(2) The lease recites that the same has been executed under and in pursuance of an act of the General Assembly of the State of Ohio amending Section 3209 of the General Code, passed February 16, 1914, and amended July 20, 1914 (105 O. L. 6). Since this lease is made pursuant to Section 3209-1 of the General Code, and since Section 3209, General Code, was repealed in 107 O. L. 357, I suggest that the lease recite that it is made in pursuance to Section 3209-1, General Code.

(3) The seal of the Auditor of State is missing. Section 3203-4, General Code, provides that leases shall be signed by the Auditor of State, acting as the state supervisor of school and ministerial lands, and the seal of the auditor shall be affixed.

(4) In the last sentence of the first paragraph ending on page 2, the words "offset walls" should probably read "offset wells." In the first sentence of the third paragraph on page 3, I suggest that the word "may" be inserted following the word "lessee," to read as follows: "The lessee may at any time by paying to the lessor all amounts," etc. The last sentence in the first paragraph ending on page 4, with reference to the right of the Auditor of State to enter upon the premises and eject the lessee and repossess the premises, is not quite clear. The phrase "of the said lessor's former estate" appears to be incomplete.

(5) The signature of the lessor and lessee are found on page 4 of the lease and the acknowledgments of the lessor and lessee are found on page 5 of the lease. Since the lease is made up of separate sheets of paper fastened together by means of wire fasteners, the execution of the lease is improper, since it does not comply with Section 8510 of the General Code which requires that the acknowledgment be certified on the same sheet on which the instrument is written or printed. It is imperative under this section that the signatures and acknowledgments appear on the same sheet.

For the foregoing reasons the two copies of the lease above referred to are returned to you without my approval noted thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

174.

TUMEY CASE—DOES NOT AFFECT ELIGIBILITY OF JUSTICE OF THE PEACE AS EXAMINING MAGISTRATE.

SYLLABUS:

Recent decisions of United States Supreme Court does not affect jurisdiction or eligibility of justice of the peace as examining magistrate.

COLUMBUS, OHIO, March 11, 1927.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR MR. DUGAN:—In response to your request over the telephone, I beg to advise you that it is my opinion that the decision of the Supreme Court of the United States in the case of Ed. Tumey vs. the State of Ohio, No. 527 on the October term 1926 docket in no way affects the eligibility of a justice of the peace as an examining magistrate. In other words, the power of justices of the peace throughout the State of Ohio to bind accused persons over to the grand jury is in no way affected by said decision.

I am departing from the rule of this office, in insisting that questions be sub-

mitted in writing, in this particular case on account of the urgency of the matter and what I have said above confirms what I have said to you over the telephone.

Respectfully,
EDWARD C. TURNER,
Attorney General.

175.

COSTS IN MINOR STATE CASES—NO PROVISION IN LAW FOR COLLECTION AGAINST STATE—DEFENDANT NOT ENTITLED TO REIMBURSEMENT FOR TAKING A RECORD OF THE PROCEEDINGS BEFORE A MAGISTRATE.

SYLLABUS:

1. *Where a minor state case is reviewed on error proceedings in a court of common pleas, and the judgment of the lower court is reversed, and final judgment entered against the state, the defendant being discharged and the state ordered to pay the costs, there is no statute making provision as to where the clerk of courts should send such cost bill.*

2. *Such defendant has a valid judgment against the State of Ohio, but until means are provided by statute how same shall be paid, and the legislature appropriates money to pay said judgment, he cannot collect it.*

3. *Where a defendant in a minor state case advances money to a stenographer for taking a record of the proceedings before a magistrate, and on error proceedings judgment is entered discharging said defendant and ordering the state to pay the costs, said defendant is not entitled to reimbursement for such advancement.*

COLUMBUS, OHIO, March 11, 1927.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which reads as follows:

> "Some time ago J. B. was arrested on a State Warrant, wherein an affidavit signed by the Sheriff charged said J. B. with "Possession of Intoxicating Liquor", which affidavit was filed before the Mayor of Huron, Ohio, trial was had and the defendant, J. B. was found guilty. The case was taken on error to the Common Pleas Court, where trial was had, the judgment reversed and final judgment entered against the State and B. being discharged, and defendant in error, which was the State of Ohio, ordered to pay the costs.
>
> As this was a state case the Clerk of Courts does not know, or is in doubt as to whom to send the bill for payment of the costs.
>
> Also the plaintiff in error, J. B., advanced $25.00 to the stenographer who took the proceedings before the Mayor and prepared a transcript and the question now arises as to who shall refund the $25.00 to said plaintiff in error and where the $25.00 shall be collected from if same can be refunded."