As hereinbefore set forth, when a license has been revoked and the sixty day reinstatement period shall have expired, the former optometrist has no right to practice since his license is non-existent.

In the case of *Gobin* vs. *State of Oklahoma,* 131 Pac., 546, (Okla.), 44 L. R. A., N. S., 1089, it was held that a physician whose license had been revoked had no right to practice medicine within such state and that he could be convicted under a similar statute to that hereinabove set forth, for the illegal practice of medicine.

It has been uniformly held that the state has the right, under the police power, to determine who may and who may not practice optometry within such state.

Thus, where the legislature has specifically provided that the license shall cease to exist upon certain circumstances and such circumstances have been found to exist and the license revoked, it becomes illegal and a misdemeanor under the section above quoted to perform any of the acts constituting the practice of optometry as set forth in Section 1295-21, General Code.

Under Section 1295-29, General Code, referred to in your fifth request, concerning the registration of certificates of optometrists with the clerk of courts of Common Pleas, I find no provision directing the filing of a revocation of such certificate with the clerk of courts, and bearing in mind further that the statute provides no fee for the clerk of courts for the recordation or filing of such certificate it is doubtful whether a clerk of courts would be required to file such certificate of revocation when filed with him. It must also be borne in mind that executive boards, such as the State Board of Optometry, have only such powers and such duties as are placed upon them by statute. Section 1295-30, General Code, provides for the keeping of complete records of proceedings of the board and makes such records public records. I am therefore of the opinion that it is not the duty of the State Board of Optometry to file a certificate of revocation of an optometrist's license with the clerk of the Court of Common Pleas in the county in which such optometrist whose license has been revoked formerly practiced.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4225.

DIRECTOR OF AGRICULTURE — ASSISTANT DIRECTOR MAY NOT EXERCISE POWERS OF DIRECTOR UNLESS DESIGNATED TO DO SO BY DIRECTOR.

SYLLABUS:

Where there is no vacancy in the office of the director of agriculture, the assistant director cannot legally exercise the functions and powers of the director during his absence or incapacity, unless such assistant be designated by the director so to do.

COLUMBUS, OHIO, April 1, 1932.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your recent communication which reads as follows:

"Will you kindly advise me whether, under the provisions of Section 154-5 of the General Code of Ohio, and any other sections which may be relevant, the Assistant Director of Agriculture can legally exercise the functions and powers of the Director during absence or incapacity of such Director, the Director still retaining his office."

Section 154-3, General Code, reads in part as follows:

"The following administrative departments are created:
The department of agriculture, which shall be administered by the director of agriculture, hereby created;"

Section 154-4, General Code, reads as follows:

"Each director whose office is created by section 154-3 of the General Code shall be appointed by the governor by and with the advice and consent of the senate, and shall hold his office during the pleasure of the governor."

Section 154-5, General Code, provides as follows:

"In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 154-6 of the General Code, or as the head of one of the divisions created within such department as authorized by section 154-8 of the General Code. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director of the department until such vacancy is filled."

Section 154-7, General Code, reads as follows:

"The officers mentioned in sections 154-5 and 154-6 of the General Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director."

Section 154-8, General Code, reads in part as follows:

"The officers mentioned in sections 154-5 and 154-6 of the General Code shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe."

An assistant is defined as "one who helps, aids, or assists; one who stands by and helps or aids another." 5 C. J. 1327.

The fact that one is designated as an assistant does not, of itself, empower him to act in place of the principal. In the case of *U. S.* vs. *Adams,* 24 Fed. 348, the law provided that the assistant in question should be appointed by the president and should perform all such duties in the office as should be prescribed by the secretary or as might be required by law. The court held:

> "The assistant secretary of the treasury is not the deputy of the secretary, but only his aid; and his acts are not valid unless specifically authorized by law or prescribed by the secretary."

and in the opinion the court said:

> "An 'assistant' is one who stands by and helps or aids another. He is not a deputy, and cannot, therefore, act in the name of and for the person he assists, but only with him and under his direction, unless otherwise expressly provided by law."

The statutes confer no such authority upon the assistant director of agriculture except when a vacancy occurs in the office of director as provided by section 154-5, General Code.

A vacancy in an office does not occur when the incumbent is absent or incapacitated or so long as there is an incumbent authorized to perform the functions of the office. As is said in 46 C. J. 1063:

> "Where, however, a statute provides that a deputy shall represent his principal in case of suspension, absence, resignation, or death, the deputy cannot act if his principal is only casually absent, and since only a permanent absence enables the deputy to act, the record should show the legal reason for acting."

In the case of *State, ex rel. Harrison,* 113 Ind. 434, the court held:

> "When an office has been conferred upon one legally eligible and has been accepted, no vacancy can be said to exist therein until the term of service and right to hold as fixed by the law expires or until the death, resignation or removal of the person elected or appointed."

To the same effect is the case of *Baxter* vs. *Latimer,* 116 Mich. 356.

In an advisory opinion to the governor appearing in 67 Fla. 423, where the constitution provided that when the office of any judge shall become vacant from any cause the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy, the court held as follows:

> "An office is vacant where there is no incumbent of it who is authorized to perform the functions of the office.
>
> Under the constitution of this state the authority of an incumbent of an office is not affected by his physical or mental ability to perform the functions of the office."

See also *Sleigh* vs. *U. S.,* 9 Ct. Cl. 369.

However, under the powers given to the director in section 154-8, General Code, such director could designate the assistant director or any one of the officers in his department mentioned in section 154-6, General Code, to act for him during his absence. *U. S.* vs. *Adams, supra.*

I am of the opinion, therefore, that, where there is no vacancy in the office

of the director of agriculture, the assistant director cannot legally exercise the functions and powers of the director during his absence or incapacity, unless such assistant be designated by the director so to do.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4226.

NOTES—ISSUED BY TRUSTEES OF PUBLIC LIBRARY UNDER AMENDED SENATE BILL NO. 323—FEDERAL RESERVE BANKS MAY INVEST IN SUCH.

SYLLABUS:

The notes issued by a board of trustees of a public library under the authority of Section 7, of Am. S. B. 323, enacted by the 89th General Assembly, are legal investments for Federal Reserve Banks under the provisions of Title 2, Section 355, U. S. Code.

COLUMBUS, OHIO, April 2, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for opinion on the question as to whether public libraries are "political subdivisions" within the meaning of that term, as used in Section 14-B, of the Federal Reserve Act, and also your enclosure of letter from the president of a board of education library. The section to which you refer is U. S. Code, Title 12, Section 355, and reads as follows:

> "Every Federal reserve bank shall have power to buy and sell, at home or abroad, bonds and notes of the United States, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts, such purchases to be made in accordance with rules and regulations prescribed by the Federal Reserve Board."

Your question might well be stated: Are notes issued by authority of Section 7, of Am. S. B. 323, enacted by the 89th General Assembly, by the board of trustees of a public library, legal investments for Federal reserve banks? This office has repeatedly held since the enactment of "The Uniform Bond Act" and prior to the enactment of Am. S. B. 323 that such boards of trustees have no authority to borrow money or issue bonds. See Opinions of the Attorney General for 1928, page 3097, and Opinions of the Attorney General for 1930, page 800. A like decision was reached by the Court of Appeals of Lucas County, in the case of *State ex rel. Finegold* vs. *Board of County Commissioners,* 29 O. A. 364.

In Opinion 4118 rendered to your Bureau under date of March 2, 1932, (Opinions of the Attorney General for 1932) I held that by virtue of the language