whether the company *should be* required to pay. However, from the facts stated in the enclosures accompanying your request, it is evident that the company is liable for the penalty imposed by such section unless, for good cause shown, the court causes such penalty to be remitted.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4471.

COUNTY RECORDER—MAY DISCHARGE DEPUTY WITHOUT CAUSE—NEITHER RECORDER OR COUNTY LIABLE IN DAMAGES.

SYLLABUS:

A county recorder may discharge his deputies at any time, even though he may have attempted to appoint them for a definite term, and neither the county nor the recorder will be liable for damages for such removal.

COLUMBUS, OHIO, July 1, 1932.

HON. DWIGHT CUSICK, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

> "I have received the following letter from the County Recorder of Perry County, Ohio:
>
> 'I respectfully request from you a written opinion as to whether or not I can discharge one or more of the deputies in my office in case I desire to do so.
>
> 'The appointment of each deputy provides that they were appointed for one year from January 1st, 1932.'
>
> * * * * * * * * *
>
> The questions, if any, herein involved appear to me to be the following:
>
> (1) May the County Recorder commit the County to the payment of a definite sum of money for a certain period of time in the employment of a deputy?
>
> (2) May the County Recorder remove a deputy after they have certified an appointment for a definite period of time?
>
> (3) Where a deputy is appointed for a definite period of time and then removed, can said deputy hold the County Recorder personally liable in damages for such removal?
>
> I respectfully request your opinion concerning the above matters."

Section 2754, General Code, provides as follows:

> "The county recorder may appoint a deputy or deputies approved by the court of common pleas to aid him in the performance of his duties. Such appointment or removal shall be in writing and filed with the county

treasurer. The recorder and his sureties shall be responsible for his deputy, or deputies' neglect of duty or misconduct in office. Before entering upon the discharge of his duty, the deputy or deputies shall take an oath of office."

Section 2981, General Code, reads in part as follows:

"Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action."

Section 9, General Code, reads as follows:

"A deputy, when duly qualified, may perform all and singular the duties of his principal. A deputy or clerk, appointed in pursuance of law, shall hold the appointment only during the pleasure of the officer appointing him. The principal may take from his deputy or clerk a bond, with sureties, conditioned for the faithful performance of the duties of the appointment. In all cases the principal shall be answerable for the neglect or misconduct in office of his deputy or clerk."

The term "such officers" mentioned in section 2981 refers to the officers mentioned in section 2977, the county recorder being included therein.

The term of office of deputy recorders is not fixed by law, and they are therefore regarded as holding office at the will of the appointing officer, the county recorder, and are removable at his pleasure, even though he has attempted to fix a definite term. Sections 9 and 2981, General Code, give county recorders the unlimited power of removing their deputies. The legislative policy manifested by this statute can not be annulled by the action of county recorders in attempting to appoint their deputies for a definite term. As said in the case of *Abrams* vs. *Horton,* 45 N. Y. S. 887, "they have no authority thus to fix the duration of a public employment which the law and the legislature have left indefinite,—presumably for some good reason." The general rule is laid down in 46 C. J. 964 as follows:

"Where the term of office is not fixed by law, the officer is regarded as holding at the will of the appointing power, even though the appointing power attempts to fix a definite term; and an officer removable at the pleasure of the appointing power has, in the strict meaning of the word, no 'term' of office."

In the case of *State, ex rel.,* vs. *Archibald,* 5 N. D. 359, it was held:

"The grant of power to appoint to public office, where no term of office, is fixed by law, carries with it as an incident the absolute power of removal at any time, without notice or charges or a hearing, and without the cause for removal being inquired into by any court. Such power vested in a board cannot be limited by any action taken by such board, whether by appointing the officer for a fixed term, or by by-laws restricting the power of removal to cases where cause for removal exists."

In the case of *Parsons* vs. *Breed,* 126 Ky. 759, the court said:

> "Where neither the constitution nor statute fixes the term of office, the appointee holds at the pleasure of the appointing power, although it was attempted by the appointing power to fix a definite term."

In the case of *Wright* vs. *Gamble,* 136 Ga. 376, it was held:

> "Where the tenure of an office is not prescribed by law, the power to remove is an incident to the power to appoint. In such case the appointee holds at the pleasure of the appointing power, although it attempts to fix a definite term; and no formalities, such as the preferring of charges or the granting of a hearing to the incumbent, are necessary to the lawful exercise of the authority of removal."

The same conclusion was reached in my opinion No. 3262, dated May 27, 1931. I am aware that the case of *Wiyiarch* vs. *Newark,* 4 O. A. 294, holds to the contrary, but that case is in conflict with the weight of authority and is contrary to *State* vs. *Craig,* 69 O. S. 236, and *State* vs. *McDonald,* 124 O. S. 315. In the latter case, the Court held that quo warranto was not the proper remedy, but the Court did say:

> "The relator was not a public officer. He was only an employe of the board, and was subject to dismissal by the board at its discretion."

Likewise, a deputy recorder is not a public officer. *Theobald* vs. *State,* 10 C. C. (N. S.) 175, affirmed without opinion in 78 O. S. 426. See also *State* vs. *Myers,* 56 O. S. 340.

A person who holds office at the pleasure of the appointing power or other officer, holds his office subject to the exercise of this right of removal at any time; he can claim no property or contract rights in the office, and his removal is a breach of no obligation or duty to him. 35 L. R. A. (N. S.) 866. See also *Mathis* vs. *Rose,* 64 N. J. L. 45; *Higgins* vs. *Cole,* 100 Cal. 260; *Carter* vs. *Durango,* 16 Colo. 534; *State, ex rel.,* vs. *Johnson,* 123 Mo. 43. From these authorities, it follows that a county recorder may discharge his deputies at any time, even though he may have attempted to appoint them for a definite term, and neither the county nor the recorder will be liable for damages for such removal.

This opinion refers only to such deputies as are authorized by law to act for and in place of their principal and holding a fiduciary relation to such principal as defined in section 486-8, General Code, and not to such employes as may be in the classified civil service.

Respectfully,
GILBERT BETTMAN,
Attorney General.