

account of being desirous of having the question submitted at the November, 1931, election and had they known that the question could not be submitted until the November, 1932, election, they would not have signed the petition. Under the circumstances, it is my judgment that a new petition should be prepared and circulated in the event it is desired to vote upon this question at the November, 1932, election.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3572.

APPROVAL, BONDS OF NAPOLEON VILLAGE SCHOOL DISTRICT,
HENRY COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, September 15, 1931.

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

3573.

APPROVAL, BONDS OF SUGAR CREEK RURAL SCHOOL DISTRICT,
ALLEN COUNTY, OHIO—\$50,000.00

COLUMBUS, OHIO, September 15, 1931.

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

3574.

SPECIAL CONSTABLE—UNAUTHORIZED TO PATROL PUBLIC HIGH-
WAYS—AUTHORITY LIMITED.

SYLLABUS:

A special constable cannot be appointed for the general purpose of patrolling the public highways to enforce traffic laws. The duties of a special constable when appointed under section 3331 of the General Code are limited to the particular case in which he is appointed.

COLUMBUS, OHIO, September 15, 1931.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—In your recent communication you present the following inquiry:

“Can a justice of the peace appoint a special constable for the sole purpose of watching the State highways for speed law violators? There is sort of an epidemic of drunken and reckless drivers in this county

at the present time, and we thought this would be one way of breaking it up."

Sections 1738, 13428 and 3331 relate to the appointment of special constables. The first two sections above mentioned have no application in view of the facts stated. The last section, which must control in the case under consideration, reads:

"A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, when such appointment becomes necessary in the following cases:

1. When there is no constable in the township.
2. In case of disability of one of the regular constables in the township.
3. When the constable therein is a party to the suit.
4. When, from the pressure of official business, the constables therein are not able to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and require the person appointed to take an oath, as in other cases."

In my opinion, reported in Opinions of the Attorney General for 1929, volume I, page 205, it was held as disclosed by the syllabus:

"A duly elected or appointed constable has authority, in the performance of his duties to patrol the highways in any township in his county by virtue of the authority and power granted to him by Sections 3340 and 3345, General Code."

A reading of said opinion discloses that it was regular constables that were under consideration and referred to in the syllabus. In the body of said opinion, among other things, it is stated:

"A constable appointed by a justice of the peace for a special purpose, by virtue of Section 3331, General Code, has the same authority as other constables in regard to carrying out the special purpose for which he is appointed."

My predecessor in an opinion found in Opinions of the Attorney General for 1927, volume I, page 32, had occasion to consider the powers of a special constable appointed under section 3331, *supra*. The first branch of the syllabus of said opinion reads:

"The powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable."

In the body of the opinion last mentioned the following is stated:

"A special constable can only be appointed under paragraph 4 of Section 3331 of the General Code in a civil or criminal case then pending. Created by special appointment and for a special purpose in a civil or criminal case, a memorandum whereof is on the docket of the justice, such appointee is a 'special constable' only while acting in pursuance thereof. He is not clothed with the powers of a constable except for such 'special purpose.' A distinct and separate appointment is essential for each special purpose wherein his services are necessary, either in a civil or criminal case and the justice of the peace must make a memorandum of each such special purpose on his docket. Such special constables have no authority to serve warrants or to make arrests by virtue of their special appointment, except in the particular case in which they are appointed a 'special constable.' When the duties of his appointment have been performed his appointment as a 'special constable' automatically terminates."

Applying the principles announced in the foregoing opinions, impels the conclusion that the powers of a special constable appointed under the provisions of section 3331 of the General Code are limited to the particular case in which he is so appointed and such an officer does not have the general powers of a regularly elected or appointed constable.

It follows, therefore, that a special constable may not be appointed for the general purpose of patrolling the public highways.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3575.

APPROVAL, BONDS OF MONTGOMERY COUNTY, OHIO—\$28,000.00

COLUMBUS, OHIO, September 15, 1931.

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

3576.

APPROVAL, BONDS OF CITY OF BEXLEY, FRANKLIN COUNTY,
OHIO—\$29,000.00.

COLUMBUS, OHIO, September 15, 1931.

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