pany, of Akron, Ohio. This contract covers the construction and completion of General Contract for Revamping Steam Mains, Kent State Normal School, Kent, Ohio, and calls for an expenditure of twenty-one thousand four hundred dollars ($21,400.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a contract bond upon which the Commercial Casualty Insurance Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully
EDWARD C. TURNER
Attorney General

761.

BOND—PUBLIC OFFICERS MAY FILE NEW BONDS DURING TERM OF OFFICE—HOUSE BILLS NUMBERS 40 AND 333, 87TH GENERAL ASSEMBLY, DISCUSSED.

SYLLABUS:

1. *A public officer who is required to give an official bond at or before the time he takes office may, during his term of office, file a new bond for the remaining portion of his term of office, which new bond must, of course, be approved by the officer or officers required by law to approve the same.*

2. *The amendments to the sections of the General Code contained in House Bill No. 40, passed by the 87th General Assembly, and the provisions of House Bill No. 333, 87th General Assembly, do not affect the salary of any officer.*

3. *The premium on any bond of any public officer, deputy or employe signed by a licensed surety company, executed after House Bills Nos. 40 and 333 passed by the 87th General Assembly became effective shall be paid by the state, county, township, municipality school district or other subdivision of which such person so giving such bond is an officer, deputy or employe.*

COLUMBUS, OHIO, July 21, 1927.

HON. JOHN W. LOREE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

"House Bill No. 40, Bonds of County Officers effective July 10, 1927. House Bill No. 333, effective July 20th, Bonds of Public Officers.

This is to ask your opinion as to whether or not under the above bills surety company bonds, for the unexpired term, may be substituted for personal bonds now on file and approved, and the premium paid by the political subdivision to which the bond is to be given."

Your attention is called to the fact that House Bill No. 40 became effective July 18, 1927, instead of July 10th as stated in your letter.

House Bill No. 40 amends Sections 2399, 2559, 2633, 2751, 2784, 2824, 2868 and 2911 of the General Code. These sections refer to the bonds required of the various county officers.

Section 2399 relates to the bond to be given by the county commissioners. Said section requires each commissioner to give a bond, and the amendment provides:

> "The expense or premium for such bond shall be paid by the county commissioners and charged to the general fund of the county."

No other change or amendment relating to the question submitted was made in said section.

The same is true of Section 2559, which relates to the bond of the county auditor; Section 2751, which relates to the bond of the county recorder; Section 2784, which relates to the bond of the county surveyor; Section 2824, which relates to the bond of the sheriff and coroner; Section 2868, which relates to the bond of the clerk of the court of common pleas; and Section 2911, which relates to the bond of the prosecuting attorney. That is, in so far as the amendments under consideration are concerned, the same change is made in all of these sections as was made in the section relative to the bond of the county commissioners. In other words, House Bill No. 40 authorizes the payment of the premiums, if any, upon bonds given by the various county officers above enumerated "by the county commissioners and charged to the general fund of the county."

Section 2633, General Code, refers to the bond of the county treasurer, and while there has been some change in the language, said section theretofore permitted the payment of the premium on the treasurer's bond by the county commissioners from the general fund of the county. There is therefore no amendment affecting this provision as it relates to the county treasurer.

You also refer to House Bill No. 333, which provides that Section 9573 of the General Code shall be supplemented by the enactment of Section 9573-1, which reads as follows:

> "The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

Your inquiry may be divided into two questions:

(1) May the county officers now in office who have executed personal bonds substitute therefor surety company bonds for the remaining portion of their term and require the county commissioners to pay the premium thereon from the general fund of the county?

(2) May other officers, deputies or employes who have heretofore been required to give bond at their own expense and have executed personal bonds substitute therefor surety company bonds for the remaining portion of their term, and have the premium thereon paid by the proper officials of the subdivision of which such person is an officer, deputy, or employe?

Your question requires consideration and application of the provisions of Section 20 of Article II of the Constitution of Ohio, which reads 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." (Italics the writer's.)

It will be noted that this provision authorizes the general assembly to fix the compensation of officers and provides that no change in such compensation "shall affect the *salary* of any officer during his existing term". It must be determined then whether or not, if the provisions of House Bills Nos. 40 and 333, respectively, apply to incumbent officers during their present term, the provisions thereof would "affect the salary of any officer during his existing term."

The Supreme Court of Ohio in the case of *Thompson* vs. *Phillips*, 12 O. S. 617, decided that the word "salary" as used in the hereinbefore quoted section of the Constitution "was not used in a general sense, embracing any compensation fixed for an officer, *but in its limited sense, of an annual or periodical payment for services*—a payment dependent on the time, and not on the amount of services rendered."

This is the construction which has been placed upon said constitutional provision ever since the above case was decided; and it therefore follows that there is nothing in the provisions of said House Bills Nos. 40 and 333 which affect the *salary* of any of the officers, deputies or employes mentioned therein. Nor is there any provision of law which prevents the acts above referred to from being applicable to those who are in office at the time they became effective.

This then brings us to the question of whether or not an officer may, during his term, substitute another bond in lieu of the bond given at the beginning of his term of office.

There is no statute which prevents any officer from executing a new bond and releasing the sureties on the old bond from *further* liability after the time of such release and execution of a new bond, if he so desires, providing the new bond be approved by the officer or officers who must approve such bond.

Any surety has a right to be released from further liability upon the bond of any officer by following certain procedure required by statute. The proceedings differ in the case of the various officers and it is not necessary to discuss the various sections setting forth such procedure in connection with this opinion. Suffice it to say that in such case, when a new bond is executed, the original bondsmen are discharged from liability for the acts of the officer during the balance of his term. It does not, however, release them from liability on such bond for acts of the officer prior to such discharge.

There are also cases which because of the financial condition of the bondsmen or other circumstances make the original bond insufficient so as to require the officer to give a new bond.

If for any of these reasons any officer has occasion to execute a new bond for the unexpired portion of his term, he may execute a surety bond and the expense or premium thereof shall be paid by the county commissioners or the proper officer of the subdivision of which such person is an officer, deputy or employe.

It is therefore my opinion that

(1) A public officer who is required to give an official bond at or before the time he takes office may, during his term of office, file a new bond for the remaining portion of his term of office, provided the same be approved by the officer or officers required by law to approve such bond.

(2) The amendments to the sections of the General Code contained in House Bill No. 40, passed by the 87th General Assembly, and the provisions of House Bill No. 333, 87th General Assembly, do not affect the salary of any officer.

(3) The premium on any bond of any public officer, deputy or employe signed by a licensed surety company, executed after House Bills Nos. 40 and 333 passed by the 87th General Assembly became effective shall be paid by the state, county, township, municipality, school district or other subdivision of which the person so giving such bond is an officer, deputy or employe.

Respectfully,
EDWARD C. TURNER,
Attorney General.