

double the amount collected with good and sufficient sureties, to be approved by the auditor, conditioned for the faithful paying over and accounting to such society for such funds."

Sections 9895, 9896 and 9897 G. C. also provide for the levying, collecting and final disbursement of funds in similar cases to be used for the benefit of county agricultural societies.

Section 9893 G. C. provides:

"When money has been raised by taxation in a county for the purpose of leasing lands for county fairs, or of erecting buildings for county fair purposes, or for making improvements on county fair grounds, or any purpose connected with the use of county fair grounds or the management thereof by a county agricultural society, it shall be used for such purpose only, notwithstanding the law under which the money was so raised has expired by limitation. Such moneys shall be used for the purposes intended by the act under which they were levied and collected by taxation."

Section 9892 G. C. which is also a statute of similar subject matter, provides as follows:

"From the proceeds arising from the sale of such bonds, the county commissioners shall pay off and liquidate the indebtedness for which they were so sold."

Upon examination, therefore, of these closely related sections of the code pertaining to the powers and duties of county agricultural societies it is the opinion of this department that the control of funds raised by the procedure of section 9887-1 G. C. should be vested in the county agricultural society for the benefit of which the same were raised, and that the county commissioners or auditor would be acting upon lawful authority in disposing of said fund in accordance with the provisions of sections 9892 and 9897 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1867.

TOWNSHIP TREASURER—PERMANENT REMOVAL FROM TOWNSHIP
CREATES VACANCY IN SAID OFFICE—DUTY OF TOWNSHIP
TRUSTEES TO FILL SAID VACANCY PURSUANT TO SECTION
3261 G. C.

The permanent removal from the township of the township treasurer creates a vacancy in the office of township treasurer, which vacancy it is duty of the township trustees, pursuant to the provisions of section 3261 G. C., to fill.

COLUMBUS, OHIO, February 21, 1921.

HON. J. F. VANDENBROEK, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading as follows:

"Kindly grant me information on the concrete fact set forth:

Duly elect treasurer of the township before the expiration of his term removed himself and established his residence in another county. Can such person or is such party still qualified to hold the said office of treasurer in the former township for the full term of two years?"

Answering our request for further information you say that you

"* * * wish to state that the township treasurer removed himself permanently out of the county and out of the township of his former residence. His intention is to make that his permanent domicile."

In neither of your communication is there anything to indicate that the person whom you have in mind has abandoned his office by refusing or neglecting to exercise the functions thereof. For the purpose of this opinion, it will be assumed that such person is still attentive to his duties, and therefore not removable for misconduct in office under the provisions of sections 10-1 G. C. et seq. (103 O. L. 851); and our inquiry shall be whether the mere fact of the permanent removal of the township treasurer from the township wherein he was elected, creates a vacancy in that office.

Section 4 of Article XV of the constitution of Ohio says:

"No person shall be elected or appointed to any office in this state *unless possessed of the qualifications of an elector* * * *"

What the qualifications of an elector are, appears from section 1 of Article V of the same instrument, and from section 4861 G. C. et seq.

These provisions make it clear that a non-resident of the township would be ineligible to election to the office of township treasurer. The question you are interested in, however, has to do with one who becomes a non-resident of the township *after* he was elected to the office of township treasurer, and after he qualified for that office and entered upon the performance of his duties.

Section 3261 G. C. says:

"If by reason of non-acceptance, death, *or removal* of a person chosen to an office in any township, except trustees, at the regular election, or upon the removal of the assessor from the precinct or township for which he was elected, or there is a vacancy from any other cause, the trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term."

The word "removal", the eighth word of the section, occurring in the phrase "or removal of a person chosen to an office in any township", is, it must be admitted, somewhat ambiguous, inasmuch as it is capable of meaning (a) "removal" in the sense of removal of one's person from the territorial jurisdiction (that is to say, a change of residence); or (b) "removal" in the sense of *removal from office*, as for misfeasance, malfeasance or nonfeasance.

In view of the fact that the idea of change of residence is brought out, in the same section, with reference to the assessor, by the use of the phrase

"or upon the removal of the assessor from the precinct or township for which he was elected",

a very plausible argument may be advanced for the contention that "removal", as it

occurs in the eighth word of the section, means *removal from office* and *not removal from the township*.

We find, however, that the phrase

“or upon the removal of the assessor from the precinct or township for which he was elected”

did not come into the statute until many years after its original enactment, namely in 97 O. L. 76, so that the occurrence of such phrase is of no assistance in the task of interpreting other parts of the statute theretofore existing.

The question, then is: What did the legislature mean when it first used the word “removal” in the statute in question?

Said statute first made its appearance about two years after Ohio became a state, being section 12 of “An act to provide for the incorporation of townships” (passed January 21, 1804), and found in 2 O. L. 100. Said section, in part, was as follows:

“That when by reason of non-acceptance, death or removal, of any person chosen to an office, in any township, at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall fill such vacancy, and the person thus chosen shall take the same oaths and be liable to the same penalties as though he had been chosen at the annual meetings; * * *.”

There is nothing in the said act which provides for the removal of said officers for misfeasance, malfeasance or nonfeasance.

We next meet the provision in question in 3 O. L. 368. After that, we find it in the following: 8 O. L. 247; 18 O. L. 35; 22 O. L. 417; 29 O. L. 488; 51 O. L. 493; 87 O. L. 119; 97 O. L. 76; and 98 O. L. 172.

In none of the acts above cited is there found any provision whereby a township officer may be removed from office for misfeasance, malfeasance and nonfeasance.

In 55 O. L. 92, in an act passed April 12, 1858 and entitled “To further provide for the better regulation of the receipt, disbursement, and safe-keeping of the public revenue”, we find methods provided for the removal of certain fiscal officers, among them the state treasurer, county treasurer and township treasurer, upon discovery of their misconduct in office.

Section 22 of that act says:

“Whenever the term of office of any treasurer of this state or any treasurer of any county or *township* or any organized city in this state shall have expired, or he shall have resigned, died, or *have been removed from office*, he * * * shall make a full settlement” etc.

This provision appears to be the forerunner of section 3319 G. C., which says:

“At the expiration of his term of office, or on his resignation or *removal from office*, the treasurer shall deliver to his successor all moneys, books, papers and other property in his possession as treasurer, and in case of his death or incapacity they shall be delivered over by his legal representative.”

Here again, though, we are reminded that the question is as to what was the

meaning of the word "removal" in the year 1804, when the original statute employing it was enacted, and in such inquiry it is of no aid to know that in 1858, a half century later, the legislature did provide a method of removing the township treasurer for misconduct in office.

In view of the fact that at the time the legislature first enacted what we now call section 3261 G. C. there was no statutory method whereby the township treasurer could be removed from office for misfeasance, malfeasance or nonfeasance, it is the view of this department that the legislature could not have had in mind that meaning of the word "removal." Consequently, we give the word its other possible meaning, which is, removal of the person from the territorial jurisdiction of the township.

Holding, as we do that the case you put falls within the operation of an express statute (to-wit section 3261 G. C.), we at once distinguish the case from the case of Salamanca Township vs. Wilson, 109 U. S. 627.

It is also proper to say that we think the word "removal", as found in section 3261 G. C., means *permanent*, as distinguished from mere *temporary* removal. No necessity arises, however, to discuss this distinction as your letter makes it clear that the removal you have in mind is a permanent one.

It may also be added that the view herein expressed as to the meaning of the word "removal" in section 3261 G. C., is in agreement with the view taken by a former opinion of this department, found in Opinions of the Attorney-General for 1917, Vol. I, p. 527, although in said opinion the construction herein given was assumed to be the correct one without discussion.

By way of direct answer to your question you are, therefore, advised that the permanent removal from the township of the township treasurer creates a vacancy in the office of township treasurer, which vacancy it is the duty of the township trustees, pursuant to the provisions of section 3261 G. C., to fill.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1868.

SCHOOLS—CITY BOARD OF EDUCATION OF SEVEN MEMBERS,
ELECTED AT LARGE—WHERE CENSUS SHOWS INCREASE IN POPULATION OF CITY—STATUS OF BOARD NOT CHANGED—CITY OF DAYTON.

A City board of education consisting of seven members elected at large, in pursuance to the provisions of sections 4698 et seq. G. C., as amended in 1919, constitutes a legal board for a city school district, the population of which is more than fifty thousand and less than one hundred fifty thousand. Such a board also conforms to the provisions of said sections relative to a board required for a city school district containing a population of more than one hundred fifty thousand. In the event that the district containing the lesser population passes the one hundred fifty thousand mark in population, this fact will not change the status of such a board, and members so elected will have a legal tenure of office, notwithstanding the change in population.

COLUMBUS, OHIO, February 21, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—In your recent communication you requested an opinion upon the following: