

56.

APPROVAL, BONDS OF JEFFERSON RURAL SCHOOL DISTRICT, FAYETTE COUNTY, \$110,000, TO CONSTRUCT, FURNISH AND EQUIP FIREPROOF SCHOOL BUILDING.

COLUMBUS, OHIO, February 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

57.

APPROVAL, BONDS OF SMITH TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, \$6,500, TO COMPLETE ERECTION OF SCHOOL BUILDING AT CENTERVILLE.

COLUMBUS, OHIO, February 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

58.

TRUSTEES OF TOWNSHIPS OWNING STONE QUARRY CANNOT PURCHASE ADDITIONAL LANDS WITHOUT APPROVAL OF VOTERS OF TOWNSHIP.

SYLLABUS:

Trustees of a township, owning a stone or gravel quarry, cannot purchase additional lands for such quarry without the submission of the question to the voters of the township and their approval thereof.

COLUMBUS, OHIO, February 8, 1923.

HON. WALTER K. KEPPEL, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion of this department, in which your question is in effect:

Where the trustees of a township, owning a stone or gravel quarry, need more land for quarry purposes, can said trustees purchase additional land, section 7214 G. C., without first submitting the question to the voters of the township?

Section 7214 G. C. is as follows:

“The county commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of construct-

ing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional land necessary for cuts and fills together with a right of way to or from the same for the removal of material. If the county commissioners or township trustees, and the owner of such material or land, cannot agree on the price therefor, the county commissioners or township trustees may apply to the probate court or common pleas court of the county in which the same is located, and on receipt of such application, the court shall proceed to assess the value of the material or right to be appropriated in the manner hereinafter provided."

That portion relating to township trustees and land is:

"* * * * township trustees may * * * appropriate additional land necessary for cuts and fills together with a right of way to or from the same for the removal of material."

The Century Dictionary defines "appropriate" to mean:

"To set apart formally or officially, as by legislative act, for a particular purpose."

Section 7214 G. C. is a part of Chapter XVI, Title 4, entitled "Condemnation of Materials for Road Building." The only use to which "land" appropriated under this section can be put is for "cuts and fills." This is very specific and leaves no doubt about the purpose for which land so taken is to be used.

The Road Act as passed in 1915, Volume 106-574, containing this section 7214 as a part thereof also included section 3298-20, which is as follows:

"The trustees of a township may levy a tax in such amount, as they determine, to purchase real property, containing suitable stone or gravel, and the necessary machinery for operating the same, when deemed necessary for the construction, improvement, or repair of the public roads within the township, to be under the control of the trustees or a person appointed by them. The question of levying such tax, for such purpose, and the amount asked therefor, shall be submitted to the qualified electors of the township at a general election. Twenty days notice therefor shall be previously given by posting in at least ten public places in the township. Such notice shall state specifically the amount to be raised. If a majority of all votes cast at such election are in favor of the proposition, the tax therein provided for shall be considered authorized. Such tax may be levied in addition to all other taxes for township purposes, but subject, however, to the limitation on the combined maximum rate for all taxes now in force."

This section clearly provides a way for township trustees to purchase land for stone or gravel quarries; and also makes provision for machinery for operating the same. But it makes such purchase conditional only after the approval by the voters of the township.

Section 3298-23 G. C. provides how townships may jointly own real estate, containing suitable stone or gravel for road materials, and how a township may sell an interest in a quarry to another township but provides "the interest so sold must be an equal undivided interest between all the townships so interested, and

no township shall purchase an interest in such real property until the question of such purchase has been submitted by a vote of the qualified electors of said township or townships as herein provided."

Thus there is under sections 3298-20 and 3298-23 G. C. provision made for township trustees to purchase stone or gravel quarries and this provision is only after a vote of qualified electors of the township.

To say that trustees could buy quarries under section 7214 G. C. without a vote would render useless sections 3298-20 and 3298-23 G. C. No such interpretation can be placed.

Land can only be taken by township trustees under section 7214 G. C. for "cuts and fills". If stone or gravel quarries are to be purchased it must be under section 3298-20 or 3298-23 G. C.

Therefore, in answer to your inquiry, trustees cannot purchase additional land for quarry purposes without first submitting the question to the voters of the township.

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

59.

SALARY—JUDGE OF INSOLVENCY COURT OF CUYAHOGA COUNTY
WHOSE TERM BEGAN JANUARY 1, 1923, ENTITLED TO SALARY
COMPUTED UNDER SECTIONS 2992 AND 2996 G. C.

The judge of the court of insolvency of Cuyahoga county whose term of office began on January 1, 1923, is entitled to have his salary for the term computed under sections 2992 and 2996 G. C., as now in force.

COLUMBUS, OHIO, February 8, 1923.

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

GENTLEMEN:—Your letter of recent date inquiring as to the manner of computing the salary of the judge of the Court of Insolvency of Cuyahoga County for the term of office which began January 1, 1923, was duly received.

Section 1622 G. C. provides that the judge of the Court of Insolvency of Cuyahoga County shall receive "the same compensation as the probate judge of such county."

The annual salary to be paid to each probate judge in the state is computed under section 2992 G. C. according to the population of his county, but subject, however, to the express limitation contained in section 2996 G. C., as hereinafter explained.

Original section 2996 G. C. fixed a maximum limitation at \$6,000, but the amendatory act passed May 14, 1921 (109 O. L. 614), increased the limitation to \$9,000. By reason of the constitutional provision prohibiting an increase in salary during terms of office, the probate judges in office at the time the amendatory act became effective were not entitled to the benefit of the increased maximum during their then existing terms. But probate judges elected for terms of office beginning after the effective date of the amendatory section are entitled to receive the maximum of \$9,000, provided the population of their respective counties, under section 2992 G. C., is sufficient to entitle them to that amount. The mere fact that the present probate judge of Cuyahoga County may not be entitled to receive the