ANNUAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF OHIO

FOR THE

Period from November 15, 1903, to January 1, 1905; with an Introductory Review of the Work of the Department to June 1, 1905.

COLUMBUS, OHIO:
F. J. HEER, STATE PRINTER,
1905.

ATTORNEYS GENERAL OF OHIO.

Henry Stanbery	1846-1851
Joseph McCormick	1851-1852
George E. Pugh	1852-1854
George W. McCook	1854-1856
Francis D. Kimball	1856-1857
C. P. Wolcott	1857-1861
James Murray	1861-1863
Lyman R. Critchfield	1863-1865
William P. Richardson	1865-
Chauncey N. Olds	1865-1866
William H. West	1866-1870
Francis B. Pond	1870-1874
John Little	1874-1878
Isaiah Pillars	1878-1880
George K. Nash	1880-1883
D. A. Hollingsworth	1883-1884
James Lawrence	1884-1886
Jacob Kohler	1886-1888
David K. Watson	1888-1892
John K. Richards	1892-1896
F. S. Monnett	1896-1900
J. M. Sheets	1900-1904
Wade H. Ellis	1904-

ATTORNEY GENERAL'S DEPARTMENT.

WADE H. ELLIS	*Attorney General.*
GEORGE H. JONES	*First Assistant Attorney General.*
WM. H. MILLER	*Second Assistant Attorney General.*
SMITH W. BENNETT	*Special Counsel.*
ROSCOE J. MAUCK	*Special Counsel.*
RALPH E. WESTFALL	*Chief Clerk.*
C. K. CAREY	*Stenographer.*
M. G. CULTON	*Stenographer.*
WM. SHEEHAN	*Messenger.*

ATTORNEY GENERAL'S REPORT.

COLUMBUS, OHIO, June 1st, 1905.

HON. MYRON T. HERRICK, *Governor of Ohio*:

SIR: The provisions of the constitution and laws of the state do not make clear either when, how often or for what period the Attorney General shall submit a report of the work of his department. Section 20 of Article III of the constitution requires the officers of the executive department to make a report at least five days preceding each regular session of the general assembly. This would mean every two years. Section 62 of the Revised Statutes provides that all annual reports shall be made on or before the 20th day of November of each year. Section 216 declares that the Attorney General "in his annual report" shall submit an abstract of the statistics of crime, etc.; while section 3847 requires that the Attorney General shall annually report the number and condition of certain associations as reported to him by the officers of the same. Since the reports of crimes, referred to in section 216, under more recent statutes are required to be gathered and published by the Secretary of State, and since the requirements of section 3847 have never, in recent years, been complied with, for the reason that the statistics therein referred to have not been furnished to the Attorney General, there has been no occasion for an annual report from this office in obedience to either of these sections.

The only source of authority upon the subject, therefore, is the requirement of Section 20 of Article III calling for a report every two years, and the custom of the department to make a report every year. Under these circumstances I have concluded, in deference to the practice of my predecessors, to submit a report of the first year's work of this department under my charge, and, in obedience to the requirement of the constitution, to submit a further and complete report on or about January 1st, 1906, at least five days before the next regular session of the general assembly.

The present report will contain:

1. A review of the re-organization of the department in accordance with the Act of the General Assembly, approved March 31, 1904 (97 O. L., 59).
2. The work of the department including the important litigation conducted on behalf of the State.
3. Collections and disbursements from November 15th, 1903, the date of the last report, to January 1st, 1905.

4. Cases in the supreme, circuit and common pleas court of the State. brought, pending or disposed of from November 15th, 1903, to January 1st, 1905.
5. Opinions rendered from November 15th, 1903, to January 1st, 1905.

The report proper, including all statistical data, will not extend beyond January 1st, 1905, while, for the purpose of presenting a fuller and more satisfactory statement of the work of the department, the introductory review will extend to June 1st, 1905.

I.

REORGANIZATION OF THE DEPARTMENT.

The most important event during the present term was the act of March 31st 1904, (97 O. L. 59), reorganizing the office of the Attorney General. Theretofore, although the constitution and statutes expressed the theory that the Attorney General was to be the chief law officer of the state and have sole charge and custody of the legal business for all officers, departments and institutions, many state departments had employed their own counsel and paid them out of appropriations made for that purpose by the general assembly. The result of this custom was to create confusion in the employment of counsel, to divide responsibility, and to conceal, rather than reveal, the cost of the state's law business. Under the law as now amended no state officer, board or head of any department or of any institution has authority to employ or to be represented by any counsel or attorney-at-law other than the Attorney General, or those employed by him. The immediate consequence of the passage of this act has been to concentrate responsibility, to secure a prompter service and a more prudent and economical management of the legal business of the various state offices, departments and institutions. The new act also provided additional facilities to the Attorney General, and increased his office force by adding a second assistant attorney general, a chief clerk and a messenger. No salaries were increased except that of the first assistant attorney general from $1,500 to $3,000 per annum, and of one of the stenographers from $75.00 to $100.00 per month.

In addition, the Attorney General was authorized, as he had previously been, to employ special counsel whenever necessary, and the general assembly which passed the new act, having in mind the total amount theretofore expended for this purpose by the various departments and institutions, necessarily appropriated a larger sum than had previously been allowed the Attorney General alone, although a much smaller amount than the aggregate expenditures for such purposes by all the departments of the state. The total amount appropriated for the first year for special counsel, was $21,000. During a similar period before the enactment of the new law, the various departments, which had been authorized to employ their own counsel, had expended $21,766.40, while the Attor-

ney General's office had spent $6,000 appropriated for that department alone and $4,000 allowed by the emergency board to make up a deficiency, thus making a total of $31,766.40, to accomplish the same work for which there is now appropriated $21,000. The saving, however, will be even greater than this, for experience has already shown that there will be a balance left out of the $21,000.

This reorganization of the Attorney General's office has been beneficial to the State in many other ways. Not only has it limited the expense of the State for counsel fees to the one appropriation made for that purpose, concentrated the responsibility for the employment of such counsel and kept the law business of the State in one office, where the progress of the work and the condition of litigation can be readily ascertained, but the additional facilities and assistance thus given have made it possible to dispose of the work more promptly and to undertake new work in the line of duty, which the small force heretofore permissible under the appropriations for this department, rendered impracticable.

For the dairy and food department alone, the work of which was formerly done by special counsel employed by the commissioner, 247 prosecutions have been brought by this office since the act of reorganization took effect on April 1st, 1904, and 14 were pending at that date. Of this total of 261 cases, all have been disposed of but 17; 21 were dismissed by the prosecuting witnesses; 8 were lost, and judgment was secured by the State in 215.

Of the new work made possible with the additional assistants now employed, the most important has been the suits against delinquent corporations, which were indebted to the State under the operation of the Willis law, to which detailed reference will be made hereafter. Many thousands of dollars were due the State from these corporations, but the collection of the indebtedness, by process of law, was postponed from time to time, for the reason that the Secretary of State was not provided with an attorney to bring the necessary suits, and the Attorney General had not sufficient assistance to undertake the work. Since the reorganization of this department these claims have been submitted here, and enough has already been collected to show that this added source of income alone will ultimately be sufficient to pay the entire cost of maintaining the Attorney General's department.

II.

WORK OF THE DEPARTMENT.

The work of the Attorney General's office has grown with the growth of the State. Naturally the litigation in the supreme and inferior courts has gradually increased, as have also the services in the way of legal advice to the various officers, boards and institutions. But in addition to these, the far-reaching legislation of the last few years has presented

many new questions to, and imposed many new duties, upon, the law department of the State.

Since 1902, Ohio has accomplished some of the most important governmental and administrative reforms in the history of the State. First, it has made a radical change in the laws affecting all municipal corporations, establishing a uniform system for the multitude of special charters which had theretofore existed. Next, it has almost completely abandoned the taxation of real and personal property for State purposes, and substituted franchise and excise taxes upon special privileges instead. It has completely revised the election laws and made uniform the election machinery of the State. It has repealed all the special acts for the government of schools and adopted a new school code. It has created a state bureau for the supervision and inspection of all public offices, state, county, city, village, township and school, and adopted a uniform system of public accounting among the six thousand and more offices in the State. It has amended the laws affecting the compensation of the judges, prosecuting attorneys, county commissioners, and others, and has immediately before it the duty, in response to a popular demand, of abolishing the present fee system of compensation altogether, and extending the salary system to all county offices. It has undertaken the work of contributing aid to public roads and established a highway department; and for the first time in the history of the State, the common school system has been extended to embrace the conduct and support of normal schools for the training of teachers.

More than this, all the amendments to the constitution since its adoption in 1851, save only that amendment establishing the circuit court, have been passed since 1902. The general assembly of 1902 submitted to the people four amendments to the constitution, to-wit: of Section 2 of Article XII, classifying the subjects of taxation; Section 16 of Article II, giving the veto power to the governor; Section 3 of Article XIII, abolishing the double liability of stockholders in private corporations, and Section 2 of Article XI, giving to each county in the state at least one representative in the legislature. Of these all but the first mentioned were adopted by the people.

The extraordinary session of the same general assembly, which had been called to reorganize the municipal governments in the summer of 1902, proposed an amendment to Section 6 of Article XIII, classifying municipal corporations, which failed of adoption. The General Assembly of 1904 has proposed two amendments to the constitution to be voted on by the people in November, 1905, as follows: First, an amendment of section 2 of article XII, exempting from taxation all bonds issued by the State of Ohio or any political sub-division thereof; and second, an amendment to be designated as Article XVII of the constitution, providing for the separation of national and state from local elections.

These sweeping changes made and proposed in the last few years in

the constitution and laws of the State have necessarily greatly increased the work of the law department. In addition there has been a recent tendency to make the Attorney General, ex-officio, a member of the various new state boards composed of state officers, as to some of which at least the duties are in no sense related to the proper work of this department. The Attorney General is made, by law, a member of 17 state boards, composed, among others, of the four boards of appraisers and assessors for the fixing of tax valuations upon express, telegraph, telephone, sleeping-car, parlor-car, dining-car, freight line and equipment companies, and of public service corporations; the board of equalization for railroads and incorporated banks; the several boards of tax remissions and appeals, the fee commission, emergency board, sinking fund and printing commissions and a number of others. While it is true that the reorganization of this department has relieved him in a measure of routine work, and while it is proper that he should act as counsel for these various boards, it may well be questioned whether the time and labor devoted by the Attorney General to attendance upon the sessions of such boards as a member thereof, may not be better employed in professional services to the State.

In another important respect an advantageous change has been made in the practical work of this department, as the result of the reorganization effected by the last general assembly. The additional assistance provided for conducting the business of the office under the new order has made possible such a classification and distribution of the work as to give to the various departments of the state government the benefit of the legal services and advice of those who are acquiring special training in the particular questions of law involved. The members of the office force and the special counsel regularly employed have each, so far as possible, a separate and distinct line of duty, and each is thus enabled to familiarize himself with the body of the laws and rules governing the offices and departments for which his services are particularly required. Of course the force at the command of this office is not large enough to furnish an attorney or solicitor for each of the departments, even if such were necessary, nor has it been possible to give all the time of one assistant to each of the classes of departments into which, for the convenience of its legal work, the State has been divided. But to some extent at least the work has been systematized and each assistant or special counsel in the office has been assigned to, and kept within, the sphere of the duty of attending to one or more special lines of work. In order to accomplish this an attempt has been made to classify the offices and institutions regularly calling for the services of the Attorney General, and to give to each as far as practicable, the counsel of some member of this department whose special duty shall be to advise and represent such office or institution. For this purpose the various departments of the state government, and the work therefor, have been divided as follows:

1. *The Governor and Trustees of State Institutions.* This includes routine work for the executive office and the giving of advice, drafting of contracts and similar services for the various boards, officers and superintendents of the benevolent, reformatory and penal institutions of the state.
2. *Department of the Secretary of State;* including the questions therein arising as to the formation of private corporations, the collection of Willis law taxes from such corporations, and the duties of the secretary as chief supervisor of elections.
3. *Departments of State Auditor and State Treasurer;* including the bureau of inspection and supervision of public offices, as well as the department for the collection of Dow taxes, Cole taxes and inheritance taxes, and the board for the remission of taxes and penalties.
4. *Public Works, Highways and Agriculture.* This includes the board of public works, board of agriculture, commissioner of highways, the canal commission and other related departments.
5. *General Criminal Business;* including the trial of criminal cases in the supreme court in which the Attorney General may appear, together with questions coming from prosecuting attorneys of the various counties, the prosecutions by the state fire marshal, the fish and game commission and requisition matters in the executive department.
6. *The Dairy and Food Department;* including general work of the commissioner and the prosecutions throughout the state for violations of the pure food laws.
7. *Health and Medical Departments;* including the board of health, the board of medical registration and examination, the board of pharmacy, the board of dental examiners, and kindred departments.
8. *Department of Insurance;* including the work of the superintendent in licensing and supervising fire, casualty and life insurance companies; the collection of taxes from delinquent insurance companies; and the bureau of building and loan associations, which is made a part of this department.
9. *Common Schools and Universities.* This includes the office of the commissioner of common schools, trustees and officers of state universities, the board of school examiners, and kindred departments.
10. *Miscellaneous Departments, Including Labor, Mines, Railroads* and others. Under this head come the department of labor statistics, free employment offices, the inspector of mines, the commissioner of railroads and telegraphs, the board of arbitration, the inspector of workshops and factories, examiner of stationary

engineers, the inspector of oils, and a number of others of similar character.

The above classification is, of course, made for the purpose of effecting a more practical method of conducting the routine business of the office, and does not involve important litigation or unusual questions. Nor does it take into consideration those departments which rarely need the services of this office, nor the work done for the general assembly when in session, and the various committees of that body.

There is also not included in this brief summary of the work of this department any account of the employment of special counsel in several of the larger cities of the State, for the reason that the work of such assistants is chiefly done under the direction of those in this office who have immediate charge of the department for which the service is rendered. This work relates principally to prosecutions for the dairy and food commissioner, the fish and game commission, the collections for the Auditor and Secretary of State, and litigation for the board of public works and canal commission.

The Special Counsel employed for this purpose, other than those included in the regular office force, are Messrs. O. E. Harrison of Greenville, assigned to investigate as to corporations which have never reported to the Secretary of State, pursuant to the requirements of the Willis Law; Charles F. Williams of Cincinnati; Frank R. Marvin of Cleveland, employed in certain prosecutions under the Dairy and Food Laws of the State, and L. Q. Rawson of Cleveland whose employment is made in a number of cases pending in that city.

III.

IMPORTANT CASES PENDING OR DECIDED.

On November 15th, 1903, the closing date of the last annual report of this department, there were eighteen cases pending in the Supreme Court of the State. Between November 15th, 1903, and January 1st, 1905, the close of the present report, thirteen new cases were filed, sixteen were disposed of and fifteen cases were pending at the last mentioned date. Since that time eight more have been disposed of and there are now but seven cases pending in the Supreme Court.

In the various Circuit Courts of the State nine cases were pending on November 15th, 1903, eight new cases were filed between that date and January 1st, 1905, eight were disposed of and on said date nine were still pending. Since that time a number of new cases have been brought which have not yet been disposed of.

In the Common Pleas Courts thirteen cases were pending on November 15th, 1903, eighty-seven new cases were filed between November 15th, 1903, and January 1st, 1905, seventeen were disposed of and on the last mentioned date, the close of the present report, eighty-three cases

were pending. Since January 1st, 1905, about one hundred and fifty new cases have been brought in the Common Pleas Court, a number of which have been disposed of.

There is not included herein the prosecutions instituted before Magistrates and Police Courts for violations of the Pure Food Laws of the State.

Anti-Trust Law Cases.

The most important litigation begun or determined by this department during the present term have been those cases seeking to destroy illegal combinations in restraint of trade and to enforce obedience to the Anti-trust laws of the State.

The first and most significant of these was a case orginally brought by Mr. Edward T. Humes, Prosecuting Attorney of Delaware County, Ohio, against Pearly W. Gage, charging the defendant under the criminal provisions of the Valentine-Stewart Act with aiding and assisting in carrying out the objects of the Delaware Coal Exchange, an association of persons organized for the purpose of preventing competition in the sale and transportation of coal. The defendant was convicted in the Common Pleas Court, but the State lost the case in the Circuit Court, that court finding that those sections of the Ohio Anti-trust laws which provide for the punishment of its violators contravened the Constitution of the State. When this case reached the Supreme Court, the Attorney General's Department asked leave to participate, and filed a brief therein. The Supreme Court reversed the judgment of the Circuit Court and the constitutional right of the State under the Anti-trust laws as they now exist, to punish by criminal proceedings those who engage in unlawful combinations in restraint of trade, is thus fully established. The result of this decision is very gratifying to all who believe in the rigid and effective enforcement of these laws, and gives encouragement to public officers charged with this duty to proceed to a faithful and courageous performance.

In addition to this case, several others are now pending in this office, which seek to oust from their charter privileges, corporations charged with offending against these laws.

Among these is a suit against the Hocking Valley Railway Company begun by my predecessor in the Circuit Court of Franklin County charging that company with discriminating against coal operators, with owning stock in other coal, railway and mining companies and in other respects violating the law to the injury of producers, shippers and the general public. This case, after several amendments to the petition made necessary by motions of the defendant, is now ready to be pushed to a speedy trial and conclusion.

Another of these cases is a suit against A. Booth & Company, popularly known as the "Fish Trust." To the answer of the defendant the State recently made a motion to strike out a large portion thereof,

which was granted and the defendant given time to file a new answer which has not yet been done.

In connection with Anti-trust litigation it may be proper to call attention to the work now being done by this department in connection with that of the commissioner of railroads and telegraphs, to abate the evils of railroad rate discriminations, wherever complaint is made, according to the procedure provided by law. It has been found that the commissioner of railroads and telegraphs has full power to investigate the complaints of shippers, or others, who charge any railroad company in this State with violations of the freight or passenger rates fixed by law, or with discriminations as to either. An important investigation is now proceeding upon the application of the Receivers' and Shippers' Association of the city of Cincinnati. The railroad commissioner's power is to investigate and report. He has no authority to fix rates. With respect to railroads, whether foreign or domestic corporations, operating within this State, the legislature has power to fix the freight and passenger rates which they may lawfully charge.

The Uniform Accounting Law.

The legislature of 1902 passed an act establishing a bureau of inspection and supervision of public offices, to be known as a department of the State Auditor's office, to have power to inspect and supervise all the public offices of the State, counties, cities, villages, townships, and school districts, as well as to establish a uniform system of accounting for such offices. A great deal of splendid work has been done by this department. It has discovered discrepancies and irregularities amounting to several hundred thousands of dollars, and has been the means of recovering large sums for the taxpayers in various parts of the State, and of bringing to the bar of justice a number of dishonest officials. The constitutionality of this act was questioned by the auditor of one of the counties and, in the case of State ex rel Guilbert v. Shumate, a mandamus action in the Supreme Court, the validity of the act was sustained. A decision was rendered May 23d, 1905, and the result is most gratifying, not only to those who are familiar with the efficient work being done by this department but to good citizens everywhere who insist upon honesty and faithfulness in public office.

The Guaranty Deposit Case.

This was a suit in mandamus in the Supreme Court entitled State of Ohio ex rel Fidelity and Deposit Company v. A. I. Vorys, Superintendent of Insurance. The legislature of 1904 passed an act releasing the deposit of $30,000 in securities heretofore required of certain guaranty companies for the protection of their policy or contract holders, in this State. The Superintendent of Insurance, upon the advice of this office, declined to deliver such deposits to the companies interested on the ground that the act was unconstitutional in so far as it attempted to require the release of any deposit for the benefit of those who had an existing contract with, or claim against,

the foreign corporation, since the act, if enforced, would impair the obligation of contracts. The Supreme Court very recently decided this case in favor of the insurance department, sustaining the Attorney General's demurrer to the petition and dismissing the case.

The Brannock Law Case.

This was an action entitled in the Supreme Court "Robert H. Jeffrey, etc., vs. The State of Ohio ex rel James M. Butler, City Solicitor." It is one of two suits brought up from the Court of Common Pleas of Franklin County to test the constitutionality of the act passed by the last General Assembly providing local option on the liquor question for the residence districts of municipalities throughout the State. Among the defendants in one of the actions below were the deputy state supervisors of elections, and the Attorney General appeared in their behalf to maintain the right of such officers to hold an election under the so-called Brannock law and to sustain the validity of that act. The Court of Common Pleas, the Circuit Court and the Supreme Court each held the act constitutional. The last named tribunal rendered its decision on May 2d, 1905.

Election Law Cases.

Two important questions have been decided by the Supreme Court during the present term of this office growing out of the new election law passed by the last general assembly. The first of these determined the right of the Secretary of State, acting as the Chief Supervisor of Elections to decide which of two rival political party committees is the lawful agency of the party to recommend appointments as deputy state supervisors of elections for any of the counties of the State, where there is a dispute upon this question and in good faith evidence is heard upon the subject. Although the case is not reported this seems to be the result of the Court's judgment in the case of State ex rel Ellis, Attorney General, v. The Board of Deputy State Supervisors of Cuyahoga County et al. This case also involved the constitutionality of the so-called "Hypes Election Law" and the effect of the decision, is the sustaining of the validity of that act. Incidentally in this case the important principle was announced that the Supreme Court, although without original jurisdiction in injunction, may in an original action in quo warranto to determine the right of rival boards to exercise official functions, grant an ancillary injunction to protect those having the *prima facie* right from interference by other claimants during the pendency of such original action. (See 70 O. S. 341.)

The other question involved the constitutionality of that portion of the new election law which provides a different hour for closing the polls in the larger cities of the State from that required in all other municipalities. In the case of Gentsch, chief deputy, et al v. The State of Ohio ex rel McGorry, a mandamus action was brought in the Court of Common Pleas of Cuyahoga County and carried as promptly as possible to the Supreme Court, to compel the deputy state supervisors and inspectors of elections in the city of Cleveland to keep the polls open in that city

for the election to be held November 8th, 1904 until 5:30 o'clock as the law required with respect to Cleveland and Cincinnati, instead of closing them at 4 o'clock, as the law required with respect to other municipalities. The contention was made that this provision of the election law was unconstitutional since it was a law of a general nature and did not have uniform operation throughout the State. The language of the Supreme Court in the syllabus of the case upholding the validity of the act is important as the latest expression on the subject of classification. (71 O. S. 151.)

The Inheritance Tax Case.

This was an action brought by the prosecuting attorney of Franklin County against Walter D. Guilbert, State Auditor, to test the constitutionality of the act passed by the last general assembly levying a tax of 2 per cent. for general revenue purposes upon the right to all direct inheritances, over the sum of $3,000. The chief contention was that the exemption of $3,000 made an unconstitutional discrimination in favor of the owners of small estates; that it was a tax upon property and therefore, under Section 2 of Article XII of the constitution, could only be levied by a uniform rule. Taxes of this character are in force in 21 states, viz: New York, Massachusetts, Connecticut, New Jersey, Maryland, Delaware, Pennsylvania, Tennessee, West Virginia, California, Illinois, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, Ohio, Vermont, Virginia, and Wisconsin. The last twelve states mentioned have adopted this form of taxation within the last ten years, and most of this number within the last five years. The decisions of other states were thus shown to sustain the taxation of inheritances and the validity of the act for Ohio was upheld. The case is reported in 70 O. S. 229.

Suits for the Protection of Lake Erie Fish.

Among the more important cases tried and decided during the present term is that of State v. French, decided January 3rd, 1905, and reported in 71 O. S. 186. The court here held valid the act of 1898 for the further and better protection of fish and game and providing, among other things, that nets set or used contrary to law become a public nuisance and may be destroyed by wardens and other executive officers of the State, and that no action for damages should lie or be maintained against any person for or on account of such seizure or destruction. The principle established by this case is of the highest consequence in the protection of the native fish supply of the State, and much of the credit for the maintainance of the State's position is due to my predecessor, Mr. J. M. Sheets, who brought the original action and assisted in the final trial in the Supreme Court which took place after the expiration of his term.

The Habitual Criminal Act.

Following the repeal of the Habitual Criminal Act by the General Assembly on March 6th, 1902 (95 O. L. 410), several attempts were made by proceedings in habeas corpus to secure the release of that class of offenders who were serving

sentences of life imprisonment, having been convicted of being habitual criminals in accordance with the provisions of said act. On March 9th, 1904, the Supreme Court in the case entitled In re Kline (70 O. S. 25), being an application for a writ of habeas corpus, established the status of such prisoners as beyond the reach of the power of the State to review their several cases, and found that their sole hope of release from such term of imprisonment was through executive clemency. Certain of such prisoners made application to the Board of Managers of the Ohio Penitentiary to be paroled. As they were not embraced within the terms of the parole law the applications were rejected. Upon request from the Governor for an opinion as to his power to commute the sentence of any member of this class, from life to that of a term of years, the Attorney General sustained the power of commutation as being co-extensive with that of pardon, and further held that by commuting the sentence of any such prisoners they could be brought within the terms of the parole law. The result of this case and of the action of the Governor, which followed, was to extend in some sense to prisoners convicted and serving a sentence under the Habitual Criminal Act, the benefit of the repeal of that law.

Special School Laws.

Certain important cases were pending in the Supreme Court of the State at the time the present incumbent assumed the office of Attorney General, and others were later instituted, involving the constitutionality of several special acts for the government of public schools. This litigation, like that condemned by the Supreme Court in the government of municipalities, has been declared unconstitutional and void. The case of the State ex rel Attorney General v. Hanley et al. was decided December 20th, 1904 (71 O. S. 23). It was brought for the purpose of testing the constitutionality of the act entitled "An act to provide for the reorganization of school boards in city districts of the third grade of the first class (Toledo) passed March 25th, 1898 as amended April 23rd, 1898" (93 O. L. 485-625). The Supreme Court withheld its judgment for some time thereby giving to the general assembly an opportunity, which was availed of, to provide for the reorganization of the school system of the State under a general and constitutional law.

The case of State ex rel Board of Education of the City District of Cleveland v. Walter D. Guilbert, Auditor of State, No. 8,977, in the Supreme Court was instituted by the relator against the Auditor to compel the latter to issue an order upon the State Treasurer for an amount aggregating about $60,000.00 claimed for the purpose of maintaining a school for the special instruction of the deaf in that city. This had been provided for by an act of April 21st, 1898 (93 O. L. 186), but its operation was confined to the cities of Cleveland and Cincinnati. The Auditor contended that the act in question was unconstitutional and the petition of the relator was dismissed on May 10th, 1904.

County Surveyors' Salary Law.

The legislature of 1904 passed an act (97 O. L. 313, 314) conferring upon the judges of the court of common pleas in the various counties of the State, the power and duty of fixing the salaries of county surveyors throughout the State. The judges of the court of common pleas of Mahoning County declined to obey this act and an original action in mandamus was commenced in the supreme court by the prosecuting attorney of Mahoning County, to require said judges to fix the salary of the surveyor of said county. In order to test the constitutionality of the law the attorney general appeared for and defended the judges. The contention was made by the judges that the law was unconstitutional because it sought to confer upon the courts a power that was not judicial, that was purely legislative and could not be delegated. The court sustained this view. An important suggestion was thus made to the legislature of 1906 which will have in hand the passage of a uniform salary law for the county officers of the State, that in no case may the duty of fixing such salaries be delegated to a commission, or tribunal, other than the legislature itself, and certainly not to the courts. The general assembly only has power, under Section 20 of Article II, to fix the term of office and the compensation of all officers, although it has previously been decided in a case approved by the one under discussion (Cricket et al v. The State, 18 O. S. 21) that the duty thus enjoined by the constitution does not require the general assembly to fix the sum or amount which each officer is to receive, but only requires that it shall prescribe or *fix the rule* by which the compensation is to be determined. The result of this decision seems clearly to suggest that the legislature may make the compensation of county officers dependent upon the population of the county, the tax duplicate or any other standard by which the salary received may fairly be measured by the service performed, and yet ascertainable by an invariable and automatic method. Nor does there appear to be any objection to the establishment of an arbitrary maximum and minimum amount. This case (being State ex rel Montgomery v. Disney Rogers et al, Judges of the Court of Common Pleas of Mahoning County) is reported in 71 O. S., p. 203.

Canal Land Cases.

A great part of the time of this department is consumed in litigation and other matters involving the title of the State to its canal lands. This litigation is chiefly confined to the Miami and Erie Canal and the reservoirs and lands adjacent thereto. Several cases upon this subject are still pending as shown by the subsequent pages of this report and are being pushed to trial as speedily as the State has been able to secure the evidence necessary to sustain its claims. These canals and reservoirs were constructed in the years embraced between 1825 and 1843 and the lands acquired pursuant to the provisions of an act of the general assembly dated February 4th, 1825 (23 O. L. 56), by which the commissioners were authorized to enter upon the land of all parties owning the same and appropriate them for the public purpose of a

canal. The act did not require any judicial proceeding to be instituted by the State or its canal commissioners, but merely gave to the private owner the right to make a claim against the State within one year for the taking of his lands, for the value of the same and the damages consequent upon their appropriation. This method of procedure left no judicial records to evidence the title of the State, and such proceedings as were taken by the Canal Commissioners and the Board of Public Works have not been in every case preserved. It is therefore difficult at this time for the State to secure competent evidence to substantiate its title to these lands where such title is brought into dispute. In a great majority of cases, however, we have been able to maintain the State's claim, and the subsequent pages of this report will show the suits still pending which involve these questions.

Among the most important of the canal cases is that of the State ex rel Attorney General v. The C. H. & D. Ry. Co. now pending in the Supreme Court, as No. 5853. In this case the State claims title to a strip of land in Hamilton and another in Dayton, portions of which are occupied by the C., H. & D. Ry. Co. and the City of Dayton. Testimony has been taken by a special Master Commissioner, Mr. R. R. Nevin, of Dayton, and his report has just been filed, finding in favor of the State as against the railway company, and partially against the State in favor of the City of Dayton. Exceptions have been made to this report and the same is yet to be reviewed by the Supreme Court.

In the case of State v. Baldwin and State v. Kellner, referred to in other parts of this report, the State succeeded in establishing its title to the bed and banks of the canal between First and Sixth streets in the City of Dayton. The defendants have prosecuted error to the Circuit Court, and the cases are there undisposed of.

In Cincinnati two cases, State v. Mandery, and State v. The Bellevue Brewing Co., involve the title to the berme bank of the canal near Mohawk Place. One of these cases has been decided against the State on a question of estoppel, and is now in the Circuit Court.

Among the more important canal cases is that of State v. Stoker et al, decided April 11th, 1905, in favor of the State, by the Supreme Court. This was an action to quiet title to a large portion of the east embankment of the Mercer County reservoir, and the decision involves a settlement of questions which will be of much benefit to the State in similar controversies.

In this connection it is gratifying to note that through the efforts of State departments there has finally been secured, during the last few months, the passage of an act of Congress, confirming, in the State of Ohio, title to a large tract of land included in the Mercer reservoir, which has heretofore been held by the United States government.

Construction of the Municipal Code.

A number of cases have been brought and decided during the present term of the Attorney General affecting the validity or construction of various sections or provisions of the New Municipal Code. In not all of these has this department appeared, although the questions involved may have immediately concerned the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State. Among the most important of these cases is that of State of Ohio ex rel Attorney General v. Wyman (71 O. S., 1), involving the construction of the civil service provisions of the new act for the government of municipal corporations.

Two other cases are those of Cambridge v. Smallwood, to be reported in Vol. 27, of the Ohio Circuit Court Reports, page 302, and Bellefontaine v. Haviland to be reported in Vol. 15 of the Nisi Prius Reports, 482, in the first of which the Circuit Court and in the second of which the Court of Common Pleas holds that mayors of municipalities who are paid salaries under the code are not entitled to retain fees collected for the violation of penal ordinances.

In another case just decided by the Supreme Court it is held that the special act for the establishment of a Market House Commission in the City of Cleveland, although attempted to be retained by an amendment inserted in the municipal code, is unconstitutional; and in still another recently decided in that court, the tenure of office of city clerks or clerks of council has been held to be extended until the first Monday in January, 1906, by operation of the "Chapman Law."

The Status of Terminal Railway Companies.

In order to test the right of a corporation to exercise the privileges and franchises of a steam railway company which had been organized in the city of Cincinnati, with both termini and the entire line within the corporate limits of the one municipality, a suit in quo warranto was brought by this department in the Circuit Court of Franklin County against the Union Terminal R. R. Co., judgment was rendered against the State and upon review this judgment on May 23rd, 1905, was affirmed by the Supreme Court. In view of the fact that such enterprises, having for their purpose the improvement of station, terminal and switching facilities in the larger cities of the State, were in process of development and that a determination of their legal status was important, not only to the State, but to the commercial interests involved, it was thought advisable to test the rights of such companies as speedily as possible and the conclusion of this case has accomplished the end desired.

Regulation of Telephone Companies.

In the case of State of Ohio on the relation of the Attorney General v. The Toledo Home Telephone Company, No. 8713, an original action in quo warranto was brought in the Supreme Court to oust the telephone company from exercising its rights, privileges and franchises for the reason that it was charging higher rates than those fixed by the probate court in the decree of that

tribunal, determining the mode and manner of the use of the streets of the city of Toledo. The Supreme Court sustained the contention of the company that the probate court was without jurisdiction to fix such rates and that the telephone company could establish its own rates independently of such decree. It had theretofore been held by the Supreme Court in the Findlay telephone case that council was without jurisdiction to fix such rates, and the result of these two decisions is that the legislature alone is vested with authority either itself to establish reasonable telephone rates, or to delegate that authority to the municipal councils.

Private Bank Cases.

The 76th general assembly passed an act which was approved April 23d, 1904 (97 O. L. 266, 267) designed to require private or unincorporated banks to file with the Auditor of State the same reports as those theretofore required of incorporated banking institutions, under previous laws. A number of such private banks having failed to make such reports, contending that the act did not apply to such institutions, or that it could not constitutionally be made to apply to them, the Auditor of State requested the Attorney General to bring such proceedings as were necessary to test the application and validity of the new act. These suits are now pending in the common pleas court and it is expected that a final determination of the question will be reached before the meeting of the next general assembly.

Other Important Cases.

Among the other important State cases decided by the Supreme Court during the present term of this office is that of State v. Borger (70 O. S. 508) holding that the general assembly has no constitutional power to forbid the erection of boiler works within a certain distance of the administrative department of the penitentiary, and State upon the relation of the Attorney General v. The Union Depot Co. (71 O. S. 379), holding that such company may grant to a transfer company the exclusive right to use a designated portion of its depot grounds for the purpose of standing thereon its hacks and vehicles, and of soliciting thereon the patronage of incoming passengers and excluding therefrom all others engaged in a like business, such right having been disputed by the State in a quo warranto action against the depot company in the city of Columbus.

There is now pending in the Supreme Court a case filed May 1st, 1905, involving the very interesting question of the right of a corporation organized for the purpose of protecting physicians from personal damage suits, to do business in this State. The suit is entitled State of Ohio ex rel The Physicians Defense Co. v. Lewis C. Laylin, Secretary of State. It was brought originally in the Common Pleas Court of Franklin County, and was an action in mandamus to compel the Secretary of State to issue to the plaintiff a certificate authorizing it to do business in this State. The Secretary of State, through this department, contended that the plaintiff was not entitled to such certificate for the reason, first, that it proposes

to do an insurance business of a kind not recognized by the laws of Ohio, and second, because the business proposed to be done is a professional business which is expressly prohibited to corporations by the statutes of this State. A judgment was rendered in the Common Pleas Court against the company, affirmed by the Circuit Court, and now sought to be reviewed by the proceedings in error pending in the Supreme Court.

Procedure in Quo Warranto Actions.

Upon assuming the duties of this office, I adopted a rule which has been, and will be, followed during my administration regarding the use of the name of the State in actions in quo warranto. In two classes of cases appeals have frequently been made, in recent years, to the Attorney General to bring ouster proceedings in the Supreme Court. The first of these has been to try title to public office in a contest between rival claimants. The second has been to work out private rights or remedies against, or between, corporations. In both such cases I have uniformly declined to take the action which has come to be known as "loaning the name of the State." In the first class of cases the relation of the Attorney General is not necessary to the settlement of the controversy by quo warranto proceedings. Such proceedings may be brought on the relation of the claimant himself to the office, the title to which is in dispute. In the second class of cases refusal has seemed justifiable on the ground that private wrongs should be redressed by private remedies, and it has usually been found that the questions involved may be readily determined by other forms of action. The principle I have sought to establish in these matters is that the State, through the Attorney General, should not bring any action in any court except such as concerns the public and such as would justify his personal and active participation in the trial thereof.

In conformity with this rule it has been found expedient to adopt a certain fixed procedure in all cases where complaints are made to this office against any individual, corporation or association, and in which action by the law department is sought at the instance of the complainant. The facts constituting the grievance sought to be redressed in such suit are first required to be reduced to writing and filed in this office. The individual, corporation or association against whom the complaint is made is then given notice of the same, wherever the interests of the public are not prejudiced thereby, and an opportunity allowed to both sides for a hearing before the Attorney General. If, upon such hearing, or further investigation, facts sufficient are disclosed to warrant the action desired, the proper suit is brought by the Attorney General and prosecuted by him and his assistants. In this way quo warranto or other actions by the Attorney General are confined to cases of public concern and those in which there is a fair chance for the State to substantiate its claim; and in this way, further, such suits are prosecuted by those who have no private interest in the controversy, and are

impelled solely by a sense of official duty and a desire to uphold the laws and public policy of the State.

IV.

OFFICIAL OPINIONS RENDERED.

Not a small part of the work of this department consists in the rendering of formal opinions to the various officers, boards, bureaus and institutions of the State, entitled to the advice of the Attorney General. Of course this work occupies but an inconsiderable portion of time compared with that devoted to more informal consultations with the heads of departments upon questions of law or procedure presented in the daily round of official duty. But a more or less accurate understanding may be had of the increasing demand for such services, as occasioned by the growing activities of all state departments, and especially by the new legislation of the last few years, when it is seen that the number of official opinions during 1904 is more than twice those of 1903, and this in spite of the fact that an attempt has been made to confine such service to instances clearly within the authority of the Attorney General and to questions of public importance only. The Attorney General is only authorized to give opinions to State officers, heads of State departments, bureaus and institutions and to prosecuting attorneys, and then only in matters on controversies in which the State is a party or is directly interested; and this limitation has been strictly adhered to.

The session of the general assembly last year as well as the important work it did in adopting the new school code, and new election law; in extending the terms of city, village, township and school officers; in the establishment of several new departments; in the passage of the depository law; in fixing the salaries of judges, county commissioners and others; in the enactment of new tax laws and insurance laws, and in other work calling for the immediate construction or application of the statutes to unusual conditions made unavoidable an increase in the amount of opinion work done by this department.

V.

COLLECTIONS AND EXPENDITURES.

In a detailed form as shown hereafter in this report are the collections of this department from November 15th, 1903, to January 1st, 1905. The large part of these collections are from corporations or individuals having penal labor contracts with the State and being delinquent from time to time in their payments. It is the duty of the State Auditor when such indebtedness is past due to certify the claim to the Attorney General and the collection is then made through this office.

For the year 1904, however, the first under the present term, a new source of revenue to the State has been drawn upon by this office. These

have been the collections heretofore mentioned from delinquent corporations under the provisions of the so-called Willis Law. This act was passed by the legislature in 1902, and was one of the progressive reforms in taxation inaugurated largely through the efforts of the late Governor Nash, and designed to relieve real and personal property from the burden of supporting the State government and to shift the load to broader and stronger backs. These new taxation laws have had the effect of relieving home and farm property of more than three million dollars per annum of taxation and reducing the levy for State purposes from 2.89 mills upon the dollar to 1.35 mills. In fact the only levy upon tangible property now maintained in Ohio for State purposes is that which is imposed for the support of the schools and sinking fund.

The Willis Law imposes a tax of one-tenth of one per cent. per annum upon the capital stock of all corporations in Ohio of whatever character, except only public service corporations which pay an excise tax upon their gross receipts. During the year 1904 there was realized by the State treasury from this source $680,497.55.

Naturally a great many of these corporations either through neglect or ignorance of the law failed to make the reports required and to pay the tax from year to year. The number of these delinquents has been growing despite the efforts of the department charged with the collections, for the reason that no facilities have been furnished to prosecute the claims in the courts. Since the reorganization of the Attorney General's office hundreds of these claims have been submitted here for suit and up to June 1st, 1905, $28,725.05 has been collected; some of it through the courts and the largest part of it through the work of special counsel employed to visit the localities where the delinquent companies are situated.

The total collections of this office from November 15th, 1903, to January 1st, 1905, were $188,367.51.

The amount appropriated by the legislature for the expense of the department during the year 1904 was $40,100.00.

The amount expended was $31,204.00.

Taking into consideration the delinquent taxes of the character above described which have already been collected, and the claims which have been filed for collection since the last date covered by this report, it may readily be foreseen that the added revenues to the State yielded through these special efforts alone will soon pay the entire annual cost of maintaining this department.

Respectfully submitted,

WADE H. ELLIS,
Attorney General.

DETAILED REPORT OF THE ATTORNEY GENERAL,

I.

MONEY COLLECTED AND COVERED INTO THE STATE TREASURY BY THE ATTORNEY GENERAL FROM NOVEMBER 15, 1903, TO JANUARY 1, 1905.

Date.	From whom received.	Amount collected.	Amount covered into State Treas.
1903.			
Nov. 16.	Columbus Bolt Works	$3,807 90	$3,807 90
20.	E. B. Lanman Co	1,081 60	1,081 60
27.	Pioneer Stove Co	1,140 25	1,140 25
30.	P. Hayden Saddlery Hardware Co	2,202 08	2,202 08
Dec. 10.	George B. Sprague Cigar Co	1,308 45	1,308 45
12.	National Broom Co	1,152 72	1,152 72
15.	Brown, Hinman & Huntington Co	2,118 80	2,118 80
16.	Columbus Bolt Works	4,103 47	4,103 47
16.	E. B. Lanman Co	1,013 53	1,013 53
26.	Pioneer Stove Co	1,187 25	1,187 25
31.	P. Hayden Saddlery Hardware Co	2,222 25	2,222 25
1904.			
Jan. 12.	Geo. B. Sprague Cigar Co	$1,195 35	$1,195 35
15.	The Brown, Hinman & Huntington Co	2,202 30	2,202 30
16.	The Columbus Bolt Works	4,010 83	4,010 83
29.	The National Broom Co	1,016 04	1,016 04
29.	" " " " interest	9 28	9 28
30.	P. Hayden Saddlery Hardware Co	2,030 55	2,030 55
Feb. 3.	Geo. B. Sprague Cigar Co	1,056 90	1,056 90
3.	The Pioneer Stove Co	1,192 20	1,192 20
3.	" " " " interest	3 00	3 00
3.	The E. B. Lanman Co	1,088 67	1,088 67
3.	" " " " "	1 64	1 64
15.	The Brown, Hinman & Huntington Co	2,128 95	2,128 95
15.	The E. B. Lanman Co	992 53	992 53
16.	The Columbus Bolt Works	3,717 13	3,717 13
29.	P. Hayden Saddlery Hardware Co	2,282 77	2 282 77
Mch. 8.	Geo. B. Sprague Cigar Co	1,195 50	1,195 50
11.	The Pioneer Stove Co	1,047 25	1,047 25
11.	" " " "	4 18	4 18
15.	The E. B. Lanman Co	1,052 30	1,052 30
16.	The Columbus Bolt Works	4,283 87	4,283 87
18.	The Brown, Hinman & Huntington Co	2,389 30	2,389 30
31.	P. Hayden Saddlery Hardware Co	2,412 07	2,412 07
Apr. 6.	Geo. B. Sprague Cigar Co	2,462 85	2,462 85
7.	The Brown, Hinman & Huntington Co	2,346 25	2,346 25
8.	The E. B. Lanman Co	991 75	991 75
9.	The Brown, Hinman & Huntington Co	2,380 35	2,380 35

MONEY COLLECTED AND COVERED INTO THE STATE TREASURY BY THE ATTORNEY GENERAL — Continued.

Date. 1904.	From whom received.	Amount collected.	Amount covered into State Treas.
14.	The Pioneer Stove Co	1,237 40	1,237 40
14.	" " " " interest	6 15	6 15
16.	The Columbus Bolt Works	4,095 63	4,095 63
28.	The National Broom Co	833 31	833 31
28.	" " " " interest	14 30	14 30
30.	P. Hayden Saddlery Hardware Co	2,500 05	2,500 05
May 16.	Columbus Bolt Works	4,044 96	4,044 96
17.	The E. B. Lanman Co	913 55	913 55
20.	Pioneer Stove Co	1,255 70	1,255 70
20.	" " " interest	6 25	6 25
31.	P. Hayden Saddlery Hardware Co	2,745 97	2,745 97
June 4.	The National Broom Co	1,000 00	1,000 00
4.	Geo. B. Sprague Cigar Co	1,371 45	1,371 45
13.	The Brown, Hinman & Huntington Co	2,508 30	2,508 30
15.	The National Broom Co	1,000 00	1,000 00
15.	The E. B. Lanman Co	1,003 45	1,003 45
17.	The Columbus Bolt Works	4,323 47	4,323 47
29.	The Natonal Broom Co	822 78	822 78
30.	P. Hayden Saddlery Hardware Co	2,755 65	2,755 65
July 1.	Geo. B. Sprague Cigar Co	1,389 60	1,389 60
5.	The National Broom Co	1,000 00	1,000 00
13.	The Brown, Hinman & Huntington Co	2,420 55	2,420 55
15.	The National Broom Co	1,000 00	1,000 00
15.	The E. B. Lanman Co	1,037 07	1,037 07
16.	The Columbus Bolt Works	4,468 27	4,468 27
21.	The Pioneer Stove Co	1,196 90	1,196 90
21.	" " " "	12 56	12 56
30.	P. Hayden Saddlery Hardware Co	2,900 10	2,900 10
Aug. 3.	Geo. B. Sprague Cigar Co	1,381 65	1,381 65
13.	The Brown, Hinman & Huntington Co	2,463 15	2,463 15
16.	The Columbus Bolt Works	4,368 99	4,368 99
16.	The E. B. Lanman Co	1,092 45	1,092 45
25.	The National Broom Co	1,100 00	1,100 00
25.	The Pioneer Stove Co	1,264 00	1,264 00
25.	" " " " interest	14 32	14 32
31.	Costs recovered in case No. 103,862, Common Pleas Court, Hamilton County	5 95	5 95
31.	P. Hayden Saddlery Hardware Co	2,912 55	2,912 55
Sept. 9.	Geo. B. Sprague Cigar Co	1,487 85	1,487 85
15.	The Brown, Hinman & Huntington Co	2,441 30	2,441 30
15.	The E. B. Lanman Co	1,126 67	1,126 67
16.	The Columbus Bolt Works	4,714 94	4,714 94
23.	Prudential Trust Co., in full of State's claim in McKay v. Am. Motor Carriage Co., case No. 83,042, Cuyahoga County Common Pleas Court	500 00	500 00
30.	The Pioneer Stove Co	1,268 70	1,268 70

MONEY COLLECTED AND COVERED INTO THE STATE TREASURY BY THE ATTORNEY GENERAL — Concluded.

Date.	From whom received.	Amount collected.	Amount covered into State Treas.
1904.			
30.	" " " " interest	14 32	14 32
30.	P. Hayden Saddlery Hardware Co	2,781 07	2,781 07
Oct. 3.	The National Broom Co	1,000 00	1,000 00
11.	Geo. B. Sprague Cigar Co	1,859 38	1,859 38
15.	The Brown, Hinman & Huntington Co	2,381 45	2,381 45
17.	The Columbus Bolt Works	4,311 20	4,311 20
17.	The E. B. Lanman Co	1,075 25	1,075 25
25.	The National Broom Co	1,000 00	1,000 00
28.	Geo. B. Sprague Cigar Co	3,745 70	3,745 70
31.	The P. Hayden Saddlery Hardware Co	2,904 15	2,904 15
Nov. 3.	The Pioneer Stove Co	1,233 10	1,233 10
3.	" " " "	15 44	15 44
15.	The Columbus Bolt Works	4,400 46	4,400 46
15.	The Brown, Hinman & Huntington Co	2,546 90	2,546 90
16.	The National Broom Co	1,000 00	1,000 00
18.	The E. B. Lanman Co	1,146 37	1,146 37
28.	The Pioneer Stove Co	1,211 76	1,211 76
30.	The P. Hayden Saddlery Hardware Co	2,796 68	2,796 68
Dec. 7.	The National Broom Co	1,000 00	1,000 00
16.	The Columbus Bolt Works	4,166 25	4,166 25
16.	The Brown, Hinman & Huntington Co	2,441 00	2,441 00
16.	The E. B. Lanman Co	1,150 88	1,150 88
	Total	$183,019 41	$183,019 41

RECAPITULATION.

The Brown Hinman, & Huntington Co	$30,768 60
The Columbus Bolt Works	58,817 37
The E. B. Lanman Co	14,767 71
The George B. Sprague Cigar Co	18,454 68
The P. Hayden Saddlery Hardware Co	33,445 94
The Pioneer Stove Co	13,310 73
The National Broom Co	12,948 43
The Prudential Trust Co	500 00
Court costs refunded	5 95
Total collected and covered into State Treasury	$183,019 41

COLLECTIONS FROM CORPORATIONS DELINQUENT UNDER THE WILLIS LAW (SECTION 2781-24 R. S.)

The American Umbrella Co.	10 00
" " Oil Exchange Co.	10 00
Anderson, Royce & Coon Co.	12 00
Attica Foundry & Machine Co.	10 00
Aultman Company	250 00
Bankers Identification Co.	50 00
Beattie Electrical Co.	10 00
Bellevue Stone Co.	20 00
Blade Printing Co.	20 00
Blessing Shoe Forge Co.	10 00
Brucker Lumber Co.	20 00
Brunswick Athletic Association	10 00
Brunk Machine & Forging Co.	25 00
Buckeye Shoe Manufacturing Co.	25 00
Burton Handle Co.	30 00
Carbon Hill Coal Co.	10 00
Cincinnati Fruit & Produce Credit Co.	10 00
Clark's Coach & Transfer Co.	40 00
Cleveland Electrical Manufacturing Co.	27 10
" Machinery & Warehouse Co.	10 00
" Store Fixture Co.	20 00
" Window Glass Co.	100 00
Climax Stock Guard Co.	81 80
Colton Manufacturing Co.	17 50
Concordia Singing Society	10 00
Consumers' Coal & Ice Co.	10 00
Co-operative Grocery Co.	$10 00
Coshocton Mfg. Co	10 00
" Ice & Cold Storage Co.	15 00
Dayton Construction Co.	10 00
Electric Porcelain Co.	10 00
Erie County Trotting Ass'n	10 00
Euclid Ave. Trust Co.	100 00
Front Street Furniture Co.	10 00
Fulton Market Co.	10 00
Garrettsville Creamery Co.	15 00
Globe Specialty Co	10 00
Guernsey Brick & Construction Co.	50 00
H. B. Tenzer Lumber Co.	50 00
Hamilton Parker Co.	25 00
Jackson Lumber Co.	28 50
John Weisbaum Co.	12 00
Joseph B. Mayer Oil Co.	20 00
Johnson Brothers Coal Co.	10 00
LaGrange Milk & Cream Co.	15 00
Lake Shore Club	10 00
Leuer Bros. Lumber Co.	5 00
Lorain Apartment House Co.	21 50
Madison Realty Co.	10 00
Marguerite Oil Co.	40 00

COLLECTIONS FROM CORPORATIONS DELINQUENT UNDER THE WILLIS LAW — Continued.

Marietta Plaster & Fuel Co	10 00
Massillon Show Print Co	12 50
McCullum Lime Co	20 00
McComb Mfg. Co	5 00
New Koch Lung Cure Co	10 00
Oriental Turkish & Electric Bath Co	10 00
Orwell Elgin Butter Creamery Co	10 00
Oscar C. Hene Co	10 00
Ohio & Penna. Transportation Co	10 00
Pheils Universal Check Co	42 00
Producers Co	100 00
Rebholtz & Alaska Mining Co	10 00
Rock Plaster Mfg. Co	100 00
Royal Goshen Coal Co	10 00
Sabina Creamery & Cheese Co	10 00
Sample Case Co	13 13
Schneider Machinery Co	10 00
Scott Rogers Co	10 00
Semler Milling Co	100 00
Sheppard Ptg. & Pub. Co	32 63
Springfield Malleable Iron Co	50 00
Sterling Veneer & Basket Co	12 70
Surplus Oil Co	40 00
Sutherland Mfg. Co	10 00
T. E. Harwood Ptg. & Pub. Co	25 00
Toledo Grocers' Supply Co	10 00
" Pattern Co	10 00
" Rolling Mill Co	45 00
Trace Hamilton Coal Mining Co	15 00
The Toledo Newspaper Publishing Co	300 00
Townsend Coal Co	15 00
Union Grocery Co	10 00
Union Wall Paper Co	10 00
United Salt Co	5 00
Victor Rubber Co	5 00
Warren Novelty Co	10 00
W. M. Cunningham Co	10 00
Woltman Carriage & Wagon Co	5 00
Woodlyn Grain Co	15 00
Youngstown Dry Goods Co	200 00
American Motor Carriage Co	500 00
College of Journalism	75 00
Euclid Shale Brick Co	10 00
Scenic Railway	30 00
Prudential Trust Co	1,210 00
Walworth Run Foundry Co	55 75
Ohio & Penna. Transportation Co	10 00
Van Wert Petroleum Co	24 00
Gugenheim, Albert M. Co	30 00
Andrews Bros. Co	520 00

COLLECTIONS FROM CORPORATIONS DELINQUENT UNDER THE WILLIS LAW — Concluded.

" Land Co	30 00	
Metropolitan Bank Co	150 00	
	$5,348 11	
Paid to Secretary of State for transmission to Treasurer of State		$5,348 11

SUMMARY.

Collections on account convict labor and miscellaneous	$183,019 41	
Collections from corporations delinquent under Willis Law	5,348 11	
	$188,367 51	
Paid into State Treasury		$183,019 41
Paid to Secretary of State for transmission to Treasurer of State		5,348 11
Grand total		$188,367 51

II.

CASES PENDING OR DISPOSED OF FROM NOVEMBER 15, 1903, TO JANUARY 1, 1905.

1. Cases Pending in the Supreme Court January 1, 1905.

No. 5853.

State of Ohio ex rel. Attorney General v. The Cincinnati, Hamilton & Dayton Ry. Co.

December 31, 1897, petition in quo warranto filed.

No. 6782.

State of Ohio ex rel. Attorney General v. The Crescent Building & Loan Company, of Toledo, O.

August 16, 1899, petition filed.

No. 7682.

State of Ohio ex rel. Attorney General v. The Guarantee Savings & Loan Company, Cleveland, O.

August 8, 1901, petition filed.

No. 7708.

State of Ohio ex rel. Attorney General v. The Northern Ohio Building & Loan Company.

August 29, 1901, petition filed.

No. 7822.

State of Ohio ex rel. Attorney General v. The Imperial Savings Company of Toledo, Ohio.

January 6, 1902, petition filed.

No. 8681.

State v. Pearly W. Gage.

October 9, 1903, petition filed.

No. 8713.

State of Ohio ex rel. Attorney General v. Toledo Home Telephone Co.

Nov. 12, 1903, petition filed.

No. 8993.

State of Ohio ex rel. Attorney General v. The Board of Deputy State Supervisors of Cuyahoga County et al.

May 10, 1904, petition filed.

No. 9038.

State v. French.

June 9, 1904, petition filed.

No. 9047.

State of Ohio ex rel. W. D. Guilbert, Auditor of State v. W. J. Shumate, Auditor of Jackson County.

June 14, 1904, petition filed.

No. 9089.

Robert H. Jeffrey, Mayor of the City of Columbus, Ohio v. State of Ohio ex rel. James M. Butler, City Solicitor, Etc.

July 11, 1904, petition filed.

No. 9092.

State of Ohio ex rel. George M. Montgomery v. Disney Rogers, et al., Judges of the Court of Common Pleas, Mahoning County.

July 12, 1904, petition filed.

No. 9113.

State v. F. M. Stoker.

July 26, 1904, petition filed.

No. 9133.

State ex rel. The Fidelity and Deposit Co., v. Vorys, Supt., etc.

August 8, 1904, petition filed.

No. 9233.

State v. Springfield Underwriters' Mutual Fire Insurance Co.

November 5, 1904, petition filed.

II. Cases Disposed of in the Supreme Court from November 15, 1903, to January 1, 1905.

No. 7939.

State of Ohio ex rel. Attorney General v. Joseph P. Hanley et al.

March 12, 1902, petition filed.
December 20, 1904 Circuit Court reversed. Judgment for plaintiff in error.

No. 8229.

State of Ohio v. Southern Ohio Traction Co.

January 26, 1903, petition filed.
February 16, 1904, Judgment of Circuit Court affirmed. Petition dismissed.

No. 8293.

State ex rel. J. M. Sheets, Attorney General v. A. C. Petrie, et al.

February 24, 1903, petition filed.
March 1, 1904, dismissed for want of preparation.

No. 8294.

State v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

February 26, 1903, petition filed.
June 4, 1904, judgment of Circuit Court affirmed. Petition dismissed.

No. 8398.

State ex rel. Attorney General v. G. W. Smith, et al.

April 16, 1903, petition filed.
December 15, 1903, judgment of ouster except as to E. J. Grover.

No. 8427.

State ex rel. Attorney General v. Andrew Forsythe and Geo. B. Winten.

May 4, 1903, petition filed.
June 7, 1904, dismissed by relator.

No. 8636.

State of Ohio ex rel. Attorney General v. W. C. Pollner, F. W. Bell et al.

Sept. 1, 1903, petition filed.
Dec. 6, 1903, dismissed for want of preparation.

No. 8717.

State v. Cliff Corbin.

Nov. 16, 1903, petition filed.
April 19, 1904, dismissed by consent of parties.

No. 8725.

In re. application of Charles F. Kline for a writ of habeas corpus.

Nov. 7, 1903, motion filed for leave to file petition.
Nov. 27, 1903, petition filed.
Mar. 8, 1904, demurrer to answer overruled. Writ denied.
Reported 49 O. L. B. No. 19, p. 144. 70 O. S. p. 25.

No. 8738.

State ex rel. Attorney General v. John W. Wyman.

Dec. 17, 1903, petition filed.
Oct. 18, 1904, exception taken to Master's report sustained. Petition dismissed.

No. 8745.

State ex rel. Attorney General v. Wilson Hawkins.

December 23, 1903, petition filed.
Oct. 25, 1904, writ refused. Petition dismissed at cost of relator.

No. 8854.

State v. Samuel Borger.

Feby. 18, 1904, petition filed.
June 14, 1904, judgment of Circuit Court affirmed. Petition dismissed.

No. 8973.

State of Ohio ex rel. E. L. Taylor, Pros. Atty. Franklin Co. v. Walter D. Guilbert, Auditor of State of the State of Ohio.

April 26, 1904, petition filed.
May 3, 1904, demurrer to petition sustained. Petition dismissed.

No. 8977.

State of Ohio ex rel. Board of Education of the City District of the City of Cleveland v. W. D. Guilbert, Auditor of State of the State of Ohio.

April 27, 1904, pettion filed.
May 10, 1904, demurrer to petition sustained.. Petition dismissed.

No. 8994.

State of Ohio ex rel. Thomas Coughlin v. Lewis C. Laylin, Secretary of State of the State of Ohio, etc.

May 10, 1904, petition filed.
May 17, 1904, dismissed by relator.

No. 9230.

Frank Gentsch, Chief Deputy, et al v. State of Ohio ex rel. Joseph McGorry and Robt. C. Wright.

Nov. 2, 1904, petition filed.
Nov. 4, 1904, judgment reversed and original petition dismissed. Mandate issued.

III. Cases Pending or Disposed of in Circuit Court from November 15, 1903, to January 1, 1905.

Clermont County.

No. 232.

State of Ohio ex rel. A. C. Hutchens, a resident tax payer of Clermont County, O., v. N. G. Cover, et al., individually and as members of the Board of Deputy State Supervisors of Elections of Clermont County, O., and Stephen Cramer.

Injunction. On appeal from Common Pleas Court. Injunction dissolved.

No. 233.

State of Ohio ex rel. V. O. Lytle, a tax payer, etc., v. C. A. Whippey, et al., Deputy State Supervisors of Elections in and for Clermont Co., and F. W. Thomas, Clerk, etc.

Injunction. On appeal from Common Pleas Court Injunction dissolved.

No. 234.

State of Ohio ex rel. Vernon O. Lytle, a tax payer, etc., v. Chas. A. Whippey, et al., individually and as Deputy State Supervisors of Elections for Clermont Co., F. W. Thomas, Clerk, etc., Samuel WS.prague and G. W. Hulick. Injunction. On appeal from Common Pleas Court.

Injunction dissolved.

Franklin County.

No. 1882.

State ex rel. J. M. Sheets, Attorney General, v. The Provident Savings Co.

Pending on motion to confirm final report of trustees.

No. 2012.

State ex rel. J. M. Sheets, Attorney General, v. The Business Men's Athletic Club.

Pending.

No. 2059.

State ex rel. J. M. Sheets, Attorney General, v. The Harrison Mutual Burial Assn.

Quo warranto. Pending.

No. 2087.

State ex rel. J. M. Sheets, Attorney General, v. The Hocking Valley Ry. Co.

Quo warranto. Pending.

No. 2140.

State of Ohio ex rel. Wade H. Ellis, Attorney General, v. A. Booth & Co.

Petition in quo warranto filed June 30th, 1904. Answer filed July 13th, 1904. Plaintiff's motion filed Sept. 18th, 1904. Pending.

No. 2136.

State of Ohio v. S. L. Douglass.

Error to the Common Pleas Court of Franklin County, O. Petition in error filed June 25th, 1904. Pending.

No. 2187.

Gustavus A. Doran v. Joseph J. Fleming.

Error to the Common Pleas Court of Franklin County. Petition in error filed October 11, 1904. Pending.

No. 2189.

State of Ohio ex rel. Wade H. Ellis, Attorney General, v. The Union Terminal Ry. Co.

Petition in quo warranto filed Oct. 18th, 1904. Answer filed Nov. 5th, 1904. Demurrer to answer filed Nov. 5th, 1904. Pending.

Lucas County.

No. 610.

Samuel Drago v. The State of Ohio.

Error to the Common Pleas Court of Lucas County. Judgment. Common Pleas affirmed.

Ross County.

State of Ohio v. W. P. Bowers.

Error to the Common Pleas Court of Ross County. Petition in error filed ——— day of 1904.

No. 2103.

State of Ohio ex rel. Ellsworth Glenn v. Board of Dental Examiners of the State of Ohio.

October 9, 1904, petition in error dismissed; judgment of Common Pleas affirmed at cost of plaintiff in error.

No. 2123.

State ex rel. Wade H. Ellis, Attorney General v. The Home Mutual Fire Insurance Company.

June 22nd, 1904, dismissed at costs of defendant.

No. ——.

Benjamin Seymour v. State of Ohio.

Circuit Court of Ross County, December 10th, 1904, Judgment of Common Pleas Court affirmed.

No. ——.

Jacob Ross v. The State of Ohio.

Circuit Court Ross County, December 10th, 1904, judgment of Common Pleas Court affirmed.

IV. Crses Pending or Disposed of in Court of Common Pleas from November 15, 1903, to January 1, 1905.

Erie County.

No. 9478.

The Sandusky Fish Co. v. The State of Ohio.

Action for money; amount claimed, $600. Pending.

No. 9512.

H. C. Payson v. The State of Ohio.

Action for money. Pending.

Franklin County.

No. 38,917.

The Fultonham Brick & Tile Co. v. Columbus Construction Co., Trustees Ohio State University, et al.

Action for money. Pending.

No. 42,736.

State of Ohio v. Columbus Construction Co., John J. Dun, et al.

Action on contractor's bond. Pending.

No. 44,762.

State of Ohio v. The Sunlight Gas Company.

Pending on defendant's motion to strike out.

No. 45,356.

State of Ohio v. John L. Wilgus.

Action for recovery of canal lands in Tuscarawas County. Pending.

No. 45,357.

State of Ohio v. Howard Adamson.

Action for recovery of canal lands in Tuscarawas County Pending.

No. 45,950.

Clifton C. Evans, a tax-payer, etc., v. The Board of Public Works.

Injunction. Pending.

No. 47,080.

State of Ohio v. Ohio River & Western Ry. Co.

To recover penalty for operation of cars without equipment of air-brakes and automatic couplers. Pending.

No. 47,182.

State of Ohio v. The Merchants' Fire Ins. Co. of Newark, N. J.

March 5th, 1904, default judgment against defendant $1,859.10 and costs taxed at $10.91.

No. 47,197.

State of Ohio v. Millers' and Manufacturers' Mutual Ins. Co. of Minneapolis.

March 5th, 1904, default judgment against defendant $197.37 and costs taxed at $10.91.

No. 47,210.

State of Ohio v. Merchants' Ins. Co. in Providence, R. I.

March 5th, 1904, default judgment against defendants $123.60 and costs taxed at $10.91.

No. 47,207.

State of Ohio v. The Royer Wheel Co.

Dec. 31st, 1903, petition filed. Pending.

No. 47,841.

State of Ohio v. Columbus Transfer Co., et al.

Injunction. Pending.

No. 47,842.

State of Ohio v. The National Broom Co. and American Surety Co.

Action for recovery of money for convict labor and on bond. Pending.

No. 47,929.

State of Ohio ex rel. Physicians' Defense Co., a corporation, v. Lewis C. Laylin, Secretary of State of Ohio.

Mandamus. Pending on demurrer to petition.

No. 48,432.

Frakn S. Mitchell v. Board of Public Works.

Injunction. Pending on notice of appeal by plaintiff.

No. 48,518.

State of Ohio ex rel. W. J. Hamilton Coal Co. v. Board of Trustees of Ohio State University, et al.

Pending on demurrer to petition.

In addition to the foregoing cases in the Common Pleas Court of Franklin County, Ohio, on September 8th, 1904, proceedings were begun in said court against 82 corporations to recover taxes and penalties under the Willis law, the defendants being as follows:

The American Sand Co.,
Arnold Emerich Co.,
Arnold Jones Co.,
*Akron Twine & Cordage Co.,
Albaugh, W. A. Petroleum Co.,
*Argus Oil Co.,
Advance Planing Mill Co.,
*Andrews Bros. Co.,
*Andrews Land Co.,

Banks Clark Co.,
Belmont Coal Co.,
Buckeye Novelty Co.,
Bettsville Brick & Tile Co.,

Cambridge Springs Bath Co.,
Cleveland Ornamental Glass & Fixture Co.,
*College of Journaism Co.,
Clark Printing Co.,
City Laundry Co.,
Cleveland Glass & Fixture Co.,
Cleveland Automobile Co.,
*Central Trust Co.,
Cincinnati Dairy Co.,
Citizens' Home Investment Co.,

DeVeny Printing Co.,
Day, W. P., Co.,
Dayton Storage Battery Co.,

*Euclid Shale Brick Co.,
East Palestine Land Co.,
Eagle Shoe Mfg. Co.,
Extension Hay Rack Co.,

Findlay Brick & Tile Co.,
Fawcett Incandescent Mantle Co.,
Forch, J., Cork Mfg. Co.,
Franklin Flour & Feed Co.,
Foreman & Co.,

Graves, W. D. Electrical Mach. Co.,
Good Time Co.,
Gem City Plumbing & Heating Co.,
Grafton Savings Bank Co.,
*Gugenheim, Albert M. Co.,

Harshman Shoe Mfg. Co.,

Investment Banking Co.,
Independent Brewing Co.,
Independent Novelty Co.,

Joffee, George, Co.,

Lima Coal Co.,
Lippy Mfg. Co.,

Messenger Pub. Co.,
Madisonville Woolen Mills Co.,
Maltby-Hornaday Co.,
Monarch, M. V., Sons Co.,
*Metropolitan Banking Co.,
Miamisburg Paper Co.,

Northern Ohio Transfer Co.,
Noville, Wm., Co.,
New Imperial Laundry Co.,
Napthaline Mfg. Co.,
National Supply & Mfg. Co.,
Norwalk Foundry & Mach. Co.,
National Machine Tool Co.,

Ohio Steel & Iron Specialty Co.,
O'Mally Lumber Co.,
*Ohio River Transportation Co.,
Ohio River Planing Mill Co.,
Ohio Bell Pure Air & Cooling Co.,

Prudential Trust Co.,
Prudential Savings Co.,
Pratt Stone Co.,

*Settled and dismissed.

Phoenix Distilling, — Jas. M. Sheldon Co.,
Rockfield, J. W., Co.,
*Scenic Ry. Co.,
Sun Publishing Co.,
Standard Land Co.,
Sandusky Automobile Co.,
Springfield Coal & Lumber Co.,
Thurman Chemical Co.,
*Tuscarara Rubber Co.,
*Van Wert Petroleum Co.,
*Walworth Run Foundry Co.,
Wholesale Fruit & Produce Credit Co.,
Washington Baseball Co.

Gallia County.

No. 4264.

Chsa. W. Davis v. Henry C. Barnes.

On appeal from Thomas, J. P. Gallipolis Tp., Gallia County, Ohio. Judgment for defendant.

Hamilton County.

No. 116,011.

State of Ohio v. Jacob Mandary.

Action to recover possession of certain canal lands located in the city of Cincinnati. Pending.

No. 126,180.

George E. Klem v. The Ohio Farmers' Insurance Co., et al.

Petition filed on the —— day of ———, 1904. Pending.

Lorain County.

No. 6709.

Matt Juskevic v. Harland H. Hollenbeck, The National Fire Ins. Co. of Hartford, Ct., Anna . Haupt, Sarah Martin and L. A. Dawes.

May 20th, 1903, amended petition filed —— day of ———. Answer of defendant Hollenbeck to amended petition filed. Dec. 11, 1904, verdict for defendants.

No. 6865.

Mary Juskevic v. Harland H. Hollenbeck, et al.

Pending.

Lucas County.

No. 52,918.

State of Ohio v. Sanford H. Howland, et al.

Action on bond. Amount claimed, $2,103.72. Pending.

Montgomery County.

No. 20,224

The State of Ohio v. Cyrus W. Baldwin.

March 28, 1899, petition filed.
December 23, 1904, verdict for plaintiff.
Motion for new trial pending.

No. 13,097.

The State of Ohio v. Chris G. Kellner.

December 5th, 1899, petition filed. Pending.

No. 24,990.

Stephen W. Long v. A. F. Shepherd.

On appeal from W. H. LeFever, Justice of the Peace, Van Buren Tp., Montgomery County. Pending.

Perry County

Elizabeth M. Hamilton v .Harvey Walker.

Oct. 27, 1901, petition filed.
Dec. 18, 1904, verdict for plaintiff. Verdict set aside and new trial ordered. Pending.

Summit County.

3439.

State of Ohio v. Brewster Coal Co.

Petition filed March 28, 189—. Answer filed. Pending.

No. 11,064.

Dora L. Palmer v. Wm. M. Hiltabiddle & Chas. J. Chimes.

Pending on motion to petition.

No. 46,674.

George K. Detweiler v. The Board of Public Works.

Sept. 13th, 1904, dismissed at plaintiff's costs.

No. 47,152.

State of Ohio ex rel Purpus and Conradi, a partnership, v. Mark Slater, Supervisor of Public Printing of the State of Ohio.

April —, 1904, judgment for defendant at relator's costs.

No. 10,618.

State of Ohio v. Frank S. Yerges, et al.

April 20th, 1904, dismissed at request of Adjutant General.

V. Criminal Proceedings Were Instituted under the Direction of the Attorney General's Office as Follows:

For violation of pure food laws	122
For violation of employment agency laws	11
For violation of medical registration laws	9
Pharmacy board	37
For violation of stationary engineer laws	7
For violation of child labor laws	1
	187