
Sheriffs; Right to Poundage in Certain Cases—Taxes on National Bank Shares; Remitting Under.

SHERIFFS; RIGHT TO POUNDAGE IN CERTAIN CASES.

Attorney General's Office,
Columbus, January 10, 1868.

Moses Nelson, Esq., Sheriff Preble County:

DEAR SIR:—Your communication of 6th instant, making inquiry as to whether sheriffs are "entitled to poundage on moneys paid to them for distribution among heirs in partition cases, wherein some of the parties elect to take the premises, etc.," is received.

When the money is received and recipted for by the sheriff, in his official character, under said act, in such manner as to charge him therefor on his bond, he is entitled to poundage.

Respectfully,

W. H. WEST,
Attorney General.

TAXES ON NATIONAL BANK SHARES; REMITTING UNDER .

Attorney General's Office,
Columbus, January 10, 1868.

P. W. Noel, Esq., Auditor Scioto County:

DEAR SIR:—My return from New York last evening found your letter of the 28th ult., in relation to the refunding of taxes on national bank shares, awaiting reply.

You ask: "Is it the understanding that the auditor of state and attorney general have full authority to refund the whole taxes paid, county and city, as well as State, independent of any action of county commissioners or city authorities?"

I have the honor to reply:

Taxes on National Bank Shares; Remitting Under.

First. That the attorney general has no power, by himself, or jointly with the auditor of state, to remit said taxes, or any part thereof. That power, and the duty of exercising it, belongs exclusively to the auditor.

Second. I do not know in what manner, or at what times, the auditor has directed said certificates to be received. I think a liberal interpretation of the resolution would give him the discretion to apportion them part to the December and part to the June payment. Whether he did or did not so order their apportionment, I have no information.

Third. The terms of the resolution, I think, vest in the state auditor the sole authority to remit taxes illegally collected, whether State or local, and it is the duty of the treasurer to receive the certificates, unless enjoined by the court, on the application of the commissioners; or if the treasurer refuses, the remedy of the banks is by *mandamus*.

Fourth. If the receiving of these certificates results in embarrassing the local finances, the remedy is with the legislature, with whom the matter originated. It has been the effort of the auditor to execute the resolution, and carry out the legislative will. In one particular the attorney general differed with him, but was overruled. The duty of the attorney general was subordinate to the authority of the auditor, it was to "*assist the auditor in the performance of his duties.*" He gave such assistance as the auditor solicited, which was limited to preparing a series of interrogatories addressed to the banks, to ascertain what government securities and other assets they were entitled to have deducted, etc., a copy of which I enclose you, and to approve the form of the certificate according to the interpretation placed upon the resolution by the auditor. What responses the banks made, or what was the basis of the auditor's computation, this office has no information; nor has it of the amounts found due, other than as disclosed by the certificates after they were filled up.

The history of the matter is briefly this: The Supreme

County Treasurers Cannot Collect the Five Per Cent. Penalty on Sales of Lands for Taxes.

Court, in the cases named in the resolution, decided the tax illegal. Many suits had been commenced, many more were awaiting said decision, to be commenced, if favorable. As there were many thousands of shareholders, each entitled to a separate action, the costs would have been enormous. To avoid these costs, the legislature, by a unanimous vote of the Senate, and with but one dissenting vote in the House, adopted this resolution. If it failed to meet the case, it will have to furnish further remedies.

Very respectfully,

W. H. WEST,
Attorney General.

COUNTY TREASURERS CANNOT COLLECT THE
FIVE PER CENT. PENALTY ON SALES OF
LANDS FOR TAXES.

Attorney General's Office,
Columbus, January 22, 1868.

Hon. Jas. H. Godman, Auditor of State:

SIR:—Your letter of this date is received asking whether county treasurers may exact the five per cent. penalty provided in section four of the act of 1859 (11 S. & C., 1475), on sale of lands for taxes.

I am clearly of opinion they are not. The penalty provided in this section is chargeable in case and only in case of collection "by distress, or otherwise as may at the time be prescribed by law." The term "otherwise" did not include collections by tax sales, for it is apparent from section five of the same act that it is only in case of failure to collect by distress or otherwise that a sale can be made. So that the term "otherwise" imparts any mode of collection the treasurer may pursue, under the law, at any time,

County Treasurers Cannot Collect the Five Per Cent. Penalty on Sales of Lands for Taxes.

other than, and anterior to sale. From a careful analysis of these statutes these things are evident:

1. The five per cent. penalty authorized by section four can be exacted only in case of *collection* by the treasurer.

2. It can be exacted only in case of collection, by distress or otherwise, in such mode as the law may prescribe anterior to sale.

3. It cannot be exacted then on sale.

4. Further it is apparent that, by the terms of section five, as amended, only the tax proper, with *twenty per cent. penalty* thereon can be entered upon the duplicate. There is no provision of law for entering the five per cent. of section four upon it.

5. But the tax and penalty "on the duplicate" is all that can be exacted on tax sale. 1 S. & C., p. 100, Sec. 23.

6. Hence the said five per cent., not being "on the duplicate" cannot be exacted.

7. Any additional penalty exacted, other than the penalty entered upon the duplicate, would not be a charge on the land sold, and if exacted would either render the sale void or there could not be alien recoverable back on redemption.

This penalty then cannot be collected on sales.

Very truly, etc.,

W. H. WEST,
Attorney General.

*Foreign Insurance Companies Having a Common Agency
in Ohio not to be Considered as One Company.*

FOREIGN INSURANCE COMPANIES HAVING A
COMMON AGENCY IN OHIO NOT TO BE CON-
SIDERED AS ONE COMPANY.

The State of Ohio,
Office of the Attorney General,
Columbus, January 24, 1868.

Hon. J. H. Godman, Auditor State:

SIR:—Your letter of this date is received, covering a communication from the underwriters' agency of New York, and inquiring whether said agency can be regarded and treated under our laws, as an insurance company, and entitled to transact business in this State, upon complying with the requirements of section twenty-four of the act of 1867, as a single company.

I understand that four separate and distinct corporations in New York have constituted, under the laws of that State a *common agency*, to transact jointly for them, business in other States, with power to issue none but joint policies. Does this operating by and through a joint agency, whether a natural person, or an incorporated association, constitute these four companies, one company under our laws, or do they continue to be four companies? If the former, then they are entitled. If the latter they are not.

Is the separate capital of each one of these four companies made the joint capital of the association? Or does each company maintain a distinct organization controlling its separate capital by its own officers? If the former they are entitled. If the latter, not.

In stating their liabilities, under the third clause of section nineteen, are the separate liabilities of each and the joint liability of all included; or is the *joint* liability alone sufficient? Certainly not the latter, for it would furnish a false showing. If the former, then they are four com-

*Probate Judges; Construction of Act Requiring Them to
File an Account of Their Fees.*

panies, and not one, and must be treated as such under our laws.

Under the facts submitted, and the law as it stands, I cannot see how you can treat or regard this agency as "an insurance company;" or the four companies as "a single company," but as four companies. You cannot in my judgment, execute the law if you consider them as one company, for as such they cannot comply with section nineteen. Possibly if the law, under which the agency is created were submitted to me, I might determine otherwise, but with the lights I have, the above is my opinion.

Truly, etc.,

W. H. WEST,
Attorney General.

PROBATE JUDGES; CONSTRUCTION OF ACT
REQUIRING THEM TO FILE AN ACCOUNT OF
THEIR FEES.

The State of Ohio,
Office of the Attorney General,
Columbus, February 1, 1868.

M. Barnes, Esq., Prosecuting Attorney:

DEAR SIR:—I think a fair and reasonable construction of the act "prescribing further duties of the Probate Court" required him to file on the 1st of last September an account of all fees by him charged or received by virtue of his office, from and after the 9th day of March, 1867, and then every year thereafter on the 1st day of September for the year preceding that date. I do not think the legislature intended the law to be retroactive in respect to charges preceding its passage.

The remedy is by indictment, unless on warrant and arrest before a justice he shall plead guilty. If on such

School Property Other Than That Used for Common or Public Schools, Not Exempt from Taxation.

arrest he should refuse to plead guilty, he could only be discharged or held to bail for his appearance, etc. The prosecuting attorney is not required to look after it, more than, on recognizance filed, or complaint made, to call the matter to the attention of the grand jury, and conduct the prosecution, if indictment be found.

Yours, etc.,

W. H. WEST,
Attorney General.

SCHOOL PROPERTY OTHER THAN THAT USED
FOR COMMON OR PUBLIC SCHOOLS, NOT
EXEMPT FROM TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, February 6, 1868.

Hon. James H. Godman, Auditor of State, Columbus, Ohio:

SIR:—I have to acknowledge the receipt of your communication of this date, submitting to me for my opinion, the following inquiry and statement of facts, received by you from an auditor of one of the counties of this State, to-wit:

“The Catholic church bought a house and lot here in 1865 or 1866, and have since that time used the same for private school purposes, keeping a *subscription school*. The lot has not been transferred, was sold for taxes of 1866 and 1867 on the 21st of January, 1868. Shall I refund the taxes to the purchaser and strike the lot from the duplicate?”

I have the honor to reply, that the third section of the act March 31, 1864, provides “that all public school houses

*School Property Other Than That Used for Common or
Public Schools, Not Exempt from Taxation.*

and houses used exclusively for public worship," shall be exempt from taxation. (61 Ohio Laws, p. 39.) The term "public" as employed in this act in relation to school houses is intended to be synonymous with the term "common," so that the term "public school houses" means houses used for common or public schools, open to all who may see proper to attend on the instructions therein, under the regulations prescribed by law, in contradistinction to houses for education under such rules and regulations as may be prescribed by individuals or associations, without reference to any public law or statute upon the subject.

A house owned by an individual in which he imparts instruction to all who may enter and accept the same upon his terms, cannot properly be called a public but a private school house, the school therein taught being in popular parlance a private school. The principle is not changed by multiplying the number of owners. It still continues a private school in contradistinction to the public or common school known to the law.

It might be that a school of this kind, wherein instructions are imparted as a mere gratuity to all necessitous and indigent persons, who might apply, might by strained construction fall under the head of a public charity, and thus be exempt, but it seems to me quite clear that in the absence of a purely charitable gratuity any house owned by any private individual or association of individuals for private educational purposes, is not a public school house within the meaning of the law, and hence not exempt.

Very respectfully,

W. H. WEST,
Attorney General.

Public Roads or Highways; Obstruction of, Etc.

PUBLIC ROADS OR HIGHWAYS; OBSTRUCTION
OF, ETC.

The State of Ohio,
Office of the Attorney General,
Columbus, February 17, 1868.

J. D. Taylor, Esq.:

SIR:—Your letter of the 15th instant is received and I have the honor to reply:

1st. A road which has been for the proper prescriptive period, continuously used, traveled and recognized as a public highway, by being improved and worked by the public road authorities, is to all intents and for all purposes a public highway under our laws. But it must have been so treated and recognized by being improved and worked by the public authorities; otherwise it may be only a *private* way, or public easement, not a public highway in the proper legal sense of the term.

2. If it shall have become a public highway in the sense above mentioned, it falls within the purview of section fifteen, act 1867, and proof that it was a travelled road before the organization of the county. It may, notwithstanding, have been subsequently adopted under regular proceedings. That it is a public highway, on the same line, may have been laid out regularly, after the organization of the county, and the record lost. And this will be the presumption, if sufficient time since the organization has elapsed for the prescription to have matured.

3. "*Permitting*" an obstruction to remain on a public highway is the only crime defined in the fifteenth section. It is no offense to place an obstruction upon it, if it be not permitted to remain thereon to the injury of the public, or some individual. If any person shall obstruct by permitting, etc., or shall *permit* any wood, timber, lumber or *other* obstruction to *remain*. The law is very crude and awkwardly constructed. But an allegation of placing an obstruction upon coupled with an allegation of permitting, etc.,

Requisitions for Fugitives from Justice Based on Ex Parte Affidavits not Sufficient.

does not vitiate for duplicity. The former is only the inducement to the latter.

Truly, etc.,

W. H. WEST,
Attorney General.

REQUISITIONS FOR FUGITIVES FROM JUSTICE
BASED ON *EX PARTE* AFFIDAVITS NOT SUFFICIENT.

The State of Ohio;
Office of the Attorney General,
Columbus, March 11, 1868.

His Excellency, The Governor:

DEAR SIR:—Your favor of this date concerning a requisition from his excellency, the Governor of Kentucky, is received and contents noted.

The requisition is founded on an *ex parte* affidavit, alleging that the fugitive, in the act, 1866, obtained "under false and fraudulent pretences and with a felonious intent one thousand dollars, etc."

This allegation is clearly insufficient to sustain an indictment, and hence not sufficient to sustain a requisition. In this I am supported by the opinion of my predecessor, now attorney general of the United States, found in record "A," p. 54, given in a similar case. The facts constituting the crime must be alleged with sufficient distinctness to make a *prima facie* case, otherwise the process is liable to the greatest abuse. Conclusions of law, or opinions in an *ex parte* affidavit are not sufficient. However honestly made, the affiant may be greatly mistaken.

Respectfully, etc.,

W. H. WEST.

*Masonic and Odd Fellows Societies; Taxation of Property of
—County Surveyors; Compensation of.*

MASONIC AND ODD FELLOWS SOCIETIES; TAX-
ATION OF PROPERTY OF.

Office of Attorney General,
Columbus, March 11, 1868.

Hon. James H. Godman, Auditor of State:

SIR:—I have examined the law touching the taxation of the property of Odd Fellows and Masonic societies. There is but one clause of the statute under which exemption can be claimed for them, viz.: that exempting institutions of purely public charity. No judicial decision is of record defining their character, and I can only express an opinion from the best lights before me. I do not understand them to be public institutions, in the legal sense of that term, but associations exclusive in their character, and confining their charities to their own membership.

If this opinion be deemed erroneous by the societies, it is competent for them to enjoin the collection of the taxes levied and have the question judicially determined.

Respectfully, etc.,

W. H. WEST,
Attorney General.

COUNTY SURVEYORS; COMPENSATION OF.

The State of Ohio,
Office of the Attorney General,
Columbus, March 20, 1868.

*Hon. U. C. Rutter, House of Representatives, Columbus,
Ohio:*

DEAR SIR:—When county surveyors are employed by the day, they are not entitled to mileage, the five dollars

Soldier's Relief Fund; Benefit of Should be Given to All Persons for Whom Levied and Raised.

covering their entire compensation. When they work otherwise than by the day, they are entitled to the fees prescribed by law and mileage.

Very respectfully,
W. H. WEST,
Attorney General.

SOLDIER'S RELIEF FUND; BENEFIT OF SHOULD
BE GIVEN TO ALL PERSONS FOR WHOM
LEVIED AND RAISED.

Attorney General's Office,
Columbus, March 20, 1868.

Mr. Samuel Allison, Waverly, Ohio:

SIR:—In reply to your favor of the 14th instant, in relation to the soldier's relief fund, of Preble Township, Pike County, I have to say, that I have repeatedly held that each necessitous person mentioned in the law, authorizing the levy of a tax for that fund, was entitled to a reasonable proportion of such fund actually levied and collected. Any person who did not receive such reasonable portion is entitled yet to receive the same out of any unexpended balances of that fund.

Very respectfully,
W. H. WEST,
Attorney General.

State Library; Who Are Entitled to Draw Books Therefrom.

STATE LIBRARY; WHO ARE ENTITLED TO DRAW
BOOKS THEREFROM.

Attorney General's Office,
Columbus, March 23, 1868.

S. Harbaugh, Esq., State Librarian:

DEAR SIR:—Your letter asking who are “State officers” within the meaning of the act to reorganize the State library, I S. & C., 832, Sec. 10, is received. In reply I have the honor to state:

The several officers who are elected by the State at large, the several officers appointed by the governor, to-wit: Railroad commissioner, gas commissioner, adjutant general, quartermaster general, supervisor of printing, etc.; also, the trustees of the several benevolent institutions of *the State*, and of the penitentiary (Const. Art. VII), these being State institutions, etc.; also state house commissioner and librarian.

I doubt if there be any others unless the superintendent of the benevolent institutions and the warden of the penitentiary be State officers. Whether they are “officers” in the sense of the statute, or only “employees” is a matter of which I am not sure. It would seem that under the statutes punishing embezzlements these persons would be held to be “State officers”, and liable as such. I will, therefore, so hold them to be State officers until the legislature shall more clearly indicate its meanings. I cannot now recall any other person, or class of persons entitled to the designation.

First, then: The elective officers of State.

Second. The officers appointed by the governor as officers for the whole State.

Third. Trustees and superintendents of the State benevolent institutions.

Fourth. Trustees and warden of penitentiary.

Yours, etc.,

W. H. WEST,
Attorney General.

School Boards Can Subscribe for the Ohio Educational Monthly—Real Property; What Classes are Exempt from Taxation.

SCHOOL BOARDS CAN SUBSCRIBE FOR THE
OHIO EDUCATIONAL MONTHLY.

Attorney General's Office,
Columbus, March 31, 1868.

Hon. John A. Norris, School Commissioner, Columbus, Ohio:

SIR:—Your letter of the 27th instant is received.

I think that under the library provisions of the school law and other provisions thereof for the promotion of the general well being of the public schools; it is competent for school boards to subscribe for the Ohio Educational Monthly, and pay for the same out of the contingent school fund, so long as it is properly conducted.

Very respectfully,
W. H. WEST,
Attorney General.

REAL PROPERTY; WHAT CLASSES ARE EXEMPT
FROM TAXATION.

Attorney General's Office,
Columbus, March 30, 1868.

Hon. James H. Godman, Auditor of State, Columbus, Ohio:

SIR:—The letter of A. Holbrook, Esq., asking if the dormitories or boarding halls, connected with the South Western Normal School, of Lebanon, Ohio, are not exempt from taxation, having been referred by you, to me, for my opinion, I have the honor to reply, that the following classes of real property may be general laws be exempted from taxation, viz.:

County Surveyors; Compensation of Under the Ditch Law.

- 1st. Burying grounds.
- 2d. Public school houses.
- 3d. Houses used exclusively for public worship.
- 4th. Institutions of purely public charity.
- 5th. Public property used exclusively for any public purpose.

Constitution, Article XII, Sec. 2.

The legislature has no authority to exempt from taxation any species of real property not included in one of the above classes. If the South Western Normal School is a public school then it is properly exempt. If, on the other hand, it be only a private school, conducted by private enterprise, then it is not properly exempt.

It seems to me there should be no difficulty in any gentleman deciding for himself whether his property falls within either of these classes. It is a question purely of fact, the law being too plain to admit of doubt.

Very respectfully,

W. H. WEST,
Attorney General.

COUNTY SURVEYORS; COMPENSATION OF UNDER THE DITCH LAW.

Attorney General's Office,
Columbus, April 14, 1868.

O. Merrill, Esq., County Auditor, Ottokce, Ohio:

DEAR SIR:—In reply to your favor of the 31st ult., asking what compensation county surveyors are entitled for services under the ditch law, I would say three dollars per day, and no more.

Very respectfully,

W. H. WEST,
Attorney General.

*Toll Gates; Erection of Under the Act of March 29th, 1867
—County Commissioners; Failure to Give Additional
Bond.*

TOLL GATES; ERECTION OF UNDER THE ACT OF
MARCH 29TH, 1867.

Attorney General's Office,
Columbus, April 14, 1868.

*Frank H. Carpenter, Esq., County Surveyor, Lancaster,
Ohio:*

SIR:—I have to acknowledge the receipt of your favor of the 3d instant, inquiring if toll gates can be erected and tolls collected on roads constructed under the act of March 29, 1867.

It is barely possible, though doubtful, that the gates might be established under section eighteen of the act of April 15, 1867 (page 175, Statutes 1867). They certainly cannot be established under any other law, unless some provision has been made therefor by legislation during the present session, of which I am ignorant.

Very respectfully,

W. H. WEST,
Attorney General.

COUNTY COMMISSIONERS; FAILURE TO GIVE
ADDITIONAL BOND.

Attorney General's Office,
Columbus, May 15, 1868.

*J. B. Newton, Esq., Auditor Wood County, Perrysburg,
Ohio:*

DEAR SIR:—I do not think the failure of the commissioners to give the additional bond required by the act of

*"Visible Admixture" Law; Its Unconstitutionality—Notaries
Public Can Use Any Seal.*

1868, vacates their offices. The act contains no such provision, and it cannot be implied.

Very respectfully,

W. H. WEST,
Attorney General.

"VISIBLE ADMIXTURE" LAW; ITS UNCONSTITUTIONALITY.

Attorney General's Office,
Columbus, May 27, 1868.

John C. Vanden, Esq., Gallipolis, Ohio:

SIR:—It is my opinion that the visible admixture law, so-called, is clearly unconstitutional in all of its provisions.

Very respectfully,

W. H. WEST,
Attorney General.

NOTARIES PUBLIC CAN USE ANY SEAL.

Attorney General's Office,
Columbus, May 27, 1868.

W. R. Quinn, Esq., Eaton, Ohio:

DEAR SIR:—Any seal can now be used by notaries public.

Very respectfully,

W. H. WEST,
Attorney General.

Vacancies; No Election to Fill Them Can Be Held Until They Actually Occur—Railroad Property; Appraisement of For Taxation.

VACANCIES; NO ELECTION TO FILL THEM CAN BE HELD UNTIL THEY ACTUALLY OCCUR.

Attorney General's Office,
Columbus, May 27, 1868.

Mr. Nathaniel Wiley, O'Zark, Monroe County, Ohio:

DEAR SIR:—In reply to your favor of the 18th instant, I have to say that no election to fill a vacancy can be held until the vacancy actually occurs.

Very respectfully,

W. H. WEST,
Attorney General.

Per Marble.

RAILROAD PROPERTY; APPRAISEMENT OF FOR TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, May 28, 1868.

Auditor of Washington County, Marietta, Ohio:

SIR:—Yours of the 25th instant is at hand. It has been uniformly holden at this office and at the auditor of state's office, that in apportioning the value of railroad property under the acts of May 1, 1862, and April 14, 1863 (59th O. L., p. 88 and 60th O. L., p. 114 and 115) the relative values of the respective portions of the property in each county, township, city and village must be preserved, and this cannot be done in any other way than by valuing the road bed and track at a uniform value per mile according to length of main track, then adding to the aggregate value of right of way and track in each county and other municipality, the actual value of depot grounds,

County Commissioners; Certain Powers, Duties and Compensation of.

shops, buildings, structures and stationary personal property in each.

The following was agreed upon a year ago between the auditor of state and myself as the proper form and mode of appraisement, apportionment and return of railroad property for taxation, to-wit:

| | | |
|------|---|--------------------|
| 1st. | 100 miles of main line in Ohio, \$12,000 per mile | \$1,200,000 |
| 2d. | 25 miles of side track | |
| 3d. | 15 miles of double track | |
| 4th. | Total value of rolling stock | 400,000 |
| 5th. | Total value depot grounds, structures, and stationary personal property | 100,000 |
| 6th. | Total value moneys and credits | 100,000 |
| | Total value of property | <u>\$1,800,000</u> |

APPORTIONMENT.

| | |
|--|------------------|
| City of....., | County, Ohio. |
| 1 mile of main track..... | \$12,000 |
| Depot grounds and buildings, engine house, shops, stationary engines, structures, tools, etc. | 100,000 |
| Prop. of rolling stock..... | 4,000 |
| Prop. of moneys, etc..... | 100 |
| | <u>\$116,100</u> |

Township.

| | |
|---------------------------|------------------|
| 8 miles main track..... | \$96,000 |
| Prop. rolling stock | 32,000 |
| | <u>\$128,000</u> |

Incorporated Village of.....in said Township.

| | |
|--|----------------|
| 1/2 mile main track | \$6,000 |
| Depot grounds and buildings.. | 2,000 |
| Stationary personal property, moneys, credits, etc. | 500 |
| | <u>\$8,500</u> |
| Total in township and village.... | \$136,500 |

County Commissioners; Certain Powers, Duties and Compensation of.

And so of other townships, cities and incorporated villages.

Total for the county of.

And at the close :

Total in all the counties. \$1,800,000

The value of the rolling stock is to be prorated to each mile.

Respectfully,

W. H. WEST,
Attorney General.

NOTE—The same communication was sent to the auditor of Athens County, in reply to one received from him.

COUNTY COMMISSIONERS; CERTAIN POWERS,
DUTIES AND COMPENSATION OF.

Office of the Attorney General,
Columbus, May 29, 1868.

Hon. J. H. Godman, Auditor, Etc.:

SIR:—I have the honor to reply to your inquiries of the 21st instant as follows:

1st. County commissioners have no general authority to employ a superintendent to oversee the erection of any building or public structure. All such erections are to be done by contract, the contractors being responsible for the performance thereof, unless there be specific authority given by special enactment to employ a superintendent.

2. They can authorize one or more of their own number to attend from time to time and see that any such contract is being complied with; otherwise the work might be done indifferently, and the commissioners be bound by

County Commissioners; Certain Powers, Duties and Compensation of.

their own laches, in not entering complaint or taking exception, as the work progressed. They cannot assume the absolute superintendence and direction of the work, but simply a kind of visitorial supervision. Such visitorial service will entitle the acting member to *per diem*.

3. They may authorize one or more of their number, in a proper case, to examine a bridge, or other public work within their county, or transact other necessary business, which does not require the personal presence of the full session, and may report to, and his report adopted by, the full session. The member performing such service will be entitled to *per diem*, but *not* to mileage, or to have any personal expenses for travel or otherwise, refunded.

4. They must hold four regular stated sessions in each year, and also such other sessions as the statute may require, as when acting in the capacity of a board of equalization, etc. (S. & C. 245, Sec. 11.) They may hold such other special or called sessions as their official duties render necessary. These are without limit, other than *honest* discretion.

5. They are allowed *per diem* for all services rendered in the *necessary* discharge of *official* duty. They are allowed mileage from their places of residence to the county seat, for attending their *sessions* not exceeding *eight* in any one year. They are not entitled to mileage for attending to any business except at an actual meeting of their board, in regular or special session.

6. They cannot make any *allowance* to the county auditor which in any year shall exceed the limit prescribed by the act of April 17, 1867. But county auditors are entitled under the drain and turnpike acts to *fees* in addition to the compensation provided in said act of 1867.

Truly, etc.,

W. H. WEST,

Attorney General.

*County Commissioners' Bonds—A Matron of an Asylum
Not an Officer Within the Meaning of the Constitution.*

COUNTY COMMISSIONERS' BONDS.

Attorney General's Office,
Columbus, July 1, 1868.

Hon. F. S. Cable, Probate Judge, Paulding, Ohio:

SIR:—Your favor of the 22d instant is received.

A request on the part of the court to accept the bond does not cause a vacancy, but the commissioners' remedy in such case is by a mandamus to compel the Common Pleas judge to act upon the matter. If, however, the bond has been rejected for insufficiency the judge may fix a limited time in which to furnish a sufficient bond, upon failure to comply with which the office may be declared vacant, and a successor appointed.

Very respectfully,
W. H. WEST,
Attorney General.

A MATRON OF AN ASYLUM NOT AN OFFICER
WITHIN THE MEANING OF THE CONSTITU-
TION.

Attorney General's Office,
Columbus, July 1, 1868.

*Dr. B. Stanton, Superintendent N. O. Lunatic Asylum,
Newburgh, Ohio:*

DEAR SIR:—In reply to your favor of the 25th instant, I would say that in my opinion the matron is not an officer within the meaning of the constitution. Nevertheless, I would not suggest the selection of a non-resident of the State, unless required by some overruling necessity, or

Justices, When They Can Require Security for Costs; Constables; Fees in Criminal Cases.

great superiority in the person, unless dissatisfaction should arise, which is more detrimental to the welfare and good management of the institution than can be compensated for by the choice of such non-resident.

Very respectfully,
W. H. WEST,
Attorney General.

JUSTICES, WHEN THEY CAN REQUIRE SECURITY FOR COSTS; CONSTABLES; FEES IN CRIMINAL CASES.

Attorney General's Office,
Columbus, July 8, 1868.

John P. Moore, Esq., Waverly, Ohio:

DEAR SIR:—YOUR favor of the 1st instant is received.

1st. Justices can only require endorsement or security for costs in minor offences. If the prosecutor be indigent and the justice refuses to take him, he must await the meeting of the grand jury.

2d. Constables are required to serve all criminal process placed in their hands, for which they are entitled to an annual allowance not exceeding the amount of their uncollected fees, nor exceeding one hundred dollars in any one year. No other moneys on account of fees except the allowance aforesaid can be drawn from the county treasury for criminal services, either by justices, constables, mayors, marshals, or other inferior officers, except only the necessary expenses incurred beyond the county in the pursuit of fugitives.

Very respectfully,
W. H. WEST,
Attorney General.

Probate Judges; Entitled to Compensation Under the Registry Law—Insurance Act; Can the Legislature Apply the Nineteenth, Twentieth and Twenty-first Sections of, to Companies Incorporated Prior to the Constitution of 1851.

PROBATE JUDGES; ENTITLED TO COMPENSATION UNDER THE REGISTRY LAW.

Attorney General's Office,
Columbus, July 8, 1868.

S. W. Cartwright, Esq., Prosecuting Attorney, Circleville, Ohio:

DEAR SIR:—In reply to your favor of the 2d instant, I would say that the probate judge is entitled to the same compensation under the registry law to which he is in like manner in other cases; but I am not sufficiently familiar with the duties of the probate judge to know what similar services he performs. I suppose, however, it corresponds very much to indexing and should be compensated accordingly.

Very respectfully,

W. H. WEST,
Attorney General.

INSURANCE ACT; CAN THE LEGISLATURE APPLY THE NINETEENTH, TWENTIETH AND TWENTY-FIRST SECTIONS OF, TO COMPANIES INCORPORATED PRIOR TO THE CONSTITUTION OF 1851.

Office of the Attorney General,
Columbus, July 28, 1868.

Jas. H. Godman, Esq., Auditor of State:

DEAR SIR:—If I properly understand your verbal inquiry of the 16th instant, it is this:

Insurance Act; Can the Legislature Apply the Nineteenth, Twentieth and Twenty-first Sections of, to Companies Incorporated Prior to the Constitution of 1851.

“Has the legislature the constitutional power to make the provisions of the nineteenth, twentieth and twenty-first sections of the act of April 15, 1867, ‘to regulate insurance companies,’ applicable to, and obligatory upon, insurance companies incorporated prior to the adoption of the constitution of 1851?”

I am quite clear that the legislature has such power. It can be denied only on the ground that its exercise interferes with some franchise or vested right of the corporation, in the sense of “impairing the obligation of a contract.” This was the ground upon which the case of *Dartmouth College vs. Woodward* was decided; also the case of *The Piqua Bank vs. Knaup*. But these decisions have no application to the present inquiry, from want of analogy, either in facts or principle.

To do and perform the duties required by the nineteenth, the twentieth and twenty-first sections of the act in no manner interferes with, suspends, interrupts or impairs any franchise, liberty, right or function, of such corporation, or of any officer or member thereof.

The charters of these corporations are in the nature of contracts between the incorporators on the one hand and the public on the other, the terms of which the contracting parties have the right to have enforced. They are granted in consideration of certain supposed benefits to the public from the exercise of the privileges granted, and the observance of the duties and obligations imposed by their charters. The public, as a contracting party, is, therefore, interested in the enforcement of these duties and obligations and have a right to be informed whether they are being observed, honestly and in good faith.

But as the management of the concerns and the exercise of the functions and duties of the corporations are committed exclusively to one of the contracting parties as

*Insurance Act; Can the Legislature Apply the Nineteenth,
Twentieth and Twenty-first Sections of, to Companies
Incorporated Prior to the Constitution of 1851.*

right, the public can never be informed as to whether the contract is being faithfully executed, unless the power to demand and compel such information exists somewhere.

That power clearly exists in the legislature, which is the sovereign agent of the public and through which alone it can have protection. Hence, it has been held that a "statute raising a commission to visit a bank, and examine its officers, who are compelled to testify *under a penalty* touching its assets and business" is clearly within the constitutional powers of the legislature, *Comth vs. F. & M. Bank*, 21 Pick. 542. It seems then the plainest corollary from this, that if the officers of a corporation may be made to testify "under a penalty," they may be made to report "under a penalty," which is only another form of furnishing to the public the desired information as to the condition of the corporation, and the degree of *honesty and good faith*, with which it is observing the corporate contract on its part. It is essential to the public protection and the promotion of public justice. It in no way interferes with or impairs any right, liberty, or franchise of the corporation, but rather tends to foster and enforce them; and hence, the enactment of the above named sections was clearly within the power of the legislature.

Respectfully, etc.,
W. H. WEST,
Attorney General.

Compensation of Common Pleas Clerks for Furnishing Statistical Matter.

COMPENSATION OF COMMON PLEAS CLERKS
FOR FURNISHING STATISTICAL MATTER.

Office of the Attorney General,
Columbus, July 28, 1868.

O. H. Hoover, Esq.:

DEAR SIR:—By the act of February 21, 1867, the several Common Pleas clerks are required to report certain statistical matters to the commissioner of statistics, etc., for which they are entitled to the compensation in said act provided.

By the fourth section of the act of April 17, 1868, these matters are required to be reported to the secretary of state.

The second section of the same act authorizes the secretary of state to propound such *additional* inquiries as he may deem necessary to the discharge of his duties, which the several officers are directed to answer “without compensation.”

But the duties of clerks under the act of 1867, so far as making out and returning the annual report therein required is concerned, and their compensation for such report, are not affected by the second section of the act of 1868. For what is required by the act of 1867 compensation is allowed as in said act provided. For any information not required to be furnished by said act, but given under the second section of the act of 1868, no compensation is allowed.

Truly, etc.,

W. H. WEST,
Attorney General.

*Accounts of Guardians; When to be Rendered—School
Fund of the Village of Clifton, Hamilton County.*

ACCOUNTS OF GUARDIANS; WHEN TO BE REND-
DERED.

Office of the Attorney General,
Columbus, August 12, 1868.

R. P. W. Muse, Esq.:

SIR:—Guardians are required by law to settle and render an account every two years.

The court, if settlement be neglected, shall notify such guardians by letter, citation or otherwise, after the two years have expired, of the fact thereof, and require settlement. If for thirty days he still neglects no compensation is allowed. No affidavit is required.

Settlement may be required before the expiration of two years upon good cause shown by affidavit of any person interested.

Yours, etc.,

W. H. WEST,
Attorney General.

SCHOOL FUND OF THE VILLAGE OF CLIFTON,
HAMILTON COUNTY.

Office of the Attorney General,
Columbus, August, 1868.

*Hon. John A. Norris, State School Commissioner, Colum-
bus, Ohio:*

DEAR SIR:—The eighth section of the "act for the main-
tenance and better regulation of the common schools in
Cincinnati," passed January 27, 1853 (51 O. L., p. 505),
puts the school fund of said city under the control of the
school board, to be paid exclusively upon their order.

*Free Tuition in State Universities of Soldiers in the Union
Armies Who Were Minors.*

I presume the second section of the charter of Clifton makes this provision of the Cincinnati act applicable to the schools of that village. Of this I have no doubt.

Very respectfully,

W. H. WEST,

Attorney General.

FREE TUITION IN STATE UNIVERSITIES OF
SOLDIERS IN THE UNION ARMIES WHO
WERE MINORS.

Office of the Attorney General,
Columbus, September 2, 1868.

Mr. John B. Elam, Spring Valley, Ohio:

DEAR SIR:—Your favor of the 1st instant, asking a construction of the act giving discharged soldiers free tuition in the State Universities for the same length of time they were in the army as minors, is received.

You are entitled to the privilege of the university free of tuition for the period of fifteen months from the day you entered it. I presume you are not entitled to room rent free, as the statute mentions only tuition. The university has no authority to ante-date the commencement of your time, and refer it back to the beginning of the session. But it is not required to make any deductions for vacations intervening.

Very respectfully,

W. H. WEST,

Attorney General.

County Recorders; Compensation for Making Indexes—Justices and Constable Cannot Draw Fees From the County Treasury in Criminal Cases.

COUNTY RECORDERS; COMPENSATION FOR
MAKING INDEXES.

Office of the Attorney General,
Columbus, September 3, 1868.

John T. Moore, Esq., Waverly, Ohio:

SIR:—I have received your favor of the 1st instant, and in reply have to say that by the third section of the act of 1835 (S. & C. 1275), recorders are required to make out a general index of records before that time made, and were entitled to compensation therefor as in said act provided. In the act of 1850 (S. & C., 1278) the authority given by the act of 1835 was continued in force as to counties that had not provided general indexes. The act of 1852 provided for the keeping up and continuing of said indexes, to be paid for in the manner provided in said act.

I find no law authorizing the payment out of the county treasury for any other than index, and that only for bringing up such index in respect to past records.

Very respectfully,

W. H. WEST,
Attorney General.

JUSTICES AND CONSTABLES CANNOT DRAW
FEES FROM THE COUNTY TREASURY IN
CRIMINAL CASES.

Office of the Attorney General,
Columbus, September 3, 1868.

Amos Hill, Esq., Ottokee, Ohio:

DEAR SIR:—In reply to your favor of the 31st ult., I must say that justices and constables are not entitled to

Vitalized Embryo.

draw any fees from the county treasury in any criminal case whatever. They are confined to the allowance of the commissioners, except that constables are allowed expenses incurred in pursuing fugitives beyond the limits of their respective counties.

Very respectfully,
W. H. WEST,
Attorney General.

VITALIZED EMBRYO.

Office of the Attorney General,
Columbus, September 3, 1868.

Chas. P. Wickham, Esq., Prosecuting Attorney, Norwalk, Ohio:

DEAR SIR:—I have your favor of the 31st ult., in which you ask what is meant by the expression "vitalized embryo," in the act of 1867, providing for the punishment of abortion.

I must confess that I am unable to state what is exactly meant by the expression referred to, and would respectfully refer you to the Hon. L. D. Griswold, of Elyria, Lorain County, the author of the act.

Being myself entirely ignorant of such matters, and the courts not having given an official construction of the term, I am unwilling to venture an opinion until such construction is had. I recommend, however, that you do the best you can, raise all the questions you can by offering to prove whatever points you may think have a remote bearing on the subject, with the view of having the law brought before the Supreme Court for construction.

Very respectfully,
W. H. WEST,
Attorney General.

*School Contracts Must Be Ratified By Boards of Education
When in Session—Admission of Colored Children into
the Schools for Whites; Powers of Township Boards.*

SCHOOL CONTRACTS MUST BE RATIFIED BY
BOARDS OF EDUCATION WHEN IN SESSION.

Office of the Attorney General,
Columbus, September 17, 1868.

W. D. Edgar, Esq., County Auditor, Kenton, Ohio:

DEAR SIR:—Your favor of the 7th instant is received.

In reply I have to say that unless the map contract was ratified by the board of education when in session, it is void. It was so decided by the District Court in Logan County last month. The Supreme Court has not yet decided the Cominger case.

Very respectfully,
W. H. WEST,
Attorney General.

ADMISSION OF COLORED CHILDREN INTO
SCHOOLS FOR WHITES; POWERS OF TOWNSHIP
BOARDS.

Office of the Attorney General,
Columbus, October 14, 1868.

Hon. J. A. Norris, Commissioner of Schools, Etc.:

DEAR SIR:—Under the eighth and thirty-first sections of the school law as interpreted by the Supreme Court in the case of *Van Camp vs. Logan Township*, O. S. R., 406, colored children are not, as a matter of right, entitled to admission into the schools for whites. I doubt, therefore, whether township boards can make provision for their admission into such schools against the consent of the local directors. The court might hold this within their powers,

Cuts and Mottoes on Election Tickets.

but I do not feel at liberty to so advise as my mind inclines otherwise. If the legislature had intended such provision might be made it would, I think, have clearly stated it.

Yours, etc.,

W. H. WEST,
Attorney General.

CUTS AND MOTTOES ON ELECTION TICKETS.

Office of the Attorney General,
Columbus, October 15, 1868.

*O. H. Hoover, Esq., County Auditor, New Philadelphia,
Ohio:*

DEAR SIR:—Your favor of the 28th ult. reached here promptly, but absence from the city has prevented me from giving it earlier attention.

It is difficult to state exactly what the act of May 5, 1868, means. I have, however, no hesitation in saying that it would be illegal to print cuts on election tickets, but I am not so certain in regard to mottoes if they precede the names of the candidates.

Very respectfully,

W. H. WEST,
Attorney General.

A Deserter Must Be Convicted as Such By a Civil Court Before His Vote Can be Legally Rejected—An Old Board of Education Reappointed Before an Election is Held, Will Hold.

A DESERTER MUST BE CONVICTED AS SUCH BY
A CIVIL COURT BEFORE HIS VOTE CAN BE
LEGALLY REJECTED.

Office of the Attorney General,
Columbus, October 15, 1868.

Mr. Jacob Lamon, Croton, Licking County, Ohio:

DEAR SIR:—I find your favor of the 5th instant on my return to the city after an absence of over two weeks.

Before the vote of a deserter can be legally rejected he must have been convicted as such by a civil court.

Very respectfully,

W. H. WEST,
Attorney General.

AN OLD BOARD OF EDUCATION REAPPOINTED
BEFORE AN ELECTION IS HELD, WILL HOLD.

Office of the Attorney General,
Columbus, October 28, 1868.

C. H. Voorhes, Esq., Prosecuting Attorney, Millersburg, Ohio:

DEAR SIR:—Owing to absence from the city, I have been unable to reply to your favor of the 15th instant at an earlier date than this.

I have now to say that if the old board was reappointed and qualified before the special election, it will hold. If, however, the special election took place before the reappointment and the persons elected qualified by swearing

*Probate Judges Can Issue Naturalization Papers Only at
Their County Seats.*

each other, which is sufficient, the new board is entitled to act.

This reply to your inquiries is forwarded through the Hon. John A. Norris, state school commissioner, at his request, as he has had some correspondence in regard to the matter.

Very respectfully,
W. H. WEST,
Attorney General.

PROBATE JUDGES CAN ISSUE NATURALIZATION
PAPERS ONLY AT THEIR COUNTY SEATS.

Office of the Attorney General,
Columbus, October 28, 1868.

H. B. West, Esq., Put-in-Bay, Ohio:

MY DEAR SIR:—Owing to absence from the city, I have been unable until now to respond to your favor of the 13th instant.

In reply to your first question, I will say that all naturalization papers issued by a probate judge at any point other than the county seat, are illegal and void. Section one of the act of 1853 (S. & C., 1212) says that "there is established in each county of this State, a probate court, which shall be held at the *county seat* of each county."

Your second question is: "What can be done where a man asks for papers who is without any question qualified to receive them, and the court refuses to issue them?"

I reply that there is no remedy against him under our State laws, other than impeachment.

Very respectfully,
W. H. WEST,
Attorney General.

*County Recorders; Stationery for—Sale of School Lands in
Wood County.*

COUNTY RECORDERS; STATIONERY FOR.

Office of the Attorney General,
Columbus, November 5, 1868.

J. B. Allen, Esq., County Recorder, Athens, Ohio:

DEAR SIR:—I have your communication of the 30th ult., in which you state that the county commissioners refuse to furnish stationery for the use of your office, and asking an opinion from me on the subject.

I find no provisions of law which, in terms, authorize the commissioners to furnish the recorder with stationery. The statute requires him to procure at the expense of the county the necessary books for making records, indexes, etc. This, I have no doubt, would include such stationery as may be necessary for blotters, plats and copies required for public use or purposes; but such stationery as is requisite for the recorder's correspondence, or for copies furnished to individuals on private account, for which he receives a compensation, it would seem, that it should be purchased at his own expense and charged to the parties who procure such copies. The universal custom, however, as far as my knowledge extends, has been to furnish recorders with stationery.

Very respectfully,

W. H. WEST,
Attorney General.

SALE OF SCHOOL LANDS IN WOOD COUNTY.

Office of the Attorney General,
Columbus, November 5, 1868.

J. B. Neaton, Esq., County Auditor, Perrysburg, Ohio:

DEAR SIR:—In reply to your favor of the 2d instant, I have to say that the six weeks expired the day preceding

Power of the Legislature to Enact an Efficient Registry Law.

the seventh publication day: and the sale, therefore, as regards the notice was legal.

As requested, I return the affidavit herewith.

Very respectfully,

W. H. WEST,
Attorney General.

POWER OF THE LEGISLATURE TO ENACT AN
EFFICIENT REGISTRY LAW.

Office of the Attorney General,
Columbus, November 16, 1868.

To His Excellency, R. B. Hayes, Governor:

SIR:—The inquiry of your excellency, addressed to this department, asking “whether in the opinion of the attorney general, the legislature possesses the constitutional power to enact a registry law of practical efficiency,” has been considered, and the conclusions reached are herein communicated.

Legality of suffrage is the object intended to be secured by all registry laws. This can be done with practical efficiency only by registration of voters such length of time previous to the election as may be sufficient to investigate and detect illegalities and frauds, and by excluding from the polls all who shall fail to so enroll their names upon the registry lists within the time limited. Does the power exist to enact and enforce a law of this character?

By article five, section one of the constitution, it is ordained that “every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the State for one year next preceding the election, and of the county, township or ward in which he resides such time as may be prescribed by law shall have the qual-

Power of the Legislature to Enact an Efficient Registry Law.

ifications of an elector and be entitled to vote at all elections.”

It is very obvious from this that the prerequisite conditions of suffrage are of two classes, namely: those which are purely *constitutional*, and those which are of *legislative determination*.

The constitutional conditions are these:

1. The elector must be a “white male.”
2. He must be a citizen of the United States.
3. He must be “twenty-one years of age.”
4. He must “have resided in the State one year next preceding the election.
5. He must “reside in the county and in the township or ward” in which he offers to vote.

These conditions are fixed and inflexible. They are not subject to legislative cognizance. They can neither be enlarged, impaired, nor relieved from. Hence, if suffrage had no other conditions for its exercise but these, whoever possessed them on the day of the election would be entitled to vote, any registry or other law to the contrary notwithstanding. In such case a registry law of practical efficiency would be impossible. The legislature would have no power to require to limit or restrict these conditions by interpretation, definition or otherwise. I am aware that it has assumed to define what constitutes *residence*. To my mind, however, it seems to have no more power to do this than it has to prescribe what shall constitute a “white male,” or a “citizen of the United States,” or “the age of twenty-one years.” These are all subjects of purely judicial, and not of legislative cognizance, and although a person might be excluded, or admitted, under the rules prescribed by the legislature for ascertaining *residence*, an appeal may nevertheless be taken to the courts and these rules abrogated, if, in the opinion of those tribunals, their requirements exceed or come short of the judicial interpretation of the term *residence*, and what shall constitute it. These conditions of suffrage are thus wisely defined by the constitution so as

Power of the Legislature to Enact an Efficient Registry Law.

to place them beyond the whims and provisions of the legislature. Hence, if suffrage has no other conditions for its exercise, as already stated, the enactment of any practical registry law would not be within the province of legislation.

But these are not all the conditions of suffrage. There is another, namely: Duration or length of local residence "in the county, township or ward," over which the power of the legislature, within the constitutional limit of one year, is plenary and absolute. To prescribe as a condition of suffrage a definite length or duration of local residence after the occurrence of any event within the power of the elector to control, is, therefore, clearly within the sphere of legislation. Thus, it is entirely competent to enact as a precedent condition of voting in any "county, township, or ward," that the elector shall have resided therein ten, twenty or thirty days, after enrolling his name upon its registry lists.

A registration law of this character would not in my opinion contravene the constitution, and might be so framed as to be of great efficiency.

It is deeply humiliating that the state of political and public morals is so vicious as to render such a law necessary; yet, the experiences of the last year have been too dishonoring for longer endurance without some adequate measure of relief. It is much more humiliating, however, to reflect that, there being a necessity for the law, there is possibly not sufficient public and political virtue to secure its enactment.

The crying evils to be averted by such a law are colonization and illegal naturalization. These can only be prevented by the intervention of sufficient time and adequate opportunities before the election, for investigation, detection and exposure. To afford these, a date should be fixed at or before which the purpose to claim the rights of an elector should be publicly declared, together with the reasons upon which the right is based. The mode of declaring this purpose may well be limited to registration in the "county, township or ward," wherein it is intended to claim the right.

Power of the Legislature to Enact an Efficient Registry Law.

A law requiring local residence for a named period after registration before the rights of an elector shall attach, or be exercised, would afford the time and opportunity necessary for scanning the lists, detecting frauds and exposing illegalities whether of colonization or naturalization. The lists would be opened to public inspection. The number and names upon them at the expiration of the time for registration, preparatory to exercising the right at the ensuing election, could be generally known, and the illegal or fraudulent additions of other names detected. The rights of those registered could be examined, and, if found insufficient, challenged and rejected. The law might provide for the publication of lists immediately upon their completion so that all could examine and scan them.

The details of such a law would neither be difficult nor complex. Nor need its requirements embarrass or obstruct legitimate rights. One rightful registration by continuous residents of the same precinct, or voting district, would suffice. As to them, their original registration might continue from year to year, until the right should be lost by removal or other cause. Only the names of those subsequently acquiring the right need to be added to the lists from time to time. Being once enrolled the name might continue until successfully challenged and rejected for any cause thereafter arising. Nor need the right be embarrassed by removals. As the law now stands it requires a county residence of thirty days. An elector removing from one county into another before the expiration of the registry period might immediately enroll his name stating the fact of such removal and his purpose to claim the right, in which case, if the residence were *bona fide* and continued up to the election, the right should be recognized. So also of minors attaining full age before the election but after the registration period. Their names could be enrolled upon a statement and registry of the facts, in anticipation of their arrival at full age. In case of removals from a township, or ward, to another in the same county, a certificate of reg-

Power of the Legislature to Enact an Efficient Registry Law.

istration in the former might carry with it the right to register any time in the latter, unless the removal should be into a different representative, senatorial or congressional district.

Under the operations of such a law the colonization of voters and the results of illegal naturalization could be very successfully thwarted. These have recently become the prolific source of the most flagrant and corrupting abuses. As to the latter a simple and very effectual remedy is within the power of Congress. That body can so amend the federal statutes that the rights of full citizenship shall not attach or be exercised for thirty, sixty or ninety days after the issuing of the final certificate. It can also limit the jurisdiction of the courts in any county, to the naturalization of persons resident therein. If it be objected that such legislation would unjustly prolong the period for naturalization, it could be provided that the final certificate might issue a corresponding period before the expiration of the existing term of five years.

Under the provisions of such amendatory laws the states could provide very great safeguards in this: they could provide by local legislation that the several courts should make at stated periods, and especially at the close of the registration period, full reports to some of the State departments for publication, of the names, etc., of all persons naturalized therein during the preceding period. By a comparison of such published lists, with the certificates of the persons registered, frauds could readily be traced and exposed.

If it be objected that all this would be expensive and burdensome to the State, my answer is, that the purity of the ballot box, which it would secure, would be compensated a thousand fold. A government of force is less intolerable than a government of fraud. If those who have the right are constantly overwhelmed by those who have not the right, contempt for the government and a disregard of law will inevitably result. That affection for country and respect

Power of the Legislature to Enact an Efficient Registry Law.

for authority, which makes a nation strong, and a people powerful, contented and happy, will gradually decline, until, if the evil be not arrested by law, the State may expire in revolution. The existing laws only operate to exclude the conscientious and law abiding. The venal, the vicious and the unscrupulous override and trample upon them with impunity. Bad men might object to the proposed restrictions, as the lawless ever demur to restraint. The good would not; for observing the laws themselves they would not complain for so framing them as to compel their observance by the vicious.

My deliberate judgment is, that our whole system of naturalization laws is on a wrong basis. No reason now exists for the declaration of intention precedent to final confirmation. Requiring witnesses to prove moral character, and attachment to the principles of the government has become a mere mockery. Nobody at this day is ever rejected on this ground. These requirements ought to be abolished. A bureau of immigration should be established in the interior or treasury departments for the registration therein of the names, ages, countries, dates of arrival and names of passage vessels, of all male immigrants. The collectors of the several ports of entry should be *ex officio* registers of immigration, requested to report to the bureau all such arrivals, and furnish to each, or to the parents or guardians of minors of tender age, a certificate of immigration, upon the production of which, or its duplicate from the bureau, if the original be lost, and not otherwise, should the court of the proper county have authority to issue the final certificate when the time therefor shall arrive. The details of such a system readily suggest themselves.

But these are matters of national rather than State cognizance, except in so far as to bring them to the attention of the legislature by your excellency, with a view of invoking through it, the early action of Congress on the subject.

That the legislature has the power to enact a registry law of the character above indicated, I have no doubt.

*Prosecuting Attorney Not Responsible When a Bond is Filed
Without His Knowledge.*

That the efficiency of such a law would be greatly augmented by the suggested legislation of Congress, I have as little doubt. That both are practicable, I am equally satisfied.

Having thus answered your inquiry, I have the honor to be,

Respectfully, etc.,

W. H. WEST,

Attorney General.

PROSECUTING ATTORNEY NOT RESPONSIBLE
WHEN A BOND IS FILED WITHOUT HIS
KNOWLEDGE.

Office of the Attorney General,

Columbus, December 15, 1868.

K. Albery, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your favor of the 7th instant is received.

You are not responsible unless the bond was submitted to you, or unless you, knowing that it was about to be filed, failed to notify the commissioners. If the bond was accepted without you being consulted in the matter you certainly cannot be held responsible.

Very respectfully,

W. H. WEST,

Attorney General.

*Extra Compensation and Allowance to Members and Officers
of the General Assembly.*

EXTRA COMPENSATION AND ALLOWANCE TO
MEMBERS AND OFFICERS OF THE GENERAL
ASSEMBLY.

Office of the Attorney General,
Columbus, December 16, 1868.

Hon. James H. Godman, Auditor of State:

SIR:—I have the honor to acknowledge the receipt of your note of the 15th instant, requesting my opinion on sundry points relative "to the subject of extra compensation of members and officers of the General Assembly, and the issue of warrants therefor, by the auditor of state."

1. By article two, section thirty-one, of the constitution, and the provisions of the act of April 2, 1866, "to fix the compensation of members and officers of the General Assembly," no compensation, or allowance, extra or otherwise, can be allowed to any member or officer of the General Assembly for their services as such, except as in said act provided and the act referred to hereafter.

2. Members are entitled to compensation at the rate of five dollars per day for each day's actual attendance during the session. Clerks and sergeants-at-arms are entitled respectively to five dollars per day for each day's attendance during the session of the General Assembly. The clerks of the Senate and House are entitled to five dollars per day each for the time actually employed, after the adjournment of the General Assembly, for making out an index to the journals. Sergeants-at-arms are entitled to five dollars per day each for taking care of, and restoring the property under their charge, to the secretary of state, the same to be allowed for such time after adjournment as they shall be actually and necessarily employed. No other compensation or allowance is provided by law for members and officers of the General Assembly except the mileage of members as in

*Extra Compensation and Allowance to Members and Officers
of the General Assembly.*

said act stated; and except also, for proof reading and other services directed to be performed after the adjournment as provided in the act of February 27, 1867.

3. I can find no authority for the issue of warrants on the certificates of the presiding officers of the General Assembly. The auditor it, would seem, must assume the responsibility of acting upon said certificates at his peril.

4. Members are certainly not entitled to compensation for any day during the session when not in actual attendance, or at least, at the capital and prevented from attending by sickness or other unavoidable casualty; nor are they entitled to compensation for any services rendered during the vacation.

5. The auditor must take such measures as to him seem fit, to ascertain the service rendered, either by requiring an affidavit, or such other proof as to him shall appear satisfactory. The certificates of the presiding officers can have no authority in respect to the *per diem* of members, unless made in pursuance of law.

6. Clerks and sergeants-at-arms are not entitled to mileage; nor are the latter entitled to compensation for any services rendered after the adjournment except those specifically enumerated in the statutes. No allowance, either for time or service, can be made to assistant clerks or assistant sergeants-at-arms, after the adjournment of the General Assembly. Any act or resolution of the General Assembly directing the payment of any sums for extra services as aforesaid, or for the payment, of any allowance, or compensation whatever, not provided for by law, previous to the term of such member or officer, is so plainly unconstitutional, that the auditor of state ought to refuse to pay in pursuance of its provisions. The whole question of compensation is governed by the said section thirty-one, article two, of the constitution above referred to, which forbids any increase or alteration of the compensation to be paid to members

Terms of County Auditors; When They Commence—Probate Judge; When He Can Grant an Injunction.

and officers during their terms, and every such resolution or act is nugatory.

Very respectfully,
W. H. WEST,
Attorney General.

TERMS OF COUNTY AUDITORS; WHEN THEY
COMMENCE.

The State of Ohio,
Office of the Attorney General,
Columbus, December 17, 1868.

Mr. J. N. Thomas:

SIR:—You will not enter upon the duties of your office until March 1, 1869. You will observe that the wording of the statute in case of auditors (S. & C., 96, S. 1) differs from that of the statute in the case of clerks (S. & C., 232, S. 1). In the case of auditors a specific time is fixed for the commencement of the term. In the case of clerks not. See *State vs. Neibling*, 6 O. St. Reports, p. 40.

Yours truly,
W. H. WEST,
Attorney General.

PROBATE JUDGE; WHEN HE CAN GRANT AN IN-
JUNCTION.

The State of Ohio,
Office of the Attorney General,
Columbus, December 29, 1868.

John T. Moore, Esq., Prosecuting Attorney, Waverly, Ohio:

DEAR SIR:—Your favor of the 21st instant, inquiring if the Probate Court can grant an injunction, and if it has

Charges of Constables for Serving Subpoenas.

power to punish a party for disobedience of one, is received.

The probate judge, in the absence of the common pleas judge from the county, has power to grant an injunction, but none to punish disobedience of the same.

Very respectfully,

W. H. WEST,

Attorney General.

CHARGES OF CONSTABLES FOR SERVING SUB-
POENAS.

The State of Ohio,

Office of the Attorney General,

Columbus, December 29, 1868.

*W. A. Walden, Esq., Prosecuting Attorney, Steubenville,
Ohio:*

DEAR SIR:—Your favor of the 23d instant, relative to the serving of subpoenas by constables, is received.

Your views as expressed in your communication are entirely correct. Constables have no authority to serve by copy personally, and hence cannot charge therefor, except when the copy is left at the residence of the witness. (Sec. 66, Justices' Code.)

Very respectfully,

W. H. WEST,

Attorney General.

*Minerva; Incorporation of That Portion in Carroll County;
Charges for Keeping Lunatics, Etc.*

MINERVA; INCORPORATION OF THAT PORTION
IN CARROLL COUNTY; CHARGES FOR KEEP-
ING LUNATICS, ETC.

The State of Ohio,
Office of the Attorney General,
Columbus, December 30, 1868.

Robert Raley, Esq., Prosecuting Attorney, Carrollton, Ohio:

DEAR SIR:—In reply to the inquiries propounded in your favor of the 14th instant, I have to say:

1st. That portion of Minerva lying in Carroll County can be brought into the corporate limits only by proceeding under sections 193 and 194, S. & C., p. 1552, in the same manner as if neither portion had ever been incorporated.

2d. If the lunatic mentioned remains in the infirmary after ceasing to be dangerous, because he is a pauper, the superintendent can make no charge. He can only charge thirty-five cents per day for the temporary keeping of the lunatic during the time he was dangerous. I suppose that inasmuch as the jailor provides at his own expense the provisions necessary to feed the lunatic and received but thirty-five cents per day, the superintendent of the infirmary must do the same. I can see no reason why they should not stand on a par.

Very respectfully,
W. H. WEST,
Attorney General.