of the Uniform Bond Act, effective August 10, 1927, provided that bonds sold by a municipal corporation shall be to the highest and best bidder after publication of notice of such sale for four consecutive weeks.

I am of the opinion that these proceedings were pending within the meaning of Section 26, General Code, prior to the repeal of Section 3924, the declaratory resolutions passed pursuant to Section 3814 having been passed prior to the effective date of such repeal, and consequently the award of these bonds pursuant to publication of notice of bond sale for three weeks was not a valid award. *Toledo* vs. *Marrow*, 8 O. C. C. (N. S.) 121; affirmed 75 O. S. 574.

In view of the foregoing, I advise you not to purchase these bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1277.

APPROVAL, ONE GAME REFUGE LEASE.

COLUMBUS, OHIO, December 9, 1929.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval lease No. 2066, wherein Edwin Shuey, Jr., grants to the state for game refuge purposes for the term of five years, 130.2.04 acres situate in the Township of Moorefield in Clark County.

Finding said lease in proper legal form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1278.

ELECTION—HELD UPON QUESTION OF BOND ISSUE WITHOUT STATUTORY PUBLICATION OF NOTICE—VALIDITY TO BE DETERMINED BY COURT.

SYLLABUS:

The question of the validity of an election authorizing the issuance of bonds when there has been a failure to strictly comply with the provisions of Section 2293-21, General Code, relative to the publication of notice of such election, is one for determination by a proper court upon consideration of all the facts in a specific case.

COLUMBUS, OHIO, December 10, 1929.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "At the general election held on November 5th last, there was submitted to the electors of this county the question of issuing bonds in the amount of $100,000.00 for the construction of a county hospital. The county

commissioners, acting under Section 3127 G. C. enacted in 112 O. L. 381, had passed the proper resolution; and under Section 2293-19 G. C. enacted in 112 O. L. 372 had passed the necessary resolutions, the county auditor had certified the amount of the tax rate necessary to pay off the bonds, and the commissioners had passed the resolution to proceed with the election, a copy of which was certified to the deputy state supervisors of elections with directions to prepare the ballots, make other necessary arrangements for the submission of the question to the voters of the county, and to give notice of said election in accordance with Section 2293-21 of the General Code. Unfortunately, notice of the election in the form of an advertisement authorized by the deputy state supervisors of elections was not published in a newspaper in the form contemplated in Section 2293-21.

However, a great deal of publicity was given to the election for about six weeks prior thereto, news articles concerning the proposition appeared each week in the Record Republican, a newspaper of general circulation in the county. A committee of citizens, who were in favor of the issuance of the bonds, gave it much publicity by sending out approximately 25,000 circulars, personal letters and sample ballots. The entire population of the county as shown by the last census was about 22,500, and it is about the same now. In addition to the foregoing publicity given, meetings were held throughout the county and City of Washington where the question submitted was fully explained to the voters and they were informed as to the date of the election and the purpose thereof. The total vote on the hospital bond issue was 5,203, of which 2,901 were for it and 2,302 against it, making the necessary 55% of those voting upon the proposition in favor of it. The only other county wide question submitted at this election was the proposed constitutional amendment and the total number of votes cast thereon was 4,308.

Kindly let us have your opinion just as soon as possible on this question: 'Taking into consideration all of the circumstances stated above, does the mere failure of the board of deputy state supervisors of elections to publish the notice specified in Section 2293-21 G. C. invalidate the election? Second, would bonds issued thereunder be valid?'

The decision of the circuit court in the case of *Fike* vs. *State*, 4 C. C. (N. S.) 81; 15 O. C. D. 554, and the authorities cited in the court's opinion lead me to the conclusion that the election is not invalidated thereby, but we would like to have your opinion thereon.

For your further information the following is a correct abstract of the votes cast in Fayette County, at the general elections since 1926, as they appear on file in the office of the Fayette County Board of Elections.

1926—6049
1927—5234
1928—8567
1929—5850."

I am advised that no notice was published purporting to comply with the provisions of Section 2293-21, General Code. This section provides as follows:

"The election shall be held at the regular places for voting in such subdivision and shall be conducted, canvassed and certified in the same manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in one or more newspapers of general circulation in the subdivision once a week for four consecutive weeks prior thereto, stating the amount of the proposed bond issue, the purpose for which such bonds are to be issued, the maximum number of years during

which such bonds shall run and the estimated average additional tax rate, outside of the fifteen mill limitation, as certified by the county auditor."

The second branch of the head-notes in the case of *Fike* vs. *The State of Ohio*, to which you refer, is as follows:

"Failure to publish for a full period of ten days the mayor's proclamation of a special election to be held under Sections 4364-20a, Revised Statutes, et seq. (commonly called the Beal Local Option Election Law), is not fatal to the validity of the election, where the election was otherwise regularly held, knowledge of its approach was general throughout the municipality, and a comparatively full vote was cast, and no attempt was made to deceive or mislead anyone, and it does not appear that any elector was either without knowledge thereof, kept from voting, or failed to vote on account of the failure to give ten days notice. Publication of notice for ten days, under such circumstances, is not jurisdictional, and failure to publish it for the full period is a mere irregularity which does not invalidate the election."

The case of *Cincinnati* vs. *Puchta*, 25 O. C. C. (N. S.), 458, affirmed 94 O. S., 431, is a similar case involving the provisions of Section 3946, General Code, as in force and effect prior to repeal by the 87th General Assembly. This section provided that thirty days notice of a municipal election upon the question of issuing bonds shall be given once a week for four consecutive weeks prior thereto. Publication was made for four consecutive weeks but not thirty days prior to the election. The Supreme Court held as disclosed in the Per Curiam opinion at p. 432 as follows:

"The chief purpose of this statute is evident, to-wit, four weekly publications. And these were made. We do not hold that in all cases such would be a sufficient compliance with the law, but in the absence of any allegation here that anybody was denied the right to vote, by reason of the statute not being literally complied with for the full thirty days, the regularity of the election proceedings is upheld."

There are numerous cases in Ohio of a similar nature in which the courts have held elections valid notwithstanding the fact that statutes relative to notice may not have been strictly complied with. In such cases, they have taken into consideration extraneous facts in determining whether or not there has been a substantial compliance with the statutory requirement as to such notices and have so held upon a determination that in a given case the facts warrant the conclusion that there has been a substantial compliance with such statutes.

In the case of *State* vs. *Kuhner and King*, 107 O. S., 406, without overruling the case of *Cincinnati* vs. *Puchta*, it was held as a principle of law that a statutory requirement that notice be published for two consecutive weeks means "during the continuance of or throughout the period of two weeks." Applying the rule of statutory construction laid down by the Supreme Court in the case of *State* vs. *Kuhner and King*, there is no question but that Section 2293-21 requires that a notice of the election shall be published "during the continuance of or throughout four consecutive weeks prior thereto." Under authority of this case, where there has been a publication of notice of election purporting to comply with the provisions of Section 2293-21, supra, this office has held that the validity of the election was a question for determination by a proper court. Opinions of Attorney General, 1927, Vol. IV, p. 2587. In this opinion, after discussing the Puchta case and other similar cases, my predecessor held as set forth at p. 2591:

"The net result of these cases is such as not to permit of answering your second question categorically. In my opinion the question is one for a determination by a proper court as to whether the electors had such general knowledge of the election that failure to publish for the statutory period did not result in a denial to anyone of his right to vote."

I concur in these views. The Attorney General cannot, in a given case, upon consideration of certain extraneous facts indicative of sufficient notice of the election, render an opinion that as a matter of law the election is valid. Before rendering such an opinion, he should hear and consider the testimony of all parties claiming to have had sufficient notice as well as of those claiming not to have had notice. Such a determination would be a usurpation of the province of the courts.

In view of the foregoing, I advise that in my opinion, the question of the validity of an election authorizing the issuance of bonds when there has been a failure to strictly comply with the provisions of Section 2293-21, General Code, relative to the publication of notice of such election, is one for determination by a proper court upon consideration of all the facts in a specific case.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1279.

APPROVAL, LEASE TO CERTAIN PREMISES IN CITY OF COLUMBUS FOR USE OF DEPARTMENT OF FINANCE.

COLUMBUS, OHIO, December 10, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a lease wherein The Northwestern Boulevard Company, an Ohio corporation, grants to the State of Ohio, for the use of the Department of Finance, certain premises situated in the City of Columbus and County of Franklin and more fully described therein, for a term of two years. The rental to be paid under said lease is $9,000.00 for the term, payable quarterly beginning December 15, 1929.

Said lease seems to have been executed in proper legal form with the exception that the same has not been dated.

You have submitted Encumbrance Estimate No. 6052, containing a certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay for the obligations under said contract for the first year which is believed to be sufficient under the circumstances.

In view of the foregoing, I hereby approve said lease as to form and suggest that before the same is finally accepted it be properly dated.

Said lease is being herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.