

of exemption or cessation from work, a day of festivity, recreation or amusement. *State vs. Shelton*, 77 N. E. 1052-1054, 38 Ind. App. 80."

—Words and Phrases, 2nd Series, Vol. II, p. 900.

It, therefore, seems that the spirit of Section 5978, General Code, supra, contemplates the closing of public offices upon Saturday afternoon. However, notwithstanding that the law contemplates the closing of such offices, there seems to be no inhibition against keeping them open in the event the official in charge thereof sees fit to do so.

Section 5977 of the General Code provides :

"The first Monday in September of each year shall be known as 'Labor Day,' and, for all purposes, shall be considered as the first day of the week."

In construing the section last quoted in the case of *Grocery Co. vs. Armstrong*, 8 O. C. C. 489, the court held that a judgment by confession before a justice of the peace on Labor Day is absolutely void and such judgment may be attacked collaterally. Said opinion was affirmed without report by the Supreme Court of Ohio in 53 O. S. 657 .

However, in the case of *State vs. Thomas*, 61 O. S. 444, it was held that a term of the Common Pleas Court may begin on Labor Day and an indictment found by a grand jury which is impaneled and sworn that day is not invalid. This case was cited, apparently with approval, by the Supreme Court of Ohio in the case of *Norman vs. State*, 109 O. S. 213. While the facts in that case involved the question as to the legality of one being tried on Columbus Day, October 12, and therefore distinguishable from the Thomas case, the court cites the latter as authority. The following is quoted from the body of the court's opinion in said case of *Norman vs. State*:

"It has generally been held that, in the absence of a statute containing a mandatory provision forbidding the judges of courts to hear and determine matters on a legal holiday, a judicial proceeding upon such day is not void. 10 L. R. A. (N. S.), note, and cases cited."

Based upon the foregoing citations and discussions, it is my opinion that Section 5978 of the General Code, makes Saturday afternoons one-half legal holidays for all purposes and contemplates that public offices shall be closed on said afternoons. However, there is no inhibition against keeping such offices open for the purpose of transacting public business and any such business so transacted will not be invalidated by reason of the fact that it was consummated on Saturday afternoon.

Respectfully,

GILBERT BETTMAN,

Attorney General.

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305.

RODMEN—CLASSIFIED AS ASSISTANTS TO COUNTY SURVEYOR—ENTITLED TO EXPENSES UNDER SECTION 2786, GENERAL CODE.

SYLLABUS:

*Rodmen come under the classification of assistants and their reasonable and necessary expenses incurred in the performance of their official duties should be allowed under Section 2786, General Code of Ohio.*

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

COLUMBUS, OHIO, April 15, 1929.

DEAR SIR:—I am in receipt of your letter of March 25, 1929, which is as follows:

“Under General Code, Section 2786, county surveyor and each assistant and deputy are allowed their reasonable and necessary expenses incurred in the performance of their official duties.

In our county the State Examiner has said that rodmen should not have their expenses paid under this section. The State Highway Department has in the past always paid the expenses of rodmen employed by the county surveyor.

I would like to have your opinion as to whether rodmen come under the classification of assistants or deputies and should their expenses be paid under this section.”

Section 2981 of the General Code refers to county officers including county surveyor, and is as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bonds with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office.”

Assuming that a rodman is appointed by a county surveyor by virtue of Section 2981, General Code, then your question resolves itself into this inquiry: Does the word “assistant” and “deputy” as used in Section 2786 of the General Code, include a rodman? It has long been the settled policy of this state that public officers are not entitled to extra compensation, unless clearly authorized by statute.

Section 2786, General Code, provides as follows:

“The county surveyor shall keep his office at the county seat in such room or rooms as are provided by the county commissioners, which shall be furnished, with all necessary cases and other suitable articles, at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties.”

A deputy is defined in Bouvier's Law Dictionary, Vol. I, p. 851, as “One who

has power to do everything which his principal might do." From this definition it is apparent that a rodman does not come under the classification of a deputy, as a rodman's duty is special. He does not perform the general duties of a surveyor.

Now, does the word "assistant" as used in Section 2786 of the General Code include a rodman? In Words and Phrases, Vol. I, Series I, p. 583, the following cases are cited which define an assistant:

*Wright vs. Wheeler*, 30 N. C. 184.

"Under Revised Statute C 31, Sec. 46, if any clerk for himself or his assistant in office shall issue any writ, etc., an assistant is one who is called in by the clerk without any regular appointment to aid him either in conducting the business of the office generally or to aid him in some particular."

*State ex rel. Bartraw vs. Longfellow*, 69 S. E., 596.

"An assistant is defined to be one who stands by and aids or helps another, thus an inspector of buildings, being an assistant of the commissioners of public buildings, was not an officer."

*Elliston vs. Stevenson*, 22 Ky. 271.

"An assistant does not mean a deputy. Clerks and other public officers have assistants who are not deputies; though a deputy is an assistant, the word 'assistant' is more comprehensive than the word 'deputy,' those who aid whether sworn or not sworn, while a deputy embraces only the sworn person."

In Words and Phrases, Vol. I, Series III, p. 686, the following cases are cited defining an assistant:

*Saxley vs. Sonneman*, 186 Ia. 310.

"A deputy is one appointed to subscribe for another with power to act for him in his name or behalf. A special deputy is one appointed to exercise some special function or power of an official or officer for whom appointed and *an assistant is one who assists, a helper.*"

*Pryor Brown Transfer Co. vs. Gibson*, 51 A. L. R. 193.

"A rider or driver employed by the contractor for carrying the mails is an 'assistant' about the business of the government."

The cases cited, *supra*, seem to hold generally that an assistant is one who aids or helps another in the conduct of his office, generally or in some particular way. A rodman has a special duty to perform in assisting a surveyor in making surveys. He helps the surveyor in the performance of his duties. He is, therefore, an assistant to the surveyor.

Answering your question specifically, I am of the opinion that rodmen come under the classification of assistants and their necessary and reasonable expenses incurred in the performance of their official duties should be allowed under Section 2786, General Code of Ohio.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*