

inmate, to be paid out on the warrant of the county auditor upon the order of the county commissioners.

It is noted that under Section 2550, General Code, upon the death of such inmate or when such inmate lawfully ceases to be a county charge any balance of the property or effects of said inmate shall be paid by the Superintendent of the County Home to the inmate, or in case of death to her legal representative.

You state that no collection was made by the state for the support of said patient during the time that she was an inmate of said state hospital. I am informed that it was determined that owing to the small value of her estate and the financial and physical condition of her husband that no claim was made against either of them for the payment of her maintenance at the state hospital.

It is therefore my opinion that the commissioners of Preble County may properly claim this money now on deposit at the said state hospital and that the procedure for obtaining possession thereof is provided as hereinbefore indicated.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1218.

MAYOR—ABSENT FROM DUTIES OF OFFICE—PRESIDENT OF COUNCIL NOT ENTITLED TO COMPENSATION PROVIDED FOR MAYOR.

SYLLABUS:

When, for any reason, the mayor of a city is unable to perform the duties of his office, and the president of council thereby becomes acting mayor, said president of council is not entitled to the compensation provided for the office of mayor during the period while he is so acting, but is entitled only to the compensation provided for the office of president of council.

COLUMBUS, OHIO, October 31, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication, as follows:

“Section 4273, G. C., provides:

‘When the mayor is absent from the city, or is unable for any cause to perform his duties, the president of the council shall be the acting mayor. While the president of the city council is acting as mayor, he shall not serve as president of council.’

The pertinent part of 4274, G. C., reads:

‘In case of death, resignation or removal of the mayor, the president of council shall become the mayor, and serve for the unexpired term and until the successor is elected and qualified. * * *

It has been our understanding that the compensation fixed by council for the president of council is in full for the performance of all the duties imposed upon him by law, one of which is to act as mayor when such mayor is unable for any cause to perform his duties.

In Opinion No. 240, to be found at page 184 of the Opinions of the Attorney General for 1923, it was held:

'A mayor suspended from office pending investigation under Section 4268, General Code, and permanently removed, is not entitled to salary during the period of such suspension.

However, should it ultimately be decided by a court of competent jurisdiction that he was wrongfully removed, then and in that event he will be so entitled to his salary.'

When a mayor is suspended without pay and subsequently removed from office is the president of council who acted as mayor during such period of suspension entitled to the salary of the mayor during such period?"

Section 4268, General Code, reads as follows:

"In case of misconduct in office, bribery, any gross neglect of duty, gross immorality, or habitual drunkenness of any mayor, upon notice and after affording such mayor a full and fair opportunity to be heard in his defense, the governor of the state shall remove him from office. The proceedings for his removal shall be commenced by the governor putting on file in his office a written statement of the alleged causes for the mayor's removal, and he shall cause a copy of such statement to be served upon the mayor not less than ten days before the hearing of the matter. Pending such investigation by the governor, he may suspend the mayor for a period of thirty days."

Obviously, during the period of such suspension, the mayor "is unable for any cause to perform his duties," and therefore the president of council shall during this period be the acting mayor as provided by Section 4273, General Code, quoted in your letter.

In some instances, where provision is made by statute for the making of appointments to fill temporary vacancies in office, provision is also made that such appointee shall receive the compensation provided for the office, or an amount equal to the regular compensation provided for the office. In the case, however, of the president of council acting as mayor when the mayor "is unable for any cause to perform his duties" no such provision is made. In fact nothing whatever is said in the statutes with reference to the compensation of the president of council while acting as mayor.

It will be noted from the provisions of Section 4273, *supra*, and Section 4274, General Code, also quoted in your inquiry, that the president of council does not become the mayor while he is merely "acting mayor", but only when the mayor is removed from office. While the president of council is acting mayor he still retains title to the office of president of council, and when the period of the mayor's suspension expires, or if within that period the suspension is lifted, the president of council again resumes the duties attached to the office of president of council.

When a public officer accepts an office, he accepts that office *cum onere*, that is to say, he accepts it with all its incidents, obligations and burdens, and when the president of council accepts the office of president of council he accepts it together with all its duties, which include those of acting as mayor when the mayor "is unable for any cause to perform his duties."

In Throop on Public Officers, Section 443, it is stated:

"It has been often held that an officer's right to his compensation does not grow out of a contract between him and the state or the municipality by which it is payable. The compensation belongs to the officer as an in-

cident of his office and he is entitled to it not by force of any contract, but because the law attaches it to the office."

In Ruling Case Law, Vol. 22, page 525, it is said:

"It is a well established principle that a salary pertaining to an office is an incident of the office itself and not to its occupation and exercise."

The president of council while he is president of council, is entitled to the compensation provided for the office of president of council, and no more, and it follows that since he is still president of council while he is acting as mayor, he is entitled to the salary provided for the office of president of council and not to the salary which is provided for the office of mayor.

Specifically answering your question, I am of the opinion that the president of council who is acting as mayor during the period of the mayor's suspension, is still president of council and is not the mayor, and that he is entitled only to the compensation provided for the office of president of council, even though the mayor is removed upon the charges which were filed and because of which he was suspended, and the president of council then becomes the mayor. The time of his "becoming the mayor" does not date back to the date of the order of suspension.

Nothing in this opinion is to be construed as holding that a city council may not provide, by ordinance, that the president of council shall receive as compensation while acting as mayor, an amount equal to the salary as mayor. Such an ordinance would of course have to be passed prior to the incumbent's taking office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1219.

BOARD OF EDUCATION—MAY NOT ISSUE NOTES IN ANTICIPATION OF BOND ISSUE WHEN SAID NOTES ARE TO BE ALLOWED TO STAND UNREDEEMED FOR PERIOD FOR WHICH SAID BONDS ARE TO RUN.

SYLLABUS:

1. *Where a board of education wishes to issue notes in anticipation of an issue of bonds, which notes are to be allowed to stand unredeemed for the period for which said bonds are to run, without actually issuing said bonds, the issue of such notes would be unauthorized and illegal.*

2. *Where such notes are issued in good faith and where a change in the financial condition of the subdivision makes possible the discharge of said notes at maturity, it is unnecessary to issue the bonds anticipated by such notes.*

COLUMBUS, OHIO, October 31, 1927.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication requesting my opinion upon the following:

"Under the new uniform bond act a Board of Education wishes to issue bonds without a vote of the people in compliance with Section 2293-15, and