

ified. Such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after such appointment."

In view of the foregoing discussion and authorities cited, and specifically answering your questions, it is my opinion :

(1) There was no vacancy in the office of Probate Judge at the time Mrs. Secrest was appointed to fill said vacancy, and, therefore, the appointment made by Governor Donahey was void, and the commission issued to said appointee was and is inoperative and invalid.

(2) The term of office of the present Probate Judge of Paulding County, Ohio, expires February 9, 1929. As no person was duly elected at the preceding election, the office of said judge will become vacant by reason of the expiration of the term of the incumbent, on said date, and the Governor is authorized to fill such vacancy by appointment. The person so appointed shall hold the office until a successor is elected and qualified.

Respectfully,
GILBERT BETTMAN,
Attorney General.

27.

APPROVAL, DEEDS TO MIAMI AND ERIE CANAL LANDS IN THE CITY
OF CINCINNATI—5 GRANTEES.

COLUMBUS, OHIO, January 25, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of even date herewith transmitting for my examination and approval five deeds of the State of Ohio conveying certain parcels of surplus Miami and Erie Canal lands relinquished by the city of Cincinnati to the State of Ohio pursuant to the provisions of the Act of April 20, 1927 (112 O. L. 210).

The deeds transmitted are as follows:

<i>Parcel No.</i>	<i>Names and Addresses of Grantees.</i>	<i>Consideration.</i>
22	John G. and Magdalena Hirsch, 439 W. McMicken St., Cincinnati, Ohio-----	\$272 00
142	Chas. and Kathrina Benkeser, 1608 West Belmar Place, North College Hill, Cincinnati, Ohio-----	52 00
188	Charles H. Schwegman, c/o Heilker & Heilker, Schmidt Building, Fifth and Main Sts., Cincinnati, Ohio-----	8,636 00
189	Richard J. Coates, c/o Heilker & Heilker, Schmidt Building, Fifth and Main Sts., Cincinnati, Ohio-----	6,464 00
190	Richard J. Coates, c/o Heilker & Heilker, Schmidt Building, Fifth and Main Sts., Cincinnati, Ohio-----	1,175 00

I have examined the forms submitted and am of the opinion that they are in conformity to law with the exception of the third deed above listed. As to this deed, it appears from the recital therein as to payment of the consideration of the convey-

ance that said deed is to be made to Chas. H. Schwegman, Trustee. If, as a matter of fact, this deed is to be made to Chas. H. Schwegman, Trustee, and not to Chas. H. Schwegman individually and personally, the word trustee should be typed in the deed form after the name Chas. H. Schwegman in the granting clause of said deed and after his name in the habendum clause of said deed.

You are accordingly advised that these deeds have my approval as to form, with the exceptions above noted.

Under the provisions of Section 9 of the Act of the General Assembly above referred to, the sales of these tracts or parcels of land are made by you subject to the approval of the Governor and the Attorney General. The sales meet with my approval, and, I have accordingly endorsed my approval upon the deed forms submitted, which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

28.

BONDING COMPANY—RIGHT TO COMPLETE STATE CONTRACT WHEN
PRINCIPAL DEFAULTS—ENTERING FACTS ON JOURNAL OF PUBLIC
WORKS—CERTIFICATION TO STATE AUDITOR.

SYLLABUS:

1. *When a proposal has been made by the Department of Public Works for construction work and bids have been received thereon, said bids being accompanied by a bond guaranteeing that the bidder will enter into a contract if the same be awarded to him, and also conditioned upon the faithful performance of said contract, and a contract was so awarded and entered into, the bonding company may, upon default on the part of the contractor, perform the contract so entered into, complete the work, and be entitled to receive from the state payments therefor, as provided in the original contract.*

2. *Such default upon the part of the contractor and said action on the part of the bonding company should be set forth upon the journal of the Department of Public Works after the contractor has so defaulted and a copy thereof certified to the Auditor of State.*

COLUMBUS, OHIO, January 26, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication under date of January 2, 1929, containing a request for opinion as follows:

“On October 25, 1928, the contract by and between the State of Ohio, by R. T. Wisda, Director of Public Works, and the Coventry Construction Co., South Akron, Ohio, for the construction of retaining walls in the Ohio and Erie Canal, Akron, Ohio, was approved by you.

“The Coventry Construction Company could not complete the contract. Its surety, The Commercial Casualty Insurance Company, elected to complete the contract and are, at the present time, going ahead with the work.

“We respectfully request an opinion as to the legality of paying The