

If the average annual levy throughout the life of the indebtedness required to retire such indebtedness were used, as in the case of the original bond issues, the rate for the first years would be insufficient to take care of the indebtedness maturing in those years, and clearly there could be no levy during those years in excess of the rate set forth on the ballot; whereas in the case of the original bond issues, the rate is expressly stated to be only an estimate of the average annual levy during the life of the bonds required to pay the interest on and retire them, so that the rate actually levied during the forepart of the life of such bonds can be and generally is higher than the estimated average annual levy.

In answer to your third question, it is my opinion, therefore, that the rate should be used which will be required to pay the principal and interest obligations of such bonds for that year in which such obligations shall be the greatest.

As to your fourth question, the statute simply provides that the purpose shall be set forth, and as the statute names the various purposes for which an additional tax may be levied, if approved by the electors, it is my view that it would be sufficient to follow the wording of section 5625-15, General Code, as follows: "For the debt charges on certain bonds issued prior to January 1, 1925."

In Opinions of the Attorney General for 1927 at page 1673 the question arose whether in the case of an additional levy for certain improvements it would be necessary to specify on the ballot the specific streets sought to be improved. The opinion held that an additional levy may be authorized without the same degree of definiteness as is required in the case of bond issues.

It would not be objectionable, however, and perhaps preferable, so that the electors might know what bonds are affected, to describe such bonds briefly; for instance, by saying "For the debt charges on certain bonds issued prior to January 1, 1925, to wit, bonds for the improvement of highways issued on," and then set forth the dates on which the bonds for these improvements were issued.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4045.

COMPENSATION—PROBATION OFFICER—PROBATE JUDGE MAY NOT FIX SUCH IN EXCESS OF AMOUNT APPROPRIATED BY COUNTY COMMISSIONER.

SYLLABUS:

Under the provisions of Section 1662, General Code, a probate judge may not fix the compensation of a probation officer or employees under such section in an amount in excess of the aggregate fixed by the county commissioners for such purposes.

COLUMBUS, OHIO, February 8, 1932.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"The Probate Judge of Meigs County has appointed a probation officer as authorized by Section 1662, G. C., and has designated his compensation. The County Commissioners in their tentative appropriations

failed to appropriate or fix any amount for that purpose. Are the County Commissioners compelled to appropriate any amount for the compensation of the probation officer?

I am familiar with the Opinion of your office No. 3298, dated April 26, 1926, given before Section 1662, G. C., was amended, and it was my idea that the amendment made it possible for the Commissioners to refuse to appropriate. However, there seems to be some disagreement about my conclusion and I will appreciate an opinion from your office in regard to it."

Section 1662, General Code, last amended by the 88th General Assembly, reads in part as follows:

"The judge designated or elected to exercise jurisdiction may appoint one or more discreet persons of good moral character, one or more of whom may be a woman, to serve as probation officers during the pleasure of the judge. One of such officers shall be known as chief probation officer and there may be one or more assistants with such duties and titles as the judge shall designate. Such chief probation officer and assistants shall receive such compensation as may be designated by the judge exercising this jurisdiction, provided, *however, such compensation shall not exceed in the aggregate the amount fixed by the county commissioners for such purpose.* The judge may appoint other probation officers, with or without compensation, when the interests of the county require it. * * *"

(Italics the writer's.)

The opinion to which you refer in your communication found in Opinions of the Attorney General, 1926, page 188, was rendered before the portion of Section 1662, General Code, above *italicized*, was added thereto.

From a consideration of the *italicized* part of Section 1662, as now in force, it would seem that the legislature has expressly given to the county commissioners the power of determining the aggregate amount available for the payment of the salaries of a probation officer or probation officers employed under the provisions of Section 1662, General Code, above quoted, and it follows that if the aggregate amount fixed by the county commissioners is ten thousand dollars or one dollar, the probate judge would be so limited in fixing the amount of compensation of a probation officer or probation officers employed under the terms of Section 1662, General Code.

It must be borne in mind that the county commissioners are the appropriating authority of a county and if, in the absence of fraud or an abuse of discretion, they determine that county needs other than that presented in the instant situation demand the whole of the money available for appropriation, they may so appropriate with the result that no money will be available for the payment of the compensation of the probation officer or probation officers. However, if after taking into consideration all county expenditures, there are funds available for the payment of the salary of a probation officer, it would probably be an abuse of discretion for the county commissioners arbitrarily to refuse to appropriate therefor.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that under the provisions of Section 1662, General Code, if no funds

are available for the payment of the compensation of a probation officer, the county commissioners may not be compelled to appropriate for the same, although an appointment to such position has been made.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4046.

VACANCY—BOARD OF EDUCATION—PERSON ELECTED DIES
BEFORE BEING QUALIFIED—SUCCESSOR ELECTED BY
BOARD AT FIRST MEETING THEREAFTER.

SYLLABUS:

1. *Where two persons are to be elected at large to membership on a board of education and one of the two successful candidates dies before he qualifies, neither of the incumbents whose term expires on the first Monday in January after said election has the right to hold over until the next general election at which members of boards of education are elected.*

2. *In such event, at the commencement of the term in January following said election, a vacancy exists which the board is authorized to fill, by election, at its first regular or special meeting, or as soon thereafter as possible.*

COLUMBUS, OHIO, February 8, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your recent letter which reads as follows:

“The Board of Education of the Green Springs School District is composed of five members. The terms of two members of this Board expire the first Monday of January, 1932, so that the electors of the District voted in November, 1931, to fill these two places upon the Board. There were three candidates, one being one of the members whose term expired, who was running for re-election. The other member whose term expired, did not seek re-election.

At the election held in November, the two elected to the office did not include the one running for re-election. In other words, he was the low man of the three. Before he had an opportunity to qualify one of the successful candidates died. The question arose then as to whose place upon the Board the surviving successful candidate assumed. In other words, would the member of the Board who was running for re-election be defeated, hold over, and will he hold over until the next general election at which School Board members are chosen, and will the successful living candidate take the place of the member of the Board who did not seek re-election, or are both places upon the Board declared vacant, the successful candidate taking one of the places, and the Board then entitled to appoint someone to the other vacancy?

Section 4745 states that the term shall be for four years, and until the successor is elected and qualified. The successor in this instance was elected, but never qualified.”