

bond issues totalling the sum of \$57,000.00. Each of the transcripts shows that the bonds covered therein were advertised for sale one time on the 20th day of January, 1928, in two newspapers published in the City of Dayton. The sale was had on February 8, 1928.

Section 2293-28, General Code, which was enacted by the 87th General Assembly as a part of The Uniform Bond Act and became effective on August 10, 1927, provides that bonds having a maturity of more than two years shall be sold to the highest bidder, after being advertised once a week for three consecutive weeks and on the same day of the week, the first advertisement being published at least twenty-one full days before the date of sale, in a newspaper having general circulation in the county where the bonds are issued.

As above stated, the bonds covered by the transcripts above referred to were not advertised for sale until January, 1928, which was after the effective date of The Uniform Bond Act and Section 2293-28, General Code, above referred to, and I am of the opinion that there having been no compliance with the provisions of that section the sale of said bonds was void. There are also other defects appearing in the transcripts, but in view of the above I am compelled to advise you not to purchase the above issues of bonds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1902.

JUDGE OF COMMON PLEAS COURT—WHEN HE MAY RECEIVE PER
DIEM COMPENSATION.

SYLLABUS:

A judge of the Court of Common Pleas may be paid a per diem compensation in addition to his regular salary, only when, under the provisions of Section 1469, General Code, he has been assigned by the Chief Justice, to aid in disposing of business in some other county than that in which he resides.

COLUMBUS, OHIO, March 27, 1928.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion, as follows:

“The question has arisen in this county as to whether or not a common pleas judge, who exchanges benches for a few days, same being by agreement of judges, but not assigned so to do by the Chief Justice of the Supreme Court, is entitled to per diem the same as if he had been assigned by the Chief Justice to hold court in another jurisdiction. I would appreciate your opinion on this matter.”

The only provision of law which authorizes the payment of a per diem compensation to common pleas judges, in addition to their regular salary, is that contained in Section 2253, General Code (112 O. L. 345), which reads as follows:

"In addition to the annual salary and expenses provided for in Sections 1529, 2251, 2252, 2252-1, each judge of the court of common pleas while holding court in a county in which he does not reside, by assignment of the chief justice under Section 1687 of the General Code, or without any assignment, shall receive his actual and necessary expenses incurred while so holding court in a county in which he does not reside, to be paid from the treasury of such county upon the warrant of the county auditor, issued to such judge; *each judge of the court of common pleas who is assigned by the chief justice by virtue of Section 1469 of the General Code, to aid in disposing of business of some county other than that in which he resides, shall receive twenty dollars per day for each day of such assignment* and his actual and necessary expenses incurred in holding court under such assignment, to be paid from the treasury of the county to which he is so assigned upon the warrant of the auditor of such county." (Italics the writer's.)

Sections 1469 and 1687, referred to in Section 2253, General Code, provide as follows:

Section 1469. "The chief justice shall preside at all terms and sessions of the supreme court. In case of the absence or disability of the chief justice, the elder of the two judges having the shortest term to serve, and not holding office by appointment to fill a vacancy, shall preside and perform the duties of the chief justice. *When an unusual number of cases have accumulated in the court of common pleas of any county, the chief justice may, without request, assign a judge or judges from another county or counties in the state to aid in the disposition of such business; when the number of cases pending in the court of any common pleas of any county at any time exceeds seventy-five per cent of the number of cases filed during the preceeding year, the chief justice, without request, shall assign a judge or judges from another county or counties to aid in the disposition of such business,* and the chief justice shall, at such times as he may desire, and not less than once each year, ascertain the number of cases pending in the court of common pleas in each county. The expenses incurred by the chief justice in performing all his administrative duties shall be paid out of the state treasury upon the warrant of the state auditor." (Italics the writer's.)

Section 1687. "When a judge of the common pleas court or of the superior court of Cincinnati is interested in a cause or matter pending before the court in a county of his district, or is related to, or has a bias or prejudice, either for or against, a party to such matter or cause, or to his counsel or is otherwise disqualified to sit in such cause or matter, on the filing of an affidavit of any party to such cause or matter, or of the counsel of any party, setting forth the fact of such interest, bias, prejudice or disqualification, the clerk of the court shall enter the fact of the filing of such affidavit on the trial docket in such cause and forthwith notify the chief justice of the supreme court, who shall designate and assign some other judge to take his place. Thereupon the judge so assigned shall proceed and try such matter or cause. The affidavit herein referred to shall be filed not less than three days prior to the time set for the hearing in such matter or cause."

It is a well recognized rule of law that public officers can be paid only such compensation as is provided by law. As the only provision of law, which authorizes the payment of a per diem compensation to common pleas judges in addition to their regular salaries, is that contained in Section 2253, *supra*, which provides that such payment may be made when the judge is assigned by the Chief Justice by *virtue of Section 1469 of the General Code, to aid in disposing of business of some county other than that in which he resides*, it seems clear that such per diem compensation can not be paid under any other circumstances.

I am therefore of the opinion that a common pleas judge, who merely by agreement with the judge of some other county exchanges benches with him, is not entitled to any compensation in addition to his regular salary.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1903.

POOR—AUTHORITY OF TOWNSHIP TRUSTEES TO CARE FOR INDIGENTS—MEDICAL AND SURGICAL EXPENSES—CERTIFICATE OF FISCAL OFFICER.

SYLLABUS:

1. *Where indigent persons have a legal settlement and residence in a township of this state, the trustees of such township are authorized to contract for necessary operations on such persons and to pay for the same out of township funds; and within the limitations prescribed in Section 3480, General Code, they are required to do so.*

2. *The trustees of a township can not make a contract, or make an order involving an expenditure of money unless the fiscal officer of the township certifies that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances.*

3. *Where medical or surgical services are required by an indigent person, who is a township charge, in a township and no physician or surgeon is regularly employed by such township, by contract, to furnish medical attendance to the poor, upon compliance with the requirements of Section 3480, General Code, a legal obligation of the township is created to pay to the physician or surgeon rendering the necessary services, such compensation as the township trustees determine to be just and reasonable. Such obligation may be created without the filing of a fiscal officer's certificate, as provided by Section 5625-33, General Code, to the effect that the necessary funds to discharge such obligation are in the township treasury.*

COLUMBUS, OHIO, March 27, 1928.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“The trustees of Jackson Township, our county, in which is included the village of Byesville, report an indigent boy about sixteen years of age re-