

cation) is not authorized to require reports containing information required by the Teachers' Retirement Board, such as Form A, adopted by such board, to be filed with the clerk of the board of education, so that the provisions of Section 7786, General Code, to the effect that the salary of a teacher may be withheld until such teacher files with the clerk reports required to be filed by the director of education, boards of education and the superintendent of schools, may be invoked.

Respectfully,

EDWARD C. TURNER,
Attorney General.

338.

ROSTER OF OHIO WORLD WAR SOLDIERS—COPIES OF SAME TO BE
DELIVERED TO PRESENT GENERAL ASSEMBLY.

SYLLABUS:

The ten copies or sets of the roster of Ohio soldiers, sailors and marines engaged in the war with the Central Powers of Europe, directed by Section 4 of the Act providing for the publication and distribution of such roster, (108 v. Part I, 191) to be distributed to each member of the General Assembly, should be delivered to the present members of the General Assembly, who are at this time public officers, and not the individuals who were members of the Eighty-Third General Assembly, which passed said act.

COLUMBUS, OHIO, April 18, 1927.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of April 14, 1927, reading as follows:

“The 83rd General Assembly on May 7, 1919, approved an appropriation providing for the preparation, publication and distribution of a complete roster of all Ohio soldiers, sailors and marines who entered the service of the United States in the war 1917-1919 with the Central Powers of Europe. Section 4 of the Act providing for the distribution, allows to each member of the General Assembly ten copies or sets.

Your opinion is requested whether or not the distribution at this time should be made to the present members of the General Assembly or to the members comprising the 83rd General Assembly.”

Section 4 of the act to which you refer is a part of “An Act—Providing for the publication and distribution of the roster of Ohio soldiers, sailors and marines engaged in the war with the Central Powers of Europe” passed on April 17, 1919 (1082, Part 1, 191). This section reads in part as follows:

“The distribution of said volumes shall be under the direction of the secretary of state and shall be as follows: To each member of the general assembly, ten copies or sets; to the adjutant general, for distribution to the adjutants general of each state and territory, and proper officials of the navy and war departments of the United States, one hundred copies or sets; to each elective state officer of Ohio, to be kept as a part of the official records of his office, one copy; to the state library, one hundred copies for exchange and ten copies to be retained permanently therein; to the Ohio Archaeological

and Historical society, twenty-five copies; to each public library of the state, one copy; to each college or university library, one copy; to each county recorder, to be kept by him in his office and transferred to his successor as other public records, one copy. The remainder of said copies after such distribution shall be placed on sale by the secretary of state at a price to be fixed by the commissioners of public printing * * *."

It is a general and fundamental rule of construction that if a statute be reasonably susceptible of two interpretations, one of which would render it unconstitutional and the other valid, that construction will be adopted which will uphold its validity.

See *State ex rel., vs. Hunt*, 34 O. S. 143; *Commercial Co. vs. Manufacturing Co.*, 55 O. S. 217; *Burt vs. Rattle*, 31 O. S. 116.

The rule is thus stated in 12 C. J. 787:

"When reasonably possible, a statute must be so construed as to uphold its validity. Indeed, a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score. In other words, in testing the constitutionality of a statute, the language must receive such construction as will conform it to any constitutional limitation or requirement, if it is susceptible of such interpretation; and the statute and constitutional provisions must be read together and so harmonized as to give effect to both when this can be consistently done. If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional, it is the duty of the court to adopt that construction which, without doing violence to the fair meaning of the language, will render it valid. This rule is based on the presumption that the legislature intended to act within the scope of its constitutional powers, and to enact a valid and effective statute. * * *" *(Italics the writer's.)*

If it be said that the language of Section 4, supra, "To each member of the General Assembly, ten copies or sets", has reference to the members of the 83rd General Assembly (most of whom are no longer members of the legislature) in their individual or private capacity, then clearly is so much of such section unconstitutional and void. Not only would the giving of these copies or sets to the individuals who were formerly members of the General Assembly constitute a devotion of public moneys raised by taxation to a private use, but such action would be in direct violation of Section 31, Article II of the Constitution of Ohio, which reads as follows:

"The members and officers of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office."

No argument should be required to demonstrate that copies or sets of the books in question are things of value and "perquisites" within the meaning of the section of the Constitution above quoted. The act under consideration provides that not more than ten thousand copies or sets of the roster shall be printed, and appropriates the sum of fifty thousand dollars to cover the cost of the preparation and printing. The act further provides that after the distribution of such volumes to the public institutions and public officers enumerated in Section 4, supra, the "remainder of said copies * * * shall be placed on sale by the secretary of state at a price to be fixed by the commissioners of public printing." The distribution to the former members of the General Assembly can not be justified on the ground that the roster is a public record

the free distribution of which to individual citizens would promote the welfare of the state, because the legislature specifically determined in Section 4, supra, that the books should be sold to institutions other than the institutions of a public or quasi-public nature and to individuals other than the public officers named in the act.

While it is somewhat difficult to see just what relation the placing of ten copies or sets of the roster in question in the hands of each member of the General Assembly bears to a proper discharge of legislative duties, the legislature has determined such distribution to be necessary and for the best interests of the state. And the only theory upon which such a distribution can be justified is, that the books are to be placed in the hands of the members of the General Assembly as public officers, to enable them the more properly and efficiently to discharge their public duties as such officers. It follows that the distribution about which you inquire must be made to the present members of the Senate and House who are public officers and not to the members of the legislature which passed the act under consideration.

In this connection the remarks of the Attorney General in an opinion rendered to the Sergeant-at-arms of the House of Representatives, 81st General Assembly, under date of June 2, 1915, reported at page 908, Vol. I of the Opinions of the Attorney General for that year are pertinent.

"The property furnished for the use of either the house or a member or officer thereof of the General Assembly, is furnished for public and not private purposes, and the ownership to said property never at any time vested in any member or officer of the General Assembly, and no officer, member or employe of the General Assembly, or either branch of said assembly, has any more right to order such property boxed up at public expense and sent to him for his private use, than would the governor or the attorney general, or any other state officer, have to clean out their respective offices of everything in them, including the carpets on the floor, when they retire."

Specifically answering your question, for the reasons stated, I am of the opinion that the ten copies or sets of the roster of Ohio soldiers, sailors and marines engaged in the war with the Central Powers of Europe, directed by Section 4 of the act providing for the publication and distribution of such roster (108 V. Part 1, 191), to be distributed to each member of the General Assembly, should be delivered to the present members of the General Assembly, who are at this time public officers, and not to the individuals who were members of the 83rd General Assembly, which passed said act.

Respectfully,

EDWARD C. TURNER,
Attorney General.

339.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWNSHIP,
COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, April 18, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, O.*

DEAR MR. SCHLESINGER:—An examination of the abstract submitted by you to this department discloses the following:

The abstract under consideration was prepared by McMillan & Kelso, abstracters, Lisbon, Ohio, under date of May 7, 1926, and was continued by the same abstracters