

earnings of the company and as to this it is further provided by this section that except as otherwise approved and ordered by the superintendent of insurance no part of the principal sum of moneys thus advanced to the company shall be repaid until the surplus of the company remaining after such repayment is equal in amount to the principal of the money so advanced. It is quite clear from the provisions of this section that moneys advanced to a domestic mutual insurance company in the manner therein provided may never become a liability of the company and inasmuch as, under the provisions of section 5414-9, General Code, it is only actual liabilities which can be deducted, so far as this question is concerned, I am of the opinion that no deduction can be made from the assets of a domestic mutual insurance company on account of any sum or sums of money that may have been advanced to such company by any of its officers, directors or members under the authority of section 9607-12, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4584.

FLECTION LAW—CLERK OF COMMON PLEAS COURT—NO PROVISION FOR ELECTION FOR UNEXPIRED TERM IN NOVEMBER, 1932, WHERE OFFICE NOW HELD BY APPOINTMENT.

*SYLLABUS:*

*No provision should be made at the election on November 8, 1932, for the election of a clerk of a common pleas court for the unexpired term in the instances where the office is now being filled by appointment.*

COLUMBUS, OHIO, August 30, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which reads as follows:

“Permit me to submit the following inquiry to you for your opinion.

In view of your Opin'on No. 1777, of April 12th, 1930, relative to filling a vacancy in the office of Clerk of Common Pleas Court, and in view of the subsequent decision of the Ohio Supreme Court in *The State, ex rel. Klein vs. Bernon, et al., Board of Elections of Cuyahoga County*, 122 O. S., page 621, relative to the same subject, will you please advise me as to whether or not it will be necessary to provide at the election of November 8th, for the election of a Clerk of the Common Pleas Court, unexpired term, in the instances where the office is now being filled by appointment.”

In the case of *State ex rel. Klein vs. Bernon, et al., Board of Elections of Cuyahoga County*, 122 O. S. 621, which case is mentioned in your communication, the facts, briefly, were as follows (as shown by the petition filed in the Supreme Court):

One G. W. who had been elected clerk of the common pleas court of Cuyahoga County in November, 1928, for a term beginning on the first Monday in August, 1929, and ending on the first Monday of January, 1933, according to the terms of section 2867, General Code, as amended in 112 O. L. 139, died some time in July, 1930. Thereupon, one T. C. C. was appointed clerk pro tempore by the county commissioners in accordance with the provisions of section 2870, General Code. The relator, Klein, filed a nominating petition on September 5, 1930, with the clerk of the board of elections of Cuyahoga County and sought to have his name placed on the ballots as a candidate for the unexpired term for the office of clerk of the common pleas court at the general election in November, 1930. When the board of elections refused to place his name on said ballots, he filed a mandamus action against said board seeking to compel it to do so. The board refused to place his name on the ballots, for the reason that it regarded that section 10, General Code, when read with sections 2867 and 2870, General Code, prevented an election to fill a vacancy in the office of clerk of courts until November, 1932, as concluded in my Opinion No. 1777, rendered April 14, 1930, and reported in Opinions of the Attorney General for 1930, volume I, page 630.

These facts presented the following issue for the court's determination (as shown by the relator's brief and uncontested by the respondent), viz:—By virtue of T. C. C.'s temporary appointment, does he hold the office of clerk of courts until the expiration of the term of G. W. deceased, to wit, the first Monday in January, 1933, or does he hold said office until his successor is elected at the November election in 1930?

The court denied the writ prayed for, and in its short journal entry opinion, said:

“This matter coming on to be heard upon the demurrer to the application of the relator for a writ of mandamus directing the board of elections of Cuyahoga County to place his name on the ballot to be furnished the electors of said county for the forthcoming general election to be held on November 4, 1930, for the office of clerk of courts; upon consideration whereof said demurrer is sustained for the reason that Section 2867, General Code, specifically provides that there shall be elected in each county, at the regular election in 1932 and biennially thereafter, a clerk of the court of common pleas, who shall assume office on the first Monday of January next after his election; that Section 10 of the General Code, providing for the election of a successor to an elective officer, whose office has become vacant, at the first general election for the office that occurs more than thirty days after the vacancy, does not apply, it appearing that Section 10 specially exempts cases which have been otherwise provided by law; and it appearing that Section 2867, General Code, makes special provision for the election of the clerk of the court of common pleas, the writ is denied.”

The court in the above case held that section 10, General Code, did not require an election of a clerk of the common pleas court at the regular election of state and county officers in 1930, since section 2867, General Code, specifically provided when such election for the office of clerk of courts should be held, to wit—1932. It would, therefore, follow from a reading of section 10, General Code, in the light of section 2867, General Code, that the clerk pro tempore would hold office until a successor had been elected at the regular election in 1932 and had qualified. These sections being in *pari materia* should be construed together.

Therefore, there could be no short term of the office of clerk of common pleas court for which a candidate could run at the November election.

Hence, in specific answer to your question, I am of the opinion that no provision should be made at the election on November 8, 1932, for the election of a clerk of the common pleas court for the unexpired term in the instances where the office is now being filled by appointment.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4585.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE HAGAN CORPORATION OF PITTSBURGH, PA., FOR THE CONSTRUCTION AND COMPLETION OF COMBUSTION CONTROL EQUIPMENT FOR THE OHIO STATE PENITENTIARY, AT AN EXPENDITURE OF \$4,375.00—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONNECTICUT.

COLUMBUS, OHIO, August 31, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Ohio Penitentiary, Columbus, Ohio), and the Hagan Corporation of Pittsburgh, Pennsylvania. This contract covers the construction and completion of Combustion Control Equipment for the Ohio Penitentiary, Columbus, Ohio, in accordance with the form of proposal dated July 6, 1932. Said contract calls for an expenditure of four thousand, three hundred and seventy-five dollars (\$4,375.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with section 8 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond upon which the Aetna Casualty and Surety Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with. A certificate of the Secretary of State shows that the above contracting foreign corporation is authorized to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same to you herewith, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*