

35.

APPROVAL, BONDS OF TALLMADGE TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, \$80,000, TO ERECT SCHOOL BUILDING AND REPAIR AND EQUIP SCHOOL BUILDINGS OF DISTRICT.

COLUMBUS, OHIO, January 30, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

36.

TAXATION—COUNTY BOARD COMPOSED OF AUDITOR, PROSECUTING ATTORNEY, AND PROBATE JUDGE CANNOT APPOINT OFFICER WITH INDEPENDENT POWER TO LEVY AND COLLECT TAXES IN COUNTY.

A county board to be composed of the county auditor, prosecuting attorney and probate judge, cannot be empowered by the general assembly to appoint an officer with independent power and authority to act throughout the county in levying and collecting taxes, and in performing other duties incident to the exercise of the taxing power of the state.

COLUMBUS, OHIO, January 30, 1923.

HON. ROBERT A. TAFT, *Chairman, Committee on Taxation, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the drafting of a law to govern the levying and collection of taxes, was duly received.

As I understand it, it is desired that a law be prepared and enacted whereunder a county board, to be composed of the county auditor, prosecuting attorney and probate judge, will be authorized and directed to appoint an officer to be called the "county tax assessor" or "deputy county auditor", who is to be vested by the proposed law with independent power and authority to act throughout the county in levying and collecting taxes, and in performing other duties incident to the exercise of the taxing power of the state.

It is well settled that the power of taxation is one of the inherent sovereign powers of the state, and also that this important function of state government can only be exercised through officers duly and constitutionally authorized. See *State v. Cooper*, 97 O. S., 86, and *State v. Groom*, 91 O. S., 1.

If the authority to be conferred and exercised, and the duties to be imposed upon and performed by the prospective "county tax assessor" or "deputy county auditor", are to include the levying and collection of taxes, and the performing of other duties incident to the exercise of the taxing power of the state, and his jurisdiction is to be co-extensive with and extend throughout the whole county, it seems clear that such an officer would be a county officer, for "the character

of a public office is determined by the nature of the public service to be performed in connection with the territorial limits of the authority to act in an official capacity", and since the public service to be performed is to be performed for the whole county, "whoever is lawfully authorized to perform this public service for the county at large is a county officer." *State v. Groom*, supra, p. 9; *State v. O'Brien*, 95 O. S., 166.

We are thus brought face to face with the question whether or not the general assembly has the authority to create a county office and provide that its incumbent shall be appointed, instead of elected by the electors of the county.

Section 1, Article X, Ohio Constitution, provides that

"The general assembly shall provide, by law, for the election of such county and township officers, as may be necessary."

"It is clear from this provision of the constitution," said the Supreme Court in *State v. Groom*, supra, page 10, "that the legislature of this state cannot create a county office without providing by law for the *election* of the officer who is to discharge the duties of that office. That being clear, upon what theory then can the general assembly of the state create official duties to be performed for the whole county and attach the same to offices the incumbents of which are not elected by the electors of the county for which these services are to be performed. Section 1 of Article X of the constitution gives the electors of a county the right to say who shall administer its local affairs, and any attempt by the legislature to clothe an individual not *elected* by a constitutional majority of the electors of a county with such authority would be a clear invasion of this constitutional right."

In this connection attention is also called to the more recent case of *State v. O'Brien*, supra. In that case the court held that where the state seeks to exercise its sovereign power of taxation through the agency of a county office, the statute creating the office and providing for the selection of the incumbent must conform to the constitutional provisions with respect to such officers, one of which is Section 1, Article X, Ohio Constitution, herein above quoted.

You are therefore advised that the plan specifically outlined in your letter and discussed in this opinion, cannot be carried out.

Respectfully,
C. C. CRABBE,
Attorney-General.

37.

CORONER—TO DRAW FEE NOT NECESSARY TO FIND DEATH CAUSED BY UNLAWFUL MEANS—JURISDICTION LIMITED TO COUNTY—REQUIRED TO HOLD INQUEST.

SYLLABUS:

1. *In order to draw his fee, the coroner is not bound in all cases to find the death was caused by unlawful means. The circumstances, however, must be such as to make a reasonable man suspect that unlawful means have been used.*

2. *Jurisdiction of coroner limited to county. Inquest to be held by coroner in whose county body is found. The body is "found" in the county where it is*