

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.

INDEX

References are to 1969 Opinion numbers

- ADVERTISING**
Professional engineers, 69-147
- AFFIDAVIT**
Arrest, peace officer making, 69-061
Sick leave, for, 69-164
Zoning violation, 69-095
- AGRICULTURAL USE**
Dogs, raising, 69-078
- AMBULANCE**
Fire department operating, 69-038
Township, contract, 69-123
- ANIMAL**
Dog — See DOGS.
- ANIMAL HUSBANDRY**
Dogs, raising, 69-078
- ANNEXATION OF PROPERTY**
Procedure, 69-118
- APPRAISER**
County, for, mileage fee, 69-109
- APPROPRIATION OF PROPERTY**
Evidence, proposed uses, 69-098
Valuation, proposed zoning change, 69-098
- ARREST**
Peace officer, affidavit, 69-061
Warrant, peace officer making, 69-061
- ARTICLES OF INCORPORATION**
Cancellation, indexing, 69-053
- ATTORNEY**
Juvenile, appointment for, costs, 69-110
- AUDITOR, COUNTY**
Certification of funds, 69-076
Financial report, publication, 69-047
Humane society agents, payment, 69-108
Inheritance tax, withholding for state taxes, 69-121
Junk yard license, 69-136
Local government fund, distribution, 69-083
Realty transfer, acceptance, 69-139
- BANKS**
Deposit, unclaimed, interest on, 69-157
Mortgage insurance fund, unclaimed funds in, 69-157
- BOARD OF REVISION**
Member
Hearing on assessment, 69-059
- BONDS, INVESTMENT**
Anticipation of allocations, 69-083
- BOND, SURETY**
Firearms, 69-020
- BOUNDARIES**
Township, new, 69-032
- BUILDING AND LOAN ASSOCIATION**
Bonds, stocks, etc., investment in, 69-091
Development corporation investment in, 69-091
- BUILDING DEPARTMENT**
Contract with private agency, 69-087
Enforcement powers limited, 69-087
Fees, 69-087
Legal counsel, 69-148
- BUILDING STANDARDS BOARD**
Enforcement authority, delegation, 69-087
- BUS DRIVER — See SCHOOL.**
- CEMETERY**
Township, tax levy, 69-101
- CHILDREN'S HOME**
Education, financial responsibility, 69-119
- CITY — See MUNICIPAL CORPORATION.**
- CITY SOLICITOR — See SOLICITOR, MUNICIPAL.**
- COMMON PLEAS COURT**
Judge, appointments, 69-031
Judge, time of salary payments, 69-153
- COMMUNITY MENTAL HEALTH AND RETARDATION**
Employee, county, 69-045
Lease of center, 69-062
- COMPUTER**
Law library purchasing, 69-082
- CONDEMNATION — See APPROPRIATION OF PROPERTY.**
- CONSTABLE**
Tax levy for, 69-055
- CONTRACT**
Ambulance service, township, 69-123
Certification of funds, 69-076
Council of governments, by, 69-013
Invalid, liability for supplies, 69-127
Payment approval, 69-076
Political subdivisions, joint purchases, 69-013
Prisoner's, meals, 69-163
Professional engineers, with, 69-147
Water, bulk, village, 69-066
Water supply, village, 69-067
- CONTRACT BID**
Gas, township purchase, 69-054
Group health insurance, 69-045
Insurance, county, 69-048
Motor vehicle, exceptions, 69-016
Village liability, 69-127
- CORONER**
Death, investigation, 69-036
Hospital superintendent, as, 69-104

CORPORATION

Articles, cancellation, 69-053

COUNCIL — See LEGISLATIVE AUTHORITY.

COUNCIL OF GOVERNMENTS

Purchases, joint, 69-013

COUNTY

Board of revision — See BOARD OF REVISION.

Financial report, publication, 69-047

Hospital costs for prisoner, 69-138

Humane society, payments, 69-108

Mental retardation board, supervision, 69-146

Motor vehicle tax — See MOTOR VEHICLE.

Officer, new compensation, 69-033

Sales and use tax, 69-106

COUNTY AGRICULTURAL EXPERIMENT**FARM**

Employee, county, 69-045

COUNTY COMMISSIONERS

Compensation, time of payment, 69-153

Contract for prisoner's meals, 69-163

Convention expenses, 69-090

Funds, transfer, 69-158

Group health insurance, 69-049

Health and retardation center, lease, 69-062

Hospitalization payments, 69-034

Intersection, hedge, etc., removal, 69-050

Landfill, leasing, 69-026

Prisoner's meals, cost, 69-163

Sheriff's expenses, allowance, 69-163

COUNTY COURT

Judge, referee in other divisions of common pleas court, 69-131

COUNTY ENGINEER

Trustee of public affairs, as, 69-150

COUNTY HOME FARM

Lease for county hospital, 69-140

COUNTY RECORDER

Articles of incorporation, cancellation, 69-053

County veteran's service officer, as, 69-115

Indexing instruments, 69-001

Land contract index, 69-001

Option to purchase realty, recording, 69-143

Realty transfer, recording, 69-139

Water service lien, recording, 69-001

COUNTY VISITORS BOARD

Foster home inspection, 69-023

DEATH

Coroner's investigation, 69-036

DEED

Legal description lacking, 69-139

DEER

Hunting violation, license revoked, 69-008

DEFENDANT

Costs, refund, 69-081

DEFINITIONS

Employment agency, 69-005

Residence district, 69-129

DEPENDENTS, SUPPORT

Child support due, effect on marriage license, 69-051

DEPOSITORY

Eligible institutions, 69-114

DEVELOPMENT CORPORATION

Building and loan association, investment in, 69-091

DISCRIMINATION

Housing, university, 69-042

DOGS

Raising, agricultural use, 69-078

DOMESTIC RELATIONS DIVISION

County court judge as referee, 69-131

DRIVER'S LICENSE

Suspension, refusal to take alcohol test, 69-125

DRUNK DRIVING

Test, refusal to take, 69-125

EDUCATION, BOARD OF

Building, lease from builder, 69-012

Eminent domain, use limited, 69-006

Lease of school building, 69-012

Member

Mental retardation administrator, as, 69-107

Mentally retarded, schooling, 69-040

Non-teaching employee, health insurance, 69-045

Non-teaching employee, salary reduction, 69-002

Prosecuting attorney, assistant, on, 69-133

Sick leave, bus driver, 69-057

Tuition, collection, 69-040

ELECTION**Board**

County commissioners transfer of funds, 69-158

Candidate

Vacancy, 69-080

Withdrawal, 69-080

Local option, residence district defined, 69-129

Wards, redistricting, 69-075

EMINENT DOMAIN

Board of education, by, 69-006

EMPLOYEE, PUBLIC

County, health insurance, 69-049

County, sick leave, 69-077

Health insurance, 69-045

Health insurance, township, 69-046

Holiday pay, 69-134

Sick leave, accumulation, 69-077

Sick leave affidavit, 69-164

EMPLOYMENT AGENCY

Consultation and search services, 69-005

Defined, 69-005

ENGINEERS, PROFESSIONAL

Advertising, 69-147

Contracts, 69-147

Seal of engineer, use, 69-147

EXECUTION

Appraiser, mileage fee, 69-109

FAIR LABOR STANDARDS ACT
Two contracts, overtime pay, 69-009

FEEES AND COSTS

Appraiser, county, mileage, 69-109
Attorney for juvenile, 69-110
Building department, 69-087
Defendant, refund, 69-081
Hospital, for prisoner, 69-138
Jury, 69-058
Mistrial, 69-058
Trial and retrial, 69-058

FENCE

Intersection, blocking, 69-050

FINES

Mayor's court, disposition, 69-068

FIREARMS — See also WEAPONS.

Air gun, sale to minor, 69-024
Bond required, 69-020
Minor, sale to, 69-023
Youth commission member carrying, 69-151

FIRE DEPARTMENT

Ambulance service, 69-038
Equipment, joint purchase, 69-014

FIRE DISTRICT

Territory included, 69-014

FOSTER HOME

Inspection, 69-023

FOUNDATION

Hospital, contract with, 69-056

FOUNDATION PROGRAM

Eligibility for funds, 69-103

FRANCHISE TAX

Title insurance company, 69-022

FUNDS, PUBLIC

Certification of availability, 69-076
Hospitalization, for, 69-034
Local government fund, borrowing from, 69-083
Mental retardation board, 69-015
Motor vehicle tax, use, 69-074
Township buildings, costs, 69-132
Transfer within appropriation, 69-158

FUNDS, UNCLAIMED

Deposits, interest on, 69-157

GARBAGE AND RUBBISH

Collection rules and regulations, 69-073
Disposal district, landfill, 69-026

GASOLINE

Township purchase, bid, 69-054

GENERAL ASSEMBLY

Senator as village solicitor, 69-039

HEALTH AND RETARDATION CENTER

Lease by county, 69-062

HEALTH COMMISSIONER

Public health nurse as, 69-094

HEALTH DEPARTMENT

County, township trustee on, 69-167

HEALTH INSURANCE

Bidding procedure, 69-045
County employee, 69-045
Mental retardation board, 69-049
Township employee, 69-046

HEDGES

Intersection, blocking, 69-050

HIGHER EDUCATION COMMISSION

Loan, repayment, 69-037

HIGHWAYS AND ROADS

Township
Tax levy, 69-055
Use tax funds, use, 69-121

HOLIDAY

Pay, deputy sheriff, 69-134

HOME RULE

Sale by municipality, 69-130

HOSPITAL

Prisoner, county costs, 69-138

HOSPITAL, COUNTY

Addition, electoral approval, 69-062
Board
Member on foundation board, 69-056
Physician on, 69-056
Construction on county home farm, 69-140
Enlargement, limit, 69-062
Expenditures, malpractice insurance, 69-085
Foundation, contract with, 69-056
Lease for, 69-140
Lease of facility, 69-056
Malpractice insurance, 69-085
Physician on board, 69-056

HOSPITALIZATION, GROUP

County paying, 69-034

HOSPITAL, NONPROFIT

Tax levy for, 69-089

HOSPITAL, STATE

Coroner as superintendent, 69-104

HOUSE TRAILER

Realty, becoming, 69-128

HOUSING

Discrimination, university, 69-042

HUNTING

Deer, violation, 69-008

INDIGENT PERSON

Juvenile, attorney for, 69-110

HUMANE SOCIETY

County paying, 69-108

INHERITANCE TAX

Funds, payment by state to county for taxes due,
69-121

INSURANCE — See also HEALTH INSURANCE.

County, bidding, 69-048
Malpractice, hospital paying, 69-085
Title — See TITLE INSURANCE COMPANY.

- INSURANCE COMPANY**
College, loan to, 69-037
- INTERSECTION**
Hedge, etc., blocking, 69-050
- INTOXICATION**
Test, refusal to take, 69-125
- JUDGE**
Salary increase, time of taking effect, 69-149
- JUNK YARD**
License, 69-136
- JURISDICTION**
University rule violation, 69-064
- JURY**
Costs, 69-058
Waiver, mayor's court, 69-117
- JUVENILE DELINQUENT**
Attorney, appointment, costs, 69-110
- KARATE STICK**
Weapon, dangerous, 69-019
- LAKE ERIE**
Lease of shore land to port authority, 69-142
- LAND CONTRACT**
Recording, index, 69-001
- LANDFILL**
County leasing, 69-026
- LAW DIRECTOR** — See **SOLICITOR, MUNICIPAL.**
- LAW LIBRARY**
Computer, funds for, 69-082
Mayor's court, fines for, 69-068
- LEASE**
Health and retardation center, 69-062
Hospital, county, land for, 69-140
Hospital facility, 69-056
Landfill, by county, 69-026
Port authority, land to, 69-142
School building, 69-012
- LEGAL PUBLICATION**
Garbage and rubbish rules and regulations, 69-073
- LEGISLATIVE AUTHORITY**
Member
School library trustee, as, 69-102
Wards, redistricting, 69-075
- LIBRARY**
Law — See **LAW LIBRARY.**
School, councilman as trustee, 69-102
- LICENSE**
Employment agency, 69-005
Junk yard, 69-136
Marriage — See **MARRIAGE LICENSE.**
- LIEN**
Recording, water services, 69-001
Water utility company, private, 69-001
- LIQUOR**
Local option election, residence district defined, 69-129
- LOAN**
College, to, 69-037
- MARRIAGE LICENSE**
Child support due, 69-051
Financial inadequacy, 69-051
I. Q. test, 69-051
- MAYOR'S COURT**
Fines, disposition, 69-068
Jury, waiver, 69-117
Sentence, imprisonment, 69-117
- MENTAL HEALTH AND RETARDATION BOARD**
County board, control, 69-146
Powers and duties, 69-146
- MENTAL HEALTH AND RETARDATION FUND,**
69-015
- MENTAL HEALTH AND RETARDATION SERVICE, COMMUNITY**
Powers, 69-146
- MENTALLY RETARDED**
Administrator, board of education member as, 69-107
Class, intelligence quotient limit, 69-040
Education, 69-040
Tax levy over 10 mill limit, 69-113
Workshop, county, 69-146
- MENTAL RETARDATION BOARD**
Employee, county, 69-045
Funds, 69-015
Group health insurance, purchase, 69-049
- MINOR**
Air gun, sale to, 69-023
Attorney for, costs, 69-110
Children's home, financial responsibility, 69-119
Support — See **DEPENDENTS, SUPPORT.**
Toy guns, sale to, 69-023
- MISTRIAL**
Costs, 69-058
- MOTOR VEHICLE**
County, bidding procedure, 69-016
County tax, use of funds, 69-074
Sales and use tax, 69-106
Tax
Referendum, 69-105
Term of levy, 69-105
Use of funds, 69-074
Township, gas purchase, 69-054
- MUNICIPAL CORPORATION**
Annexation procedure, 69-118
Fire equipment, joint purchase, 69-014
Motor vehicle tax, use of funds, 69-074
Sale of property, 69-130
Tax levy for nonprofit hospital, 69-089
Township taxing, 69-055
Water company supplying village, 69-067
Water, sale to corporation, 69-066
Water supply, contract for, 69-066, 69-067

MUNICIPAL COURT

Judge, salary increase, effective date, 69-149
 University rules violation, jurisdiction, 69-064
 Zoning violation prosecution, 69-095

NONCONFORMING USE

Changing, requirements, 69-027

NONPROFIT CORPORATION

Board member, township trustee, 69-084

NONRESIDENT

Kindergarten, tuition, 69-111

NURSE, PUBLIC HEALTH

Health commissioner as, 69-094

OFFICE AND OFFICER

County, new compensation, 69-033
 Hospitalization, county paying, 69-034

OFFICES, COMPATIBILITY

Board of education member and mentally retarded administrator, 69-107
 Coroner as hospital superintendent, 69-104
 County engineer as trustee of public affairs, 69-150
 County recorder as county veterans' service officer, 69-115
 Foundation chairman on hospital board, 69-056
 Hospital board and chief of staff, 69-056
 Nurse as health commissioner, 69-094
 Prosecuting attorney, assistant and board of education, 69-133
 Senator and village solicitor, 69-039
 Township clerk and village clerk, 69-081
 Township trustee as county health department member, 69-167
 Township trustee on corporate board, 69-084

OHIO STATE UNIVERSITY

Open housing, 69-042

ORDINANCE OR RESOLUTION

Statute, conflicting with, 69-130

PHYSICIAN

Malpractice insurance, hospital paying, 69-085

POLICE AND FIREMEN'S DISABILITY AND PENSION FUND

Benefits
 Amount, 69-028
 Permanent, total disability, 69-028

POLICE DEPARTMENT

Search warrant, issuing, 69-043

POLITICAL SUBDIVISIONS

Borrowing funds, 69-083
 Joint purchases, 69-013

PORT AUTHORITY

Public works department leasing land to, 69-142

PRISONER

Cook, costs, 69-163
 Hospital costs, county, 69-138
 Meal costs, county, 69-163
 Meals, contracting out, 69-163
 Transfer, funds, 69-090

PROBATE DIVISION

County court judge as referee, 69-131
 Judge, appointments, 69-031
 Marriage license — See MARRIAGE LICENSE.

PROPERTY, PERSONAL

House trailer becoming realty, 69-128

PROPERTY, REAL

Building on leased land, 69-126
 Execution against, appraiser's fee, 69-109
 House trailer becoming, 69-128
 Option on, recording, 69-143
 Tax hearing, 69-059
 Transfer, identity, 69-139
 Transfer without legal description, 69-139
 Valuation, building on leased land, 69-126

PROSECUTING ATTORNEY

Assistant on board of education, 69-133
 Building department, county, representing, 69-148
 Compensation, time of payment, 69-153
 Death, investigation powers, 69-036
 Equipment, discretion in purchasing, 69-159
 Expenditures, discretion, 69-159
 Furtherance of justice fund, 69-159
 Qualifications, 69-021

PUBLICATION

County financial report, 69-047

PUBLIC UTILITIES

Lien, private corporation, 69-001
 Zoning exemptions, 69-165

PUBLIC WORKS DEPARTMENT

Port authority, lease of land to, 69-142

PUPIL — See SCHOOL.**RECORDER, COUNTY — See COUNTY RECORDER.****RECORDS AND REPORTS**

County financial report, publication, 69-047
 Title insurance company, 69-022

RECREATIONAL DISTRICT

Joint, 69-099
 Townships, joint, 69-099

REFERENDUM

Motor vehicle tax, 69-105

RESIDENCE DISTRICT

Defined, 69-129

SALES AND USE TAX .

County, 69-106
 Motor vehicle, 69-106

SCHOOL

Age limits, mentally retarded, 69-040
 Bus driver
 Salary reduction, 69-002
 Sick leave, 69-057
 Vacation, 69-029
 Children's home, costs, 69-119
 Kindergarten, nonresident, tuition, 69-111
 Lease of building, 69-012
 Library trustee, councilman as, 69-102
 Non-teaching employee, salary reduction, 69-002

SCHOOL — continued

Pupil, expulsion, 69-071
 Pupil suspension, 69-071
 Superintendent
 Student suspension or expulsion, 69-071
 Tuition
 Board of education, from, 69-040
 Children's home resident, 69-119
 Kindergarten, nonresident, 69-111

SCHOOL DISTRICT

Executive head
 Pupil suspension or expulsion, 69-071
 Foundation program funds, eligibility, 69-103
 Recreational district, joint, 69-099
 Tax levy, reappraisal, 69-141
 Tax rate reduction, 69-141
 Transfer petition, signatures, 69-088
 Vocational
 Pupil suspension or expulsion, 69-071
 Vocational program, 69-166

SEARCH WARRANT

Municipal officer issuing, 69-043

SENATOR — See GENERAL ASSEMBLY.**SENTENCE**

Mayor's court, imprisonment, 69-117

SHERIFF

Appraiser for, mileage, 69-109
 Convention expenses, 69-090
 Deputy, holiday pay, 69-134
 Food purchases, 69-163
 Transportation expenses, 69-163

SOLICITOR, MUNICIPAL

Building department, representing, 69-148
 Senator, as, 69-039
 Zoning prosecutions, 69-095

STATUTES

Ordinance conflicting with, 69-130

TAXATION

Assessment hearing, board of revision member,
 69-059
 Building on leased land, 69-126
 Cemetery, township, for, 69-101
 Highway use tax, use of funds, 69-121
 Hospital, nonprofit, for, 69-089
 Inheritance taxes, payment to county, 69-121
 Levy
 Township fire equipment, 69-014
 Over 10 mill limit
 Mentally retarded, for, 69-113
 Realty, hearing, 69-059
 Reappraisal, 69-141
 Title insurance company, 69-022
 Township, 69-055
 Municipality within, 69-055
 Valuation, increase, 69-141

TEACHER

Additional duties, compensation, 69-025
 Assault by student, sick leave, 69-070
 Compensation
 Assault by student, 69-070
 Determination, 69-025
 Part-time teaching, increments, 69-069
 Duties, compensation, 69-025
 Part-time, increments, 69-069
 Sick leave, assault by student, 69-070
 Sick leave rights, 69-070
 Substituting, additional duty, 69-025

January 1970 Adv. Sheets

TITLE INSURANCE COMPANY

Annual report, 69-022
 Franchise tax, 69-022
 Insurance company tax, 69-022
 Intangibles tax, 69-022
 Personal property tax, 69-022

TOWN HALL

Township building included, 69-132

TOWNSHIP

Ambulance service, 69-038
 Ambulance service, contract, 69-123
 Building, construction or enlargement, 69-132
 Cemetery, tax levy for, 69-101
 Clerk, as village clerk, 69-081
 Costs, building construction, etc., 69-132
 Fire equipment, joint purchase, 69-014
 Health insurance, 69-046
 New, boundaries, 69-032
 Recreational district, joint, 69-099
 Taxation, 69-055
 Tax levy for nonprofit hospital, 69-089
 Zoning violation, prosecution, 69-095

TOWNSHIP TRUSTEE

Gas purchase, bids, 69-054
 Health department member, as, 69-167
 Nonprofit corporation board, on, 69-084

TOY FIREARMS

Minor, sale to, 69-023

TREASURER, COUNTY

Vacancy, filling, 69-052

TRIAL

Costs, refund, 69-081
 Retrial, costs, 69-058

TRUSTEES OF PUBLIC AFFAIRS

County engineer as, 69-150

TUITION — See SCHOOL.**UNIVERSITIES AND COLLEGES, STATE**

Loan by insurance company, 69-037
 Open housing, 69-042
 Rule violation, jurisdiction, 69-064

VETERANS

Service officer, county auditor as, 69-115

VILLAGE — See also MUNICIPAL CORPORATION.

Clerk, as township clerk, 69-081
 Invalid contract, liability for supplies, 69-127

VOCATIONAL EDUCATION

Required, when, 69-166

VOCATIONAL SCHOOL DISTRICT — See SCHOOL DISTRICT.**VOLUNTEER FIREMEN**

Ambulance service, 69-038

WAGES AND HOURS

Overtime, two positions held, 69-009
 Two positions, overtime pay, 69-009

WARDS

Redistricting, 69-075

WARRANT, ARREST

Peace officer making, 69-061

WATER COMPANY

Village, supplying water, 69-067

WATER SUPPLY

Contract for, village, 69-066

Contract, municipal, 69-067

Private utility, lien, 69-001

Utility lien, 69-001

Water company supplying, 69-067

Water tower, zoning exemption, 69-165

WATERWORKS

Sale to corporation of water, 69-066

WEAPONS — See also FIREARMS.

Karate stick, 69-019

YOUTH COMMISSION

Member carrying firearms, 69-151

ZONING

Dogs, raising, 69-078

Junk yard license, 69-136

Nonconforming use, changing, 69-027

Violation, prosecution, 69-095

Water tower, exempt, 69-165

TABLES

TABLE 1 — Ohio Constitution Provisions Interpreted

TABLE 2 — Ohio Revised Code Sections Interpreted

TABLE 3 — Prior Ohio Attorney General Opinions Affected

TABLE 4 — Compatible and Incompatible Offices

TABLE 5 — Informal Opinions

TABLE 1

Ohio Constitution Provisions Interpreted

<i>Ohio Const.</i>	<i>1969 Opinion</i>
Art. I, §9	69-006
§19	69-098
Art. II, §4	69-039
§20	69-034
§27	69-052
Art. IV, §4(C)	69-031
§6	69-131
Art. XII, §5a	69-121
Art. XV, §10	69-150
Art. XVII, §2	69-052
Art. XVIII, §3	69-043
	69-130

TABLE 2

Ohio Revised Code Sections Interpreted

<i>Rev. Code</i>	<i>1969 Opinion</i>	<i>Rev. Code</i>	<i>1969 Opinion</i>
H531, §19	69-141	305.171	69-034
1.14	69-134		69-045
117.06	69-047		69-048
122.561	69-157		69-049
123.03	69-142	305.31	69-105
133.30	69-083	307.09	69-140
135.04	69-114	307.41	69-016
143.12	69-134	307.86	69-016
143.29	69-057		69-045
	69-070		69-048
	69-077	309.02	69-021
	69-164	309.08	69-021
143.41	69-107		69-036
	69-115	309.09	69-148
	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

<i>Rev. Code</i>	<i>1969 Opinion</i>	<i>Rev. Code</i>	<i>1969 Opinion</i>
317.08	69-001	707.22	69-118
	69-139	709.02	69-118
	69-143	709.11	69-118
317.18	69-143	721.03	69-130
319.11	69-047	721.15	69-130
319.16	69-108	731.02	69-102
319.19	69-076	731.06	69-075
319.20	69-139	731.14	69-127
Chapter 325	69-033	733.48	69-039
325.01	69-153	733.53	69-148
325.07	69-090	737.11	69-043
	69-163	742.02	69-028
325.071	69-090	742.37	69-028
325.12	69-159	743.18	69-066
325.17	69-134	743.24	69-066
	69-153	755.16	69-099
325.19	69-134	971.27	69-060
325.20	69-090	1109.31	69-022
325.27	69-153	1151.342	69-091
331.01	69-023	1501.17	69-158
331.04	69-023	1531.02	69-008
339.01	69-062	1531.99	69-008
339.03	69-062	1701.13	69-147
339.06	69-056	1717.07	69-108
	69-085	Chapter 1726	69-091
339.14	69-140	1735.01	69-022
340.03	69-146	Chapter 1785	69-147
340.07	69-062	1901.11	69-149
340.10	69-015	1901.20	69-064
341.20	69-163	1901.34	69-095
343.01	69-026	1905.01	69-117
	69-073	2151.351	69-110
503.02	69-032	2301.18	69-031
503.07	69-032	2315.27	69-131
505.26	69-132	2335.01	69-109
505.37	69-014	2903.05	69-024
	69-038	2919.08	69-056
	69-123	2923.01	69-019
505.39	69-123		69-151
505.443	69-038	2923.02	69-019
	69-123	2923.04	69-020
505.60	69-046	2935.09	69-061
509.01	69-055	2935.10	69-061
511.01	69-132	2937.08	69-117
517.03	69-101	2947.13	69-008
517.11	69-101	2947.23	69-058
519.01	69-078		69-081
519.19	69-027	3101.01	69-051
519.21	69-078	3101.06	69-051
	69-165	3311.231	69-088
519.24	69-136	3313.02	69-045
703.22	69-032	3313.33	69-133
707.01 et seq.	69-118	3313.37	69-012

<i>Rev. Code</i>	<i>1969 Opinion</i>	<i>Rev. Code</i>	<i>1969 Opinion</i>
3313.39	69-006	4933.04	69-066
3313.64	69-111	5119.62	69-015
	69-119	5123.03	69-104
3313.66	69-071	5126.01 et seq.	69-113
3313.90	69-166	5126.03	69-045
3317.01	69-103		69-146
3317.06	69-103	5127.01	69-146
3317.13	69-069	5127.03	69-015
3319.08	69-025	5127.04	69-015
3319.082	69-002	5139.191	69-151
3319.084	69-029	5153.01	69-023
3319.10	69-025	5155.33	69-140
3321.01	69-040	5301.25	69-001
3321.05	69-040	5301.51	69-143
3323.01	69-040	5511.01	69-098
3327.06	69-111	5520.01 et seq.	69-128
3335.02	69-042	5529.11	69-050
3335.08	69-042	5549.21	69-054
3375.15	69-102	5573.13	69-055
3375.50	69-068	5573.21	69-055
3375.54	69-082	5575.01	69-054
Chapter 3377	69-037	5575.10	69-055
3377.04	69-037	5701.02	69-126
3501.17	69-158	5705.02	69-055
3513.31	69-080		69-101
3701.53	69-094	5705.05	69-105
3709.11	69-094	5705.06	69-055
3709.15	69-094	5705.10	69-015
3781.03	69-087	5705.19	69-015
3781.10	69-148		69-113
3791.04	69-087		69-123
3791.07	69-087	5705.191	69-089
3923.12	69-049	5705.221	69-015
3929.01	69-022	5705.24	69-113
4112.01	69-042	5705.331	69-141
4123.02	69-028	5705.41	69-076
4143.01	69-005	5713.03	69-126
4143.02	69-005	5713.081	69-121
4301.32	69-129	5713.11	69-141
4504.02	69-074	5715.02	69-059
	69-105	5725.18	69-022
4504.03	69-074	5725.21	69-022
4504.05	69-074	5733.20	69-053
4505.06	69-106	5739.02	69-106
4511.191	69-125	5739.021	69-106
4513.39	69-061	5739.22	69-083
4582.06	69-142	5741.02	69-106
4733.16	69-147	5741.021	69-106
4737.07	69-136	5901.02	69-031
4933.01	69-067	5901.07	69-115

TABLE 3

Prior Ohio Attorney General Opinions Affected

<i>Former Opinion</i>		<i>1969 Opinion</i>
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 physically 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

<i>Office</i>	<i>Compatible With</i>	<i>1969 Opinion No.</i>
State senator	Village solicitor	69-039
Village solicitor	State senator	69-039

Incompatible Offices

<i>Office</i>	<i>Incompatible With</i>	<i>1969 Opinion No.</i>
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