

be in proper form to convey the title of the premises under consideration when properly delivered.

I am herewith returning the deed, abstract and other papers to you.

Respectfully,

EDWARD C. TURNER.

Attorney General.

117.

MUNICIPAL COUNCIL—WITHOUT AUTHORITY TO APPOINT COUNCILMEN WHEN CITY HAS BEEN REDISTRICTED.

SYLLABUS:

Where, under authority of Section 4212 of the General Code, a city is redistricted and the number of wards therein is increased, the council is without authority to appoint councilmen to serve for the new wards so created. Such redistricting does not become effective until the next regular municipal election.

COLUMBUS, OHIO, March 1, 1927.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, as follows:

"The Bureau is in receipt of a letter from the city solicitor of Mansfield, which reads:

"Recently the city of Mansfield annexed new territory, which territory has a population of close to two thousand. The city council then, under the law, redistricted the city into wards increasing the number thereof from four to six and thereby adding two councilmen to the present number. In the annexed territory which goes into the two new wards, there is also added to each of these two new wards a portion of two of the old wards. The city council has the idea that probably they can appoint councilmen for these two new wards. I am inclined to believe that they must be elected from the new wards and think that my opinion is in line with Opinion Number 2343, February 6, 1922, which states:

"The addition of councilmen provided by Section 4206 G. C. to meet the requirements of the increase in population in municipalities must in accordance with the provisions of Section 4212 G. C. be elected at a regular municipal election by the electors of the re-districted wards created previously by council."

Will your office be kind enough to let us have your opinion as to whether these councilmen should be elected or may council appoint them to fill vacancies?"

Your views in this connection will be appreciated."

The redistricting of the city into wards in the present instance was accomplished pursuant to the same statutory authority as was applicable to redistricting under consideration in the former opinion of this department, to which the solicitor refers. That authority is found in Section 4212 of the General Code, which is as follows:

"After each recurring federal census, and within three months after the issuance of the proclamation, by the secretary of state of the population of such city, and when there is annexed thereto any territory containing, by the last federal census, such number of inhabitants as will entitle the city to an additional member of the council, the council shall subdivide the city into wards, equal in number to the members of the council therein to be elected from wards. If the council fails to make such subdivision into wards within the time herein required, on the application of the president of the council, it shall be made by the director of public service. * * * "

I am of the opinion that the present situation is governed by the same principles as were discussed in the prior opinion. It was there held that no provision for the qualification of additional councilmen could be made prior to the next municipal election. The same rule applies in this instance, although the city has actually been redistricted into a larger number of wards.

My conclusion is that the redistricting does not become operative until the next regular election and that therefore no vacancy exists at present. This must obviously be the fact, for, were it to be held otherwise, then all of the present councilmen, the boundaries of whose wards were changed in the redistricting, would no longer be officers of the municipal corporation. The inescapable conclusion is that the present council continues until the next municipal election, at which time councilmen will be elected in accordance with the redistricting already adopted.

My conclusion is confirmed by the decision in the case of *State ex rel vs. Kearns, et al.*, 47 O. S., p. 566, where, in considering an earlier analogous statute, the court held that a special election was not authorized and that the redistricting did not become effective until the next regular election.

You are accordingly advised that the council of the city of Mansfield has no authority to appoint two councilmen to serve in the wards created by redistricting.

Respectfully,

EDWARD C. TURNER.

Attorney General.

118.

DEPUTY TOWNSHIP CLERK—MAY BE PUNISHED CRIMINALLY FOR THE PERFORMANCE OF ACTS, WHICH WHEN DONE BY AN OFFICER DE JURE, WOULD BE CRIMINAL—WHOEVER AIDS IS ALSO CRIMINALLY LIABLE.

SYLLABUS:

1. *A deputy township clerk appointed to sell hunter's and trapper's licenses, as provided in Section 1432, General Code, who fails or neglects to deposit the bond as therein required before issuing such licenses, is a de facto officer and may be punished criminally for the performance of acts, which when done by an officer de jure would be criminal.*