

*Notaries Public; Qualification of Females For—Attorney
General Not Adviser of County Auditors.*

NOTARIES PUBLIC; QUALIFICATION OF FE-
MALES FOR.

The State of Ohio,
Office of the Attorney General,
Columbus, January 19, 1878.

To R. T. Hurlbutt, Esq., Private Secretary of Governor:

SIR:—As requested by you, I have considered the ques-
tion of the qualification of Mrs. Helen C. Alton for the office
of notary public.

The State provides that the governor may appoint and
commission notaries public as many citizens of the State,
"having the qualification of electors," as may be deemed nec-
essary.

Mrs. Alton, not being an elector, by reason of her sex,
is therefore not qualified to be commissioned as notary
public.

Respectfully,

ISAIAH PILLARS,

Attorney General.

ATTORNEY GENERAL NOT ADVISER OF COUNTY
AUDITORS.

The State of Ohio,
Office of the Attorney General,
Columbus, January 25, 1878.

Chas. A. Barnett, Esq., Auditor Miami County, Troy, Ohio:

SIR:—Your letter of the 21st instant to this office mak-
ing certain legal inquiries, came duly to hand.

In answer I have to say, that the Attorney General
is not authorized to advise the county auditors as to their
duties. My predecessors have refused so to do.

Sec. 34, Vol. 74, O. L. P., 235, Not Unconstitutional.

The prosecuting attorney and state auditor are made the legal advisers of county auditors as to their duties.

The attorney general is made the legal adviser of State officers and boards, and prosecuting attorneys.

Respectfully,

ISAIAH PILLARS,

Attorney General.

SEC. 34, VOL. 74, O. L. P., 235, NOT UNCONSTITUTIONAL.

The State of Ohio,
Office of the Attorney General,
Columbus, January 22, 1878.

Wickliffe Belville, Esq., City Solicitor, Dayton:

DEAR SIR:—Yours of yesterday came duly to hand, and have given attention to the question suggested by you.

I do not believe the courts would hold any part of Sec. 34, 74, O. L., 235, to be *unconstitutional*.

The wisdom of the legislature is quite a different matter.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Attorney General Not the Legal Adviser of County Recorders.

ATTORNEY GENERAL NOT THE LEGAL ADVISER
OF COUNTY RECORDERS.

The State of Ohio,
Office of Attorney General,
Columbus, January 23, 1878.

Isaac Head, Esq., Recorder, Lucas County, Toledo, Ohio:

DEAR SIR:—Your favor of 19th instant came duly to hand. Your inquiry is a very important one, but I must say to you that I am not authorized, under the laws of Ohio, to give you an opinion. The officers I am made the legal adviser of, do not include county recorders. The prosecuting attorney is made the legal adviser of county officers. Hence, my opinion would be without any official sanction.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

DIRECTORS OF BLIND ASYLUM.

The State of Ohio,
Office of Attorney General,
Columbus, January 23, 1878.

R. F. Hurlbutt, Esq., Private Secretary, Governor:

SIR:—The governor can afford no relief in the matter. The board of directors of the blind asylum is proper authority to afford relief, if any wrong has been done.

Respectfully,

ISAIAH PILLARS,

Attorney General.

*Auditor of County; Fees of Provided for by Act of April
24, 1877.*

AUDITOR OF COUNTY; FEES OF PROVIDED FOR
BY ACT OF APRIL 24, 1877.

The State of Ohio,
Office of Attorney General,
Columbus, January 24, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—As requested by you, the inquiry contained in the letter of Mr. Roney, auditor of Brown County, of the 2d instant, has been carefully examined by me.

The inquiry is, Are county auditors entitled to compensation for making out lists for the supervisors of roads, of the taxes and taxpayers, containing a statement of road tax authorized to be worked out?

The act of April 24, 1877 (74, O. L., 124) to prescribe the fees of county auditors, was intended by the legislature to provide for the whole compensation for all official duties performed by the county auditors. That act repeals, either in words or by implication, every statute there in force, providing for fees to auditors. A part of the language of section 11 is, "Provided, that the fees and compensation provided for by the foregoing act, shall be in full for all services lawfully required to be done by the auditors of such counties." and he is further prohibited from receiving any compensation as clerk of the board of the county commissioners, etc.

Now, I can find nothing in the act of April 24, 1877, which provides for fees by name, for the particular kind of work inquired about; and hence, that Mr. Roney cannot make a separate charge for the services referred to in his letter.

Respectfully yours,

ISAAH PILLARS,

Attorney General.

Appropriations; Construction of Sec. 22, Art. 2, Constitution.

APPROPRIATIONS; CONSTRUCTION OF SEC. 22,
ART. 2, CONSTITUTION.

The State of Ohio,
Attorney General's Office,
Columbus, January 25, 1878.

Hon. James Williams, Auditor of State:

Your communication of yesterday, in substance, asking my opinion whether appropriation of March 30, 1875 (Laws of 1875, page 122), of \$3,500 for "additional battery of boilers" for the Idiotic Asylum was still operative and could lawfully be used for said purpose, is at hand.

I have no hesitation in saying that said appropriation is still in force, and can be lawfully used for the purposes of the appropriation.

In my judgment, the constitutional provision found in section twenty-two, article two, constitution, does not apply to this kind of appropriation. The language of the section is, "and no appropriation shall be made for a longer period than two years." This, in my opinion, means that no appropriation for a continuing expense shall be made for a longer period than two years.

This, undoubtedly, would also prohibit an appropriation that was not, by the terms of the appropriation, to be used until after two years. *Vide The State vs. Medberg, 7, O. St., 329.*

I think you can lawfully restore the appropriation to the books and pay the claim for the "battery of boilers for Asylum for Imbeciles." Respectfully,

ISAIAH PILLARS,
Attorney General.

P. S.—I presume the foregoing opinion is contrary to the practice that has heretofore obtained in your office, and have, therefore, given it the more careful consideration.

PILLARS.

*Requisition; Warrant Not to Issue Upon When Based on an
information.*

REQUISITION; WARRANT NOT TO ISSUE UPON
WHEN BASED ON AN INFORMATION.

State of Ohio,
Attorney General's Office,
Columbus, January 25, 1878.

To His Excellency, R. M. Bishop, Governor:

I have given most careful attention to the sufficiency of the requisition (and accompanying papers) of the Governor of Kansas upon yourself for a warrant for the arrest of one George J. Hopkins, now a resident of Ohio, to be delivered up to an agent of the State of Kansas, to be transported to said State for trial, for the alleged crime of seduction.

The commonwealth of Ohio is and has been ever watchful and jealous of the personal liberty of her citizens. She permits no one to be deprived of his liberty without "due process of law."

The right to demand of the governor of a State or Territory, that a citizen of his State or Territory be delivered up and transferred to another State or Territory for trial, is an extraordinary right, and only to be exercised where the federal laws are complied with *in the most strict manner.*

The statute of the United States provides, that the right of the executive of a State or Territory to demand of an executive of another State or Territory for the return of a fugitive from justice, for trial, depends upon the fact, whether the alleged fugitive has been *indicted* for the offense, or is charged by affidavit before a magistrate.

In the case at hand, the party sought to be transferred to another State, is charged neither by indictment nor affidavit; but by *information*, a mode of presenting a party with an offense unknown to the laws of the United States.

Chattel Mortgage, Record of—Parsonage Taxable.

I must, therefore, say that the warrant should not issue.

Respectfully,

ISAIAH PILLARS,

Attorney General.

CHATTEL MORTGAGE; RECORD OF.

State of Ohio,
Attorney General's Office,
Columbus, February 1, 1878.

William Stremmel, Esq., Recorder Crawford County, Bucyrus, Ohio:

DEAR SIR:—Yours of 28th ult. duly received. Under the act of April 30, 1877 (Laws of 1877, page 149), it certainly is necessary to record chattel mortgages.

Yours,

ISAIAH PILLARS,

Attorney General.

PARSONAGE TAXABLE.

State of Ohio,
Attorney General's Office,
Columbus, February 1, 1878.

G. Wm. Bader, Esq., Port Clinton, Ohio:

SIR:—Yours of the 26th ult., inquiring whether property used as a parsonage is exempt from taxation, was received on my return here this morning.

A parsonage, not being "property used exclusively for public worship," is not and *cannot be* exempt from taxation.

Appropriation; Construction of Sec. 22, Art. 2, Constitution.

See Sec. 2, Art. 12, of the constitution and 25 O. St. R., 229.

Respectfully,

ISAAH PILLARS,

Attorney General.

APPROPRIATION; CONSTRUCTION OF SEC. 22,
ART. 2, CONSTITUTION.

State of Ohio,
Attorney General's Office,
Columbus, February 1, 1878.

Hon. James Williams, Auditor of State:

SIR:—Yours of the 29th ult. in relation to the payment of Messrs. Nevins & Meyers for work done upon Vol. 3, geological reports, under appropriation of March 30th, 1875, has been considered.

I am of opinion that it would be lawful to pay the claim of Nevins & Meyers of the date of December 31, 1877, and which was approved by the governor, secretary of state and attorney general (a copy of which you enclosed me) from the appropriations referred to.

I base this upon the same reasons contained in my opinion to you of the date of January 25, last.

Respectfully,

ISAAH PILLARS,

Attorney General.

Agriculture College; Payment to Attorney General for Legal Service for.

AGRICULTURE COLLEGE; PAYMENT TO ATTORNEY GENERAL FOR LEGAL SERVICE FOR.

State of Ohio,
Attorney General's Office,
Columbus, February 2, 1878.

*Henry S. Babbitt, Esq., Treasurer O. H. & M. College,
Columbus, Ohio:*

SIR:—Your inquiry in relation to payment of the fees of my immediate predecessor, Hon. John Little, for services rendered under the college of which you are treasurer, has been considered.

I am clearly of the opinion that the services rendered as shown in Mr. Little's statement of services, and admitted to be correct, is not compensated for by his salary as attorney general, as provided by statute (S. & S., 696). The three per cent. there provided for, is upon collections made by the attorney general "for the State." The collections made by Mr. Little in the matter referred to were not made for the State, but for the college, and went into the treasury of the college.

His services should be paid for by the college, upon the basis of what is fair and reasonable for the professional services rendered.

Respectfully,
ISAAH PILLARS,
Attorney General.

Payment Into Treasury—Attorney General Not Legal Adviser of Private Persons.

PAYMENT INTO TREASURY.

State of Ohio,
Attorney General's Office,
Columbus, February 2, 1878.

Hon. James Williams, Auditor of State:

SIR:—I desire to pay into the State treasury the sum of \$467.48, money collected from G. W. Gill, on judgment in Franklin Common Pleas, for convict labor.

Respectfully,

ISAIAH PILLARS,

Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER OF
PRIVATE PERSONS.

State of Ohio,
Attorney General's Office,
Columbus, February 4, 1878.

M. D. Harter, Esq., Mansfield, Ohio:

SIR:—Yours of the 2d instant came to hand. I am made the legal adviser, under the statute, of certain officers. As attorney general I am not authorized to give you a legal opinion in relation to the matters inquired about.

Respectfully,

ISAIAH PILLARS,

Attorney General.

Auditor Deeds Must be Acknowledged—County Commissioners; Fees of.

AUDITOR DEEDS MUST BE ACKNOWLEDGED.

State of Ohio,
Attorney General's Office,
Columbus, February 4, 1878.

To Auditor Scioto County, Portsmouth, Ohio:

SIR:—Yours of the 1st instant came duly to hand, and in reply have to say, that a deed executed by a county auditor, like all other deeds made in Ohio, *must be acknowledged.*

Respectfully,
ISAIAH PILLARS,
Attorney General.

COUNTY COMMISSIONERS; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, February 5, 1878.

Hon. John Bichm, Probate Judge, Georgetown, Ohio:

DEAR SIR:—Your inquiry of the 4th instant came duly to hand.

The act of March 30, 1875, 72 O. L., 169-70, most certainly requires the certificate of the prosecuting attorney, and the approval of the probate judge to the itemized statement of fees of county commissioners, *in all counties without regard to population.*

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Probate Judge; Filling Unexpired Term by Election.

PROBATE JUDGE; FILLING UNEXPIRED TERM
BY ELECTION.

State of Ohio,
Attorney General's Office,
Columbus, February 6, 1878.

Maj. J. H. Day, Celina, Ohio:

DEAR SIR:—Yours of the 4th instant duly received.

Of course my opinion on the question submitted, would, at this time, be inofficial, but I will give you what it would be were the question *officially* answered.

From your letter I understand the facts to be these: In February, 1876, a vacancy occurred in the office of probate judge of Mercer County. The *vacancy* was filled by appointment as is required by the constitution. At the October election in 1876, a probate judge was elected under a proclamation of the sheriff which did not designate whether the election was for the unexpired or full term. The certificate of the clerk was for a *full* term, and the commission issued for a *full* term. The *bond* given was for the unexpired term.

I have carefully examined the constitutional provisions as found in Sec. 7 and 13, Art. 4, and the case of the *State ex rel, etc., vs The Governor*, 7 O. St., 372, and *The State ex rel, etc., vs Cogswell*, 8 O. St., 620, and *The State ex rel Attorney General vs. Taylor*, 15 O. St., 137, and am clearly of the opinion that the election of October, 1876, *was* and *could only* have been for the unexpired term. The commission could not extend the term *beyond* the unexpired term.

Respectfully,

ISAIAH PILLARS,

Attorney General.

Attorney General; Not Made the Legal Adviser of County Treasurers.

State of Ohio,
Attorney General's Office,
Columbus, February 14, 1878.

A. G. Clark, Esq., Toledo, Ohio:

DEAR SIR:—On my return to Columbus this morning, I found yours of the 9th instant.

Please say to members of the board of directors that the contract must be closed at once. If not so closed, I will be compelled to report the fact to the legislature, and have the boys removed to the reform farm near Lancaster. I feel this to be my official duty.

Respectfully,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL; NOT MADE THE LEGAL
ADVISER OF COUNTY TREASURERS.

State of Ohio,
Attorney General's Office,
Columbus, February 12, 1878.

D. C. Clover, Esq., Lancaster, Ohio:

DEAR SIR:—On my return to Columbus this morning, found yours of the 8th instant, and in answer, have to say, that under the laws of Ohio, the attorney general is not made the legal adviser of county treasurers, nor private parties, and therefore, his opinion would be unauthorized.

The prosecuting attorney is made the legal adviser of county officers.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

*Taxation; Exemption of Property Held by Library Association
of Cleveland, Ohio.*

TAXATION; EXEMPTION OF PROPERTY HELD
BY LIBRARY ASSOCIATION OF CLEVELAND,
OHIO.

State of Ohio,
Attorney General's Office,
Columbus, February 13, 1878.

Hon. James Williams, Auditor of State:

SIR:—Yours of today accompanied by several papers in reference to the exemption from taxation of the property of the Cleveland Library Association, has been submitted to me. You leave it entirely optional with myself, as to whether or not I express my opinion in the premises.

After considering the whole matter, I think it my duty to suggest to you, that the better course for the county auditor to pursue in the premises is, to allow the property to remain in duplicate as *taxable*; and let the question, as to whether the property is *exempt* from taxation, be determined by the courts in a suit to enjoin the collection of the tax assessed against it.

This, in my judgment from my considerations, should be the true course in all *doubtful cases*. Predecessor thought it was doubtful whether the property in question was exempt. From the facts brought to my knowledge contained in the papers you referred to me, there would scarcely be a question in my mind, but that the property in question is taxable.

Respectfully,

ISAAH PILLARS,
Attorney General.

School Director; Election of—Mayor; Duties of.

SCHOOL DIRECTOR; ELECTION OF.

State of Ohio,
Attorney General's Office,
Columbus, February 13, 1878.

Hon. J. J. Burns, Commissioner Common Schools:

SIR:—Your inquiry of today has been duly considered, and in answer have to say, upon the statement of facts submitted by you:

1st. That the appointment of E. B. Morton, as director, by the clerk in January 19th was *unauthorized*.

2d. That the election held on Friday, January 25th, was *invalid* for want of proper notice.

3d. The appointment of Mr. R. Ayers as director on the 26th January by the clerk, was authorized and is valid. Mr. Ayers is the legal director.

Respectfully,
ISAIAH PILLARS,
Attorney General.

MAYOR; DUTIES OF.

State of Ohio,
Attorney General's Office,
Columbus, February 13, 1878.

L. W. Crane, Esq., Clerk of Wilmington, Ohio:

SIR:—In answer to yours of the 8th instant, I have to say, that by Sec. 86, Laws of 1869, page 164, the mayor has no vote in council *except in cases of a tie vote*.

It is *then* his legal duty to vote.

Yours,
ISAIAH PILLARS,
Attorney General.

*County Commissioners; Fees of—Taxation; Property of
Soldier Not Exempt.*

COUNTY COMMISSIONERS; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, February 14, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—In answer to the inquiry to you by the auditor of Brown County, and referred to me, contained in his letter of the 9th instant, I have to say: that on the 4th instant, Hon. John P. Beihm, probate judge of Brown County, addressed to me substantially the same inquiry. In answer to him I said, "The act of March 30th, 1875 (72 O. L., 169-70), most certainly requires the certificate of the prosecuting attorney and the approval of the probate judge to the itemized statement of fees of county commissioners for services rendered." Such is the law.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAXATION; PROPERTY OF SOLDIER NOT
EXEMPT.

State of Ohio,
Attorney General's Office,
Columbus, February 14, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—I have examined the question of the exemption from taxation of the property of Capt. F. A. Kendall, of the United States army, serving on detached duty in Cleveland, as submitted to you by the auditor of Cuyahoga County, in his letter of the 12th instant.

Requisition; When It Will Be Allowed.

The statute of Ohio provides, "That all property, whether real or personal, in this State," shall be subject to taxation.

There are then certain *exemptions* provided for, in none of which am I able to find the property of Captain Kendall included.

His property in this State is taxable under the laws of Ohio.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

REQUISITION; WHEN IT WILL BE ALLOWED.

State of Ohio,
Attorney General's Office,
Columbus, February 20, 1878.

*E. J. Duer, Esq., Prosecuting Attorney, Holmes County,
Millersburg, Ohio:*

DEAR SIR:—Yours of yesterday duly received. I have no hesitation in saying that upon proper application the governor will issue a requisition for a person who has been indicted, given bail for his appearance, has fled the State, and bond forfeited.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Requisition; Refusal to Issue.

REQUISITION; REFUSAL TO ISSUE.

State of Ohio,
Attorney General's Office,
Columbus, February 21, 1878.

To Hon. R. M. Bishop, Governor:

The two requisitions bearing the date of February 14, 1878, from the Governor of Pennsylvania asking for warrants for the arrest and extradition of John F. Perdue, on the charges of "fraudulently conveying property with the intent to defraud creditors," and "perjury" have been duly considered by me.

I am compelled to advise against the issuing of warrants on the requisition for two reasons:

1st. I am fully impressed that arrest, and extradition of the alleged fugitive is sought to subserve private interests, and is, therefore, in contravention of the joint resolution of the Ohio legislature. (See Laws of 1870, page 170.)

2d. Warrants have already been issued upon requisitions for the same offenses for the same party.

Respectfully,

ISAIAH PILLARS,

Attorney General.

Fine; Judgment for; Does Not Become Dormant Under Sec. 422 of the "Code"—Board of Police Commissioners; Estimates of for Expense of Police Not Receivable By City Council.

FINE; JUDGMENT FOR; DOES NOT BECOME DORMANT UNDER SEC. 422 OF THE "CODE."

State of Ohio,
Attorney General's Office,
Columbus, February 22, 1878.

C. L. White, Esq., Prosecuting Attorney, Vinton County, McArthur, Ohio:

DEAR SIR:—Yours of the 21st instant came duly to hand, and have carefully considered the question therein submitted.

I am of the opinion that Sec. 422 of the code (S. & Cr., 1067) does not apply to judgments for fines and costs imposed as penalty for crime. The provision for judgments becoming dormant in five years under certain state of facts, applies only to judgments in civil actions.

I know of no like provision for fines and costs.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

BOARD OF POLICE COMMISSIONERS; ESTIMATES OF FOR EXPENSE OF POLICE NOT REVIEWABLE BY CITY COUNCIL.

State of Ohio,
Attorney General's Office,
Columbus, February 27, 1878.

F. M. Hosier, Esq., Secretary Board of Police Commissioners, Dayton, Ohio:

SIR:—Your communication of the 22d instant came duly to hand, and has been carefully considered.

The question you submit, in substance is, Has council the

*Board of Police Commissioners; Estimates of for Expense
of Policies Not Reviewable By City Council.*

power to *revise* and *change* the estimate made in detail, by the board of police commissioners of the cost and expenses of providing for and maintaining the police department, as required to be made by said commissioners by section twenty-seven of the act of April 2, 1868? (S. & S., 814.)

The language of the section is,

“It shall be the duty of the board of police to prepare and submit to the city auditor, on or before the 1st day of May in every year, an estimate of the whole cost and expense of providing for and maintaining the police department of said city within the current fiscal year; which estimate shall be in detail, and shall be laid by the auditor before the city council, and the same shall be by the city council of said city provided for in the general tax assessment.”

In my judgment the action of the board of police commission under this section, is not subject to review or alterations by the city council.

The law gives the council no such power. It can only exercise such power as is specifically conferred by statute. And further, the provision of the section is, “and the same (the estimate) shall be by the city council provided for in the general tax assessment.” Now if the council had the right to *change* the estimate, it would not be providing for the *same* estimate as made by the police commissioners.

In my opinion, the statute is mandatory on the council.

Respectfully yours,

ISAAH PILLARS,

Attorney General.

Member of General Assembly; Cannot Be Appointed Director of Penitentiary Under Act of Said General Assembly.

MEMBER OF GENERAL ASSEMBLY; CANNOT BE
APPOINTED DIRECTOR OF PENITENTIARY
UNDER ACT OF SAID GENERAL ASSEMBLY.

State of Ohio,
Attorney General's Office,
Columbus, February 27, 1878.

Hon. R. M. Bishop, Governor:

SIR:—Your communication of this morning asking my opinion, whether under the constitution a member of the present General Assembly can be appointed to the office of director of the penitentiary, under the act passed by the present General Assembly for reorganization and government of the penitentiary, is at hand.

After a most careful consideration of the question, I am compelled to answer in the negative.

Section nineteen, article two, of the constitution provides "no Senator or Representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, *which shall be created*, or the emoluments of which shall have been increased, during the term for which he shall have been elected."

The act just passed by the General Assembly, for the reorganization and government of the penitentiary, *abolishes* the office of director, so that the present incumbents cease to be directors; and then the act, by section one, immediately *creates* the office of director of the penitentiary to be filled by appointment by the governor by and with the consent of the Senate.

The act thus creates the office of director, and in pursuance of the constitutional provision quoted above, no Senator or Representative can be appointed to fill said office.

Respectfully,

ISATAH PILLARS,
Attorney General.

Criminal Case No Appeal from a Mayor to Court of Common Pleas—New Cells.

CRIMINAL CASE NO APPEAL FROM A MAYOR TO COURT OF COMMON PLEAS.

State of Ohio,
Attorney General's Office,
Columbus, March 2, 1878.

H. P. Hcssburn, Esq., Mayor of Ashtabula, Ohio:

DEAR SIR:—Yours of 28th ult. came duly to hand.

There is no such thing as an *appeal* in a *criminal* case from a mayor to the Common Pleas. I state the law correctly in your letter.

Yours,
ISAIAH PILLARS,
Attorney General.

NEW CELLS.

State of Ohio,
Attorney General's Office,
Columbus, March 6, 1878.

Auditor of State:

I can allow no claim for work done on or materials furnished for "new cells" in penitentiary until a full investigation is had, and the contract for the same found to be fully complied with, and then the amount will be allowed in favor of the parties only with whom the State contracted.

ISAIAH PILLARS,
Attorney General.

Canals; Advise as to Settlement With Lessees.

CANALS; ADVISE AS TO SETTLEMENT WITH
LESSEES.

Lima, Ohio, March 5, 1878.

Senator Lord, Columbus, Ohio:

DEAR SIR:—I find I cannot be present, as requested, at the joint meeting of the committees of the Senate and House on public works, and, therefore, feel it to be my duty to address you this letter to be used, should you deem it proper to do so.

1st. The legislature and the acts done thereunder complained of by the lessees, while in the opinion of my predecessor, Hon. John Little, and myself, did not and cannot justify the lessees under the law in abandoning the canals and other public works, yet such legislation and acts thereunder, have furnished the grounds upon which the lessees have, under the advice of eminent counsel (Judge Ranney and Hon. M. A. Daugherty) as a matter of fact, abandoned the leased premises (the public works), and attempted to rescind the contract of lease, thus rendering it necessary in order to preserve the canals from serious injury, to place them temporarily in charge of receivers which was done by order of the Superior Court of Montgomery County.

2d. Under the statute (S. S., Sec. 5, 63) providing for the leasing of the public works, and which was embodied in the contract of lease, the lessees were required to make such repairs, only, as the board of public works might require of them, after due notice, and such repairs not to exceed the original cost of the "old plan or material used."

3d. It is a fact, undisputed, that the lessees have made all repairs required of them by the board of public works. Hence up to this time, the State would have no right of action against the lessees for damages by reason of want of repairs. Whether more repairs should have been required by the board of public works, is entirely another question and with which we have nothing now to do.

Justice Peace; Separate Ballot.

4th. To leave the canals in the hands of the receivers with their limited powers to be operated by them during the pendency of litigation would, in my judgment, largely imperil the public interests of the State, a thing which should not be permitted by those who are held accountable for legislation.

5th. It is, therefore, my deliberate and conscientious judgment, as the legal adviser of the State, in view of all the facts and considerations in the premises, that the public interests would be best subserved by making an amicable adjustment of all matters in difference between the lessees and the State, on the basis of the State assuming control of the public works, and paying the lessees such price as agreed upon for their property which may be essential and necessary to operate the canals.

6th. Should the committees and the General Assembly conclude otherwise, Mr. Little (who by consent of the governor and auditor of state, is associated with me in the pending litigation) and myself will do everything in our power to have the pending suit brought to a speedy and as successful termination as possible.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

JUSTICE OF THE PEACE; SEPARATE BALLOT.

State of Ohio,
Attorney General's Office,
Columbus, March 7, 1878.

J. C. Strain, Esq., Clerk Madison Township, Highland County, Greenfield, Ohio:

SIR:—In answer to yours of the 4th instant I have to say, that the ballot for justice of the peace must be by separate ballot and separate box.

Township Office; Held by an Elector of Township—Quo Warranto; Duty of Prosecuting Attorney.

There is no limit to the number of terms an assessor may hold.

Yours,
ISAAH PILLARS,
Attorney General.

TOWNSHIP OFFICE; HELD BY AN ELECTOR OF TOWNSHIP.

State of Ohio,
Attorney General's Office,
Columbus, March 6, 1878.

J. R. Rocbuck, Esq., Township Clerk, Burton City, P. O.:

SIR:—Yours of the 4th came duly to hand.

Any qualified citizen *without reference to where he lives in the township*, can hold a township office.

Respectfully,
ISAAH PILLARS,
Attorney General.

QUO WARRANTO; DUTY OF PROSECUTING ATTORNEY.

State of Ohio,
Attorney General's Office,
Columbus, March 7, 1878.

Hugh Bowelby Willson, Norwalk, Ohio:

DEAR SIR:—Yours of the 4th instant came to hand.

Under the statute (S. & Cr., 1264) it is made the duty of the prosecuting attorney to institute proceedings in quo warranto in such cases as stated in your letter.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

BURNS ACT; CONSTRUCTION OF.

State of Ohio,
Attorney General's Office,
Columbus, March 8, 1878.

T. C. Ferrell, Esq., Mayor, New Philadelphia, Ohio:

DEAR SIR:—Your favor of yesterday came duly to hand.

While I am not made the official adviser of cities or villages, yet I will suggest an answer to your question.

The statute authorizing cities and villages to contract for gas does not provide for any definite periods (see Vol. 71, p. 93, Ohio Laws). The contract may cover a month or a term of years. But the "Burns Law," Sec. 663, Municipal Code, Laws of 1876, page 126, provides that "No contract, agreement, or other obligations, involving the expenditure of money, shall be entered into, nor shall any ordinance, etc., for the expenditure of money," unless the money to be expended is in the city or village treasury. This is mandatory. Now, in my judgment, under this legislation no contract can be made for the supply of gas, as none can be made for anything else, unless the money to be expended is in the treasury unappropriated for any other purpose.

It is very probable that additional legislation is needed to meet such public demands.

Respectfully,

ISAIAH PILLARS,

Attorney General.

Justice of the Peace; Two Can be Elected at Same Election
—Dying Declarations; Competency in Abortion Cases.

JUSTICE OF THE PEACE; TWO CAN BE ELECTED
 AT THE SAME ELECTION.

State of Ohio,
 Attorney General's Office,
 Columbus, March 11, 1878.

Jacob Schluper, Esq., Township Clerk, Millersburg, Ohio:

DEAR SIR:—Yours of the 9th instant came duly to hand.

Under the statute for the election of justice of peace, as amended by the act of 1869 (see Laws of 1869, page 142) it is my opinion that both of the justices to fill the vacancies which will occur April 9th, and May 11th, can be elected at the same time.

It should be specified, however, on the ballots what vacancy it is intended the candidate is voted for to fill.

The section of the law I have referred to, should in every respect be strictly complied with.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

DYING DECLARATIONS; COMPETENCY IN ABOR-
 TION CASES.

State of Ohio,
 Attorney General's Office,
 Columbus, March 11, 1878.

John J. Glover, Esq., Prosecuting Attorney, Delaware County, Delaware, Ohio:

DEAR SIR:—Yours of the 9th instant came duly to hand.

The question you propound, to-wit: Whether under an indictment for an abortion or foeticide which has resulted

Clerk of the Court; Fees of.

in the death of the pregnant woman, her dying declarations are competent to be given in evidence, is now pending in the Supreme Court. It is presented in the case of the State vs. Harper. I was counsel for defendant in the trial of the case in the Common Pleas; and assigned to argue the question in the Supreme Court. I herewith enclose you my brief. You can get the brief on the other side, by writing to E. A. Ballard, of Lima, Ohio.

My opinion in that case was, and I am still of the opinion, that dying declarations were not competent to be given in evidence.

It is a close question, however, and a very important one.

In a case recently tried in Cincinnati, I understand the evidence was admitted.

You might well insist upon its introduction until the question is finally settled.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CLERK OF THE COURT; FEES OF.

Dispatch to Attorney General,
Findlay, Ohio, March 11, 1878.

An officer elected in eighteen hundred and seventy-five takes his office in February eighteen hundred and seventy-six, after he has taken office what fee bill is he entitled to work under? Advise immediately.

SCOTT W. PREBLE,
Clerk Court.

To which the attorney general answers, "His fees are determined by the act of (1876) eighteen hundred and seventy-six, after its passage."

ISAIAH PILLARS,
Attorney General.

Chattel Mortgages; Must Be Recorded—Agricultural College; Construction of Law in Relation to.

CHATTEL MORTGAGES; MUST BE RECORDED.

State of Ohio,
Attorney General's Office,
Columbus, March 14, 1878.

Z. W. Heagler, Recorder, Fayette County, Washington,
C. H.:

SIR:—Your letter of the 11th instant before me, and in answer, would say that chattel mortgages should be recorded (see Laws of 1877, page 149).

Yours,

ISAIAH PILLARS,
Attorney General.

AGRICULTURAL COLLEGE; CONSTRUCTION OF
LAW IN RELATION TO.

State of Ohio,
Attorney General's Office,
Columbus, March 14, 1878.

Hon. Thos. A. Cowgill, of the Committee on Agriculture,
House Representatives:

DEAR SIR:—I have given most careful thought to the question involved in your letter of yesterday.

The fourth section of the act of Congress, providing for the establishment of colleges for the benefit of agriculture and the mechanic arts, in the various States, requires that the "leading object shall be" to teach such branches of learning as relate, 1st, to agriculture, 2d, the mechanic arts, and 3d, military tactics.

These purposes or objects are made obligatory, and cannot be dispensed with. Incidental to these, scientific and

Coroner; Fees Reviewable by Auditor.

classical studies *may be taught*. Branches of learning relating to agriculture, mechanic arts, and military tactics *must be provided for*. The amendment as section nine which you submit to me, as originally drawn makes the teaching of military tactics an incidental matter, rather than one of the "leading objects." This would be in violation of the act of Congress.

I do not want to be understood, however, as claiming that every student *must* study branches of learning as relate to military tactics.

It is not compulsory. All the legislature has to do is to provide the means for the teaching of military tactics; leaving it to the discretion of the student whether he will pursue it or not. I think the amendment, with the change I have noted, would not be in contravention of the acts of Congress.

I have tried to make the changes so as to have section nine conform to my construction as above given of the act of Congress.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CORONER; FEES REVIEWABLE BY AUDITOR.

State of Ohio,
Attorney General's Office,
Columbus, March 19, 1878.

S. Rosenthal, Esq., Auditor, Morrow County, Mt. Gilead,
Ohio:

SIR:—Your inquiry of today came duly to hand. If a coroner demands pay out of the county treasury for *more* than the law entitles him to charge, the auditor has the legal right and it is his duty to reduce the fees to just what the

Armory; Duty of Cities and Villages to Provide for.

law provides. He (the auditor) cannot legally draw his warrant in favor of the coroner for anything more.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

ARMORY; DUTY OF CITIES AND VILLAGES TO PROVIDE FOR.

State of Ohio,
Attorney General's Office,
Columbus, March 20, 1878.

D. D. Hare, Esq., Solicitor, Upper Sandusky, Ohio:

DEAR SIR:—Yours of the 18th instant came duly to hand. Undoubtedly, the thirty-fourth section of the militia law (73 O. L., 235-6) makes it the duty of all cities and villages in which a military company exists, "to furnish the same with a suitable armory and drill room." In doing this, however, the company cannot dictate to the council where the armory shall be or how much shall be paid for it. And again, if the council cannot do this without violating what is known as the "Burns Law," 73 O. L., 126, Sec. 663, they have no power to comply with section thirty-four, above referred to.

This section six hundred and sixty-three, renders all contracts of the council void, *unless the money is in the treasury to carry the contract into effect.*

Respectfully,

ISAIAH PILLARS,

Attorney General.

*Bank Charter Not Authorized Under Act of 1845 Since
Adoption of Constitution of 1851.*

BANK CHARTER NOT AUTHORIZED UNDER ACT
OF 1845 SINCE ADOPTION OF CONSTITUTION
OF 1851.

State of Ohio,
Attorney General's Office,
Columbus, March 20, 1878.

Hon. Milton Barnes, Secretary of State:

DEAR SIR:—The certificate of Wilkinson Pierson and others which you submitted to me on the 12th instant, with a request for an official opinion as to what action you should take in the premises, I have carefully considered.

The certificate is drawn under the seventh section of the act of February 24th, 1845, entitled "An act to incorporate the State banks of Ohio and other banking companies."

If the right to create banking corporations under this act has not been superseded by the constitution of 1851, your only duty now would be to record the certificate, and carefully preserve the same in your office (vide last clause Sec. 7, St. & Cr., 120). It certainly is a grave and an important question to the people of the State, whether the right now exists, to form incorporated companies with powers to do a banking business, by virtue of the provisions of said act.

As individual liability of stockholders is one of the essential elements and pre-requisites to the formation of all incorporated companies under the present constitution of Ohio, and as the act of 1845 is wholly lacking in any such provision, I am strongly of the opinion that no banking corporation can be formed under said act.

I would advise you, therefore, to decline to record said certificate, until a court of competent jurisdiction determines in proceedings in *mandamus*, that the parties signing

*Cities and Villages Not Authorized to Borrow Money to
Build Bridges.*

the same have the right to said certificate recorded, and form a banking corporation.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CITIES AND VILLAGES NOT AUTHORIZED TO
BORROW MONEY TO BUILD BRIDGES.

State of Ohio,
Dayton, Ohio, March 5, 1878.

W. Belville, Esq., Dayton, Ohio:

SIR:—The question submitted to me is, Has council the power to borrow money in anticipation of a tax (to be) levied for the construction of bridges?

In my opinion the council has no such power. It is not authorized by Sec. 661, municipal code, 74 Vol. O. L., 65. That section confines the loan in anticipation of the *general revenue* fund. It is not authorized by Sec. 656, 73, Vol. O. L. 126. I think such a loan is prohibited by Sec. 663, 73 Vol. O. L., 126, commonly known as the "Burns Law."

Respectfully,
ISAIAH PILLARS,
Attorney General.

Deed From State.

DEED FROM STATE.

State of Ohio,
Attorney General's Office,
Columbus, March 21, 1878.

Frank W. Merrick, Esq., Columbus, Ohio:

DEAR SIR:—Your inquiry of the 14th instant has been considered.

Your inquiry is hereto attached. As I am not made the adviser of private citizens, any opinion I may give to you must necessarily be inofficial. Were the question properly before me, however, as attorney general, I would be compelled to say that "the failure of Wm. Sullevant, trustee, to have the deed of trust executed to him by the State of Ohio, noted and registered in auditor of state's office," is not in my opinion fatal to the validity of the deed.

I am of the opinion, that the courts would hold that the provision of the statute requiring "the auditor to keep a record of such deeds delivered, showing to whom delivered and the date thereof" (S. & Cr., 478) as but directory.

I see no reason why the auditor might not yet make such record of the delivery of the Sullevant deed, as is required by the statute.

Respectfully,
ISAIAH PILLARS,
Attorney General.

*Fine and Costs; Interest on—U. S. Army Officer Exemption
of Property From Taxation.*

FINE AND COSTS; INTEREST ON.

McArthur, Ohio, April 5, 1878.

Attorney General, State of Ohio:

DEAR SIR:—Please inform me, whether I can collect interest on costs, when judgment is rendered for fine and costs in a State case.

Very respectfully,

Your obedient servant,

J. J. SHACKEY,
Ex-Sheriff of V. Co., O.

Attorney General answers:

I never heard of such a thing in my practice of the law. I do not think any court would allow any officer or witness to collect *interest on fees* due them.

Yours,

ISAIAH PILLARS,
Attorney General.

U. S. ARMY OFFICER EXEMPTION OF PROPERTY
FROM TAXATION.

State of Ohio,
Attorney General's Office,
Columbus, March 28, 1878.

Capt. F. A. Kimball, Cleveland, Ohio:

DEAR SIR:—Your letter of the 23d instant came duly to hand.

I have carefully read the case of *Dobbins vs. Corns of Erie Co.*, 16 Peters R., 435. It certainly is not in point, "that the compensation of an officer of the U. S. is fixed by law, and any law of a State imposing a *tax upon the office*,

Clerk of City Council; Need Not Be Member of.

diminishing the recompense, is in conflict with the laws of the U. S. which secures the allowance to the officer."

You will see at once this does not bear on the question involved in your case.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CLERK OF CITY COUNCIL; NEED NOT BE MEMBER OF.

State of Ohio,
Attorney General's Office,
Columbus, April 6, 1878.

M. D. Baldwin, Esq., City Solicitor, Fremont, Ohio:

DEAR SIR:—Your letter of the 3d instant has been duly considered.

I am clearly of the opinion, that under the section you refer to (Sec. 87-74, Vol. O. L., 143) it was not the intention of the legislature that the council should elect one of their own number clerk. While the language of the section might at first sight be so construed, yet when we take into consideration the general policy of the law which excludes members of council from accepting any pay, emoluments, or profits growing out of any office or contract as the result of their actions as members of council, there can be no doubt, that it was not intended that the clerk should be a member of council.

And then, the practice is in accordance with this construction.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

*Judges for J. P. Election Paid Out of County Treasury—
Clerk of City Council; Need Not Be Members of.*

JUDGES OF J. P. ELECTION PAID OUT OF COUNTY TREASURY.

State of Ohio,
Attorney General's Office,
Columbus, April 6, 1878.

*W. J. Kelly, Esq., Auditor of Darke County, Greenville,
Ohio:*

DEAR SIR:—On my return to Columbus this morning I found yours of the 1st instant.

From an examination of the statutes I am satisfied that the fees of judges of the election of a justice of peace should be paid out of the county treasury. (See S. & S., page 331, Sec. 1.)

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

CLERK OF CITY COUNCIL; NEED NOT BE MEMBERS OF.

State of Ohio,
Attorney General's Office,
Columbus, April 8, 1878.

Frank A. Hardy, Esq., Piqua, Ohio:

SIR:—The following extract from my opinion of the 6th instant to the city solicitor of Fremont, will answer your letter of today :

“I am clearly of the opinion that under section 87, 74 O. L., 143, it was not the intention of the

Clerk of City Council; Need Not Be Made Member of.

legislature that the council should elect one of their own number as clerk."

Yours,

ISAIAH PILLARS,
Attorney General.

CLERK OF CITY COUNCIL ; NEED NOT BE MADE
MEMBER OF.

State of Ohio,
Attorney General's Office,
Columbus, April 11, 1878.

J. H. Hatch, Esq., City Clerk, Piqua, Ohio:

DEAR SIR:—On my arrival here this morning I found yours of the 8th instant, and in answer would say, that I have within a few days been asked my opinion on the question submitted by you, from different parts of the State.

I am fully of the opinion that the act does not contemplate the election of a *member of the council* as clerk.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

Commissioners Have Power to Remit the Penalty and Interest; Judgment—Assessors; Pay of.

COMMISSIONERS HAVE POWER TO REMIT THE
PENALTY AND INTEREST; JUDGMENT.

State of Ohio,
Attorney General's Office,
Columbus, April 11, 1878.

W. W. McKnight, Esq., Prosecuting Attorney, Brown County, Ohio:

DEAR SIR:—On my arrival here this morning I found yours of the 8th instant.

I have no doubt but that the commissioners have full power under Sec. 13, S. & Cr., 246, to remit the penalty and interest, entering into the judgment you speak of. And from the facts stated by you I should think it would be eminently just so to do. However, that is a question wholly for the commissioners.

They have the *power* so to do.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ASSESSOR'S; PAY OF.

State of Ohio,
Attorney General's Office,

Hon. James Williams, Auditor of State:

SIR:—In answer to your inquiry as to the compensation of assessors, I have to say:

That the pay of assessors must be determined by the act of April 6, 1878, without regard to the time they may qualify. Sec. 20, Art. 2, of the constitution does not apply to the "pay" of an assessor. Hence, their compensation

Appropriation for Repair of Canal.

may be increased or decreased during their term of service.

I think the principle is well settled in the case of *John G. Thompson vs Phillips*, 12 O. St., 617, also *Crickett vs State of Ohio*, 1 O. St., 9.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

APPROPRIATION FOR REPAIR OF CANAL.

State of Ohio,
Attorney General's Office,
Columbus, April 18, 1878.

Hon. H. P. Clough, Chairman Com. on Public Works:

SIR:—Your request that I should give a written opinion as to the effect the passage of H. B. 337, would have upon the right of the State to recover damages against the lessees of the public works by reason of the breach of the terms of the lease on their part, has been fully considered.

I am clearly of the opinion that the passage of the bill and the carrying out of its provisions, would not affect the legal rights of the State in any right of action it may now have against the lessees.

As I understand the bill, it simply contemplates *repairs* on the canals. This certainly could be done if the lessees were in the actual management of the canals without, in the least, interfering with their rights.

It would be a far different thing, however, should the State assume control of the canals for all purposes.

Respectfully,
ISAAH PILLARS,
Attorney General.

Auditor of Trumbull County; Prosecution of.

AUDITOR OF TRUMBULL COUNTY; PROSECUTION OF.

State of Ohio,
Attorney General's Office,
Columbus, April 18, 1878.

*T. J. Gillmer, Esq., Prosecuting Attorney, Trumbull County,
Warren, Ohio:*

DEAR SIR:—Yours of the 17th instant, with inclosure, came duly to hand, and has been considered.

I have at this time serious doubts as to whether, under the particular state of facts contained in your letter, Kennedy could be indicted under Sec. 6, Chap. 11, Criminal Code.

By an analysis of said section you will see that it makes two classes of offenses, to-wit: the presenting a false claim for the purpose of "procuring the allowance of the same, or an order for the same;" and 2d, receiving payment of such claim, knowing the same to be false and fraudulent.

If I correctly understand the case stated in your letter, it is, that Kennedy, as auditor, drew the order *without any claim being presented*.

You say, you do not know who drew the money on the order. If it was Kennedy (about which, I presume, there is no doubt), then he would be guilty of obtaining money under false pretenses, and should be indicted under Sec. 7, Chap. 11, Criminal Code.

In fact, in every case in which he has drawn false and fraudulent orders *and obtained the money on them*, I think it would be a safe course to indict him for obtaining money under false pretense. I am inclined to believe it would be safer than to indict under section six.

As a matter of safety and precaution, why would it not do to find *two* indictments: One for the drawing the false orders, and one for obtaining the money under false pretenses? I simply make the suggestion to you for your consideration.

City Council; Member of; Removing from One Ward to Another—Morse. Advice to; As Superintendent of Asylum.

It is unnecessary to say to you, that in drafting the indictments great care should be exercised.

Respectfully yours,
 ISAAH PILLARS,
 Attorney General.

CITY COUNCIL; MEMBER OF; REMOVING FROM ONE WARD TO ANOTHER.

State of Ohio,
 Attorney General's Office,
 Columbus, April 25, 1878.

W. Belville, Esq., City Solicitor, Dayton, Ohio:

DEAR SIR:—Yours of the 24th instant making inquiry, "Can a member of council hold his office removing to another ward?" was duly received, and in answer to the same I have to say, *No.*

Respectfully yours,
 ISAAH PILLARS,
 Attorney General.

MORSE; ADVICE TO; AS SUPERINTENDENT OF ASYLUM.

State of Ohio,
 Attorney General's Office,
 Columbus, April 26, 1878.

Dr. D. H. Morse, Superintendent Dayton Asylum for Insane:

DEAR SIR:—Your letter of today came duly to hand. 1st. Under the law the superintendent, under the su-

Imprisonment of Party for Non-Payment of Fine.

pervision of the trustees has the employment of servants, nurses and other employees of the institution. Of course, now the steward may do this, but he can only do it with the direct sanction of the superintendent. There is an apparent conflict between Secs. 11 and 14, but I think they would be construed as I have indicated.

2d. A single man, without minor children, can, *under no circumstances*, be considered, *under the law*, as a man of family. The sister and niece of a steward cannot, under the law, be regarded as a part of his family, and live with him at the expense of the State. Such a thing you must not permit. If you do, you will jeopardize the interests of the State, and your own reputation.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

IMPRISONMENT OF PARTY FOR NON-PAYMENT
 OF FINE.

State of Ohio,
 Attorney General's Office,
 Columbus, April 27, 1878.

*John B. Young, Esq., Blue Creek P. O., Adams County,
 Ohio:*

DEAR SIR:—Your letter came duly to hand, and in answer have to say, to the inquiries therein contained:

1st. That the discharge on the writ of habeas corpus does not invalidate the judgment.

2d. Another execution can issue against the defendant to satisfy the judgment, as if no execution had issued.

3d. Sec. 6, S. & Cr., 682, does not apply to the case, for reasons that the body is not taken as a part of the *penalty*

*Peace Warrant: Probate Judge Has Jurisdiction—Marshal
of Village Not Street Commissioner.*

for the offense committed, but to enforce the payment of
fines and costs in the absence of property.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

PEACE WARRANT: PROBATE JUDGE HAS JURIS-
DICTION.

State of Ohio.

Attorney General's Office,

Columbus, April 30, 1878.

Judge A. W. Heldenbrand, Canton, Ohio:

SIR:—Yours of yesterday came duly to hand.

If the probate court of Stark County has *criminal juris-*
isdiction, then, most clearly, under Sec. 4, Chap. 1, title 2,
Criminal Code, the Probate Court of Stark County has
jurisdiction of peace warrant.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

MARSHAL OF VILLAGE NOT STREET COMMIS-
SIONER.

State of Ohio.

Attorney General's Office,

Columbus, April 30, 1878.

O. O. Mathers, Esq., Sidney, Ohio:

DEAR SIR:—Your inquiry of the 27th instant, I found
on my return to Columbus this morning; and in answer

School District; Annexing Part of Territory to Village.

would say, that House Bill 411, act of March 29, 1878, page 88, applies *only* to a certain village in Hamilton County, which has a population of 1,417.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

SCHOOL DISTRICT; ANNEXING PART OF TERRITORY TO VILLAGE.

State of Ohio,
 Attorney General's Office,
 Columbus, April 30, 1878.

*W. H. Hubbard, Esq., Solicitor of Board of Education, Ash-
 tabula, Ohio:*

DEAR SIR:—Yours of the 26th instant was duly received, and has been carefully considered.

The question you submit is, "Does territory annexed to an incorporated village, become a part of the village school district, by virtue of such annexation?"

I think it is very clear that it does not.

If there was any doubt about this, from the language of the statute (and I think there was not), it certainly is set at rest by the decision of the Supreme Court in the case of *Cist vs. The State ex rel Wilder*, 21 O. St., 339.

The annexation is for municipal purposes only. To accomplish the transfer of the territory so annexed, for school purposes it must be done by virtue of Sec. 40, Vol. 70, page 205.

Undoubtedly, as a matter of convenience, it would be better to have all the territory within the corporate limits

Deed of State to Riley; Construction of.

belong to a single district. But this is a matter for the local boards to agree on.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DEED OF STATE TO RILEY; CONSTRUCTION OF.

State of Ohio,
Attorney General's Office,
Columbus, April 30, 1878.

Hon. F. C. TeBlond, Cclina, Ohio:

DEAR SIR:—Yours of the 27th instant came to hand this p. m.

This morning the land clerk in the auditor's office (Wetmore) came into my office and submitted the precise question involved in your letter.

I gave him an opinion in exact conformity with your construction of the deed to J. W. Riley.

Whatever there was in the fractional quarter, whether it was greater or less than 44 25-100 acres passed to Riley, there might, originally, have been some question of the right of the State to sell to Riley the land as *canal lands*, but it is too late now to raise any question.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Marshal of Village—Road Tax; Power of Trustees to Levy.MARSHAL OF VILLAGE; RESIGNATION ONCE
ACCEPTED CANNOT BE RECALLED.

State of Ohio,
Attorney General's Office,
Columbus, May 1, 1878.

R. C. Dunlin, Esq., Congress, Ohio:

DEAR SIR:—Under the statement of facts as contained in yours of the 29th ult., your marshal has resigned and his resignation has been accepted. The resignation cannot be recalled.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ROAD TAX; POWER OF TRUSTEES TO LEVY.

State of Ohio,
Attorney General's Office,
Columbus, May 1, 1878.

John M. Cochran, Esq., Glendale, Ohio:

DEAR SIR:—Yours of the 29th ult. came to hand.

The only way I can explain the difference in the provisional in Sec. 7, page 94 and Sec. 18, page 100, Laws of 1877, is that the former applies to counties where the total valuation exceeds ten millions, and the latter does not.

Respectfully,
ISAIAH PILLARS,
Attorney General.

Public Works; How the Legal Right Effected, by Taking Possession of.

PUBLIC WORKS; HOW THE LEGAL RIGHT EFFECTED BY TAKING POSSESSION OF.

State of Ohio,
Attorney General's Office,
Columbus, May 2, 1878.

Hon. James E. Neal, Speaker House Representatives:

The question upon which my written opinion was requested by the House of Representatives, as contained in its resolution of today, has been carefully considered.

The language of the resolution is:

“That the attorney general communicate without delay to this House, his written opinion in relation to the effect the taking of immediate possession of the public works by the State would have upon any legal rights which the State may now have against the lessees of the public works, by reason of any breach on their part of the contract of lease.”

The lessees having abandoned the public works on the first day of December last, and offered to surrender the same to the board of public works, and having refused to pay any further rent for the use of said public works, or in any other way, perform the terms of the contract of lease on their part, the State is at perfect liberty, at any time, to take immediate possession and assume absolute control of the public works.

By taking possession of leased premises (the public works) by the State, and at the same time carefully specifying that by so taking possession, the State does not admit, but protests against the right of the lessees to abandon the public works, and against their right to surrender the same, the State, in my judgment, will not waive any right of action it may now have against the lessees by reason of the breach

Public Works; How the Legal Right Effected by Taking Possession of.

of the contract of lease on their part, except in the following particulars, to-wit :

1st. No rent can be collected from the lessees after the State has so taken possession of the public works, but the lessees would be bound for rent up to the time the State would so take possession.

2d. No other, or further *repairs* could be required of the lessees after the State had so taken possession of the public works.

All other right of action which may now exist in favor of the State and against the lessees, would continue to subsist.

It may be proper to add, that, should the State assume possession of the canals, the order of the Superior Court of Montgomery County in the pending case against the lessees, appointing receivers temporarily to take control of the public works would be superseded, and the powers and duties of said receivers cease.

Presuming that brevity would be more desirable to the House than a lengthy opinion, I omit entering into a discussion of the reasons which lead me to the foregoing conclusion.

Respectfully,

ISAIAH PILLARS,
Attorney General.

*Medical Student; Age of; to Graduate—Duty of Council
to Levy Tax for Water Works.*

MEDICAL STUDENT; AGE OF; TO GRADUATE.

State of Ohio,
Attorney General's Office,
Columbus, May 3, 1878.

C. E. Miles, M.D., Boston Highland, Mass.:

SIR:—In answer to yours of the 30th ult., I have to say that we have no law in Ohio fixing the age at which a medical student may graduate.

A minor may graduate as Doctor of Medicine.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DUTY OF COUNCIL TO LEVY TAX FOR WATER
WORKS.

State of Ohio,
Attorney General's Office,
Columbus, May 4, 1878.

Horatio Wildman, Esq., City Solicitor, Sandusky, Ohio:

DEAR SIR:—In compliance with your request, I have, in addition to the discussion you and I gave the matter when you were in my office the other day, given careful thought to the proper construction to be given to Sec. 356-7 of the municipal code.

Under section three hundred and fifty-six the city council must levy a tax, in each and every year, "during the erection and completion of the water works, and before they shall have been put in operation," upon all the taxable property of the city, for the purpose of paying the interest on the

Duty of Council to Levy Tax for Water Works.

money borrowed for the erection and completion of said water works.

Under section three hundred and fifty-seven the council may (must or shall) *after the water works have been put in operation*, levy and collect a tax in sufficient amount, in each and every year "upon all the taxable property adjoining, abutting to or bounding upon any street, lane, alley, public ground, square, block or premises through which water pipe has been laid," in such manner as the council may deem equitable for the purpose of raising a fund to pay the interest on any loan which may have been made for the erection or extension of the water works.

That this section is *mandatory*, I think there is no doubt.

That the words in this section, "may be assessed," would be construed by the courts to mean "*shall* be assessed" is very clear to my mind.

The general rule is this, that where a statute declares that a public body or officer "*may*" have power to do an act which concerns the public interest, or the rights of third persons, *may* means *shall* or *must*.

See 3 Hill, 612. Supervisors vs. U. S. 4 Wall, 435. 5, Wall, 705, 48 Mo. R., 167, 22 Barl, 404, 39 Mo. 521, and also Sedgwick on the construction of statute and constitution Laws, 375.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

*County Commissioners May Appoint One of Their Number
Superintendent Public Works—Council Has Full
Power to Limit Compensation of Its Clerks.*

COUNTY COMMISSIONERS MAY APPOINT ONE
OF THEIR NUMBER SUPERINTENDENT PUB-
LIC WORKS.

State of Ohio,
Attorney General's Office,
Columbus, May 5, 1878.

Hon. F. B. Sprague, Probate Judge, Delaware, Ohio:

DEAR SIR:—In answer of yours of today I have to say, that I presume it is legal for the county commissioners to appoint one of their own number to superintend the construction of a public work, and that such commissioner could draw pay for the extra time employed; but the appointment should be made by the board and an entry made on their journal of that fact. If they have omitted to make the entry, probably they can still so do. It must, however, be the official action of the board.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

COUNCIL HAS FULL POWER TO LIMIT COMPEN-
SATION OF ITS CLERKS.

State of Ohio,
Attorney General's Office,
Columbus, May 8, 1878.

A. L. Harn, Esq., Clerk, Hansberg, Ohio:

SIR:—Your letter of the 5th instant addressed to my predecessor, Mr. Little, was received. And in answer have

Store and Bookkeeper of Asylum.

to say, that the council has full power to fix the compensation of its clerk either for past or future services.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

STORE AND BOOKKEEPER OF ASYLUM.

State of Ohio,
 Attorney General's Office,
 Columbus, May 8, 1878.

Dr. Thomas D. Stiles, President Board Trustees Dayton Asylum, Ft. Jefferson, Ohio:

DEAR DOCTOR:—Your inquiry of the 3d instant was received by me last evening.

Your question is a very important one, and I have given it careful thought. My attention heretofore has been called to the same question.

I do not hesitate to say, that under Sec. 12, page 67-8, L. of 1878, the board of trustees cannot allow the bookkeeper and storekeeper more than "six hundred dollars per annum, *and his board in the asylum*" which means his individual board. It makes no difference whether he be married or unmarried; he is only entitled to (and the board of trustees are only authorized to allow him) his individual board in addition to his salary.

It stands on the same ground, and must be construed in the same way as though you should employ a man at so much a year and agree to board him.

An agreement to furnish a person board can never be construed to mean that the *family* of the person is entitled to board. Had the legislature meant otherwise, it would have said so.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

*Ohio Penitentiary; Construction of the Convict Labor Law
of 1878—Proclamation.*

OHIO PENITENTIARY; CONSTRUCTION OF THE
CONVICT LABOR LAW OF 1878.

State of Ohio,
Attorney General's Office,
Columbus, May 10, 1878.

Directors of Ohio Penitentiary:

GENTS:—In answer to your inquiry of yesterday, I have to say, that I have given very careful thought to the construction of paragraph 6, Sec. 15, page 21, of Laws of 1878, and have come to the following conclusion as the law: In making contracts for convict labor, you are restricted as to a minimum price of 70 cents per day, for the labor of each convict.

1st. Where the contract for labor is for a *longer time than one year*.

2d. Where the labor of the convict is temporarily employed.

The statute does not restrict the board to any price per day.

1st. Where the contract for labor is for one year, or less than one year, provided it be not merely *temporary*.

2d. Where the convict is on the first year of his sentence or is a cripple, a female, a minor, or is unskilled, disabled by disease or old age. Respectfully,

ISAIAH PILLARS,
Attorney General.

PROCLAMATION

BY THE GOVERNOR.

Whereas, The adjournment of the LXIII General Assembly of Ohio until the 7th day of January, A. D., 1879,

Proclamation.

without making the usual and necessary appropriations for the support of the various departments of the State government, for the ensuing fiscal year, presents an extraordinary occasion, requiring the governor to exercise the powers vested in him by the constitution to convene the General Assembly; now, therefore, I, Richard M. Bishop, Governor of the State of Ohio, do, by virtue of the power to this end in me vested by the constitution, convene the Senate and House of Representatives of the General Assembly of the State of Ohio, to assemble at their respective chambers, in the capitol, in the city of Columbus, at ten o'clock, a. m., on Tuesday, the fourteenth day of May, A. D., 1878, to consider and determine such measures as, in their wisdom, their duty and the welfare of the people may seem to demand.

In Witness Whereof, I have hereunto set my hand, and caused the great seal of the State of Ohio to be affixed, at the city of Columbus, (*Great Seal.*) this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and of the independence of the United States the one hundred and second.

RICHARD M. BISHOP, GOVERNOR.

By the Governor: Milton Barnes, Secretary of State:

Attorney General's Office,
Columbus, May 13, 1878.

The foregoing proclamation was prepared by request of the governor, in anticipation of the adjournment of the General Assembly without having passed the general appropriation bill, but the contingency not arising, the proclamation was not used.

ISAIAH PILLARS,
Attorney General.

*Savings Bank; Report of—Supervisor of Public Printing;
Has No Power to Have Wood Cuts and Engravings
Executed to Be Inserted in Reports.*

SAVINGS BANK; REPORT OF.

State of Ohio,
Attorney General's Office,
Columbus, May 13, 1878.

Hon. James Williams, Auditor of State:

Yours of the 11th instant has been duly considered.

In my judgment the act of March 31st, 1877 (74 O. L., 72) supersedes Sec. 21 of February 26, 1873 (70 O. L., 45), and hence, the report as required by the latter act need not be made.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SUPERVISOR OF PUBLIC PRINTING; HAS NO
POWER TO HAVE WOOD CUTS AND ENGRAV-
INGS EXECUTED TO BE INSERTED IN RE-
PORTS.

State of Ohio,
Attorney General's Office,
Columbus, May 13, 1878.

Col. W. W. Bond, Supervisor of Public Printing:

DEAR SIR:—Your letter of today has been duly considered.

After a very careful examination of the various statutes in relation to the public printing, I am of the opinion that you have no power to have wood cuts and other engravings executed to be inserted into the report of public institution

Secretary of State; Right to Return Bill to the General Assembly.

or board (except the agricultural report), to be paid for from the appropriation for State printing.

If cuts or plates are inserted into any such reports, it must be paid for from the appropriation to such institute or board, into whose report they are so inserted, unless otherwise specifically provided for by the General Assembly.

Respectfully,

ISAIAH PILLARS,

Attorney General.

SECRETARY OF STATE; RIGHT TO RETURN BILL
TO THE GENERAL ASSEMBLY.

State of Ohio,
Attorney General's Office,
Columbus, May 14, 1878.

Hon. Milton Barnes, Secretary of State:

DEAR SIR:—In answer to yours of today, just handed me, I have to say, that should both Houses by joint resolution, request of you the return of H. B. No. 41 (Municipal Code) for the purpose of adding thereto the enacting clause, which was omitted in the enrollment through clerical error, you have the undoubted legal right so to return said bill.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Tax Title Certificate; Personal Property—Insurance Company; Taxation Duties of.

TAX TITLE CERTIFICATE; PERSONAL PROPERTY.

Lima, Ohio, May 25, 1878.

Hon. James Williams, Auditor of State:

SIR:—I have examined the question submitted in the letter of L. Lehenkuhle, auditor of Putnam County, to you, of the date of the 21st instant, and by you submitted to me. And I am clearly of the opinion, that certificates of purchase of real estate for taxes, upon sales made in January as provided by law, must be treated as *personal* property; or moneys invested, until the purchaser, or holder of the certificate (in the case it is assigned) is entitled to, and receives a deed from the auditor, for the land so sold.

And that moneys so invested must be listed and taxed accordingly.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

INSURANCE COMPANY; TAXATION DUTIES OF.

State of Ohio,
Attorney General's Office,
Columbus, May 28, 1878.

John L. Liggett, Esq., Secretary Michigan Mutual Life, Detroit, Mich.:

DEAR SIR:—Yours of the 23d instant I found on my return here this morning. I have carefully noted the contents.

The question submitted is one that should properly be referred to the auditor, and should he be in doubt, he would consult me.

But, I will say, however, that, in the case you put (and

Oil Law; Proper Officer to Construe—Auditor Fees in Ditch Case.

the case but shows the rule), the \$160 would, as I now view it, be the "gross receipts."

The law only contemplates the *actual* receipts.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

OIL LAW; PROPER OFFICER TO CONSTRUE.

State of Ohio,
Attorney General's Office,
Columbus, May 28, 1878.

A. M. Riddle, Esq., Dept. Inspector of Oils, Cincinnati, Ohio:

DEAR SIR:—On my return here this morning I found yours of the 24th instant.

The question you submit should be referred by you to the State inspector, Hon. F. W. Green, at Cleveland.

He is the proper officer to construe the oil law just passed, in the *first instance*. Should he desire my opinion on any question it would be proper for me to give it.

You can well see, it would not do for me to give you one opinion and the State inspector another.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

AUDITOR FEES IN DITCH CASE.

State of Ohio,
Attorney General's Office,
Columbus, May 29, 1878.

To the Commissioners of Henry County:

GENTLEMEN:—At your request I have examined the statute in relation to the auditor's fees in ditch cases, and find that section eight of the act of April 24, 1877 (Laws of

Girls' Industrial Home; Superintendent of.

1877, page 129), determines all the fees the auditor is entitled to for services in ditch cases. That provides for ten cents for every one hundred for recording all papers which are properly embodied in the final record.

Section eleven provides that the fees provided for by that act, shall be in *full* for all services, and makes it *unlawful* to charge more.

Respectfully,

ISAIAH PILLARS,

Attorney General.

GIRLS' INDUSTRIAL HOME: SUPERINTENDENT
OF.

State of Ohio,
Attorney General's Office,
Columbus, May 31, 1878.

Hon. F. B. Sprague, Delaware, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand, and contents noted.

After an examination of the recent act, for the reorganization of the "Girls' Industrial Home," I have to say, that in my opinion, the trustees need not appoint immediately, a successor to the present superintendent. They may wait until fall or longer if they choose. The present superintendent can legally remain, without further bond, until his successor is appointed and qualified.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*Boards of Education; Powers of, to Establish High Schools,
With Scientific and Classical Courses; and Normal and
Polytechnic Schools.*

BOARDS OF EDUCATION; POWERS OF, TO ES-
TABLISH HIGH SCHOOLS, WITH SCIENTIFIC
AND CLASSICAL COURSES; AND NORMAL
AND POLYTECHNIC SCHOOLS.

State of Ohio,
Attorney General's Office,
Columbus, May 31, 1878.

*Hon. J. J. Burns, State Commissioner of Common Schools
of Ohio:*

SIR:—The questions referred to me by you, and upon which you request that I give an official opinion, are as follows:

1st. Did the framers of the constitution (Article VI, Sec. II), by the phrase "a thorough and efficient system of common schools throughout the State," intend to authorize the General Assembly to enact laws sustaining, by general taxation, any higher grade of school than common schools; for instance, high schools with a collegiate course of studies, normal schools for training professional teachers; and what did they mean by the phrase "common schools?"

2d. Is a board of education by the general school act (Vol. 70, page 208, Sec. 50) authorized either by its letter, true spirit or meaning to establish any other than different or higher grades of common schools in the constitutional sense of the term *common* schools; or may a board, under the general phraseology employed in that section of the school act, establish, at discretion, classical high schools, normal schools and polytechnic schools, etc.?

It is very manifest, from discussions in various parts of our State and country, that the questions submitted are of no ordinary importance.

Many able and learned men, professing to have the good of the country at heart, are of the decided opinion that the extent of the instruction in the higher branches in our

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public schools, which are maintained wholly by taxation, has been carried and is liable to be carried still further—far beyond what was originally intended by the men who so beneficently provided for establishment of free public education in Ohio.

The president of a distinguished college in Massachusetts, addressed recently a letter to a professor in a southern university, in which he said: "I am *not* in favor of supporting schools above the grammar school grade completely by taxation. I hold, that the parents of children who go to high schools should contribute a part of the costs of maintaining such schools. * * * Elementary education is of direct and universal benefit, and is not only a legitimate, but the most legitimate public charge. * * * But the secondary and superior education seems to me to stand on a different basis."

So formidable has the opposition become in Massachusetts to the support by taxation of schools for the teaching of anything more than the common or elementary branches, that the board of education of that State, in its report for 1876-1877, devotes considerable space to a refutation of the arguments against high school education at the public expense.

The opposition to a liberal education as taught in high and normal schools and schools of technology, all supported by taxation, is based upon two reasons, as stated in the report.

1st. That *secondary* instruction is not necessary to the well being of the State.

2d. Only a small portion of the school population avail themselves of the advantages of the instruction in these higher institutions.

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Polytechnic Schools.*

As still further showing the importance of this question, and how influential the opposition to anything more than free schools for the teaching of the elementary branches, I quote an extract from a carefully prepared address delivered by Prof. Pierce at the meeting of the American Social Science Association, in Cincinnati, on the 11th instant. He says:

"There is a certain minimum of education which society must not only offer to its members, but which it must insist upon its accepting simply for its own preservation. *There is also a maximum to which public demand should be restricted, and beyond which it is the part of judicious economy to leave the provisions to individual competence and private munificence.* * * * There seems to be no sufficient reason for introducing into public education the rudiments which belong exclusively to a collegiate course."

To determine the extent or amount of education which was intended by the language of the constitution, when it provided for the establishment of a "thorough and efficient system of common schools throughout the State," is not of easy solution. The extent to which free public education should be carried, is a fundamental question, lying at the very foundation of the prosperity, well being, and intelligence of the people of the State. It is not the question of a day or a generation; but one that must remain for all time, and be confronted by each generation as it marches forward and assumes the control of public and governmental affairs.

The second section of article VI of the constitution of Ohio, adopted in June, 1851, imperatively says: "The General Assembly *shall* make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will *secure a thorough and efficient* system of common schools throughout the State."

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With Scientific and Classical Courses; and Normal and
Polytechnic Schools.*

What was the extent of education meant to be "secured" to the youth of the State by the system of common schools thus made mandatory on the General Assembly to establish? It is not a question solely as to what the framers of the constitution meant; but a court, in construing the provision, would consider as well, what was intended by the people in its adoption.

Judge Thurman, who is as able and learned a jurist as ever sat on the bench of Ohio, in his opinion, in the case of the *Exchange Bank of Columbus vs. Hines*, reported in the Third Ohio State Reports, on pages 46-7, says:

The debates of a body that forms a constitution or laws, are proverbially unsafe guides for its interpretations. Those who speak are generally few, compared with those who vote, and among the debaters themselves, there is seldom seen a uniformity of construction. The advocates of a provision are often silent as to some of its necessary results, in order to avoid opposition, and its enemies sometimes misconstrue its meaning, or exaggerate its consequences, in order to defeat it. Debates are not always listened to or a speaker is liable to be misunderstood or misreported. A brief speech on the floor sometimes acquires a wonderful length in print: and reasons that the body never heard, may first see the light through the agency of the press. In the meantime, the law has been adopted, each member voting upon it according to the light of his own judgment. * * * But the convention was not such a body. It ordained nothing. It merely recommended a constitution to the people, and it is to the vote of the latter that the instrument owes its vitality. The question, therefore, is not how did the *convention*, but how did the *people* understand it.

Adopting this reasoning, it would, therefore, be unsafe to rely solely on the meager report of the debates upon the pro-

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vision of the few gentlemen who expressed themselves, of that body of able men, fully abreast with the liberal spirit of the time in which they acted.

For a more certain light to aid us in determining the question under consideration, we should look to public aid that had been given prior to that time in Ohio and elsewhere, to public education, to the gradual and steady growth of the free public school system in Ohio and elsewhere; to the then status of many of the more advanced public schools, and the existing opinion and demands of the active and intelligent friends of public education in Ohio.

And it is also of great assistance to see what changes were made in the public system immediately following the adoption of the constitution.

Ohio has been favored from the earliest period of its history, probably beyond most of the States of the Union, in the aid given it for public instruction. This aid even antedates any permanent settlement of white people within its limits. It is now nearly a century since the passage of the first legislation in that respect. In 1785, when the Congress of the Confederation passed an ordinance for the survey of the western lands, one thirty-sixth (one section) of every township was expressly reserved from sale "for the maintenance of public schools within said township." The territorial ordinance of July 13, 1787, of the Congress of the Confederation, for the government of the northwestern territory, provided, in article three: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, *schools* and the means of *education* shall forever be encouraged."

By subsequent legislation on the part of Congress, one thirty-sixth of the entire lands of the State, was given to the State in trust for the support of schools. This equalled 711,7

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871 acres. About the same time, 69,120 acres were given by Congress for the endowment of two State universities, which were afterwards established and known as the Ohio University, at Athens, and Miami University, at Oxford. Had these munificent donations been carefully preserved and cared for, Ohio would now have an irreducible common school fund of \$15,000,000 or \$20,000,000, instead of the present amount of \$3,500,000, and the universities an ample endowment fund, instead of now dying out for the want of means. Again, in 1862, Congress gave to each State, for the establishment of an agricultural and mechanical college within it, an amount of land equal to 30,000 acres for each member. This made Ohio's share 629,920 acres. This land realized, upon sale, \$470,307.28.

But to return to a very brief glance at the history of school legislation in Ohio:

The constitution, adopted in 1802, provided, article eight, section three:

“Religion, morality and knowledge being *essentially* necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

Section twenty-five of the same article, provides:

“No law shall be passed to prevent the poor in the several counties and townships within this State from an equal participation in the schools, colleges and universities within this State, which are endowed in whole or in part, from revenues arising from donations made by the United States for the support of schools and colleges: and the

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doors of said schools, academies and universities shall be open for the reception of scholars, students and teachers of every grade, without distinction or preference whatever, contrary to the intent for which said donations were made."

Section twenty-seven of the same article, also provided:

"Every association of persons, when regularly formed, within this State, and having given themselves a name; may, on application to the legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies; colleges, universities, and for other purposes."

It must be conceded, by any one familiar with the history of common schools in Ohio, that, notwithstanding these liberal provisions and organic expressions in favor of public education, that up to 1838 but little had been done providing for and perfecting a system of common schools. This, it is presumed, was the result of the hardships, toils and scanty means incident to pioneer life.

It was not until 1821 that any general school law was passed by the legislature, and this was so inefficient that but little was accomplished. Under this law, it was left to the vote of each township whether school districts should be formed. In 1825 that statute was amended so as to make it compulsory on the township trustees to divide their township into districts.

The only tax levied for school purposes was by the counties and this produced so small a revenue that but little could be accomplished. The ordinary tax assessed would not produce, for an ordinary rural school district, more than ten dollars.

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It was not until 1837 that any advancement was made in the cause of public education. In that year, through the efforts of a few earnest men, a school department was established by the act of the General Assembly, and the Hon. Samuel Lewis, of Cincinnati, was appointed State superintendent of common schools. Mr. Lewis was an earnest worker in the cause of popular education, and to him is due, in a large measure, the credit of reducing the common schools of the State to anything like a uniform system. He made three annual reports, and resigned his office, and the duties of it were passed over to the secretary of state, where they remained until the inauguration of our present common school system in 1853. In 1838, Mr. Lewis prepared, and procured to be adopted by the General Assembly, the first general common school law in Ohio of any efficiency. Under this law it was provided that school directors "may determine the studies to be pursued in each school, so that reading, writing and arithmetic may be taught in the English language." This was afterwards modified so those branches might, under certain circumstances, be taught in the German language. Teachers were, up to 1849, only required to pass an examination in spelling, reading, writing and arithmetic, as far as "the simple rule of three." In that year geography and grammar were added to the qualifications of the applicant for a certificate to teach.

It may be safely asserted, that up to the time of the adoption of the constitution of 1851, that, so far as the general common school system was concerned, no more than the primary or common branches were contemplated by any legislation, to be taught. In fact, except as provided by special legislation (which will be presently noticed), no other branches were authorized to be taught in the common schools. *Graded schools* were unknown to the general law. I do not, therefore, hesitate to say, that, in my judgment, the common schools, prior to the adoption of our present

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constitution, meant public schools for teaching the primary or common branches of learning.

Was the adoption of the constitution of 1851, and the general law passed thereunder in 1853, intended to effect a change in the common school system?

After much reflection and investigation, I do not hesitate to answer in the affirmative.

From 1840 to 1850, the year the convention met to deliberate upon the provisions of a new constitution for the State, and adapt the organic law to the new conditions and wants of the largely increased and differently circumstanced population, unknown to the few pioneers of 1802, the public mind, through the zealous exertions of Samuel Lewis, before named, Lorin Andrews, Prof. J. W. Andrews, Prof. M. F. Cowdry, Asa Lord, T. W. Harvey, H. H. Barney, Hon. Harvey Rice of Cleveland, and many others who should be named, with the assistance of the Ohio State Teachers' Association, and institutes held and lectures delivered in various parts of the State, the people had been thoroughly aroused to the necessities of a higher standard for public education. As a result of this, the general school system, not affording the means, special acts were asked for and passed by the legislature, authorizing the establishment of graded, union, and high schools in many of the towns and cities of the State.

The first graded school in the State was established in Cincinnati. Very soon after, Cleveland followed in the wake, and established a graded school. In both these schools the boys and girls were graded and taught separately. Shortly prior to this time partially graded schools had been established in New York, Boston, Providence and Philadelphia.

In the graded school of Cincinnati was taught, in addition to the common branches, analysis, rhetorical reading,

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bookkeeping, and all forms of commercial paper, all branches as applied to business, composition, modern and ancient geography, history, algebra, geometry, trigonometry, mensuration, surveying, chemistry, botany, natural history, geology, natural philosophy and rural economy. I have taken these from their course of studies when the school was first established.

The examples of Cincinnati and Cleveland encouraged other cities and towns in a similar direction. The third city to establish a graded school was Dayton. This was in 1841. The next was Columbus in 1845, which elected for her superintendent of schools Dr. Asa D. Lord, in 1847. Dr. Lord was the first superintendent of schools elected in any city in Ohio. He was one of the most efficient educational workers in Ohio.

Soon after these examples, Portsmouth, Maumee and Zanesville, all by special legislation, established graded schools. In February, 1847, the celebrated Akron schools law was passed. The author of the plan embodied in this act was Rev. J. Jennings, pastor of the Congregational church in Akron. I quote from a paper prepared by Prof. R. W. Stevenson, superintendent of the public schools of Columbus, on graded schools, for the centennial history of the schools in Ohio, and to whom I acknowledge my indebtedness for many of the foregoing statistics in relation to graded schools. Prof. Stevenson says, in speaking of the Akron law:

“The law provides for the election of six directors, whose term should be six years. It gave this board of education full control of all the schools of the town, which by a union of the several school districts into which it was divided, became a single district; and authorizes this board to establish six or more primary schools, and a cen-

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tral grammar school; to fix the terms of transfer from one grade to another; to make and enforce all necessary rules and regulations for the government of teachers and pupils; to employ and pay teachers; to purchase books and apparatus; to select sites and erect buildings; to certify to the town council the amount of money necessary for school purposes; and to appoint three qualified persons to act as examiners of teachers."

The provisions of this law were so wise, and its practical operations so satisfactory, that its provisions were rapidly extended to towns all over the State; and it finally was enacted into a general law in 1849. Union schools, high schools, and graded schools, teaching not alone the primary branches, but all the higher branches of learning, and the classics, sprang up all over the State, until, when the convention assembled, in 1850, they numbered about seventy. In my judgment, it was the spirit of the foregoing legislation in relation to graded and union and high schools that was embodied in the constitution, and by which it was made mandatory on the General Assembly to provide for a "*thorough and efficient system of common schools throughout the State.*"

It also must be conceded that the example of a successful public school system in Prussia and in New England States, especially Massachusetts, had a very large influence on the convention and people.

It was not for schools in which the *common* branches alone should be taught that the provision was made, but it was to secure *thorough* and *efficient* schools, *common* and *free* to all alike, in whatever condition in life, maintained at the public expense, in which *all* the branches of learning of every kind might be taught, as demanded by the public welfare and the wants of each community.

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Polytechnic Schools.*

I am fortified in this construction by proceedings in the convention. On February 24, 1851, the committee on education submitted to the convention a second report, in which they provided that the General Assembly should, by taxation, etc., secure a thorough and efficient system of common schools through the State, and *place the means of instruction in the common branches of education, for a suitable portion of each year, within the reach of all children therein of suitable age, and capacity for learning.* (See 2d Vol. Debates, 698.)

This was voted down, and the section adopted as it now stands in section two article six. I quote some of the language of Mr. Archbold in debate on the question for what it may be worth: He hoped to see common schools advance not only to meet such demands *as are now made upon them,* but to meet *higher and greater* requisitions. Then the common of the future will need be far above the common of the present. He wanted to see a system of schools as perfect as they could be devised, and to see it improve *so as to keep pace with the most rapid progress of the most rapid element of our social and political constitution.* Society ought not to be shackled too far. He hoped for a higher and holier order of things in the future. *The ideas of what may be useful, twenty years hence,* may be far different from what they are now. (2 Debates, 698-9.)

In my judgment, the law for the "reorganization, supervision and maintenance of common schools," passed March 14, 1853, was a thorough embodiment of the meaning of the constitutional provision. It covered the whole ground that had been provided in the various acts before referred to, in relation to graded, union and high schools. It made each township a single district or union school. It provided for a board of education for the district.

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Section fourteen made it the duty of the "board of education to establish a school in each sub-district of the township of *such grade as, the public good, in their opinion, may require*; and in the location of *primary schools* or schools of higher grade, the board shall have reference to population and neighborhood, * * * as well as to other circumstances proper to be considered, so as to promote the best interests of schools."

Section thirteen provided that the township board of education should have "the management and control of all the central and high schools of their proper townships which may be established therein under the authority of this act, with full power with respect to such schools." And the township board was further authorized to "appoint one of their own number the acting manager of schools for the township, who shall do and perform all such duties as the board may prescribe in relation to the management and supervision of the different schools, and the educational interests of the township, and may allow him a reasonable compensation therefor."

Section seventeen provided "that the board shall have power to determine the *studies to be pursued and the school books to be used* in the several schools under their control." And again, in section twenty: "Each township board of education shall have power to establish in their respective townships, such number of *graded schools* * * * as the public interest might require." And by the same section, they were authorized to establish schools of a *higher* grade than primary, which should be known as "central or high schools."

Section thirty-three gave to boards of education, in cities and villages, full power over the educational interests in their respective localities, in the establishment of graded and high schools, prescribing the studies and books, and making the necessary rules and regulations for the government of the schools.

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Polytechnic Schools.*

This act further made the radical change of abolishing the county school tax, and providing in its stead a State tax, to be levied on all the property of the State, for the maintenance of common schools in the State, to be distributed to the counties, not in proportion to the wealth or taxes paid in each county, but in proportion to the enumeration of youth of school ages in each county.

This act further provided, for the furtherance of knowledge and the cultivation of the people, that a tax should be levied on the property of the State to raise a fund with which to supply a library to every school district. It is generally understood that the Hon. Harvey Rice, a Senator from Cuyahoga County, was the author of this act. While the bill was under discussion, Mr. Rice, in a speech, after remarking about the inefficiency of the general school laws of Ohio prior to that time, said :

“Yet it cannot be doubted that the old system, with all its defects, has been productive of an influence highly salutary in forming and training the youthful mind, and in developing the true elements of our moral and political power. But the State has now outgrown the garments that were fitted to her early condition, and astonishing changes have taken place in respect to her wealth and population, as well as in respect to public sentiment. The banner of educational reform has been flung to the breeze, on which is inscribed the watchword of the age, ‘Onward, forever onward!’ Though not comprehended, perhaps, *yet the time has come when a great work is to be done*—when our legislation must be so directed as to aid the masses in their struggling efforts to rise up and assume the proud position in the scale of human existence which the God of Nature has designed. But, how is this to be accomplished? I answer, by making the means of education as free as the air and the sunlight. But this can be done only by a judicious reorganization of our school system, and by the

*Boards of Education; Powers of, to Establish High Schools,
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Polytechnic Schools.*

application of a sufficient fund to keep it in vigorous operation. *Money, sir, is the only motive power on which reliance can be placed.*"

And again in the same speech, Mr. Rice said:

"By the provisions of this bill, it is intended to make our common schools what they ought to be—the *colleges of the people*—cheap enough for the poorest, and good enough for the richest.' With but a slight increase of taxation, schools of different grades can be established and maintained in every township of the State, and the sons and daughters of our farmers and mechanics have an opportunity of acquiring a finished education, equally with the more favored of our land."

The spirit in which the common school law was enacted, characterized its early inauguration and enforcement. Hon. H. H. Barney, a zealous and able worker in the cause of education, was elected State commissioner of common schools; and under his supervision, with the assistance of the worthy men who had helped to bring about the advancement in education, the new system was thoroughly inaugurated; common schools were no longer intended to simply teach the common branches, they were made the "colleges of the people." Graded schools, high schools, *academies and colleges*, if you please, have been established all over the State, with curriculums including all branches of learning, both scientific and classical. Mr. Barney, in his first annual report, said, "In article six, section two of the constitution, it is expressly required 'that the General Assembly shall make provision, by taxation or otherwise, as, with the interest arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State.' This language is too plain to be misunderstood. *No feeble system or half way work will comply with this noble requisition.*"

Boards of Education; Powers of, to Establish High Schools, With Scientific and Classical Courses; and Normal and Polytechnic Schools.

The school law of 1873, prepared by Hon. T. W. Harvey, then State school commissioner, and as thorough and as able an educator as Ohio ever had, *took no step backward*. It was designed to make the common school system of Ohio still more "*thorough and efficient*."

It has long been a settled maxim in Ohio, founded on the wisest public policy, "that the property of the State should *educate* the children of the State." This does not mean that they should have the advantage of a free education in the common branches alone, but in whatever goes to constitute education.

The question of the extent of the powers of a board of education of a township, village, or city to provide for a course of studies, and books to be used in their respective schools, does not seem to have been brought directly under judicial review in Ohio. The nearest the question was ever touched was in the celebrated case of *Board of Education of Cincinnati vs. Minor, et al.*, 23 Ohio St., 211, involving the question of compelling the reading the Bible in school.

The syllabus of the case is:

1st. The constitution of the State does not enjoin or require religious instruction, or the reading of religious books in the public schools of the State.

2d. The legislature having placed the management of the public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be read.

This would seem to be a clear recognition and enunciation of the doctrine that boards of education were fully empowered, without constitutional, legislative, or judicial restriction, to determine and prescribe the extent and course of instruction in their respective schools. And I submit that this is the true construction to be given to the present school laws of Ohio.

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Polytechnic Schools.*

I am not unmindful of the fact that an enormous sum of money is expended every year in Ohio (and much of it probably wastefully), for the support of public education.

The auditor of state's report shows that the general levy on the grand duplicate of the State for 1877, was, for the State common school fund, \$1,573,663.28. For the same year the local levies for school and schoolhouse purposes was \$5,796,502.47. This makes a grand total of taxes paid by the people of Ohio for school purposes in the year 1877, of \$7,370,165.75, and to this must be added the interest on the irreducible school fund, amounting to \$250,000, and this at a time when there is such a depression of business and shrinkage values. With the local authorities lies almost wholly the remedy. But this is aside from the question under consideration. I am strengthened in the legal view I have taken of the construction to be given to the constitutional provisions, and the laws enacted thereunder, by proceedings had in the late constitutional convention of Ohio, which was composed of as able a body of men as ever sat in Ohio as a deliberative body.

On Thursday, March 19, 1874, a majority of the committee on education, to-wit: John D. Sears, Henry F. Page, Wm. P. Kerr and J. T. Carberry, made a report to the convention of an amendment to section two, article six, which reads as follows:

"The power of taxation conferred by this section shall be limited to a sum sufficient to educate all the children of the State in such common and necessary branches of learning as shall be prescribed by law." (See Debates, Vol. 2, part 2, page 2186.)

This was opposed in debate by Mr. Cook of Wood, Mr. Cunningham of Allen, Mr. Alexander of Van Wert, Mr. McCormick of ———, Mr. Townsend of Cuyahoga, Mr.

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Bishop of Hamilton (now Governor of Ohio), Mr. Dorsey of Miami, and who was also a member of the convention of 1850-1, and others.

The ground of this objection, mainly, was that the amendment proposed was a blow at our graded and high schools; that it was a step backwards. The amendment failed, and the provision allowed to stand as we now have it.

Normal or training schools have grown up and become a part of the system in Cincinnati, Cleveland, Dayton and Sandusky. Speaking for myself, I would say that I regard the training and fitting teachers for their profession as essential and necessary. In no other way can the common school system of Ohio be made so "*thorough and efficient.*"

In the United States there are one hundred and thirty-seven normal schools, seven being in Massachusetts, which are made part of her school system.

Prussia was the first nation to enforce the special training of teachers, and the excellence of her public school system is, without doubt, due to the fact that her schools are taught by those who have had a professional training. She now has one hundred and one normal schools; Switzerland has thirty-two. Ohio should have long since established schools, at the public expense, for this purpose. That it is entirely within the provision of the law, I have no doubt. Should a board of education determine that the public good demands it, I have no doubt but that under the law, it would have the power to establish (as has been done in Massachusetts) polytechnic schools or schools of technology—schools for teaching the various arts.

I conclude, therefore, after a full investigation of the question, that a board of education is authorized, by letter, true spirit, and meaning of the law enacted in obedience to the requirements of section two, article six, of the constitution, to establish such schools, with such grades, and with such courses of instruction in the various departments of

Attorney General Not Adviser.

education as, in its wisdom, the public good may seem to require.

Each board of education has the power, under the law, to determine for itself the minimum or maximum of the instruction it will furnish, limited only by the funds raised for school purposes, and at its command.

If these broad powers are abused, the remedy lies with the people and the General Assembly.

The importance of the questions considered is my apology for the length of this opinion.

Respectfully submitted,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 1, 1878.

David Boyce, Esq., East Liverpool, Ohio:

SIR:—I would with pleasure comply with the request contained in yours of the 30th ult., but think it would be wholly improper for me to express an opinion on the question until it comes before me officially.

Respectfully,
ISAIAH PILLARS,
Attorney General.

*Oils; Inspector of—Prosecuting Attorney Not Entitled to
a Per Cent. on Costs Collected by Sheriff.*

OILS; INSPECTOR OF.

State of Ohio,
Attorney General's Office,
Columbus, June 7, 1878.

Hon. F. W. Green, State Inspector of Oils, Cleveland, Ohio:

DEAR SIR:—Yours of the 5th instant came duly to hand, and has been carefully considered.

An inspector of oils under the statute of Ohio, passed May 15, 1878, like all other officers of the State can, of right, discharge the duties of his office only within the territorial limits of Ohio. But I do not hesitate to say, that should an inspector go outside of the State, and by the *consent of the manufacturer or dealer*, inspect oil to be used or sold in Ohio, that the inspection would be legal and valid under the statute referred to:

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY NOT ENTITLED TO A
PER CENT. ON COSTS COLLECTED BY
SHERIFF.

State of Ohio,
Attorney General's Office,
Columbus, June 7, 1878.

J. F. Gorvey, Esq., Prosecuting Attorney, Urbana, Ohio:

DEAR SIR:—Yours of the 5th instant came duly to hand and in answer I have to say, that a prosecuting attorney is not entitled to a percentum on costs paid to the sheriff

*County Commissioners Have No Power to Strike Property
for Taxation.*

by the State. They are not "costs collected of defendants."
(See 70 O. S., 67.)

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNTY COMMISSIONERS HAVE NO POWER TO
STRIKE PROPERTY FOR TAXATION.

State of Ohio,
Attorney General's Office,
Columbus, June 12, 1878.

*W. W. McKnight, Esq., Prosecuting Attorney, Brown
County, Georgetown, Ohio:*

DEAR SIR:—Yours of the 8th instant came duly to hand
and contents noted. The county commissioners have no
power in the premises. The county auditor, under the in-
structions from the auditor of state, has power to strike
property, not subject to taxation, from the duplicate.

The auditor should submit a statement of the facts to
the state auditor for instructions.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Prosecuting Attorney; Adviser—Prosecuting Attorney.

PROSECUTING ATTORNEY; ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 12, 1878.

Thos. J. McElhenie, Esq., Auditor of Wayne County, Wooster, Ohio:

SIR:—In answer to yours of the 8th instant, I have to say, that the prosecuting attorney is made by statute the legal adviser of the county commissioners; and to him your question should be referred. It would be improper for me to give advice in the matter unless he should request it. I presume the question can be answered by the prosecuting attorney.

Yours,

ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY.

State of Ohio,
Attorney General's Office,
Columbus, June 12, 1878.

John A. Price, Esq., Bellefontaine, Ohio:

DEAR SIR:—I regret I cannot give you an official opinion as requested in yours of the 10th instant. As you are aware, the statute makes the prosecuting attorney the legal adviser of the county commissioners, and I, as attorney general, have no authority for giving an opinion, and it would be improper for me to do so.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

Attorney General Not Adviser.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 13, 1878.

Col. I. N. Alexander, Van Wert, Ohio:

DEAR SIR:—Your communication of the 10th instant, with enclosures, came duly to hand, and contents carefully noted.

As you are aware, the attorney general is made by the statute the legal adviser of the governor, and various heads of departments and various public institutions and prosecuting attorneys. Beyond these my predecessors, who were Stanbery, Pugh and Wolcott, have held the attorney general was not authorized in giving official opinions.

You say in your letter "the object of taking my (your) opinion was to guard against proceedings in *quo warranto*."

One of the grounds for the writ is "when any association of persons shall act as a corporation within this State, without being legally incorporated." (S. & Cr., 1265.)

If the association avoids this provision, there will be no danger of proceedings in *quo warranto*.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

P. S.—Since writing the above, the superintendent of insurance, Mr. Wright, has called my attention to sections twenty-four and twenty-five of act of March 12, 1872 (69 Vol. O. L., 39), and he says he will insist upon the thorough enforcement of.

PILLARS.

Powers of the Board of Trustees of O. S. U.

POWERS OF THE BOARD OF TRUSTEES OF O.
S. U.

State of Ohio,
Attorney General's Office,
Columbus, June 13, 1878.

*T. Ewing Miller, Esq., Chairman Finance Committee of
Board of Trustees Ohio State University:*

SIR:—I have given very careful attention to the question of the power of the board of trustees of the Ohio State University, to accept the proposition of Mr. Hillgard and enter into the contract as required by said proposition.

I am clearly of the opinion that the board has no power to contract for the payment of the annuity as required by Mr. Hillgard's proposition.

1st. The general power of the board to contract gives it no such power.

2d. The eighth section of the act of 1870 (67 Vol. O. L., 21) which is in force provides that the "board shall not contract any debt not previously authorized by the General Assembly of the State of Ohio."

3d. The funds of the university cannot be diverted to the payment of an annuity.

The terms of Mr. Hillgard's proposition can be carried out only by future legislation.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

Ashtabula Railroad Disaster.

ASHTABULA RAILROAD DISASTER.

State of Ohio,
Attorney General's Office,
Columbus, June 14, 1878.

His Excellency, R. M. Bishop, Governor of Ohio:

SIR:—I have carefully examined the communication of the secretary of state of the United States of the date of the 6th instant, as also the letter of Sir Edward Thornton, with accompaniments to Hon. Wm. M. Evarts, secretary of state of the U. S., enclosed to you.

The State of Ohio is in honor bound to pay the claim of Mr. J. Tomlinson for expenses incurred and time occupied by him in attending the sitting of the coroner's jury impaneled to pass upon the Ashtabula railroad disaster.

The claim should have been discharged long since; and it is greatly to be regretted that the matter had not been brought to the attention of the General Assembly of Ohio before its adjournment, so that it might have made the necessary appropriation to have paid said claim. There are now no funds appropriated out of which it can be paid.

I know of no course to pursue, but to assure Mr. Tomlinson, through the secretary of State of the U. S., and the British minister, and the proper Canadian authorities, that upon the reassembling of the General Assembly of Ohio, in January next, the claim shall be brought to its attention and provision made for its payment.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Attorney General Not Adviser—Tax Tables to be Published.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 14, 1878.

Geo. K. Jenkins, Esq., Martins Ferry, Ohio:

SIR:—Yours of the 13th instant came duly to hand, and in answer have to say: That under the law, I am not authorized to give an official opinion upon the question submitted, unless it is referred to me by the auditor of state.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX TABLES TO BE PUBLISHED.

State of Ohio,
Attorney General's Office,
Columbus, June 14, 1878.

W. H. Clymer, Esq., Pub. and Ed. Van Wert Times, Van Wert, Ohio:

DEAR SIR:—On my return here I found yours of the 8th instant.

I have carefully examined the law, and am satisfied that both tables are required to be published.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DITCH.

State of Ohio,
Attorney General's Office,
Columbus, June 22, 1878.

George A. Detmer, Esq., Auditor of Van Wert County, Van Wert, Ohio:

DEAR SIR:—On my return here last evening I found yours of the 17th instant.

In answer to your inquiry I have to say, that I know of no other course to pursue, than to proceed and have the county ditch constructed, and whatever part of the expense the land (that is, the S. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Sec. 22, T. 1, R. 1), should bear, assessed upon it; and if not paid, of course it would be sold to pay the assessment.

From the facts submitted to me, I know of no other course to advise.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 22, 1878.

Col. Don Piatt, Mac-acheck, Ohio:

MY DEAR SIR:—On my arrival here last evening I found yours of the 18th instant.

The county commissioners had sought my opinion in the matter you write about; but the law, not making the

Prosecuting Attorney Not Entitled to a Commission on Money Paid By State for Costs—Sheep; Killing of.

attorney general their legal adviser I declined to give an opinion in the matter

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

PROSECUTING ATTORNEY NOT ENTITLED TO A COMMISSION ON MONEY PAID BY STATE FOR COSTS.

State of Ohio,
 Attorney General's Office,
 Columbus, June 22, 1878.

J. H. Mitchell, Esq., New Philadelphia, Ohio:

DEAR SIR:—In answer to yours of the 10th instant, I have to say, that prosecuting attorneys are not entitled to a commission on money paid by the State for costs. Their right to percentage extends only to money made from defendants.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

SHEEP; KILLING OF.

State of Ohio,
 Attorney General's Office,
 Columbus, June 24, 1878.

D. Brown, Esq., Prosecuting Attorney Carroll County, Carrollton, Ohio:

DEAR SIR:—Yours of the 21st instant, asking my con-

Sheep; Killing of.

struction of section eight of the act of May 5, 1877 (74 Vol. O. L., 178) came duly to hand, and has been carefully considered.

This section, like much other legislation, is not drawn with very great clearness.

The literal reading of the section would require, that any person who may be damaged by the killing or injuring of sheep may present a detailed account of the injury done with the damages claimed therefor, to the commissioner, and *shall make it appear to the satisfaction of said commissioners that he was damaged to the extent claimed by the "parol testimony of at least two other persons being freeholders of the neighborhood."*

1st. That said claim is just and reasonable.

2d. That said injury was not caused in whole or in part, by any dog kept or harbored by the owner of said sheep, etc.

3d. That the owner does not know whose dog or dogs committed such injury.

Now, I take it, that it would be utterly impossible to prove by anybody's testimony, except that of the owner of the sheep killed or injured, that the injury was not caused, in whole or in part, by his own dogs, and that he *does not* know whose dogs did it. These are matters peculiarly within his own knowledge.

I would, therefore, say to the commissioners, that the testimony of the two freeholders referred to in the section could relate only to the justice and reasonableness of the claim and that in case the owner of dogs is unknown, that the amount could not be collected of him on execution if such was the fact. This is as far as their testimony could go.

The whole matter is left to the judgment of the commissioners under the proofs before them.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Beach Resolution—Attorney General Not Legal Adviser.

BEACH RESOLUTION.

State of Ohio,
Attorney General's Office,
Columbus, June 25, 1878.

Hon. James Williams, Auditor of State:

SIR:—My attention has been called to the allowance to Mr. Beach, sergeant-at-arms, under the statute (S. & S., Sec. 4, p. 697) and to which you called my attention in your letter of the 25th ult.

The resolution of the House of May 11 (and which you quote in your letter) providing for the payment of fifty dollars to Mr. Beach. I have no doubt was intended to cover the same services as that referred to in the statute.

Speaker Neal, however, in a letter to me of the 31st ult. (a copy of which I herewith enclose you) says that the amount of fifty dollars (\$50.00) thus allowed Mr. Beach by resolution was in *addition* to what he would be entitled to under the statute.

If this be so, then you would be justified in making Mr. Beach such allowance under the statute as you think would be right.

Respectfully,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 25, 1878.

T. B. Holland, Esq., Paulding, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand.

It certainly would be improper for me to give an opinion in the matter unless the prosecuting attorney would request

Contract of Gas; Power of City to Enter Into.

it. I presume the prosecuting attorney and commissioners have no question about the law in the premises; and you can readily see it would not do for me to give an opinion unless requested by them.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

CONTRACT OF GAS; POWER OF CITY TO ENTER
 INTO.

State of Ohio,
 Attorney General's Office,
 Columbus, June 27, 1878.

W. T. Forgey, Esq., Irouton, Ohio:

SIR:—Yours of yesterday came duly to hand.

The question you submit, as to the power of city council to enter into a contract for a term of years for the supply of gas, is not without difficulty and uncertainty. It has been a serious question throughout the State. City councils are authorized by general statute to enter into such contract; but what is known as the Burns law (73 Vol. O. L., 126) expressly provides "that no contract, agreement or other obligation, involving the expenditure of money shall be entered into, nor shall any ordinance, etc., be passed for the expenditure of money unless the money to be expended is in the city or village treasury."

This would seem to be mandatory and extend to all kinds of contract for the expenditure of money.

The interpretation, however, it has generally received at least in its practical application has been to confine it to contracts for the immediate expenditure of money; that is, all such contracts are absolutely prohibited unless the money

Liquor Law; Who to Give Notice to Township Clerk.

is on hand. Many contracts have recently been made for gas for a term of years by councils.

The Burns law should be amended so as to leave no doubt about the legality of these contracts.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

LIQUOR LAW; WHO TO GIVE NOTICE TO TOWNSHIP CLERK.

State of Ohio,
Attorney General's Office,
Columbus, June 29, 1878.

Henry Bruch, Esq., Clerk of German Township, Fulton County:

DEAR SIR:—In answer to yours of the 27th instant, I have to say, that no one, but the husband, wife, child, parent, guardian, or other interested person *liable to be injured and who can have a right of action* by reason of the sale of intoxicating liquors have the right to give notice to the clerk in pursuance of the act of February 18, 1875.

A son-in-law is not included in the list of persons, who can place the name of his father-in-law on the township book of said township, and if the name is so placed there without authority, the clerk has the right to strike it off.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Criminal Cases; Permission to Take Evidence.

CRIMINAL CASES; PERMISSION TO TAKE EVIDENCE.

State of Ohio,
Attorney General's Office,
Columbus, June 9, 1878.

*Clark Irvine, Esq., Prosecuting Attorney Knox County, Mt.
Vernon, Ohio:*

DEAR SIR:—Yours of yesterday was duly received, and the question therein stated carefully considered.

The provisions of Secs. 27 and 28, Chap. 6, Criminal Code, in my opinion was intended to adopt the same practices in criminal cases as provides in civil action for taking testimony by commissioners. Unless the parties otherwise agree, the interrogatories on both sides should be prepared and annexed to the commission, and then the examination would have to be confined to said interrogatories.

The attorneys on both sides of course are entitled to be present, and conduct the examination as I have above indicated; both parties may by agreement waive the written interrogatories.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

County Surveyor's Mileage to.

COUNTY SURVEYOR'S MILEAGE TO.

State of Ohio,
Attorney General's Office,
Columbus, July 7, 1878.

*Byron Stilwell, Esq., Prosecuting Attorney Ashland County,
Ashland, Ohio:*

SIR:—Yours of the 2d instant I found upon my return here yesterday, and after carefully considering the question therein stated, I am of the opinion, that a proper construction of the statute (Sec. 2, p. 747, S. S.) gives the county surveyor mileage, whether employed by the day or otherwise.

The provision in the statute is "mileage going and returning, 10 cents per mile, and the chain carrier's and marker's fees shall be paid by the person at whose request the survey is made." Now, whether the surveyors be employed by the day or otherwise, "the chain carrier's and marker's fees must be paid by the person at whose request the survey is made;" and so, in the same clause, it is provided that *mileage* must be paid by the person at whose request the survey is made, without reference to the *manner* in which the surveyor is employed; that is, whether he be employed by the day or otherwise.

Respectfully,
ISAIAH PILLARS,
Attorney General.

Fees of Attorney for Commissioners—Criminal Cases; Fees in.

FEEES OF ATTORNEY FOR COMMISSIONER.

State of Ohio,
Attorney General's Office,
Columbus, July 9, 1878.

John R. Stonesipher, Esq., Prosecuting Attorney Muskingum County, Zanesville, Ohio:

DEAR SIR:—On my return here today I found yours of the 5th instant, and in answer I have to say, that in my opinion, the fees of attorneys for services in defending the commissioners against the indictments found against them, must be paid by them *individually*. They were indicted as *individuals* for misconduct in office.

They were not indicted as commissioners, but as *private citizens* for an offense charged to be committed by wrongful exercise of power not conferred by law, while county commissioners.

Their defense was purely private, and there is no law by which they can pay their attorney's fees out of the public funds. It was their misfortune to be indicted and with which the *county* has nothing to do.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CRIMINAL CASES; FEES IN.

State of Ohio,
Attorney General's Office,
Columbus, July 8, 1878.

Robert A. Scott, Esq., Prosecuting Attorney Williams County, Bryan, Ohio:

SIR:—Yours of the 5th instant asking my constructions in several respects, of the act passed March 16, 1878, entitled

Criminal Cases; Fees in.

an "act to regulate the payment of certain costs in criminal cases" (75 O. L., 50) was duly received.

After a careful consideration of the above entitled act, I submit the following, which in my opinion, is the correct construction to be given to said act:

1st. That the fees of justices of the peace, police judges or justices, mayors, marshals, constables and witnesses shall be paid out of the county treasury, in all prosecutions for felony (which by Sec. 2, Chapter 1, of the crimes act is any offense punishable by death, or imprisonment in the penitentiary) in which a conviction is had and shall be inserted in the judgment and cost bill "so that," in the language of the statute, "except in capital cases, the same may be paid to the county, out of the State treasury." Sec. 1.

2d. In prosecution for felony wherein the State fails *at any step in the prosecution*, the fees of witnesses before justice of the peace, mayor or police judge or justice, shall, on the certificate of either of said officer before whom the case may have come, be paid, on allowance of the county commissioners, out of the county treasury. Sec. 3.

3d. The county commissioners may (shall) at any regular session, make an allowance to justices of the peace, mayors, police judges, or justices, constables and marshals in lieu of fees in cases for felony wherein the State fails at any step in the prosecution; and in case for misdemeanor wherein there has been a conviction; but wherein the defendant proves insolvent, and from whom the costs cannot be made; provided the total amount allowed to any such officer in all such cases shall not in any one year, exceed the fees legally taxed to him; nor in any event shall the total amount allowed to any such officer, in any one year exceed one hundred dollars. (Sec. 4.)

4th. That should it appear to the commissioners in ascertaining the amount of fees taxed, so as to make the allowance aforesaid in lieu of fees to justices of the peace, mayors and police judges or justices, that either of said officers beyond whom a case was commenced was negligent

Compensation; Clerks of Senate.

in not taking security for costs, in taking insufficient security, in such case as the law authorizes the security for costs to be taken, in such cases no allowance shall be made, in lieu of fees; and it is the duty of the officer to prove, in the first instance that he was not so negligent.

5th. County commissioners may allow and pay from the county treasury any necessary expense by any officer in the pursuit of any person charged with a felony, who has fled the county whether he be captured or not.

6th. No fees, under any circumstances, can be paid out of the county treasury in proceedings to keep the peace.

7th. In no case whatever except as above provided, shall any costs be paid out of the State or county treasury to any justice of the peace, police judge or justice, mayor, marshal or constable. (Sec. 3.)

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

COMPENSATION; CLERKS OF SENATE.

State of Ohio,
Attorney General's Office,
Columbus, July 12, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—Your communication of the 26th ult., with accompanying papers, in relation to the constitutionality of the resolution of the Senate of Ohio of the date of May, 1877, providing for pay for "twenty days extra services" of Howard E. Gilkey, C. C. Bankes, W. S. Thomas, J. H. Lantz and W. M. Ease, assistant clerks of said Senate, and of the resolution of the Senate of the date of May, 1877, have been most carefully considered.

Compensation; Clerks of Senate.

The resolution for pay of the assistant clerks reads as follows:

Resolved, That the assistant clerks of the Senate be allowed the per diem of twenty days for extra services performed during the session of this General Assembly."

The provision of the constitution it was supposed this resolution was in contravention with, reads as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the services shall have been rendered, or the contract entered into." (Sec. 29, Art. 2.)

The language and purposes of the provision is clear. It was intended to and does provide against "*extra compensation*" for services which have already been compensated for.

The language of the resolution of the Senate is, that the assistant clerks "be allowed the per diem of twenty days for *extra services* performed."

Clearly this was providing for compensation for services which had not been compensated or paid for. It was not "extra compensataion," but was providing for the payment for "extra services." The resolution was not, therefore, in violation of section twenty-nine, article two, of the constitution.

The foregoing is the construction given by the Supreme Court to a resolution of the House of Representatives, similar to the one under consideration, in the case of Frederick Blankner against the auditor of state, for writ of mandamus.

I have no doubt, but that the auditor of state, in proceedings in mandamus, instituted by the parties named as assistant clerk, would be compelled to issue warrants in favor of said parties, in conformity with said resolution.

The resolution of the Senate, however, in relation to the pay of the 1st and 2d assistant sergent-at-arms is somewhat different.

Assignees Must Return for Taxation.

The language of the resolution is for "extra and faithful services."

So far as paying for "faithful" services is concerned, it most certainly would be in the nature of "extra compensation." I cannot advise the issuing warrants under this resolution; but for the pay to the clerks, I can see no objection in law, however much against public policy these kind of allowances may be.

With the legislature lies the remedy.

Respectfully,

ISAIAH PILLARS,

Attorney General.

ASSIGNEES MUST RETURN FOR TAXATION.

State of Ohio,

Attorney General's Office,

Columbus, July 9, 1878.

Hon. James Williams, Auditor of State:

SIR:—The question submitted in yours of the 1st instant, to-wit: whether an assignee is required, under the law, to list the property in his hands as such assignee has, in connection with a brief on the subject submitted by Jefferson Palm, Esq., fully considered.

1st. All property, whether real or personal, in this State, except such as is specifically exempt, "shall be entered on the list of taxable property, for that purpose in the manner prescribed" by statute. (Vide Sec. 1, Tax Law.) No order or decision of any Federal Court or State Court can change this broad provision of the statute of Ohio, and which is strictly in obedience to the constitution of Ohio, by directing or holding that taxable property in the hands of an assignee either under the bankrupt laws of the U. S., or the insolvent laws of Ohio, need not be listed by such

Replevin; Jurisdiction Before.

assignee for taxation. And if any decision of that kind has been made by any Federal Court, I do not hesitate to say, it should be disregarded. The Federal Court should be taught that there are some limits beyond which they cannot go in trampling upon the rights of the States.

2d. Section four of the tax law, is, in my judgment, broad enough to include every owner or holder of property, in whatever capacity, and compel him to list whatever property of whatever description may be in his hands or under his control, *in whatever capacity* he may so have it or control it.

The law, in relation to the matter, does not deal in technicalities.

Whatever taxable property is found in the State, it should go upon the duplicate for taxation. With the greatest vigilance that can be used, enormous sums go untaxed every year in Ohio.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

REPLEVIN; JURISDICTION BEFORE.

State of Ohio,
Attorney General's Office,
Columbus, July 20, 1878.

Fred A. Johnson, Esq., Justice of Peace, Cincinnati Township, Cincinnati, Ohio:

SIR:—On my return to Columbus, I found yours of the 17th instant.

As you are undoubtedly aware, the attorney general is not made the legal adviser of justices; but, notwithstanding, in answer to your question, I will say, that a person

Jury Before Justice.

being a resident of the county in which the suit in replevin is commenced, *must be sued in the township in which he resides.* Suit must be commenced in that township.

Of course, the constable can go any place in the county to take the property described in the writ of replevin.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

JURY BEFORE JUSTICE.

State of Ohio,
Attorney General's Office,
Columbus, July 26, 1878.

B. Savage, Justice of Peace, Paulding, Ohio:

DEAR SIR:—On my return here this morning I found yours of the 23d instant, and in answer thereto have to say, that there is no statute allowing justices of the peace to empanel a jury in criminal cases.

In misdemeanors, if the defendant pleads guilty, the justice may fine or imprison as the statute may allow. If the defendant does not plead guilty, all the justice can do is upon examination, to bind over, or discharge.

There are some very minor offenses that the justice has final jurisdiction in—such as profane swearing, etc.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

State Inspector of Oils; Powers of.

STATE INSPECTOR OF OILS; POWERS OF.

State of Ohio,
Attorney General's Office,
Columbus, July 26, 1878.

Hon. F. W. Green, State Inspector of Oils, Cleveland, Ohio:

SIR:—Yours of the 24th instant came duly to hand.

The question you submit is "has an inspector or department inspector the right to enter a store in which oils are sold or offered for sale, and demand that the oils on hand be inspected by him, or must he only act when called upon for that purpose?"

I have given the question very careful consideration and have to say, in section two of the act of May 15, 1878, providing for the inspection of illuminating oils, it is provided for the appointment of a State inspector of oils and deputy inspectors whose duty it is "to provide themselves, at their own expense, with the necessary instruments, * * * for testing and marking the quality of said illuminating oils, and when called on for that purpose to promptly inspect, etc., etc."

Said second section further provides:

*"Such State inspector or his deputies are hereby required, and it is made their duty, to test the quality of all mineral or petroleum oils * * * * which is offered or intended to be offered for sale for all illuminating purposes in this State."*

It is the duty of the inspector or deputies, then, under this section:

1st. To "promptly inspect" oils when called on for that purpose.

2d. To inspect the quality of all oils which is offered or intended to be offered for sale for illuminating purposes in Ohio, *whether he is called upon so to do, or not.* And for this purpose the inspector or deputy inspector has the

Auditor of County; Fees of.

right to enter a store or any place where said oils may be kept and discharge his duty under the statute. Any one interfering with any inspector in thus discharging his duty, would be guilty of the crime of resisting an officer, and would be liable to prosecution accordingly.

Any other interpretation of the statute would render it nugatory.

Respectfully yours,
 ISAAH PILLARS,
 Attorney General.

AUDITOR OF COUNTY; FEES OF.

State of Ohio,
 Attorney General's Office,
 Columbus, July 27, 1878.

*A. H. Wilson, Esq., Prosecuting Attorney Hocking County,
 Logan, Ohio:*

DEAR SIR:—In answer to yours of yesterday I have to say, that there is no statutory provisions for extra pay to county auditors in addition to their general compensation, for services performed under the law taxing dogs. It must be regarded, therefore, as covered by the general compensation to auditors.

It cannot be taken from the fund arising from the tax on dogs.

Respectfully yours,
 ISAAH PILLARS,
 Attorney General.

*Duty of Superintendent Reform School—Attorney General
Legal Adviser of Certain Officers.*

DUTY OF SUPERINTENDENT REFORM SCHOOL.
SCHOOL.

State of Ohio,
Attorney General's Office,
Columbus, August 7, 1878.

A. S. Frager, Esq., Auditor of Greene County, Xenia, Ohio:

DEAR SIR:—Yours of the 8th instant came duly to hand, and in answer I have to say that "the proper officer of the institution" referred to in Sec. 14, pages 62-75, O. L., undoubtedly means the superintendent of the reform school for boys; and the certificate thereto of said officer, to give it any reasonable and useful construction, would mean the certificate of the superintendent that the youth named in the case and writ, had been delivered by the sheriff to him. It cannot mean, that the superintendent shall certify the costs are correct, for he can know nothing about them.

Through *bungling* which is not uncommon in legislation, the section is silent as to what should be in the certificate. But I would give it the construction above indicated.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

ATTORNEY GENERAL LEGAL ADVISER OF CER-
TAIN OFFICERS.

State of Ohio,
Attorney General's Office,
Columbus, August 8, 1878.

Wm. B. Warren, Esq., Sylvania, Ohio:

SIR:—Your letter of the 6th instant in relation to the

*Conviction—or—Justice Peace; Examination of a Party
Before; Making Appear Before Court is Not Conviction.*

rights of orphans in the S. & S. Orphan's Home, came to hand.

The statutes makes the attorney general the legal adviser of certain officers and public institutions and does not authorize him to give advice to private parties.

Respectfully,

ISAIAH PILLARS,

Attorney General.

CONVICTION—OR—JUSTICE PEACE; EXAMINATION OF A PARTY BEFORE; MAKING APPEAR BEFORE COURT IS NOT CONVICTION.

State of Ohio,
Attorney General's Office,
Columbus, August 8, 1878.

Albert Douglass, Jr., Esq., Prosecuting Attorney, Chillicothe, Ohio:

DEAR SIR:—Yours of the 6th came duly to hand.

An examination of a party before a justice of peace and requiring the party to answer to the offense in the Probate Court or Common Pleas, is not a *conviction*.

A conviction can only be had after a *trial* of the case. A preliminary examination is not a trial.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*People's Mutual Benefit Association—Fines to Be Paid Into
County Treasury.*

PEOPLE'S MUTUAL BENEFIT ASSOCIATION.

State of Ohio,
Attorney General's Office,
Columbus, August 8, 1878.

Messrs. Lynch, Day & Lynch, Canton, Ohio:

GENTS:—Yours of the 2d instant I found on my return here this morning.

I have given no official opinion concerning the "People's Mutual Benefit Association," or the manner in which they do their business.

I had some general conversation (the substance of which I do not now remember) with a party who called into my office, in relation to the manner in which said association was doing business.

Whatever I may have said was entirely unofficial, and merely a passing remark.

I certainly would not undertake to give an official opinion in regard to the matter unless it was brought before me in a proper way.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

FINES TO BE PAID INTO COUNTY TREASURY.

State of Ohio,
Attorney General's Office,
Columbus, August 8, 1878.

David Francis, Esq., Mayor of Arcanum, Ohio:

SIR:—On my return here this morning I found yours of the 30th ult., and in answer thereto I have to say:

Attorney General Not Legal Adviser.

1st. Under Section 9, Chapter 1, Criminal Code, 74 O. L., 242, all fines shall within twenty days (20) after their receipt be paid into the county treasury.

2d. A warrant need not be issued for a prisoner who has been arrested by the official "on view."

Where, however, he is committed to jail to await an examination, or be held over to answer to the proper court, without bail, a *mittimus* must issue.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, August 8, 1878.

Hon. C. C. Washburn, Minneapolis, Minn.:

DEAR SIR:—On my return here today, I found yours of the 28th instant, in relation to the fraudulent action as claimed, of Cooper Insurance Company, of Dayton, Ohio.

It is a matter not falling within my official duties, and, therefore, I can take no action.

If the erasure and change you speak of amounts to a forgery (about which I have some doubt), the facts should be laid before the prosecuting attorney of Montgomery County, and the proper parties indicted.

I recommend that you submit the facts to that official.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Fees in Inquests of Lunacy.

FEES IN INQUESTS OF LUNACY.

State of Ohio,
Attorney General's Office,
Columbus, August 9, 1878.

Judge J. H. Gordon, P. J., Putnam County, Ottawa, Ohio:

DEAR SIR:—Your inquiry of yesterday in relation to the payment of costs in proceeding in lunacy under Sec. 20, and following Secs. S. & Cr. 843 when the application fails and the party discharged, came duly to hand, and has been carefully considered.

I find no special legislation on the subject. Sec. 40, S. & Cr. 84-7, provides for the payment of "taxable costs and expenses" under the provision of the act, out of the county treasury.

But this, in my opinion, would only be in such cases as the court holds the party to be a lunatic, and commits them to the asylum.

Were I probate judge, I should tax the costs and render judgment therefor, against the party making the affidavit and instituting the proceedings, in all cases when the proceedings fail.

I am of the opinion the courts above would sustain such judgment, on the general principle that the court has power to finally dispose of whatever matters the statute gives it jurisdiction of.

Respectfully yours,
ISAJAH PILLARS,
Attorney General.

Coroners; Powers and Duties of, in Holding Inquests.

CORONERS; POWERS AND DUTIES OF, IN HOLDING INQUESTS.

State of Ohio,
Attorney General's Office,
Columbus, August 13, 1878.

Hon. James Williams, Auditor of State:

SIR:—Yours of the 2d instant, enclosing the letter of J. T. Irvine, Esq., auditor of Muskingum County, of the 30th ult., in relation to the powers and duties of coroners in holding inquests, and also calling attention to the abuses which are sometimes practiced by coroners in unnecessarily holding inquests, has been carefully considered by me.

The powers and duties of coroners in holding inquests upon the bodies of dead persons, one would suppose, at this time, would be well understood; but that there are many inquests held, unnecessarily, and without any valid authority of law, I have no doubt.

The coroner is one of the ancient officers of the common law, and was originally an office of great dignity, and only filled by the nobility of England, who served without compensation.

The first statute defining the duties and powers of coroners was passed by Parliament in the fourth year of the reign of Edward I (1278). It was then made the duty of the coroner, with the assistance of a jury, to hold an inquest upon the body "when any person was slain, died suddenly, or in prison, concerning the manner of his death." And it was further made the duty of the coroner that if the investigation looked to the guilt of any person in causing the death, he should arrest and commit to prison for further trial. Thus the coroner's inquest answered the purpose of our examining courts. And such, I believe, has substantially remained the law of England until this time. While the office of coroner has always been known to the laws of the various States of the Union, yet his powers and duties have been much more limited than in England.

Coroners; Powers and Duties of, in Holding Inquests.

Even the ancient and useless coroner's jury was maintained up to the 15th of May last, when it was abolished.

The powers and duties of a coroner in Ohio as to the holding of inquests are clearly and well defined by statute. The act passed by the General Assembly May 15, 1878 (75 O. L., 570), provides:

"That whenever information shall be given to any coroner that the body of any person whose death is supposed to have been caused by violence, has been *found* within his county, he shall appear forthwith at the place where such body shall be * * * * and proceed to inquire how the deceased came to his death."

This is but the language of the oldest statute in Ohio on the subject, and points out precisely under what circumstances it is made the duty of a coroner, or when he is invested with the authority to hold an inquest. The investigation, unlike that under the English law, is not a criminal proceeding. It may develop facts which may result in a criminal proceeding.

The inquest is held solely to ascertain whether the death of the person whose body had been *found*, and the cause and manner of whose death is unknown, but is reasonably supposed to have been produced by violence, *was in fact produced by violence, and if so, by whom.*

If upon the examination the statute provides,

"The coroner shall find that the deceased came to his death by force or violence, and by any person or persons, it shall be the duty of the coroner to arrest such person or persons, and convey him or them immediately before a proper officer for examination according to law; and if said persons, or any of them, shall not be present, it shall be the duty of the coroner forthwith to inform one or more justices of the peace and the prosecuting attorney, of the facts so found, in order that the person may be dealt with according to law."

Coroner; Powers and Duties of, in Holding Inquests.

A coroner is authorized by law to hold an inquest *only when he has credible information that the dead body of a person has been found within his county, supposed to have come to his or her death by violence.* This is the language of the statute.

The body must have been *found* in a well-defined, established and every-day use of the term.

If a person came to his or her death in the presence of others easily accessible, and the casualty, or criminal violence at the hands of another, in all such cases, neither the spirit nor the letter of the statute contemplates nor authorizes an inquest to be had upon the body. The dead body is not "*found.*" The *cause* and *manner* of the death is known.

If it is by criminal violence, it is the duty of the proper officers to arrest the guilty party at once, and prosecute him. In such cases, the coroner's inquest can accomplish nothing that can be done in the preliminary examination had before a justice of the peace or police judge.

I am well aware that a practice has grown up all over the State and especially in the large cities, of holding an inquest in almost every case of violent or sudden death, let it occur however openly and in public view it may. *Inquests* in such cases are not authorized by law, and the practice should cease. They are not only unauthorized, but accomplish no possible good; are often improper intrusions and outrageous on the feelings of the family and friends of the deceased, especially where a *post mortem* examination is had; and then large and unnecessary costs are made to be paid out of the public funds.

It is only, I repeat, where the dead body is found, supposed to have been caused by violence, but the manner of the death unknown, that the statute authorizes an inquest to be held.

Should a coroner go beyond his power, and hold an inquest not authorized by law, I am of the opinion, there is no mode by which he could enforce payment of fees to him for such service.

Council; Member of.

Should a county auditor be clearly satisfied that an inquest had been held in his county not authorized by law, he would be justified, in fact it would be his duty, to withhold payment of fees to the coroner for such services.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

COUNCIL; MEMBER OF.

State of Ohio,
Attorney General's Office,
Columbus, August 15, 1878.

G. G. Banker, Esq., City Solicitor, Delaware, Ohio:

DEAR SIR:—On my return to Columbus last evening, I found yours of the 10th instant.

I examined Sec. 29, Chap. 2, Municipal Code (75 O. L., 196) before I gave my opinion to the mayor, and since receiving your letter I have again given it careful thought, and I can see nothing to cause me to change my views.

It seems to me clear, that the "services" referred to in section twenty-nine, is some kind of *official* service.

True, the general policy of the law is, that a member of council is forbidden to enter into a contract with the city. But this certainly does not mean that a man who happens to be a member of the council, cannot be employed by the street commissioner, or any one else authorized to employ labor for the city as a common laborer.

It seems to me that this is the true construction to be given to this section.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

*Trustees of Benevolent Institutions; How Chosen—Auditor
of County Election to Fill Vacancy.*

TRUSTEES OF BENEVOLENT INSTITUTIONS;
HOW CHOSEN.

State of Ohio,
Attorney General's Office,
Columbus, August 20, 1878.

Frank Moore, Esq., Mt. Vernon, Ohio:

DEAR SIR:—Yours of the 14th instant I found on my return to Columbus this morning. Section two of the act (69 O. L., 83) I think clearly answers the question you ask. It provides "That the trustees and officers thereof shall be chosen in such manner and for such time as may be provided in the rules and regulations of such association."

The rules and regulations must determine the time for which a trustee shall hold his office.

Respectfully,

ISAIAH PILLARS,
Attorney General.

AUDITOR OF COUNTY ELECTION TO FILL VA-
CANCY.

State of Ohio,
Attorney General's Office,
Columbus, August 21, 1878.

Joseph G. Huffman, Esq., New Lexington, Ohio:

DEAR SIR:—Your inquiry of the 12th instant in relation to the election to fill the vacancy in the office of auditor of your county (Perry) has been carefully considered.

The statute does not provide that the election in such

County Treasurer; Mileage of.

cases shall be for the unexpired term. Hence, it must be for the full term.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

COUNTY TREASURER; MILEAGE OF.

State of Ohio,
Attorney General's Office,
Columbus, August 19, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—In answer to your inquiry of the 17th instant, I have to say, that in my opinion, a county treasurer is not entitled to the allowance of eight per cent. per mile for "traveling fees" as provided for in Sec. XXIV. S. & Cr., 1587, where he does not either by himself or deputy go to and return from the seat of government in making his settlement.

The travel must be actual, not constructive.

This is the ruling in all analogous cases.

Yours,

ISAAH PILLARS,
Attorney General.

Municipal Corporation's Power to Regulate Saloons.

MUNICIPAL CORPORATION'S POWER TO REGULATE SALOONS.

State of Ohio,
Attorney General's Office,
Columbus, August 21, 1878.

Hon. Ross J. Alexander, Bridgeport, Ohio:

DEAR SIR:—I have carefully considered the question of the validity of the ordinance copied in your letter of the 7th instant.

In paragraph five of section one hundred and ninety-nine of the municipal code of 1869, power was given to all cities and incorporated villages, "to regulate, restrain and prohibit, ale, beer and porter houses, and shops; and houses and places of notorious and habitual resort for tippling and intemperance." Under this provision, the village of McConnellsville passed an ordinance *prohibiting* the keeping of ale, beer or porter houses.

The Supreme Court in the case of *Burchholder vs Village of McConnellsville*, 20 O. St., 308, held the ordinance to be *valid*; and received and distinguished the cases of the city of *Canton vs. Nist*, 9 O. St., 349 and *Thompson vs. City of Mt. Vernon* from the *McConnellsville* case.

The provision in the code of 1869 was modified in 1875 (72 O. L., 107) so that it read, shall have power "to regulate ale, beer and porter houses or shops." This also is the precise language of the new municipal code.

That a municipal corporation had the power at the time of passage of the ordinance (August 14, 1876) to *regulate* ale, beer and porter houses or shops there can be no doubt.

The question then presented is, does the ordinance in question attempt to regulate ale, beer and porter houses and shops? I am of the decided opinion that in the true sense of the term, it does so attempt to regulate such houses; and

County Treasury; Vacancy in

there, in my judgment, the ordinance is valid, and I think the Supreme Court would so hold.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNTY TREASURY; VACANCY IN.

State of Ohio,
Attorney General's Office,
Columbus, August 29, 1878.

Fred Young, Esq., Treasurer of Paulding County, Paulding, Ohio:

SIR:—Yours of the 27th instant came duly to hand. I have given most careful attention to the question as to whether a vacancy will exist in the office of treasurer of your county after the first Monday in September by reason of the failure to elect your successor at the general election last October. In my judgment the law is as follows:

First—If you are now serving for the first term as county treasurer, that is, if you were first elected at the October election, 1875, then you will continue to be the treasurer, and entitled to hold the same *after the first Monday in September next and until your successor is elected and qualified*. The failure to elect your successor at the election in October last does not create a vacancy in said case.

Second—If you are now serving upon your *second* term as treasurer, *then there will be a vacancy in the office* after the first Monday in September, if no successor was elected last October.

This follows from the provision of section 3, article 10, of the Constitution, which is that no person shall be eligible

*Prosecuting Attorney; Fees of—Ohio State University;
Liability of Prof. Colvin.*

to the office of sheriff or county treasurer *for more than four years* in any period of six years.

Thus under the Constitution you cannot serve longer than four years, whether there is a successor elected or not.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

PROSECUTING ATTORNEY; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, August 29, 1878.

T. J. Gilmore, Esq., Prosecuting Attorney Warren, Ohio:

DEAR SIR:—In answer to yours of the 22d inst., I have to say, that it is the *Federal Census* of 1870 which must control.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

OHIO STATE UNIVERSITY; LIABILITY OF PROF.
COLVIN.

State of Ohio,
Attorney General's Office,
Columbus, August 30, 1878.

*Messrs. J. H. Anderson and T. Ewing Miller, Executive
Committee of Board of Trustees Ohio University:*

GENTLEMEN:—I have given very careful and impartial consideration to the question submitted to me on the 16th inst. in relation to the claim of Prof. Wm. Colvin for ser-

Ohio State University; Liability of Prof. Colvin.

vices as professor in the Ohio State University for the past college year.

Soon after the submission of the question to me, the Hon. George Hoadly submitted a written argument in behalf of the claim of Prof. Colvin. To this argument, which presented fully and ably the case of Prof. Colvin, I gave careful attention.

In your paper submitting the case to me you say: "The engagement of a professor is only *by the year*, and terminates at the end of the year, unless the parties by mutual consent continue it." Again you say: "It has always been the custom of the board of trustees to take a vote each year on the renewal of the engagement with professors."

Upon this statement of facts, there can be no question as to the law of the matter.

Prof. Colvin's engagements as professor of political economy and civil polity being only from year to year, terminated at the end of the college year in 1877, unless some action was taken by the board of trustees which amounted to a re-engagement, but the very opposite was indicated by the action of the board.

On January 8, 1875, the board of trustees created the chair of political economy and civil polity and engaged Prof. Colvin to fill the same at a salary of \$2,500 per annum. (See Fifth Annual Report of Board of Trustees, page 16.)

This chair Prof. Colvin continued to fill, from year to year under re-engagements (if your statement of facts be correct), until the close of the college year in 1877. On June 20, 1877, the board of trustees by a vote of 9 to 4 (11 being a quorum to do business), passed the following resolution: "Resolved, That the curriculum be changed by striking therefrom the Department of Political Economy and Civil Polity and substituting therefor the Department of Mines and Mine Engineering and Metallurgy." (See page 100, Seventh Annual Report.)

The action of the board had the clear power to take and by a majority vote at a meeting of a quorum.

Ohio State University; Liability of Prof. Colvin.

By the last clause of Sec. 5, act of April 20, 1877 (74 O. L., 102), which act is now repealed, that, "it shall require a majority of all the board to elect or remove a president or a professor." The action of the board, referred to, was not the removal of a president or professor; it was the abolition of the chair. Let the chair have been abolished whatever time in the year it might have been, the professor would have remained and been entitled to his salary *for the remainder* of the year, unless removed by a majority of all the board.

The action of the board was not only *valid* for the purpose intended; but was also notice to Prof. Colvin, that unless re-engaged in some other department, his services were no longer needed or wanted.

Again on the same day, to-wit: June 20, 1877, the board took the following action: "Resolved, That Mr. William Colvin, who has heretofore been professor of political economy and civil polity, a chair now abolished, is entitled to pay for the college year just ended." (See p. 103 Annual Report for 1876-7.)

No opposing votes to this resolution, or opposition, seem to have been given or made; and hence the presumption would be, that it was voted for by all the members of the board who were present.

If the abolition of the chair would have had the effect to *remove the professor* then it would seem, that upon this last resolution to have had the requisite number of votes.

As with the first resolution, quoted, so with this: It was notice to Prof. Colvin, that unless otherwise engaged by the board, his services would not be wanted for the ensuing year. His services were not otherwise engaged by the board for another year; and therefore, he is not entitled to further compensation by virtue of any contract with or services rendered to the university.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*Attorney General Not Legal Adviser—Fees of Counsel
Assigned to Defend.*

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, September 3, 1878.

F. J. Esker, Esq., Auditor of Ross County, Chillicothe, Ohio:

DEAR SIR:—Your postal card of the 31st ult., I found on my return here today. I am not made by statute the official adviser of county auditors, and therefore, my opinion on the question submitted, would be of no official authority. The prosecuting attorney is, by statute, the official adviser of the county auditor, and all other county officers; and to him I refer you, for an examination of the question upon which you desire an opinion.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

FEEES OF COUNSEL ASSIGNED TO DEFEND.

State of Ohio,
Attorney General's Office,
Columbus, September 4, 1878.

*A. H. Wilson, Esq., Prosecuting Attorney Hocking County,
Logan, Ohio:*

DEAR SIR:—Your inquiry of the 27th ultimo on relation to the fees of counsel assigned to defend an indigent prisoner charged with homicide, has been very carefully considered, as well as the very able presentation of the question by Mr. Rippey in favor of a different construction of the statute other than the one I am compelled to come to.

Sec. 7, chapter 5, Criminal Code, reads: "Counsel so

Fees of Counsel Assigned to Defend.

assigned in any case of felony shall be paid for their services by the county, and may receive therefor, in any case of homicide, not exceeding one hundred dollars, and in any other case of felony, not exceeding fifty."

Now, I am wholly unable to say that under the provisions of this section where there are two counsels assigned to defend a prisoner, that they are each entitled to \$100 or \$50 (as the case may be), for services under any circumstances.

I am of the opinion that it was the intention of the Legislature to fix \$100 in cases of homicide, and \$50 in other felonies, as the *maximum* to be paid by the county in any case, whether there be one or two counsels assigned to defend.

If anything else had been intended, how natural it would have been to have used the expression \$100 *each*, or \$50 each. Where two counsels are assigned and both defend the prisoner, the commissioners certainly would not be justified in paying the whole compensation to one of the counsel.

It should be the duty of the commissioners, where two counsels are assigned to defend, to divide the pay they are authorized to allow, fairly and justly between the counsel. As a general thing in the practice, this decision the attorneys easily determine for themselves.

We cannot, by construction, always make the Legislature what we think it should be.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*County Commissioners; Fees of—Justice of Peace;
Vacancy.*

COUNTY COMMISSIONERS; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, September 4, 1878.

*H. Calkins, Esq., Prosecuting Attorney Darke County,
Greenville, Ohio:*

DEAR SIR:—Yours of the 2d inst. came duly to hand, and has been duly considered.

In my judgment, the act of March 30, 1875 (72 O. L., 170), does not provide for mileage to county commissioners for travel while in the discharge of official business within the county, except for the "necessary travel for each regular or called session, not exceeding one session for each month" for which they are entitled to five cents per mile.

The section further provides, that, "when necessary to travel on official business *outside of his county*;" a commissioner shall be allowed and paid his "reasonable and necessary expenses actually paid in the discharge of his official duty."

This is the fair construction of the statute.

Respectfully yours,

ISAAH PILLARS,

Attorney General.

JUSTICE OF PEACE; VACANCY.

State of Ohio,
Attorney General's Office,
Lima, September 7, 1878.

*N. L. Searl, Esq., Clerk Brown Township, Scioto County,
Ohio:*

DEAR SIR:—Yours of the 4th inst. came duly to hand.

Fees of Counsel Assigned By Prosecuting Attorney.

If the person elected justice of the peace failed to give bond within ten days from the taking of the oath of office, there would be a vacancy. See S. & Cr., 764, Sec. 11.

If the bond was given within ten days the failure to record it would not cause a vacancy.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

FEEES OF COUNSEL ASSIGNED BY PROSECUTING
ATTORNEY.

State of Ohio,
Attorney General's Office,
Columbus, September 12, 1878.

To the Commissioners of Hocking County:

At the request of W. N. England, Esq., auditor of your county, I have examined the statute in relation to the appointment and pay of assistant prosecuting attorney.

I am clearly of the opinion that under Sec. 8, Chapt. 5, of the Criminal Code (74 Vol. O. L., 330), no more than one attorney to assist the prosecuting attorney is authorized to be appointed in any one case. And hence, no more than one attorney can be legally paid from the county treasury.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

*Justice of the Peace; Election of by Separate Ballot—
Fire Department Payment of Members.*

JUSTICE OF THE PEACE; ELECTION OF BY SEPARATE BALLOT.

State of Ohio,
Attorney General's Office,
Columbus, September 15, 1878.

W. F. Hinman, Esq., Clerk Common Pleas, Cleveland, Ohio:

DEAR SIR:—The statute, without doubt, requires that the vote for justice of the peace be by separate ballot, which necessarily would require a separate ballot box.

Respectfully yours,
ISATAH PILLARS,
Attorney General.

FIRE DEPARTMENT PAYMENT OF MEMBERS.

State of Ohio,
Attorney General's Office,
Columbus, September 18, 1878.

Charles W. Allison, Esq., Mt. Gilcard, Ohio:

DEAR SIR:—Yours of the date of today came duly to hand, and has been duly considered.

I can see no legal objection to what is proposed. Among the powers conferred on cities and villages is that of organizing and maintaining a fire department. See paragraph 30, section 1, chapter 3, New Municipal Code (75 O. L., 199). See also section 31, page 353, same volume. In order to *sustain* the fire department, if it is necessary to pay its members, it is certainly legal for the council to so provide.

Members of the fire department cannot be compelled

*Legal Tender Bills; Taxation Of—Wintergill, Ralph, Com-
mutation of Death Sentence to That of Imprisonment,
For Life.*

to serve for nothing; and the council is not prohibited from
paying them.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

LEGAL TENDER BILLS. TAXATION OF.

State of Ohio,
Attorney General's Office,
Columbus, September 19, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—I have carefully considered the questions
submitted in yours of yesterday, and in the letter of the
auditor of Pike County of the 16th inst.

I know of no better way of giving my opinion than
by saying that the interpretation of the law as expressed in
your letter and which you have pursued in your office is, in
my judgment, the true construction of the first proviso of
section 6, S. & S., 758. Section 4 of the new tax law (75
O. L., 442), in my opinion, embodies the same construction.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

WINTERGILL, RALPH, COMMUTATION OF
DEATH SENTENCE TO THAT OF IMPRISON-
MENT FOR LIFE.

State of Ohio,
Attorney General's Office,
Columbus, September 25, 1878.

To His Excellency, R. M. Bishop, Governor of Ohio:

SIR:—At your request I have given most careful and

Wintergill, Ralph, Commutation of Death Sentence to That of Imprisonment for Life.

conscientious consideration to the testimony taken upon the trial of the case of the State of Ohio against Ralph Wintergill, for murder in the first degree, in the Court of Common Pleas, Columbiana County, and who is now under sentence of death.

On the afternoon of the 30th day of October, 1877, the prisoner killed his wife, by cutting her throat in the presence of three other persons, apparently upon a sudden impulse; and then immediately thereafter, attempted to commit suicide (in which he was very nearly successful) by cutting his own throat with the same instrument with which he had killed his wife.

I am of the conviction from all the testimony in the case, that the defendant, Ralph Wintergill, was not, at the time of the homicide, in such a state of condition of mind, that there was or could have been that *premeditation* and *deliberation* which is essential in the first degree.

If not *insane* so as to constitute that a complete defense, yet clearly there was such a morbid and natural condition of the mind on the part of the prisoner toward his wife (the deceased), based on a suspicion of his wife's infidelity (which the proofs show to be wholly imaginary) that the homicide can hardly be said to have been the act of a party competent to have intelligently premeditated and deliberated upon the act. The epileptic condition of the defendant, prior and subsequent to the commission of the homicide, strongly supports me in this position.

I therefore feel it to be my duty to recommend to your excellency to commute the sentence of the prisoner from that of death, to imprisonment in the penitentiary for life.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*Criminal Cases. Right of Prosecuting Attorney to Elect to
What Court to Try.*

CRIMINAL CASES RIGHT OF PROSECUTING AT-
TORNEY TO ELECT TO WHAT COURT TO
TRY.

State of Ohio,
Attorney General's Office,
Columbus, September 25, 1878.

*Elijah J. Duer, Esq., Prosecuting Attorney Holmes County,
Millersburg, Ohio:*

DEAR SIR:—Yours of the 21st inst. came duly to hand.

The exact sense or construction to be given to a part of section 14, page 961, 45 volume, O. L., I confess is somewhat difficult, and as you suggest, is well calculated to "puzzle" a good many.

The section, of course, was intended to apply to such as the Probate Court has criminal jurisdiction; and a justice of the peace may recognize to either the Probate Court or Common Pleas for all minor offenses in such counties.

The section clearly gives the prosecuting attorney the option to prosecute in either court *at his election* any minor offense sent up to either court. The time for him to elect which court he will proceed in would be at any time after the party is held over and the transcript is filed, *and the filing of an information, or the finding of an indictment.*

This would be my construction, at least at present.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*Ditch in Defiance County—Auditor of County; Attorney
General Not Adviser of.*

DITCH IN DEFIANCE COUNTY.

State of Ohio,
Attorney General's Office,
Columbus, September 25, 1878.

*Chas. E. Bronson, Esq., Prosecuting Attorney Defiance
County, Defiance, Ohio:*

DEAR SIR:—On my return here this morning I found
yours of the 19th inst.

I suggest that the commissioners extend the time for
the completion of the ditch, and that the party interfering
with its construction *be arrested, and put under bonds to
keep the peace.*

If he then still interferences, put him in jail.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR OF COUNTY; ATTORNEY GENERAL
NOT ADVISER OF.

State of Ohio,
Attorney General's Office,
Columbus, September 25, 1878.

J. R. Kagy, Esq., Auditor Hancock County, Findlay, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand.

The county commissioners from your statement of the
matter, have undoubtedly acted under the right law. I
would say, however, that the prosecuting attorney is made
the legal adviser of the commissioners in all matters.

Yours,
ISAIAH PILLARS,
Attorney General.

Inspector of Oils; Duty of—Ballots; Printing of.

INSPECTOR OF OILS; DUTY OF.

State of Ohio,
Attorney General's Office,
Columbus, September 26, 1878.

Hon. F. W. Green, State Inspector of Oils, Cleveland, Ohio:

DEAR SIR:—You have called my attention to the question as to the fees of the inspector and deputy inspector of oils under section 3 of the act of May 15, 1878, and upon what vessels containing oil they are entitled to charge.

The language of the act is upon "barrels," "packages" and "casks." These are also designated in section 4. I do not hesitate in saying, that a *tank* upon the cars, used in the *transportation* of oil does not fall under either the designation of barrel, package, or cask. Either of these terms means such articles in which the oil is placed for the purpose of being vended, and on which the inspector's brand is to be placed.

If oil in the tank upon the case, is inspected, the inspector is entitled to charge as for so many barrels, contained in said tank inspected by him.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

BALLOTS; PRINTING OF.

State of Ohio,
Attorney General's Office,
Columbus, September 26, 1878.

S. P. Hildreth, Esq., Norwalk, Ohio:

SIR:—Yours of the 24th came duly to hand.

I am of the opinion that a ticket *printed* as you sug-

Police Judge; Payment of Fees Before.

gest would be in violation of the act of March 21, 1874 (O. L., 31).

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

POLICE JUDGE; PAYMENT OF FEES BEFORE.

State of Ohio,
Attorney General's Office,
Columbus, September 26, 1878.

Judge M. Wilson, Cincinnati, Ohio:

DEAR SIR:—Yours of the 25th inst. came duly to hand, and also one in reference to the same question, from Mr. Baker, county solicitor.

I am of the opinion that the latter clause of section 15, page 222, 75 O. L., quoted in your letter refers to the fees of witnesses in State cases in the police court in which jurisdiction is retained to finally try and dispose of the case. In such cases, the witnesses are to be paid as though tried in the Common Pleas Court. Respectfully yours,

ISAIAH PILLARS,

Attorney General.

POLICE JUDGE; PAYMENT OF FEES BEFORE.

State of Ohio,
Attorney General's Office,
Columbus, September 26, 1878.

Chas. W. Baker, Esq., Solicitor Hamilton County, Cincinnati, Ohio:

DEAR SIR:—Yours of yesterday, as well as a letter from Judge Wilson, in reference to the same subject, came duly to hand.

Attorney General Not Legal Adviser.

I am of the opinion that the latter clause of section 15, page 222, 75 Vol. O. L., referred to in your letter refers to the fees of witnesses in State cases in the police court, in which jurisdiction is retained to finally try and dispose of the case. In such case the witnesses are to be paid as though the cases were tried in the Common Pleas Court.

Where the police judge simply holds examining court, construction given my letter of July 8, 1878, applies.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, October 1, 1878.

*C. W. Randall, Esq., Auditor of Warren County, Lebanon,
Ohio:*

DEAR SIR:—Yours of the 25th ult., just came duly into my hands, and in answer would say, that the matter about which you inquire, falls within the department of the auditor of the State, to whom I respectfully refer you.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Prosecuting Attorney; Duties of—Election; Judges of.

PROSECUTING ATTORNEY; DUTIES OF.

State of Ohio,
Attorney General's Office,
Columbus, October 1, 1878.

C. H. Atkinson, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Yours of the 28th ult. came duly to hand. You certainly cannot bring suit against the office without knowing the excessive amount of fees charged and received by them. But the committee having made the report, that illegal fees have been charged and received, I respectfully suggest to you, if it is not your official duty to investigate and ascertain the amount of such improper charge, and prosecute.

Respectfully yours,

ISAJAH PILLARS,
Attorney General.

ELECTION; JUDGES OF.

State of Ohio,
Attorney General's Office,
Columbus, October 1, 1878.

Joseph G. Huffman, Esq., Prosecuting Attorney Perry County, New Lexington, Ohio:

DEAR SIR:—Yours of the 28th ult. came duly to hand. Under the statute of April 12th, 1870 (67 O. L., 47), the judges of election will consist of two trustees *who had the highest vote when elected*, and the candidate who had the highest vote *but not elected*. Whatever three this strikes are the judges under that statute, although it may place three of the same politics on the board. Respectfully yours,

ISAJAH PILLARS,
Attorney General.

*Soldiers' Home; Right of Inmates to Vote.*SOLDIERS' HOME; RIGHT OF INMATES TO
VOTE.

State of Ohio,
Attorney General's Office,
Columbus, September 29, 1878.

*James Baker, Esq., Chairman of the Democratic Executive
Committee of the Soldiers' Home, Dayton, Ohio:*

DEAR SIR:—Yours of the 29th inst. submitting to me, as attorney general, certain inquiries in regard to the right of certain inmates of the Soldiers' Home near Dayton, Ohio, to vote at the approaching election, came duly to hand, and for the want of time to carefully examine the question submitted, I could not answer the same until now.

While the law only makes the attorney general the legal adviser of certain State and county officers, and boards of trustees of the public institutions of the State, yet I deem it not improper to give you my opinion in reference to the matter in question.

The first section of the act of May 7th, 1872 (74 O. L., 211), lays down certain general rules by which to determine the residence and the right of the person to vote.

The first general rule there laid down is: "That place shall be considered the *residence* of a person in which his habitation is fixed, *without any present intention of removing therefrom* and to which when absent *he has the intention of returning.*"

Any person residing at the home as thus provided, and otherwise having the qualifications of an elector, has the right to vote there.

The sixth general rule provides in the section of the law referred to reads: "The place where a married man's family resides, shall be considered his place of residence; but if it is a place for temporary establishment of his family, or for transient objects, it shall be otherwise." To the first clause of this general rule there are some exceptions. One

Township; Division Of.

clearly is, when a married man has separated from his family (or from his wife who in the absence of children would be held to mean family) and has acquired a fixed place of abode or habitation in another locality. If an inmate of the Soldiers' Home has a wife or family with whom he has no intention of again living—although he may contribute toward their support—would be regarded as falling under this exception to the general rule; and if from another State and having lived at the home for one year and acquired a fixed residence there, as provided by the first rule quoted from the statute and being otherwise qualified, would have the right to vote at the home.

In your letter you ask: Will not the inmate's oath or affirmation, that though he has a wife at a distance, he has no intention of again living with her, but regards this (the Home) as his only and permanent home, determine affirmatively his right to vote here (at the Home) to this answer, the inmates being otherwise qualified, yes.

Respectfully yours,

ISAAH PILLARS,

Attorney General.

TOWNSHIP; DIVISION OF.

State of Ohio,
Attorney General's Office,
Columbus, October 1, 1878.

S. H. Bright, Esq., Logan, Ohio:

DEAR SIR:—Yours of the 30th ult. came duly to hand.

I have examined the original in the office of secretary of state, and find there is no misprint.

The northeast half of the northeast quarter would be held to mean, I think, the east half of the northeast quarter.

Respectfully yours,

ISAAH PILLARS,

Attorney General.

Soldiers' Home, Right of Inmates to Vote—Game Law.

SOLDIERS' HOME, RIGHT OF INMATES TO VOTE.

State of Ohio,
Attorney General's Office,
Columbus, October 9, 1878.

James Baker, Esq., Chairman Democratic Executive Committee, Soldiers' Home, Dayton, Ohio:

DEAR SIR:—Since writing you on the 29th ult., my attention has been called to the fact, that the act of May 7th, 1877, to which I referred in my letter, has been repealed by the act of February 27, 1878 (75 O. L., 16 and 17), but this act contains substantially the same provisions as the act repealed, so that the opinion I gave you as to the right of inmates of the Home to vote, will hold good under this latter act.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

GAME LAW.

State of Ohio,
Attorney General's Office,
Columbus, October 9, 1878.

P. C. Polk, Esq., Secretary Forest Shooting Club, Middletown, Ohio:

DEAR SIR:—In answer to yours of the 5th inst., I have to say, that it will not be lawful to kill quail before November 1. See Criminal Code Sec. 28, Chapter 8.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

Fines Paid County Treasurer—Blind Asylum; Expenses of Inmates.

FINES PAID COUNTY TREASURER.

State of Ohio,
Attorney General's Office,
Columbus, October 9, 1878.

J. H. Lightbody, Esq., Mayor of Aberdeen, Ohio:

DEAR SIR:—Yours of the 2d inst., I found on my return from home this morning.

Section 9, chapter 1, of the Criminal Code (Laws of 1877, page 242), provides, that "any officer who collects any fine, shall, unless otherwise required by law, within twenty days after the receipt thereof, pay the same into the treasury of the county in which such fine is assessed to the credit of the county general fund."

This would not include fines assessed under a village or city ordinance. All such fines would go into the village or city treasury.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

BLIND ASYLUM; EXPENSE OF INMATES.

State of Ohio,
Attorney General's Office,
Columbus, October 5, 1878.

G. L. Smeed, M. A., Superintendent Ohio Institution for Blind, Columbus, Ohio:

SIR:—Your inquiry of the 1st inst. came into my hands, just as I was leaving Columbus on the 3d inst.

Your inquiry is: Does the fifteenth section of the act of May 10, 1878, for the reorganization of the asylum for

Ditch Law; Right of Appeal.

the blind (75 O. L., 155) contemplate the payment of bills incurred before the pupil is in our (your) charge.

My answer is, most clearly not.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

DITCH LAW; RIGHT OF APPEAL.

State of Ohio,
Attorney General's Office,
Columbus, October 11, 1878.

Judge C. Edson, Van Wert, Ohio:

MY DEAR SIR:—Your letter of the 9th inst. reached me here this morning. I have given a careful examination of the statute involved, and have no doubt but that your ruling was correct.

I am of the very clear opinion that there is no appeal from order of the commissioner for the "deepening and widening" of an old ditch. Certainly section 5 of the act of April 12, 1871 (68 O. L., 60), nor any part of said act, does not provide for an appeal from the order to deepen and widen neither does the supplementary act of March 16, 1874 (71 O. L., 29).

Section 5 of the act of 1871 only provides for an appeal from the *location* of the ditch.

I doubt very much whether proceedings to *locate* a ditch, and proceedings to *deepen* and *widen* a ditch, can be united in one proceeding.

But, I presume, that is not a question that now comes before you.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Dog Tax Law—Duty of Prosecuting Attorney.

DOG TAX LAW.

State of Ohio,
Attorney General's Office,
Columbus, October 16, 1878.

*R. C. Rice, Esq., Auditor of Trumbull County, Warren,
Ohio:*

DEAR SIR:—Yours of the 11th inst., I found upon my return here, and have given careful examination to see if some relief could not be furnished you for extra work under the Dog Tax Law, and regret to say there cannot be, except by action of the Legislature.

The act of April 24, 1877 (74 O. L., 124), is very specific as to the fees county auditors are entitled to receive, omitting the labor under the dog tax; and in the eleventh section provides: "That the fees and compensation provided for by this act *shall be in full for all services lawfully required to be done* by the auditors of such counties."

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

DUTY OF PROSECUTING ATTORNEY.

State of Ohio,
Attorney General's Office,
Columbus, October 16, 1878.

C. A. Atkinson, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Yours of the 11th inst. duly received. If the commissioners employed an attorney to investigate the auditor's fees, and the attorney has done so, and reported, and the auditor refunded in accordance with the report, I would let that be the end of the matter, *unless some newly*

Mayors; Blank, Etc., to Be Furnished By Council.

discovered fact should show clearly that the auditor was still indebted to the county. I would suppose, from your statement, that you had fully done your duty, in the premises.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

MAYORS; BLANK, ETC., TO BE FURNISHED BY
 COUNCIL.

State of Ohio,
 Attorney General's Office,
 Columbus, October 16, 1878.

John M. Lynn, Esq., Mayor of Portsmouth, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand.

It seems that the city has paid \$10.50 for printing certain blanks, to be used by you in the discharge of your official duty as mayor, and now the council wants you to pay or reimburse the city for the expenditure.

The question you submit is, can you be compelled legally, or is it your legal duty to do so?

The demand certainly is most unusual in its present form.

Had the council refused to have paid the bill for the blanks when it was presented, it would have been far better than now to ask the mayor to reimburse the city for the bill so paid.

But the real question is, Is a city or village corporation under legal obligations to furnish the necessary blanks for the mayor to be used by him in the discharge of his official duties?

While there is no direct provision of the statute expressly requiring a council so to do, yet I have no doubt

Voting; Right of Inmates of Infirmary.

but that it is as much the legal duty of a council to furnish such necessary blanks to the mayor to be used in the discharge of his official duties, as it is to furnish the necessary dockets in which to enter the cases brought before him.

Such has been the practice throughout the State without an exception to my knowledge.

I have written this so that you can submit it to the council if you desire. Respectfully yours,

ISAIAH PILLARS,
Attorney General.

VOTING: RIGHT OF INMATES OF INFIRMARY.

State of Ohio,
Attorney General's Office,
Columbus, October 3, 1878.

*Thos. H. Dolson, Prosecuting Attorney, Fairfield County,
Lancaster, Ohio:*

DEAR SIR:—You ask of me an official opinion as to the right of the inmates of your infirmary to vote in the township in which the infirmary is located, the inmates being otherwise qualified as electors.

In regard to the question I have to say, that the act of February 27, 1878 (75 O. L., 16 and 17), lays down certain rules by which to determine the residence of a person for voting purposes.

The first rule is, "That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which when he is absent, he has the intention of returning."

Now if any of the inmates fall under this rule, they have the right to vote in the township in which the infirmary is situated.

Reform School; Form of Annual Report.

That is as I would understand the rule, if any of the inmates recognize and treat no other place as their home, and to which when they leave the infirmary they expect to go, then all such have the right to vote in the township in which the infirmary is located.

All inmates who are not *temporarily* in the infirmary, but where it may be reasonably supposed are permanent public charges, and who are not expecting to return to some other home, may be said to have a *fixed habitation* at said infirmary and entitled there to vote.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

REFORM SCHOOL; FORM OF ANNUAL REPORT.

State of Ohio.
Attorney General's Office,
Columbus, October 21, 1878.

J. C. Hite, Esq., Superintendent Ohio Reform School, Near Lancaster, Ohio:

DEAR SIR:—Yours of the 18th inst. came duly to hand, and has been carefully considered.

I am of the opinion, that a statement of the *aggregate* of the several items of the *same kind article*, purchased from *one* person, with the amount paid each person, would be a sufficient "detailed account," under Sec. 20, page 63, 75 O. L.

And so in the same manner, I would state the total paid each employe; also, whatever receipts there may be of articles sold, I would state in the same way.

I refer to the entire fiscal year, or so much as you may control.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Fish; Right to Catch in Lake—Criminal Law; Practice in Probate Court.

FISH; RIGHT TO CATCH IN LAKE.

State of Ohio,
Attorney General's Office,
Columbus, October 22, 1878.

Messrs. T. C. Adams & Bro., Castalia, Ohio:

GENTS:—Yours of the 18th inst. came duly to hand, and in answer I have to say, that if "Sandusky Bay," in which you propose to fish, is properly a part of the waters of *Lake Erie*, then the statute of April 10, 1878 (75 O. L., 108), does not apply to it. Otherwise, it does. You had better take advice in the premises.

Yours,

ISAIAH PILLARS,
Attorney General.

CRIMINAL LAW; PRACTICE IN PROBATE COURT.

State of Ohio,
Attorney General's Office,
Columbus, October 22, 1878.

Byron Stilwell, Esq., Ashland, Ohio:

DEAR SIR:—I am in receipt of a letter of the 21st inst., with no signature, but which I suppose to be from you, because your name is on the *letter head*, and your *card* is enclosed.

First—The omission of a middle name or the initial letter of the same, of the defendant does not affect the indictment. Should he plead a misnomer, the true name, by order of court, can be supplied.

Second—If the prosecution was based by the statute of

Attorney General Not Legal Adviser.

limitation at the time of the finding of the indictment, no re-indictment could cure the matter.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Lima, Ohio, October 20, 1878.

*S. Pettit, Esq., Auditor Columbiana County, New Lisbon,
Ohio:*

DEAR SIR:—Yours of the 21st came duly to hand to-day, being forwarded to me from Columbus.

Did the statute authorize me to give an official opinion on the question submitted, I would be pleased to do so; but it does not.

The law makes the attorney general the legal adviser of State officers and prosecuting attorney.

The prosecuting attorney is, by statute, the legal adviser of the county officers of his county.

The state auditor is also made the adviser of county auditors in relation to their duties.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Duttenhofer "Nolle" of Indictment—Quo Warranto; Proceedings in, Against Judge Courtright.

DUTTENHOFER "NOLLE" OF INDICTMENT.

State of Ohio,
Attorney General's Office,
Columbus, October 30, 1878.

Ira Graham, Esq., Prosecuting Attorney, Meigs County, Pomeroy, Ohio:

DEAR SIR:—Yours of the 28th inst., came duly to hand.

From a very careful examination of the facts in the case of *The State* against *Duttenhofer*, as set out in the Record, I have no hesitation in recommending to you to enter a "*nolle prosequi*" to the indictment.

I do not believe the facts will warrant a conviction. And such, I think, was the opinion of the judges of the Supreme Court, although they based their reversal on another ground.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

QUO WARRANTO; PROCEEDINGS IN, AGAINST
JUDGE COURTRIGHT.

State of Ohio,
Attorney General's Office,
Columbus, October 30, 1878.

Judge Samuel W. Courtright, Circleville, Ohio:

SIR:—On my return here last evening, I found your favor of the 28th inst., requesting me to institute proceedings in *quo warranto* to test the validity of the title by which you claim to hold and exercise the functions of the office of

Quo Warranto; Proceedings in, Against Judge Courtright.

judge of the Court of Common Pleas in the fourth sub-division of the Fifth Judicial District.

In view of the recent decision of the Supreme Court in relation to the constitutionality of the act of May 10, 1878 (Vol. 75, O. L., 139), to change the Common Pleas Districts, etc., and the acts of May 13, 1878 (75, O. L., 537), amendatory thereof and which is referred to in your letter, it certainly becomes a very grave question as to the constitutionality of the several acts creating fourth sub-divisions in the Third, Fifth and Ninth Judicial Districts of the State.

We have not yet the benefit of the text of the decision of the Supreme Court, but one of the points announced is, "That said act (the act of May 10, 1878), and the act of May 13, 1878 (75, O. L., 537), amendatory thereof, *in so far as they undertake to reconstruct the judicial districts of the State therein provided are unconstitutional.*"

If by this it is meant that the Legislature has not the power to create more than *three* sub-divisions in any district as provided in section 3, article 4 of the Constitution (and I cannot see what else is to be drawn from it), then all acts providing for fourth sub-divisions must be held to be unconstitutional, and the election of judges therein, without any valid authority of law.

I shall file the information in *quo warranto* to test the question involved, as requested by you.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Tax; Levying of for Construction of Town Hall.

TAX; LEVYING OF FOR CONSTRUCTION OF
TOWN HALL.

State of Ohio,
Attorney General's Office,
Columbus, November 1, 1878.

*To Trustees of Montgomery Township, Ashland County,
Ohio:*

GENTS:—Yours of the 29th ult. came duly to hand.

While I am not made the legal adviser of township trustees, yet I do not deem it improper to give you my opinion on the question submitted.

The question submitted is, "whether, under the act of April 11, 1876 (73, O. L., 203), providing for the submission of the question of the levying a tax for the construction of a town hall to a vote of the people at a general election, it requires a majority of the *whole number of votes cast at said election*, to authorize the levying of a tax for said purpose?"

In my opinion it does. That is, it would take a majority for the tax, of the 1,072 votes, which you say were cast in your township at the last general election, and at which election the proposition was submitted.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Tax Tables to be Published—Judicial District.

TAX TABLES TO BE PUBLISHED.

State of Ohio,
Attorney General's Office,
Columbus, November 1, 1878.

*John M. Myers, Esq., Proprietor Seneca Advertiser, Tiffin,
Ohio:*

DEAR SIR:—Yours of yesterday came duly to hand. In answer to a letter of similar import from Mr. Clymer, publisher of *Van Wert Times*, I sent the enclosed, which I presume will be a satisfactory answer to your letter.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

JUDICIAL DISTRICT.

State of Ohio,
Attorney General's Office,
Columbus, November 4, 1878.

Hon. James Tripp, Jackson, Ohio:

DEAR SIR:—On my return here this afternoon I found yours of the 31st ult.

The Supreme Court has, as I and others interpret its holding, decided the *whole* of the acts for the redistricting the State for judicial purposes *unconstitutional*, except probably that which relates to Hamilton County.

Your certificate and commission should be for the old second *sub-division* of the *Judicial District*.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Game Law—Attorney General Not Legal Adviser.

GAME LAW.

State of Ohio,
Attorney General's Office,
Columbus, November 4, 1878.

Daniel Schrader, Esq., Walbridge, Wood County, Ohio:

DEAR SIR:—Yours of the 3d inst. came duly to hand, and in answer I have to say, that "deer can be killed between September 20 and November 1; turkeys, between the first day of November and the fifteenth day of January."

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, November 5, 1878.

Messrs. Sherman, Rote & Co., Ashtabula, Ohio:

GENTS:—Yours of yesterday, with enclosure, came duly to hand.

The matter about which you write falls especially within the duties of the auditor of state.

Unless he would demand of me an opinion, I would not be authorized by statute to give one on the question.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Duties of Prosecuting Attorney—Courthouse; Limit to Issue Bonds.

DUTIES OF PROSECUTING ATTORNEY.

State of Ohio,
Attorney General's Office,
Columbus, November 11, 1878.

Albert Douglass, Jr., Esq., Prosecuting Attorney Ross County, Chillicothe, Ohio:

DEAR SIR:—Yours of the 4th inst., came duly to hand. I have been so engaged I could not answer you before this.

Although there is no specific provision of statute stating in words, that the prosecuting attorney shall be the legal adviser of the officers of his county as to the discharge of their official duties, yet I think it necessarily follows from the duties imposed on him by express words in the statute. See Sec. 2, S. & Cr., 1225, and the various other duties provided for by statute. See Sec. 69, page 215, 70 O. L. That the prosecuting attorney is as much the legal adviser of his county officers as the attorney general is of the State officers, I have no doubt.

Such has been the practice, generally throughout the State. Of course, it is competent for the commissioner's, and other county officers, whom they deem it advisable, to call in other counsel to assist the prosecuting attorney.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

COURTHOUSE; LIMIT TO ISSUE BONDS.

State of Ohio,
Attorney General's Office,
Columbus, November 19, 1878.

Joseph Stafferel, Esq., Auditor of Gallia County, Gallipolis, Ohio:

DEAR SIR:—Yours of the 15th inst. came duly to hand.

Tax; Special Assessment Made on Lots.

Your inquiry is, whether, under the local act of May 7th, 1877, to authorize the commissioners of Gallia County to build a courthouse and to issue bonds therefor (74, O. L., 518), the commissioners can expend more than \$25,000.

I am of the opinion that the commissioners are not limited to that amount in the construction of the courthouse authorized by said act to build.

The sum named (in the \$25,000) is the limit for which bonds can be issued.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX; SPECIAL ASSESSMENT MADE ON LOTS.

State of Ohio,
Attorney General's Office,
Columbus, November 19, 1878.

C. A. Bieder, Esq., City Solicitor, Wooster, Ohio:

SIR:—On my return here today I found yours of the 13th inst.

I have not the time to give the question a re-examination, but my understanding of the law is, that where special assessments are lawfully made on lots or lands, and certified to the county auditor for collection, and by him placed upon the duplicate, they stand there as all other taxes, and must be collected in the same way.

If the Supreme Court has made any other ruling, I have not seen it, but of course, it must prevail.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

A Letter From Attorney General Pillars, of Ohio, to the Governor of Ohio, to Restore the Amicable Relations Between the Co-Equal States of Ohio and Kansas.

A LETTER FROM ATTORNEY GENERAL PILLARS, OF OHIO, TO THE GOVERNOR OF OHIO, TO RESTORE THE AMICABLE RELATION BETWEEN THE CO-EQUAL STATES OF OHIO AND KANSAS.

State of Ohio,
Attorney General's Office,
Columbus, November 20, 1878.

To His Excellency, R. M. Bishop, Governor of Ohio:

SIR:—The communication from his excellency, George T. Anthony, governor of Kansas, of the date of the 8th inst., handed to me has been carefully read.

His excellency, the governor of Kansas, certainly has cause to complain for not issuing a warrant for the arrest and extradition of George I. Hopkins, an alleged fugitive from the State of Kansas, in pursuance with the requisition of the governor of Ohio of the date of March 23, 1878.

The blame in the matter attaches to this office.

The mistake occurred as follows:

On January 26, 1878, a requisition issued by the governor of Kansas upon the governor of Ohio for the extradition of said Hopkins based upon an information was submitted to me under the rule of your office for approval.

I disapproved the issuing of a warrant upon said requisition for the reasons stated in my opinion of the date of January 26, 1878, a copy of which was transmitted to his excellency, Governor Anthony.

When the requisition of the date of March 23, 1878, was presented to me for my approval, I was informed that it was but a duplicate of the requisition in the same matter already passed upon; and thereupon supposing such to be the facts, I endorsed the requisition "Not approved for rea-

Boundary Line Between the States of Ohio and Pennsylvania.

sons heretofore assigned, when application was heretofore made for same party for same offense."

Upon examination, it appears that the requisition was based upon an *affidavit* charging the offense, and the warrant should have issued; and I now recommend that the same issue.

With this explanation and correction I hope the amicable relations between the co-equal States of Kansas and Ohio may be restored.

Your excellency's obedient servant,
ISAIAH PILLARS,
Attorney General of Ohio.

BOUNDARY LINE BETWEEN THE STATES OF
OHIO AND PENNSYLVANIA.

State of Ohio,
Attorney General's Office,
Columbus, November 20, 1878.

To His Excellency, R. M. Bishop, Governor of Ohio:

DEAR SIR:—The communication from the commissioners appointed by your excellency under the act of May 3, 1878, in relation to the boundary line between the States of Ohio and Pennsylvania, and making inquiry as to their precise duty under said act, has been, at your request, carefully considered by me.

The title of the act is, "An act in regard to the boundary *monuments* on the line between the State of Ohio and Pennsylvania."

The first section of the act provides, that the governor of Ohio shall "appoint three competent persons to be commissioned to act in conjunction with a similar commission of the State of Pennsylvania (but not otherwise) *to examine as to the true location of the monuments which make*

*Township Trustee and Infirmary Director; Holding Office
at the Same Time.*

the boundary line between the State of Ohio and Pennsylvania, and in connection with said commission of the said State of Pennsylvania to replace any monuments that have been removed, or have become displaced or dilapidated on the boundary line of said State."

This comprises the whole of the duty of said commission, and beyond which it has not the power to go.

As the act clearly reads, the commission is appointed:

First—To examine as to the *true location* of the *monuments* which make (mark) the *boundary line* between the States of Ohio and Pennsylvania, and

Second—To *replace any monuments* which have been removed, etc. From these two duties the commission cannot deviate, so as, in the least, to vary the boundary between Ohio and Pennsylvania as indicated by the *ancient monuments marking said line*.

Neither is the commission authorized to erect any *new monuments*, except so far as it is necessary to "*replace any monuments that have been removed,*" become displaced, or dilapidated.

The foregoing will answer all inquiries contained in said communication. Respectfully yours,

ISAIAH PILLARS,

Attorney General.

TOWNSHIP TRUSTEE AND INFIRMARY DIRECTOR;
HOLDING OFFICE AT THE SAME TIME.

State of Ohio,

Attorney General's Office,

Lima, Ohio, November 21, 1878.

*A. T. Dempsey, Esq., Clerk Board Infirmary Directors, Iron-
ton, Ohio:*

DEAR SIR:—Owing to my presence here attending court, your inquiry of the 13th inst. as to whether a person

*Jackson Home Building and Loan Association; Proceedings
in Quo Warranto.*

can hold the office of township trustee and infirmary director at the same time, was not received by me until yesterday.

I find nothing in the statute which disqualifies a person from holding both offices at the same time; and am of the opinion he may legally do so.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

JACKSON HOME BUILDING AND LOAN ASSOCIATION; PROCEEDINGS IN QUO WARRANTO.

State of Ohio,
Attorney General's Office,
Columbus, November 22, 1878.

J. T. Monahan, Esq., Jackson, Ohio:

DEAR SIR:—Yours of the 21st inst. came duly to hand.

If you will furnish me affidavits from not less than two responsible and creditable citizens, of the abuse of its corporate duties and privileges, as stated in your letter, and also the name of some one who will endorse for costs, I will commence proceedings in *quo warranto* against the Jackson Home Building and Loan Association.

It would be well also, to retain some good lawyer in Jackson to assist in getting up the proofs.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

*Mayor's Office; Vacancy in—Revoking the Warrant in the
McKenna Case.*

MAYOR'S OFFICE; VACANCY IN.

State of Ohio,
Attorney General's Office,
Columbus, November 26, 1878.

A. S. Ham, Esq., Clerk of Harveysburg, Ohio:

DEAR SIR:—Yours of the 21st inst. came duly to hand.

If the vacancy occurs in the office of mayor, more than thirty days before the next annual election for municipal officers, the vacancy is filled by the council by a majority vote of all its members, by the choice of some suitable person of the township or town to act as mayor until said annual election, when the *unexpired* term shall be filled by election.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

REVOKING THE WARRANT IN THE MCKENNA
CASE.

State of Ohio,
Attorney General's Office,
Columbus, December 3, 1878.

To His Excellency, R. M. Bishop, Governor of Ohio:

SIR:—In answer to your inquiry as to the power and propriety of revoking the warrant issued by you upon the governor of Wyoming Territory, for the extradition of Robert McKenna, I have to say, that soon after the arrest of said McKenna upon said warrant, to-wit: On the 11th day of February, 1878, he, said McKenna, broke from the jail of Highland County and fled, and from which time until November 28 last, he was at large.

Dog; Taxation of.

That during the time the said McKenna was so at large, to-wit: on the 31st day of October, 1878, he committed the crime of robbery in Pike County, Ohio, upon the person of two helpless old women, for which crime he now stands indicted, and upon which charge a warrant has been issued, and served upon said McKenna.

I am clearly of the opinion, that under the foregoing circumstances, your excellency would be entirely justified in revoking said warrant, so that said McKenna may be held in Ohio, prosecuted for said crime of robbery, and do so advise.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

DOG; TAXATION OF.

State of Ohio,
Attorney General's Office,
Columbus, December 5, 1878.

*D. M. Brown, Esq., Prosecuting Attorney Carroll County,
Carrollton, Ohio:*

DEAR SIR:—Yours of the 2d inst. came duly to hand, and in answer would say:

That the fund created by the act of May 5, 1877 (74 O. L. 177), by the taxation of dogs, is chargeable with the loss or damage to sheep as contemplated by said act, *occurring from and after its passage.*

But all such claims must have been or must be proved and allowed in accordance with the eighth section of said act.

You will observe that the last clause of said section provides, "No claim as aforesaid shall be allowed unless presented at the next session aforesaid *after the occurring thereof.*"

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

New Structures; Taxation of.

NEW STRUCTURES; TAXATION OF.

State of Ohio,
Attorney General's Office,
Columbus, December 6, 1878.

Hon. James Williams, Auditor of State:

DEAR SIR:—Your inquiry of yesterday has been carefully considered.

You state, "The question is, when a new structure has been erected on a lot or lands, and the same of which has not for any reason been added to the value of the lot, and so has escaped taxation until the discovery of the omission, can the taxes be put upon its value for all the time it has escaped taxation?"

I am compelled to answer the question in the negative.

The section of the law you refer to (S. & Cr., 108, Sec. 52) as well as the provisions of the new tax law referring to the same matter (75 O. L., 465, Sec. 18) does not apply to the case put. These sections only apply to cases where there has been an omission to enter any "lands or town lots, situated within the county, subjected to taxation," upon the duplicate.

In all such cases, it shall be the duty of the auditor when he shall enter the same on the duplicate, "to add to the taxes of the current year, the simple taxes of each and every preceding year in which such lands shall have escaped taxation."

Now, in the case of the omission to add the value of new structures, it is not the *leaving the lot or lands entirely off the duplicate*. It is simply omitting to enter an increased value to real estates already on the duplicate. While a structure or fixture upon real estate becomes "land" in a legal sense; yet it is not such as considered separate from the lot or land upon which it is situated.

The only taxes which the additional or increased valuation by reason of new structures, can be made to bear, will

Mandamus— Auditor of Carroll County; Pay of.

be the taxes for the current year at the time the increased valuation is placed upon the duplicate.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

MANDAMUS.

State of Ohio,
 Attorney General's Office,
 Columbus, December 6, 1878.

General Chas. W. Karr, Cincinnati, Ohio:

DEAR SIR:—Yours of the 2d inst. came duly to hand. The matter about which you write, the attorney general has nothing to do with. If it would be the duty of anyone here to look to the matter, it would be the adjutant general.

I would advise, however, that the commanding officer of each company, or regiment affected, commence proceedings in mandamus to enforce whatever rights the law gives them.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

AUDITOR OF CARROLL COUNTY; PAY OF.

State of Ohio,
 Attorney General's Office,
 Columbus, December 11, 1878.

A. L. Billman, Esq., Auditor of Carroll County, Carrollton, Ohio:

DEAR SIR:—Yours of the 9th inst. came duly to hand. If you are entitled to pay, as auditor, for the work you

Auditor of County; Pay of—Road Improvement Law.

! speak of, it must be found in the act of April 24, 1877 (74 O. L., 124). If not there you cannot be paid. See Sec. 11 of that act.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

 AUDITOR OF COUNTY; PAY OF.

State of Ohio,
 Attorney General's Office,
 Columbus, December 11, 1878.

A. H. Haines, Esq., Auditor Clinton County, Wilmington, Ohio:

DEAR SIR:—On my return here this morning, I found yours of the 6th inst. inquiring as to the legality of an additional compensation to yourself for services under the "dog tax" law.

I regret that I cannot say that it would be in accordance with law to make you the additional allowance.

The act of April 24, 1877 (74 O. L., 124), makes all the provision there is for the pay of county auditors. Read the proviso in section 11 of that act.

Respectfully yours,
 ISAIAH PILLARS,
 Attorney General.

 ROAD IMPROVEMENT LAW.

State of Ohio,
 Attorney General's Office,
 Columbus, December 11, 1878.

Charles E. Bronson, Esq., Prosecuting Attorney, Defiance County, Defiance, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand. You state that a levy has been made for "road purposes,"

Register of Lands.

under the act of April 30, 1869 (66 O. L., 60), and inquire "shall a complete record be made of all these different improvements, outside of the commissioners' journal?"

In answer, I say no. The Statute does not require such a record to be kept.

The commissioners' journal, however, should be somewhat full as to what improvements are to be made.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

REGISTER OF LANDS.

State of Ohio,
Attorney General's Office,
Columbus, December 11, 1878.

T. Y. McCray, Esq., Register, School Lands, Mansfield, Ohio:

DEAR SIR:—On my arrival here this morning, I found yours of the 6th inst. You had better write direct to the auditor of state, call his attention to the Statute, and mark your demand for such books, etc., you may need.

As soon as you get things in proper shape, I would like to have you give the general notice we talked about, for everybody to pay, or bring in their receipts.

At the same time I will give notice to take depositions in the Gutzwiler case, at your office, so that you may take the evidence of each man as he comes in. Before doing so, however, I should like to talk with you about the matter, so that we can agree upon the time, etc.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Man; Able-Bodied.

MAN; ABLE-BODIED.

State of Ohio,
Attorney General's Office,
Columbus, December 11, 1878.

Hiram Goodwin, Esq., Medina, Ohio:

DEAR SIR:—In answer to your letter of the 7th inst. all that I can say, is, that an "able-bodied male person," as used in Sec. 18, page 392, Laws of 1878, is a male person able to perform what is generally regarded as a day's work. The ability thus to labor, is a question of fact.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

NEGATIVE REPLY.

State of Ohio,
Attorney General's Office,
Columbus, December 11, 1878.

John L. Guy, Esq., Gallipolis, Ohio:

SIR:—In answer to your inquiry of the 9th inst., I have to say no.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Costs in Criminal Cases—Costs of Clerk.

COSTS IN CRIMINAL CASES.

State of Ohio,
Attorney General's Office,
Columbus, December 11, 1878.

J. M. McGillivray, Esq., McArthur, Ohio:

DEAR SIR:—Owing to absence and other pressing matters, I have not had time to answer yours of the 4th inst. until now.

My construction of the act of March 16, 1878 (75 O. L., 50), in my letter to the prosecuting attorney of Williams County, of the 8th of July last, was prepared with very great care.

I agree with you that the act should be amended, and made much more explicit than it is.

Respectfully yours,
ISAAH PILLARS,
Attorney General.

COSTS OF CLERK.

State of Ohio,
Attorney General's Office,
Columbus, December 12, 1878.

*Willard S. Hyde, Esq., Clerk Knox Common Pleas Court,
Mt. Vernon, Ohio:*

DEAR SIR:—I have received and read with care, your very carefully prepared letter of the 10th inst. I think it would be improper for me to give an opinion in the premises for two reasons:

First—Because the question is pending in your court upon a motion to retax costs; and that is just the tribunal to determine the matter.

Prosecuting Attorney; Fees of.

Second—The statute does not make the attorney general the legal adviser of clerks, and in such case, my predecessors have held that he is not authorized to give an opinion.

I would suggest to you to submit to the court on the mention to retax the same argument you sent me. It is well made.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, December 17, 1878.

H. Calkins, Esq., Prosecuting Attorney Darke County, Greenville, Ohio:

DEAR SIR:—Yours of the 14th inst., and also a letter of the same date from the auditor of your county in relation to the same matter, came duly to hand.

The provision of the statute (70 O. L., 67) in relation to the percentage to which a prosecuting attorney is entitled, is very plain reading.

He is entitled to "ten per cent. on all money collected on fines, forfeited recognizances, and costs collected of defendant in criminal cases" provided such sum shall not exceed \$100 in any one case.

To entitle a prosecuting attorney to this percentage it is not necessary for him *to make it on execution*. If the amounts are paid to the clerk by defendants upon judgment in criminal cases, either for fines, costs or forfeited recog-

Board of Equalization Power of Auditor of State.

nizances even without execution, the prosecuting attorney is entitled to his percentage, as on money collected.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Show this to the auditor, as in answer to his letter.

BOARD OF EQUALIZATION POWER OF AUDITOR
OF STATE.

State of Ohio,
Attorney General's Office,
Columbus, December 23, 1878.

Hon. James Williams, Auditor of State:

SIR:—Your communication of the 16th inst. (with enclosures) in reference to your power to direct the correction of the many cases of gross injustice and flagrant blunders of the city board of equalization of Cincinnati in the discharge of its duty the past year, a number of which have been referred to you by the auditor of Hamilton County, for instruction, has been most carefully considered by me. Whatever power you have in the premises, is to be found in section 15, chapter 3, of the new tax law (75 O. L., 465), and which section is but the re-enactment of section 35 O. L., 102.

The section reads, "Each county auditor shall from time to time correct any errors which he may discover in the name of the *owner in the valuation, description or quantity*, of any tract or lot contained in the list of real property in his county; but in no case shall he make any deduction from the valuation of any tract, or lot of real property, except such as shall have been ordered, either by the State board, or by the county board of equalization, or upon the written order of the auditor of state; which written order shall only be made

Board of Equalization Power of Auditor of State.

upon a statement of facts submitted to the auditor of state in writing."

Thus, in any case, where it is clearly made to appear to the auditor of state by statement in writing that there exists upon the tax duplicate of the county an error

First—In the name of any owner.

Second—In the valuation of any tract or lot of land.

Third—In the quantity of any tract or lot of land, he may direct, by written order, the proper county auditor to make the correction.

Now the statement submitted to you (and to which you have called my attention), and upon which you are asked to give written orders to the auditor of Hamilton County, are for the correction of alleged errors in *valuation* upon the part of the last annual board of equalization of the city of Cincinnati.

The tax law now being in force at the time of the action of said board, its powers and duties were defined by Sec. 45 and the acts therein referred to S. & S. 755.

The auditor of state is not constituted a court or a tribunal of any kind, to review, either upon questions of law or fact, the acts of a board of equalization; and hence, I deem it unnecessary here, to go into discussion of the power of an annual board of equalization.

Its judgment as to values in the discharge of its official duties in the equalization of appraisements for taxation, however unjust and excessive its valuations may be, you, as auditor of state have no power to correct. If there is any remedy, it lies in another direction.

But, while this is true, should it clearly be made to appear by *sworn statements* of members of the board of equalization, and otherwise, that a mistake was made in a valuation based entirely upon a misapprehended or mistaken state of facts, it would be, in my opinion, such error in *valuation* as is within the purview of said Sec. 15 (75 O. L., 465), and which you would be authorized to correct, *provided, that such correction does not reduce the value of*

Auditor; Pay of.

real property in the county below the aggregate value on the duplicate of the preceding year, and not including the value of new structures as returned by the assessors for the current year.

I make this limitation because the board of equalization is limited in a like manner.

In closing I deem it not improper to say, that if city councils were a little more careful in the selection of members of boards of equalization, and such boards more careful in the discharge of their duties, that much of the injustice complained of would be avoided.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR; PAY OF.

State of Ohio,
Attorney General's Office,
Columbus, December, 1878.

*D. M. Brown, Esq., Prosecuting Attorney Carroll County,
Carrollton, Ohio:*

DEAR SIR:—In answer to yours of the 20th inst., I have to say, that a county auditor is entitled to no compensation except what is specifically provided for in the general act fixing the salary, etc., of auditor.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

*"Soldiers' Relief Fund," County Commissioner in Regard to
—County Seat; Removal of.*

"SOLDIERS' RELIEF FUND;" COUNTY COMMISSIONER IN REGARD TO.

State of Ohio,
Attorney General's Office,
Columbus, December 23, 1878.

*C. A. Atkinson, Esq., Prosecuting Attorney Jackson County,
Jackson, Ohio:*

DEAR SIR:—Yours of the 18th inst., inquiring as to "what the powers and duties of the county commissioners are under the amendatory act of 1873, in regard to the soldiers' relief fund, came duly to hand. I do not see how I can make their duties any plainer than does the original act of 1865 and the amendatory act you refer to.

If I knew just the question you were troubled with I would endeavor to assist you.

Respectfully yours,
ISAIAH PILLARS.
Attorney General.

COUNTY SEAT; REMOVAL OF.

State of Ohio,
Attorney General's Office,
Lima, December 30, 1879.

*Messrs. C. L. Coorman, D. Dawford and J. A. Gallagher,
Bellaire, Ohio:*

GENTLEMEN:—Your letter of the 24th inst. reached me here, and I have given your inquiries a careful examination.

First—I have no doubt but that proceedings for the removal of a *county seat* can be legally commenced by giving notice thirty (30) days prior to the commencement of an adjourned session of the Legislature.