

The abstract under consideration was prepared by Adolph Haak & Co., Abstracters, August 10, 1905, and a continuation thereto made by E. M. Baldrige, Attorney at Law, March 14, 1924, and pertains to the following premises:

Lot 71 of Hamilton's Second Garden Addition to the city of Columbus, Ohio, as the same is numbered and delineated on the recorded plat thereof, recorded in Plat Book 7, page 186, Recorder's Office, Franklin County, Ohio, saving and excepting therefrom six feet off the rear end thereof reserved for the purpose of an alley.

Upon examination of said abstract, I am of the opinion same shows a good and merchantable title to said premises in Edwin F. Renier and Josephine W. Renier, subject to the dower right of Sarah C. Hancing, widow of Joseph H. Renier, deceased.

The release of the mortgage shown at section 8 of the first part of the abstract is in defective form, but as the note secured by the mortgage has been long past due, no action could be maintained upon same. The release shown at section 14 is also defective but shows that the notes secured by the mortgage were undoubtedly paid.

Attention is directed to the restrictions in the conveyance shown at section 5 of the continuation, wherein are found restrictions for a period of twenty-five years against the use of the premises for the erection of any buildings to be used for slaughter houses and the killing of animals, or the use of said premises for the sale of intoxicating liquors or malt beverages.

The abstract states no examination has been made in the United States District or Circuit Court, nor in any subdivision thereof.

Taxes for the last half of the year 1923, amounting to \$6.08, are unpaid and are due and payable in June, 1924. There is also a balance of \$85.47, together with interest due for the improvement of Clara street, the next installment of \$28.48 and interest being due in December, 1924.

It is suggested that the proper execution of a general warranty deed by Edwin Francis Renier and Josephine W. Renier, and a release of dower by Sarah C. Hancing will be sufficient to convey the title to said premises to the State of Ohio when properly delivered.

Attention is also directed to the necessity of the proper certificate of the Director of Finance to the effect that there are unincumbered balances legally appropriated sufficient to cover the purchase price before the purchase can be consummated.

The abstract submitted is herewith returned.

Respectfully,

C. C. CRABBE,

Attorney General.

1297.

JOINT COUNTY DITCH IMPROVEMENT—COMPENSATION OF COUNTY COMMISSIONERS—HOW PAID.

SYLLABUS:

1. *The amount of compensation for services rendered by county commissioners in connection with a joint county ditch improvement is to be included in the limitation of one hundred days in any one year and also in the limitation of four days on any one improvement.*

2. *The one-half compensation payable to the county commissioners for services in connection with a joint county ditch improvement, payable out of the joint county fund, is payable upon allowance by the joint county board out of the general county fund of the county of which such commissioner is a member of the board. The one-half compensation payable to a county commissioner for services in connection with a joint county ditch improvement, payable in the first instance out of the general ditch improvement fund of the county, is payable upon allowance by the joint county board out of the general ditch improvement fund of the county in which the ditch petition is filed.*

COLUMBUS, OHIO, March 24, 1924.

Department of Auditor of State, Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your recent communication in which you submit the following questions:

“1. Is the amount of compensation allowed to county commissioners in joint ditch proceedings to be included in the limitation of one hundred days in any one year for the members of each board of commissioners; and also in the limitation of four days on any one improvement?”

“2. How and by whom is the one-half compensation of the members of the joint board of county commissioners to be paid in the first instance out of the general ditch improvement fund and charged as a part of the cost of location and construction of the improvement; and how and by whom is the one-half of such compensation to be paid out of the general county fund?”

Section 6502, General Code, reads:

“In addition to the salary otherwise provided by law for county commissioners, each commissioner shall receive, for performing all duties required of him in this chapter, five dollars per day for each day actually engaged in work on an improvement as defined in this chapter, but not to exceed one hundred days in any one year, and not to exceed four days on any one improvement and the one-half part thereof shall be paid out of the general fund of the county, and the one-half part thereof shall be charged as costs in the location and construction of the improvement and paid in the first instance out of the general ditch improvement fund of the county.”

Section 6537 of the General Code reads:

“Save and except as is otherwise provided in this chapter, the joint board of county commissioners may do and perform all the things that the commissioners may do in a single county improvement, and shall be governed by and be subject to all the provisions of the chapter relating to single county ditches in so far as applicable. The proceedings for a joint county improvement shall proceed before said joint board the same as if said joint board were a board of county commissioners representing a county that included all the territory of all the counties represented by the commissioners on said joint board. All rights of appeal, and all other rights or remedies as provided in the chapter relating to single county improvements shall apply to joint county improvements. All officers doing any acts or

making any findings for or against such improvement shall perform all the duties required of them pursuant to the provisions of chapter one of this title. All owners affected by the proceedings for a joint county improvement shall have all the rights and remedies given them in single county improvements. The proceedings in joint county improvements shall be the same as the proceedings in single county improvements, save and except as modified in this chapter."

The two sections above quoted are part of the act passed April 3, 1923 (110 O. L. 161) to codify the drainage laws—said section 6502 being found in chapter one thereof, which relates to single county ditches, and said section 6537 being found in chapter two thereof, which relates to joint county ditches.

I held, in an opinion rendered February 1, 1924, to Hon. J. F. Vandenbroek, Prosecuting Attorney, of Napoleon, Ohio, as shown by the syllabus thereof :

"Under the provisions of section 6537 of the General Code, the provisions of section 6502 of the General Code, relating to the compensation of county commissioners, have application to both single and joint county ditch improvements."

It was said in the opinion :

"It will be noted from a reading of this section (6537) that the provisions of chapter one, in so far as they are applicable, are made applicable to the proceedings in connection with a joint county ditch improvement."

All the provisions of said section 6502, General Code, which may be applicable to the provisions of said chapter two of said act are as much a part thereof as though fully rewritten in said chapter two. As heretofore held, the compensation provided for county commissioners under chapter one are applicable in providing for and fixing the compensation for services rendered by county commissioners under chapter two. Upon this theory of the legislation, it would follow that the compensation of county commissioners for services rendered under chapter two would be included in the limitation of one hundred days in any one year for the members of each board of county commissioners, and also in the limitation of four days on any one improvement.

Under the provisions of said section 6502, General Code, it is provided that one-half of the per diem compensation of each commissioner shall be paid out of the general fund of the county. There is no provision of law for including the part of compensation payable out of the general county fund in the assessment in the event the petition is granted and the improvement constructed, or including such part of the compensation in the cost bill in the event the petition is dismissed.

As a matter of practical application of the provisions relating to the payment of the compensation of county commissioners in joint county ditch improvements, this one-half of the compensation of each county commissioner upon the allowance of the joint board of county commissioners should be paid out of the general fund of the county of which such commissioner is a member. It will be noted that one-half of the compensation of each county commissioner shall be, in the first instance, paid out of the general ditch improvement fund of the county and shall be charged as costs in the location and construction of the improvement. In the event the petition is granted and the improvement constructed, this one-half of the compensation is included in the assessment; in the event the petition is dismissed, this one-half of the compensation is included in the cost bill and paid by the petitioners.

As a matter of practical application of the provisions relating to the payment

of the compensation, this one-half of the compensation of each county commissioner upon the allowance of the joint board of county commissioners should, in the first instance, be paid out of the general ditch fund of the county where the petition was filed.

Respectfully,
C. C. CRABBE,
Attorney General.

1298.

CIVIL SERVICE—SUPERINTENDENT OF PARKS MAY BE EXEMPTED
FROM CLASSIFIED SERVICE—SECTION 486-8 G. C. CONSTRUED.

SYLLABUS:

The position of Superintendent of Parks may be exempted from the classified service on the grounds that such an employe is an assistant within the meaning of sub-section 8 of section 486-8 of the General Code.

COLUMBUS, OHIO, March 24, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my official opinion upon the following statement of facts:

“Section 486-8 General Code of Ohio provides for the classified and unclassified service in the state and various political subdivisions thereof. In Opinion No. 371 to be found at page 1007 of the Annual Reports for 1917, it was held that:

“The health officer appointed by the municipal board of health is an ‘assistant’ to such board, and may be selected as exempt from the classified civil service under paragraph ‘8’ of section 8 of the civil service law.”

The bureau has been requested for advice as follows:

“Does the position of superintendent of parks come under civil service exclusively?”

This question was submitted by the President of the City Park and Recreation Commission of the city of Canton, Ohio.”

Section 486-8 G. C., which relates to the classified and unclassified service of the state in so far as your inquiry is concerned provides:

“(a) The unclassified service shall comprise the following positions which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. * * *

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistant or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.”