

3. Members of the State Board of Accountancy are entitled to be paid necessary traveling expenses, and each member of such board may be allowed by the board for his services an amount commensurate with the time actually expended in such services, not to exceed five dollars per day.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4560.

JUSTICE OF PEACE—FORMATION OF NEW TOWNSHIP—NUMBER TO BE ELECTED DETERMINED BY SECTION 1712, G. C.

SYLLABUS:

Upon the formation of a new township the number of justices of the peace for such township shall be determined and elected in the manner provided by section 1712, General Code.

COLUMBUS, OHIO, August 10, 1932.

HON. CAMERON MEACHAM, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"Under Sections 3244 et seq. the City of New Boston has been separated from Clay Township of which it was formerly a part, and the City of New Boston has been formed into a separate Township called New Boston Township. Three Justices of the Peace elected by Clay Township reside within the limits of New Boston City and also New Boston Township.

The 1928 O. A. G. No. 2008 and Section 3512 of the General Code of Ohio did not quite appear to be in agreement. I am therefore requesting an opinion from you as to how Justices of the Peace in New Boston Township shall be selected, whether under Section 3259 of the General Code of Ohio or selected by the City Council of New Boston as Section 3512 might seem to indicate."

Section 3512, General Code, reads in part as follows:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections."

From an examination of the above section, it is apparent that it is applicable to those instances in which the corporate limits of a city or village are extended and become identical with those of a township in which are existing township offices.

Section 3259, General Code, provides:

"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 elec-

tion 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."

Section 1712, General Code, which is pertinent to your inquiry, reads as follows:

"When a new township is created, the court of common pleas of the county shall determine on the number of justices of the peace therefor and the day of their election. The clerk of the court shall transmit a copy of such proceedings to the trustees of the township, who shall immediately give notice to the electors to elect such justices in the manner hereinafter provided. If there are no trustees of the township, the clerk shall give notice of such election not less than ten days nor more than fifteen days prior thereto by causing advertisements of the time and place of the holding thereof to be posted in three public places (places) in such township."

Since section 1712, General Code, is specific in its reference to the determination of the number of the justices of the peace for the new township and their election, the terms of such section would control over the general language contained in section 3259, General Code.

The opinion to which you refer in your communication, found in Opinions of the Attorney General for 1928, page 984, considered the question of the jurisdiction of the justices of the peace which were elected by the old township and whose residences were located in that part of the township set aside for the formation of the new township but did not specifically determine the procedure to be followed by the new township in selecting its justices of the peace.

In respect to the question under consideration under a set of circumstances similar to that presented by your inquiry, the opinion stated "under the provisions of said section (1712) the Common Pleas Court of the county on the creation of the new township will determine the number of justices of the peace for said township and thereupon such justices of the peace for the new township will be elected in the manner provided for in said section and will continue to hold office until their successors are elected at the first general township election thereafter held. *State, ex rel. vs. Hansen*, 17 O. C. C. (N. S.) 79."

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that upon the formation of the new township the number of justices of the peace for such township shall be determined and elected in the manner provided by section 1712, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.