

submitted a contract bond, upon which the Aetna Casualty and Insurance Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2077.

ELECTION LAW—JUDGES AND CLERKS OF ELECTIONS APPOINTED UNDER REPEALED SECTION 4853, GENERAL CODE, ENTITLED TO COMPENSATION PROVIDED BY SECTION 4785-28, GENERAL CODE AT AUGUST, 1930, PRIMARY.

SYLLABUS:

Judges and clerks of elections heretofore appointed under Section 4853, General Code, in the year 1929, who will serve under such appointment at the August 1930 primary, should be paid the compensation provided in Section 4785-28, General Code,

COLUMBUS, OHIO, July 9, 1930.

HON. J. F. KUHN, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Section 4785-234 of the Election Laws states:

‘This act shall become effective on the 1st day of January, 1930.’

Section 4785-28 of the Election Laws states:

‘The judges and clerks shall receive as compensation for their services, when actually serving, the sum of eight dollars for each general, primary and special election, in counties of less than two hundred and fifty thousand population according to the next preceding federal census; * * *’

Section 4785-25 provides:

‘On or before the first day of September before each November election the board by a majority vote shall, after careful examination and investigation as to their qualifications, appoint for each election precinct six competent persons, four as judges and two as clerks, who shall constitute the election officers of such precinct. * * *’

There are less than 250,000 population in Tuscarawas County. The question arises: Are the judges and clerks, who shall serve as election officers at the August 1930 primaries, entitled to the \$8.00 for their services, as authorized by Section 4785-28, or must they serve for the \$5.00, as authorized by Section 4860, G. C., which was in force before this new election law?

Our County Board of Elections requests your opinion through me.”

Section 4785-25, General Code, part of which you have quoted in your letter, provides as follows:

"On or before the first day of September before each November election the board by a majority vote shall, after careful examination and investigation as to their qualifications, appoint for each election precinct six competent persons, four as judges and two as clerks, who shall constitute the election officers of such precinct. Not more than two of the judges and one of the clerks shall be members of the same political party. The term of such precinct officers shall be for one year, but subject to removal at any time by the board. Vacancies for unexpired terms shall be filled by the board. When new precincts have been created the board shall appoint judges and clerks for such precincts for the unexpired term. Any judge or clerk may be summarily removed from office at any time by the board for neglect of duty, malfeasance or misconduct in office."

Judges and clerks of elections were heretofore appointed under the provisions of Section 4853, General Code, as in force and effect prior to January 1, 1930. This section provided as follows:

"At least ten days before any general election, the deputy state supervisors of each county shall appoint for each precinct in which the voters are not registered four judges and two clerks of elections, residents of the precinct, who shall constitute the election officers of such precinct. The deputy state supervisors shall designate one judge in each precinct to act as presiding judge, who shall be selected from the dominant party in the precinct, as determined by the next preceding November election."

Section 4854, General Code, which was also repealed by the act known as the Election Laws of the State of Ohio, effective January 1, 1930, provided that the term of office of judges and clerks of elections should be for one year from the date of their appointment. It is obvious, therefore, that since Section 4785-25, supra, provides for the appointment of judges and clerks of elections on or before September 1, 1930, the precinct officials who will serve at the August 1930 primary will be acting during their term of office which commenced in 1929.

Section 4785-28, General Code, which you quote, has provided a different compensation to be paid to judges and clerks of elections than was heretofore provided in Section 4860, General Code, as you indicate. I, therefore, assume that your question is predicated upon Section 20, Article II of the Ohio Constitution, which is as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

This section was under consideration in Opinion No. 1506, rendered February 8, 1930, to the Bureau of Inspection and Supervision of Public Offices, the syllabus of which is as follows:

"In the event the 1930 federal census is completed in the latter part of the year 1930, the compensation of members of boards of elections for the year 1931 should be determined as provided in Section 4785-18, General Code, on the basis of the population of the county according to the 1930 census."

Conceding for the purposes of this opinion that judges and clerks of elections are

"officers" within the meaning of the constitutional provision herein quoted, it becomes necessary to determine whether or not the compensation provided in Section 4785-28, supra, is "salary" as contemplated in this section of the Constitution. The foregoing opinion quoted from the case of *Thompson, Realtor, vs. Phillips*, 12 O. S. 617, wherein the Supreme Court, after quoting the above section of the Ohio Constitution, held:

"It is manifest, from the change of expression in the two clauses of the section, that the word 'salary' was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense, of an annual or periodical payment for services—a payment dependent on the time, and not on the amount of the service rendered."

The opinion also cited the case of *Gobrecht vs. Cincinnati*, 51 O. S. 68, which held that where the compensation of a public officer is fixed by a provision that "each member of the board who is present during the entire session of any regular meeting, and not otherwise, shall be entitled to receive five dollars for his attendance", such compensation is not "salary" within the meaning of Section 20, Article II of the Constitution. After referring to the case of *Thompson vs. Phillips*, supra, the Supreme Court in the *Gobrecht* case said at pp. 72 and 73:

"We think the compensation in the case at bar comes within the principle of the case cited, although a per diem compensation. It is not, within the meaning of the section quoted, 'salary'. Hence, an increase in the pay of a member during his term, is not prohibited by the constitution."

I am clearly of the view that the *Gobrecht* case and the foregoing opinion are dispositive of the question raised in your communication, and therefore advise in specific answer to your question that in my opinion judges and clerks of elections heretofore appointed under Section 4853, General Code, in the year 1929, who will serve under such appointment at the August, 1930, primary, should be paid the compensation provided in Section 4785-28, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2078.

DISAPPROVAL, LEASE IN QUADRUPPLICATE BETWEEN THE BROAD-THIRD REALTY COMPANY AND STATE OF OHIO FOR ROOMS IN ROWLANDS BUILDING, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 9, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a lease in quadruplicate between The Broad-Third Realty Company, a corporation, Columbus, Ohio, and yourself as Superintendent of Public Works for the State of Ohio. This lease grants to your department for the use of the Support Division, Department of Public Welfare, rooms in the Rowlands Building, 12 North Third Street, Columbus, Ohio, for office purposes.

After a careful examination of the lease, I find that the same is in proper legal form, with the following exceptions: