

The principle of this case was followed in the later case of *Gobrecht vs. Cincinnati*, 51 O. S. 68.

Applying this test to the case at hand, it would appear that the compensation fixed by the board under section 4785-15, General Code, is salary, for the board fixes the remuneration in monthly installments, payments depending on the time and not on the amount of service rendered.

Moreover, it is to be noted that the legislature speaks of the compensation provided for by sections 4785-15, 4785-18 and 4785-19 as "salary" throughout Amended House Bill No. 2.

In view of the above considerations, I am of the opinion that the salary of the present deputy clerk cannot be reduced in accordance with Amended House Bill No. 2 until March 1, 1934, when his present term expires.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4863.

PROSECUTING ATTORNEY—REQUIRED TO FILE ONLY ONE BOND
COVERING TOTAL SUM OF SALARY.

SYLLABUS:

When the prosecuting attorney, before undertaking the duties of his office, has given bond to the State of Ohio in a sum as fixed by the Common Pleas Court or the Probate Court, in excess of the amount of his official salary, with sureties approved by such court, conditioned that he will faithfully perform the duties enjoined upon him by law and pay over, according to law, all moneys by him received in his official capacity, it is not necessary for such prosecutor to file an additional bond in order to be entitled to the additional allowance provided in Section 3004, General Code.

COLUMBUS, OHIO, January 6, 1933.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion, as follows:

"The Prosecuting Attorney of each county, in order to qualify for his position, must give bond under section 2911, of the Ohio General Code, in a sum not less than \$1,000.00, for the faithful performance of his duty, and also a bond under section 3004, in a sum not less than his official salary, conditioned the same as the bond mentioned in section 2911. Heretofore it has been the practice in this County to give one bond, usually in the sum of \$3,000.00, covering the faithful performance of duty and the proper accounting of all funds collected.

My question is, whether or not one bond will satisfy both sections of the statute, or whether it is necessary to give two bonds. In explana-

tion of the above, let me say that the bond heretofore has been fixed at \$3,000.00, which is approximately \$400.00 greater than the salary of the prosecuting attorney in this County. In other words, the bond which has been given satisfied the requirements of either statute."

In 1911, the legislature repealed Section 3004, General Code, as it then existed, and enacted in lieu thereof, an entirely new section, which was given a like section number by the legislature. The former section provided that the county prosecutor was entitled to retain from moneys collected by him from fines for recognizances and costs in criminal cases, ten percent of such sums so collected, but not to exceed \$100.00 in any one case. Such amount was in addition to his salary.

In place of such former Section 3004, General Code, the legislature enacted a new act, now called Section 3004, entitled:

"An act to better provide for the administration of criminal justice by amending section 3004 of the General Code in such manner as to increase the facilities of prosecuting attorneys." (102 O. L. 74.)

Such act retains no part of former Section 3004.

The present Section 3004, General Code, after authorizing an allowance to the County Prosecutor in addition to that to be expended for assistants and clerk hire, of an amount not to exceed one-half of his official salary, to pay the expenses of his office not otherwise provided by law, provides that he shall give a bond to the State of Ohio in the penal sum of not less than his official salary, both the amount of such bond and the sufficiency of the securities thereon, to be approved by the Court of Common Pleas or the Probate Court of such county. Such section, in so far as is material, reads as follows:

"Provided that nothing shall be paid under this section until the prosecuting attorney shall have given bond to the state in a sum not less than his official salary to be fixed by the court of common pleas or probate court with sureties to be approved by either of said courts, conditioned that he will faithfully discharge all the duties enjoined upon him, by law, and pay over, according to law, all moneys by him, received in his official capacity. Such bond with the approval of such court of the amount thereof and sureties thereon and his oath of office inclosed therein shall be deposited with the county treasurer."

In Section 2911, General Code, there is also a provision with reference to a bond by the county prosecuting attorney. Such section provides that before a prosecuting attorney shall enter upon his duties he shall give a bond to the state in the penal sum as fixed by the Court of Common Pleas or the Probate Court, but not less than \$1,000. Such section reads:

"Before entering upon the discharge of his duties, the prosecuting attorney 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 one thousand dollars, to be fixed by the court of common pleas or the probate court, the surety company to be approved by either of such courts, con-

ditioned that he will faithfully discharge all the duties enjoined upon him by law, and pay over, according to law, all moneys by him received in his official capacity. The expense or premium for such bond shall be paid by the county commissioners, and shall be charged to the general fund of the county. Such bond, with the approval of such court of the amount thereof and sureties thereon, and his oath of office indorsed thereon, shall be deposited with the county treasurer."

It is to be noted that in both Sections 2911 and 3004, General Code, the conditions of the bond required to be given are identical, i. e., "that he will faithfully discharge all the duties enjoined upon him by law, and pay over according to law, all moneys by him received in his official capacity."

An examination of each of such sections discloses no difference in the purpose of the bond mentioned in Sections 2911 and 3004, General Code. There is a difference in the time at which the bonds mentioned are required to be filed. Thus, the prosecutor may not assume the duties of his office until he shall have given a bond in the penal sum as determined by the provisions of Section 2911, General Code, and he may not disburse or receive the additional allowance until a bond has been filed which complies with the provisions of Section 3004, General Code. Such examination does not disclose any specific provision which would prevent the prosecuting attorney from receiving or disbursing the additional allowance fund, if the court, in fixing the penal sum of the bond to be filed by the county prosecutor when taking office, fixed such bond in a penal sum equal to or greater than the salary of the prosecuting attorney, unless such sections require separate and distinct bonds.

I find no language in either of such sections, stating specifically that the bonds are cumulative. The language of Section 3004, supra, would indicate that its provisions would be complied with if the penal sum of the bond filed by the prosecutor prior to his assumption of the duties of his office, as fixed by the court, was equal to, or in excess of the amount of his salary. Each of such Sections 2911 and 3004, General Code, should undoubtedly receive a strict construction, being statutes enacted for the purpose of protecting the taxpayer against loss from possible fraud by a public official. 2 Lewis' Sutherland Statutory Construction, Section 714; *State vs. Collister*, 11 O. S. 46; *State vs. Este*, 7 Oh. (Pt. 1) 134.

But, as stated by Justice Swayne, in *U. S. vs. Hartwell*, 6 Wall. (73 U. S.) 383, 18 L. Ed. 830, 833:

"But whenever invoked (the rule of strict construction) it comes attended with qualifications and other rules no less important. * * * If the language be clear it is conclusive. There can be no construction where there is nothing to construe. The words must not be narrowed to the exclusion of what the Legislature intended to embrace; but that intention must be gathered from the words, and they must be such as to have no room for a reasonable doubt upon the subject. It must not be defeated by a forced and over strict construction. The rule does not exclude the application of common sense to the terms made use of in the Act, in order to avoid an absurdity which the Legislature ought not to be presumed to have intended * * * The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes in the fullest manner, the policy and objects of the legislature. The rule of strict construction is not violated by permitting the words to have their full meaning, or the more extended

of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such a sense, bent neither one way or the other, as will best manifest the legislative intent."

I am unable to find in either of the two sections, above referred to, any language specifically stating that each statute refers to a separate and distinct bond. Neither statute purports directly to require the giving of a bond. Section 2911, General Code, merely provides that the prosecuting attorney shall not undertake the duties of his office unless he shall theretofore have filed a bond as therein described. Such section does not attempt to determine the maximum penal amount of such bond. Section 3004, supra, merely provides that the prosecuting attorney shall not be entitled to authorize the payment of, or to receive certain moneys unless a bond containing like conditions to that bond required to be filed before undertaking the duties of his office, in a minimum penal sum of at least the amount of his official salary, shall have been filed. The only difference between the two descriptions of the prosecutor's bond is the minimum penal sum. I am unable to conclude, from the language of such sections, that the intent or purpose of the legislature in the enactment of such provisions, was to require two separate bonds conditioned for the performance of identical duties by the prosecuting attorney.

In specific answer to your inquiry, therefore, I am of the opinion that when the prosecuting attorney, before undertaking the duties of his office, has given bond to the State of Ohio in a sum as fixed by the Common Pleas Court or the Probate Court, in excess of the amount of his official salary, with sureties approved by such court, conditioned that he will faithfully perform the duties enjoined upon him by law, and pay over, according to law, all moneys by him received in his official capacity, it is not necessary for such prosecutor to file an additional bond in order to be entitled to the additional allowance provided in Section 3004, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4864.

TUITION—PERSON IN LOCO PARENTIS MAY NOT BE CHARGED
TUITION—PUPIL LIVING WITH PERSON OTHER THAN PARENT
OR GUARDIAN.

SYLLABUS:

1. *When children of compulsory school age are in a school district, and "actual residents" of the district "have the care" of them, or are "in charge" of them, as those terms are used in the laws relating to compulsory education, and under such circumstances that those "actual residents" are required to send the children to a public, private or parochial school as provided by Section 7763, General Code, or be subject to the penalties imposed by Section 12974, General Code, if they fail to do so, the board of education of the school district must admit these children to the privileges of the public school of the district, even though someone may be liable under the law for their tuition and the said tuition is not paid.*

2. *By force of Section 7681, General Code, a child who resides with persons other than his parents or guardian, under conditions whereby the person with*