

or criminal, and when the repeal or amendment relates to the remedy it shall not affect pending actions, prosecutions or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecutions or proceedings, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

The provision of this section to the effect that a repeal and amendment shall not affect pending actions unless otherwise expressly provided is to be construed literally; and it does not mean "unless such inference may be granted from the repealing statute." *Kelly vs. State*, ex rel. 94 O. S. 331.

General Code, Section 26, is a rule of legislative interpretation and is to be construed as a part of any amended act unless such amendment otherwise expressly provides. *State ex rel. vs. Zangerle*, 101 O. S. 236.

It is, I believe, manifest from the language of the act that there is no expressed intention to make its provisions retroactive in effect.

These considerations lead me to the conclusion that the recent enactment of the General Assembly providing for reciprocity in inheritance taxation has no application to successions to estates of decedents dying prior to the effective date of such act.

Respectfully,

EDWARD C. TURNER,

Attorney General.

579.

COURT CONSTABLE—SUBJECT TO REMOVAL AT ANY TIME AT THE INSTANCE OF THE COURT BY AND FOR WHICH HE WAS APPOINTED.

SYLLABUS:

A court constable appointed under authority of Section 1692 of the General Code, is subject to removal at any time, at the instance of the court by and for which he was appointed.

COLUMBUS, OHIO, June 6, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication in which you request my opinion with reference to the following:

"In the month of August, 1925, Judge Layton, of the Court of Common Pleas of this county, appointed a Court Constable of the Court of Common Pleas of this county, and fixed his salary at \$1,200.00 per year. No definite time was fixed for said appointment.

Judge Layton subsequently resigned, said resignation to take effect on June 8, 1926, and Hon. Judge C. A. Stueve was appointed as his successor, said appointment being effective June 9, 1926. He immediately qualified, and was re-elected to both long and short terms, in November, 1926, and is now serving as Judge of said county, his term ending on the 9th day of January, 1933.

Will you kindly inform me whether under Sections 1692 and 1693 of the

General Code, the Court Constable serves the pleasure of the court, or whether his appointment is for a definite period."

Section 1692, General Code, reads as follows:

"When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, superior court, insolvency court, in each county of the state, and, in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases."

Section 486-8 reads in part as follows:

"The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. * * *

10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination."

It will thus be seen that court constables are not in the classified civil service and for that reason it is not necessary to prefer charges against them or assign reasons therefor in order to effect their suspension or removal.

It will be noted from the provisions of Section 1692, supra, that appointment of court constables shall only be made when in the opinion of the court the business thereof so requires. This implies that if in the opinion of the court the business thereof does not require the services of a court constable there should be none appointed and it clearly follows that if the constable is appointed and at any time thereafter in the opinion of the court his services are no longer required he may be dismissed. The terms of the statute clearly give to the court the entire discretion of the appointment in the first place and of the termination of the time of the appointment if in the court's opinion there is no longer any necessity for retaining the services of such court constable.

Your inquiry however raises another question and that is whether or not upon the resignation of a judge who had appointed a court constable the term of the court constable so appointed thereupon automatically expires and whether or not if there is no new appointment made a vacancy would occur in the position. It will be noted from the provisions of Section 1692, supra, that no term is fixed for court constables appointed by authority of this statute and while some states have a special statute which provides that the terms of all officers not otherwise fixed should be for some definite time therein fixed, we have no such statute in Ohio, and I know of no statute which fixes the term of court constables.

It is said in Throop on Public Offices, Section 304:

"Where an office is filled by appointment, and a definite term of office is not fixed by a constitutional or statutory provision, the office is held at

the pleasure of the appointing power, and the incumbent may be removed at any time."

The same author, at Section 354 says:

"The general rule is, that where a definite term of office is not fixed by law, the officer or officers, by whom a person was appointed to a particular office, may remove him at pleasure, and without notice, charges, or reasons assigned."

Specifically answering your question therefore, it is my opinion that a court constable serves at the pleasure of the court which appointed him and that Judge Steuve has the right to make his own appointment who will hold the position until he is removed by the court for any reason satisfactory to the court, either by determining that the business of the court does not require the services of a court constable or by appointing some other person in his place.

Respectfully,
EDWARD C. TURNER,
Attorney General.

580.

EXCISE TAX—MONEY PAID TO ELECTRIC LIGHT COMPANY BY A PROSPECTIVE CUSTOMER AS A CONDITION PRECEDENT TO RECEIVING ELECTRIC CURRENT IS INCLUDED IN THE TERM "GROSS RECEIPTS" USED IN SECTION 5483, GENERAL CODE, AND IS SUBJECT TO THE EXCISE TAX THEREIN PROVIDED.

SYLLABUS:

Money paid by a prospective customer to an electric light company as a condition precedent to receiving current from such company, even though the amount so paid be expended by the company in constructing an extension necessary to deliver current to the customer, is included in the term "gross receipts" in Section 5483, General Code, and subject to the excise tax therein provided.

COLUMBUS, OHIO, June 7, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You request my opinion on the following question:

"X is a corporation furnishing electricity for light, heat and power purposes to consumers in this state. In certain cases when a prospective consumer makes application for service, the company makes an estimate of the cost of the extension necessary to give the required service and the customer is required to pay this amount to the company. The amount so paid is used by the company in constructing the extension, including line, transformers, etc. The amount so expended by the company is charged into the capital account as an addition and betterment and the property in the extension becomes the property of the company.