

of Columbus, Ohio, in and by which there are leased and demised to the State of Ohio, acting through you as Director of the Department of Public Works, certain premises for the use of the Unemployment Compensation Commission.

By this lease, which is one for a term of one year and two months from the first day of November, 1937, to the 31st day of December, 1938, and which provides for an annual rental of \$25,000.00 payable in monthly installments of \$2,083.33 each, there are leased and demised to the State for the use of the Unemployment Compensation Commission certain premises situated in the city of Columbus, Ohio, which are described as follows:

Being the entire building known as Thirty-Three North Third Street, the same being located on the northwest corner of Third Street and Lynn Alley, and containing six (6) floors and basement.

This lease has been properly executed by Thirty-Three North Third, Inc., the lessor, by the hands of its Vice President and Secretary, pursuant to a resolution of the Board of Directors of said company duly adopted under date of October 18, 1937. I likewise find that this lease and the provisions thereof are in proper form.

The lease is accompanied by contract encumbrance record No. 12 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for the months of November and December, 1937. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1427.

PERSON ACCUSED OF CRIME—BOUND OVER TO GRAND JURY—INSANITY—COMMON PLEAS COURT MAY NOT COMMIT ACCUSED TO LIMA STATE HOSPITAL UNTIL INDICTED.

*SYLLABUS:*

*When a person is accused of a crime and bound over to the grand jury, and it comes to the attention of the Court of Common Pleas that*

*such person is not then sane, in accordance with the provisions of Section 13441-1, General Code, the matter is not pending before the Court of Common Pleas and that Court may not in accordance with the provisions of law commit the accused to the Lima State Hospital before indictment.*

COLUMBUS, OHIO, November 4, 1937.

HON. GLENN W. MARRIOTT, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR: Your communication of recent date requesting an opinion, reads as follows:

“Can the Court of Common Pleas order a defendant, who is not under indictment but who has been bound over to the Grand Jury, to be committed to the Lima State Hospital, provided that application is made by the prosecuting attorney for an examination and said examination by three reputable physicians pronounces him insane?”

The State Department of Welfare, as well as the Superintendent of the Lima State Hospital, is of the opinion that said defendant can not be committed to the institution until the aforesaid examination is made *after* said defendant has been indicted by the grand jury.”

Your request involves an interpretation of Section 13441-1, General Code, which reads as follows:

“If the attorney for a person accused of crime *pending in the court of common pleas*, whether before or after trial suggests to the court that such person is not then sane, and a certificate of a reputable physician to that effect is presented to the court, or if the grand jury represents to the court that any such person is not then sane, or if it otherwise comes to the notice of the court that such person is not then sane, the court shall proceed to examine into the question of the sanity or insanity of said person, or in its discretion may impanel a jury for such purpose. If three-fourths of such jury agree upon a verdict, such verdict may be returned as the verdict of the jury. If there be a jury trial and three-fourths of the jury do not agree, another jury may be impaneled to try such question.” (Italics the writer’s.)

Let me refer to the case of *Evans vs. State of Ohio*, 123 O. S., p. 132, the syllabus of which reads as follows:

“Under Section 13441-1, General Code, if during the trial it comes to the notice of the court that a person accused of crime whose trial upon such charge is pending in the court of common pleas is not then sane, the court is required either forthwith to proceed to examine into the question of the sanity or insanity of such defendant, or to impanel a jury for such purpose.”

In the opinion, Judge Allen comments as follows:

“\* \* \* It is suggested that Section 13441-1, General Code, requires the representation of insanity, in order to compel the attention of the court, to be made before or after, and not during, the trial. This seems a strained construction of the statute. Analyzing the section, we find, first, that the attorney for a person accused of crime ‘pending in the court of common pleas’ may suggest to the court that such person is not then sane. The phrase ‘pending in the court of common pleas’ certainly contemplates that the representation of insanity may be made at the time that the trial is pending in the court of common pleas. It indicates that the Legislature desired to take care of the situation where a defendant is actually insane at the time of the trial. The words relied upon for the argument, that the court may disregard a representation of insanity made during the trial, are not ‘either before or after trial,’ but ‘whether before or after trial.’ The use of the word ‘whether’ emphasizes the intention of the Legislature to safeguard, rather than to curtail, the rights of an insane defendant. These words mean that, regardless of the time of suggestion, with reference to whether it is before or after the trial, an attorney may, by presenting the certificate of a reputable physician, compel an examination into the mental condition of the defendant. Also the fact that the phrase ‘before or after the trial’ qualifies this initial phrase only is shown by the fact that a second provision is enacted, namely, that the grand jury may represent to the court that any such accused is not then sane. Any such representation by the grand jury would of course come before, and not after, the trial. Then follows the significant phrase, ‘or if it otherwise comes to the notice of the court that such person is not then sane.’ No limitation of time whatever is attached to this phrase, and in the opinion of the majority of the court no such limitation is intended, except that the case be ‘pending in the court of common pleas.’ \* \* \*”

However, in the last cited case, the defendant had been indicted by the grand jury and the question of whether he was in court on a charge then pending in the Court of Common Pleas, did not arise. It is, therefore, necessary for the determination of your question to consider when the case of a person accused of crime is pending in the Court of Common Pleas.

Section 13433-10, General Code, reads in part as follows:

“When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him from custody. \* \* \*”

Your request embraces circumstances of an accused person who is not under an indictment but who has been bound over to the grand jury.

Section 13435-13, General Code, reads as follows:

“When a transcript or recognizance is received by the clerk of the court of common pleas, he shall enter the same upon the appearance docket of the courts, with the date of the filing of such transcript or recognizance, the date and amount of the recognizance, the names of the sureties and the costs. *Such recognizance shall be considered thereupon as of record in such court, and proceeded on by process issuing therefrom, in a like manner as if it had been entered into before such court.* When a court having cognizance of an offense takes a recognizance, it shall be a sufficient record thereof to enter upon the journal of such court, the title of the case, the crime charged, the names of the sureties, the amount of the recognizance, and the time therein required for the appearance of the accused. In making the complete record, when required to be made, recognizances whether returned to or taken in such court, shall be recorded in full if required by the prosecuting attorney or the accused.” (Italics the writer’s.)

It is necessary for us to consider exactly when a person is accused of crime and when the matter is pending in the Court of Com-

mon Pleas. It is apparent that there are but two ways for a person to be accused of crime in the Court of Common Pleas, namely, by information or by indictment.

Section 13433-10, General Code, provides only for the person accused to be held for his appearance at a proper time and before the proper court and otherwise he shall be discharged from custody.

In the matter under consideration, the accused has been held for his appearance before the proper court, namely, the Court of Common Pleas, and in that court he does not have the status of one accused of crime in the absence of information until action of the grand jury results in indictment.

Section 13436-21, General Code, reads in part as follows:

“Indictments found by a grand jury shall be presented by the foreman to the court and filed with the clerk thereof, who shall endorse thereon the date of such filing and enter each case upon the appearance docket and the trial docket of the term when the persons indicted have been arrested  
\* \* \*”

It is apparent, therefore, that when the clerk of courts under the provisions of Section 13436-21, receives an indictment from the foreman of the grand jury and enters it as a part of a case upon the appearance docket and the trial docket, that matter is then pending in the Court of Common Pleas.

In *Evans vs. State of Ohio*, *supra*, the court gave a clear meaning of the necessary procedure and interpreted the Legislature's intention to be that of giving the court full authority upon the proper suggestion when the matter was pending in the Court of Common Pleas. Judge Allen in the opinion further commented as follows:

“\* \* \* Certainly orderly procedure would hardly be enhanced by conducting a trial of a person actually insane. If such a trial has taken place without knowledge of the insanity, the inquiry may, under this section, be instituted after the trial, but, if insanity does exist, certainly the inquiry should if possible take place before completing the costly and intricate proceedings of a criminal trial such as this.  
\* \* \*”

In the above excerpt from Judge Allen's opinion, it is noted that emphasis is put upon the point of time of trial and that the opinion indicates that the matter is pending in the Court of Common Pleas before trial and presumably after indictment. In Section 13441-1,

General Code, emphasis is placed upon the following wording: "whether before or after trial" and of course there can be no trial without previous indictment.

It is, therefore, my opinion that under the circumstances set forth in your request, the defendant who is not under indictment but who has been bound over to the grand jury, is not until after indictment a person accused of crime pending in the Court of Common Pleas within the meaning of Section 13441-1, General Code, and may not be committed to the Lima State Hospital until after indictment.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1428.

APPROVAL—BONDS OF WAYNE TOWNSHIP RURAL  
SCHOOL DISTRICT, BUTLER COUNTY, OHIO, \$32,000.00.

COLUMBUS, OHIO, November 4, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Wayne Township Rural School Dist.,  
Butler County, Ohio, \$32,000.00.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise all of an issue of school improvement bonds dated October 1, 1937, bearing interest at the rate of  $3\frac{3}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*