

authorized and required to pay the premium of any duly licensed surety company on the bond of the Probate Judge of such county.

In answer to your second question I know of no authority in law which would authorize the county to refund to the Probate Judge of your county that part of a premium paid by him on the bond required by Section 1581, General Code, which premium was paid prior to the enactment of Section 9573-1, *supra*, although part of such premium was earned subsequent to the effective date of said Section 9573-1. Money paid under such circumstances may not be recovered back by the payor. However, the Probate Judge may cancel the existing bond, for which he has personally paid the premium, and thus obtain a refund for the unexpired period of such obligation. He may then file a new bond for the remaining portion of the term of office, which new bond must of course, be approved by the officers required by law to approve the same.

In this connection your attention is directed to Opinion No. 761, dated July 21, 1927, addressed to the Prosecuting Attorney of Mercer, County, the syllabus of which reads:

"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 of 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."

I am enclosing herewith a copy of Opinion No. 761, referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1684.

ELECTRIC POWER PLANT—MUNICIPALITY—EXTENSION OF TRANSMISSION LINES OUTSIDE CORPORATE LIMITS—LIMITATION ON AMOUNT OF POWER SUPPLIED.

SYLLABUS:

Subject to the constitutional limitation that the sale of the surplus product of a municipal electric light and power plant to others than the municipality and its inhabitants shall not exceed fifty per centum of the total product supplied by such

utility within the municipality, a village may, under authority of Section 3966 of the General Code, construct electric light and power lines to any distance outside of the corporate limits.

COLUMBUS, OHIO, February 8, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“Section 3966, General Code, as amended 110 O. L. page 38, reads:

‘On the written request of any number of citizens living outside of the limits of a municipal corporation, the corporation may extend, construct, lay down and maintain aqueduct and water pipes and electric light and power lines outside the corporate limits and for such purpose may make use of such of the public streets, roads, alleys and public grounds as may be necessary therefor, provided, however, aqueduct and water pipes shall not extend more than five miles beyond the corporate limits.’

QUESTION: May electric light and power lines be constructed by a village outside of the corporation limits without regard to the five mile limitation?”

Section 3966, General Code, prior to its amendment in 110 O. L., read as follows:

“On the written request of any number of citizens living outside of the limits of a municipal corporation, the corporation may extend, construct, lay down and maintain aqueduct and water pipes and electric light and power lines to any distance outside the corporate limits not to exceed five miles, and for such purpose may make use of such of the public streets, roads, alleys and public grounds as may be necessary therefor.”

You will observe that the section then expressly limited the extension of electric light and power lines to a distance outside the corporate limits not to exceed five miles. In the amendment in 110 O. L. this limitation was omitted as to electric light and power lines and quite obviously it was the purpose of the Legislature to permit the extension of electric light and power lines beyond the five mile limitation, but to retain that limitation in so far as aqueducts and water pipes are concerned.

This section grants the authority to any municipal corporation and I therefore have no difficulty in reaching the conclusion that a village may construct electric light and power lines outside the corporate limits without regard to the five mile limitation.

In this connection, however, it is well to bear in mind the provisions of Section 6 of Article XVIII of the Constitution of Ohio. That section is as follows:

“Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.”

The authority therein conferred to sell the surplus product of the public utility is limited to an amount not exceeding fifty per centum of the total product supplied by such utility within the municipality. A village would, therefore, be limited in the sale of electric light and power outside of its borders to an amount not in excess of fifty per centum of the amount supplied within its borders. Subject to this limitation, it is my opinion that the constitutional section just quoted would give authority to the village to extend its electric light and power lines outside of the municipality and irrespective of the five mile limitation. In other words, I am of the opinion that Section 3966 of the Code, even though it contained an express limitation, would not be effective as against constitutional authority to sell surplus product. At the same time, Section 3966 is essential to the right of the village to make use of the public streets, roads, alleys and public grounds outside of the village, and, in so far as this right is concerned, the statutory limitation would be effective.

As I have before stated, however, the present language of Section 3966 of the General Code is such that there is no limitation upon the extension of electric light and power lines by a village outside of the corporate limits.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1685.

COUNTY TREASURER—BURGLARY INSURANCE—OPINIONS NO. 527
AND 1221 FOLLOWED.

SYLLABUS:

Opinions Nos. 527 and 1221 followed.

COLUMBUS, OHIO, February 8, 1928.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

“The opinion of the Attorney General is requested on the question as to whether county treasurers are permitted to insure tax money collected by them, and for which they are responsible, against holdup outside the premises while transporting the money to the bank for deposit; and also whether public funds could be used, under the present existing law, to pay the premium for such a policy.”

In Opinion No. 527 of this department, rendered on May 24, 1927, it was held that county commissioners cannot legally pay for burglary or holdup insurance for the county treasurer or any other county officer. That opinion is a specific answer to your second inquiry.

Subsequently, however, in Opinion No. 1221, dated October 31, 1927, this department again considered the question in the light of the decision of the Court of Appeals of Clark County holding to the contrary. A complete discussion of that decision, coupled with the general authorities, is therein contained and I deem it unnecessary again to restate the reasoning and conclusions reached. It is sufficient