

4428.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$7,000.00 (LIMITED).

COLUMBUS, OHIO, July 17, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4429.

APPROVAL, BONDS OF PERRY TOWNSHIP RURAL SCHOOL
DISTRICT, STARK COUNTY, OHIO, \$8,600.00 (LIMITED).

COLUMBUS, OHIO, July 17, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4430.

POLICE—COMMISSIONS TO SPECIAL POLICE NEED NOT BE
RECORDED WITH SECRETARY OF STATE WHEN.

SYLLABUS:

1. *Commissions issued to special policemen pursuant to the present provisions of Section 9150, General Code, and recorded with the clerk of courts of any county or counties in the state, as required by Section 9151, General Code, need not be recorded in the office of the Secretary of State after the effective date of Amended Senate Bill No. 153.*

2. *Commissions issued to a special policeman pursuant to the provisions of Section 9150, General Code, and recorded with the Secretary of State under the provisions of Amended Senate Bill No. 153 (effective September 4, 1935) entitle such policemen to act in such capacity on the premises of his employer or elsewhere when directly in the discharge of his duties.*

COLUMBUS, OHIO, July 17, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication over the signature of your Corporation Adviser, which reads as follows:

“Amended Senate Bill No. 153, enacted by the General Assembly, requires commissions issued by the governor, to policemen, with the oath to be recorded in the office of the Secretary of State.

This office has received many requests regarding the construction of the above bill.

Your opinion is respectfully requested as to the following:

First, whether the commissions issued to policemen prior to the effective date of Amended Senate Bill No. 153, will be required to be recorded in the office of the Secretary of State, or whether the bill only applies to commissions issued after September 4, 1935, the effective date of the above senate bill.

Second, will a policeman commissioned by the governor, pursuant to Section 8150, G. C., and whose commission is recorded in accordance with Amended Senate Bill 153, be privileged to act in all counties in Ohio?”

Section 9150, General Code, reads as follows:

“Upon the application of any bank or building and loan association, association of banks or building and loan associations, or of a company owning or using a railroad, street railroad, suburban or interurban railroad in this state, the governor may appoint and commission such persons as the bank, building and loan association, association of banks or building and loan associations, or railroad company designates or as many thereof as he may deem proper, to act as policemen for and on the premises of such bank, building and loan association, association of banks or building and loan associations, or railroad or elsewhere, when directly in the discharge of their duties. Policemen so appointed shall be citizens of this state and men of good character. They shall hold office for three years, unless for good cause shown, their commission is revoked by the governor, or by the bank, building and loan association, association of banks or building and loan associations, or railroad company, as provided by law. Not more than one such policemen shall be appointed for each five miles of a street, suburban or interurban railroad. A fee of five dollars for each commission, shall be paid at the time the application is made, and this amount shall be returned if for any reason a commission is not issued.”

Sections 9151 and 9155, General Code, at the present time read as follows:

“SEC. 9151. Before entering upon the duties of his office,

each policeman so appointed shall take and subscribe an oath of office, which shall be endorsed on his commission. A certified copy of such commission shall be issued by the governor upon the payment of a fee of fifty cents for each copy so furnished, and, with the oath, shall be recorded in the office of the clerk of the common pleas court in the county in which such bank, building and loan association, or association of banks or building and loan associations, is located and in each county through or into which the railroad runs for which such policeman is appointed, and intended to act. Policemen so appointed, and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of policemen of cities in the several counties in which they are authorized to act while discharging the duties for which they are appointed."

"Sec. 9155. When a company no longer requires the services of a policeman so appointed, it may file a notice to that effect, under its corporate seal, attested by its secretary, in the several offices where the commission of such policeman is recorded, which shall be noted by the clerk upon the margin of the record where the commission is recorded, and thereupon the power of such policeman shall cease."

Amended Senate Bill No. 153 referred to in your letter filed in the office of the Secretary of State June 5, 1935, and effective September 4, 1935, amended Sections 9151 and 9155, General Code, *supra*. As amended, these sections will read as follows:

"Sec. 9151. Before entering upon the duties of his office, each policeman so appointed shall take and subscribe an oath of office, which shall be endorsed on his commission, and said commission with the oath, shall be recorded in the office of the secretary of state who shall charge and collect a fee of one dollar therefor. Policemen so appointed, and commissioned severally shall possess and exercise the powers, and be subject to the liabilities of municipal policemen while discharging the duties for which they are appointed."

"Sec. 9155. When a company no longer requires the services of a policeman so appointed, it may file in the office of the secretary of state a notice to that effect signed by its duly authorized officer, which notice shall be noted by the secretary of state upon the margin of the record where the commission is recorded, and thereupon the power of such policeman shall cease. No charge shall be made by the secretary of state for the filing of such notice."

Your first question depends, in effect, upon whether Amended Senate

Bill No. 153 is to be given a retroactive construction or a purely prospective construction. The question as to whether a statute should be construed on the one hand as retrospective or retroactive, or on the other hand as prospective, has given us one of the most fundamental and universal rules of statutory construction. As stated in 59 Corpus Juris, 1159, "it is a well settled and fundamental rule of statutory construction, variously stated, that all statutes are to be construed as having only a prospective operation and not as operating retrospectively."

The courts of this country have consistently frowned upon giving a statute a retroactive effect in the absence of language in the statute clearly indicating such an intent. It is also well established that in so far as a new statute merely provides for changes in the mode of procedure, it will not invalidate steps taken before it goes into effect, but will apply to all proceedings taken thereafter. *Board of Education vs. Ach*, 113 O. S. 482; *Clugston vs. Rogers*, 203 Mich., 339.

It is of course fundamental that in determining whether particular rights, duties and remedies are controlled by a statute in its original or amended form or by a statute which has been repealed, the first inquiry to make is as to the intention of the lawmaking power. It has been often stated that the pole star of all statutory construction is to arrive at the legislative intent. However, in Ohio we are aided in arriving at a correct determination of your question by a General Saving Law. Section 26, General Code, reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

Relative to this section the following is to be found in 37 Ohio Jurisprudence, Sections 181, 182 and 183:

"Sec. 181. The General Saving Law has been declared to be a rule of interpretation. However, it has the advantage of not merely being a rule of certainty in construction, but also of exciting the attention of the legislature and begetting an inquiry as to the propriety of applying a given amendment or repeal in pending matters. It operates to make applicable in the designated situations the law as it existed before the amendment or repeal. However, it has been held to have no application where there was involved neither

a pending action nor a right or cause of action, prosecution, or proceeding existing at the time of the amendment or repeal. It does not prevent the new statute from being applicable to causes of action which arise after the effective date of the statute.”

“Sec. 182. The General Saving Law announces the general policy of the legislature as to the operation of its statutes. It has been declared to be declaratory of the general policy of the law that statutes are to have a prospective operation unless the purpose to have them act retrospectively is made distinctly manifest.”

“Sec. 183. The General Saving Law is not applicable where the amending or repealing law clearly manifests a different intention—that is, where there is express provision in the repealing or amending law. However, where there are, in the opinion of the legislature, sufficient reasons for a departure from the policy of the General Saving Law, it is declared that the departure shall be expressed in the amendatory or repealing statute. The word ‘expressly,’ as used in the statute, carries its usual and customary meaning—to wit, clear, definite, plain, and direct. If the intention of the legislature is to give to such repealing or amending act a retroactive effect, such intention must not be left to inference or construction. No use of the present tense nor other generality of language can be accepted by the courts as a substitute for such express indication of legislative intent. Moreover, the amended or repealed act should be applied to past transactions no further than the language employed requires.”

Had the Legislature intended that commissions issued prior to the effective date of Amended Senate Bill No. 153 were to be likewise recorded in the office of the Secretary of State it would have been an easy matter to have used language appropriate to that intention. This, particularly because the courts of this state have taken the position that the General Saving Law should receive a liberal construction to the end that its policies might not be subverted. It would therefore seem to follow that only such commissions as are issued after the effective date of Amended Senate Bill No. 153 should be recorded in the office of the Secretary of State.

Your second question relates to whether or not a policeman commissioned by the governor pursuant to Section 9150, General Code, and whose commission is recorded in the office of the Secretary of State by virtue of Amended Senate Bill No. 153, may act in such capacity in all the counties in this state. The amendment of Section 9151, *supra*, will eliminate certain language relative to the filing of the commission with the clerk of courts. The following pertinent language is eliminated from the section:

“* * the clerk of the common pleas court in the county in which such bank, building and loan association, or association of banks or building and loan associations, is located and in each county through or into which the railroad runs for which such policeman is appointed, and intended to act.* **”

The elimination of this language might indicate that the matter of county boundaries is no longer important. With reference to where such policeman may officially act, Section 9150, supra, which was not amended by Amended Senate Bill No. 153 reads in part, as follows:

“* * to act as policeman for and on the premises of such bank, building and loan association, association of banks or building and loan associations, or railroad or elsewhere, when directly in the discharge of their duties.** Not more than one such policeman shall be appointed for each five miles of a street, suburban or interurban railroad.* **”

Section 9150, General Code, as before stated, has not been repealed or amended, and the answer to your second question would seem to be found in the proper construction of that section.

It is true that with the amendment of Section 9151, General Code, it will no longer be necessary to file the commission in the various counties as required by that section prior to its amendment by Amended Senate Bill No. 153. However, the place where the commission may be exercised is still limited by the express language of Section 9150, General Code, and the passage of Amended Senate Bill No. 153 in nowise affects the locality where such special policemen may exercise their police powers. A special policeman for a railroad can, under the terms of his commission, act in every county where his particular railroad runs and he may likewise act in any other county when he is directly in the discharge of his duties as a special policeman. In other words, it could not be contended that a special policeman whose commission is recorded with the Secretary of State under the terms of Amended Senate Bill No. 153 may act in every county of the state regardless of where his concern or business is actually located and regardless of the question of whether or not he is directly in the discharge of his duties. However, by virtue of Amended Senate Bill No. 153 it will no longer be necessary for a special policeman to file his commission in any one county or counties.

Summarizing, and in specific answer to your inquiries, it is my opinion that:

1. Commissions issued to special policemen pursuant to the present provisions of Section 9150, General Code, and recorded with the clerk of courts of any county or counties in the state as required by Section 9151, General

Code, need not be recorded in the office of the Secretary of State after the effective date of Amended Senate Bill No. 153.

2. Commissions issued to a special policeman pursuant to the provisions of Section 9150, General Code, and recorded with the Secretary of State under the provisions of Amended Senate Bill No. 153 (effective September 4, 1935) entitle such policeman to act in such capacity on the premises of his employer or elsewhere when directly in the discharge of his duties.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4431.

BOARD OF EDUCATION—COMPENSATION OF MEMBERS
THEREOF NOT “SALARY”—EXPENSE ALLOWANCE IN
SECTION 4734, G. C., NOT PERMITTED AFTER JUNE 12,
1935.

SYLLABUS:

1. *Neither the expense allowance for members of a county board of education as fixed by former Section 4734, General Code, nor the compensation provided for members of rural boards of education under former Section 4715, General Code, is “salary” as the term “salary” is used in Section 20, Article II of the Constitution of Ohio, forbidding a change in salary of a public officer during his term of office.*

2. *Incumbents of the office of member of a county board of education are not entitled to the three dollars per day allowance for expenses for attendance upon meetings of the board as provided for by former Section 4734, General Code, after June 12, 1935, the effective date of the amendment of the said statute, by the terms of which amendment the said three dollars per day expense allowance provided for by the former statute was not allowed; nor are present members of rural boards of education entitled to the per diem compensation for attendance upon meetings of the board provided for by former Section 4715, General Code, after June 12, 1935, the effective date of the repeal of the said statute.*

COLUMBUS, OHIO, July 18, 1935.

HON. KARL M. WEANER, JR., *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows: