MIAMISBURG & CARROLLTON HYDRAULIC COMPANY'S CONTRACT.

The State of Ohio,
Office of the Attorney General,
Columbus, January 8, 1873.

To the Board of Public Works:

GENTLEMEN:—I have examined the contract made between the State and the Miamisburg & Carrollton Hydraulic Company.

First—The act authorizing the contract contemplated allowing the company to use the canal for the purpose of flowing the water of the Miami River through it for their own purposes.

Second—The act of March 20, 1867, above referred to, and the contract framed under it, in my judgment, contemplate that such use shall not raise or lower materially the water on that level of the canal so as to affect injuriously the use of the canal for the purposes of navigation, or the use of the water power theretofore leased by the State.

Third—If this use by the Hydraulic Company interferes in any way injuriously with the navigation of the canal, or with the use of the water power theretofore leased and the contract for which still subsists, the State has the right, if upon proper notice the Hydraulic Company does not correct their use of the canal so as not injuriously to affect that level of the water as above stated, to stop such flow by shutting off the water caused to flow into and through the canal by such company. Such injurious use of the canal is a trespass upon the State as well as upon the rights of such lessee of water power, and either may maintain an action, but the board has abundant authority conferred by statute to act summarily in the matter in such cases without application to the courts, and ought to exercise this authority promptly when a proper case arises, so as to protect the

The General Assembly Can Create a Court Which Shall Have Jurisdiction Over a Part of a County.

rights of those who have made contracts with it for the use of water power.

Very respectfully,
F. B. POND,
Attorney General.

THE GENERAL ASSEMBLY CAN CREATE A COURT WHICH SHALL HAVE JURISDICTION OVER A PART OF THE COUNTY.

The State of Ohio,
Office of the Attorney General,
Columbus, January 17, 1873.

A. W. Jones, Esq.:

SIR:—In compliance with your request for an opinion touching the power of the General Assembly to establish a court which shall have competent jurisdiction over part of a county, I have to say:

Section 1 of article 4 of the constitution provides as follows:

> "The judicial power of the State shall be vested in a Supreme Court, in District Courts, Courts of Common Pleas, Court of Probate, justices of the peace, *and in such other courts,* inferior to the Supreme Court as the General Assembly may from time to time establish."

In my judgment it is competent for the General Assembly under that section to create a court inferior to the Supreme Court, which shall have jurisdiction over any portion of a county indicated in the act creating it, and need not necessarily make such jurisdiction co-extensive with the limits of the county in which it is created.

This view, as I understand it, is fully sustained by the Supreme Court in the case of the Steamboat Northern Indiana vs. Milliken (7th O. S. R., p. 386).

Very respectfully,

F. B. POND,
Attorney General.

VALUATION OF THE KELLEY PROPERTY IN COLUMBUS.

The State of Ohio,
Office of the Attorney General,
Columbus, January 17, 1873.

Hon. James Williams, Auditor of State:

SIR:—I have examined the communication of Judge Bates and the exhibits and testimony attached, and am satisfied therefrom that the auditor of Franklin County has mistaken the meaning of the order of the city board of equalization, dated November 9, 1870, in this:

In my judgment the meaning of that order was to add fifteen per cent. to the valuation of so much of the real property fronting on Broad street as was regularly laid off into city lots, and so much of real property not so laid off and fronting on said street as would be included in city lots of the usual size and shape, if the same were so laid off and no more. I do not think the intention of that order could have been to include any territory back of the usual depth of a city lot fronting on Broad street.

So far then as the fifteen per cent. has been put upon real property back of the usual depth of a city lot fronting on Broad street, in my judgment, there has been error, and such error, as Auditor of State, under section 35 of the tax

act (S. & C., p. 1453), has power by his order to cause to be corrected upon the written showing made.

Very respectfully,
F. B. POND,
Attorney General.

FORFEITED WATER POWER LEASES NOT SUBJECT TO TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, January 19, 1873.

Hon. James Williams, Auditor of State:

SIR:—The statute authorizing leases of water power by the authorities of the State provides for the forfeiture of the lease for non-payment of rents. If the lease had so become forfeited to the State before it became delinquent for taxes, no taxes should since have been levied thereon, nor should it have been sold for said taxes. In that event also the property should be taken from the duplicate and the taxes actually paid should be refunded.

Very respectfully,
F. B. POND,
Attorney General.

County Auditors' Deputies Cannot be Paid Out of the County Treasury—Channel of the Ohio River Cannot be Occupied so as to Interfere Injuriously With Navigation.

COUNTY AUDITORS' DEPUTIES CANNOT BE PAID OUT OF THE COUNTY TREASURY.

The State of Ohio,
Office of the Attorney General,
Columbus, February 6, 1873.

H. L. Morey, Prosecuting Attorney, Butler County:

SIR:—Yours of the 3d inst. came duly to hand, and in reply I have to say:

I find no statute authorizing the payment of deputies appointed under the sixth section of the auditors' act of April 18, 1870, (O. L., Vol. 67) out of the county treasury. Of course, in the absence of legislative authority for it, it cannot be done.

I think you are clearly right in your opinion.

Very respectfully,
F. B. POND,
Attorney General.

CHANNEL OF THE OHIO RIVER CANNOT BE OCCUPIED SO AS TO INTERFERE INJURIOUSLY WITH NAVIGATION.

The State of Ohio,
Office of the Attorney General.

To the Governor:

SIR:—The communication of S. S. Davis, mayor of the city of Cincinnati, has been examined, and in reply to your question arising under the same, I have to say:

First—It is clear that in the absence of congressional

legislation authorizing the same, no person or corporation has the right to occupy or use any portion of the channel of the Ohio River so as to interfere injuriously with the free use thereof for the purposes of navigation.

Second—I am satisfied that it is competent for the General Assembly of the State to fix limits or "water lines" within which such river or the channel thereof may be used, so that the same shall not injuriously affect such use for the purposes of navigation.

Very respectfully,
F. B. POND,
Attorney General.

PRESIDENT PRO TEMPORE OF A CITY COUNCIL MAY BE APPOINTED.

The State of Ohio,
Office of the Attorney General,
Columbus, February 19, 1873.

William Daugherty:

SIR:—I am satisfied that a fair construction of the municipal code will warrant the appointment of a president of the council "pro tempore" of a city where a quorum of the council are present and when the "president" and "president pro tem." are both absent and the meeting, whether regular or special, is regularly called.

Very respectfully,
F. B. POND,
Attorney General.

Tax Penalties, Etc., Should be Properly Distributed—County Commissioners Have no Control Over Apportionment of Infirmary Superintendents.

TAX PENALTIES, ETC., SHOULD BE PROPERLY DISTRIBUTED.

The State of Ohio,
Office of the Attorney General,
Columbus, February 19, 1873.

Rawson Griffin, Esq.:

SIR:—Yours handed me by Dr. Williams would have received earlier attention but for press of other matters. In reply I have to say:

First—The interest and penalty fixed by law for the non-payment of the tax should, in my judgment, go to the credit of the parties to whom the tax belongs and is to be apportioned in the ratio of the taxes to the county township, etc.

Second—The penalty fixed by the court should, in my judgment, go to the municipality which pays the counsel fees to compel a collection of the tax.

Very respectfully,
F. B. POND,
Attorney General.

COUNTY COMMISSIONERS HAVE NO CONTROL OVER APPORTIONMENT OF INFIRMARY SUPERINTENDENTS.

The State of Ohio,
Office of the Attorney General,
Columbus, February 20, 1873.

W. Kimmel, Esq.:

SIR:—In reply to yours of 8th inst. I have to say:

In my judgment the county commissioners have nothing to do, under the twenty-third section of the act of 1872 (O.

L., Vol. 69, p. 121), with the appointment of a superintendent for the county infirmary. They may control his pay to the extent that an unreasonable sum shall not be paid for his services.

Very respectfully,
F. B. POND,
Attorney General.

CERTIFICATE OF INCREASE OF CAPITAL STOCK OF THE CHARCOAL IRON COMPANY.

The State of Ohio,
Office of the Attorney General,
Columbus, April 8, 1873.

Hon. Wm. Nash:

SIR:—I have examined the certificate of "Charcoal Iron Company" for increase of capital stock.

If the shares are $1,000 each then all the stock of the company was represented in the meeting at which the increase was "unanimously" voted. In such case I think the thirty days previous notice required by the statute may be dispensed with.

The certificate is, however, in my judgment, defective in this.

By the fourth section of the act of April 12, 1865, (S. & S., p. 237) the certificate must state that the whole amount (of increase) thereof has been paid to such company (this may perhaps be sufficiently stated but what follows, in my judgment, is not), and that no note, bill, bond or other security has been taken for any part thereof, and that the credit of such company has not been used directly or indirectly to raise funds to pay the same or any part thereof."

What the statute requires here must be stated and not

left to inference or implication. In this respect the certificate is clearly bad.

There is no disposition to be captious about these certificates, but there is a palpable necessity that they should in all material matters conform to the statute.

Very respectfully,

F. B. POND,
Attorney General.

STATE HOUSE FENCE CONTRACT VALID.

The State of Ohio,
Office of the Attorney General,
Columbus, April, 1873.

To the Governor and Treasurer of State:

SIR:—By the act of the General Assembly of April 27, 1872, (O. L., Vol. 69, p. 135) the comptroller of the treasury was directed to procure and put up around the State House grounds a new fence.

"The work and improvements" (so directed) were required to be done "with the advice and consent of the Governor and Treasurer of State."

In my judgment the contract or contracts for the fence should be made and the work done under the provisions of the act of April 3, 1868 (O. L., Vol. 65, p. 59).

I find that as required by that act an estimate has been made of the cost of the work by an architect, and the sum of $23,946.10 fixed by him as the probable and reasonable cost of the work, which estimate has been duly filed.

The work was duly advertised under the last named act, and a letting made for $21,000.

The only limit I find for the amount for which such a letting shall be made is contained in the seventh section of

said last named act, and that is that the contract shall not exceed the estimate of the architect.

The contract was made with L. Schaefer & Son, the lowest bidders, for the sum of $21,119.30.

I think the contract to be in accordance with the law, and that the appropriation of last year does not limit the amount for which such contract might be made.

Very respectfully,

F. B. POND,
Attorney General.

PROSECUTING ATTORNEYS NOT ENTITLED TO EXTRA ALLOWANCE FOR PROSECUTING COUNTY TREASURERS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 25, 1873.

Asa Jenkins, Esq.:

SIR:—Yours of yesterday came to hand today. I know of no statute warranting the county commissioners in making any extra allowance for the prosecuting attorney for duties done under the twenty-fifth section of the act of March 12, 1831, (S. & C., p. 1587).

This is a part of the official duty of the prosecuting attorney as I think.

Very respectfully,

F. B. POND,
Attorney General.

PLACES FOR ELECTIONS FOR JUSTICES OF THE PEACE; HOW FIXED.

The State of Ohio,
Office of the Attorney General,
Columbus, April 28, 1873.

Hon. A. T. Wikoff, Secretary of State:

SIR:—I have examined the papers submitted touching the election of justice of the peace in Upper Township, Meigs County, Ohio, and am satisfied that the finding of the freeholders who tried the contest was correct.

The election of a justice of the peace is, in all respects, controlled by the act of 1853 (S. & C., 762), and the acts supplementary thereto and amendatory thereof.

The act of 1853 clearly empowers the trustees to direct and fix the place where the election for justice shall be held, and having fixed it, that is the only place in my judgment where *legal vote* can be cast, except in case of cities whose limits are co-extensive with the township, in which case the election is provided for in the act of 1861 (S. & S., p. 413). I do not think the General Assembly has passed any act modifying this principle, or affecting it by implication even. Whether this is best or not is not in my judgment the question, but is it the law is what we have got to see to.

Very respectfully,
F. B. POND,
Attorney General.

COMPENSATION OF PROSECUTING ATTORNEYS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 28, 1873.

SIR:—Hon. D. J. Callen handed me a letter of yours a good while ago. It is my fault that it has not been answered.

The ten percentum on fines, costs and forfeited recognizances collected during his term of office by a prosecuting attorney, he is entitled to an allowance for out of the general fund of the county, and if the county commissioners refuse to allow it, they may be compelled by mandamus.

The case you put, in my judgment, comes clearly within the meaning of the act, if collected by you.

What authority the commissioners had to employ other counsel for the purpose of collecting the amount of the notes you speak of, I cannot see when, as the prosecutor of the county you were authorized to do it, and the law makes it your duty to attend to it in your official capacity.

Second—Your regular compensation is *fixed* by statute on the basis of the population of your county, and must be paid, and the only discretion, in my judgment, the commissioners have is as to the time and installments in which the salary is to be paid.

Very respectfully,
F. B. POND,
Attorney General.

Pay of Village Marshals Cannot be Increased During Term of Office—Probate Judges Can Commit to Reform Farm Upon Complaint of Parents or Guardians.

PAY OF VILLAGE MARSHALS CANNOT BE INCREASED DURING TERM OF OFFICE.

The State of Ohio,
Office of the Attorney General,
Columbus, May 14, 1873.

E. W. Maxson, Sol. Garrettsville:

SIR:—In reply to yours of 12th inst. I have to say:

I do not see how under the provisions of the sixty-ninth section of the act of April 8, 1870, (Vol. 67, p. 69) the pay of this officer (marshal of your village) could have been "*increased*" at all "during the term for which" he was "elected." Hence, I do not think the marshal can collect his salary (in the increase contemplated in the ordinance) for any period of his existing term.

Very respectfully,
F. B. POND.
Attorney General.

PROBATE JUDGES CAN COMMIT TO REFORM FARM UPON COMPLAINT OF PARENTS OR GUARDIANS.

The State of Ohio,
Office of the Attorney General,
Columbus, May 22, 1873.

W. S. Dougherty, Esq., Probate Judge, Etc.:

DEAR SIR:—On the complaint and proof made by the parent or guardian of an infant under the sixth section of the act of May, 1857, (S. & C., p. 689) I have no doubt a probate judge has complete jurisdiction to commit such in-

fant to the reform farm as provided in the tenth section of the act of April, 1838. (S. & C., p. 1381.)

It is not necessary that the judge should have criminal jurisdiction.

The commitment is not made as a punishment for crime but simply "to place the infant under the guardianship of the public authorities named for proper care and discipline." See Prescott vs. The State, Vol. 19 O. S. R., page 188, and this authority may be and is conferred by statute properly upon the probate judge.

I do not think the act of February 24, 1865, affects this at all.

Very respectfully,

F. B. POND,
Attorney General.

APPROPRIATIONS FOR CLEARING OUT THE SOUTHERN END OF THE OHIO CANAL.

The State of Ohio,
Office of the Attorney General,
Columbus, May 24, 1873.

To the Board of Public Works:

GENTLEMEN:—I have examined the question of the appropriation of $10,000 made in 1872, and the additional appropriation made last winter of $5,000 for clearing out and opening for navigation the southern end of the Ohio canal at Portsmouth, and have to say:

That I am fully satisfied that that excavation proposed to be made is part of the Ohio canal as it was originally constructed and maintained.

I am, therefore, fully satisfied that there is sufficient pre-existing law for the use of the money so appropriated,

and the Auditor of State will be fully warranted in drawing his warrants on the treasury for such of those appropriations as you may need for the work.

As to the Licking Feeder question I desire a little further time to examine it, and will report soon.

Very respectfully,

F. B. POND,
Attorney General.

DISPOSITION OF RAILROAD BONDS DEPOSITED UNDER THE BOESEL LAW.

The State of Ohio,
Office of the Attorney General,
Columbus, May 30, 1873.

Hon. Isaac Welsh, Treasurer of State:

SIR:—In reply to your verbal inquiry touching the disposition of railroad bonds deposited with you under the provisions of the Boesel law, I have to say:

The Supreme Court has declared that act *void*. In my judgment the bonds should, therefore, remain in the treasury until the General Assembly shall take further action in regard to their disposition. None of them should be delivered over to any person or persons for any cause until such action is had.

Very respectfully,

F. B. POND,
Attorney General.

Stockholders Are Competent to Execute and File an Amended Certificate of Incorporation.

STOCKHOLDERS ARE COMPETENT TO EXECUTE AND FILE AN AMENDED CERTIFICATE OF INCORPORATION.

The State of Ohio,
Office of the Attorney General,
Columbus, June 26, 1873.

Hon. A. F. Wikoff, Secretary of State:

SIR:—I have examined the communication of Messrs. Kennett and Ambler, touching the construction of the act of March 10, 1873, (O. L., Vol. 70, p. 61).

The proviso in the act does not seem to have been well considered.

By its terms it would seem that the "amended certificate" was to be executed by the "incorporated company," but this could not, in my judgment, have been the intention of the legislature. That intention doubtless was to cure the defect in the *execution* only of the original certificate. The original certificate must have been executed by natural persons. I cannot think the General Assembly intended that the amendment should be executed by other than natural persons.

The next question is, what natural persons are contemplated.

The first impression would be that inasmuch as the defective *execution* of the original is *all* that the statute proposes to cure, that the same natural persons who signed the original should also execute the "amendment."

This, however, within the period of three years would, as experience shows in a large majority of instances, be impossible or inappropriate, either from death, or the extinction of any interest in the affairs of the corporation.

The present stockholders of the corporation are either the original corporators or their successors, and I am of the opinion that the General Assembly designed to authorize the

amended certificate to be executed by a *legal* number of the present stockholders.

Very respectfully,
F. B. POND,
Attorney General.

LOAN ASSOCIATIONS DO NOT POSSESS GENERAL BANKING POWERS.

The State of Ohio,
Office of the Attorney General,
Columbus, June 28, 1873.

Hon. A. T. Wikoff, Secretary of State:

SIR:—I have examined the communication of Messrs. Estep and Burke, touching the Citizens' Loan Association of Cleveland.

As I understand it this company was incorporated under the act of May 9, 1868, (S. & S., p. 194 and 195) as amended.

This act hardly conferred or was intended to confer any general *banking power*. A corporation organized under it is restricted in this regard to receiving from *its members* alone, "dues," "fines," "interest," etc., and loaning money to *its members* alone. Associations organized under this act do not appear to me to be the "savings and loan institutions" contemplated in the twenty-third section of the act of February 26, 1873.

I think it would be too much to suppose that the General Assembly intended by that section to confer upon associations such as this, banking powers as extensive as those conferred by the act of 1873, when such powers do not seem to have been at all contemplated by the act under which they were incorporated.

Be so good as to ask also of the gentlemen (for whose

opinion I entertain a very high regard), whether in their judgment it is safe to act under the act of 1873 in a constitutional view. Section 7 of Article XIII of the constitution, it appears to me, renders this act of 1873 void for the following reasons:

First—In my judgment the act of 1873 confers "banking powers."

Second—The act was never submitted to the people, etc.

I would like *their judgment on this proposition.*

Very respectfully,

F. B. POND,
Attorney General.

WHEN A VILLAGE BECOMES A CITY OF THE SECOND CLASS.

The State of Ohio,
Office of the Attorney General,
Columbus, June 28, 1873.

Thos. Irvin, Esq.,

Dear Sir:—Yours of the 23d inst. is received, and in reply I have to say:

In my judgment a village becomes a city of the second class "so soon as the recorder shall make the record and certify and forward," etc.

The city will, however, still be governed by the authorities chosen for the village until the city shall be "actually organized by the election and qualification of officers," but is nevertheless a city upon the occurrence of the first above named fact.

Very respectfully,

F. B. POND,
Attorney General.

Justices of the Peace Must Make Their Resignations to Common Pleas Clerks—Building and Loan Associations Can Increase Their Capital Stock.

JUSTICES OF THE PEACE MUST MAKE THEIR RESIGNATIONS TO COMMON PLEAS CLERKS.

The State of Ohio,
Office of the Attorney General,
Columbus, June 30, 1873.

James M. Devore, Esq.:

SIR:—If you never made a resignation "to the clerk of the Court of Common Pleas" you have never made a valid resignation, and are still, to all intents and purposes, a justice of the peace.

Very respectfully,
F. B. POND,
Attorney General.

See S. & C. Statutes, first Vol., page 765, section 15.

BUILDING AND LOAN ASSOCIATIONS CAN INCREASE THEIR CAPITAL STOCK.

The State of Ohio,
Office of the Attorney General,
Columbus, June 30, 1873.

Captain A. F. Wikoff, Secretary of State:

SIR:—Your communication of today is received. I think Building and Loan Associations may increase their capital stock under the provisions of the act of April 25, 1868. The act of May 5, 1868, (S. & S., p. 195) as it originally stood, although in terms repealing the act of February 21, 1867, (O. L., Vol., 64, p. 18) operates simply as an amendment of that act continuing its life and operation so far as the amendments made by the act of May 5, 1868, do

not change it; simply repealing because in amending it the repeal was required by the constitutional provision.

The act of May 9, 1868, is also an amendment merely, both acts being, as I consider them, a correction of the act of 1867, and any amendatory or supplementary act like that of April 26, 1868, apply as fully to the later acts as to the act of 1867.

Very respectfully,
F. B. POND,
Attorney General.

GOVERNOR CAN REVOKE THE COMMISSION OF A NOTARY PUBLIC.

The State of Ohio,
Office of the Attorney General,
Columbus, July 8, 1873.

To the Governor:

I have seen the communication of D. S. Nye and E. S. Shillhouse, touching the commission of A. F. Anderson as notary public, and have to say:

Under section 2 of the act concerning notaries, etc., (S. & C., p. 873) I am satisfied it is competent for the Governor to revoke the commission of a notary if he be *satisfied* that the person commissioned is so conducting himself as to endanger the interests of those for whom he undertakes to do business.

Very respectfully,
F. B. POND,
Attorney General.

Securities Deposited by Insurance Companies Must be Retained Proportionate to Liabilities—How to Proceed Against County Commissioners for Loss to the County Which Resulted From Their Joint Action.

SECURITIES DEPOSITED BY INSURANCE COMPANIES MUST BE RETAINED PROPORTIONATE TO LIABILITIES.

The State of Ohio,
Office of the Attorney General,
Columbus, July 15, 1873.

Hon. W. F. Church:

SIR:—Your verbal inquiry touching section 22 of the act of March 12, 1872, "To provide for establishing an insurance department in the State of Ohio," I have to say:

If you are satisfied that all the liabilities indicated by that section are "paid and extinguished" that are due *or may become due*, you can deliver all the securities. If a portion of such liabilities still remains unpaid and unextinguished then you should retain such proportion of the securities as the existing liability due or to become due bears to the whole amount of liabilities for which the whole securities were pledged.

Very respectfully,
F. B. POND,
Attorney General.

HOW TO PROCEED AGAINST COUNTY COMMISSIONERS FOR LOSS TO THE COUNTY WHICH RESULTED FROM THEIR JOINT ACTION.

The State of Ohio,
Office of the Attorney General,
Columbus, July 21, 1873.

D. S. Sprigg, Esq.:

DEAR SIR:—I cannot now say why your former letter was not answered. In reply to this I have to say:

Governor Cannot Relieve Sureties of a Notary Public Without Revoking His Commission.

In my judgment, in the first instance, in order to fix the liability of the county commissioners for the loss to the county, which was the result of their joint action, an action should be brought against them jointly and severally, without reference or regard to the bond of each. When the liability is fixed, if necessary, you can proceed upon the bond of each to obtain the amount so fixed.

This seems to me the proper course.

Very respectfully,

F. B. POND,
Attorney General.

GOVERNOR CANNOT RELIEVE SURETIES OF A NOTARY PUBLIC WITHOUT REVOKING HIS COMMISSION.

The State of Ohio,
Office of the Attorney General,
Columbus, July 22, 1873.

To the Governor:

SIR:—I have examined the papers connected with the application to revoke the commission of A. F. Anderson as notary public and am satisfied that the law provides no mode by which you can relieve the securities of Anderson without revoking his commission; and while I still think it in the power of the Governor to make this revocation, yet, unless it be a flagrant case where his unfaithfulness and misconduct are palpable and clear, I should remit the parties complaining to their remedy provided in section 11 of Notarial act (S. & C., p. 874).

Very respectfully,

F. B. POND,
Attorney General.

State Institutions Can Work the State Quarry—County Auditors Can Correct Returns of Value of Bank Stock.

STATE INSTITUTIONS CAN WORK THE STATE QUARRY.

The State of Ohio,
Office of the Attorney General,
Columbus, August 9, 1873.

Dr. Doren:

DEAR SIR:—Under the joint resolution of the General Assembly of April 27, 1872, (O. L., Vol. 69, page 318) any managing officer of a State institution like yours has the right without let or hindrance from the trustees of the Central Ohio Lunatic Asylum, or their agents, to take stone or sand from the "State Quarry Tract," to aid in repairing or constructing the buildings connected with such institution. This right is specifically saved and reserved in giving the lunatic asylum trustees power to control the tract at all. There is no doubt in my mind about this.

Very respectfully,
F. B. POND,
Attorney General.

COUNTY AUDITORS CAN CORRECT RETURNS OF VALUE OF BANK STOCK.

The State of Ohio,
Office of the Attorney General,
Columbus, September 23, 1873.

Hon. James Williams, Auditor of State:

SIR:—If a county auditor shall be satisfied that the president and cashier of a national bank have, under the fourth section of the act of April 16, 1867, (S. & S., p. 63) *wilfully made a false* statement of the value of the stock of such bank, he, as auditor, has full and complete power con-

County Auditors Can Correct Returns of Value of Bank Stock.

ferred by statute to "correct" such return, and for the purpose of being enabled to do so, to resort to all the evidence provided for, and the powers conferred by section 34 of the tax law. (S. & C., pp. 1452 and 1453.) This stock, like any other property, must, under the constitution, be listed for taxation at *its true value in money.*

The act of 1859 provided for listing other property in the State upon that principle and that principle only. The act of 1867 simply provides a mode for listing the stocks of banks and bankers originally. It never was intended, in my judgment, to affect or limit the power of the county auditor to "correct" the statement made by the president and cashier, just as he could "correct" the false return of a person under the thirty-fourth section of the act of 1859 above referred to.

The principle that underlies this is the principle fixed by the constitution as above referred to, and the General Assembly has never, to my knowledge, been allowed by the Supreme Court, to wander from that principle; and, in my judgment, the act of 1867, above referred to, in its ninth section, expressly recognizes the power of the county auditor to aid in arriving at this *"true value in money,"* as clearly and effectually as said thirty-fourth section of the act of 1859 does touching the return of any person required to list his property.

I have no doubt about the above.

Very respectfully,

F. B. POND,
Attorney General.

Term of County Auditor When Appointed to Fill a Vacancy.

TERM OF COUNTY AUDITOR WHEN APPOINTED TO FILL A VACANCY.

The State of Ohio,
Office of the Attorney General,
Columbus, September, 1873.

To the Commissioners of Miami County:

Mr. Williams, your prosecuting attorney, forwards to me your letter touching the sudden death of your county auditor, and I have to say:

In my judgment section 5 of the act of April 18, 1870, (O. L., Vol. 67, p. 104) expresses only the intention of the General Assembly to fill a vacancy.

The term of the deceased would have expired, I am informed, on the second Monday of November, 1873. Your appointment to fill this vacancy, in my judgment, should be for the unexpired term of the deceased officer.

I do not think it possible that the General Assembly could have intended by that section to create a new term without the direct voice of the people for a year beyond the term for which the deceased was elected.

Very respectfully,
F. B. POND,
Attorney General.

County Commissioners Not Entitled to Pay for Expenses Incurred While Traveling Within Their Respective Counties.

COUNTY COMMISSIONERS NOT ENTITLED TO PAY FOR EXPENSES INCURRED WHILE TRAVELING WITHIN THEIR RESPECTIVE COUNTIES.

The State of Ohio,
Office of the Attorney General,
Columbus, September 24, 1873.

George W. Knapp, Prosecuting Attorney:

SIR:—I should have answered yours of the 15th inst. sooner, but have not from press of business at home and here.

The transcript in the case of Burt vs. State is filed. I have had little time to examine it yet, and my health is such that I do not know that I can immediately. The case will undoubtedly be taken out of its order and, if parties desire, I presume can be set down for argument on the 15th; i. e., if parties desire oral argument. I am inclined to think there is no error in the points you refer to.

As to the other question:

The county commissioners are entitled to no pay by way of per diem, mileage, or to draw money from the treasury to cover expenses of executing the duties of their office only as *expressly* authorized by statute. The act of April 20, 1872, not only does not authorize expressly payment of expenses for traveling *in the county* but by implication prohibits it in allowing pay for such expenses "when necessary to travel on official business *out* of his county." In the absence of any other statute the above, in my judgment, is a fair construction of this one.

Very respectfully,
F. B. POND,
Attorney General.

Insurance Company of West Virginia; Surrendering the Securities of.

INSURANCE COMPANY OF WEST VIRGINIA; SURRENDERING THE SECURITIES OF.

The State of Ohio,
Office of the Attorney General,
Columbus, November 4, 1873.

Hon. W. F. Church, Superintendent of Insurance:

SIR:—In reply to your verbal inquiry as to delivering up the securities of the Insurance Company of West Virginia, I have to say:

That so soon as said company shall have satisfied you that prior to the taking effect of the West Virginia statute, it had incurred in Ohio no liabilities to policy holders under contracts with them, which are now binding upon the company, or shall present to you satisfactory evidence that such policy holders, if any there be, are satisfied to waive and release any rights they may have acquired in such securities, then I should surrender such securities. If not, I do not think it your duty to do so, believing as I do, that under the law as it existed when such contracts were made, the policy holders may have acquired a vested right in them.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Real Property Should Not be Taxed Twice in the Same Hands.

REAL PROPERTY SHOULD NOT BE TAXED TWICE IN THE SAME HANDS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 22, 1873.

Hon. James Williams, Auditor of State:

SIR:—I have examined the communication of parties addressed to A. W. S. Minear, auditor of Athens County, and I have to say:

In my judgment the statute does not contemplate taxing real property or the value of it twice in the *same* hands. It aims to get at the property, and when the value of that is reached once, I do not think in such a case as this, it contemplates assessing or taxing it again.

Again, I doubt if there was an actual credit so as to charge these parties. There is an agreement to create a credit, but I doubt whether it is really a subsisting taxable credit until the notes and mortgage contemplated in the agreement are executed. The vendors retain general possession of the property, absolutely own it, until the time for making the notes and mortgage. No consideration passes to the vendee until then.

Very respectfully, etc.,
F. B. POND,
Attorney General.

Deposits Should be Included in the Annual Returns of Banks and Bankers Made to County Auditors.

DEPOSITS SHOULD BE INCLUDED IN THE ANNUAL RETURNS OF BANKS AND BANKERS MADE TO COUNTY AUDITORS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 22, 1873.

Hon. James Williams, Auditor of State:

SIR:—In reply to the verbal inquiry you made, I have to say:

In my judgment, under the third sub-division of section 32 (S. & S., p. 764), *deposits* as well as other cash items, whether in possession or in transit, should be included in the statement.

In sub-division six, deposits are to be deducted. For what reason? Simply to balance the statement made of them in sub-division three. It cannot be possible that the deduction is to be made from other property, the result of which would be, in many cases, to have bankers with no taxes to pay at all, notwithstanding they may have quite a large capital embarked in the business.

Very respectfully,
F. B. POND,
Attorney General.