

cused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present."

It is plainly provided in the above sections that either the arresting officer or court may accept cash bail as set forth in said sections, but if they do so must set such bail at the maximum fine for the offense.

In the Opinions of the Attorney General for 1921, page 581, we find the following statement:

"While the action taken is obviously without authority of law, yet it is an order made by a judicial tribunal, and it is believed that the action of a court cannot be questioned, excepting in a procedure which would authorize a higher authority to review the same.

"Notwithstanding the apparent erroneous orders made in the cases described, no law has come to my attention which will authorize your bureau to hold such a magistrate financially liable for errors of judgment as to the extent of his powers. It is suggested that your bureau can properly point out to such officials the irregularity and make suggestions in connection therewith. If such an official should wantonly refuse to comply with the instructions given, it may be that such wanton disregard for the duties imposed by law would constitute a cause of removal by the governor. However, as above indicated, notwithstanding that the action taken causes a financial loss to the city, there seems to be no authority whereby such a court can be held financially liable for errors of judgment."

While the court or constable could not be held liable for a loss sustained by their error of judgment in following the statutes, they could probably be removed for neglect of duty or compelled by mandamus to perform their legal duties.

Their attention should, at least, be called to the law in such matters and they should be admonished to follow it as set forth in said two sections of the Code.

Respectfully,

C. C. CRABBE,
Attorney General.

2885.

TERM OF OFFICE OF MEMBER OF DISTRICT BOARD OF HEALTH IS
UNTIL SUCCESSOR IS APPOINTED AND QUALIFIED.

SYLLABUS:

The term of office of a member of the District Board of Health, under section 4406 of the General Code, is until his successor is appointed and qualified.

COLUMBUS, OHIO, October 21, 1925.

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In some of the general health districts provided for in 1261-16 G. C., the advisory council, provided for in 1261-18 G. C. have not met or in some

instances have not had a quorum to transact business at their annual meetings. One of the duties required of the district advisory council is to appoint members of the general district board of health.

"In a certain county the county auditor is withholding the salaries of the health commissioner and other employees of the board of health on the grounds that a legally constituted board of health does not exist, basing the opinion on the fact that the term of office of the members appointed on the original board of health has expired and the district advisory council has not re-elected them or appointed their successors. The auditor is acting on his own judgment in this matter as he has not sought the advice of the prosecuting attorney.

"We desire to have your opinion as to whether or not section 8 of the General Code, which provides that a person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws, applies to the members of a district board of health."

Section 1261-17 of the General Code in part provides:

"In each general health district, except in a district formed by the union of a general health district and a city health district, there shall be a district board of health consisting of five members to be appointed as hereinafter provided and as provided in section 4406 of the General Code."

Section 1261-18 of the General Code in part provides:

"The district advisory council shall proceed to select and appoint a district board of health as hereinbefore provided, having due regard to the equal representation of all parts of the district, * * * Annually thereafter the district advisory council shall meet on the first Monday in May for the purpose of electing its officers and a member of the district boards of health. * * *"

It will also be noted that section 1261-16 of the General Code, provides that the state shall be divided into health districts and that each city shall constitute a health district and for the purpose of this act shall be known as the city health district. That the townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as a general health district.

Section 1261-17 of the General Code, in referring to the appointment of the five members of a *general* health district, provides that the five members shall be appointed as hereinafter provided and as provided by section 4406 of the General Code.

Section 4406 of the General Code provides as follows:

"A term of office of the members of the board shall be five years from the date of appointment, and until the successors are appointed and qualified, * * *"

The reference in section 1261-17 to section 4406 of the General Code, includes this section with reference to the appointment and terms of members for a *general* health district. Therefore, members of a general health district hold office for a term of five years and *until their successors are appointed and qualified*.

If the members of the board of health of a general health district are appointed

under the statute providing for the filling of vacancies or for the original appointment for such office they would be holding office under *color of title*.

It is a general well understood rule that you cannot collaterally attack the right of a person to hold office. A person appointed under color of title is either a de jure or a defacto officer and his title to such office can only be questioned by a proceedings in quo warranto to oust him from such office. If a legally constituted board of health does not exist a de facto board of health exists and the actions of a de facto officer are as legal as the action of a de jure officer. The employment of a health commissioner and other employes of a board of health, whether made by a de facto board of health or a de jure board of health is legal and cannot be questioned.

It is therefore my opinion that the term of office of a member of the district board of health under section 4406 of the General Code is until his successor is appointed and qualified.

Respectfully,
C. C. CRABBE,
Attorney General.

2886.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE ROOSMEYER-HECHT COMPANY, OF CINCINNATI, OHIO, COVERING THE FURTHER IMPROVEMENT OF A MONUMENT TO THE MEMORY OF WILLIAM HENRY HARRISON AND THE WILLIAM HENRY HARRISON MEMORIAL PARK, AT NORTH BEND, OHIO, AT EXPENDITURE OF \$3,400.00.

COLUMBUS, OHIO, October 21, 1925.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus; Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, and the Roos-Meyer-Hecht Company, of Cincinnati, Ohio. This contract covers the further improvement of a monument to the memory of William Henry Harrison and the William Henry Harrison Memorial Park, at North Bend, Ohio, and calls for an expenditure of \$3,400.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Aetna Casualty and Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was given for ten days as authorized by the Board of Control, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.