutely essential to constitute a man a county officer. Undoubtedly, by virtue of Section 138, General Code, *supra*, before a newly appointed treasurer of your county will have any authority to transact any official business for the county, it will be necessary for him to furnish bond, as re-

quired by law, and to submit to the Governor of the state his appointment by the county commissioners, and receive from the Governor a commission to fill the office of county treasurer.

In specific answer to your question, therefore, I am of the opinion that in order to become a de jure officer, a person elected or appointed county treasurer must receive a commission for the office, as provided in Section 138 of the General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

863.

MUNICIPALITY—COUNCIL MAY PROVIDE FOR AN INVESTIGATOR OF THE POOR UNDER PUBLIC SAFETY DIRECTOR—ELIGIBILITY OF PERSON EMPLOYED BY PRIVATE AGENCY.

**SYLLABUS:**

1. *Council of a municipality may establish an office for an employe in the office of director of public safety to make investigations of the poor, and the salary or compensation of such employe may be paid out of public funds.*

2. *A person who is employed by a private agency to make investigations of the poor may be employed by a municipality to fill an office established by council to make similar investigation.*

COLUMBUS, OHIO, September 12, 1929.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“Section 3481 of the General Code of Ohio provides in part as follows:

“When complaint is made to the township trustees or to the proper officers of the municipal corporation that a person therein requires public relief or support, one or more of such officers, or some other duly authorized person, shall visit the person needing relief forthwith. \* \* \*

(1) Does this provision authorize the officers of a municipal corporation to employ a person to make this investigation and pay his salary or compensation out of public funds?

(2) If such employment may be made, are the municipal officers authorized to employ for part time a person who is also employed by a private agency for similar work?”

Section 3481, General Code, reads as follows:

“When complaint is made to the township trustees or to the proper officers of the municipal corporation that a person therein requires public relief or support, one or more of such officers, or some other duly authorized person, shall visit the person needing relief, forthwith, to ascertain his name, age, sex, color, nativity, length of residence in the county, previous habits and present condition and in what township and county in this state he is legally settled. The information so ascertained shall be transmitted to the township