

The second question is answered in the negative.

3. With respect to the third question, the authorities strongly indicate that Mr. Marshall is not entitled to receive the increased salary in question, because of section 20 of Article II of the Ohio Constitution which prohibits a change in salary during the term. It is proper to say, however, that the exact point now involved has never been definitely settled by the Supreme Court of this state. At the time Mr. Marshall assumed the office the annual salary was \$4,500, and the act increasing the salary to \$6,000 per annum was passed and became effective during the six-year portion of the term for which he was appointed (108 O. L. 1154). While it is true that the fixed portion of his tenure expired on February 1st, 1923, and the amount he now seeks covers only the period of time from and after that date, nevertheless, he has continued in office under his original and only appointment by reason of the failure of the senate to confirm his successor, as required by section 487 G. C., and also under authority of section 8 of the General Code, and under the authorities hereinafter referred to, the so-called hold-over period appears to be as much a part of the term as the fixed six-year period. Mr. Marshall made an unsuccessful attempt to secure the increased salary for the period of his tenure prior to February 1st, 1923, but the Supreme Court held (*Donahy v. Marshall*, 101 O. S. 473) that the amendatory act did not apply to his case as then presented, because of the constitutional provision hereinbefore referred to. Cases holding that the hold-over period is a part of the term of office, some of which are directly to the effect that a hold-over incumbent is not entitled to receive increased salary during such period, are *State v. Wright*, 58 O. S. 540; *State v. Metcalfe*, 80 O. S. 242; *State v. Speidel*, 62 O. S. 156; *Peterson v. Benson*, 32 L. R. A. (N. S.) 949; *Baker City v. Murphy*, 35 L. R. A. 88; *State v. Smith*, 87 Mo. 158; *Grand Haven v. Guaranty Co.*, 128 Mich., 106; 22 Ruling Case Law, 555; and 1921 Opinions of Attorney General, Vol. 1, page 502.

Respectfully,

C. C. CRABBE,

Attorney General.

323.

STATUS OF TITLE, 103.86 ACRES OF LAND SITUATED IN XENIA
TOWNSHIP, GREENE COUNTY, STATE OF OHIO.

COLUMBUS, OHIO, May 9, 1923.

Trustees of The Combined Normal and Industrial Department, Wilberforce University, Xenia, Ohio.

GENTLEMEN:—You have submitted an abstract and requested my opinion as to the status of the title to 103.86 acres of land situated in the County of Greene, State of Ohio, Xenia Township, more fully described in said abstract.

An examination has been made of said abstract and it is believed that said abstract with the supplement submitted therewith shows the title to said premises to be in the name of John A. McClain, free from incumbrances and defects excepting as hereinafter noted.

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.

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