

"It is not necessary in the instant case to determine whether the Legislature might confer upon the secretary of state the power to terminate the powers, privileges, and franchises of a corporation. It is sufficient to say that, when all these sections are construed together, the legislative intent is evident, and it becomes clear that it was not intended to confer that power upon the secretary of state further than to facilitate the filing of reports and the collection of fees and taxes."

The question presented in your communication must be distinguished from that which was before the Supreme Court in the Eversman case, supra, since the authority to file a certificate of amendment is a special privilege conferred by the Legislature and should not be considered in the same category as the authority to enter into customary business transactions within the scope of the purpose of the corporation under its franchise. In taking the position that a corporation may not amend its articles as set forth in your letter under these circumstances, I believe I am construing Section 5509 in accordance with the construction placed thereon by the Supreme Court in that, after cancellation of the articles of a corporation as provided therein, the powers and privileges of a corporation are terminated by the Secretary of State "to facilitate the filing of reports and the collection of fees and taxes." The reference in Section 5509, in its present form, to Section 8623-80 further strengthens this construction because Section 8623-80 now provides that after cancellation a corporation "shall cease to carry on its business and shall be without authority so to do."

Section 5511, supra, has provided one specific amendment that may be filed by a corporation after cancellation and before reinstatement, viz., an amendment changing the name of such corporation in the event articles have been issued to another corporation of the same or a similar name as therein specified. There is no provision for the filing of any other amendment of the articles of incorporation after cancellation.

In view of the foregoing, it follows that the corporation in question must be reinstated as provided in Section 5511, supra, before the desired certificate of amendment may be filed.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1532.

TOWNSHIP TRUSTEES—PER DIEM COMPENSATION FOR ATTENDING CONFERENCES WITH OTHER BOARDS OF TRUSTEES CONCERNING UNIFORM SYSTEMS OF ROADS, CEMETERIES AND POOR RELIEF.

*SYLLABUS:*

*In the absence of an apparent abuse of discretion or evidence of bad faith in a particular case, it cannot be said as a matter of law, that it is unlawful for township trustees, after determining the need and propriety of a conference with the trustees of other townships for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to highways, cemeteries and poor relief, to credit themselves with the time expended in attending such a meeting as*

being "service in the business of the township" for which they are entitled to per diem compensation, in accordance with Section 3294, General Code.

COLUMBUS, OHIO, February 17, 1930.

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

GENTLEMEN :—Acknowledgment is made of your communication in which you enclose a letter from Mr. J. R. Thomas, President, State Association of Township Trustees and Clerks, and request my opinion upon the questions which he propounds. His letter, in part, reads :

"Are township trustees entitled to a per diem compensation under Section 3294 of the General Code when meeting for any one or more of the following purposes :

(1) Where several township boards of trustees meet together at the county seat or other point within the county for the purpose of discussing the best procedure in constructing, widening, reconstructing, or otherwise improving township roads, to the end that a more unified and correlated system of improved township roads may be secured throughout the county.

(2) Where several township boards of trustees meet together at the county seat or other point within the county for the purpose of establishing or carrying on a uniform system of poor relief throughout the county.

(3) Where several township boards of trustees meet together at the county seat or other point within the county for the purpose of establishing or carrying on a uniform system of caring for township cemeteries within the county."

Section 3294 of the General Code, referred to in the letter above quoted, provides :

"Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year including services in connection with the poor. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

It is a fundamental proposition of law that officers are entitled to only such fees or compensation as are specifically provided by law. Inasmuch as the section above quoted refers to the compensation that a trustee is to receive "for each day of service in the business of the township," it obviously becomes necessary to determine whether the meetings referred to have reference to the business of the township in a legal sense.

There has never been a judicial pronouncement of just what constitutes "business of the township" in the prosecution of which township trustees may be paid. It is a familiar principle of law that such administrative officers as township trustees have such powers only as are expressly granted to them by statute, together with such incidental powers as are reasonably necessary to effectuate the express powers so granted. Courts have jealously guarded this rule by not permitting such officers to exercise powers beyond those expressly granted or necessarily implied therefrom but

will not invade the field of discretion where discretion in the manner of the performance of a statutory duty is at issue.

Township trustees are expressly authorized by Section 3298-1, and related sections of the General Code, to construct, reconstruct, resurface or improve certain public highways within the township, in some instances in co-operation with the county commissioners. They are expressly authorized by Sections 3476, et seq., of the General Code, to extend relief to certain needy poor within the township. Certain specific duties of township trustees with respect to the establishment and maintenance of cemeteries are fixed by statute. Section 3441, et seq., General Code.

There is no express duty enjoined by statute for township trustees to co-operate with the trustees of other townships in the establishment or maintenance of highways or cemeteries, except joint cemeteries, or the extension of poor relief. It is conceivable, however, that under certain circumstances the interests of the township might be furthered by such co-operation, and if so, the carrying out of the express duty with respect to highways, township cemeteries and poor relief would then be said to include the power to co-operate with other agencies so that the express duty might be more effectually performed. The persons who are in the best position to judge of the necessity for said co-operation would no doubt be the trustees of the township, who are charged with the performance of the duty. If these trustees, in the exercise of a sound discretion and in good faith, determine that the interests of the township demand the co-operation of the trustees with the trustees of another or other townships and a meeting is called in furtherance thereof, I could not say, as a matter of law, that the trustees when attending such a meeting were not extending "service in the business of the township" for which service they would be entitled to \$2.50 per day within the yearly limits fixed by statute.

It should at all times be remembered that the presumption is in favor of the proper exercise of power on the part of public officials and while it is conceivable that, if it is held that township trustees of the several townships of a county or of several adjoining or neighboring townships have power to hold joint meetings for the purpose of discussing matters pertaining to the duties of said township trustees in reference to highways, cemeteries and poor relief, the said power may be abused and carried beyond reasonable demands, it seems to me that it cannot be laid down, as a general proposition, in the absence of any evidence, that the discretion of the trustees was abused or that their action was not taken in good faith in any particular case.

Township trustees are elective officers. Their action with respect to the number of days they claim to have been doing the business of the township is an open book, inasmuch as they are required to present an itemized statement of their account for such per diem and services and that statement is filed with the clerk of the township and by him preserved for inspection by any persons interested. Should this power be abused, the people of the district can, and no doubt would remedy the matter before it had gone very far, by changing the board. Anyway the Legislature has safeguarded any extensive abuse that might occur in this respect by limiting the amount that may be received by township trustees for per diem services to \$250.00 per year.

In specific answer to your question, I am unable to say, as a matter of law, that when township boards of trustees of several townships meet at some central point for the purpose of discussing matters pertaining to the duties of the several boards with respect to highways, cemeteries and poor relief, such trustees are not "on the business of the township," and are not entitled to the per diem compensation fixed by statute for township trustees when performing services in the business of the township.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*