

been repealed by Amended Senate Bill No. 99, must renew his license for the year 1934 in accordance with the provisions of the new Embalmers' and Funeral Directors' law.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2365.

BLIND PERSON—MAY HOLD OFFICE OF TOWNSHIP CLERK AND RETAIN BLIND PENSION IF CONSIDERED "NEEDY BLIND" BY COUNTY COMMISSIONERS.

SYLLABUS:

1. *Blindness does not disqualify a person from holding the office of township clerk.*

2. *A blind township clerk may retain his blind pension allowed him by the county commissioners if such commissioners determine that the amount of his fees and allowances for his services as township clerk are not sufficient to provide him with the necessities of life, that he has no other sufficient means of his own to maintain himself, and that, unless extended the relief authorized by law, he would become a charge upon the public or upon those not required by law to support him.*

COLUMBUS, OHIO, March 13, 1934.

HON. FANNIE M. MYERS, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR MADAM:—Your recent communication reads as follows:

"We have a situation in our county pertaining to a blind person holding the office of Township Clerk, and may we ask for an opinion from you covering the following questions:

1st: Is there any statute prohibiting a blind person from holding the office of Township Clerk?

2nd: Can such blind Clerk retain his pension, allowed him by the Blind Relief Commission?"

Relative to your first question, I may say that a careful examination of the General Code of Ohio does not reveal any statute expressly prohibiting a blind person from holding the office of township clerk. Although you do not specifically so ask, I presume you desire to know whether or not a blind person may hold the office of township clerk. There is no doubt that the legislature has the power to prescribe the qualifications for an office, providing such qualifications are not in conflict with any qualifications required of a particular office by the Constitution. This seems clear from the Supreme Court case of *The State of Ohio, on relation of the Attorney General, vs. Samuel F. Covington et al.*, 29 O. S. 102. The ninth paragraph of the syllabus of such case reads:

"9. The provision in the constitution, section 4, article 15, that 'no person shall be elected or appointed to an office in this state unless he possesses the qualifications of an elector,' does not, by implication, forbid the legislature to require other reasonable qualifications for office."

To the same effect, see Throop on Public Officers, Section 73. In the case of *State ex rel. Shea vs. Cocking, Mayor, et al.*, 66 Montana, 169; 213 Pacific Reporter, 594; 28 American Law Reports, 772, decided February 14, 1923, by the Montana Supreme Court, it was held as disclosed by the first three paragraphs of the syllabus:

"1. The office of police judge is the creation of the statute and not of the constitution.

2. Where the legislature in creating an elective office prescribes no limitations or qualifications, the right to hold it is an implied attribute of citizenship and is presumed to be co-extensive with that of voting at an election held for the purpose of choosing an incumbent for that office those only who are competent to select the officer being deemed competent to hold it.

3. Held, that blindness does not disqualify one from holding the office of police judge."

In the opinion the court stated at page 174:

"The legislature has not prescribed any qualifications for the incumbent of the office of police judge in addition to the statutes above quoted. This policy is consistent with the general rule, 'Where no limitations are prescribed, the right to hold a public office under our political system is an implied attribute of citizenship and is presumed to be co-extensive with that of voting at an election held for the purpose of choosing an incumbent for that office; those, and those only, who are competent to select the officer being deemed competent also to hold the office.' (Mechem on Public Office and Officers, Sec. 67.)

Under the common law it is was held that unfitness, if gross and palpable, is a disqualification for holding an office. Throop says:

'It is needless to say that the practical application of the doctrine is generally very difficult and, as far as our examination has extended, there is but one case in the United States where it has been applied. That was in New York, where a person ignorant of any foreign language had been appointed interpreter, and it was held that he was incompetent to hold the office.' (Throop on Public Officers, Sec. 71.)

We have not been cited to an instance where a blind man has been declared ineligible to hold an office.

* * *

Notwithstanding the disadvantages under which a blind man must labor in the position of police judge, it cannot be said that this misfortune wholly disqualifies him from holding the office. The people of a municipality have a right to select as their police judge anyone who comes within the qualifications prescribed by statute. It is their sovereign right to select their own officers. If this rule permits too much latitude, then the question of eligibility cannot be corrected by the courts but must be by the legislature, in whom the power is reposed. (*People vs. May*, 3 Mich. 598.)"

It appears to me that the foregoing case is directly in point here, and would compel the conclusion that a blind person may legally hold the office of township clerk.

Coming now to your second question, I may say that Section 2965, General Code, defines the "needy blind" who may legally be allowed blind relief by the county commissioners, whose duties are to administer the blind relief laws since the abolishment of the blind relief commissions of the counties in 1913. Said section reads:

"Any person of either sex, who, by reason of loss of eyesight, is unable to provide himself with the necessities of life, who has not sufficient means of his own to maintain himself, and who, unless relieved as authorized by these provisions would become a charge upon the public or upon those not required by law to support him, shall be deemed a needy blind person."

In the Opinions of the Attorney General for 1928, volume II, page 1597, it was held as disclosed by the first and fourth paragraphs of the syllabus, as follows:

"1. By the terms of Section 2965, General Code, before one may be deemed a needy blind person, so as to be entitled to relief authorized by law, he must be a person (1) who, by reason of loss of eyesight, is unable to provide himself with the necessities of life and who has not sufficient means of his own to maintain himself and (2) who, unless extended the relief authorized by law, would become a charge upon the public or upon those not required by law to support him.

4. Whether or not a person is a needy blind person to whom relief should be extended, as authorized by section 2965 and related sections of the General Code, is a question of fact to be determined upon the evidence by the county commissioners and in the absence of fraud or other gross abuse of such discretion the determination of the commissioners is final."

A township clerk is compensated on the basis of fees and allowances and does not receive an annual salary as do county officers and state officers. See sections 3307, 3308, 6498, 3193, 1430, 1432, 3298-15m, 3460, 14955, 14957 and 5826, General Code. The last paragraph of section 3308, General Code, provides:

"* * * In no one year shall he (the township clerk) be entitled to receive from the township treasury more than two hundred and fifty dollars." (Words in parenthesis mine.)

This office, in an opinion reported in Opinions of the Attorney General for 1921, volume I, page 86, held as disclosed by the syllabus:

"Under sections 3294, 3308 and 3318, G. C., the limitation upon maximum annual compensation of the township officers therein named has reference only to services for the township as such, for which payment is made by the township out of the township treasury; and payments by individuals, for the services of such officers, do not come within such limitation."

In other words, a township clerk in performing the duties of his office, receives no definite salary. In view of the foregoing opinion a township clerk, though limited to receiving \$250.00 in a year from the township treasury, may receive an aggregate compensation during such year in excess of that amount on account of the receipt of fees by virtue of his office, which fees are not paid from the township treasury. It is possible that he may receive a certain amount of money for his services as township clerk and yet be considered a "needy blind" person, within the meaning of section 2965, General Code, by the county commissioners. It being a question of fact to be decided by the county commissioners whether or not a person is by reason of loss of eyesight, unable to provide himself with the necessities of life and has not sufficient means of his own to maintain himself, and further, whether or not, unless relief be granted, as authorized by law, the person would become a charge upon the public or upon those not required by law to support him, it follows that the said commissioners must determine from the circumstances, whether or not the township clerk is receiving enough fees from his office to sufficiently maintain himself.

In specific answer to your second question, I am of the opinion that the blind clerk may retain his pension allowed him by the county commissioners, and serve as township clerk, if the said county commissioners in their discretion determine that he (the township clerk) is still a "needy blind" person within the meaning of section 2965, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2366.

SANITARY DISTRICT—CITY REQUIRED TO PAY ANNUAL ASSESSMENT TO PROVIDE FUNDS FOR BOND RETIREMENT AND INTEREST—UNPAID TAXES NOT JUSTIFICATION OF NON-PAYMENT—IF TAX LEVY INADEQUATE DEFICIENCY PAID HOW.

SYLLABUS:

1. *Where an annual assessment has been duly levied against a city by the board of directors of a sanitary district, of which such city is a part, for the purpose of providing funds for bond retirement and interest, and a proper levy has been made by such city therefor, the fact that, by reason of unpaid taxes, the proceeds of such levy are not sufficient to pay said assessment in full does not relieve the city of its obligation to pay the entire amount of such assessment.*
2. *In such case, it is the duty of the city to pay such deficiency from its general fund, provided there are unappropriated and unencumbered moneys in said fund, or it may appropriate and pay it from any unappropriated moneys of its water department.*
3. *In the event the city has no funds from which said deficiency can be paid, then it is its duty to set forth in its tax budget for the next year the amount of such deficiency, together with such portion of the next annual assessment as has not been paid from its water department funds.*