Company of New York appears as surety. Said bond is conditioned to cover the faithful performance of the duties of the principal as examiner in the Building and Loan Division of the Department of Commerce.

Finding said bond to have been executed in proper legal form, I have approved the same as to form and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2304.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—$60,000.00.

COLUMBUS, OHIO, September 6, 1930.

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

2305.

JURISDICTION—WHERE NEW TOWNSHIP CREATED—DE FACTO EXERCISE OF AUTHORITY IN TWO TOWNSHIPS BY JUSTICE OF PEACE—JUDGMENTS OF JUSTICE VALID WHEN NO KNOWLEDGE OF NEW TOWNSHIP IS SHOWN—WHO MAY RECEIVE DOCKETS AND PAPERS OF SUCH JUSTICE.

SYLLABUS:

1. *Where a justice of the peace is elected in a township and subsequently a new township is created out of territory within a village in such township and said justice of the peace has resided and continues to reside in the new township territory, under circumstances which do not show knowledge either on the part of the community generally or himself of the creation of said new township, such justice becomes a de facto officer, and judgments rendered by him between the time of the creation of the new township and the expiration of his commission are valid.*

2. *The dockets and papers of such justice should be turned over at the expiration of his commission to the newly elected justice of the original township.*

COLUMBUS, OHIO, September 8, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication as follows:

"'B' was a duly elected and qualified justice of the peace for a term ending December 31, 1929, for 'G' Township; on June 23, 1928, the county commissioners created 'F' Township out of a part of the territory previously included in 'G' Township. The justice of the peace 'B' continued to exercise

jurisdiction in civil cases although he was a resident of 'F' Township as created by the county commissioners. At the November election, 1929, 'McG' was elected justice of the peace for 'F' Township and 'S' was elected justice of the peace for 'G' Township. At the expiration of his term, Justice of the Peace 'B' turned his dockets and papers over to Justice of the Peace 'S.' There were some eighty-two cases in which judgment had been rendered by Justice of the Peace 'B' subsequent to the creation of 'F' Township by the county commissioners.

Question 1. Did Justice of the Peace 'B' proceed properly in turning his dockets and papers over to Justice of the Peace 'S'?

Question 2. May Justice of the Peace 'S' legally proceed to issue executions in the eighty-two cases in which judgments were rendered by Justice of the Peace 'B' after the creation of 'F' Township?

Question 3. In view of your Opinion No. 1550, rendered to this department under date of February 24, 1930, what is the status of the judgments rendered in the eighty-two cases above referred to?"

In my Opinion No. 1550, rendered to you on February 24, 1930, and referred to by you in your communication, I had under consideration the general question as to the right of a justice of the peace to hold court in a township other than the one for which he was elected when a new township was created from territory within his township. Pertinent facts now before me were not presented at that time. I held, as disclosed by the first paragraph of the syllabus, as follows:

"When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may not hold civil court in the new township but must confine his jurisdiction to the township for which he was elected."

The special facts now presented show that "B" lived in Fairview village both before and after the creation of such township. Therefore, under authority of the above opinion, it would seem that he had no legal authority to exercise jurisdiction in said township (Fairview).

In an opinion of my immediate predecessor, found in Opinions of the Attorney General for 1928, Vol. 2, 984, it was held in the syllabus that:

"Where the county commissioners of a county, acting under the provisions of Section 3248, General Code, create a new township out of that part of the territory of an existing township included within the limits of a municipal corporation therein, duly elected and qualified justices of the peace of such existing township, residing in such municipal corporation do not become justices of the peace of the new township. They continue to be justices of the peace of the prior existing township in and for which they were elected, and they may perform the duties and exercise the jurisdiction of their respective offices therein, provided they establish their residences within such township within a reasonable time after the creation of the new township. If they do not establish their residence in said prior existing township within a reasonable time, vacancies will be created in said offices which the trustees of such township will be authorized to fill."

The question now arises as to whether "B" was a *de facto* justice when he con-

tinued to exercise authority ostensibly over both Fairview and Goldwood Townships after the creation of the new township.

The Legislature has provided in Section 1713, General Code, that "no justice may be deprived of his commission until the expiration of the term for which he was elected."

It is stated in 35 Corpus Juris, 452, that:

> "A *de facto* justice is one who *colore officii* claims and assumes to exercise the authority of the office, is reputed to have it, and in whose acts the community acquiesces. Thus one is a *de facto* justice who, having been duly elected or appointed as such, * * * continues to act as justice after his removal from the district to which he was appointed. * * * So far as the public and third persons are concerned, the acts of a *de facto* justice are as valid as those of a justice *de jure.*"

It appears to me that "B" was a *de facto* justice after the creation of the new township. Supplementary information to that appearing in your communication shows that neither "B" nor any one else outside of the county commissioners knew that the township had been created until just before the 1929 election. Therefore, it is apparent that all the conditions necessary for a *de facto* officer, as noted above, were present. "B" had his commission for color of office and the community generally recognized him as justice of the peace.

In the case of *Hinton* vs. *Lindsay,* 20 Ga., 746, the facts show that judgments were rendered by one Bradford as a justice of the peace in a district adjoining that in which he claimed to be a justice. It was held in the 5th branch of the syllabus that:

> "A justice of the peace who, notwithstanding his removal to an adjoining district, continues to act under his former commission, is an officer *de facto,* and his acts as such are not void, so far as the public and third persons are concerned; neither can they be invalidated in a proceeding to which he is not a party."

In the course of the opinion it was said (p. 748):

> "The last, and by far the most troublesome point is, were the judicial acts done by this magistrate during the five months that he generally lodged out of the district in which he presided, void? And can they be collaterally impeached and set aside, in a proceeding to which he is no party?
>
> We consider the doctrine well settled, upon great principles of public policy, that the acts of an officer *de facto,* whether judicial or ministerial, are valid, so far as the rights of the public or third persons having an interest in such acts are concerned; and that neither the title of such an officer nor the validity of his acts, as such, can be indirectly called in question in a proceeding to which he is not a party. This doctrine has been established from the earliest period, and repeatedly confirmed by an unbroken current of decisions both in England and in this country. * * * "

Having reached the conclusion that these judgments are valid, your first question now presents itself.

Section 1727, General Code, provides:

> "Upon the expiration of his term of office, each justice shall deposit with

his successor his official dockets, and those of his predecessors which are in his custody, with all the files and papers, laws and statutes pertaining to his office, there to be kept as public records and property. If no successor is elected and qualified, or if the office becomes vacant by death, removal from the township, or otherwise, before his successor is elected and qualified, the dockets and papers must be deposited with the nearest justice in the township, and, if there be none, then the nearest in the county, there to be kept until a successor is chosen and qualified, then to be delivered to such successor, on request."

Obviously the dockets must be turned over to the successor under the above section. The facts show that "B", even though holding court in Fairview township, believed that he was exercising jurisdiction in Goldwood Township. The docket in which he kept and entered his judgments was the property of the township of Goldwood. In this connection Section 1724 provides:

"Each justice of the peace must keep a docket, which shall be furnished by the trustees of the township, in which must be entered by him:

* * * * * * * *

10. The judgment of the justice, specifying the items of costs included, and the time when rendered.

* * * ."

It is believed that a proper interpretation of the law requires that the docket be turned over to the new Goldwood justice, "S", rather than to the Fairview justice, "McG". I am of the opinion, therefore, that the first question presented in your inquiry must be answered in the affirmative.

Coming now to your second question, it is noted that General Code Section 10224 provides in part as follows:

"Justices of the peace within and co-extensive with their respective counties shall have jurisdiction and authority:

* * * * * * * *

8. To issue execution on judgments rendered by them.

* * * ."

Furthermore, Section 10399 provides:

"Except when it has been taken to the Common Pleas on error, or appeal, or docketed therein, or during the time it may be stayed, as hereafter provided, *execution for the enforcement of a judgment may be issued by the justice by whom it was rendered, or by his successor in office,* on the application of the party entitled thereto, at any time within five years from the entry of the judgment, or the date of the last execution thereon, or the revivor thereof." (Italics the writer's.)

In view of the provisions of the above sections, I have no hesitancy in answering your second question in the affirmative.

Your third question has been answered by the discussion of your first question. As I have stated above, the acts of a *de facto* officer cannot be questioned by the public or third persons.

It was held in the first paragraph of the syllabus in the case of Ex Parte Jacob W. Strang, 21 O. S., p. 610:

"The acts of an officer *de facto,* when questioned collaterally, are as binding as those of an officer *de jure.*"

To the same effect is the case of *Greenlee* vs. *Cole,* 113 O. S. 585, 589.

It is therefore evident that said judgments cannot now in any way be attacked since no objection was made by any of the parties to the actions at the time of the rendition of the judgments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2306.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—$17,971.50.

COLUMBUS, OHIO, September 8, 1930.

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

2307.

APPROVAL, BONDS OF CITY OF WARREN, TRUMBULL COUNTY, OHIO —$18,500.00.

COLUMBUS, OHIO, September 8, 1930.

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

2308.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING IN LUCAS COUNTY.

COLUMBUS, OHIO, September 8, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*