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*Tax Law; Annuities.*

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the town of Nelsonville a lot in said town for the purpose of erecting therein "a free church and school house."

The question submitted I understand to be, whether the legislature can give to the authorities of the town the power to transfer this lot to the school directors for the purpose of erecting a common school house thereon.

The grant so made by Mr. Nelson is in the nature of a charitable bequest to a specific trustee, that is, the town of Nelsonville, which is an incorporated town, for a definite object, that is, the erection on a lot of a *free church and school house*. As this grant was entirely lawful and sufficiently specific, it requires no interposition either of the legislature or a court of equity to carry out the intention of the donor.

What is proposed on the part of the school directors is that this property is to be diverted from the trustee to whom it was committed by Mr. Nelson, and from the specific purpose intended by the grant.

I do not think this can be done even with the aid of the legislature.

Very respectfully yours,

HENRY STANBERY.

Hon. R. G. McLean, House of Representatives.

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TAX LAW; ANNUITIES.

Attorney General's Office,

Columbus, January 11, 1848.

SIR:—Yours of the 28th ult. has remained unanswered for some days in consequence of other engagements.

It appears that Mrs. Cable is entitled to an annuity of \$42.00 which she receives from Pennsylvania, and that she has been assessed on account of this yearly payment at the

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*Tax Law; Annuities; College Student; Residence.*

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sum of \$700, being a principal sum, which at 6 per cent. would give the yearly amount of \$42.

This mode of valuing or assessing this property is altogether erroneous.

The twelfth section of the tax law of March 2, 1846, provides that annuities shall be valued at the price which the person listing the same believes them to worth in money. The mode of arriving at this price or value is to ascertain from the annuity tables, what sum it would require to purchase for Mrs. Cable an annuity of \$42 per year for life. That, of course, depends upon her age, etc., but you will find it will fall much short of \$700.

Yours respectfully,

HENRY STANBERY.

Mr. Samuel Simple, Leavitt, Carroll County, Ohio.

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COLLEGE STUDENT; RESIDENCE.

Attorney General's Office,  
Columbus, March 20, 1847.

*David A. Wallace, Esq.:*

DEAR SIR:—IN answer to your letter of the 15th instant asking my opinion whether students in your college from other parts of the State are to be considered residents of the township in which the college is situated, I have to say that they are not to be so considered.

The residence necessary to make a person liable to work on the roads must be accompanied with *an intention of remaining*. It must be such a residence that if continued for a sufficient length of time would give the person a settlement under the poor laws, and not a merely temporary residence or for a temporary business or purpose, accompanied with an *intention of returning* to some other domicile or residence when that business or purpose is accomplished.

Yours respectfully,

HENRY STANBERY.

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*Fugitives From Justice; Damages on Sippo Reservoir.*

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## FUGITIVES FROM JUSTICE.

Attorney General's Office,  
Columbus, April 4, 1848.

SIR:—I have examined the requisition of the governor of Indiana for the surrender of Edward Bradbury, a fugitive from justice, and the documents accompanying the requisition.

The papers show that in the spring term, A. D. 1848, Bradbury, with one Stephen Spinkham, was indicted in the Circuit Court of the county of Wayne, Indiana, for the offence of obtaining money and property by false pretences. A copy of the indictment is certified as authentic by the governor, and the requisition states that the governor of Indiana has satisfactory evidence that Bradbury has fled from justice, and is now remaining in the State of Ohio, and that Benjamin Conklin has been appointed by the governor as agent to receive the fugitive.

I see no objection to the issuing of the usual warrant by your excellency for the arrest of the fugitive.

Very respectfully,

HENRY STANBERY.

His Excellency, Wm. Bebb, Columbus, Ohio.

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DAMAGES ON SIPPO RESERVOIR; ESTATE BY  
CURTESY; TAX TITLE.

Attorney General's Office,  
Columbus, April 8, 1848.

*I. Blikensderfer, Jr., Esq., Acting Commissioner:*

SIR:—It appears from your letter of the 6th instant that you entertain doubts in regard to the payment of two of the awards of damage on the Sippo Reservoir.

1st. As to the award to Mark Higginbotham, it appears that he has an estate by curtesy in 44.43 acres within the reservoir for the total destruction of which land there has been awarded in his name \$964.04. The estate in re-

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*Assault and Battery; Complaint by Third Person.*

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mainder belongs to the step-children of Higginbotham, who are minors. It is obvious that the tenant for life can only be entitled to a ratable share of those damages, and before the award is paid to him, he should be appointed by the proper court guardian for his step-children and give a receipt for the money in his own right as guardian.

2d. As to the award of Timothy Finnegan, who holds by tax title. It appears that he has been in possession under this title for about 18 years. No claim is set up by the former owner, nor does it appear that any one is now entitled to redeem. Under these circumstances, I think we are bound to regard him as the owner. He does not claim in subordination to any other title. It is hardly proper that we should undertake to decide that his tax title is invalid, and the estate should be recovered by the former owner. I think that any claim that former owner might have to the sum awarded or the damages, must be asserted by him against Finnegan. Yours respectfully,

HENRY STANBERY.

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ASSAULT AND BATTERY; COMPLAINT BY THIRD PERSON.

Attorney General's Office,  
Columbus, April 8, 1848.

SIR:—I entertain no doubt that a prosecution for an assault and battery may be commenced before a justice of the peace on the complaint of a third person other than the party injured, but in such a case the justice has no power to fine on a plea of guilty. He may commit to jail, discharge or recognize to the Common Pleas. It is only where the complaint is by the party injured that he can hear the case on the plea of guilty and finally dispose of it by fine.

Yours respectfully,

HENRY STANBERY.

L. L. Smith, Esq., Prosecuting Attorney, Athens, Ohio.

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*County Surveyor; Record; County Road on County Line;  
Appointment of Treasurer to Fill Vacancy.*

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COUNTY SURVEYOR; RECORD; COUNTY ROAD  
ON COUNTY LINE.

Attorney General's Office,  
Columbus, April 15, 1848.

*B. F. Raleigh, Esq., Hamilton, Ohio:*

DEAR SIR:—Absence from town has prevented an earlier reply to yours of the 30th ult. As to the questions submitted for my opinion:

1. The amendatory act of February 8, 1847, Ohio Stat. Vol. 45, page 50, expressly requires the county surveyor to keep a record of all his surveys, whether official or not. I think the tracing the lines of former surveys, although no new monuments are made, and also such surveys as you mention of a temporary character, are all embraced in the amendatory law. The language of the law is very comprehensive.

Whatever can be called a survey, no matter how made or for what purpose, must go upon this record.

2. I am of opinion that the expenses of establishing a county road upon a county line should be borne equally by both the counties.

Yours respectfully,  
HENRY STANBERY.

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APPOINTMENT OF TREASURER TO FILL VA-  
CANCY.

Attorney General's Office,  
Columbus, April 15, 1848.

*Mr. F. K. Jacobs, Lima, Ohio:*

DEAR SIR:—In answer to yours of the 7th instant I have to say that the appointment of a county treasurer made by the commissioners of the county in case of a vacancy occasioned by the neglect of the treasurer-elect to give bond, continues for the whole term of treasurer-elect.

Yours respectfully,  
HENRY STANBERY.

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*Taverns; Indictment; License Act of 1847.*

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## TAVERNS; INDICTMENT.

Attorney General's Office,  
Columbus, April 24, 1848.

*L. F. Fisher, Esq., Prosecuting Attorney, London, Ohio:*

DEAR SIR:—Your letter of the 8th of January came during my absence at Washington City, and has since escaped my attention until today.

I think the explanatory act of February 24, 1834, on the subject of taverns, requires a change in the old form of indictment.

Where the tavern is kept in a city, town or village or within the distance of one mile from such place, that fact ought to be distinctly averred. But where it is kept beyond distance, there should be an averment that the defendant kept in his tavern for the use of persons resorting to it spirituous liquors, etc.

Yours respectfully,  
HENRY STANBERY.

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LICENSE ACT OF 1847.

Attorney General's Office,  
Columbus, April 24, 1848.

*J. T. Asper, Esq., Prosecuting Attorney, Warren County:*

DEAR SIR:—I take the first leisure I have had to reply to yours of the 15th ult.

1. I am of opinion that the act regulating the sale of intoxicating liquors passed February 8, 1847, is constitutional.

2. Only so much of that law as submits the question of licenses to the electors, was repealed at the late session of the General Assembly.

3. I see no difficulty in the way of a prosecution un-

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*Appointment of Treasurer to Fill Vacancy.*

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der the 4th section of that act, and think that your form of indictment (which is herewith returned) is good.

Yours respectfully,

HENRY STANBERY.

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APPOINTMENT OF TREASURER TO FILL VACANCY; UNEXPIRED TERM.

Attorney General's Office,  
Columbus, April 25, 1848.

*T. K. Jacobs, Lima, Ohio:*

DEAR SIR:—It appears from your letter of the 21st instant that Mr. Beatty was elected treasurer of Allen County at the October election, 1845; that he was re-elected to the same office at the October election, 1847, and died in February, 1848, not having given bond for the second term, and that you were appointed treasurer by the county commissioners upon the death of Mr. Beatty.

I am of opinion that your term of service under the appointment is only for the unexpired term of Beatty's first term, that is, until the first Monday of June next. At that day the term of office under which Mr. Beatty was acting at the time of his death would have expired. When that time comes it will be proper for the county commissioners to make a new appointment and the appointment so to be made will continue for the whole of Mr. Beatty's second term.

I had at first some doubt whether your term of office under your present appointment would not continue throughout both the terms for which Mr. Beatty was elected, and this doubt arose on the language of the last clause of the fourth section Swan's Stat. 964, which provides that the treasurer appointed by the commissioners should hold his office until the expiration of the term for which his predecessor was elected or appointed, *and until his successor is elected and qualified*. But I think this term elected is to be so construed as to include an *appointment* as well as a regular election by the people, especially as the same language is

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*Collection of Taxes by Treasurer.*

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used in the first section, where it obviously must have that construction.

Yours respectfully,  
HENRY STANBERY.

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COLLECTION OF TAXES BY COUNTY TREASURER.

Attorney General's Office,  
Columbus, May 22, 1848.

*A. Peters, Esq., Treasurer Muskingum County:*

DEAR SIR:—In answer to the inquiries contained in your letter of the 12th instant, I have to say that I can find no authority in any of the statutes as to the collection of taxes by the county treasurer to warrant a proceeding by attachment in the ordinary way.

The 19th section of the act of March 12, 1831 (Swan's Stat. 996) authorizes the county treasurer or his deputy at any time after the 1st of December (since changed to the 20th of December) to distrain sufficient goods and chattels belonging to the person charged with the tax, to tax the taxes and costs and to advertise and sell.

The eighteenth section of the tax law of February 8, 1847 (Vol. 45, p. 64), provides that if the county treasurer shall be unable to collect the taxes assessed upon any executor, administrator, guardian, receiver, accounting officer, agent, factor, or other person, the treasurer shall apply to the Court of Common Pleas and the court shall cause a notice to be served on such executor, etc., and if no cause is shown why the taxes are not paid, a rule shall be entered for the payment of the taxes, which shall have the force of a judgment and be enforced by an attachment or execution, or such process as may be directed by the court.

I do not think that this section repeals by implication the nineteenth section of the act of 1831, but is to be considered as a cumulative remedy and to apply to the executors, etc., who could not be reached under that law.

I see no objection to your proceeding to distrain the



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*College Student; Residence—Militia Law; Fines of Independent Company; How Collected.*

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notes, moneys or other personal property of the delinquent according to the provisions of the old law, or if the person can be served with notice you can make the motion to the court and obtain the judgment, as provided in the act of 1847, and then the court will direct such process as will reach his notes, etc.

Yours respectfully,  
HENRY STANBERY.

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COLLEGE STUDENT; RESIDENCE.

Attorney General's Office,  
Columbus, May 27, 1848.

*Mr. James Findlay, New Concord, Ohio:*

DEAR SIR:—Yours of the 27th instant has been received.

I am of opinion that students attending college from other parts of the State, or of other states, are not to be considered residents of the township in which the college is situate, so as to become liable to work on the highways.

Yours respectfully,  
HENRY STANBERY.

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MILITIA LAW; FINES OF INDEPENDENT COMPANY; HOW COLLECTED.

Attorney General's Office,  
Columbus, June 19, 1848.

*Samuel Galloway, Esq.:*

DEAR SIR:—The question of Mr. Jayne submitted to you for the opinion of the attorney general has been examined and I am of opinion that independent companies have the power to establish by-laws or regulations for their government according to the provisions of the act of March 27,

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*Prosecuting Attorney; Litigation Outside of County.*

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1841, 39 Vol. O. Stat., p. 39, and that any fines or taxes arising under such regulations are to be collected according to the provisions of the third section of that act, before a justice of the peace if the amount is under one hundred dollars or before the Court of Common Pleas, if over that amount, in an action of debt in the name of the treasurer of the company.

Very respectfully yours,

HENRY STANBERY.

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PROSECUTING ATTORNEY; LITIGATION OUTSIDE OF COUNTY.

Attorney General's Office,

Columbus, July 10, 1848.

SIR:—I have just received your telegraphic dispatch of this date. For answer I have to say that it is not the duty of a prosecuting attorney to resist the allowance of a writ of error in a criminal case, applied for out of his county. His duties are limited to litigation within his county, and there is no statutory provision, within my knowledge, requiring him to travel out of his county for any purpose.

Very respectfully yours,

HENRY STANBERY.

Jno. Clarke, Esq., Prosecuting Attorney, New Lisbon, Ohio.

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ADMISSION OF EVIDENCE.

Attorney General's Office,

Columbus, July 21, 1848.

SIR:—I have examined the question stated in yours of the 10th instant and am of opinion that the secondary evidence was properly admitted. In addition to the cases cited by you I would refer you to the following: 16 Wendell 56, 2 Cowen 524, 14 East, 276.

I replied to your telegraphic dispatch by letter of the

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*Roads and Highways; Indictment—Ohio Penitentiary;  
Renewal of Contract.*

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10th instant that it was not your duty to follow the case out of your county.

If the case is reserved for bank, please give me due notice.

Yours respectfully,

HENRY STANBERY.

John Clarke, Esq., Prosecuting Attorney, New Lisbon, Ohio.

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ROADS AND HIGHWAYS; INDICTMENT.

Attorney General's Office,

Columbus, December 2, 1848.

*Prosecuting Attorney Wyandotte County:*

SIR:—In answer to yours of the 29th ult., I am of opinion that an indictment under the twentieth section of the act relating to roads and highways need not set out the name or names if any individuals obstruct, but the general allegation to the hindrance of travelers and persons passing and repassing, etc., is sufficient.

Yours very respectfully,

HENRY STANBERY.

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OHIO PENITENTIARY; RENEWAL OF CONTRACT.

Attorney General's Office,

Columbus, December 19, 1848.

*The Directors of the Penitentiary:*

GENTLEMEN:—In answer to your letter of the 18th instant I am of opinion that you are not at liberty to renew any existing contract for the hire of convict labor, even if the contract contains a clause for renewal. The act of February 24, 1848, in relation to convict labor (Ohio Stat. Vol. 46, page 76) is too explicit to admit of doubt. It forbids the directors to renew any existing contract for the hire of convict labor, or to enter into any new contract for the hire of

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*Fugitive from Justice.*

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such labor unless upon report by them made to the legislature of the proposed contract or renewal they shall be specially authorized by the legislature so to do.

There is no room to suppose that the legislature did not intend the prohibition to extend to such contracts as contained the clause for renewal. You are prohibited from renewing any existing contract. Besides all the existing contracts contain that clause of which the legislature were fully advised. Whether the clause for renewal is valid and obligatory is not now the question. It is simply a question of the exercise of power by the directors, agents of the State, and whatever power you may have had to renew an existing contract or make a new one, is expressly taken away as a general power and is limited to cases in which after a report to the legislature of the proposed contract or renewal, you may be specially authorized to contract or renew.

I would therefore suggest to you the making of such report to the legislature of any contract or renewal of a contract which you may deem expedient, but that you abstain from anything further, until the special authority is granted.

Yours respectfully,

HENRY STANBERY.

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FUGITIVE FROM JUSTICE.

Attorney General's Office,  
Columbus, January 18, 1849.

SIR:—I have examined the requisition from the Governor of Michigan, and the accompanying affidavits, in the matter of Solomon Heymans and am of opinion that they do not make a proper case for the issuing of your warrant.

It appears that Heyman was in custody in Michigan in virtue of proceedings commenced under the Michigan stat-