

the proportion represented by property owned and business done within the state. The conclusion was reached that the entire amount and not a proportion thereof should be the basis of the penalty. It was, however, indicated in the opinion that, in the specific instance under consideration, the penalty should be determined in accordance with the terms of Section 5511 of the General Code, as amended in Amended Substitute Senate Bill No. 22. The corporation in that instance having become delinquent prior to the effective date of the amendment of Section 5511 of the General Code, the reinstatement fee and penalty would be controlled by that section prior to its amendment. In so far as the language therein contained is inconsistent with this opinion, it is modified. The conclusion there reached, however, to the effect that the corporation in question is liable for the maximum fee of one hundred dollars, remains unchanged.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

715.

FILING OF PETITION TO TRANSFER PUBLIC FUNDS—PETITIONERS  
MAY FIX TENTATIVE DATE FOR HEARING—POWER OF COURT  
TO CHANGE DATE—NOTICE OF FILING OF PETITION—HOW  
PUBLISHED.

SYLLABUS:

1. *Upon the filing of a petition in the Court of Common Pleas for the purpose of transferring public funds, as provided by Sections 2296, et seq., of the General Code, the petitioners are authorized to fix a tentative date for the hearing of said petition. If the date fixed by the petitioners is not convenient to the court, the court may by virtue of its inherent power over its docket, fix such time as will be convenient, guided by the exigencies of the situation and the directory provision of Section 2299, General Code, to the effect that the "cause shall be heard upon request of the petitioners in preference to all other cases on the docket." Any abuse of discretion by the court in fixing the date for hearing may be reviewed on appeal to the Court of Appeals, and on proceedings in error in the Supreme Court.*

2. *Notice of the filing, objects and prayer of the petition, and of the time when it will be for hearing, if published in a newspaper, shall be given by one publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer, preference being given to newspapers published within the territory. If there be no such newspapers, the notice must be posted in ten most conspicuous places within the territory for the period of four weeks.*

COLUMBUS, OHIO, July 11, 1927.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion in answer to two questions as follows:

"(1) Under Section 2298, are the petitioners to set the day for hearing said petition according to their own discretion?

(2) Within what time should the petition be heard after the publication of the notice required by Section 2298?"

Section 2298, General Code, to which you refer, has to do with the notice that must be given when it is sought to have public funds transferred from one fund to another by order of the Common Pleas Court upon petition of a board of county commissioners, a board of township trustees, a board of education or the legislative authority of a municipality.

This subject is regulated by the provisions of Sections 2296, et seq., of the General Code, which provide in substance that any one of the public authorities above named may transfer certain public funds from one fund to another, when upon its petition to the Common Pleas Court therefor, the court orders the transfer.

It is provided that a resolution must first be passed declaring the necessity for the transfer, after which the officers or board shall file a petition in the Common Pleas Court of the county in which the funds are held setting forth the name and amount of the fund or funds which they desire to have transferred, a copy of the resolution with a full statement of the proceedings pertaining to its passage and the reason or necessity for the transfer. Upon the filing of this petition, notice must be given and hearing had as provided by Sections 2298 and 2299 of the General Code, which respectively read as follows:

“Sec. 2298. The petitioner shall give notice of the filing, objects and prayer of the petition, and of the time when it will be for hearing. The notice shall be given by one publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer of funds, preference being given to newspapers published within the territory. If there are no such newspapers, the notice shall be posted in ten most conspicuous places within the territory for the period of four weeks.”

“Sec. 2299. The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court but such cause shall be heard, upon request of the petitioners in preference to all other cases on the docket. Any person or persons, objecting to the prayer of such petition, shall file their objections in such cause on or before the time fixed in the notice for hearing, and they shall be entitled to be heard.”

After these proceedings are begun, hearing is had in the Common Pleas Court and if the court finds that the notice has been given as required by law, that the petition states sufficient facts, that there are good reasons or that a necessity exists for the transfer of the funds and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make the transfer; whereupon such order shall be certified by the clerk of the court and entered on the records of the petitioning officers or board and the petitioners may make the transfer as directed therein. Either the petitioners or the persons filing objections to the petition may appeal the cause to the Court of Appeals of the county and the cause may be reviewed on error in the Supreme Court (Sections 2300, 2301 and 2302, General Code).

It will be noted that ample provision is made to safeguard a wrongful diversion of the public funds, in that ample opportunity is afforded for the filing of objections and the hearing thereon. In addition, while the court is given broad discretion to determine whether or not a necessity exists for the transfer of the funds and whether or not any injury will result therefrom, all parties interested are provided a means for review in the higher courts, if the discretion reposed in the Common Pleas Court be abused.

It is clear that it was the intention of the legislature to give to the parties interested full opportunity to present to the court all the facts that might be pertinent to the issue; and, while Section 2298, supra, does not specify the length of time that should elapse between the publication of the notice and the time set therein for the hearing, it would seem that, inasmuch as the purpose of the notice is to give opportunity for the filing of objections, the time should be a reasonable time. What is a reasonable time is a

question for the court to determine upon the hearing, the statute leaving the matter largely to the discretion of the court hearing the cause, which discretion would be reviewable as are the other questions involved.

As the statute does not fix any time for the hearing, but directs that the petitioners shall give notice by publication of the filing of the petition *and of the time when it will be for hearing* (Section 2298, *supra*), it is clear that the fixing of the time is left to the petitioners who should understand that this right impliedly carries with it the injunction that the time fixed must be a reasonable time and that their judgment in the matter is subject to review by the court. If the time thus fixed by them is in the opinion of the court a reasonable time, the petition may be heard at the time thus fixed.

A literal reading of Section 2299, *supra*, would seem to require the court to hear the petition at the time stated in the notice, or as soon thereafter as convenient, and on request of the petitioners, to have the hearing in preference to all other cases on the docket. It would seem to me, however, that the statute contains no more than a *directory* provision to the effect that the court shall give the cause preference over other cases on the docket and that it should be heard within a reasonable time after the time fixed in the notice. The court has inherent power to control the business of the court and fix the sequence of the hearing of causes therein to the end that justice may be done to all persons seeking relief in the courts.

Specifically answering your question, therefore, it is my opinion that the petitioners, when publishing the notice required by Section 2298, General Code, have authority to set a tentative date for hearing of their petition, which should be at such a time as to give opportunity to all persons interested to file objections thereto if they so desire. The petition may be heard at the date set by the petitioners if convenient to the court, and if not convenient to the court the hearing should await the court's convenience, which should be guided by the *directory* provision of Section 2299, General Code, to the effect that, upon request of the petitioners, the cause should be heard in preference to all other causes on the docket. The petitioners, in fixing the tentative date for the hearing, and the court, in hearing the cause, must be guided by what is reasonable and proper under the circumstances, any abuse of discretion on the part of either the petitioners or the court being subject to review on appeal in the Court of Appeals and on proceedings in error in the Supreme Court.

Notice of the filing, objects and prayer of the petition, and of the time when it will be for hearing, if published in a newspaper, shall be given by one publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer, preference being given to newspapers published within the territory. If there be no such newspapers, the notice must be posted in ten most conspicuous places within the territory for the period of four weeks.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

716.

DEPARTMENT OF PUBLIC WELFARE—NO AUTHORITY UNDER SECTIONS 1819 AND 1820, GENERAL CODE, TO INQUIRE INTO QUESTION OF LEGAL SETTLEMENT—QUESTION OF LEGAL SETTLEMENT AMONG COUNTIES OF STATE IS JURISDICTIONAL—CANNOT LOSE LEGAL SETTLEMENT.

*SYLLABUS:*

1. *The Department of Public Welfare has no authority under Sections 1819 and 1820 of the General Code to inquire into the question of legal settlement as between counties in the state.*