sheriff by law is required to do, and pay the amount so collected to the sheriff of such county."

Section 1544 provides:

"On the application of the sheriff, in a criminal case, if a court is satisfied that the administration of justice requires an additional bailiff to execute process, it may appoint such additional bailiff as in its discretion may be necessary. His powers and duties shall cease when such case is determined."

Your commuication relates to a "special" bailiff. It is assumed that you have reference to a temporary bailiff referred to under the section last quoted.

Section 1545 provides for the bond of the bailiff.

From the foregoing, it is evident that the bailiff is a deputy sheriff and performs similar duties to that of the deputy sheriff, which is in effect the same duties as the sheriff is required to perform. It follows that if the sheriff has sufficient time to perform the duties of a bailiff in connection with his other duties, there would be no necessity for the appointment of such bailiff. In other words, for the sheriff to draw the compensation as a special bailiff would, in effect, be allowing him double compensation for the same services which he is required by law to perform.

Section 2994 provides for the salary of the sheriff, and section 2996 provides that such salary shall be instead of "all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind."

It is therefore the opinion of this department that the sheriff cannot legally draw the compensation provided for a court bailiff.

Respectfully,
C. C. CRABBE,
Attorney General.

1553.

OFFICERS NOMINATED BY MAYOR AND LATER REJECTED BY COUNCIL AFTER SERVING AS MEMBERS OF BOARD HAVE NO DEFINITE TERM OF OFFICE.

COLUMBUS, OHIO, June 2, 1924.

SYLLABUS:

Officers nominated by the mayor, whose names have never been submitted to the council for confirmation which are subsequently voted upon by the council and rejected, have no definite term of office, and it is not necessary to remove them by quo warranto before the mayor may nominate other officers.

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

Dear Sir:

I am in receipt of your recent communication as follows:

"In a certain city we find that four of five members of the Board of Health were appointed by the Mayor and have not been confirmed by the City Council. Failure to submit these names for confirmation was due to ignorance of the provisions of section 4404 G. C., which require such confirmation. These members have served on the Board of Health for periods of four, three, two and one year, respectively, without any question having been raised as to their legal status, and with such recognition of such members as may be assumed from the relations which exist between a City Council and a Board of Health. Very recently these appointments were taken up by Council without action on the part of the Mayor, and the nominees were rejected.

The question has been raised as to the status of such members following the recent action of the Council, and also the legal status while serving as members of the Board of Health.

I shall, therefore, be glad to have your opinion on the following questions:

1. Are the terms of office of such members terminated if the question of confirmation is subsequeutly submitted and the nominees are rejected?

2. Considering the time that has expired since the appointments were originally made, is it possible to remove such members except by a proceeding in quo warranto?"

Section 4404, General Code, in part provides:

"The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. *** "

By the above section members of a city health board are nominated by the mayor and confirmed by council.

"Where an appointment is made as the result of a nomination by one authority and confirmation by another, the appointment is not complete until the action of all bodies concerned has been had." (29 Cyc, 1392)

Applying the above rule to the facts in this case, there is no legal appointment of members of the health board. The fact that no question was raised as to their status as members and that the council had impliedly confirmed their appointment by recognizing their acts, would not amount to a confirmation.

"A confirmation necessarily supposes a knowledge of the thing ratified, the term implying a deliberate act intended to renew and ratify a transaction known to be avoidable." (12 C. J., 425)

In the case of Adair vs. Brimmer, 74 N. Y., 539, it was held:

"Confirmation and ratification imply to legal minds knowledge of a defect in the act to be confirmed, and of the right to reject or ratify it."

If there is no legal appointment, the person acting as a *de facto* officer has no term and therefore there could be no termination of such term by council rejecting such appointment.

In the case of State ex rel vs. Johnson, 8 O. C. C. (n. s.) 535, a case in which the senate had not confirmed an appointment by the Governor, the court says:

"It became the duty of the then governor at once to make a new appointment. Until that was done Slater was a *de facto,* but not a *de jure* official."

In the case of State ex rel vs. Craig, 69 O. S., 236, it was said by the court:

"When there is some color of title, resort must first be had to *quo warranto,* but where there is no such color, but a mere nullity, a legal appointment may be made to fill the office, and then if the party in the wrong still persists in holding onto the office, he may be ousted by proceedings for that purpose."

In the above case the council appointed certain of its members as members of the health board. As this was contrary to statute, the court held such pretended appointment a nullity. In the case under consideration the action was not a nullity but was avoidable.

While it is not necessary to resort to *quo warranto* to oust such *de facto* members before the mayor may nominate others, if the incumbents refuse to relinquish their office, *quo warranto* would be the only means of removing them.

Respectfully,
C. C. CRABBE,
Attorney General.

1554.

BRIDGES AND VIADUCTS ARE NOT PART OF STREET OR HIGHWAY WITHIN THE MEANING OF SECTION 6309-2 G. C.—MOTOR VEHICLE LICENSE TAX—HOW MUNICIPALITY SHOULD EXPEND SAME.

COLUMBUS, OHIO, June 2, 1924.

SYLLABUS;

1. *Bridges and viaducts are not a part of a street, road or highway, within the meaning of sub-division 2 of Section 6309-2 of the General Code, providing that the portion of the motor vehicle license tax going to a municipal corporation shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose.*

2. *No part of the portion of the motor vehicle license tax going to a municipality may be expended in the maintenance and repair of such bridges and viaducts.*

Department of Auditor of State, Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—

Receipt is acknowledged of your recent communication, which reads:

"Section 6309-2, General Code, paragraph 2, provides that the fund created by the state automobile license tax in the municipal treasury shall be used for the maintenance and repair of streets wherein the existing founda-