

sideration Section 3294, together with other sections. The syllabus of said opinion reads:

“Under Sections 3294, 3308 and 3318, G. C. the limitation upon maximum annual compensation of the township officers therein named has reference only to services for the township as such, for which payment is made by the township out of the township treasury; and payments by individuals, for the services of such officers, do not come within such limitation.”

From your statement of facts it is assumed that the township trustees in co-operation with the county commissioners, in the construction of roads, are proceeding under the provisions of Section 6906, et seq., of the General Code.

Under the sections above mentioned, it would appear that the duty of making the construction contemplated is under the supervision and control of the county commissioners and the county surveyor, notwithstanding the township trustees have agreed to bear a portion of the expense. It would follow that any sum paid by the county surveyor in connection with the supervision of such a construction would be paid from the county treasury and not from the township treasury, and Section 3294, supra, would have no application under such circumstances.

No statutory inhibitions against such proceeding have been found. Section 12912, General Code, inhibits township trustees, as well as other officers, from doing certain things therein mentioned, but does not apply in the case you present. It is not believed that there is anything in such a proceeding which would render applicable the rule of incompatibility at common law.

It is understood that the Bureau of Inspection and Supervision of Public Offices, from an administrative standpoint, has long interpreted the law to authorize a township trustee to be employed by a county surveyor in connection with roads which are being constructed by the county.

In specific answer to your inquiry, it is my opinion that a township trustee may be employed by a county surveyor on a road which is being constructed by a county, notwithstanding the township trustees are contributing to the financing of such project under the provisions of Section 6906, et seq. of the General Code. Under such circumstances the limitations provided in Section 3294 of the General Code have no application.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1206.

ELECTION—BALLOT CAST WITH NAME WRITTEN IN BLANK SPACE
WITHOUT CROSS MARK—VALID.

SYLLABUS:

Under Section 5070, paragraphs 6 and 9, General Code, where an elector writes in the name of "A" in pencil in the proper blank space provided therefor, but fails

to place a cross mark in front of said name, such ballot indicates the elector's intention and must be counted for "A".

COLUMBUS, OHIO, November 18, 1929.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"Section 5071 of the General Code provides as follows:

'SUBSTITUTION WHEN NO NOMINATION MADE OR NOMINEE OMITTED. If there was no nomination for a particular office by a political party, or if by inadvertence, or otherwise, the name of a candidate regularly nominated by such party is omitted from the ballot, and the elector desires to vote for someone to fill such office, he may do so by writing the name of the person for whom he desires to vote in the space underneath the heading or designation of such office, and make a cross mark in the circle at the head of the ticket, in which case the ballot shall be counted for the entire ticket, as though the name substituted had been originally printed thereon.'

Does the writing of the name without placng an 'X' before it show such intention of the voter to cast his ballot for that man, as to amount to a vote such as should be counted by the election board?"

Besides Section 5071, General Code, which you quote, the following portions of Section 5070 are pertinent to your question:

"If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in black lead pencil or in black ink in the proper place, and making a cross mark in the blank space at the left of the name so written.

* * * *
* * * *

No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice."

Your inquiry involves consideration of the question of whether the elector must not only write into the space provided therefore, the name of his candidate, but whether he must also place a cross mark in front of said name.

A similar question was under consideration by the Court of Appeals of Montgomery County in the case of *Board of Elections vs. Henry*, 25 O. A., 278. In a per curian opinion, the court said in part:

"From a reading of this statute, as well as by an application of common sense it is manifest that, when the voter has written the name upon the ballot, he intends to vote for the person whose name is so written. Strictly and technically speaking, the voter should complete the statutory requirement by adding the cross mark. While the cross mark fulfills the statute, it adds little to the evidence of the voter's intention. Where the voter writes the name and omits the cross mark, the case may be likened to that of a voter who makes the first stroke of a cross mark on the printed ticket and fails to get the second stroke across. All voters are not college or professional men, but they all have the same right to vote."

A motion to certify the record in the above cause was overruled by the Ohio Supreme Court, and I find no other decision in conflict with said holding.

In the Henry case, *supra*, the Court of Appeals further said:

"In deciding this question, we have no hesitancy in declaring that the voter, by writing the name of the candidate in the appropriate space on the ballot, clearly indicates his intention to vote for the person whose name he has written, and that the failure of the voter to add the cross mark is a technical error."

This question was under consideration by my predecessor, and it was held that the provisions of the statutes of Ohio, regarding a cross mark to be placed in the block on a ballot at the left of, and directly opposite the name voted for, or proposition submitted, are directory and not mandatory, where the intention is otherwise clear. See Opinions of the Attorney General for 1928, Volume 4, page 2706. I concur in this view.

Specifically answering your question, therefore, I am of the opinion that the writing in of a name, without placing an "X" or any mark before it, indicates the intention of the elector, and constitutes a vote which should be counted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1207.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—PERLE M.
GEBERT.

COLUMBUS, OHIO, November 18, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond in the penal sum of \$5,000.00, upon which Perle M. Gebert appears as principal, and The Ohio Casualty Insurance Company appears as surety, to cover the faithful performance of the duties of said principal as Resident District Deputy Director assigned to Hardin County.

Finding said bond in proper legal form, I have approved the same as to form, and return it herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.