I am of the opinion that the foregoing is a fair and truthful statement of the measure to be referred and accordingly submit for uses provided by law, the following certification:

"I, Gilbert Bettman, Attorney General of the State of Ohio, pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, hereby certify that the foregoing summary is a fair and truthful statement of Amended Senate Bill No. 342, passed by the 89th General Assembly, June 25, 1931. GILBERT BETTMAN, Attorney General."

Respectfully,
GILBERT BETTMAN,
Attorney General.

3510.

COUNTY AUDITOR—ALLOWANCE OF CERTAIN EXPENSES INCURRED BY CORONER IN CONNECTION WITH MILLFIELD MINE DISASTER.

SYLLABUS:

Discussion of allowance by county auditor of expenses incurred by county coroner in connection with the Millfield Mine disaster.

COLUMBUS, OHIO, August 17, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which reads as follows:

"I would like to have your opinion upon six questions of law growing out of the following facts:

On November 5th, 1930, at the Sunday Creek Coal Company mine at Millfield, Athens County, Ohio, an explosion occurred in one of the entries causing the death of eighty-two men. The Athens County coroner was called. He made a trip from Athens to the mine at Millfield, a distance of about eleven miles from Athens, the county seat. The bodies were brought out in relays and they were so badly burned and mangled that it was impossible to identify them immediately on being removed from the mine. The coroner rented two rooms, a pool room and a store room besides using a building belonging to the Sunday Creek Coal Company for temporary morgues to provide a place to wash the bodies and examine them and to carry on the necessary steps to identify them. He agreed to pay the owners of the two rooms $10.00 apiece, mainly for the purpose of cleaning the rooms after the bodies had been identified and prepared for the undertakers.

It took the coroner and assistants (mainly volunteers) and undertakers three days and nights to identify and prepare the bodies for which the renting of these rooms were used.

It was necessary for the coroner to make numerous trips to Athens for supplies, to Nelsonville, Ohio, Trimble, Ohio, and Glouster, Ohio, in all he traveled in excess of four hundred miles.

The coroner made eighty-two separate reports and identifications and findings and filed a copy of them with the Probate Court of Athens County, Ohio, and a separate copy with the Common Pleas Court of Athens County, Ohio, and a separate copy with the State Mine Department.

For the inquest into the cause of the accident to be held on the 12th day of November, 1930, which time was agreed upon by the said Mine Department, the coroner swore in one Peter McKinley, a deputy sheriff, (without compensation from Athens County, Ohio) who was the General Superintendent for the Sunday Creek Coal Company, to serve subpoenas on thirty-six witnesses. Some of these witnesses were State Mine Department investigators who were called away from the explosion to go to Coshocton, Ohio, to another explosion and it was necessary for them to be served at Coshocton and other points in Ohio.

The coroner to hold the inquest into the cause of the explosion and to examine the witnesses rented a moving picture theatre at Millfield, Ohio, for which he promised to pay the sum of $10.00. He employed the Common Pleas Court stenographer to take the testimony of the witnesses and report the findings of the inquest. The stenographer made copies for the coroner who furnished them for the State Mine Department, and one copy to be filed in the Common Pleas Court. The testimony and findings totaled 84,000 words.

The County Auditor now refuses to allow the following items and upon these items I would like your opinion:

First: Refuses to allow $10.00 as rent for the store room and pool room used for temporary morgues, saying that there is no law providing for such rental. Refuses to allow the $10.00 for the theatre for holding the inquest where witnesses were examined.

Second: The mileage for serving subpoenas on witnesses called before the coroner and the prosecuting attorney at the inquest and will not allow mileage for separate witnesses when they are located in the same town or village.

Third: Refuses to allow compensation for a stenographer taking testimony and making copies of the testimony and findings of the inquest. (Said report and testimony if written in long hand by the coroner himself would probably have taken a week.)

FOURTH: The coroner mileage in going to and from the mine for supplies and seeking people to identify the bodies.

FIFTH: Refuses to allow the charge of $4.50 telephone charges for notifying relatives of dead miners and calling relatives to assist in the identification and the calling of undertakers and ambulances.

SIXTH: Refuses to allow for the making of reports as to description of the dead bodies, filed with the Probate Court. (I am enclosing for your information a copy of the coroner's report and findings of facts as made on one of the bodies which is similar to the other eighty-two copies.)

If the facts as I have set them forth are not clear I will do anything possible to assist you and write further explanation of the facts in any manner so that I may have your opinion as above requested."

Sections 921 and 2856, General Code, are immediately applicable to your inquiries, and provide, so far as pertinent, as follows:

Sec. 921. " * * *

Upon receiving notice of a death occurring at a mine, as provided for in this act, the coroner shall hold an inquest forthwith upon the body of such person, inquire carefully into the cause of his death, and within ten days after such inquest, return a copy of his findings, with a description of the body, and all the testimony before him, to the chief inspector of mines. Upon request of the owner, lessee or agent of the mine where such person was employed, shall furnish a copy thereof to such owner, lessee or agent, for which such coroner shall be entitled to a fee of ten cents per legal cap page, but in no case more than five dollars for any one inquest, for copy furnished owner or lessee."

Sec. 2856. "When informed that the body of a person, whose death is supposed to have been caused by unlawful or suspicious means has been found within the county, the coroner shall appear forthwith at the place where the body is, issue subpoenas for such witnesses as he deems necessary, administer to them the usual oath, and proceed to inquire how the deceased came to his death, whether by violence from any other person or persons, by whom, whether as principals or accessories before or after the fact, and all circumstances relating thereto. The testimony of such witnesses shall be reduced to writing, by them respectively subscribed except when stenographically reported by the official stenographer of the coroner, and, with the finding and recognizances hereinafter mentioned, if any, returned by the coroner to the clerk of the court of common pleas of the county. If he deems it necessary, he shall cause such witnesses to enter into recognizance, in such sum as may be proper, for their appearance at the succeeding term of the court of common pleas of the county to give testimony concerning the matter. The coroner may require any and all such witnesses to give security for their attendance, and if they or any of them neglect to comply with his requirements, he shall commit such person to the prison of the county, until discharged by due course of law. A report shall be made from the personal observation of the corpse; statements of relatives, of other persons having adequate knowledge of the facts, and such other sources of information as may be available or by autopsy if such autopsy is authorized by the prosecuting attorney of the county."

It will be observed from the above sections that the provisions of section 2856 regarding the duties of a coroner when a death occurs in his county, which death is supposed to have been caused by unlawful or suspicious means, are general, while the provisions of section 921 are special, only applying when a death occurs at a mine. However, the two statutes must be read together, inasmuch as they have to do with the same subject matter, and if there be any inconsistencies, the provisions of section 921 will prevail. It is a well known rule of statutory construction that a special statute will prevail over a general statute on the same subject matter.

Section 921 makes it the mandatory duty of a coroner to hold an inquest immediately after receiving notice of a death at a mine. In fact, said coroner would be liable for a fine if he did not do so. See *section* 976, *General Code.*

It is to be noted that the above statutes are very vague as to the powers and duties of a coroner immediately after being notified or informed of a death and before the holding of the inquest. Section 921 only provides for the inquest and report of the findings and description of the body when a death occurs at a mine. However, section 2856 does provide that "the coroner shall appear forthwith at

the place where the body is, issue subpoenas for such witnesses as he deems necessary, administer to them the usual oath, and proceed to inquire how the deceased came to his death," etc.

It was stated in the case of *State ex rel. v. Berry,* 113 O. S. 641, at page 644, as follows:

> "In this state, however, the coroner can only exercise such powers and jurisdiction as are provided by statute."

While it is true that a public officer has such powers as are expressly given to him by the legislature, nevertheless, it has been held time and again by the Ohio courts that a public officer has also those implied powers which are necessary to effectuate the express powers granted. See *State, ex rel.* v. *Commissioners,* 8 N. P. (N. S.) 281, 282, affirmed, *Irèton* v. *State, ex rel.,* 12 C. C. (N. S.) 202, which was affirmed without opinion in *Ireton* v. *State, ex rel.,* 81 O. S. 562; and *State, ex rel.* v. *Kraft,* 18 O. App. Reps. 454, 456.

As noted in a preceding paragraph, section 2856 provides that the coroner shall appear immediately at the place where the body is found, on being informed of a death supposed to have been caused by suspicious or unlawful means. Section 2866, General Code, provides for the fees to be allowed a coroner and reads in part:

> "For view of dead body, three dollars."

Reading these sections together, it seems to be contemplated that a coroner shall view the body when he appears at the place where the death occurs.

In the case of *Lancaster County* v. *Holyoke,* 37 Neb. 328, the court was construing Section 7, Chapter 28 Compiled Statutes of the then Nebraska Code, which section provided "for viewing the dead body, $10." The court said at page 332:

> "* * * The word 'viewing', as here used, means something more than looking, seeing, beholding; it means inspection, investigation, and inquiry into the cause of the death of the person * * *."

Since the coroner is expected to inspect the body, investigate and attempt to determine the cause of death of a person, it seems reasonable to suppose that conditions might often exist where it would be absolutely essential to wash the body so that an efficient examination to determine the cause of death may be had. In the facts under consideration, it may be supposed that the bodies would have to be washed before they could be adequately examined, inasmuch as the explosion no doubt caused a cave-in of the mine covering the bodies with dirt and grime. Surely a coroner would have implied authority to do what he believed to be necessary under the circumstances so that he could examine and identify the bodies. Inasmuch as deaths occur sometimes in sparsely settled communities, facilities for washing of a body might not always be available without cost to the coroner. In such a situation, it would seem reasonable that the coroner should have the right to rent space in order to wash the body if it were necessary. From the facts disclosed by your communication, it appears that the bodies were horribly mangled, and therefore it cannot be said that the renting of space to wash the bodies was absolutely unnecessary. I therefore feel that the item for rent for the storeroom and pool room to wash the bodies may be allowed by the auditor.

As for the renting of the Millfield theatre for holding the inquest, it is to be noted that the statutes are vague as to where the inquest shall be held. How-

ever, it is to be inferred from the language used in section 2856, supra, that the inquest shall be held at the place where the body is found. This was the holding in the case of *Pickett* v. *Erie Co.,* 3 Pa. Co. 23, where it is stated at page 24:

> "The evident meaning and intent of the law is that the coroner's inquest should be held where the body is found. It must be on view of the remains, and of course it would not be held in their absence, although an inquest should be summoned and met where the death occurred."

See also Opinions of the Attorney General, 1923, page 23. It is readily to be noted that oftentimes the place where a death occurs may be in a locality which is some distance from the county seat, where the county coroner would be apt to have his office. Surely the coroner being compelled to hold an inquest at the mine where the bodies were found in the present instance, under the terms of section 921, supra, would have implied authority to provide a place to carry out this mandatory duty. Consequently, I am of the opinion, in answer to the second part of your first item, that the county auditor might legally allow the rent for the Millfield theatre where the inquest was held.

Coming now to your second item, I may say that section 2856, supra, provides that the coroner shall issue subpoenas for witnesses. Section 2858, provides in part as follows:

> "The coroner may issue any writ required by this chapter, to any constable of the county in which such body is found, or if, in his opinion the emergency so requires, to any discreet person of the county who shall be entitled to receive for the services rendered the same fees as elected constables * * *."

It is to be observed from the foregoing section that the coroner may issue his writ to any discreet person of the county if he believes an emergency exists, and that the discreet person may receive the same fees for the services rendered as elected constables. Section 3347, General Code, provides the fees payable to a constable for performing his various duties, and reads so far as pertinent:

> "For services actually rendered and expenses incurred, regularly elected * * * constables shall be entitled to receive the following fees and expenses, * * * serving and making return of each of the following notices and writs for each person named therein, including copies to complete service, if required by law, eighty cents; viz., summons, *subpoena* * * * mileage for the distance actually and necessarily traveled in serving and returning any of the preceding writs * * * first mile fifty cents and each additional mile, fifteen cents."

In Opinions of the Attorney General for 1929, Vol. I, page 757, it was held in the syllabus:

> "Under Section 3347 of the General Code, where a constable travels and serves two warrants at the same time during the same journey, he is not entitled to charge separate mileage on each warrant, but only for the number of miles actually and necessarily traveled in order to serve both warrants."

The facts involved in the above opinion showed the two defendants who were served with a warrant, lived in the same locality. It was contended that the constable was entitled to separate mileage for each warrant, but it was held

that he could receive remuneration only for the number of miles actually traveled in serving both warrants. Obviously, the above opinion is dispositive of the question involved in your second item; and for your consideration I am enclosing herewith a copy of the ruling. Hence, specifically answering the question involved in your second item, I am of the opinion that the auditor should allow the deputy sheriff who served the subpoenas in this case remuneration for the number of miles actually traveled in serving said subpoenas.

As for the third item, it appears that the coroner hired the common pleas court stenographer to take the testimony at the inquest. After an examinaion of the statutes, it appears that there is nothing therein making it the duty of the official stenographer of the court of common pleas to take notes at a coroner's inquest, and the question then arises—May a coroner employ a stenographer for the purpose of taking testimony?

With respect to this question, it was stated in the first paragraph of the syllabus of an opinion published in Annual Reports of the Attorney General for 1911-1912, Vol. I, page 320, as follows:

> "There is no statute authorizing the coroner to engage a stenographer and when he does, it must be at his own expense."

In the body of said opinion, at page 321, after stating that section 2856 was the only statute in which there was reference to a stenographer for a coroner, it is said:

> "This section provides that when the testimony of a witness at an inquest is stenographically reported by the official stenographer of the coroner, the witness need not sign the same. It does not authorize the payment from the county of the compensation of the stenographer. There is no statute empowering a coroner to employ a stenographer, and if he does so it must be at his expense.
>
> It is a well known principle of law that no officer, or person, can draw compensation from public funds except by authority of statute or ordinance.
>
> The allowance to the coroner of ten cents per one hundred words for a necessary writings is the only proper charge to be paid from the county for such writings."

Furthermore, the coroner is allowed by section 2866, the following fee:

> "For drawing all necessary writings, and return thereof, for every one hundred words, ten cents * * ."

In Annual Report of the Attorney General for 1909-1910, it was held at page 493, in the second paragraph of the syllabus:

> "Stenographer of coroner must be paid out of coroner's fees for taking testimony at inquest, and not out county fund."

In the body of the opinion at page 495, it is stated:

> "Answering your second question, I beg to state that I find no provision of law authorizing a coroner to employ an official stenographer, the compensation of whom may be paid by the county as expenses of the coroner. Section 1221 (now G. C. 2856) does mention the official stenographer of the coroner, but it is apparently contemplated that this stenographer shall be paid out of the fees of the coroner allowed under section 1239 (now G. C. 2866), and that no allowance as for expenses shall be made to cover such services." (Words in parenthesis mine.)

See also Opinions of the Attorney General for 1917, Vol I, page 245.

While there has been a slight change in section 2856, supra, since the rendition of the foregoing opinions, the change in no way affects their conclusions. In 1921, section 2856-2, General Code, was enacted authorizing coroners in counties having a population exceeding one hundred thousand to appoint in writing a stenographer-secretary to record testimony at inquests; however, this has no application to Athens County, inasmuch as said county has a population of around fifty thousand.

Therefore, in specific answer to the question involved in your third item, I am of the opinion that the auditor may not allow compensation for the common pleas court stenographer appointed by the coroner to take testimony at the inquest.

As for your fourth item, it is to be noted that section 2866 provides in part:

> "Coroners shall be allowed the following fees:
> * * * for traveling each mile, ten cents."

There is obviously no intimation or limitation in this section or any other section of the code as to what the word "traveling" means. It is apparent, however, that the coroner's duty is to view the body, and under section 921, in the present instance, immediately hold an inquest, inquire into the cause of death and prepare a report, including a description of the body. Apparently if he has implied authority to have the bodies washed, as determined in item first, supra, it is essential that supplies for such washing be furnished. Hence, I believe that the coroner may receive mileage for going to and from the mine to obtain supplies. As for mileage for seeking people to identify the bodies, it is apparent that the coroner under section 921 must hold an inquest and return a copy of the findings with a description of the body to the chief inspector of mines. Also section 2859, General Code, provides that when an inquest is held, a description of the body shall be returned as part of the findings, which description shall specify the name and all other particulars which may assist in the identification. Thus, it is my opinion that his expenses in seeking people to identify the bodies is a proper expense, allowable under section 2866, supra.

Coming now to the fifth item, it is to be seen that by virtue of section 2856, a report is to be made by the coroner from personal observation of the corpse, statements of relatives, etc. This report must be filed within ten days of the inquest with the mining department. Inasmuch as the coroner must hold an inquest immediately when a body is found at a mine, and the report of the inquest is to be made up partly from statements of relatives (section 2856), it is my opinion that the telephone charges for notifying relatives of the dead miners and calling the relatives to assist in the identification, is a lawful charge. As for calling of the undertakers and ambulances, it has been noted that the coroner is charged with the duty of identifying a body. Oftentimes, as in the present case, a body is in no condition to be identified without being washed and treated properly beforehand. The coroner cannot always be expected to have facilities and time for washing and identifying bodies, especially where there is such a large number, as in the present instance. It is a well known fact that bodies will deteriorate quickly without the aid of preservatives, and if an undertaker's attention were denied, chances of identification might be lost. Hence, I believe the coroner has implied power to call undertakers with ambulances to assist in washing and preparing the bodies for identification.

As for the sixth item, section 921 provides that a copy of the findings with a description of the body be made to the chief inspector of mines, and section 2856 provides that a copy of the testimony and findings be returned to the clerk

of the common pleas court. Section 2859 provides that the findings shall include a description of the body. However, nowhere is there any requirement that a copy of the proceedings be filed with the probate court. Consequently, I am of the opinion, in answer to the question involved in your sixth item, that the county auditor has no authority to allow payment for the making of returns as to description of the dead bodies, which were filed with the probate court.

In concluding this opinion, your attention is directed to sections 2460 and 2570, General Code, which provide as follows:

> "Sec. 2460. No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."
>
> "Sec. 2570. Except moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from such treasury, upon presentation of the proper order or voucher therefor, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose and on what fund. He shall not issue a warrant for the payment of any claim against the county, unless allowed by the county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal authorized by law so to do."

You will note that by virtue of the foregoing statutes, all expense items which are a lawful charge against the county, but the amount of which are not specifically fixed by law, or allowed by an officer or tribunal authorized by law so to do, may only be paid by warrant of the county auditor after being allowed by the county commissioners. Hence, it is necessary that the county commissioners allow the expenses involved in item one, supra, inasmuch as the amount of such expenses is nowhere fixed by law or authorized by the statutes to be fixed by an officer or tribunal. Likewise, for the same reason, the expenses for mileage for the serving of subpoenas for witnessses at the inquest and the traveling expenses of the coroner, involved in items two and four, supra, should first be allowed by the county commissioners. In this connection, it was held in the case of *State ex rel. Fred Dreihs* v. *Hagerty, Auditor,* 11 O. C. C. 226, 5 O. C. D. 215, that mileage of a special constable in serving a writ of subpoena for a witness at a coroner's inquest must first be allowed by the county commissioners under R. S. 1024 (now G. C. 2570, supra). The court said in part at page 229 of 11 O. C. C.:

> "It is entirely clear, we think, that the amount due the relator is not 'fixed by law'. It is true that the statute attaches certain fees to the performance of certain duties by a constable; * * * for mileage in serving the same (writ of subpoena), twenty-five cents for the first mile, and five cents per mile for each additional mile properly traveled by the officer in serving the same; but the amount of the bill depends in any particular case, on the mode of service, whether by copy or reading,

the number of persons named in the subpoena, and the distance properly traveled in serving the same."

Finally, the expenses of the telephone calls, involved in the fifth item, supra, are clearly not fixed by law or authorized to be fixed by an officer or tribunal and should also be first allowed by the county commissioners.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3511.

WORKMEN'S COMPENSATION LAW—APPLICABLE TO EMPLOYERS AND EMPLOYEES ENGAGED IN CONSTRUCTION OF FEDERAL BUILDING IN THIS STATE—SAFETY LAWS OF OHIO APPLICABLE TILL CONGRESS HAS LEGISLATED ON THE SUBJECT—FEDERAL BUILDINGS IN OHIO "PLACES OF EMPLOYMENT" WITHIN SECTION 871-13, BUT NOT WITHIN SECTION 1002, GENERAL CODE.

SYLLABUS:

1. *The Workmen's Compensation Law of Ohio is applicable to employers and employees engaged in the construction of federal buildings upon lands acquired by the federal government in the State of Ohio, when the work is done by an employer who has entered into a contract with the federal government for that purpose.*
2. *The safety laws of Ohio adopted by the General Assembly, and the safety code adopted by the Industrial Commission of Ohio in pursuance to law, are applicable to such employers and employees in all cases, unless the Congress of the United States has legislated relative thereto.*
3. *Said premises are not "places of employment" within the meaning of Section* 1002, *General Code, but are "places of employment" within the meaning of Section* 871-13, *General Code.*

COLUMBUS, OHIO, August 18, 1931.

HON. T. A. EDMONDSON, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads as follows:

> "This department and the Industrial Commission have several legal questions confronting them in regard to the jurisdiction and authority which they exercise over employes, employers, and places of employment in connection with the construction of federal buildings or other operations on federal property within the State where such work is done by an independent contractor.
>
> "At times these contractors have their principal place of business in other states and conduct no operations within this state, except those in connection with the work on federal property or such as may be incidental thereto, as for instance the hauling of material to and from the location.
>
> "There are several questions involved in regard to such work which I will enumerate below and respectfully ask your written opinion on the questions of law involved.