

On page seven of the supplement there is shown a grant by John A. McClain to The Ohio Fuel Supply Company. This conveys to the said grantee the right to lay its pipe line, etc., through the lands in question. You should determine to your own satisfaction to what extent, if any, this grant may interfere with the enjoyment of the premises. This instrument is recorded in Book No. 99, page 89 of the Records of Greene County, Ohio. It is probable that this is of little or no consequence.

Attention is further called to the fact that the description in the abstract discloses that said lands are situated in Survey No. 2265, whereas, the deed describes the said lands as being in Spillman Campbell's Survey No. 2065. In view of this inconsistency you should determine that the land in the deed is the same as the land described in the abstract and if the designation of said survey is erroneous the deed should be corrected in this respect.

It has also been noted that the recitals in the consideration clause in the deed refers to the consideration having been paid by "The Trustees of The Combined Normal and Industrial Department at Wilberforce University, Greene County, Ohio." This should read paid by: "The State of Ohio on behalf of the Trustees," etc. And further, the granting clause grants said premises to "The Trustees of The Combined Normal and Industrial Department," etc., whereas, it should grant said premises to "The State of Ohio for the use and benefit of the Trustees," etc.

It is suggested that before said deed is accepted for the conveyance of said premises it should be corrected in the manner as heretofore indicated.

Under the terms of the deed it will be the duty of the state to pay all taxes due and payable on and after December, 1923.

Enclosed herewith you will find the abstract, deed and encumbrance estimate.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

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324.

PROSECUTING ATTORNEY MAY LEGALLY EMPLOY SECRET SERVICE OFFICER AT AN ANNUAL SALARY—SECTION 3004, G. C., CONSTRUED.

*SYLLABUS:*

*A prosecuting attorney may legally employ a secret service officer at an annual salary, payable out of his allowance under section 3004 G. C., his employment being continuous throughout the year, when such employment is reasonably necessary and in the furtherance of justice.*

COLUMBUS, OHIO, May 9, 1923.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This department is in receipt of your recent communication as follows:

"The prosecuting attorney of one of the larger counties of this state desires to employ a secret service officer and pay him from his allowance under section 3004 G. C., giving him a stipulated annual salary, sufficient to justify him to devote his entire time to the service. The prosecutor

thinks this will be more economical to the county than to employ persons connected with detective agencies and pay them by the job from this fund, as he has always done. He wants to use the same man throughout the year at an annual salary, while at present he hires a man every time he wants a specific job done and pays him for that job when the service has been rendered.

*Question:* Can the prosecuting attorney legally employ a secret service officer at an annual salary payable out of his allowance under section 3004 of the General Code, his employment being continuous throughout the year?

"In this connection we are calling your attention to an opinion to be found in Opinions of the Attorney General for 1917, page 1589."

In answering your question I am assuming that a secret service officer has been appointed under section 2915-1 G. C. and that the question is whether the prosecuting attorney can appoint an additional secret service officer and pay him an annual salary out of the allowance under section 3004 G. C.

Section 2915-1, General Code of Ohio, provides:

"The prosecuting attorney may appoint a secret service officer whose duty it shall be to aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature. Such appointment shall be made for such term as the prosecuting attorney may deem advisable, and subject to termination at any time by such prosecuting attorney. The compensation of said officer shall be fixed by the judge of the court of common pleas of the county in which the appointment is made, or if there be more than one judge, by the judges of such court in such county in joint session, and shall not be less than one hundred and twenty-five dollars per month for the time actually occupied in such service nor more than one-half of the official salary of the prosecuting attorney for a year, payable monthly, out of the county fund, upon the warrant of the county auditor."

Section 3004 General Code provides:

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for. Upon the order of the prosecuting attorney the county auditor shall draw his warrant on the county treasurer payable to the prosecuting attorney or such other person as the order designates, for such amount as the order requires not exceeding the amount provided for herein, and to be paid out of the general fund of the county."

Section 2915-1 provides for the appointment of a secret service officer whose salary shall be fixed by the judge or judges of the common pleas court and paid out of the county funds on the warrant of the auditor, and section 3004 provides a fund which is placed at the disposal of the prosecuting attorney, to be used in the performance of his official duties and in the furtherance of justice.

The two matters are separate and distinct. Both may be used at the same time and neither need be used at any time if the conditions warrant such non-use.

It was held by a former Attorney General in Opinions of the Attorney General for 1916, Vol. 2, p. 1453:

“The allowance made to a prosecuting attorney under the provisions of section 3004 G. C. may be expended in the employment of a person or persons to procure evidence against violators of the law regulating the speed of motor vehicles, said evidence to be used before a grand jury or in the prosecution of said offenders if no secret service officer has been appointed by said prosecuting attorney under the provisions of section 2915-1, as amended in 103 O. L., 501. If such secret service officer has been appointed, said expenditure aforesaid may not be made unless the services of such persons are reasonably necessary in addition to the services of said secret service officer.”

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It was held by a former Attorney General in Reports of the Attorney General for 1914, Vol 1, p. 270:

“The question presents itself as to the meaning of ‘not otherwise provided for’. Does it mean not otherwise provided for in law, or not otherwise provided for in fact? Suppose the prosecuting attorney had not proceeded agreeably to section 2915-1 and had not appointed a secret service officer under that section. May it then be said that we have an application of ‘not otherwise provided for’ in section 3004? I should be inclined ordinarily to hold that the expression—‘not otherwise provided for’—was a legal expression and did not relate to a fact, but I am loath to come to a conclusion that would unnecessarily put the greater expense upon the county; and, too, I can conceive of a situation in which the prosecuting attorney might have his regular detective employed under section 2915-1 occupied and a situation would arise wherein it would be advisable in the furtherance of justice to employ a detective under section 3004 for special purposes.

“On the whole, I am not able to see any objection to the action of a prosecuting attorney who is prompted by considerations of economy to proceed under section 3004. Certain it is that the chief guiding official in transactions under either section is the prosecuting attorney. Certain it is, also, that either section gives him the right to employ a detective. It is apparent that under either section the total amount to be expended must not exceed one-half of the official salary, and it is fair to assume that the salary to be paid under any circumstance should not exceed that provided in 2915-1, and a prosecutor is to be commended if he can secure the services of a secret service agent at a lower price than the minimum provides in section 2915 and for just such time as is necessary. I can hardly conceive of anyone raising an objection so long as the prosecuting attorney pursues the course herein indicated.”

The same official held in Reports of the Attorney General for 1914, Vol. 1, p 399, as follows:

“A prosecuting attorney who is employing a secret service officer regularly under section 2915, General Code, may employ another secret

service officer when necessary under the provisions of section 3004, General Code."

From an examination of the above sections of the General Code and the opinion's, it appears that the fund provided in 3004 may be used for secret service in instances where there has been no officer appointed under section 2915-1, and where there has been an appointment made under the above section, and the use of such fund is to provide a secret service officer in addition to one provided for in section 2915-1, when such use is in furtherance of justice.

It would naturally follow that if the fund provided by 3004 G. C. can be used to employ a secret service officer, in addition to the one provided by 2915-1, when such use is in furtherance of justice, the prosecuting attorney could employ him at an annual salary.

It is the opinion of this department that the prosecuting attorney may legally employ a secret service officer at an annual salary, payable out of his allowance under section 3004, General Code, his employment being continuous throughout the year.

Respectfully,

C. C. CRABBE,

*Attorney General.*

325.

DEPOSIT OF FOREIGN INSURANCE COMPANY—HOW RELEASED—SUPERINTENDENT OF INSURANCE MUST BE SATISFIED THAT ALL LIABILITIES AND OBLIGATIONS WHICH THE DEPOSIT WAS MADE TO SECURE HAVE BEEN PAID AND EXTINGUISHED—IF IN DOUBT HE IS AUTHORIZED TO ASK FOR FAVORABLE DECISION BY COURT OF COMPETENT JURISDICTION.

**SYLLABUS:**

1. *The deposit of securities with the Superintendent of Insurance of Ohio, made by a foreign insurance company as a prerequisite to the transaction of business in Ohio, can only be withdrawn when such Superintendent is satisfied that all liabilities and obligations which said deposit has been made to secure have been paid and extinguished.*

2. *An indemnifying bond, however desirable it may be, would not alone justify the release of such deposit, since there seems to be no statutory provision in Ohio for the acceptance of a bond in lieu of the deposit.*

3. *Upon the proofs offered of the extinguishment of all liabilities and obligations which the deposit was made to secure, if the Superintendent of Insurance of Ohio is still in doubt, he is justified in asking the protection of a favorable decision by a court of competent jurisdiction, authorizing the release of the securities so deposited.*