

In the case that you present the application for registration was not filed in the office of the county auditor of the county in which such dog was kept or harbored and Section 5652, supra, was not complied with.

In view of the foregoing and answering your question specifically, it is my opinion that Section 5652, General Code, requires an application for registration of any dog, subject to the provisions thereof, to be filed in the office of the county auditor of the county in which such dog is kept or harbored. Any registration tag otherwise issued would not constitute a valid registration tag.

In connection with the above it should be pointed out that it is not meant to hold herein, that a dog should in all events be registered in the county where it happens to be at the time of registration. The test is, in what county of the state is the dog actually and in good faith "kept and harbored". And what is the proper county is a question of fact in each particular case.

I am enclosing herewith a copy of Opinion No. 1265 referred to.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1681.

APPROVAL, BONDS OF FRANKLIN COUNTY—\$10,000.00.

COLUMBUS, OHIO, February 6, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1682.

APPROVAL, BONDS OF IRONTON CITY SCHOOL DISTRICT, LAWRENCE COUNTY—\$10,000.00.

COLUMBUS, OHIO, February 6, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1683.

PROBATE JUDGE—PREMIUM FOR BOND PAID BY COUNTY—MAY NOT RECOVER PREMIUM PAID PERSONALLY.

**SYLLABUS:**

1. *By the terms of Section 9573-1, General Code, a county is authorized and required to pay the premium of any duly licensed surety company on the bond of the Probate Judge of such county.*

2. *Where prior to the enactment of Section 9573-1, General Code, a public officer has paid for a surety bond from his own funds he may not recover from the subdivision of which such person is an officer, that part of the premium paid by him on his official bond accruing subsequent to the effective date of Section 9573, General Code. He may, however, have the old bond canceled and give a new bond to be paid for from county funds.*

COLUMBUS, OHIO, February 7, 1928.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated February 2, 1928, which reads:

“The probate judge of our county has given a surety company bond under the provisions of Section 1581 of the General Code.

QUERY: Does Section 9573-1, G. C., authorize and empower the county to pay the premium on such bond? Should your answer to this question be in the affirmative then kindly advise this office whether or not the county is authorized to refund to the Probate Judge that part of such premium which has heretofore been paid by him, which part accrued subsequent to the taking effect of said Section 9573-1.”

On April 13, 1927 (112 v. 135), the Legislature passed an act entitled:

“An Act—To supplement Section 9573 of the General Code by the enactment of supplemental Section 9573-1, relative to premiums on bonds of public officers, deputies and employes.”

This act, now Section 9573-1, General Code, provides:

“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.”

Section 1581, General Code, in so far as pertinent, reads:

“Before entering upon the discharge of his duties, the probate judge shall give a bond to the state in a sum not less than five thousand dollars, with sufficient surety, approved by the board of county commissioners or by the auditor and recorder, in the absence from the county of two of the commissioners, and conditioned that he will faithfully pay over all monies received by him in his official capacity, enter and record the orders, judgments and proceedings of the court, and faithfully and impartially perform all the duties of his office. \* \* \* ”

I deem it unnecessary to cite authority to the effect that a probate judge is a “public officer”; and since by the plain terms of Section 9573-1, *supra*, the county is required to pay the premium of any duly licensed surety company on the bond of any public officer, the bond of the probate judge should be paid from county funds.

In view of the foregoing and answering your first question specifically, it is my opinion that by the terms of Section 9573-1, General Code, Athens County is

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*