

auditor should not approve the salary of the person elected to the office of city solicitor of Wellston unless he is duly admitted to the bar of this state prior to January 1, 1930.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1335.

TRANSPORTATION—FURNISHED BY COUNTY BOARD FOR PUPILS IN
TOWNSHIP SCHOOL DISTRICT SEVERAL YEARS AGO—HOW CLAIM
FOR SUCH SERVICES, HELD UP BY LITIGATION, DISCHARGED.

SYLLABUS:

Where a claim for the transportation of school pupils, incurred by a county board of education, during its school year of 1921-22, under and by authority of Section 7610-1, General Code, has been held up by litigation in court, which litigation has been dismissed without prejudice, the claim may now lawfully be paid in the same manner it might have been paid originally.

COLUMBUS, OHIO, December 27, 1929.

HON. DANIEL P. BINNING, *Prosecuting Attorney, Coshocton, Ohio.*

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

“On behalf of the Boards of Education of the village school districts of Warsaw and Nellie, I beg to cite the following facts for your consideration and opinion:

In the school year of 1921 and 1922, the Jefferson Township School District of Coshocton County had certain pupils so situated that they were entitled to transportation to school. The township board of education failed to provide for the same and on application the County Board of Education proceeded to and did let a contract to one M. F. for the transportation of said pupils to and from school. He transported said pupils to school for a period of 105 days.

The Township Board of Education in the meantime filed injunction proceedings in the Court of Common Pleas against the County Board of Education, seeking to enjoin the County Board from having any of the funds due said Township Board appropriated for the payment of said transportation. Mr. F., however, was not made a party to the suit. The case has never been heard and Mr. F. has never been compensated for his services. Since the above happenings, the Jefferson Township School District has ceased to exist, it being absorbed by the Warsaw Village School District and the Nellie School District. The Boards of Education of these school districts are financially able to pay and have expressed a willingness that Mr. F. be compensated for the services rendered in transporting the school children of Jefferson Township School District and that the injunction proceedings brought against the County Board of Education be dismissed.

The Boards of Education of the districts that absorbed said school district are desirous of knowing if Mr. F. can be legally paid. If so, should he be paid out of funds now under the control of said boards, or should the County Board of Education authorize the County Auditor to withhold from distri-

bution to said districts sufficient funds to pay Mr. F. on the contract, or in what manner the same should be handled.

I will greatly appreciate an early opinion on the above so that this much delayed matter may be finally disposed of."

The terms of Section 7610-1, General Code, in force during the school year of 1921-22 (109 O. L. 553), were substantially the same as those of the present Section 7610-1, General Code. In substance, said section then provided that if the board of education of any district under the supervision of the county board of education failed to provide sufficient school privileges for all the youth of school age in the district, it became the duty of the county board of education of the county school district to which such district belonged, upon being advised and satisfied thereof, to perform such duties or acts in the same manner as the local board was authorized to perform them. And, if in so doing it was necessary to expend money, said money should be paid out of the county treasury from the general fund of the county on vouchers signed by the president of the county board of education, and the same was to be charged against the local district for which the money was paid. The amount so paid was to be retained by the county auditor from the proper funds of the school district at the time of making the next semi-annual distribution of taxes.

If, as you state, the circumstances were such in the Jefferson Township School District during the school year of 1921-22 that certain pupils were entitled to transportation to school and the local board failed to provide the transportation, it became the duty of the county board, in accordance with the provisions of said Section 7610-1, General Code, to provide the transportation and pay for the same from the general fund of the county. It then became the duty of the auditor to retain the amount so paid from the funds of the Jefferson Township School District at the time of making the next semi-annual distribution of taxes. If that obligation became fixed at that time and has not since been satisfied or cancelled, the obligation now exists, and should be taken care of as it should have been done in the first place.

Jefferson Township School District has since that time been absorbed by the Warsaw Village School District and the Nellie School District. Those two districts succeeded to the obligations of the Jefferson Township School District as those obligations existed at the time when the district was absorbed by the two districts mentioned, and if this claim is now paid from the general fund of the county, the amount thereof should be retained from the funds due, at the next semi-annual distribution of taxes, to Warsaw Village School District and the Nellie School District in equitable proportions.

This obligation is primarily an obligation on the county board of education as it was in the first instance. The transportation costs were not a direct legal obligation of the Jefferson Township School District. I mean by that, action could not have been maintained directly against the Jefferson Township School District for the cost of the transportation, the obligation having been created by the county board of education. It however was a moral obligation of the Jefferson Township School District inasmuch as that district received the benefit of the transportation and, in my opinion, it could lawfully now be paid by the Warsaw Village School District and the Nellie School District as a moral obligation without going through the form of having it paid from the general county fund and charged back to those school districts. If that is done the obligation will, of course, be satisfied and the county board of education released. In my opinion, the matter may be taken care of at this time in either of the ways mentioned.

You do not state whether or not at the time the injunction proceedings were started, a temporary injunction was issued. If there was a temporary injunction issued at that time the claim could not lawfully be paid until the injunction is dissolved and in any event it should not be paid while the proceedings are pending.

I do not know, of course, why the injunction suit you mention has not been heard and disposed of. Strictly speaking I should not at this time render an opinion in this matter, as it has been the consistent policy of former attorneys general, as well as myself, to refrain from expressing opinions on matters pending in court. However, inasmuch as you ask for a way properly to dispose of the matter and suggest that the suit will be dismissed, I have prepared this opinion as though the suit had already been dismissed and the matter not now pending in court.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1336.

ELECTION—INELIGIBILITY OF CANDIDATE SERVING AS ELECTION OFFICIAL FOR OFFICE—CANVASSING POWER'S DUTY TO CERTIFY FROM FACE OF RETURNS—HOW TOWNSHIP TRUSTEE VACANCY CAUSED BY FAILURE TO QUALIFY FILLED—JUSTICE OF PEACE SERVES UNTIL SUCCESSOR QUALIFIES.

SYLLABUS:

1. A candidate elected to the office of township trustee who served as an election official in the same precinct at such election, is barred from taking such office by the provisions of Section 5992, General Code.
2. Where three members of a board of township trustees are elected on the face of the returns, it is the duty of the canvassing power, under Section 5112, General Code, to issue certificates of election to all three.
3. A vacancy on the board of township trustees caused by the inability of one of the trustees-elect to qualify, will be filled by appointment, as provided in Section 3262, General Code.
4. Where a justice of the peace is appointed to fill a vacancy and no successor is elected and qualified at the subsequent regular election for justice of the peace, the appointee continues in office until the next regular election for that office, if such term of service does not exceed the four year limitation imposed by Section 2, Article XVII of the Constitution.

COLUMBUS, OHIO, December 27, 1929.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“At the recent election held on the 5th day of November, this year, a man by the name of Mr. P. was elected township trustee of Lodi Township, Athens County, Ohio. Mr. P.'s candidacy was regular and his name appeared regularly printed upon the township ballot. This Mr. P. was the presiding judge in, and of one of the election precincts of said Lodi Township at said election. Mr. P. is not now, and has not been a trustee of said township, but was elected at such election—at least his was one of the three highest votes cast for trustee. Mr. P. was advised in advance of this election that in the event he served as such presiding judge and was at the same time elected as such trustee, that then and in that event complications might arise. He said then as now that if elected he would make no effort to qualify and would not in fact serve as such trustee. This is his attitude today.