OPINIONS

OF THE

ATTORNEY GENERAL

OF OHIO

1969

1969 OPINIONS 69-001 to 69-167

PAUL W. BROWN
Attorney General

Opinions published quarterly
with tables and index

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PREFACE

This publication provides prompt dissemination of the formal Opinions of the Attorney General of Ohio. Loose-leaf advance sheets with tables and index are issued quarterly until year-end, when they are closed for the permanent annual volume. The service was inaugurated in 1964 by my predecessor, Hon. William B. Saxbe, and it will be continued during my term of office.

A useful adjunct to recent annual volumes of Opinions will be the *Eleven Year (1958-1968) Cumulative Tables-Index,* to be published this summer. The Eleven Year Tables-Index is to be inserted inside the 1968 Opinions binder. A designation sticker for the binder backbone, and identifying tabbed dividers, will accompany the Tables-Index. By using the new Tables-Index in conjunction with the previously issued 1904-1957 Opinion Index, access is provided to all Opinions of the Attorney General of Ohio published during the past sixty-five years.

This publication is a cooperative project of the publisher and the office of the Attorney General. Both parties invite constructive criticism of the service, to the end that the quality and workability may be improved.

PAUL W. BROWN
Attorney General of Ohio

April 21, 1969

ATTORNEYS GENERAL
of the
STATE OF OHIO

Note: The office of Attorney General was established as an elective office by the Constitution of 1851, and the term of office was two years. By an amendment made in 1954 the term of office is now four years.

Henry Stanberry	1846-1851
Joseph McCormick	1851-1852
George E. Pugh	1852-1854
George W. McCook	1854-1856
Francis D. Kimball	1856-
C.P. Wolcott (a)	1856-1861
James Murray	1861-1863
Lyman R. Critchfield	1863-1865
William P. Richardson	1865-
Chauncey N. Olds (b)	1865-1866
William H. West	1866-1868
Francis B. Pond	1868-1872
John Little	1872-1878
Isaiah Pillars	1878-1880
George K. Nash	1880-1883
D.A. Hollingsworth (c)	1883-1884
James Lawrence	1884-1886
Jacob A. Kohler	1886-1888
David K. Watson	1888-1892
John K. Richards	1892-1896
Frank S. Monnett	1896-1900
John W. Sheets	1900-1904
Wade H. Ellis (e)	1904-Nov., 1908(d)
Ulysses G. Denman (f)	Nov.,1908-1911
Timothy S. Hogan	1911-1915
Edward C. Turner	1915-1917
Joseph McGee	1917-1919
John G. Price	1919-1923
C.C. Crabbe	1923-1927
Edward C. Turner	1927-1929
Gilbert Bettman	1929-1933
John W. Bricker	1933-1937
Herbert S. Duffy	1937-1939
Thomas J. Herbert	1939-1945
Hugh S. Jenkins	1945-1949
Herbert S. Duffy	1949-1951
C. William O'Neill	1951-1957
William B. Saxbe	1957-1959
Mark McElroy	1959-1963
William B. Saxbe	1963-1969
Paul W. Brown	1969-

Note:
(a) Appointed vice Francis D. Kimball, who resigned September, 1856.

(b) Appointed February 20, 1865, vice William P. Richardson, who was elected while a Colonel in command of Camp Chase, Columbus, Ohio, and resigned as Attorney General in February, 1865, and remained in the service.

(c) Appointed April 21, 1883, vice George K. Nash, who resigned to become a member of the Supreme Court Commission.

(d) Term extended to 1909 by constitutional amendment.

(e) Resigned November, 1908, to become Assistant United States Attorney General.

(f) Appointed November, 1908, for unexpired term ending January, 1909, vice Wade H. Ellis, resigned; then served the full term commencing January 11, 1909.

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Art. II,	§4	69-039
	§20	69-034
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Art. IV,	§4(C)	69-031
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	69-150	311.17	69-109
147.07	69-164	311.20	69-138
167.03	69-013		69-163
167.08	69-013	313.06	69-036
169.05	69-157	313.15	69-036
301.24	69-167	313.19	69-104
305.02	69-052	317.01	69-115

Rev. Code	*1969 Opinion*
317.08	69-001
	69-139
	69-143
317.18	69-143
319.11	69-047
319.16	69-108
319.19	69-076
319.20	69-139
Chapter 325	69-033
325.01	69-153
325.07	69-090
	69-163
325.071	69-090
325.12	69-159
325.17	69-134
	69-153
325.19	69-134
325.20	69-090
325.27	69-153
331.01	69-023
331.04	69-023
339.01	69-062
339.03	69-062
339.06	69-056
	69-085
339.14	69-140
340.03	69-146
340.07	69-062
340.10	69-015
341.20	69-163
343.01	69-026
	69-073
503.02	69-032
503.07	69-032
505.26	69-132
505.37	69-014
	69-038
	69-123
505.39	69-123
505.443	69-038
	69-123
505.60	69-046
509.01	69-055
511.01	69-132
517.03	69-101
517.11	69-101
519.01	69-078
519.19	69-027
519.21	69-078
	69-165
519.24	69-136
703.22	69-032
707.01 et seq.	69-118

Rev. Code	*1969 Opinion*
707.22	69-118
709.02	69-118
709.11	69-118
721.03	69-130
721.15	69-130
731.02	69-102
731.06	69-075
731.14	69-127
733.48	69-039
733.53	69-148
737.11	69-043
742.02	69-028
742.37	69-028
743.18	69-066
743.24	69-066
755.16	69-099
971.27	69-060
1109.31	69-022
1151.342	69-091
1501.17	69-158
1531.02	69-008
1531.99	69-008
1701.13	69-147
1717.07	69-108
Chapter 1726	69-091
1735.01	69-022
Chapter 1785	69-147
1901.11	69-149
1901.20	69-064
1901.34	69-095
1905.01	69-117
2151.351	69-110
2301.18	69-031
2315.27	69-131
2335.01	69-109
2903.05	69-024
2919.08	69-056
2923.01	69-019
	69-151
2923.02	69-019
2923.04	69-020
2935.09	69-061
2935.10	69-061
2937.08	69-117
2947.13	69-008
2947.23	69-058
	69-081
3101.01	69-051
3101.06	69-051
3311.231	69-088
3313.02	69-045
3313.33	69-133
3313.37	69-012

Rev. Code	*1969 Opinion*
3313.39	69-006
3313.64	69-111
	69-119
3313.66	69-071
3313.90	69-166
3317.01	69-103
3317.06	69-103
3317.13	69-069
3319.08	69-025
3319.082	69-002
3319.084	69-029
3319.10	69-025
3321.01	69-040
3321.05	69-040
3323.01	69-040
3327.06	69-111
3335.02	69-042
3335.08	69-042
3375.15	69-102
3375.50	69-068
3375.54	69-082
Chapter 3377	69-037
3377.04	69-037
3501.17	69-158
3513.31	69-080
3701.53	69-094
3709.11	69-094
3709.15	69-094
3781.03	69-087
3781.10	69-148
3791.04	69-087
3791.07	69-087
3923.12	69-049
3929.01	69-022
4112.01	69-042
4123.02	69-028
4143.01	69-005
4143.02	69-005
4301.32	69-129
4504.02	69-074
	69-105
4504.03	69-074
4504.05	69-074
4505.06	69-106
4511.191	69-125
4513.39	69-061
4582.06	69-142
4733.16	69-147
4737.07	69-136
4933.01	69-067

Rev. Code	*1969 Opinion*
4933.04	69-066
5119.62	69-015
5123.03	69-104
5126.01 et seq.	69-113
5126.03	69-045
	69-146
5127.01	69-146
5127.03	69-015
5127.04	69-015
5139.191	69-151
5153.01	69-023
5155.33	69-140
5301.25	69-001
5301.51	69-143
5511.01	69-098
5520.01 et seq.	69-128
5529.11	69-050
5549.21	69-054
5573.13	69-055
5573.21	69-055
5575.01	69-054
5575.10	69-055
5701.02	69-126
5705.02	69-055
	69-101
5705.05	69-105
5705.06	69-055
5705.10	69-015
5705.19	69-015
	69-113
	69-123
5705.191	69-089
5705.221	69-015
5705.24	69-113
5705.331	69-141
5705.41	69-076
5713.03	69-126
5713.081	69-121
5713.11	69-141
5715.02	69-059
5725.18	69-022
5725.21	69-022
5733.20	69-053
5739.02	69-106
5739.021	69-106
5739.22	69-083
5741.02	69-106
5741.021	69-106
5901.02	69-031
5901.07	69-115

TABLE 3

Prior Ohio Attorney General Opinions Affected

Former Opinion		*1969 Opinion*
1075, 1915	Followed by	69-081
269, 1928	Followed by	69-131
5977, 1936	Followed by	69-012
231, 1945	Overruled by	69-014
2616, 1950	Modified by	69-108
978, 1951	Followed by	69-034
4961, 1955	Followed by	69-081
5252, 1955	Followed by	69-034
787, 1957	Overruled by	69-130
3039, 1958	Followed by	69-163
850, 1959	Overruled by	69-129
1644, 1960	Followed by	69-033
2531, 1961	Followed by	69-147
25, 1963	Followed by	69-133
1043, 1964	Followed by	69-088
1178, 1964	Followed by	69-136
65-88	Followed by	69-167
66-007	Followed by	69-099
66-089	Followed by	69-126
66-140	Overruled by	69-130
67-063	Followed by	69-166
69-015	Followed by	69-146
69-045	Followed by	69-048
69-058	Distinguished by	69-081

TABLE 4

Compatible and Incompatible Offices

Note: The following table, in two parts, lists Compatible Offices and Incompatible Offices, as determined in Opinions of the Attorney General issued during the year 1969.

Offices and positions are considered incompatible when one is subordinate to the other or is a check upon the other. Also, positions may be deemed incompatible when it is physicially impossible for one person to discharge the duties of both offices (State, ex rel Attorney General v Gebert, 12 CC(NS) 274).

There are several constitutional and statutory provisions affecting the compatibility of offices, as follows:

Ohio Constitution	Ohio Revised Code		
Art. II, §4	3.11	315.02	2919.08
Art. III, §14	143.41	319.07	2919.09
	309.02	705.02	2919.10
	311.04	731.12	3501.02

In some instances, court decisions have ruled upon the compatibility of offices. Such court decisions are not covered in this table.

Compatible Offices

Office	*Compatible With*	*1969 Opinion No.*
State senator	Village solicitor	69-039
Village solicitor	State senator	69-039

Incompatible Offices

Office	*Incompatible With*	*1969 Opinion No.*
Assistant prosecuting attorney	Board of education member	69-133
Board of education member	Assistant prosecuting attorney	69-150
Engineer's office, classified position	Village board of trustees of public affairs, elected membership	69-150
Health department, board member	Township trustee	69-167
Township trustee	County health department board member	69-167
Village board of trustees of public affairs, elected membership	County engineer's office, classified position	69-150

TABLE 5

Informal Opinions

Note: Informal Opinions (also referred to as "Limited Circulation" Opinions) by the nature of the isolated factual situations involved are not of general interest, and therefore they are not published. Under the new numbering system Informal Opinions listed in the following Table 5 account for all numbers for which there is no formal opinion reproduced in this Service.

69-003	69-096
69-004	69-097
69-007	69-100
69-010	69-112
69-011	69-116
69-017	69-120
69-018	69-122
69-030	69-124
69-035	69-135
69-041	69-137
69-044	69-144
69-060	69-145
69-063	69-152
69-065	69-154
69-072	69-155
69-079	69-156
69-086	69-160
69-092	69-161
69-093	69-162