

thority in the statutes requiring villages authorities to provide for medical relief for its indigent poor except that in such cases where the boundaries of a village have become identical with a township, in which case the village authorities have all the rights and duties with respect to administering poor relief as a township does.

In Opinion No. 4380, rendered by my predecessor June 3, 1932, the question of whether the township or a village in the township was responsible for affording temporary or partial relief to the indigents or needy poor within the village was fully discussed. The syllabus of this opinion reads as follows:

"A village has no authority under general law to pay the cost of affording temporary or partial relief provided for by section 3476, General Code, but such expense must be borne by the township in which the persons needing such relief have a legal settlement."

It would appear that the term "municipal corporation", as applied in Section 3480, General Code, when considering this section with Sections 3476, 3477 and 3479, General Code, would be limited to the meaning of "city" and would not include villages. It is therefore my opinion that while a village may afford to its residents medical relief, there is no statute requiring village officials, which village does not have the same boundary lines as the township, to furnish such medical relief and it would be the duty of the trustees of the township to afford the relief needed for the needy poor or indigent of the village located within the township.

In specific answer to your question, I would therefore say that medical relief in villages need not be afforded by village authorities out of village funds but such relief should be afforded by the township trustees of the township in which the village is located. This, however, applies to villages which have not the same boundaries as the township.

Respectfully,
JOHN W. BRICKER,
Attorney General.

8:6

JUSTICE OF PEACE—ONE HOLDING COMMISSION BEARING EARLIER DATE AUTHORIZED TO FILL VACANCY ON BOARD OF TOWNSHIP TRUSTEES BY APPOINTMENT.

SYLLABUS:

Where two justices of the peace were appointed by the township trustees of a township under authority of section 1714, General Code, on the same day, but received their commissions from the Governor of Ohio, under sections 138 and 139, General Code, at different times, and consequently qualified on different dates, the justice of the peace holding the commission bearing the earlier date is authorized to appoint a suitable person to fill a vacancy on the board of trustees of such township, in accordance with the terms of section 3262, General Code.

COLUMBUS, OHIO, May 20, 1933.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads:

"I received a letter from the Clerk of Clay Township of this county yesterday relating to the appointment of a township trustee to fill a vacancy, which is as follows:

'At a special meeting of the Board of Trustees of Clay Township, May 8th, the resignation of Thomas H. Roe as Trustee was tendered and accepted, creating a vacancy on the Board of Trustees.

It is our understanding of Sec. 3262, G. C., that his successor shall be appointed by one of the two Justices of the Peace of Clay Township; and the question has arisen as to which is qualified to make the appointment. The history of these offices is as follows:

Because of the separation of New Boston and Clay Township, the Trustees of Clay Township appointed Thomas M. Carver and David H. Rupert to serve as Justices of the Peace, on September 6, 1932. The date of Thomas M. Carver's commission is September 13, 1932, and that of David H. Rupert, September 16, 1932, but David H. Rupert took the oath of office before the Clerk of Courts on September 19, 1932, while Thomas M. Carver took the oath of office on October 3, 1932. The bonds of both were accepted and approved by the Trustees on October 3, 1932.

Will you please advise which, in your opinion, should make the appointment of successor to Mr. Roe?"

The question presented here has never been determined by the court or attorney general as far as I can learn and I decided to submit the matter for your opinion. I personally feel that the Justice of the Peace holding the oldest commission has the right to make the appointment regardless of the fact that another Justice of the Peace in his township qualified first."

Section 3262, General Code, mentioned in the letter of the clerk of Clay township, 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 commissions 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. Wherever 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 the same powers to fill vacancies on the board of trustees."

The words "oldest commission", appearing in the foregoing section have been interpreted in opinions of several former attorneys general. In an opinion rendered to the Secretary of State on August 8, 1906, and appearing on page

62 of the Annual Report of the Attorney General for that year, it was held, as disclosed by the syllabus:

"Vacancy in office of township trustee must be filled by appointment by justice of the peace whose last commission bears the earliest date; Section 1452 R. S. construed."

Section 1452, Revised Statutes, is now section 3262, General Code. While the statute now under consideration reads differently than section 1452, Revised Statutes, the phrase hereinbefore mentioned appeared in section 1452, Revised Statutes. In the opinion the then Attorney General said:

"Both of them (justices of the peace) seem to have been last elected in 1904. They may have been commissioned at different times, however. If so, the township clerk should ascertain which commission bears the earliest date and notify the holder thereof to make the appointment."

In another opinion, reported in Opinions of the Attorney General for 1915, volume I, page 411, it was held, as disclosed by the syllabus:

"The phrase 'oldest commission' as used in section 3262 G. C., means the unexpired commission of earliest date."

In the most recent opinion, to be found in Opinions of the Attorney General for 1918, volume I, page 411, it was stated in the first paragraph of the syllabus:

"The phrase 'oldest commission', as used in section 3262 G. C., means the existing commission of earliest date."

The procedure to be followed for the appointment of a justice of the peace when there is a vacancy, is contained in sections 1714, 138 and 139, General Code. Such sections provide as follows:

Sec. 1714. "If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

Sec. 138. "A judge of a court of record, state officer, county officer, militia officer and justice of the peace, shall be ineligible to perform any duty pertaining to his office, until he presents to the proper officer or authority a legal certificate of his election or appointment, and receives from the governor a commission to fill such office."

Sec. 139. "Except militia officers, each of the officers designated in the preceding section who, for the discharge of his official duty receives any fee, compensation or salary, shall pay a fee to the secretary

of state for the making, recording and forwarding his commission before being entitled to receive it. The fee to be paid by each justice of the peace shall be two dollars, and the fee of all other such officers, five dollars."

Under section 1714, General Code, the township trustees appoint a justice of the peace when there is a vacancy and notify the county clerk of courts of such vacancy and the date when it occurred. Then the clerk of courts, after collecting the fee of two dollars from the appointee, forwards the said fee of two dollars, together with the form of application for appointment of a justice of the peace to the office of the Secretary of State, who immediately obtains the signed commission from the Governor and forwards it to the clerk of courts, under sections 138 and 139, General Code.

From information I have received from the official records in the office of the Secretary of State, it appears that Thomas M. Carver and David H. Rupert were both appointed by the township trustees of Clay Township on September 6, 1932. Said records also show that the clerk of courts forwarded the form of application for appointment of David H. Rupert to the office of Secretary of State on September 15, 1932, and his (Rupert's) commission was signed by the Governor and forwarded by the Secretary of State to the clerk of courts on September 16, 1932.

On the other hand, the records of the Secretary of State show that the clerk of courts forwarded the application for appointment of Thomas M. Carver to the Secretary of State on September 29, 1932, and the commission was signed by the Governor and forwarded to the clerk of courts on September 30, 1932. Hence, it appears from the official records of the Secretary of State that the date of the commission of David H. Rupert was September 16, 1932, and that of Thomas M. Carver, September 30, 1932. Consequently, under the uniform opinions of the former Attorneys General, the commission of David H. Rupert being the older, he is entitled to make the appointment to fill the vacancy in the Clay township board of trustees.

Therefore, in specific answer to the question propounded by the clerk of Clay township, I am of the opinion that Mr. Rupert should make the appointment of the successor of Mr. Roc.

Respectfully,
JOHN W. BRICKER,
Attorney General.

847.

APPROVAL, NOTES OF McARTHUR-HUNTSVILLE VILLAGE SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$1,135.00.

COLUMBUS, OHIO, May 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

848.

APPROVAL, NOTES OF SUGAR CREEK TOWNSHIP RURAL SCHOOL DISTRICT, ALLEN COUNTY, OHIO—\$873.00.

COLUMBUS, OHIO, May 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.