

The court then points out that this is because names could be added to this petition any time within the thirty days, and therefore the right existed to have names withdrawn within that period.

In the question before me the statute does not prescribe any time within which the petition must be filed. That is quite similar to the provisions of Section 4227-2, General Code, considered by the Supreme Court in the case of *State ex rel. vs. Rupert, supra*, in which case the statute did not prescribe the time in which the petition must be filed with the county board of elections; the Supreme Court, however, held in that case that the petition became final upon the filing with the county board of elections. I am of the opinion that the petition in the instant case became final upon its filing with the board of education. In the Rupert case when such petition was filed, the county board of elections was required to place it upon the ballot at the next election. That was a mandatory requirement and the petition was not one invoking the jurisdiction of the board of elections but required it to do all things provided by statute to provide for the election.

In this case the filing of the petition is very similar. The filing of the petition does not invoke any discretion or jurisdiction of the board of education, but by the mere filing thereof the board of education was required to do all things mentioned in the statute to complete and carry out the provisions of the petition.

It is therefore my opinion that said petition referred to as No. 2, as filed on June 27, 1929, is still pending before the board of education and that it is the mandatory duty of such board to pass a resolution transferring said territory, as provided in Section 4696, General Code.

I note you state in your communication that you have advised the county board of education that it was the mandatory duty of the Wyandot County board of education to accept the territory transferred. In that connection, I wish to call your attention to an opinion found in Opinions of the Attorney General, 1924, Volume I, page 720, the syllabus of which reads:

"The words 'may accept' as used in the third sentence of Section 4696, do not make it mandatory upon the county board of education to accept territory transferred to it by another county board of education."

Respectfully,

GILBERT BETTMAN,
Attorney General.

852.

OFFICES INCOMPATIBLE—TOWNSHIP TRUSTEE AND MEMBER OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS.

SYLLABUS:

The offices of township trustee and member of the board of deputy state supervisors of elections are incompatible, and may not be held at the same time by the same person.

COLUMBUS, OHIO, September 11, 1929.

HON. CHARLES T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Your communication of recent date reads as follows:

"A certain person holds the office of township trustee and is also a member of the deputy state board of elections of Williams County, Ohio, the one being an elective office and the other an appointive office, and as trustee he draws a salary, while as a member of the said board he receives a certain stated compensation or allowance.

Can this person hold these positions at the same time?

I fully appreciate the fact that no person can hold two elective offices at the same time and I think may hold an elective and appointive office at the same time as long as these offices are not based on a monthly salary."

It has frequently been determined in Ohio that in order to ascertain whether one person may hold two positions or offices, the test is, first, whether there are any statutory inhibitions against the same, and, second whether one position is in anywise subordinate to the other or whether one is a check upon the other. If either is subordinate to the other or a check upon the other, such positions are said to be incompatible.

In considering your inquiry, it has been noted that township trustees have certain duties to perform with reference to elections which are independent of the duties to be performed by members of the board of elections. That is to say, Section 3260, General Code, requires the trustees to fix the place of holding elections within their township, etc. Section 3280 of the General Code requires the trustees at any election to cause any disorderly person to be confined until the close of such election. They are also authorized by said section to direct constables to preserve order at said elections.

In an opinion of the Attorney General, found in Reports of the Attorney General for the year 1912, p. 299, the then Attorney General held that a member of a board of elections could not hold the position of county commissioner at the same time for the reason that the expenses of such board were allowed by the county commissioners, and, therefore, one position is a check upon the other.

Your attention is invited to Section 4991 of the General Code, which provides that all expenses of primary elections, including the compensation for members, judges and clerks of the board of elections, shall be paid in the manner provided for the payment of similar expenses for general elections, "except that the expenses of primary elections in political divisions less than a county shall be a charge against the township, city, village or political division in which said election was held." The section further expressly provides: "The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor."

In view of the foregoing provisions of Section 4991, it would appear that if a member of the board of elections holds the position of township trustee in the apportioning of the election expenses to be charged against the subdivision, such person would be in position to favor the township which he represents as trustee, and, therefore, would have the effect of rendering the two offices incompatible. This conclusion, it is believed, is in harmony with the holding of the Attorney General hereinbefore referred to. In passing, the provisions of Section 5092 of the General Code may be noted, which holds in substance that a deputy state supervisor of elections, or clerk thereof, may not be a candidate for an office to be filled at an election other than for committeeman or delegate or alternate to a convention. Similar provisions as those above referred to in Section 5092, General Code, were made in Section 16 of the act, recodifying and supplementing the election laws as set forth in Amended Senate Bill No. 2, as enacted by the 88th General Assembly, which will become effective January 1, 1930.

In specific answer to your inquiry, it is my opinion that the offices of township

trustee and member of the board of deputy state supervisors of elections are incompatible, and may not be held at the same time by the same person.

Respectfully,

GILBERT BETTMAN,
Attorney General.

853.

MUNICIPAL CIVIL SERVICE COMMISSION—ACTING AS AGENT OF STATE COMMISSION—FEES COLLECTED FROM EXAMINATIONS SHOULD BE PAID INTO STATE TREASURY.

SYLLABUS:

Under the terms of Section 486-11, of the General Code, all fees collected by virtue of the provisions of this section by a municipal civil service commission designated by the State Civil Service Commission as its agent, for the purpose of carrying out the provisions of the civil service act within a county, should be paid into the state treasury, to the credit of the general revenue fund.

COLUMBUS, OHIO, September 11, 1929.

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

GENTLEMEN:—I am in receipt of your letter of recent date which is as follows:

"The City Civil Service Commission of Cleveland is organized in accordance with the provisions of the Cleveland city charter, and has been designated as agent of the State Civil Service Commission, for the purpose of carrying out civil service provisions in relation to county employes (Sec. 486-5, G. C.)

The provisions of Section 486-11, G. C., relative to examination fees, reads:

'No fee or other assessment shall be charged for examination for positions, provided for by this act or by the rules of the commission prescribed thereunder, where the annual salary does not exceed six hundred dollars; for positions where the annual salary exceeds six hundred dollars and is less than one thousand dollars, an examination fee of fifty cents shall be charged; for positions where the annual salary is one thousand dollars or more, an examination fee of one dollar shall be charged. All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.'

Fees are collected by the Cleveland City Civil Service Commission from applicants for examinations for positions in the county service, and are deposited in the treasury of the city of Cleveland. The county reimburses the city of Cleveland a proportionate amount of the expenses of the City Civil Service Commission.

Question. In view of the provisions of Section 486-11, G. C., should such fees be deposited in the state treasury?"

Section 486-5, General Code, reads in part, as follows:

" * * * The commission may also appoint such examiners, in-