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1. PROSECUTING ATTORNEY — PERSON ELECTED TO OFFICE WHILE SERVING IN ARMED FORCES OF UNITED STATES — IN FOREIGN COUNTRY — MAY TAKE OATH OF OFFICE WHILE STATIONED IN SUCH FOREIGN COUNTRY.
2. OATH OF OFFICE — MAY BE ADMINISTERED BY ANY COMMISSIONED OFFICER OF ARMED FORCES OF UNITED STATES — SECTION 14862 G. C.
3. PERSON HERETOFORE ELECTED PROSECUTING ATTORNEY WHO SERVED AND WAS SUBSEQUENTLY REELECTED MAY FILE BOND AND OATH OF OFFICE INDORSED THEREON, PRIOR TO FIRST MONDAY OF JANUARY NEXT FOLLOWING SUCH ELECTION.

SYLLABUS:

1. A person elected to the office of prosecuting attorney while serving in the armed forces of the United States in a foreign country may take his oath of office while stationed in such foreign country.

2. Under the conditions above set forth the oath of office of the prosecuting attorney may be administered by any commissioned officer of the armed forces of the United States pursuant to the provisions of Section 14862, **General Code**.

3. A person heretofore elected to the office of prosecuting attorney and serving as such who is subsequently reelected, may file his bond and oath of office indorsed thereon prior to the first Monday of January next following such election.

Columbus, Ohio, November 16, 1944

Hon. Frank M. Cornwell, Assistant Prosecuting Attorney
Jefferson, Ohio

Dear Sir:

Your request for my opinion reads:—

“The present Prosecuting Attorney, is now a member of the Armed Forces serving in Italy. He filed a Declaration of Candi-

dacy and was nominated for reelection at the May primaries. He has no opposition for reelection, so there is every reason to believe that he will be reelected. We are in receipt of a letter from him in which he requests an opinion from your office in answer to the following questions:—

1. Can he take his oath of office while serving in the United States Army in a foreign country?

2. If he can take such oath of office, may it be taken by one of his commanding officers?

3. May the oath of office be administered, and bond executed, following the November election but prior to the first Monday of January next following the election, when the new term of office commences?"

Section 2911, General Code, provides in part that before entering upon the discharge of his duties, the prosecuting attorney shall give bond.

The concluding sentence of said section, which refers to his oath of office, reads:—

“* * * 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.”

(Emphasis added.)

It is to be noted that said section contains no provision specifying where or when the prosecutor shall take his oath of office. The only requirement is that in connection with the bond, said oath of office shall be “indorsed thereon.” But as the prosecutor is elected quadrennially with his term of office beginning on the first Monday of January next after his election, it seems manifest the law contemplates he will take whatever action is necessary to qualify for such office prior to that date.

It can hardly be disputed that Section 2911, *supra*, anticipates that, in addition to signing the oath of office, such oath must in fact be administered by some person authorized to administer an oath before the requirements of the statute have been met. See *State, ex rel. Sturm v. Bimler*, 15 O. App., 365, wherein the court held as disclosed by the syllabus of the case, to wit:—

“One elected to the office of mayor, *who fails to take the oath of office before some official authorized to administer oaths, and fails to present his bond to council for approval, as required by statute, but instead thereof appears before the incumbent mayor, who refuses to administer the oath or receive the bond, must be regarded as having refused to accept the office, and a petition in quo warranto, praying that the incumbent mayor whose term of office has in the meantime expired be ousted, does not lie and will be dismissed.*”

(Emphasis added.)

I turn now to the question as to who may administer the oath contemplated by aforementioned Section 2911 in the light of the fact that the present prosecuting attorney is serving in the armed forces of the United States and is stationed in a foreign country. Section 14862, General Code, was recently amended, and as now in force and effect, provides as follows:—

“Any commissioned officer of the armed forces of the United States is hereby authorized to *administer oaths*, take depositions, affidavits and acknowledgments of deeds, mortgages, leases and other conveyances of lands, and all powers of attorney of any person who for the time being shall be in the armed forces of the United States in the same manner as a justice of the peace, commissioner of this state, or notary public might do.”

(Emphasis added.)

It seems clear that any commissioned officer has the authority to administer the oath so as to enable the present prosecutor to comply with the provisions of the said Section 2911.

In specific answer to your several questions, it is therefore my opinion as follows:—

1. A person elected to the office of prosecuting attorney while serving in the armed forces of the United States in a foreign country may take his oath of office while stationed in such foreign country.

2. Under the conditions above set forth the oath of office of the prosecuting attorney may be administered by any commissioned officer of the armed forces of the United States pursuant to the provisions of Section 14862, General Code.

3. A person heretofore elected to the office of prosecuting attorney and serving as such who is subsequently reelected, may file his bond and oath of office indorsed thereon prior to the first Monday of January next following such election.

Respectfully,

THOMAS J. HERBERT

Attorney General