

poses, must convey a fee simple title without any limitations or conditions attached thereto. The section of the Code above quoted does not require that the title to be conveyed to the state for military purposes be a fee simple, and there are no other sections of the statutes which make any such provision. It is my opinion, therefore that under the circumstances as outlined in your letter, the city of Cleveland is justified in insisting that the land which it proposes to convey to the state of Ohio shall revert to said city whenever the premises shall cease to be used for military purposes.

It lies, of course, within the discretion of the Adjutant General as to whether or not it is deemed advisable to accept a deed containing a clause such as the one above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

364.

COUNTY COMMISSIONERS—AUTHORITY TO EMPLOY LEGAL COUNSEL
TO ASSIST PROSECUTING ATTORNEY DISCUSSED—SECTION 2412,
GENERAL CODE, CONSTRUED.

SYLLABUS:

In the employment of legal counsel to assist the prosecuting attorney under authority of Section 2412 of the General Code, it is necessary to secure the authority of the common pleas court upon application of the prosecuting attorney and the board of county commissioners in office at the time such counsel is to be employed.

COLUMBUS, OHIO, April 21, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge your recent communication in which you ask in substance the following question:

May an outgoing prosecuting attorney and the board of county commissioners apply to the common pleas court and secure authority to employ such prosecutor as a special counsel to assist the incoming prosecutor in certain special legal matters, the action of the court and the county commissioners, pursuant to the court order, being taken prior to the expiration of the outgoing prosecutor's term?

The proceedings to which you allude were doubtless under the supposed authority of Section 2412 of the General Code, which is as follows:

“If it deems it for the best interests of the county, the common pleas court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners to employ legal counsel temporarily to assist the prosecuting attorney, the board of county commissioners or any other county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity.”

This section is manifestly an exception to the general rule that the prosecuting attorney shall be the legal adviser of the county commissioners. This is by the express provisions of section 2917 of the General Code, the terms of which are as follows:

"The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. He shall be the legal adviser for all township officers and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund."

Since Section 2412 constitutes an exception to an otherwise general rule, its terms must be strictly construed. I think it apparent from the language of that section that the application to the common pleas court must be made concurrently by the prosecuting attorney and the county commissioners and that when the term "prosecuting attorney" is used, the prosecutor in office at the time the proposed special work is to be done is clearly meant. In other words, both the prosecutor and the county commissioners, must be in accord with the opinion that the employment of special counsel is necessary. The impropriety of permitting an outgoing prosecutor concurrently with the county commissioners, to be the judge of the necessity of securing help for the incoming prosecutor, is readily seen.

Quite an exhaustive analysis of the sections above referred to is found in the case of *Hunt vs. Hamilton County*, 20 O. D. (N. P.) 679. While that case is not strictly in point, since it involved a purported employment without any action being taken by the prosecuting attorney whatsoever, yet the discussion is pertinent on the question of strict construction of authority of county commissioners. I quote the following from the opinion at pages 688 and 689:

"Such sections so construed charge the prosecuting attorney with the duty of acting as legal counsel of the county commissioners. As prosecuting attorney he receives a compensation from public funds for the performance of all duties. Before, therefore, other counsel can be employed at the expense of the county, authority so to do must be clearly given by the statute. Neither the sections under consideration nor any other sections give such power, except upon request of the prosecuting attorney. There is not even a doubtful grant of such power, although to admit of a doubt would be to deny the existence of such power."

In *Opinions of the Attorney General for 1919*, at page 30, is a holding to the effect that the predecessor of the incumbent of the office of prosecuting attorney is not disqualified for such appointment by the fact of his prior incumbency in the office. This opinion correctly states the law, but is to be noted that the application in that instance for the employment was made by the new prosecutor. I deem it essential that the prosecutor in office at the time the special work is to be done concur in the opinion of the county commissioners as to the necessity of the special employment.

I therefore have no difficulty in reaching the conclusion that the resolution of the county commissioners employing the outgoing prosecutor to assist the incoming pros-

ecutor during any part of the latter's term was not effective and that no legal liability on the part of the county was thereby incurred.

Respectfully,
EDWARD C. TURNER,
Attorney General.

365.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
G. M. ANDERSON.

COLUMBUS, OHIO, April 21, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—You have resubmitted for my consideration an official bond of G. M. Anderson, given in accordance with the requirements of Section 1182 of the General Code, for the faithful performance of his duties as Resident Deputy State Highway Commissioner.

To this bond is attached a certificate of the surety company to the effect that the person who signed said bond in behalf of said company is its attorney in fact, and is authorized to sign an official bond of this nature for the amount therein involved, binding upon said company.

It has been ascertained by this department that the said surety company is authorized to transact its business of fidelity and surety insurance in this state.

Finding said bond in proper legal form and properly executed, I have noted my approval thereon, and am returning the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

366.

DEAD BODY—PAYMENT FOR BURIAL WHEN UNCLAIMED.

SYLLABUS:

When the dead body of a person is found in a township or municipal corporation and such person was not an inmate of a penal, reformatory, benevolent or charitable institution in this state, and the body is not claimed by any person for private interment at the expense of such person, or delivered for the purpose of medical or surgical study or dissection, if the deceased were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death.

COLUMBUS, OHIO, April 21, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication of recent date reading as follows: