

1. Where the proposal for the construction of a sewer for a county sewer district contains blank spaces, which the bidder is directed by the specifications to fill in, indicating the number of working days within which he will complete the work, and said bidder fails to make any indication therein, a reasonable time will be presumed. However, the failure to comply with the specifications in stating the time results in a defect in such bid, which the board of county commissioners may waive if it serves the public interest to do so; while on the other hand, if in the judgment of said board the public interest will be best served, it may reject said bid.

2. There is no legal authority for the filling in of blank spaces after the opening of the bid.

3. The board of commissioners may in its discretion take into consideration the time within which the bidder agrees to complete the work in determining which is the lowest and best bid, if in its sound judgment the element of time is essential under the existing conditions.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2985.

BOND—PREMIUM ON BOND OF COUNTY OFFICER SIGNED BY SURETY COMPANY AFTER JULY 18, 1927—A PROPER CHARGE AGAINST THE COUNTY.

**SYLLABUS:**

*When the bond of a county officer is duly released and a new bond properly signed by a duly licensed surety company, the premium thereon is a proper charge against the county, if said bond was given after July 18, 1927.*

COLUMBUS, OHIO, December 7, 1928.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“One of the officers of this county gave bond December 20, 1926, for a term of two years, with The American Guaranty Company as surety, renewable at the end of each year upon the payment of the annual premium.

This officer, at the first of this year 1928, asked that this bond be released and offered a new bond with the same guaranty company as surety, in order that he might come within the provisions of Sec. 9573-1 of the General Code, 112 Ohio Laws, page 135.

As I understand, some court in Cincinnati, although I have not been able to find it, has held that this section is unconstitutional.

In your opinion, would the premium for the above bond be a proper charge against the county?”

Your communication, in substance, presents two inquiries: First, as to whether an official bond may be given and the premium thereon paid from public funds during the term of office for which the official was elected or appointed to fill, and, second,

as to whether Section 9573-1 of the General Code is constitutional. You are referred to my opinion, found in Opinions of the Attorney General for the year 1927, Vol. II, p. 1317, wherein it was held, as disclosed by the first and third branches of the syllabus:

1. "A public officer who is required to give an official bond at or before the time he takes office may, during his term of office, file a new bond for the remaining portion of his term of office, which new bond must, of course, be approved by the officer or officers required by law to approve the same.

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3. The premium on any bond of any public officer, deputy or employe signed by a licensed surety company, executed after House Bills Nos. 40 and 333 passed by the 87th General Assembly became effective shall be paid by the state, county, township, municipality, school district or other subdivision of which such person so giving such bond is an officer, deputy or employe."

In the body of the said opinion it is disclosed that consideration was given to the provisions of Section 9573-1, which relate to county officers. It was also pointed out in said opinion that this section became effective on July 18, 1927.

In my opinion No. 1599, issued January 19, 1928, a similar holding was made with reference to the provisions of the statute under consideration.

In this connection, it will be noted that Sections 12195 to 12197, inclusive, General Code, provide the method whereby a surety may be released from the bond of the county officer, excepting a commissioner. Said sections authorize the giving of a new bond and provide that the old bond shall not be discharged until such new bond is given for the expiration of the time allowed therefor.

It is believed the foregoing will be dispositive of the first question.

In considering the second query with reference to the constitutionality of the section under consideration, you are referred to my opinion No. 2900, issued on November 20, 1928, the syllabus of which reads:

"When the county treasurer gives an official bond signed by a duly licensed surety company, the county commissioners are authorized to pay the premium therefor out of the general funds of the county."

The decision of the Cincinnati Court to which you refer was considered in the opinion last mentioned. Said decision held that Section 9573-1, General Code, is unconstitutional. However, in said Opinion No. 2900, it was pointed out that said cause was pending in the Court of Appeals and under the circumstances it was indicated that the opinion of the lower court should not be followed. Insofar as it has come to my attention, the Court of Appeals has not decided the question. A copy of Opinion No. 2900 is herewith inclosed.

You are therefore advised that when the bond of a county officer is duly released and a new bond properly signed by a duly licensed surety company, the premium thereon is a proper charge against the county, if said bond was given after July 18, 1927.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*