of the district thereby reduced. Such action might have some effect on the marketability of a bond issue but not on the right to issue the bonds. It should also be noted that the mere authority to issue the bonds creates no obligation on the district. This obligation is not created until the bonds are actually issued, sold and delivered, and if a transfer of territory from the district is thereafter made, an adjustment of indebtedness must be made between the two districts so that the obligation of the bond holder's contract will not be impaired.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1421.

LEGAL COUNSEL—APPOINTED TO AID PROSECUTING ATTORNEY IN CRIMINAL TRIAL—COMPENSATION FOR PREPARING CASE AUTHORIZED.

SYLLABUS:

Under the provisions of Section 13562 *of the General Code, an attorney appointed to assist a prosecuting attorney in the trial of a case, may be compensated for services rendered in the preparation of said case for trial.*

COLUMBUS, OHIO, January 16, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

> "Some months ago an attorney of our local bar was appointed by the court as special prosecutor to assist in the prosecution of five men who committed a robbery in this county.
>
> Two of these men were apprehended and brought to this county, partially through the efforts of the special prosecutor, and both entered pleas of guilty and were sentenced without trial; and the special prosecutor was in attendance when the above sentences were imposed, and prepared the journal entries therefor.
>
> Under the above circumstances, may this attorney be paid by virtue of Section 13562, General Code? If not under this section, then in what manner may he be paid?"

You do not state in your letter the exact nature of the services performed by the special prosecutor except that you say that partially through his efforts the defendants pleaded guilty and that he appeared when the defendants were sentenced and prepared the journal entries. However, I assume that you desire to know whether or not the language of Section 13562 of the General Code is broad enough to justify the payment for services rendered in the preparation of the trial of the case. Your attention is directed at this point to the fact that Section 13562 of the General Code was repealed by the 88th General Assembly but was re-enacted in substantially the same terms in the act to revise and codify the Code of Criminal Procedure, and it is now Section 13439-15 of the General Code. Section 13562 of the General Code provided as follows:

> "The common pleas court or the court of appeals, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a case pending in such court, and the

county commissioners shall pay such assistant such compensation for his services as such court approves and to them seems just and proper."

In the case of *Thomas* vs. *Mills,* 117 O. S. 114, the Supreme Court of Ohio, in construing the meaning of the word "trial," as used in Article 1, Section 10, of the Ohio Constitution, said in the course of the opinion as follows:

> "In its strict definition, the word 'trial' in criminal procedure means the proceedings in open court after the pleadings are finished and the prosecution is otherwise ready down to and including the rendition of the judgment, and the term 'trial' does not extend to such preliminary steps as the arraignment and giving of the pleas, nor does it comprehend a hearing in error."

However, the provisions of Section 13562 of the General Code should not be strictly construed, for they are remedial in their nature. It was the intention of the Legislature that the state should not be deprived of necessary counsel to assist the prosecuting attorney in the prosecution of criminal cases in which the public interest required it. Such a statute should be construed liberally to carry out the purpose intended by the Legislature.

In an opinion rendered by my predecessor, found in Opinions of the Attorney General for 1928, Volume III, at page 2331, the Attorney General in the course of his opinion says as follows:

> "Moreover, it is my opinion that Section 13562 should be liberally construed to effect the purpose intended by the legislature. Unquestionably, it was the intent of the legislature, when enacting the section in question, that the state should be adequately represented by counsel in cases involving the prosecution of persons charged with crime and that such counsel should receive compensation for their services."

In the prosecution of a criminal case, in order to adequately represent the state it is the duty of the attorney representing the state to familiarize himself so far as possible with the facts which are likely to be brought out in the trial of the case, and also to look up the law with reference to questions which are likely to arise at the trial. It is also his duty, in the event there is a plea of guilty in the case, to be ready to appear before the court and advise the court of the facts so that the judge can mete out the proper punishment.

In the case of *McGillis* vs. *Alcona County,* 197 Mich., p. 40, the court construed the word "trial," as used in Section 2418 of the statutes of Michigan (1 Compiled Laws, 1915). This statute provided in part as follows:

> "That the prosecuting attorney may under the direction of the court procure such assistance in the trial of any person charged with the crime of felony as he may deem necessary for the trial thereof."

The court said as follows:

> "The language of the statute, we think, is broad enough to justify payment for services performed in good faith in the preparation for as well as the trial of the cases after the order making the appointment is made. No attorney of ability and experience would think of entering upon the actual trial of a case without familiarizing himself, so far as he reasonably could, with the facts which would likely be brought out in the trial. He would also endeavor to look up the law question which would likely arise in the progress of the case."

I am inclined to the view that under the provisions of Section 13562 of the General Code, an attorney appointed to assist the prosecuting attorney in the trial of a case may be compensated for services rendered in the preparation of said case for trial.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1422.

JUSTICE OF THE PEACE—WHO MUST ADMINISTER HIS OATH OF OFFICE—FAILURE TO TAKE PROPER OATH QUESTIONED ONLY BY QUO WARRANTO—DE FACTO AND DE JURE OFFICERS DISCUSSED.

SYLLABUS:

1. *A notary public is not authorized to administer the oath of office to a justice of the peace, said oath being required to be administered by another justice of the peace or the clerk of courts.*

2. *Where a duly elected justice of the peace erroneously takes the oath of office before a notary public and assumes the duties of his office, he becomes a de facto officer and the title to his office can only be questioned by a proceeding in quo warranto. The actions of such officer are valid in so far as the status of his office is concerned.*

3. *If such justice of the peace, during the time he is acting in the capacity of such a de facto officer, within the term for which he was elected, takes the oath of office before a justice of the peace or the clerk of courts, as required by law, he then becomes a de jure officer.*

COLUMBUS, OHIO, January 16, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent letter which reads as follows:

> "I request your opinion on the following statement of facts:
>
> At the November election, 1923, one B. F. B. was duly elected a justice of the peace in and for Mifflin township, Pike county, Ohio, for a term of four years, and received his commission from the Governor. Thereafter, in January, 1924, he attempted to qualify by executing a proper bond but took the oath before a notary public instead of the clerk of the Common Pleas Court, or a justice of the peace as required by Section 1720, G. C. Mr. B. served the full four years and was re-elected in November, 1927, and again received his commission from the Governor, and also attempted to qualify by giving the necessary bond, but the second time he took the oath before a notary public in January, 1928. The matter was brought to his attention that he had not complied with Section 1720, G. C., and he thereupon went before the clerk of the Court of Common Pleas in December, 1929, and took the oath of office.
>
> Question 1. Is Mr. B. an officer de jure?
>
> Question 2. If not, is he a de facto justice of the peace?
>
> Question 3. If he is a de facto officer, are his judgments void or voidable?
>
> Question 4. Under the authority of Section 7, G. C., should the office be