of the constitution makes no grant of such jurisdiction, but merely prescribes the manner in which it may be granted by the state; and, therefore, Congress may relinquish it at pleasure, either with or without an abandonment of its title to the property, or its use."

I do not find that Congress has receded to the State of Ohio jurisdiction over the lands comprising the reservation known as Wilbur Wright Field, and to the best of my knowledge this has not been done. That being the case, the Federal government has exclusive jurisdiction over the reservation in question and the residents on that reservation are therefore not residents of Ohio or the Madriver school district, and the Madriver school district is not required to pay tuition of high school pupils who reside on said reservation and attend high school in some school district of the state of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

95.

OFFICER—MUST QUALIFY WITHIN A REASONABLE TIME AFTER TAKING OFFICE—OATH OF OFFICE.

SYLLABUS:

1. *Where the statute fails to specify the time within which acts necessary to qualification for public office shall be performed and where all of such acts are completed within a reasonable time after assuming official duties, such office shall not be considered vacant within the meaning of section 7 of the General Code.*

2. *All acts of such officer are valid whether performed before or after such completion of the steps necessary for qualification.*

COLUMBUS, OHIO, February 1, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"Clarence R. Keener, having been elected commissioner of Ashland County, applied for and secured bond as required for such office from W. D. Newell. It is stated by both Mr. Keener and Mr. Newell that on the day this bond was delivered to Mr. Keener, to-wit: Dec. 21, 1932, Mr. Newell, as a notary public, administered to Mr. Keener the oath for such office. The bond was filed in the office of the Treasurer on Jan. 3, 1933. The oath of office was not endorsed thereon. The oath of office was filed with such bond on Jan. 11, 1933.

The Chairman of the Board of County Commissioners has requested a written opinion, copy of which is hereto attached, relative to the legality of business transacted by the new Board before Jan. 11, 1933 and also to whether or not Mr. Keener has now qualified himself as Commissioner by the filing of such oath.

In this connection I have inspected Sections 2, 7 and 2399 of the General Code of Ohio.

I will appreciate your opinion concerning these questions."

Section 7 of article XV of the Ohio Constitution reads as follows:

"Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office."

Section 2 of the General Code provides:

"Each person chosen or appointed to an office under the constitution or laws of the state, and each deputy or clerk of such officer, shall take an oath of office before entering upon the discharge of his duties. The failure to take such oath shall not affect his liability or the liability of his sureties."

Section 7 of the General Code is as follows:

"A person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on him by his office, who refuses or neglects to give such bond or furnish such security, within the time and in the manner prescribed by law, and in all respects to qualify himself for the performance of such duties, shall be deemed to have refused to accept the office to which he was elected or appointed, and such office shall be considered vacant and be filled as provided by law."

Section 2399 of the General Code provides:

"Before entering upon the discharge of his duties each commissioner shall give bond signed by a bonding or surety company authorized to do business in this state, or, at his option, by two or more freeholders having real estate in the value of double the amount of the bond over and above all encumbrances to the state in a sum not less than five thousand dollars, the surety company to be approved by the probate judge of the county, conditioned for the faithful discharge of his official duties, and for the payment of any loss or damage that the county may sustain by reason of his failure therein. Such bond, with the oath of office and the approval of the probate judge endorsed thereon, shall be deposited with the treasurer of the county and kept in his office. The expense or premium for such bond shall be paid by the county commissioners and charged to the general fund of the county. Such surety may be discharged in the manner provided by law for the release of sureties of guardians."

Since the oath of office was administered and the bond executed and filed before the officer assumed his official duties, the facts presented by you concern the legal effect of the failure to have the oath endorsed upon the bond at the time it was filed.

In the case of *State, ex rel.* vs. *Bimeler,* 15 O. A. 365, at page 369, the court said:

> "One elected to an office, who does not take the oath thereof and give bond, as required of such officer, as provided by law, loses his right to such office.
>
> This is not a court-made rule, but is the law by statutory provision, as found in section 7, General Code of Ohio * * * ."

In that case, a proceeding in *quo warranto,* one elected to the office of mayor was held not to have qualified for that office. That case may be distinguished from this one. There no oath was ever administered nor was the bond presented to the village council for approval, required by section 4667. Here the corresponding acts were completed by January 3, 1933.

In the Bimeler case, before the omission to take the oath was corrected the *quo warranto* proceeding was instituted. As I understand the facts stated by you, the omission to file the oath was cured on January 11. No *quo warranto* proceeding had then been filed. In this regard, your question is like that presented to this office and answered in an opinion reported in the Opinions of the Attorney General, 1930, Vol. I, page 119, which distinguished the Bimeler case. In that opinion, my immediate predecessor said at page 120:

> "Undoubtedly, under the decision above referred to, if the justice to which you refer had not eventually taken the oath before a proper officer, he could have been ousted. In other words, if the question had been raised by *quo warranto* proceedings before he had properly become qualified, undoubtedly the courts would have declared his office to be vacant. However, the case you present is somewhat distinguished from the Bimeler case above mentioned, for the reason that the justice you mention had undertaken to take an oath, but the officer administering it was not, under the statute, authorized so to do. In the Bimeler case no oath had been taken and before the error had been corrected, action was instituted to question his title. *It has frequently been held that technical defects in qualification at the time office is taken will not disqualify the officer if later the legal requirements are fully met.*
>
> Therefore, it would appear that the justice to whom you refer, having undertaken to qualify, and later, upon the discovery of his error as to the authority of a notary to administer oaths, having taken the proper oath of office before a proper officer, he would now be regarded as a *de jure* officer, and there would be no vacancy which could now be filled by appointment." (Italics the writer's.)

Even where a defect is cured before the institution of a *quo warranto* proceeding it would seem that there must be some limitation of time within which legal requirements shall be fully met in order to preclude a vacancy under section 7.

According to the language of section 2399, the commissioner shall "give bond" *before* entering upon the discharge of his duties. The section then provides that "such bond, with the oath of office and the approval of the probate judge endorsed thereon, shall be deposited with the treasurer of the county and kept in his office."

The bond was given and deposited with the treasurer on the day the newly elected commissioner took office. The only thing remaining to be done was to endorse thereon the oath of office, which had been administered on December 21, 1932. The section specifies no time for this action. It is a familiar principle in the law that when no definite time is stipulated for the performance of an act a reasonable time is presumed to have been intended. It has been held that if the statute does not fix the time within which he must qualify the officer has a reasonable time. The court in *State, ex rel.,* vs. *Cave,* 4 O. C. C. 647, distinguished that case from *State, ex rel.,* vs. *County Commissioners,* 61 O. S. 506, which held that where a sheriff-elect fails to give bond before the first Monday of January next after his election there occurs on that day a vacancy. The court said:

> " * * * the only substantial difference between the cases is, that in the case of the sheriff the time in which bonds shall be given is absolutely stated in the statute, but there is no such limit of time in which the clerk of the board of education must give bond and qualify. *So that it would naturally be held to be within a reasonable time,* and the board of education is undoubtedly clothed with discretion to determine what is a reasonable time * * * ." (Italics the writer's.)

In the case of county commissioners, the bond must be given before entering upon the discharge of their official duties, as in the case of the sheriff, but since no time is provided by statute for endorsing the oath a reasonable time must be implied. What is a reasonable time in each case is a matter of judgment which I need not now discuss generally. In my opinion, the endorsement, if made on January 11, was within a reasonable time.

Having had a reasonable time in which to do the act in question, the commissioner became a *de jure* officer on January 3, the continuation of such status being conditioned upon his completing qualification within such time. If the final act necessary to qualification was done on January 11, the commissioner's status as a *de jure* officer was complete and the acts of the board prior thereto in which he participated were valid.

Another principle may also serve as the basis for my opinion that the acts of the board performed prior to January 11, were valid. If a duly elected officer fails to qualify by omitting to do an act, such as taking the oath of office, at the time he assumes to act in his official capacity, he is a *de facto* officer and his acts are valid. Among the many authorities sustaining this proposition is an opinion by one of my predecessors reported in the Opinions of the Attorney General, 1916, Vol. II, page 1464. To the same effect is the 1930 opinion of this office, supra, from which I quote paragraph two of the syllabus:

> "Where a duly elected justice of the peace erroneously takes the oath of office before a notary public and assumes the duties of his office, he becomes a *de facto* officer and the title to his office can only be questioned by a proceeding in *quo warranto.* The actions of such officer are valid in so far as the status of his office is concerned."

Thus far, I have devoted my discussion to the time when the acts were done, assuming that the acts themselves were sufficient to fully meet the statutory requirements. It appears that the oath has never been actually endorsed upon the bond, as required by the terms of section 2399. The question arises whether

or not the mere filing of the oath with the bond amounts to a substantial compliance with this requirement. Mechem on Public Officers and Offices, section 268, states:

> "And inasmuch as the substance is ordinarily more to be regarded than the form, it is quite generally held that, unless the statute expressly declares that a bond not executed in the form prescribed shall be void, the statute will be construed as directory only and a substantial compliance with it will suffice."

Place vs. *Taylor*, 22 O. S. 317, is cited by the text writer to support this statement. Filing the oath, although no endorsement is made on the bond, would seem to be substantial compliance with the statute.

Even adopting the view that there has not been substantial compliance in this respect, under my predecessor's 1930 opinion, supra, an endorsement made even now would be sufficient to constitute the commissioner a *de jure* officer from the time of making such an endorsement. In that opinion, the justice of the peace in question took the oath of office in January, 1928, before an officer ineligible under the statute to administer the oath, and acted as a *de facto* officer until December, 1929, when he took the oath before the proper officer. The opinion was then given that he became a *de jure* officer in December, 1929, no *quo warranto* proceedings having been instituted before that time. It follows from this opinion that, although the oath has not been endorsed upon the bond, this act may still be done and all requirements for qualification will have been met.

A reasonable time is deemed to be the test for completing the legal requirements necessary to qualification, in order to constitute one a *de jure* officer from the time of taking office. I am of the opinion that such time has not expired, *ergo*, a proper endorsement now made will refer back to January 3, and render the commissioner a *de jure* officer from the time he took office.

Based upon the foregoing, it is my opinion that:

1. Where the statute fails to specify the time within which acts necessary to qualifications for public office shall be performed and where all of such acts are completed within a reasonable time after assuming official duties, such office shall not be considered vacant within the meaning of section 7 of the General Code.

2. All acts of such officer are valid whether performed before or after such completion of the steps necessary for qualification.

Respectfully,
JOHN W. BRICKER,
Attorney General.

96.

APPROVAL, NOTES OF SALEM CITY SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO—$25,000.00.

COLUMBUS, OHIO, February 1, 1933.

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