Section 14665, however, provides that "when the necessary site and buildings are provided by the county, it shall be the duty of the Court of Common Pleas of such county, immediately thereafter, to appoint a board of six trustees to manage the said institution, and who shall be judicious persons, resident of said county." Since it is desired in the case you present that the children's home remain under its present management, even if land were to be purchased, it is manifest that Section 14664, supra, would be of no assistance.

Section 3108-1, General Code, hereinbefore mentioned, provides that the county commissioners of any county which has no county children's home may aid a semi-public home by contributing toward the purchase of land or erection of buildings or additions to buildings or other improvements, an amount not exceeding twenty-five hundred dollars. Section 3108-2 relates to how a home may become semi-public and to the filing of reports.

In view of the foregoing, it must follow that however laudable the purpose, the law does not authorize a board of county commissioners to construct such an improvement as is contemplated and, accordingly, county bonds may not be issued therefor, until the Legislature provides relief for such a situation as you present.

I am therefore compelled to conclude, in specific answer to your question, that a board of county commissioners may not issue bonds in the amount of two hundred thousand dollars for the purpose of constructing an addition to a children's home of an incorporated society when such home is to remain under the management of the board of trustees of such society.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2179.

SALARY—APPELLATE JUDGES ENTERING OFFICE BEFORE 1930 CENSUS—NOT INCREASED BY CHANGE IN COUNTY POPULATION.

SYLLABUS:

Judges of courts of appeals who took office prior to the official certification and announcement of the 1930 federal census are not entitled to an increase of compensation because of increased population shown by such census.

COLUMBUS, OHIO, July 31, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I am in receipt of a recent communication over the signature of Harry S. Commager, assistant prosecuting attorney, as follows:

> "I am submitting to your department the question of the amount of salary to be paid to certain judges of the Court of Appeals. One of the judges of the Court of Appeals was elected in the June election of 1928 and commenced his present term of office in February, 1929.
>
> Section 2253-2 of the General Code provides for additional salaries for Court of Appeals judges based upon the last federal census. The question arises, is the salary of this one judge of the Court of Appeals, whose present term of office commenced after the taking effect of Section 2253-2 of the General Code, increased by reason of the increase in population of Lucas County

as determined by the federal census lately computed, and, if so, from what date does said increase take effect?

I am enclosing a copy of Section 6 of the Acts of Congress providing for the taking of the federal census."

Article II, Section 20 of the Ohio Constitution is pertinent to consider in connection with your inquiry and provides as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

You will note that the above constitutional provision states in substance that when the constitution has not fixed the term and compensation of officers the legislature shall do so. In other words, the legislature has full power to provide for the term and compensation of appellate judges if the constitution has not done so, subject, of course, to the single condition that no change of salary shall affect such officers during their term unless the office be abolished.

Touching this subject it was contended in the case of *State ex rel.* vs. *Donahey*, 101 O. S. 490, that the above constitutional inhibition did not apply to constitutional officers and that inasmuch as the office of appellate judge was a constitutional office the inhibition did not concern appellate judges. However, the court held that said provision applied to all offices and that appellate judges in office at the time of the amendment of Section 2251, General Code (108 O. L., Pt. II, 1301), increasing the annual salary of appellate judges payable from the state treasury, were not entitled to the increase of salary because of the inhibition of the above constitutional provision.

The Ohio Constitution has stated in Article IV, Section 6, that "unless otherwise provided by law the term of office of such judges shall be six years." The legislature has provided for a term of six years for appellate judges. See General Code, 1514. However, the constitution has not fixed the compensation of appellate judges and therefore the legislature has done so pursuant to the constitutional mandate by the enactment of Sections 2251, 2253-2 and 2253-3, General Code.

It now becomes necessary to examine Section 2253-2, General Code, to see what is the nature of the compensation provided by that section. If it is salary within the meaning of that word as used in Article II, Section 20, it is obvious from the case above cited that appellate judges would not be entitled to any increase or decrease during their term of office.

Said Section 2253-2, General Code, was enacted as a supplemental section to Section 2253, General Code, in 1927 (112 O. L. 345, 346), effective August 10, of that year. Said section provides:

"In addition to the salary allowed by Sections 1569 and 2251, each judge of the court of appeals shall receive an annual compensation from each county in the appellate district in which such judge is elected or appointed, in the following manner; in appellate districts containing a county having a population not in excess of one hundred thousand, one thousand dollars, and in appellate districts containing a county having a population in excess of one hundred thousand and not in excess of two hundred thousand, two thousand dollars, and in appellate districts containing a county having a population in excess of two hundred thousand and not in excess of two hundred eighty thousand population, three thousand dollars, and in appellate districts consisting of or containing a county having a population in excess of two

hundred eighty thousand, four thousand dollars. Such additional annual compensation shall be computed and prorated according to the population of such counties in such appellate districts as determined by the latest census of the United States, and shall be paid monthly from the treasury of such county upon the warrant of the county auditor."

The above section was part of an act entitled "To amend Sections 2251, 2252 and 2253 of the General Code, and to further supplement Section 2253 by the enactment of supplemental Sections 2253-2 and 2253-3, to provide for salaries of judges of the supreme court, court of appeals and court of common pleas, and to provide per diem compensation and expenses of judges while holding court outside of the county of residence." It may be noted from a reading of Section 2253-2, General Code, that the word compensation instead of salary appears twice in the section. However, it is a recognized principle of law that the title of an act may be considered as an aid in construction of a section. See *Collings-Taylor Co.* vs. *Fidelity Co.*, 96 O. S. 123; *Dubois* vs. *Coen*, 100 O. S. 17.

Hence, it may be noted that the title of the act quoted above expressly states that its purpose was, among other things, to provide for *salaries* of appellate judges, together with per diem compensation and expenses for appellate judges while holding court outside of the county of residence. Now the expenses and per diem compensation were taken care of by the enactment of supplemental Section 2253-3, General Code. Although Section 2251, General Code, providing for salaries of judges payable from the state treasury, was amended in the same act, nevertheless the amendment in no way affected appellate judges. Therefore it appears that the legislature had in mind that the compensation provided for appellate judges, as contained in the supplemental Section 2253-2, General Code, as enacted, was salary. Moreover, this conclusion is strengthened by a consideration of the provisions of Section 2252, General Code, concerning annual compensation of common pleas judges. Such section bases the compensation of common pleas judges upon population, just as Section 2253-2, General Code, supra. It was held in the case of *Zangerle* vs. *State ex rel.*, 105 O. S. 650, that the compensation based on population as provided by Section 2252, General Code, supra, was salary within the meaning of Section 20, Article II of the constitution.

Having determined that the compensation provided by Section 2253-2, General Code, is salary within the meaning of Article II, Section 20, Ohio Constitution, it is proper to determine the application of the words "as determined by the latest census of the United States."

It may be stated that a similar phrase is included in Section 2252, General Code, wherein the following wording is used: "as ascertained by the latest federal census of the United States."

In my Opinion No. 2074, rendered to the Bureau of Inspection and Supervision of Public Offices under date of July 9, 1930, I had under consideration the question of whether common pleas judges elected prior to the completion of the 1930 census could benefit by the increased population shown by the new census, under terms of Section 2252, General Code. I held in the first paragraph of the syllabus:

"The annual compensation of common pleas judges, under Section 2252, General Code, who were elected and took office prior to the taking of the 1930 census, should be based on the 1920 census."

In the course of the opinion, after quoting Article II, Section 20, Ohio Constitution, among other things, I stated at page six:

"It is a familiar principle of law that a statute will be construed if at all possible so as to render it constitutional. See *Hopkins* vs. *Kissinger*, 31 O. A. R. 229. It is also a familiar principle that when the legislature enacts a statute, it has in mind all the constitutional provisions which are applicable to the subject matter thereof. See *State ex rel.* vs. *George*, 92 O. S. 344, 346. Therefore, it is my opinion that the words 'as ascertained by the latest federal census of the United States' refer to the latest complete federal census existing at the moment before a judge becomes an incumbent of the office."

The conclusion which I reached in my former opinion is further substantiated by the rule enunciated by the Supreme Court of Pennsylvania. That state has a constitutional provision similar to that of Ohio. By statute it was provided that certain county officers should receive compensation on the basis of "the next preceding decennial census," and in the case of *Commonwealth* vs. *Walter*, 274 Pa. 553, it was contended that a change in population as announced following the 1920 census permitted an increase in compensation of an officer during his term. With this contention, however, the court did not agree, its conclusion being set forth in the fifth branch of the syllabus as follows:

"No increase is permissible whether it be attempted by a new law passed thereafter, or by the application of the provisions of an earlier statute directing the payment of a larger sum when a county has a greater population."

There is a principle of statutory construction to the effect that, where legislative language is susceptible to two interpretations, one of which would probably render the law unconstitutional, and the other would render it valid, the court will adopt that interpretation which will preserve the enactment. I feel that this principle is applicable here. It must be confessed that the question is one concerning which there is much doubt, but I feel constrained to hold that the appellate judge in question, having taken office prior to the announcement of the 1930 census, may not receive, during his existing term, compensation based upon such 1930 census, since the latest census in existence at the time of his taking office was the 1920 census.

Based upon the foregoing, I am of the opinion that judges of Courts of Appeals who took office prior to the official certification and announcement of the 1930 federal census are not entitled to an increase of compensation because of increased population shown by such census.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2180.

INITIATIVE PETITION—WHEN MORE THAN ONE LINE AT THE TOP MAY BE USED FOR THE TITLE.

SYLLABUS:

If the title of a proposed measure to be printed at the top of an initiative or referendum petition may not physically be printed upon one line, as provided in Section 4785-186, *more than one line may be used therefor.*

COLUMBUS, OHIO, August 1, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows: