

by the 89th General Assembly under date of April 22, 1931 (114 O. L. 518.) By this act, any abandoned canal lands may be taken over for public park or recreational purposes by any village, city, township, county or other taxing district any time within two years from the effective date of said act.

Subject to the conditions and limitations above noted, this lease is approved by me as to legality and form as is evidenced by my approval upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4757.

SALARY—COUNTY OFFICIAL MAY VOLUNTARILY RETURN PORTION AND DESIGNATE PARTICULAR FUND IT SHOULD BE PLACED IN—IN ABSENCE OF DESIGNATION GOES IN GENERAL FUND.

SYLLABUS:

1. *The proper method for an elected county official to take a voluntary reduction in salary during his existing term is to draw his full salary and return as much of it as he desires to the county by way of gift.*

2. *The proper method of offering such a gift and of its acceptance by the county is for the giver to tender the gift to the county, with such conditions attached as he may desire. The county commissioners should accept the same by formal resolution and apply the subject of the gift in accordance with the terms and conditions upon which it is given.*

3. *If the donor so desires he may designate that the subject of his gift must be used for such a particularly designated county purpose as he specifies, and if he so desires, he may stipulate that it be credited to a particular fund.*

4. *If no fund is designated, and no terms or conditions are attached to the gift, it vests in the board of commissioners for the use of the county, and should be credited to the general fund of the county, unless a special fund is created to receive it by authority of Section 5625-11, General Code.*

COLUMBUS, OHIO, November 18, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Mr. Edgar Friedlander, Treasurer of Hamilton County, advises me that he has on hand several checks from elected county officials and communications stating that they desire to voluntarily turn back part of their salaries to the county. They desire to give this money to the General Fund if it is permissible to designate a fund. The Treasurer has asked for my opinion as to what fund to credit these checks.

Under Article II, Section 20, of the Ohio Constitution, salaries of any officers may not be changed during an existing term unless the

office be abolished. General Code Section 18, permits gifts of money to the county even by public officers. Amended Senate Joint Resolution No. 3, of the Third Special Session of the Eighty-Ninth General Assembly provides that a voluntary cut in salary by public officers shall not be construed as a violation of the Corrupt Practice Act or any other law of the State of Ohio.

There is no doubt in my mind that voluntary reductions in salaries may be made by public officers. However, I am doubtful whether a gift to a political subdivision of money from a public officer may be designated for a particular fund. In view of the fact that this same question will probably arise throughout the State and that a uniform ruling is desirable, I request your opinion on the following questions:

(1) What is the proper method of elected county officials taking a voluntary reduction during an existing term?

(2) What is the proper method of offering and accepting a gift of money from a public officer to the county?

(3) If such a gift is made, may a particular fund of the county be designated as a recipient?

(4) If no fund is designated into what fund should the money be paid?"

In Opinion No. 3962, rendered under date of January 18, 1932, and addressed to the Prosecuting Attorney of Stark County, I held:

"1. A public officer may, lawfully, if he sees fit, draw his salary or compensation and donate a portion or all of it to the political subdivision from which it is drawn. A previous agreement to do so, however, is not enforceable, as it is contrary to public policy and therefore void.

2. A contract whereby a public officer agrees to perform services required of him by law for a less compensation than that fixed by law, is contrary to public policy and void.

3. Although the general rule is that the acceptance of less compensation than that established by law for the office does not estop an officer from subsequently claiming the legal compensation, circumstances may be such that an officer, who, voluntarily, with full knowledge of his right to full compensation, and moved by force of an independent consideration, freely accepts a lesser amount in full satisfaction for his services, will be precluded from later claiming more than the amount so accepted."

It has been held by the Supreme Court of Ohio, in the case of *Prentiss vs. Dittmer*, 93 O. S., 314, that:

"An offer by a candidate for common pleas judge, made for the purpose of effecting his election to office, that in the event of his election he will accept for his judicial services only the stipulated salary payable by the state, and that he will accept nothing that may be due and payable to him from the local or county treasury, is against public policy and an offense within the purview of Section 5175-26, General Code, which, if proven, invalidates his election."

It has been quite generally held by courts of other states, that a previous agreement or offer made by a public officer to accept less compensation than that allowed by law for the office, is against public policy, and void. The mere acceptance, in good faith, of a lesser amount than the law provides for the position, without any previous agreement to that effect or when done without any attempt to influence the officer's election to office is not, in my opinion, a violation of Section 4785-104, General Code, commonly known as the "Corrupt Practice" statute or any other provision of law. It is doubtful whether the joint resolution of the last special session of the legislature, referred to by you, added anything to the principle that an acceptance by a public officer of less than his regular salary when done without any intent to influence his election, is not a violation of law.

In my previous opinion I pointed out that by the great weight of authority, any agreement by a public officer to fulfill the duties of his office for less than the compensation provided by law is void and against public policy, and that even the actual receipt of less than the legal rate of compensation for services rendered by him does not estop him from recovering the full amount which may be due him. See *Mechem on Public Officers*, Section 657; *State vs. Mayor of Nashville*, 54 A. R. 427; *Rodenhofer vs. Hogan*, 102 Ia. 321; 120 N. W. 639; 22 R. C. L. 538; 70 A. L. R. 973, note; *Am. & Eng. Enc. of Law*, 2nd Ed. Vol. 23, p. 402; *Corpus Juris*, Vol. 46, p. 1027. In some cases special circumstances and conditions have led the court to hold that estoppel does not arise under such circumstances. *Collins vs. New York*, 136 N. Y. S. 648; *Kirk vs. New York*, 136 N. Y. S. 1061.

There is respectable authority to the contrary, however. See 70 A. L. R., 973, *supra*; *Bloom vs. Hazard*, 104 Calif., 310; 37 Pac. 1037; *McQuillin on Municipal Corporations*, 2nd Ed., Sec. 542. I do not find any cases in Ohio in point.

To avoid any question of a public officer who draws less than his full compensation, later attempting to recover the remainder, the better practice, if he desires the subdivision to have the benefit of a part of his salary, is for him to draw his full salary or compensation and return such portion of it as he desires to the treasury of his subdivision by way of gift or donation. Such transaction would probably not be properly spoken of as a voluntary reduction of salary although it amounts to the same.

Clear and positive authority is extended to the state, to counties, to townships and to municipal corporations, by Section 18 of the General Code, to receive gifts, devises, bequests, moneys, lands or other properties and to "hold and apply the same according to the terms and conditions of the gift, devise or bequest."

The language of the statute, to the effect that the political subdivision shall apply the subject of a gift "according to the terms and conditions" thereof, clearly, in my opinion, would authorize a county to receive a gift conditioned upon its crediting it to the general fund of the county or any other fund which the donor might designate. See also Sections 2451, 2457 and 3070, General Code.

If the gift is received without any conditions, it, in my opinion, vests in the county commissioners, for the uses and purposes of the county and should be applied by the commissioners to county purposes according to law.

If a county officer or anyone else desires to make a gift of money to the county, the money is his to give, and he may attach such conditions to it as he sees fit. The statute, in my opinion, clearly authorizes the acceptance of the gift, subject to such conditions as may be attached to it, and if those conditions are that the money be credited to the general fund of the county, it is

the duty of the county authorities to credit and apply it according to the terms and conditions attached thereto.

In the light of a somewhat similar statute (Act, March 3, 1831—S. & C. 1228, 29 O. L. 315, Section 8) the Supreme Court held in the case of *Carder vs. Board of Commissioners of Fayette County*, 16 O. S. 354, that a county may take real estate by devise; and where the devise is made to the county by name, without limiting the uses of the property, it vests in the board of commissioners for the use of the county and may be appropriated by them for any and all authorized county purposes.

The case referred to above, was decided many years before the passage of what is known as the Budget Law, which law purports to deal with the proper application of the revenues of political subdivisions, and in the light of a statute the terms of which were somewhat different than those of Section 18, of the General Code of Ohio.

The so-called Budget Law provides in Sections 5625-10 and 5625-11, General Code, as follows:

5625-10. "All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax unless the law prescribes its use for a particular purpose, shall be paid into the general fund. * *"

5625-11. "In addition to the funds provided for by sections 5625-9 and 5625-12 of the General Code, the taxing authority of a subdivision may establish, with the approval of the bureau, such other funds as may be necessary and desirable, and may provide by ordinance or resolution that moneys derived from specified sources other than the general property tax shall be paid directly into such funds."

It would seem therefore, upon consideration of the foregoing, that when a gift of money is received by a county without any designation of the purpose for which it is to be used, it should be credited in the first instance, to the general fund of the county unless a special fund is created to receive it by authority of Section 5625-11, supra.

I am therefore of the opinion, in specific answer to your questions that:

1. The proper method for an elected county official to take a voluntary reduction in salary during his existing term is to draw his full salary and return as much of it as he desires to the county by way of gift.

2. The proper method of offering such a gift and of its acceptance by the county is for the giver to tender the gift to the county, with such conditions attached as he may desire. The county commissioners should accept the same by formal resolution and apply the subject of the gift in accordance with the terms and conditions upon which it is given.

3. If the donor so desires he may designate that the subject of his gift must be used for such a particularly designated county purpose as he specifies and if he so desires, he may stipulate that it be credited to a particular fund.

4. If no fund is designated, and no terms or conditions are attached to the gift, it vests in the board of commissioners for the use of the county, and

should be credited to the general fund of the county, unless a special fund is created to receive it by authority of Section 5625-11, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4758.

APPROVAL: CONTRACT BETWEEN STATE OF OHIO AND E. M. CARMELL COMPANY, COLUMBUS, OHIO, FOR STEAM AND ELECTRIC TRANSMISSION LINE "B" FROM STATE OFFICE BUILDING TO STATE HOUSE, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$38,600.00—SURETY BOND EXECUTED BY SEABOARD SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, November 18, 1932.

HON. FRANK W. MOWREY, *Executive Secretary, State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the State Office Building Commission, duly appointed under section 1 of House Bill No. 17 of the 88th General Assembly, passed March 14, 1929 (113 O. L. 59), and the E. M. Carmell Company of Columbus, Ohio. This contract covers the construction and completion of contract for Steam and Electric Transmission Line "B" from the State Office Building to the State House, Columbus, Ohio, in accordance with Item No. 1 of the form of proposal dated October 24, 1932. Said contract calls for an expenditure of thirty eight thousand six hundred dollars (\$38,600.00).

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. It is to be noted that the Controlling Board's approval of the expenditure is not required under the various acts appropriating the money for this contract. In addition, you have submitted a contract bond upon which the Seaboard Surety Company of New York 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 properly given, 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.

Finally, it appears that the Governor has approved all the acts of the Commission, in accordance with Section 1 of House Bill No. 17, 88th General Assembly, heretofore mentioned.

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,

GILBERT BETTMAN,
Attorney General.