

4227.

APPROVAL, BONDS OF VILLAGE OF NEWTON FALLS, TRUMBULL COUNTY, OHIO, \$5875.00.

COLUMBUS, OHIO, May 4, 1935.

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

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4228.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$50,000.00.

COLUMBUS, OHIO, May 4, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4229.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, May 4, 1935.

*State Employes Retirement Board, Columbus, Ohio.*

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4230.

PROCESS—DISCUSSION OF METHODS OF SERVING PROCESS UPON NON-RESIDENT DEFENDANT—(O. A. G. 1934, Vol. 1, P. 756 MODIFIED)

**SYLLABUS:**

*Under the provisions of Section 6308-2, General Code, two ways are provided for serving process upon a non-resident defendant first, that the summons be directed to the sheriff or officer of the county of the forum, who may go to Franklin county to serve the secretary of state; or, second, that summons be directed to the sheriff or officer of the county of the forum, who may, if he sees fit, deputize the sheriff of Franklin county to serve the secretary of state. In either event the officer of the forum should make the return, both as to the service upon the secretary of state and as to the "registered mail return receipt". Corbitt vs. Stolwein, O. L. R. Apr. 29, 1935, 259; Opinions of Attorney General for 1934, Vol. I, page 756, modified.*

COLUMBUS, OHIO, May 4, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—My attention has been directed to the decision of the United States District Court, Southern District of Ohio, Western Division, rendered January 11, 1935, in the case of *Corbitt vs. Stolwein*, reported in the Ohio Law Reporter of April 29, 1935, page 259, which decision is at variance in one detail with the opinion of this office rendered to you May 24, 1934, being Opinion No. 2735, reported in Opinions of the Attorney General for 1934, Vol. I, page 756. This opinion construed the provisions of Section 6308-2, General Code, bearing upon service of process upon non-resident defendants.

After quoting the provisions of Section 6308-2, General Code, with respect to serving the Secretary of State as therein provided, and Section 6308-3, General Code, with reference to the fee to be paid to the Secretary of State, the following language was used in the foregoing opinion at page 758:

“These sections are in *pari materia* and it should be noted that by virtue of Section 6308-2, General Code, quoted *supra*, the officer to whom the process is directed or the sheriff of Franklin County if he is deputized by such officer so to do, serves a copy of the process on the Secretary of State as agent for the non-residents. The sheriff of Franklin County, if he is so deputized by the officer to whom the process is directed in a particular county, or the officer if he does not choose to deputize the Franklin County sheriff, sends to the defendant by registered mail, postage prepaid, a like true and attested copy thereof, with an endorsement thereon of the service upon said secretary of state, and such duty of sending such process is not placed upon the Secretary of State.”

It is observed that the holding of the foregoing opinion is to the effect that either the sheriff of Franklin County, providing he has been deputized as therein set forth, or the officer of the county of the forum may send to the defendant by registered mail a true and attested copy of the service properly endorsed. The decision of the United States District Court, *supra*, is to the effect that the copy of the service properly endorsed must be sent by registered mail to the defendant only by the officer of the forum to whom the process is directed. The headnotes of the decision in question are as follows:

“1. Section 6308-2, General Code, prescribes a definite method of service and procedure, construction of which by the court is unnecessary, it being required only that the plain language of the statute be given such purport and intent as appears upon its face.

2. Section 6308-2, General Code, prescribes only two ways for serving process upon a non-resident defendant, to-wit, first, that the summons be directed to the sheriff or officer of the county of the forum, who may go to Franklin county to serve the secretary of state; or, second, that summons be directed to the sheriff or officer of the county of the forum, who may, if he sees fit, deputize the sheriff of Franklin county to serve the secretary of state. In either event the officer of the forum should make the return, both as to the service upon the secretary of state and as to the registered mail return receipt.”

3. Where service of summons upon a non-resident has not been obtained in the manner prescribed by statute, a motion to quash will be sustained.”

With respect to the matter of perfecting the registered mail service on a non-resident defendant, the court said in the body of the opinion:

"Defendant claims that the sections require that the process from the Clark county court should have been issued to the sheriff of Clark county, Ohio, who in turn, had the legal right to deputize the sheriff of Franklin County, Ohio, if he so desired, to serve the secretary of state; that it was the duty of the sheriff of Clark county, Ohio, to have perfected the registered mail service on the non-resident defendant, and that the return of service upon both the secretary of state and the defendant should have been made by the sheriff of Clark county.

The court is of the opinion that the views as expressed by counsel for defendant are correct; that there are not three ways for serving process as claimed by plaintiff, but only two, to-wit, first, that the summons should be directed to the sheriff or officer of the county of the forum, who may go to Franklin county to serve the secretary of state, and who should make the registered mail service and return; or, second, it should be directed to the sheriff or officer of the county of the forum, who may, if he (the sheriff or officer) sees fit, deputize in a lawful manner the sheriff of Franklin county to serve the secretary of state. In either of these events the officer of the forum should make the return, both as to the service upon the secretary of state and as to the 'registered mail return receipt.' "

In view of the foregoing, please be advised that the opinion rendered in 1934 hereinabove mentioned is so modified.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

4231.

DISAPPROVAL, PETITION CONTAINING A MEASURE TO BE REFERRED  
 AND A SUMMARY OF THE SAME UNDER SECTION 4785-175, G. C.

COLUMBUS, OHIO, May 6, 1935.

MR. FRANK M. WILCOX, *Attorney-at-Law*, 504 Lorain County Bank Building, Elyria, Ohio.

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of the state containing a measure to be referred and a summary of the same under section 4785-175, General Code. It is proposed to submit a law by initiative petition which reads as follows:

"LAW PROPOSED BY INITIATIVE PETITION FIRST TO BE SUBMITTED TO THE GENERAL ASSEMBLY

Be it enacted by the people of the State of Ohio:—

Section 1.—It shall be unlawful for any firm, corporation, copartnership or association, either foreign or domestic, to establish, open, maintain or operate