

628.

## APPROVAL, TWO GAME REFUGE LEASES.

COLUMBUS, OHIO, July 17, 1929.

HON. J. W. THOMPSON, *Chief, Division of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form, the following leases which describe lands to be used for state game refuge purposes, as authorized under the provisions of Section 1435 of the General Code:

<i>No.</i>	<i>Lessor</i>	<i>Acres</i>
635	D. U. Morris, Gallia County, Springfield and Morgan Townships...	125
637	Chas. Heatly, Gallia County, Springfield.....	100

Upon examination, I have found said leases in proper legal form, and have endorsed thereon my approval as to form, and return them to you herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

629.

APPROVAL, BONDS OF KINGS MILLS RURAL SCHOOL DISTRICT,  
WARREN COUNTY—\$6,500.00.

COLUMBUS, OHIO, July 18, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

630.

MERGER—VILLAGE CLERK AND CLERK OF BOARD OF TRUSTEES OF  
PUBLIC AFFAIRS—WHERE ADDITIONAL COMPENSATION AL-  
LOWED VILLAGE CLERK OBTAINED.*SYLLABUS:*

*If the duties of the clerk of a board of trustees of public affairs of a village are merged with the duties of the clerk of the village, and additional compensation allowed to the clerk by reason of such merger, as provided by amended Section 4281, General Code, such additional compensation is payable out of public utility funds derived from the assessment of utility rents made by the board of trustees of public affairs.*

COLUMBUS, OHIO, July 19, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following question:

“If the duties of the clerk of the board of trustees of public affairs are merged with the duties of the clerk of the village, may council allow additional compensation to such party payable out of the public utility funds under the control of the board of public affairs?”

Your inquiry is submitted with reference to amended Sections 4281 and 4360, General Code, as contained in House Bill No. 290 of the 88th General Assembly, effective July 26, 1929.

These two sections of the Code, as so amended, read as follows:

Sec. 4281. “The clerk shall keep the books of the village, exhibit accurate statements of all moneys received and expended of all the property owned by the village and the income derived therefrom and of all taxes and assessments, and the village council may by majority vote merge the duties of the clerk of the board of trustees of public affairs with the duties of the clerk of the village, allowing said clerk of the village such additional assistance in performing such additional duties as the council may determine, and such additional compensation for such additional duties as may be provided by the action of the council.”

Sec. 4360. “The board of trustees of public affairs shall organize by electing one of its members president. Unless the office of clerk of said board has been consolidated with the office of clerk of the village as authorized by Section 4281 of the General Code, it may elect a clerk, who shall be known as the clerk of the board of trustees of public affairs.”

Prior to the amendment of these two sections of the Code, as set out above, the law provided for a clerk for the council of a village and a clerk for the board of trustees of public affairs in the village, each with duties pertaining strictly to the affairs of the body or board for whom he acted.

The manifest purpose of the amendments, as above noted, is to permit one person to perform the duties of both positions, when the village council deems such action advisable.

In any event, whether council, acting by authority of amended Sections 4281 and 4360, General Code, consolidated the two positions or not, the compensation to be paid the person or persons who perform the duties of clerk for the village council and the board of trustees of public affairs is fixed by the village council, by authority of Section 4219, General Code, which provides that council shall fix the compensation of all officers, clerks and employes of the village government. There is no question, however, under the present existing law providing for a clerk for both the council and the board of trustees of public affairs or under the amended law, if the duties of the two positions are not merged by council, that the compensation to be paid to each of the clerks will be paid from separate funds.

It is provided by Sections 4357, et seq., that in each village owning and operating a public utility, there shall be established a board of trustees of public affairs for the purpose of managing the utility. Section 4360, General Code, provides for the election of a clerk by the board of trustees of public affairs and Section 4361, General Code, provides among other things, that:

“For the purpose of paying the expenses of conducting and managing such waterworks, plants and public utilities, of making necessary additions thereto and extensions thereof, and of making necessary repairs thereon, such trustees may assess a water, light, power, gas or utility rent, of sufficient amount, in such manner as they deem most equitable, upon all tenements and premises supplied with water, light, power or gas.”

It seems apparent the intent of the law is that the users of the product of a public utility shall pay all costs and expenses of the management and operation of the utility. The expense incident to the employment of a clerk to the board of trustees of public affairs is an expense of the operation of the public utilities under the control of the board of trustees of public affairs, and should be met from the funds derived from the sale of the product of the utility. The payment of compensation to the clerk of the board of trustees of public affairs, under the present law, from funds in the custody of the board of trustees of public affairs has never been questioned, and there is nothing in the statutes, as amended in House Bill No. 290, to indicate a change of purpose in that respect. Clearly, if council does not see fit to merge the duties of the two positions in one person who will be designated the clerk of the village, the clerk of the board of trustees of public affairs will be paid under the amended statutes as before, that is, from funds procured by the assessment of utility rents, and it seems equally clear, inasmuch as the Legislature has provided, in the event council consolidates the two positions, that additional compensation shall be allowed to the clerk of the village for the additional duties which he will be required to perform in the event of a merger of the two positions, that such additional compensation should be paid from the same fund as would the compensation of the clerk of the board of trustees of public affairs be paid if the two positions were not consolidated.

This conclusion is strengthened by reason of the apparent recognition on the part of the Legislature of the dual character of the person who shall perform the duties of the two positions, if required to do so by council, in that the legislation provides for a merger of the duties of the clerk of the board of trustees of public affairs with those of the clerk of the village, a consolidation of the two offices, instead of providing that the clerk of the village might be required, as such clerk, to perform the duties theretofore performed by the clerk of the board of trustees of public affairs.

I am therefore of the opinion, in specific answer to your question, that if the duties of the clerk of a board of trustees of public affairs of a village are merged with the duties of the clerk of the village, and additional compensation allowed to the clerk by reason of such merger, as provided by amended Section 4281, General Code, such additional compensation is payable out of public utility funds derived from the assessment of utility rents made by the board of trustees of public affairs.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*