whereupon the state supervisor shall cause said lands to be appraised as in other cases. Thereupon the state agricultural department shall advise the state supervisor whether it desires to purchase the fee simple title of such lands or to lease the same, and for what term such lease is desired. If the state agricultural department desires the fee simple title thereto, and pays the state supervisor for the benefit of the trust the sum of the appraised value thereof, the state supervisor shall prepare a deed in fee simple therefor and present the same to the governor for execution. Such deed shall be executed and delivered in the same manner as other deeds in fee simple for school and ministerial lands are executed and delivered. If the State agricultural department desires to lease such lands, the state supervisor shall execute a lease therefor, for such term of years as may be desired by said state agricultural department, upon the conditions as to the annual rents reserved, reservations and reappraisements as in other cases herein provided, and said state agricultural department is authorized and empowered to execute and accept delivery of leases."

It is apparent that the two sections quoted supra, authorize the leasing of such lands by the State Supervisor, or Auditor, to the State Agricultural Department for such term of years as may be desired by said State Agricultural Department, upon the condition as to annual rents reserved, reservations and reappraisements as provided in other cases, wherein said lands are leased by the State.

It would seem then that if the State Agricultural Department desires a ninety-nine year lease, renewable forever, upon the lands in question and such a term is acceptable to the State Supervisor, no reason can be seen why such a lease may not be legally executed by the State Auditor, provided that reservations are made therein of all oil, gas, coal and other minerals, timber, etc., as provided by Secs. 3184 and 3203-7 of the General Code.

In view then of the fact that the statutes place no limitation upon the term for which the State may lease school and ministerial lands withdrawn from sale or lease for the purpose provided by Section 3185 G. C., it would follow that affirmative answer to your question is found in the provisions of Section 3186 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3846.

DEPUTY SHERIFF—CANNOT BE APPOINTED BY JUSTICE OF PEACE AS SPECIAL CONSTABLE IN CRIMINAL CASES—APPROVAL BY JUDGE OF COMMON PLEAS COURT NECESSARY FOR DEPUTY SHERIFF—WHEN APPROVAL NOT OBTAINED STATUS OF DEPUTY AND HOW FEES DISPOSED OF—SO-CALLED DEPUTY MAY BE APPOINTED SPECIAL CONSTABLE.

1. *A "regular" deputy sheriff cannot be legally appointed by a justice of the peace as a special constable in criminal cases.*

2. *The approval by a judge of the common pleas court, referred to in section 2830 G. C. is requisite to the valid appointment of a deputy sheriff.*

3. *A so-called deputy sheriff appointed to serve without regular compensation and whose appointment is not approved by a judge of the common pleas court is not entitled to any fees for the services rendered by him. Such a person is at best a* De Facto *deputy. The official fees accrue to the sheriff and must be by him turned into the county treasury as a part of the earnings of his office.*

4. *A so-called deputy sheriff appointed without the approval of the common pleas court may be legally appointed by a justice of the peace as a special constable in criminal cases.*

COLUMBUS, OHIO, December 30, 1922.

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

GENTLEMEN:—The Bureau has requested the opinion of this department on the following questions:

> "1. May a deputy sheriff duly appointed under provisions of section 2830 G. C., and whose appointment is approved by the judge of the common pleas court in accordance with said section be legally appointed by a justice of the peace as a special constable in criminal cases?
>
> In this connection, we call your attention to an opinion of former Attorney General Hogan found at page 380 of his 1911-12 Report.
>
> 2. It has been the practice in some of the more populous counties for sheriffs to appoint so-called deputies without compensation and whose appointments are not approved by the judge of the common pleas court as provided in section 2830 G. C.; may such deputies serve the process issued to the sheriff, and if so, are the fees earned required to be paid into the county treasury as a part of the earnings of the sheriff's office?
>
> 3. May such deputies be appointed by a justice of the peace as special constables in criminal cases and retain the fees taxed for their services?"

Preliminary to a consideration of these questions as separate legal problems, it will be helpful to take note of a general principle which is of service in the solution of each one of them. A deputy, where not appointed for a particular purpose, or for a limited time, or for the discharge of special functions--in other words, a deputy appointed generally and without any qualification, is authorized to act for and in the place of his principal and all of his acts in contemplation of law are those of his principal. This proposition of law is at least in part embodied in section 9 of the General Code which provides in part that:

> "A deputy, when duly qualified, may perform all and singular the duties of his principal."

A clerk or an assistant may be employed for a particular purpose and as intimated it is possible to appoint a deputy for a particular or limited purpose, the statutes recognizing such appointment in certain instances, but as a general propo-

sition a deputy is an *alter ego* of his principal and in contemplation of law his identity is merged in that of the principal officer who appoints him. He has no powers, duties, rights or obligations of his own as to third persons. Whatever he does as deputy is the act of his principal. As a corrollary proposition it follows that deputies, as such, do not earn fees. Whenever a deputy of an officer performs service for which fees are allowed by law, the fees are due, not to the deputy, but to the officer. The compensation of the deputy, if any, is a matter between him and the officer unless this matter is regulated by statute; and as we shall see the statutory regulations that apply in the cases submitted do not disturb fundamentally the principle as laid down.

These propositions being true, it follows that a deputy sheriff, appointed in full compliance with section 2830 of the General Code, may be called upon by the sheriff as his principal to serve any process issued to the sheriff; and for this service he is entitled to such compensation as deputy sheriffs are allowed as such, but not to any fees unless that be the character of the compensation which the sheriff is permitted to allow his deputy.

In the opinion of a former attorney general referred to in the Bureau's letter, it was held that a sheriff, being required by virtue of section 13500 of the General Code to serve all warrants issued to him by a justice of the peace, could not be designated as a special constable in criminal cases by a justice of the peace under section 3331 of the General Code; for to allow him to accept such appointment and to draw the constable's fees accruing from such service would be to permit him to secure additional emoluments for performing services which he may legally be called upon to perform in his official capacity as sheriff and for the compensation due him in that capacity.

In the opinion of this department this conclusion is correct and, because of the principle above stated, applies as well to the case of a deputy sheriff. To allow a deputy sheriff to act as a special constable for a justice of the peace under an appointment by virtue of section 3331 of the General Code and draw the constable's fees therefor, would be to sanction the payment of additional compensation for public service which could be required of him in his capacity as deputy sheriff. Putting it in another way, from the standpoint of the justice of the peace, that officer being authorized to call upon the force of the sheriff's office for the service of process in a criminal case by virtue of section 13500 of the General Code, is not authorized to employ any part of the force of that office in any other way in such cases, and, hence, is unauthorized to appoint a deputy sheriff as well as a sheriff as a special constable in criminal cases under section 3331 of the General Code. This statement answers the Bureau's first question in the negative, subject to possible qualifications stated in the answer to the third question herein.

The Bureau's second question requires some consideration of section 2830 which has been heretofore referred to but not quoted. It provides as follows:

> "The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the sub-division in which the county of the sheriff is situated, such approval at the time it is made, shall be indorsed on such writing by the judge. Thereupon such writing and indorsement shall be filed by the sheriff with the clerk of his county, who shall duly enter it upon the journal of such court. The clerk's fees therefor shall be paid by the sheriff. Each deputy so appointed shall be a qualified elector of such county. No justice of the peace or mayor shall be appointed such deputy."

This section has been in substantially this form for a long time. It is peculiar in that while it refers to an approval by the judge of the common pleas court, it does not expressly require such approval in order that the appointment be valid. It is, nevertheless, the opinion of this department that by certain inferences from the rather unusual language of the section, the approval of the common pleas judge is requisite to the validity of the appointment of any deputy sheriff, whatever special or limited duties the sheriff may have in mind in making the appointment. Unless these inferences be derived from the express language of the statute, the section is virtually meaningless. It is inconceivable that the machinery for such an approval should have been erected by the legislature in such detail, and that such machinery should have been required to be attended with such solemnity had not this been the legislative object. Moreover, the same section provides that "each deputy *so appointed* shall be a qualified elector of such county." Surely it could not have been the intention of the legislature to authorize the appointment of deputies who were not qualified electors. From this it is arguable that the requirement that each deputy be a qualified elector was intended to apply to all deputies, and that therefore the method of appointment provided for in the section was likewise intended to apply to all deputies.

In this connection, attention is called to the fact that a subsequently enacted statute, section 2981, General Code, a part of the county officers' salary law, authorizes the sheriff, together with other county officers to which the chapter applies, to "appoint and employ the necessary deputies * * * * for their respective offices, fix their compensation, and discharge them." It requires the officer to "file with the county auditor certificates of such action." This section is to be construed with section 2830 and not as an implied repeal of it unless the two are irreconcilably inconsistent. No such irreconcilable inconsistency appears and any requirements such as there are in the two sections must be held to be cumulative.

Accordingly, it is the opinion of this department that the practice described in the Bureau's second question is unwarranted in law, as the so-called deputy sheriffs whether acting with or without compensation, whose appointments are not approved by the judge of the common pleas court as provided in section 2830 G. C. are not legally appointed, and consequently are not *de jure* deputy sheriffs. They may be *de facto* deputies, and their acts as such might be sustained as valid acts of the sheriff, though this question is not necessarily involved. As *de facto* deputies, however, any fees earned by them in serving the process issued to the sheriff must be paid into the county treasury as a part of the earnings of the sheriff's office. A *de facto* officer is held to the discharge of the same legal duties as a *de jure* officer; and because of the general principle above outlined, the fees earned by the contemplation of law are the fees of the sheriff, and he must account for them to the county treasurer.

The Bureau's third question is answered by the statement that the so-called deputies referred to therein not being legal or *de jure* deputies are not subject to the primary rule of incompatibility of offices. Such persons are accordingly eligible to appointment by justices of the peace, as special constables in criminal cases, and may retain the fees taxed for their services. This is because, though they are held to such duties as have been dealt with in connection with the second question, they are not legally compellable to serve the process of a justice of the peace issued to the sheriff.

Respectfully,
JOHN G. PRICE,
Attorney-General.