

" \* \* \* No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the Attorney General shall first give his written approval thereof. \* \* \*

No judgment or final order shall be entered in any civil action commenced under the authority or direction of this section until such entry shall have been submitted to the Attorney General, and the Attorney General is hereby constituted an attorney of record in each such action."

From the provisions of the statute last mentioned, it will be noted that a finding may be compromised in the manner therein provided.

Although there is no specific authority for anyone to compromise or abate a claim, when reduced to a finding by the Bureau, such as the one in the instant case, similar to authority with reference to claims due the State of Ohio, it would seem that the Legislature contemplated the abatement or compromise of these claims under certain circumstances, by providing that such abatement or compromise should not be done except with the written approval of the Attorney General.

In answer to your specific inquiry, you are advised that in my judgment, the ----- Machinery Company would be entitled to plead as a set-off the cost of repairs in a defense to an action to enforce the finding of the Bureau.

Respectfully,

GILBERT BETTMAN,  
Attorney General.

985.

ANNEXATION—TOWNSHIP TERRITORY JOINED WITH MUNICIPALITY  
HAVING ANOTHER TOWNSHIP COTERMINOUS THEREWITH—EFFECT  
ON JUSTICES OF PEACE OF TRANSFERRED TOWNSHIP—RESULT  
WHEN ATTACHMENT PROCEEDINGS IMPROPER.

SYLLABUS:

1. *Where territory of a township is, by proper proceedings, annexed to, and made a part of a municipal corporation and of another township coterminous with such municipal corporation, justices of the peace of the first mentioned township residing in such transferred territory do not become justices of the peace of the township to which such territory was transferred, with the right to hold court therein, if there is in such township a court other than a mayor's court, having jurisdiction of all cases of which justices of the peace have, or may have jurisdiction. And in such case, such justices of the peace and other township officers living in such transferred territory will be required to remove their residences into the remaining territory of the township for which they were elected, as a condition of their right to exercise the functions of their respective offices.*

2. *The annexation of a part of the territory of the township to a municipal corporation does not in and of itself, effect an attachment of such territory to another township included within the limits of such municipal corporation, and where such territory has not been attached to such other township, by proper proceedings to that end, justices of the peace and other officers of the township first above mentioned, who reside in the transfer of territory may continue to exercise the duties of their respective*

offices in and for the township for which they were elected, without removing their residences into the remaining territory of such township.

COLUMBUS, OHIO, October 4, 1929.

HON. DON. ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you which reads as follows:

“The following question has recently arisen in this county.

A part of Springfield Township has just been annexed to the city of Akron. Several of the township officers including the Springfield Township clerk and two justices of the peace reside, or did reside, in the part that was annexed. The legislation by which the annexation was effectuated contained no expressed provision by which the officers might continue in office until the expiration of their terms; neither did it contain any expressed provision to the contrary.

If these officers now return to what is left of Springfield Township, can they continue to serve as township officers and justices of the peace, or can they continue to serve if they continue to reside at their former residence in the recently annexed territory?

This matter is of considerable importance, for instance, in the matter of transcripts of justices' judgments, and I would very much appreciate an early reply setting forth your opinion.”

In the consideration of the questions presented in your communication, I assume that the city of Akron, including the territory attached to it from time to time from Coventry, Portage, Springfield and Tallmadge Townships, is coterminus with Akron Township. In this situation, Section 3512, General Code, operates to abolish all township officers in the township included within the corporate limits of the city other than those of justice of the peace and constables. Addressing myself to the questions presented in your communication so far as they concern the justices of the peace residing in the territory of Springfield Township which has been attached to the city of Akron, it will be noted that Section 1711-1, General Code, provides for the establishment of the office of justice of the peace in each of the several townships of the several counties of the state, except in townships in which a court other than a mayor's court exists having jurisdiction of all cases of which the justices of peace have or may have jurisdiction.

Section 1716, General Code, provides that if a part of a township is attached to another township, justices of the peace residing within that part so attached shall execute the duties of their office in the township to which such part is attached in the same manner as if elected for such township, and that they may hold court therein.

In the case of *State ex rel vs. Morse*, 94 O. S. 435, it was held that where a part of Adams Township, Lucas County, Ohio, was attached by annexation proceedings to the city of Toledo, which was at the time coterminus with Port Lawrence Township, a justice of the peace residing within that part of the limits of Adams Township so attached, could execute the duties of the office of justice of peace in the city of Toledo and Port Lawrence Township and hold court therein.

In this case, it appeared, however, that there did not at the time of such annexation, exist in the city of Toledo and Port Lawrence Township, “a court other than a mayor's court having jurisdiction of all cases of which justices of the peace have or may have jurisdiction.” The court in its opinion in this case, among other things, said:

"In the city of Toledo, and Port Lawrence township there was, then, the office of justice of the peace. There did not exist 'a court other than a mayor's court having jurisdiction of all cases of which justices of the peace have or may have jurisdiction,' and therefore that city and township did not come within the exception named in Section 1711-1, General Code. Our conclusion is that when a part of Adams Township was attached to the city of Toledo and Port Lawrence Township, the relator, residing within the limits of that part so attached, was, under the provisions of Section 1716, General Code, entitled to execute the duties of his office in the city and township to which such part was attached."

In the case here presented, however, there is in the city of Akron and in the township included therein, a court other than a mayor's court which has jurisdiction of all cases of which justices of the peace have or may have jurisdiction. In this connection it is noted that Section 1579-506, General Code, providing for the original jurisdiction of the municipal court of Akron, provides among other things that said court shall have and exercise original jurisdiction within the limits of the city of Akron "in all actions and proceedings of which justices of the peace have or may be given jurisdiction;" and Section 1579-549, General Code, provides among other things that on and after the first day of January, 1920, the office of justice of the peace of Akron Township, Summit County, shall be abolished.

It is quite clear that under the provisions of Section 1711-1, General Code, and the exception therein stated, as well as under the provisions of Section 1579-549, General Code, there does not now exist in the city of Akron and Akron Township, included therein, the office of justice of the peace; and obviously the case of *State ex rel. vs. Morse*, supra, does not apply to the facts here presented. In this situation neither the justices of the peace nor the township clerk of Springfield Township, referred to in your communication, can exercise the functions of their respective offices in the city of Akron and Akron Township to which the territory in which they reside has been annexed.

The next question here presented is whether the justices of the peace of Springfield Township and the clerk of said township living in the annexed territory will continue to hold their respective offices in Springfield Township.

Applicable to the consideration of this question, Sections 1714 and 3261, General Code, 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. 3261. "If by reason of non-acceptance, death, or removal of a person chosen to an office in any township, except trustees, at the regular election, or upon the removal of the assessor from the precinct or township for which he was elected, or there is a vacancy from any other cause, the trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term."

Touching this question this department in an opinion under date of April 23, 1928, Opinions of the Attorney General, 1928, Vol. II, page 984, said:

"As a general rule, in the absence of statutory provisions affecting the

question, where by constitutional or statutory provision, an elected officer is required to reside in the political subdivision or district for which he is elected, a transfer of territory of such political subdivision or district in which territory such officer resides will have the effect of creating a vacancy in his office unless such officer within a reasonable time establishes his residence in the territory of the political subdivision from which the transfer is made."

In the case of *State of Ohio ex rel. Ives vs. Choate*, 11 Ohio 511, it was held that where the Legislature changed the boundaries of a county and such change placed an associate judge within the limits of another county, such associate judge forfeited his office unless within a reasonable time he removed within the limits of the county for which he was elected.

In the case of *State of Ohio ex rel. Hartshorn vs. Walker*, 17 Ohio 135, it was held that on the formation of a new county, commissioners of any of the counties from which the new county is formed, who reside within its limits, cease to be commissioners of the old county, unless they move into it.

In the case of *Frazer vs. Miller*, 12 Kans. 459, it was held that where by the division of a township, one of its two justices of the peace is thrown into a new township, there is created a vacancy in the office of the justice of the peace of the original township which may be filled by appointment. From the facts stated in the reports of this case it appears that in April, 1871, one James W. Miller and one Thomas Wheeler were duly elected and qualified as justices of Clay Center Township, Clay County, Kansas. In December, 1871, the county commissioners divided the township. By such division Miller was left in Clay Center Township and Wheeler was thrown into the new township. With respect to the effect of this action of the county commissioners in dividing said township, the court in its opinion, said:

"By the division Wheeler vacated the office of justice of Clay Center Township. He did not, it is true, cease to be a justice, but he ceased to be a justice of Clay Center Township, and became a justice of another township. There would be no question but that, if the boundaries of Clay Center Township had not been disturbed, Wheeler's office would have become vacant on his removal from the township. He was removed from the township, not by his own volition, but by the act of partition. The result is the same, though the manner of accomplishment is different. There was a removal from the township, and thereby the office became vacant."

Among other decisions in support of this rule, the following may be noted: *The People vs. Morrell*, 21 Wend. (N. Y.) 563; *Mauck vs. Locke*, 70 Iowa 266; *Adams vs. Roberts*, 119 Ky. 364.

Applying the rules of law above noted, the conclusion follows that the officers referred to in your communication may continue to serve in their respective offices if they take up their residences in the remaining territory of Springfield Township within a reasonable time, but not otherwise. If on the other hand, they continue to reside in the territory annexed to the city of Akron and Akron Township, this action on their part will create vacancies in their respective offices to be filled by the township trustees of Springfield Township in the manner provided by Sections 1714 and 3261, General Code.

As above noted, my consideration of the questions presented in your communication has proceeded on the assumption that the territory of Springfield Township annexed to the city of Akron as stated in said communication, was likewise attached to the township of Akron by appropriate proceedings under either Section 3245 or 3249, General Code. If such proceedings were not had for the attachment of this

territory in Springfield Township to Akron Township, it is clear that the mere fact that this territory by proper proceedings was annexed to the city of Akron would not be effective to attach this territory to Akron Township and make it a part of the same. *State of Ohio ex rel. vs. Ward*, 17 O. S. 544. In this situation the territory of Springfield Township, as the same existed before the annexation proceedings referred to in your communication, would still remain in Springfield Township for all ordinary township purposes and the officers referred to in your communication may continue to exercise the functions of their respective offices while continuing to live in that part of the township annexed to the city of Akron.

If the territory of Springfield Township here in question has not been attached to Akron Township and the justices of the peace referred to in your communication should continue to reside and hold court in said territory which is now a part of the city of Akron, it is apprehended that certain questions may arise with respect to the jurisdiction of said justices in cases arising in said annexed territory or which may affect parties litigant who reside in such territory. However, there is nothing in your communication which calls for a discussion of such suggested questions and no opinion is here expressed with respect to the same.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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986.

APPROVAL, BONDS OF JOHNSTON TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY—\$110,000.00.

COLUMBUS, OHIO, October 4, 1929.

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

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987.

APPROVAL, BONDS OF VILLAGE OF MOGADORE, SUMMIT COUNTY—\$118,000.00.

COLUMBUS, OHIO, October 5, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*