pended, depends largely on the facts peculiar to each particular situation and I would not want to be understood as laying down a general principle that the inhibition placed on public officers by virtue of Section 3808 and cognate sections of the General Code, would in all cases be applicable to sales made by such officers to contractors under the political subdivision to which they sustain the relation of an officer, but confirming myself to your inquiry and answering your question specifically I am of the opinion that a member of a village council during his term of office cannot legally sell lumber to a contractor for use in connection with a contract awarded to such contractor by the council of which the party in question is a member.

Respectfully,
EDWARD C. TURNER,
Attorney General.

853.

RESTAURANT—WHERE PROPRIETOR OF A GROCERY STORE SELLS CHEESE, HAM, BUNS, ETC., TO HIS CUSTOMERS BUT DOES NOT SERVE HIS PATRONS WITH PREPARED LUNCHES HE IS NOT CONDUCTING A RESTAURANT.

SYLLABUS:

1. *In so far as the "Ohio Hotel and Restaurant Law" (Sections 843 to 843-18 General Code) is concerned, a restaurant is defined by Section 843-2 as a "building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accomodations."*

2. *Where the proprietor of a grocery store sells articles of food, such as cheese, ham, veal loaf, buns, etc., to his customers but does not serve his patrons with prepared lunches, he is not engaged in the business of conducting a restaurant within the meaning of Section 843-3 and related sections of the General Code, even though he has knowledge that his customers intend immediately to prepare and actually do prepare a lunch from such articles.*

COLUMBUS, OHIO, August 11, 1927.

HON. LOUIS F. MILLER, *State Fire Marshall, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date reading as follows:

"Within the corporate limits of one of the cities in Ohio we have the following proposition:

A man who operates a grocery directly across the street from a large factory sells, at meal times, to the employees of the factory—and possibly to anyone else who wishes such articles of food—cheese, ham, veal loaf, buns and the like. Our investigation has developed that this groceryman cuts his cheese, ham, meat and so on, as well as the buns, hands them to the purchaser or puts them in a bag, and explains that the customer is to make his own sandwiches,—that the law does not permit him (the groceryman) to make them. So far as we know, these articles of food are not eaten in the store.

Please inform us, by way of an opinion, whether an establishment so conducted comes within the definition of 'restaurant' as set out in the Ohio Hotel and Restaurant Law, Sections 843 to 843-18, General Code."

Sections 843 to 843-18 inclusive, of the General Code, create in the State Fire Marshal's office, a division known as the "Hotel Division", to be administered as prescribed in such sections.

Section 843-3, General Code, provides in part that:

"On or before May first, nineteen hundred and twenty, and the first day of January in each year thereafter, every person, firm or corporation now engaged in the business of conducting a hotel or restaurant, or both, in all cities and villages of this state and who shall hereafter engage in conducting such business, in such cities and villages, shall procure a license for each hotel or restaurant so conducted or proposed to be conducted; provided, that one license shall be sufficient for each combined hotel and restaurant where both are conducted in the same building and under the same management. No hotel or restaurant shall be maintained and conducted in any city or village in this state after the taking effect of this act without a license therefor. * * * "

The term "restaurant" is defined by Section 843-2, General Code, as follows:

"Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall, for the purpose of this act (G. C. Sections 843 to 843-18) be defined to be a restaurant."

By Section 843-8, General Code, penalties for failure to comply with the provisions of Sections 843 to 843-18 are provided in the following language:

"Whoever shall fail or refuse to comply with the provisions of this act (G. C. Sections 843 to 843-18) shall be deemed guilty of a misdemeanor and shall be subject to a fine of ten dollars for each day that such violation is continued. If any such violation continue for more than thirty days, the state fire marshall may revoke the license of such person, firm or corporation upon hearing and notice as hereinafter provided and close the building or premises for use as such hotel or restaurant until all the provisions of this act (G. C. Sections 843 to 843-18) shall be complied with."

Since, unless the grocer referred to in your letter is engaged in the business of conducting a restaurant, as that term is defined by Section 843-2, supra, he would not be required to procure a license, the question here presented is whether or not, upon the facts set forth in your communication, it can be said as a *matter of law* that the grocery in question is a restaurant.

In so far as criminal prosecutions are concerned, the sections of the code under consideration must be strictly construed, and if the acts complained of do not come clearly within the prohibition of the statutes, their scope cannot be extended to include acts other than those which are clearly described and provided for. If there be a fair doubt as to whether the acts charged are embraced in the prohibition, that doubt is to be resolved in favor of the defendant. And as stated in 36 Cyc. 1187, "In order to enforce a penalty against a person, he must be brought clearly within both the spirit and the letter of the statute."

In Potter's Dwarris on Statutes and Constitutions, the author says at pages 245 and 247:

> "Penal Statutes receive a strict interpretation. The general words of a penal statute shall be restrained, for the benefit of him against whom the penalty is inflicted.
> * * * * * * * * * * *
>
> A penal law then, shall not be extended by equity; that is, things which do not come within the words, shall not be brought within it, by construction. The law of England does not allow of constructive offences, or of arbitrary punishments. No man incurs a penalty unless the act which subjects him to it, is clearly both within the spirit and the letter of the statute imposing such penalty. 'If these rules are violated,' said Best, C. J., in the case of Fletcher vs. Lorden Sendes, 'the fate of accused persons is decided by the arbitrary discretion of judges, and not by the express authority of the laws'."

And in a footnote on page 245, the case of *United States vs. Ragsdale,* Hemp. R. 497, is cited as authority for the statement:

> "And a further rule is, that an offender who is protected by its letter, cannot be deprived of its benefit on the ground that his case is not within its spirit."

As above stated in order to sustain a conviction under Sections 843-3 and 843-8, supra, in the case here under consideration, the grocery concerning which you inquire must be held to be a restaurant as defined by Section 843-2, supra. That is to say, the grocery must be in a building or other structure kept, used, maintained, advertised or held out to the public as a place "where *meals or lunches are served* for consideration, without sleeping accomodations." While your letter does not expressly so state, I shall assume that the grocery is kept and maintained in a building open to the public generally, that whatever is furnished is sold "for consideration" and that there are no "sleeping accomodations." The question narrows, therefore, as to whether or not the grocery is a place "where meals or lunches are served."

The word "meal" is defined by the New Standard Dictionary as:

> "The portion or quantity of food taken to satisfy the appetite; the substance of a repast; as, he takes three *meals* a day."

The definition given by Webster's new International Dictionary is:

> "The portion of food taken at a particular time to satisfy appetite; the quantity usually so taken at one time; repast; also, act or time of eating a meal; as, during the *meal.*"

In the New Standard Dictionary the term "lunch" is defined as follows:

> "1. A light meal eaten between breakfast and dinner; a luncheon; 2. (U. S.) Any light repast between meals; 3. Food provided for a lunch. * * * "

While Webster's International Dictionary states that the word "lunch" is obsolete though used in dialect, its definition as colloquially or informally used is:

"A luncheon, or light repast."

"Luncheon" is defined as:

"a. A portion of food or light repast, taken between meals or as an irregular meal. B. An informal or light repast between breakfast and dinner."

The verb "serve" is defined by the same authority as meaning:

"To wait upon; to supply the wants of; to attend; specif., to wait upon at table; as to *serve* customers. Hence, to bring forward, arrange, deal, or distribute, as a portion of anything, especially of food prepared for eating; * * * * * * * * *

To prepare and dish up food, etc."

In the New Standard Dictionary the word "serve" is defined as:

"To wait on personally, especially as a valet or a table attendant; as, to *serve* a company at dinner. * * * To bring and arrange on the table or distribute among guests as food; as, the ice cream was *served* late."

In common and ordinary usage the word "meal" means more than a mere lunch or luncheon and carries with it the idea of something more elaborate than a mere sandwich or like edible. The very fact that the statute in question used the words "meals or lunches" conclusively shows that the legislature recognized a distinction between the two terms. No argument is required to demonstrate that if the grocer in question be violating Sections 843-3 and 843-8, supra, at all, it is because he is operating a place where lunches are served and not meals.

However, it is difficult to see how it can be successfully contended that the grocery is a place where even lunches are served. It seems clear that what the legislature intended to license and regulate was only those eating places where *prepared lunches are served* to the patrons and not places where food capable of being made into lunches is sold.

In the instant case the grocer simply sells one or more of the articles mentioned in your letter from which the purchaser prepares his own lunch and serves himself. On your statement of facts the grocer apparently carefully refrains from serving lunches and the mere fact that he cuts the articles sold as desired by the customer does not change the nature of the transaction. As above stated before one can be convicted under a penal statute he must be clearly within both the spirit and the letter of the law; and while it is questionable if the grocer comes within the spirit of the statute certainly he does not come within the letter, which defines a restaurant "to be a place where *meals or lunches are served;*" that is, a place where a meal or luncheon already prepared for consumption is served to the guest in the ordinary signification of the word "serve."

For these reasons it is my opinion that upon the facts stated in your letter, the grocer therein referred to is not engaged in the business of conducting a restaurant within the meaning of the sections of the code above set forth.

Nothing in this opinion, however, should be construed as holding that a grocer

may operate a restaurant other than in accordance with Sections 843 et seq., of the General Code. Cases may occur where the facts are such as clearly to bring the owner or proprietor of a grocery store within the provisions of these sections. All that is herein decided is that upon the facts stated in your communication the law is not being violated.

Respectfully,
EDWARD C. TURNER,
Attorney General.

854.

BOARD OF EDUCATION—RURAL BOARD MAY COMPEL RURAL BOARD OF ANOTHER COUNTY TO PAY TUITION FOR PUPILS ATTENDING ITS HIGH SCHOOL—COUNTY BOARD OF EDUCATION ADVISES RURAL BOARD AS TO TRANSPORTATION OF HIGH SCHOOL PUPILS.

SYLLABUS:

1. *A rural board of education of one county may compel a rural board of education of another county to pay tuition for pupils attending high school in its district and residing in the other district, the same as though the two rural districts were in the same county.*

2. *It is not mandatory upon rural boards of education to pay for transportation of high school pupils unless the same is deemed and declared by the county board of education of which the rural district is a part, to be advisable and practicable.*

COLUMBUS, OHIO, August 11, 1927.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

> "Can a Township Board of Education of one county compel a Township Board of Education of another county to pay transportation and tuition for pupils of one township attending high school in another county?"

Your inquiry resolves itself into two questions, first; as to the liability of a rural board of education of one county to a rural board of education of another county for tuition for high school pupils residing in its district and attending high school in the rural district of the other county, and secondly; the liability of such a board of education for the transportation of pupils to a high school in another county.

Section 7747, General Code provides in part, as follows:

> "The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. * * *