

ferred to in the above opinion by the provision that upon the removal of a member of council from the ward in which he was elected, his position should be considered as vacant, it is believed that the opinion of said court indicates that the decision would have been the same had there been no such provision of the city council.

In view of the foregoing, it is the opinion of this department upon the state of facts as given by you that when the status of a member of the county board of education, who is elected from a rural district, changes so as to cause him to be a resident of a village district, he immediately becomes disqualified as a member of the county board. Under such circumstances the member becoming so disqualified should resign and his place should be filled as provided by statute, as such a proceeding would definitely end all controversies in reference to the matter.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1114.

COMMON PLEAS COURT—DEPUTY CLERK—SECTION 2871 G. C. GOVERNS APPOINTMENT—CERTIFICATE OF APPOINTMENT FILED WITH COUNTY AUDITOR.

*The provisions of section 2871 govern the appointment of a deputy clerk of common pleas court and a certificate of such appointment must be filed with the county auditor.*

COLUMBUS, OHIO, April 1, 1920.

HON. PHIL H. WIELAND, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“Please advise which section prevails for the appointment of deputies for the office of clerk of courts, namely sections 2871 or 2981 of the General Code of Ohio.

Is the approval of the court and journal entry required or may the clerk under section 2981 without such approval or entry certify a deputy appointment to the county auditor, so long as the monthly pay of deputy does not exceed the amount allowed by the county commissioners of 40 per cent on the first two thousand of the last preceding year's fees.”

The source of your question is the apparent confusion and conflict between the sections which you quote.

Section 2871 is a part of chapter 8, entitled “clerk of common pleas court.” This section is as follows:

“The clerk may appoint one or more deputies to be approved by the court of common pleas if in session, or by one of the judges thereof, if not in session. Such appointment shall be by certificate, signed by the clerk, which, with the approval of the court or judge, shall be entered on the journal.”

At this point it may be noted that this chapter is special in that it relates not to county officers generally, but entirely to the clerk of the common pleas court.

The other section to which you refer, 2981, is a part of chapter 1 of division 3, and is entitled "salaries of county officers," and, as the title indicates, relates generally to county officers.

Section 2981 provides that such officers (including the clerk of courts) may appoint necessary deputies "and shall file with the county auditor certificates of such action."

Taken by itself this section might be interpreted as providing that the officers referred to may appoint and employ the necessary deputies without requiring the approval of any other officer. But such an interpretation would make this section directly in conflict with the provisions of section 2871, supra, that the appointment requires the approval of the court or judge.

Of course if such repugnancy exists, the question would have to be considered as to which of the two conflicting statutes should prevail and the matter of time of enactment and the special or general character of the sections would have to be considered, and the section found to prevail would to the extent of such conflict operate as a repeal by implication of the other section. Such repeals, however, are not favored and the sections under discussion should be so considered, if possible, without doing violence to the apparent intention of the legislature as will avoid such a repugnancy.

The history of section 2981 is that it, with section 2980, was originally section 3 of the act passed in 98 O. L., page 90, at the time the county offices were transferred from a fee compensation basis to a salary basis. Section 2981-1, the intervening statute, as it now stands, was passed later in 102 O. L., 136.

Section 3 as it stood before the codification carries with it undoubted evidence that its purpose was to deal with the annual determination by the commissioners of aggregate sums to be expended by county officers as compensation for their deputies and assistants. It began with the provision for the filing with the county commissioners a detailed statement of the probable amount necessary for deputies and assistants in their respective offices; provided for the action by the commissioners within a certain time after the reception of such statements and the determination and fixing of an aggregate sum for such compensation. Then followed in the second paragraph what is now section 2981 providing that "the officers herein named shall appoint and employ such deputies \* \* \* as may be necessary for their respective offices. \* \* \* and shall file with the county auditor certificates showing such action." All of this part of section 2981 will not be quoted as it is believed that enough has been referred to and considered to show that the purpose of this section was not to disturb former special grants of, or limitations on authority to appoint deputies in particular county offices, but was a part of the general scheme for providing for the payment of deputies and assistants from the county funds and fixing the aggregate amount of such salaries. It may be noted that prior to this time deputies were paid by the officers out of their own funds and the amount of their salaries was a matter of private agreement, the officer receiving his compensation by the fee system.

It must be noted also that both of these sections may be given full force and effect, that is, the clerk may make the appointment under section 2871 by certificate signed by the clerk, which, as the statute provides, "with the approval of the court or judge, shall be entered on the journal."

Then at the time of making and filing the statement required by section 2980, or prior thereto, the county clerk may file the same certificate with the county auditor as required by section 2981. So that the answer to your question may be stated in this manner: The provisions of section 2871 govern the appointment of

a deputy clerk of common pleas court and that a certificate of such appointment must be filed with the county auditor.

Respectfully,

JOHN G. PRICE,  
Attorney-General.

1115.

APPROVAL, RESOLUTIONS PROVIDING FOR SALE OF SMALL TRACT OF ABANDONED OHIO CANAL TO VILLAGE OF FRAZEYSBURG, OHIO.

COLUMBUS, OHIO, April 1, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of March 27, 1920, transmitting in duplicate resolutions providing for the sale to the village of Frazeysburg, Ohio, of a small tract of the abandoned Ohio Canal property in said village for the sum of \$50.00. I note your statement that the land in question is to be used in extending the public highway across the canal.

I have carefully examined the resolutions, find them correct in form and legal, and I have therefore affixed my signature to the same and return them herewith.

Respectfully,

JOHN G. PRICE,  
Attorney-General.

1116.

ROADS AND HIGHWAYS—LEVY UNDER SECTION 1222 G. C. (108 O. L. 494) OF LESS THAN FULL ONE AND ONE-HALF MILLS OR OF FULL ONE AND ONE-HALF MILLS IS SUBJECT TO EXTENT OF ONE-HALF MILL THEREOF TO LIMITATION UPON COMBINED MAXIMUM TAX RATE.

*A levy for the "county's proportion" under section 1222 G. C. as amended 108 O. L. 494, of less than the full one and one-half mills as well as a levy of the full one and one-half mills, is subject, to the extent of one-half mill thereof, to the limitation upon the combined maximum tax rate.*

COLUMBUS, OHIO, April 1, 1920.

HON. CARROLL A. STUBBS, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading as follows:

"This is an inquiry with reference to section 1222 of the General Code of Ohio, as amended in part one of 108 Ohio Laws at page 494. The second paragraph therein reads as follows:

"The county commissioners in any county in which less than one and one-half mills is levied in any year under the provisions of this section shall within the above limitations determine what part of such levy shall be subject to the limitations upon the combined maximum rate for all taxes now in force and what part of such levy shall be outside such limitations and unrestricted by any existing law or laws."