

2957.

APPROVAL, BONDS OF CLARK COUNTY, OHIO—\$10,461.15.

COLUMBUS, OHIO, February 17, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2958.

APPROVAL, BONDS OF PERRY TOWNSHIP SCHOOL DISTRICT,
ALLEN COUNTY, OHIO—\$89,000.00.

COLUMBUS, OHIO, February 17, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2959.

CRIMINAL BAILIFF—APPOINTED BY JUDGE OF COMMON PLEAS
COURT—SUCH PERSON THEN BECOMES DEPUTY SHERIFF.

SYLLABUS:

If the judge of the court of common pleas deems it advisable to appoint a criminal bailiff, upon such appointment the criminal bailiff then becomes a deputy sheriff.

COLUMBUS, OHIO, February 17, 1931.

HON. CHARLES T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent request for my opinion, which reads as follows:

“Section 1541 provides that the Judge of the Court of Common Pleas of a county, if he deems it advisable, may appoint ‘a Criminal bailiff, who shall be a deputy sheriff and hold his position during the pleasure of the Judge,’ etc.

Query: Does the appointment by the Common Pleas Judge automatically make the appointee a deputy sheriff, or must the appointee first be appointed as a deputy by the sheriff?

A situation has arisen in this county which makes your opinion on this question desired.”

The pertinent part of Section 1541, General Code, is as follows:

“The judge of the court of a common pleas of a county, or the judges of such court in a county in joint session, if they deem it advisable, may appoint either or all of the following:

* * * * *

Second. A criminal bailiff, who shall be a deputy sheriff and hold his position during the pleasure of the judge or judges of such court. He

shall receive compensation to be fixed by such judge or judges at the time of his appointment, not to exceed the amount permitted by law to be allowed court constables in the same court, which shall be paid monthly from the county treasury upon the warrant of the county auditor."

The question you present necessitates inquiry into the relationship between a sheriff and a criminal bailiff. Under Section 2833, General Code, the sheriff of a county is required to attend sessions of the common pleas court, court of appeals, and, when required, the probate court. Section 2830 allows him to appoint, with the approval of the judge of the court of common pleas, one or more deputies. See Opinions of the Attorney General for 1922, page 1059. Section 2831 provides that the sheriff shall be responsible for neglect of duty and misconduct in office of each of his deputies. See *State ex rel., vs. Hamann*, 10 O. N. P. (N. S.) 569.

Section 1543, General Code, reads as follows:

"The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the common pleas and probate courts of such county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. * * * "

Since a criminal bailiff, in certain instances, acts in place of the sheriff, it would perhaps seem proper that he be the appointee of the sheriff, especially in view of the liability imposed by statute and law on the sheriff for the acts of his deputies. The legislature, however, has provided by Section 1545, General Code, for the giving of a bond in the amount of five thousand dollars to the sheriff by the criminal bailiff, conditioned upon the faithful performance of the duties of the criminal bailiff. A deputy sheriff ordinarily is not required to give such a bond.

In the recent case of *State, ex. rel., vs. Thomas, Auditor*, 35 O. App. 250, the court held that county commissioners have no power to fix the amount of the salary of the criminal court bailiff but that compensation is to be fixed by the judge of the court of common pleas. This would indicate that the criminal court bailiff is not, strictly speaking, an employe of the sheriff, for if he were, under the terms of Section 2981, which concerns the appointment of deputies, assistants, etc., by various county officials, including the sheriff, his compensation would be under the control of the commissioners. This conclusion is strengthened by the examination of an opinion of the Attorney General for 1917, page 984, in which, after reviewing the various code provisions relative to the appointment of a criminal bailiff, it was said:

"The above sections and part sections provide when and how criminal bailiffs may be appointed by the judge of the court of common pleas of a county, and if such bailiff is appointed as a regular criminal bailiff he is by the provisions of said sections a deputy sheriff, and must give bond to the sheriff, and acts in said court in the place of the sheriff, or, in other words, as far as the criminal work of such court is concerned, he is in the same position as any other deputy sheriff; that is, he stands in the place of the sheriff. But, if such criminal bailiff be appointed for a single case only, then his appointment is made on the application of the sheriff, and in such case his powers to act shall cease when the particular case in which he was appointed is determined."

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that if the judge of the court of common pleas deems it advisable to appoint a criminal bailiff, upon such appointment the criminal bailiff then becomes a deputy sheriff.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2960.

APPROVAL, LEASE TO STATE LAND AT BUCKEYE LAKE, OHIO, FOR
COTTAGE SITE AND LANDING PURPOSES—W. P. REESE.

COLUMBUS, OHIO, February 17, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from the Division of Conservation in your department, submitting for my examination and approval a certain reservoir land lease in triplicate, which is executed by the Conservation Commissioner on behalf of the State of Ohio, and by which there is leased and demised to one W. P. Reese, of Millersport, Ohio, the right to use and occupy for cottage site and landing purposes, a certain parcel of state land at Buckeye Lake.

This lease, which calls for an annual rental of \$24.00, is for a term of fifteen years and is granted subject to the conditions and restrictions usually found in leases of this kind.

Upon examining said lease, I find that the same has been properly executed in accordance with the authority conferred upon the Conservation Commissioner by the provisions of Section 471, General Code, as amended in the Conservation Act passed by the 88th General Assembly, and that the provisions thereof are in conformity with the provisions of said section and of other sections of the General Code relating to leases of this kind. Said lease is accordingly hereby approved by me as to legality and form, as is evidenced by my approval endorsed upon said lease, and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2961.

APPROVAL, LEASE FOR VACANT LOT IN CITY OF COLUMBUS, OHIO,
FOR USE OF THE DEPARTMENT OF AGRICULTURE.

COLUMBUS, OHIO, February 18, 1931.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion, a lease in quintuplicate between R. B. Cochrane, of Columbus, Ohio, as lessor, and the State