

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said Rural School District.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1056.

COLLECTOR OF ASSESSMENTS—COMPENSATION FOR SERVICE.

SYLLABUS:

The collectors of assessments in the counties comprising a conservancy district created and being maintained under the laws of Ohio occupy a distinct, independent office from that of county treasurer and such collectors are of right entitled to retain as compensation for services, one per centum of the amount collected as delinquent taxes for such conservancy district.

COLUMBUS, OHIO, August 24, 1937.

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

GENTLEMEN: This is to acknowledge receipt of your letter of May 28th, requesting this office to reconsider Opinion No. 5280 (1936), rendered to you by my predecessor, the syllabus of which reads as follows:

“The compensation received by the county treasurer under the provisions of Section 6838-56, General Code, should be paid into the county treasury pursuant to Section 2977, General Code.”

Section 6828-56, General Code, reads as follows:

“If any county treasurer or other person entrusted with the collection of these assessments refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this act to the treasurer of said district upon his presentation of a proper demand, then he shall pay a penalty of ten

per cent. on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his official bond. The said county treasurer shall retain for his services one per cent of the amount he collects on delinquent taxes."

Sections 6828-50 and 6828-51, General Code, provide for the levying and collection of taxes and assessments levied and assessed under the act and in addition contain a grant of power to the county auditor and county treasurer to do all things necessary to collect delinquencies. Likewise, these sections provide for the preparation of an "assessment book" in triplicate, two copies of which are delivered to the county auditor, who certifies one copy to the county treasurer for use in the collection of the taxes and assessments of the conservancy district, and when the county treasurer receives such copy of the assessment book he becomes automatically charged with the sum total of the taxes and assessments therein contained. The county treasurer has no choice in the matter under the law. The General Assembly declares flatly that he shall perform the services enumerated in the Act for the Conservancy District.

When the county treasurer does all other things required of him under the law and files with the proper authority his official bond, duly approved, he is to all intents and purposes the county treasurer, but he cannot collect one assessment for a conservancy district because he is not qualified. He must go further and comply with Section 6828-52, General Code, which provides as follows:

"Before receiving the aforesaid 'assessment book' the treasurer of each county in which lands or other property of the district are located, shall execute to the board of directors of the district a bond with at least two good and sufficient sureties or a surety company, and which shall be paid for by the district, in a sum not less than the probable amount of any annual levy of said assessment to be collected by him during any one year, conditioned that said treasurer shall pay over and account for all assessments so collected by him according to law. Said bond after approval by said board of directors, shall be deposited with the secretary of the board of directors who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested so to do."

Let it be remembered that a conservancy district is a corporate entity, with all the corporate powers necessary for its existence. Its valid legal existence has been recognized by the courts of last resort of the

state and nation. It is governed by a board of directors. It may include a part of a county, an entire county or several counties. The directors are not elected by popular vote. They are appointed by the court or courts of common pleas of the several counties comprising the district and vacancies in the board are filled in the same manner.

The bond that the county treasurer gives to secure the funds collected by him for the district must be given to such board of directors, must be approved by such board and deposited with the board's secretary.

The county treasurer does not disburse the district funds. Section 6828-56, General Code, *supra*, provides specifically that the county treasurer, *upon demand must make prompt payment of the tax or any part thereof to the treasurer of the district.*

Let it be noted that the word "tax" as used in the Conservancy Act comprehends assessment.

I have heretofore held that the mere denomination of a public official, even by legislative enactment, does not, conclusively, make him such public officer. In its final analysis, the duties required of the officer under the law determine the character of the office. In other words, an official upon whom the legislature has imposed the duty to supervise the maintenance of roads is still a road-supervisor, notwithstanding the legislative branch may denominate him "judge."

In the event that the duties imposed by law do not clearly and succinctly characterize the office, and consequently the official incumbent, resort may be had to the territorial scope of the office and, as incidental thereto, the residence or domicile of the persons served by the public officer in question.

A county treasurer's duties are co-extensive with the geographical boundaries of the county wherein he was chosen. As such county treasurer he is the public servant of all the people of his county and he is not answerable to the people of any other county. When he undertakes to act for persons beyond the boundaries of his own county, the mantle of county treasurer falls from his shoulders and if the law imposes duties upon him that must be performed outside his county, even though such duties be of the same character as some of the duties performed in his own county for some or all the people of his county, such duties within the extra territorial jurisdiction must be performed by him in a capacity other than that of county treasurer.

For example, many years ago Adams, Brown and Clermont counties formed a subdivision of the Common Pleas Judicial District, and for purposes of brevity was referred to as the "A" "B" "C" district. The people of "A" are authorized to elect their county treasurer, but by such election the electors of "A" county cannot and do not confer upon him any semblance of jurisdiction to act as such county treasurer in

counties "B" and "C". The General Assembly authorizes the formation of a conservancy district corporation: five-tenths of the district is in County "C", four-tenths in County "B" and one-tenth in County "A". By force of legislative mandate, because you are county treasurer of "A" and this corporation has assessed some land in "A", you must collect these assessments for the corporation and turn them over to its treasurer and you must give a bond to the board of directors of the corporation to insure collection and payment.

The same legislative branch of the government says further, in effect: because of the time and trouble incident to your qualification for this position and because of the responsibility and for the work required and time expended in the collection of these assessments, you are going to be paid one per cent. of the amount of the delinquent taxes you collect, and to make sure of such payment you are authorized to retain such amount from the delinquent taxes collected by you. The individual does retain his one per centum and along come the courts of the state and the law department, following the trail blazed by the courts, and they say to him—you are on the fee-system as county treasurer; the collection of those taxes for the conservancy district merely amounts to an added duty to your existing office as county treasurer; you must pay this one per centum into the county treasury and you get nothing.

Of course, if the collection of these assessments is but an added duty to an existing office, the incumbent should get nothing, as it must be assumed that he became a candidate for the office with his eyes open and agreed, impliedly at least, to collect for the conservancy district corporation for the pay fixed by law for the county treasurer.

But suppose he must go beyond the scope of his duties as county treasurer in order to do all things required of him under the law relative to these assessments, then he is not acting as county treasurer. He is not required to give a bond as county treasurer to the directors of a public corporation. He is not required as county treasurer to account to the treasurer of a public corporation for any of the moneys collected by him.

We now come face to face with the question: If the individual is not a county treasurer in the performance of such duties, what is he? Surely he is a distinct public officer, independent of the county treasurer, except in name. He must make a distinct, independent qualification for the office. In the discharge of his duties he uses an "assessment book," not a tax duplicate. He disburses none of the moneys collected by him. He delivers them to the treasurer of the district, who does the disbursing. He is not responsible to his electors for moneys so collected. He is directly responsible to the directors of the conservancy district and indirectly responsible to all those in the district whose lands have been

assessed, nine-tenths of the number of whom may live beyond the confines of his county who did not vote for him as county treasurer because they could not.

I am constrained to the opinion that he is a tax collector for the conservancy district, that his official title as county treasurer of itself neither adds to nor takes from his title as tax collector for the conservancy district and that he is entitled to retain for his own use one per centum of all delinquent taxes collected by him for such conservancy district.

I am not unmindful of the decisions of the courts of Ohio and the opinion of other attorneys general to the effect that, generally speaking, treasurer's fees should be paid into the county treasury, but these decisions and opinion were based upon the theory that the collections made for the conservancy district were but an added duty to an existing office, with which theory I do not agree.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1057.

STATE OF OHIO—POLICE POWER TO REGULATE HOURS
OF LABOR OF FEMALES AND MINORS—NATIONAL AND
STATE BANKS, ETC.—APPLIES, WHEN.

SYLLABUS:

1. *The State of Ohio has, in the exercise of its police power, the right to regulate the hours of labor per day and week of females and minors employed in National banks and State chartered banks members of or affiliated with federal financial agencies, such as the Federal Reserve System and the Federal Deposit Insurance Corporation, in cases where said banks are situated within the territorial limits of Ohio, in the absence of Federal regulation along the same line.*

2. *The provisions of Sections 1008 to 1008-11, inclusive, and Section 12993 of the General Code, enacted at the last regular session of the General Assembly, having to do with the regulation of the hours of employment of females and minors, applies to females and minors employed in National banking associations; state chartered banks members of the Federal Reserve System; state chartered banks non-members of the Federal Reserve System but insured by the Federal Deposit Insurance Corporation; and state chartered banks non-members of the Federal*