

171.

APPROVAL—BONDS OF PARMA CITY SCHOOL DISTRICT,  
CUYAHOGA COUNTY, OHIO, \$2,000.00.

COLUMBUS, OHIO, February 25, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN :

RE : Bonds of Parma City School District, Cuyahoga  
County, Ohio, \$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated October 1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of January 27, 1937, being Opinion No. 50.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

172.

PROBATE JUDGE—QUALIFYING FOR OFFICE—BOND—CON-  
TINUATION OF OLD BOND—QUALIFICATION WITH-  
IN REASONABLE TIME—VACANCY.

COLUMBUS, OHIO, February 25, 1937.

HON. MARVIN A. KELLY, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR: I have your communication of recent date, requesting my opinion on the following question:

“As per my telegram of February 20, 1937, I am hereby submitting to you the facts in the case now before us pertaining to the office of probate judge, taking into consideration code Section 10501-1, which states:

'Quadrennially, one probate judge shall be elected in each county, who shall hold his office for a term of four years, commencing on the ninth day of February next following his election.'

and sub-section 2 pertaining to the giving of bond by the probate judge.

On February 9, 1937, the probate judge of Scioto County, Ohio, submitted to the prosecuting attorney for approval as to sufficiency, a rider of extension of the old bond issued for his first term in office. Because of the shortage found in the office after the general election of 1936, I, as prosecuting attorney, refused to sign the bond as to its sufficiency and submitted the same to the county commissioners without my approval thereon. The date of the rejection was February 10, 1937. On February 11th of the same year, the county commissioners notified the probate judge of the said rejection. On February 15th, of the same year, the probate judge submitted a personal bond, which the commissioners rejected because the personal sureties were found not to have sufficient property to cover the amount of \$10,000.00 as set by the county commissioners as bond for the probate judge's office. On February 18th the county commissioners rejected the said personal bond and notified the probate judge of such rejection, at which time he submitted a new surety bond.

The question we are submitting to you for answer is whether or not the failure of the probate judge to properly qualify by giving bond on February 9, 1937, caused a vacancy in the office of the probate judge, and if so, at what time the vacancy took place. We were considering Section 7 of the general provisions of the Ohio General Code."

Specifically, you wish to know whether in my opinion the failure of the duly elected probate judge to qualify on February 9, 1937, caused a vacancy in the office of probate judge of Scioto County.

Section 10501-1, General Code, provides:

"Quadrennially, one probate judge shall be elected in each county, who shall hold his office for a term of four years, commencing on the ninth day of February next following his election."

Section 10501-2, General Code, provides:

"Before entering upon the discharge of his duties, the

probate judge shall give a bond to the state in a sum not less than five thousand dollars, with sufficient surety, approved by the board of county commissioners or by the auditor and recorder, in the absence from the county of two of the commissioners, and conditioned that he will faithfully pay over all moneys received by him in his official capacity, enter and record the orders, judgments and proceedings of the court, and faithfully and impartially perform all the duties of his office. Such bond, with the oath of office indorced thereon, shall be deposited with the county treasurer and kept in his office. From time to time, as the state of business in his office renders necessary, the county commissioners may require the probate judge to give additional bond."

You will note that Section 10501-2, General Code, sets no specific date on or before which the bond of the probate judge must be given. This section simply requires that: "Before entering upon the discharge of his duties, the probate judge shall give a bond to the state." The fact that Section 10501-1, General Code, specifies that the term of office of probate judge shall begin on the 9th day of February next following his election cannot be interpreted to mean that the probate judge must necessarily enter upon the discharge of his duties on that date. In fact, the case of *State of Ohio, ex rel. Witham vs. Nash, Governor, et al.*, 65 O. S., 549, has definitely established the principle that the commencement date of a term of public office as fixed by statute and the date of the commencement of the discharge of the duties of that office are not necessarily the same. The syllabus of the foregoing case reads as follows:

"An infirmary director is not required to give bond before the first Monday of January, when his term of office begins, but must give bond before entering on the discharge of his duties as such infirmary director."

In this case the court was concerned with the failure of a duly elected director of a county infirmary to give bond on or before the date fixed by statute for the commencement of his term. In the per curiam opinion the court held:

"An infirmary director must give bond 'before entering on the discharge of his duties.' Revised Statutes, section 960. In this respect the law differs from that governing the bond of a sheriff, which prescribes that a sheriff shall give bond

'within ten days after receiving his commission and before the first Monday of January.' *State ex rel. Poorman vs. Commissioners*, 61 Ohio St. 506. The term of office of an infirmary director begins on the first Monday in a January; but the actual discharge of the duties of such officer does not necessarily begin with his term. The petition does not show that Hill performed any official duty prior to the giving of the bond on January 7, 1902, which was the day after the first Monday in January; but it does show that the board of county commissioners refused to approve Hill's bond solely because it appeared from the bond that it was not executed nor filed in the office of the board until the 7th day of January, 1902, and that the prosecuting attorney had not certified the sufficiency of the bond for the same reason. This was not enough to authorize the commissioners to consider the office vacant, under Revised Statutes, section 19, and to proceed to fill the vacancy, under Revised Statutes, section 959. The demurer is therefore sustained and the petition dismissed."

Since the foregoing case seems to definitely lay down the rule of law that the discharge of official duties by a duly elected officer is not necessarily coincidental with the commencement date of a term of office, the question naturally arises as to how soon after the commencement date of a term of office must a public officer complete all acts of qualification in the absence of a time limit fixed by law.

I feel that this question is very well answered by an opinion of the Attorney General rendered in 1933, Vol. I, page 96, in which it was held:

"Where the statute fails to specify the time within which acts necessary to qualifications for public office shall be performed and where all of such acts are completed within a reasonable time after assuming official duties, such office shall not be considered vacant within the meaning of section 7 of the General Code."

While the particular facts of this opinion showed that the county commissioner applied for and secured a bond before the commencement date of his term, and the particular point for opinion involved the endorsement of the oath of office on the bond, still the principle of law involved in that case is exactly the same as the one for consideration in the present case.

In order to qualify for office, a county commissioner pursuant to

Section 2399, General Code, must perform two acts: (1) Before entering upon the discharge of his duties each commissioner must give bond; (2) Such bond, with the oath of office and the approval of the probate judge endorsed thereon, shall be deposited with the treasurer of the county.

Both acts of qualification are necessary to the assumption of the duties of office; one act is meaningless without the other. A strict construction of Section 2399, General Code contemplates that these two acts of qualification are so interdependent as to be performed simultaneously.

In the present case as previously indicated, the probate judge must also perform two acts of qualification: (1) Before entering upon the discharged of his duties the probate judge shall give a bond to the state; (2) Such bond, with the oath of office endorsed thereon, shall be deposited with the county treasurer.

Conceding that in the present case these two acts of qualification were not performed on or before the commencement date of his term, still the duly elected probate judge, pursuant to the 1933 opinion of the Attorney General, Vol. I, page 96, had a reasonable time within which he must complete all acts of qualification, because it is well settled that where no definite time is stipulated in the statutes for the performance of an act, a reasonable time is presumed to have been intended.

A reasonable time is wholly a matter for determination by the facts of each particular case. The period of time for the determination of reasonableness in this case extends from February 9th to February 18th, the date on which the probate judge offered a surety bond for the approval of the commissioners, and does not extend to the date on which the commissioners finally approve or disapprove the bond.

In view of the foregoing authorities, I am of the opinion that the failure of the duly elected probate judge of Scioto County to properly qualify for office by giving bond on February 9th, did not create a vacancy. However, whether the probate judge thereafter completed all acts of qualification within a reasonable time is a matter of factual determination.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*