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1. TOWNSHIP, NEW—WHEN SET OFF, DUTY OF COUNTY COMMISSIONERS TO ORDER ELECTION OF OFFICERS—OFFICERS SHALL HOLD OFFICE UNTIL NEXT REGULAR TOWNSHIP ELECTION AND UNTIL SUCCESSORS ELECTED AND QUALIFIED—SECTION 3259 GC.
2. NEXT REGULAR ELECTION FOR TOWNSHIP OFFICERS, NOVEMBER, 1953, TWO TOWNSHIP TRUSTEES SHOULD BE ELECTED FOR TERM OF FOUR YEARS—ONE FOR TERM OF TWO YEARS—SECTION 3268 GC.
3. NO PRIMARIES MAY BE HELD FOR NOMINATION OF TOWNSHIP OFFICERS—PROVISO, UNLESS PETITIONS HAVE BEEN FILED—SECTION 4785-67 GC.

SYLLABUS:

1. When a new township is set off, it is the duty of the county commissioners under the provisions of Section 3259, General Code, forthwith to order an election of officers for such township. Such officers shall hold office until the next regular township election and their successors are elected and qualified.

2. At the next regular election for township officers held in November, 1953, two township trustees should be elected for a term of four years, and one should be elected for a term of two years pursuant to the provisions of Section 3268, General Code.

3. By reason of the provision of Section 4785-67, General Code, no primaries may be held for nomination of township officers, unless petitions for such primary have been duly filed as provided in such section.

Columbus, Ohio, June 9, 1953

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your communication, requesting my opinion in regard to the legal procedure for the appointment and election of township trustees for the newly created township of Moraine, in Montgomery County. Briefly stated, it appears that the entire area of the township of Van Buren was, by proceedings held in 1952, duly incorporated as a village and that the incorporation of such village has been completed,

recently, by the election of village officers. It also appears that prior to such election of village officers, proceedings were had under Section 3577-1 of the General Code, whereby a portion of the territory of said village was detached therefrom, and erected into a new township, to be known as Moraine Township. Based upon these facts, you present the following questions:

"1. What is the proper legal method of supplying township trustees to act temporarily until trustees can be elected at the general election in the township in November, 1953?"

"2. Must the election of the trustees be staggered, two trustees elected for a term of four years at the general election held in November, 1953, and one trustee be elected in November, 1955, for a term of four years?"

"3. Can a special primary election be held in Moraine Township for the nomination of candidates to be elected for the township offices at the general election to be held in November, 1953?"

"4. If so, who has the authority to call and fix the date for this special primary election?"

1. I direct your attention to Section 3259 of the General Code, which reads as follows:

"When a new township is set off, the county commissioners shall forthwith give at least ten days public notice by advertisement, in three public places in such township, of the time and place of holding an election for township officers. At such time and place the electors of the township shall assemble, and elect officers, who shall hold their offices until the next regular township election and their successors are elected and qualified."

It will be noted that this section has not been amended since its enactment in 51 Ohio Laws, 489. There is no ambiguity about its terms, as it appears to provide generally, for the procedure "when a new township is set off." And it is made the mandatory duty of the county commissioners forthwith to provide for an election for township officers. It is manifest that this procedure is intended to be summary, and there is no opportunity for the presentation of candidates for these offices. Accordingly, it would appear that at this election the only method of presenting and electing candidates would be by writing their names in on the ballot.

Your letter raises the question as to the possibility of appointing trustees to act temporarily until trustees can be elected at the general election to be held in November, 1953. The only section which suggests such a procedure is Section 3262, General Code, which reads as follows:

“When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years shall appoint a suitable person or persons, having the qualifications of electors in the township to fill *such vacancy or vacancies for the unexpired term*. Whenever in any township a municipal court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge if there be more than one, shall have power to fill vacancies on the board of trustees. In those townships wherein there are no justices of the peace or municipal judges the probate judge shall have the power to fill vacancies on the board of trustees.” (Emphasis added.)

While the first few words of this section, “When *for any cause* a township is without a board of trustees” may suggest that the authority of appointment vested in the officers named could be resorted to, yet a consideration of the entire language of the section convinces me that it relates only to a situation where a vacancy has been created by the resignation or removal of one trustee, or where by reason of the resignation, death or removal of all the trustees there results a situation in which a township is without a board of trustees. This conclusion is strengthened by the fact that the appointment referred to, is spoken of as an appointment “to fill such vacancy or vacancies,” and also by the fact that these appointments are for the unexpired term. In the case you present, evidently no vacancy has occurred, and there is no unexpired term to be filled. Accordingly, it is my conclusion that Section 3262 *supra*, does not give power to make temporary appointments in the situation presented. This conclusion is further strengthened by the summary procedure that is authorized by Section 3259 *supra*.

2. Referring to your second question, whether at the election of trustees in November, 1953, the terms of the trustees are to be staggered, so as to permit two members to be elected for four years and one for a term of two years, I call your attention to Section 3268, General Code, which reads as follows:

“In each township there shall be a board of township trustees consisting of three members. Two of such trustees shall be elected at the general election in 1949 and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. The third trustee shall be elected at the general election in 1951 and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after his election.”

It is plain from the provisions of this section that at the general election held in November, 1953, two trustees will be elected for a term of four years, and in order to get in tune with the system there established, it appears equally plain that at that election the third member should be elected for a term of two years. Thereafter the election will recur in strict accordance with the provisions of the law.

3. As to your third question, relative to a primary election for the nomination of trustees, you will note that by the provisions of Section 4785-67, General Code, no primaries may be held for the nomination of candidates for township offices, unless a petition for such primary has been duly filed as provided therein. It is also to be noted that owing to the imminence of the general election, there will be insufficient time for the presentation of candidates by petition, since under Section 4785-92, General Code, such nominating petitions must be filed ninety days before the first Tuesday after the first Monday in May. Accordingly, the only method of voting for persons to fill these offices will be by writing their names on the ballot. You will note that this is permitted by Section 4785-101, General Code, where no candidate has been nominated for an office.

4. In view of the above conclusion it is unnecessary to answer your fourth question.

Accordingly, it is my opinion and you are advised:

1. When a new township is set off, it is the duty of the county commissioners under the provisions of Section 3259, General Code, forthwith to order an election of officers for such township. Such officers shall hold office until the next regular township election and their successors are elected and qualified.

2. At the next regular election for township officers held in November, 1953, two township trustees should be elected for a term of four years, and one should be elected for a term of two years pursuant to the provisions of Section 3268, General Code.

3. By reason of the provision of Section 4785-67, General Code, no primaries may be held for nomination of township officers, unless petitions for such primary have been duly filed as provided in such section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General