

Note from the Attorney General's Office:

1880 Op. Att'y Gen. No. 1880 vol. 4, p. 746 was questioned by 1999 Op. Att'y Gen. No. 99-027.

*Auditor of State; Chief Clerk of, To Be Commissioned—
Percentage Due to Prosecuting Attorney on Fines,
Costs, Etc.*

AUDITOR OF STATE—CHIEF CLERK OF, TO BE
COMMISSIONED.

Columbus, Ohio, January 13, 1880.

Hon. John F. Oglevee, Auditor of the State of Ohio:

DEAR SIR:—My opinion is requested as to whether, under sections 83, and 169, of the Revised Statutes of Ohio, your chief clerk should be commissioned by the governor.

It is not clear to my mind that this is absolutely necessary, yet it can do no harm and may prevent vexatious questions in the future. I therefore advise that a commission issue from the governor to your appointee.

Respectfully submitted,

GEO. K. NASH,
Attorney General.

PERCENTAGE DUE TO PROSECUTING ATTOR-
NEY ON FINES, COSTS, ETC.

Columbus, Ohio, January 14, 1880.

Mr. A. Calkins, Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—It is my opinion that, under section 1298 of the Revised Statutes, a prosecuting attorney is entitled to a percentage on moneys collected on fines, forfeited recognizances, and costs in criminal causes, in which he has some official duty to perform, and in such causes alone. The statute does not impose any official duty on the prosecuting attorney in connection with criminal causes disposed of before justices of the peace.

Furnishing of Offices, Blanks and Stationery to Prosecuting Attorneys.

I therefore conclude that he is not entitled to a percentage upon fines and costs collected by these magistrates in cases disposed of by them.

Truly yours,
GEO. K. NASH,
Attorney General.

FURNISHING OF OFFICES, BLANKS AND STATIONERY TO PROSECUTING ATTORNEYS.

Columbus, Ohio, January 14, 1880.

Mr. Noah I. Dever, Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—YOUR favor of the 10th instant has been received. Section 859 of the Revised Statutes confers upon the county commissioners the authority and power to furnish offices for county officers, including prosecuting attorneys. It leaves with the commissioners, however, a discretion so that they may determine when the office is needed and what its character shall be.

I am not aware of any authority in county commissioners to furnish stationery to the prosecuting attorney. I think the difficulty can be entirely overcome in the matter of blank indictments.

Section 1264 of the Revised Statutes provides how blanks and stationery may be furnished to the clerk of court. Blank indictments are as useful to the clerk as to the prosecuting attorney.

The commissioners can certainly provide them for the clerk. If this be done, I think that you will find that your clerk is kind enough to let you have such number as you may find necessary.

Yours truly,
GEO. K. NASH,
Attorney General.

County Officers; Who Are Entitled to the Advice of the Attorney General—Requisition; What Evidence Required to Issue Warrant By Governor on.

COUNTY OFFICERS—WHO ENTITLED TO THE
ADVICE OF THE ATTORNEY GENERAL.

Columbus, Ohio, January 14, 1880.

S. A. Atkinson, Auditor, Woodsfield, Ohio:

DEAR SIR:—Your favor of the 10th inst. has been received. You will see by section 1274, of the Revised Statutes that the prosecuting attorney is made the legal adviser of the county officers.

Section 202 entitles only prosecuting attorneys (of county officers) to the advice of the attorney general.

It would not be courtesy on my part towards the prosecuting attorney to give advice to a county officer. If the prosecuting attorney desires my assistance in any matter upon which he is called to advise county officers, I shall render it with pleasure.

Respectfully yours,

GEO. K. NASH,
Attorney General.

REQUISITION—WHAT EVIDENCE REQUIRED
TO ISSUE WARRANT BY GOVERNOR ON.

Columbus, Ohio, January 19, 1880.

Hon. Chas. Foster, Governor of Ohio:

DEAR SIR:—In the matter of the two requisitions made upon you by the governor of West Virginia, for the extradition of L. E. Davis, charged with murder, I have the honor to report that there is no evidence showing:

First—That the prosecuting officer of the county, in

Requisition—What Evidence Required to Issue Warrant By Governor on.

which the offenses are claimed to have been committed, approves the application or that he believes that a prosecution would result in conviction:

Second—That the parties fled from the state of West Virginia before arrest could be made, and are fugitives from justice:

Third—That the ends of justice require their rendition.

Fourth—That no previous application has been made for the rendition of either of the accused for any offense arising out of the same transactions.

Fifth—That the applications are made for the purpose of punishing crime and not to enable any person to collect a private debt or for the purpose of subserving any private end or personal interest.

In each application, such evidence should be furnished, in order to comply with section 95, of the Revised Statutes of Ohio, 1880, and the regulations of the executive department of the State thereunder.

I therefore advise the withholding of your warrants in these cases, until such evidence is filed with you.

Respectfully submitted,

GEO. K. NASH,

Attorney General.

REQUISITION—WHAT EVIDENCE REQUIRED
TO ISSUE WARRANT BY GOVERNOR ON.

Office of the Attorney General,

Columbus, Ohio, January 20, 1880.

Hon. Chas. Foster, Governor of Ohio:

SIR:—In the matter of the demand upon yourself by the governor of Indiana for the extradition of one Frank Hurley, I have this report to make:

Corporation Cannot Be Organized to Deal in Real Estate.

The demand is accompanied by a duly attested copy of the complaint, made before a magistrate, against the said Frank Hurley, but it is not accompanied by affidavits to the facts constituting the offense charged by persons having actual knowledge thereof, as is required by section 95, Revised Statutes of Ohio, 1880.

Respectfully submitted,
GEO. K. NASH,
Attorney General.

CORPORATION CANNOT BE ORGANIZED TO
DEAL IN REAL ESTATE.

Office of the Attorney General,
Columbus, Ohio, January 20, 1880.

Hon. Milton Barnes, Secretary of State:

SIR:—The undersigned certificate of incorporation, proposed to be filed by the "Golden Rule Aid Society Company," has been received, together with your request for my opinion as to whether a corporation can be organized under the laws of Ohio for the purposes proposed to be accomplished by this association.

The purposes to be accomplished are not clearly set forth in the certificate. I am unable, however, to see how the purposes therein stated can be secured unless the proposed corporation becomes from time to time the buyer and the seller of real estate.

The gentlemen who are attempting to organize this corporation are evidently sincere in their desire to ascertain whether they can do so legally, for they have accompanied their application with a printed copy of their constitution and plan of doing business. On page 3 of this document they say "all property is bought by and

*Certificate of Deposit Promising to Pay Legal Tender Notes,
Taxable.*

in the name of the company and is resold only to loan shareholders."

This, it seems to me, is certainly dealing in real estate, and under section 3235 of the Revised Statutes of Ohio, a corporation can not be organized for this purpose. Building associations can not carry on such a business as is proposed by these gentlemen.

If this certificate of incorporation should be filed, or if a certificate, similar to the building association certificate, should be filed, the company duly organized thereunder, and business conducted as proposed in the constitution and plan now before me, there certainly would be trouble.

Upon a proper application, to the proper court, it would appear that the company was dealing in real estate and thereupon the company would be ousted out of its charter rights and privileges.

Respectfully submitted,
GEO. K. NASH,
Attorney General.

CERTIFICATE OF DEPOSIT PROMISING TO PAY
LEGAL TENDER NOTES, TAXABLE.

Office of the Attorney General,
Columbus, Ohio, January 21, 1880.

SIR:—Your favor of the 20th inst., has been received. The following statement of facts and question are submitted:

The facts—Mr. F. of this county deposited in a bank in Missouri the sum of \$4,000 in greenbacks, for which he produces a certificate, naming the deposit as "greenbacks" or "legal tenders."

*Certificate of Deposit Promising to Pay Legal Tender Notes,
Taxable.*

The banker agrees to hand to Mr. F. the amount of greenbacks, when demanded, and further agrees to and does *pay interest* on the deposit to Mr. F.—Mr. F. has no agreement with his banker, that he—F.—should receive the identical greenbacks, deposited by him.

The auditor has placed the amount on the duplicate here, as money or credits, and seeks to compel payment of tax.

Question—Is the above amount properly taxable under the laws of Ohio?

When Mr. F. deposited his greenbacks or treasury notes with the bank in Missouri, he parted with that specific property, and took in its stead another species of property—to-wit, a certificate which entitled him on demand to receive a like amount of treasury notes with interest. This certificate, it seems to me, should be returned for taxation.

If I should give you my note, in which I promise to pay you one hundred dollars—\$100—in treasury notes, in one year from date, or, on demand, it appears to me that that, like other notes would be subject to taxation. I am unable to see why the note should be subject to taxation and the certificate of Mr. F. relieved from it. At any rate, it seems to me that your auditor is clearly justified in placing the amount of Mr. F.'s certificate upon the tax duplicate, and if it should chance to be an error, the courts, upon proper application, would restrain the treasurer from collecting the tax. Mr. Oglevee, the auditor of state, concurs in the opinion that I have herein expressed.

Yours truly,
GEO. K. NASH,
Attorney General.

To Carlos M. Stone, Prosecuting Attorney, Cleveland, Ohio.

County Recorder—Control Over Records of His Office.

COUNTY RECORDER—CONTROL OVER RECORDS OF HIS OFFICE.

Office of the Attorney General,
Columbus, Ohio, January 22, 1880.

SIR:—I have the honor to acknowledge the receipt of three questions submitted by you in regard to the powers and duties of county recorders, touching instruments of writing on file, and recorded in their offices.

The first question is as follows:

“Can a county recorder rightfully refuse permission to examine an instrument on file for record in his office, or the record thereof unless the particular instrument or matter of record is designated?”

To this question I answer no. If such power does rest in the county recorder, and is exercised, it would defeat the purpose for which the statutes of Ohio require that deeds, mortgages, and like instruments, shall be recorded. It would in many cases prevent citizens, or their agents, from obtaining the claim of title by which they hold their property, and would in divers others ways needlessly embarrass and hinder the public.

The second question is as follows:

“Can such officer rightfully refuse an examination of an instrument on file for record or the record thereof, if he is morally certain that such examination is for the purposes of abstracting information therefrom, to be put to a use damaging to the parties to such instrument, and prejudicial to the public welfare?”

I am unable to see how a county recorder is to become “morally certain” of the purposes for which any citizen wishes to examine a matter of public record.

The law certainly does not make of him a court, to

County Recorder—Control Over Records of His Office.

examine into, and to determine the purposes and motives of citizens, who wish to examine matters of record in his custody, with power to comply with or reject their applications. Neither can it be supposed that the law would require instruments to be made a part of public records, if they could be used to the damage of the parties thereto, or the injury of the public welfare. To this question I also answer no.

The third question is as follows :

“Is the daily or weekly publication, in a paper of promiscuous circulation, of mortgages filed for record, naming the parties thereto, and all the material facts thereof, contrary to public policy and illegal?”

As to whether or not such publication is contrary to public policy, is a question about which there is undoubtedly a diversity of opinion. Those people who are so unfortunate as to be compelled to give mortgages, would probably think that such publication is against public policy. Upon the other hand, those who have an interest in knowing the financial standing and ability of their neighbors, and business men, would contend that it is not against public policy. Upon this question my opinion would be worth no more than that of any other individual.

As to whether it is illegal; I know of no statute law that prohibits such publication, and I do not believe that a libel suit could be successfully prosecuted on account of such publication. In conclusion, I will say that the records in the recorder's office are public records, and private individuals, in purchasing real estate, are bound to take notice of instruments on file and recorded therein. Therefore the public should be given the fullest and freest access to them, consistent with their proper preservation and safety. Respectfully yours,

GEO. K. NASH, Attorney General.

To Wm. I. Clarke, Prosecuting Attorney, Franklin County, Ohio.

*Attorney General—Duty of in Cases in Common Pleas
Courts.*

ATTORNEY GENERAL—DUTY OF IN CASES IN
COMMON PLEAS COURT.

Office of the Attorney General,
Columbus, Ohio, January 22, 1880.

DEAR SIR:—By the courtesy of Hon. N. M. Howard, your letter of January 19th, with enclosures, has been handed to me, and they have been thoroughly examined. The matter perplexes me not a little.

I desire to perform whatever duty is incumbent upon me, yet I do not wish to seem to be officious, or step outside and do things not required of me. It occurs to me that section 1273 of Revised Statutes makes it the duty of the prosecuting attorney of your county to prosecute the case, to which you refer on behalf of the State, as well as all other complaints, suits and controversies, in which the State is a party, within your county.

If I should attempt now to interfere in this case, would it not be a reflection upon your prosecuting attorney? Would I not, by my act, say that I do not believe that he will perform his sworn duty? This, I do not feel like saying, either by implication or otherwise, for so far as I know, he will be fearless in the discharge of duty.

Again: I do not conceive that under section 202, I have any duty to perform in this case, or that I am ever called upon to examine it. If I should be required by the governor or the General Assembly to appear in this case, then it would become my duty to take hold of the matter; but until requirement is made, I have no more concern with it than any other attorney in this State.

In regard to that part of section 202, relating to the employment of local counsel by and with the consent of the governor and auditor, my construction is that it has

Insane Asylums—Clothing of Inmates Must Be Paid for By County.

reference only to such cases as those in which the attorney general has some duty to perform. If this be so, I have no authority for retaining counsel in this case.

Yours truly,

GEO. K. NASH,
Attorney General.

To M. N. Odell, Toledo, Ohio.

INSANE ASYLUMS—CLOTHING OF INMATES
MUST BE PAID FOR BY COUNTY.

Office of the Attorney General,
Columbus, Ohio, January 23, 1880.

DEAR SIR:—In my opinion sections 631 and 632 of the Revised Statutes of Ohio intend to provide that the clothing, furnished to inmates of the benevolent institutions of the State, during the time they are such inmates, should be paid for by the county from which they came.

My mind is led to this conclusion from the fact that it is the duty of the auditor of such county to collect such bills. It was evidently the intention of the Legislature to compel the inmates of their institutions, or those responsible for them, to pay for the necessary clothing and their traveling and incidental expenses, and the duty of collecting such bills was imposed upon the auditor of the county, from which the person came, as being the officer most likely to successfully perform it.

Truly yours,

GEO. K. NASH,
Attorney General.

To Mr. L. Firestone, Superintendent of Asylum for Insane, Columbus, Ohio.

*Prosecution, When Deemed Commenced—Clough, H. P.;
Commission of.*

PROSECUTION; WHEN DEEMED COMMENCED.

Office of the Attorney General,
Columbus, Ohio, January 24, 1880.

DEAR SIR:—I believe that our code gives the court the power, in case an indictment is quashed, to admit the accused to bail or remand him to prison, in case a recognizance can not be given, to await the action of the grand jury at the next term.

(See section 7282 of the Revised Statutes of Ohio, 1880).

If this be so, the mere quashing of an indictment does not work the discontinuance of the case. I think, therefore, that the prosecution may have been deemed commenced from the time of the finding of the first indictment. Do not the words "or such prosecution commenced" in section 605—cover just such a case as this?

Yours truly,

GEO. K. NASH,
Attorney General.

To Wm. Anderson, Prosecuting Attorney, Manchester, Ohio.

CLOUGH, H. P.—COMMISSION OF.

Office of the Attorney General,
Columbus, Ohio, January 26, 1880.

SIR:—Your favor of the 20th inst., inquiring upon what authority the commission, of which the following is a copy, was issued to Horace P. Clough by Governor R. M. Bishop, has been received.

Clough, H. P.—Commission of.

COPY.

IN THE NAME AND BY THE AUTHORITY OF THE
STATE OF OHIO, RICHARD M. BISHOP, GOVERNOR
OF SAID STATE.

To all whom these presents shall come, greeting:

I, R. M. Bishop, Governor of the State of Ohio, reposing special confidence in Horace P. Clough, of Butler County, in the State of Ohio, do hereby appoint and commission him to be the State Commissioner of Ohio, for the collection of all claims of said State, now or hereafter to become due on the lands of the State, located therein, by the United States government upon military warrants, and for collection of all other claims which the State may have upon the United States government, pertaining to grants of land, swamps and others. and said H. P. Clough, commissioner, shall receive for his services as said collector twenty-five per cent. of the five per cent. allowed upon lands located by military warrants in this State, and the same percentage, to-wit, twenty-five per cent. upon all land claims, which the State of Ohio may have against the government of the United States of America.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Ohio to be affixed, at Columbus, this 17th day of July, in the year of our Lord, one thousand eight hundred and seventy-eight.

[Signed] RICHARD M. BISHOP.

By the Governor.

[Signed] MILTON BARNES,
Secretary of State.

The governor had no authority of law for making the above appointment, and the commission copied above is without force and effect.

Respectfully submitted,
GEO. K. NASH,
Attorney General.

To Hon. Chas. Foster, Governor of Ohio.

Claims Illegally Allowed—In What Name Actions to Be Brought.

CLAIMS ILLEGALLY ALLOWED—IN WHAT NAME ACTIONS TO BE BROUGHT.

Office of the Attorney General,
Columbus, Ohio, January 26, 1880.

DEAR SIR:—I have not reached a satisfactory conclusion in regard to the matter submitted to me in your favor of the 20th inst. Section 1277 expressly says that the cases in it referred to shall be civil actions in the name of the State, and my inference would be that the actions authorized in section 1278, should be brought in the same manner. Certainly the actions contemplated in the fore part of the section to be brought by the taxpayers, upon the failure of the prosecutor to do so, are to be brought in the name of the State. If you had favored me with some of the reasons announced by your court, in deciding the question, I might perhaps have been put upon the right track. If the actions can not be brought in the name of the State, then I conclude that they must be brought in the name of the prosecuting attorney, as such.

If the commissioners illegally allowed the claims I think that I would make them parties defendant to the action, as well as the party illegally receiving the money.

Instead of simply filing a petition for money had and received, I would set forth in the petition all of the facts upon which I relied for a recovery of the money.

If you can give the reasons assigned by your judge in sustaining demurrers, on the ground that the State is not the proper party plaintiff, I will be very glad to have you do so.

Yours truly,

GEO. K. NASH,

Attorney General.

To Mr. C. A. Atkinson, Prosecuting Attorney, Jackson, Ohio.

Convicts—What Time They May Gain.

CONVICTS—WHAT TIME THEY MAY GAIN.

Office of the Attorney General,
Columbus, Ohio, January 27, 1880.

DEAR SIR:—In my opinion section 7432 of the Revised Statutes and section 18 of the act passed February 27, 1878, which seems to be similar in its provisions to section 7432, are not retroactive, and that a man received at the Ohio penitentiary in 1876 for a term of five years, is entitled to a deduction of seven days during the year ending February 27, 1880, if his record has been clear.

If a convict with a four year term, serves one year with a clean record, and then violates the rules of discipline, he loses all benefits for the second year. At the beginning of the third and during the third year, he is entitled to a deduction of five days for good behavior, and during the fourth year seven days.

The words "from the period of his sentence" do not have reference to time prior to the passage of the act of February 27, 1878, and the benefits of this act would only accrue from the time of its taking effect. A convict in the penitentiary prior to the passage of that act could only have such benefits as the laws then in force gave him.

It is not necessary to supply the words "from the period of his sentence" in paragraphs "c" and "d," for they have the same significance as paragraphs "a" and "b," without supplying them.

If section 7432 be repealed, convicts in the penitentiary would be entitled to such deductions only, as they had earned before the repeal, and afterwards would have only such benefits as the new law gives. I beg pardon for the delay in answering your queries. Only the great amount of business pressing upon me has caused this seeming neglect.

Truly yours,

GEO. K. NASH, Attorney General.

To Hon. Francis Collins, President Board Directors,
Ohio Penitentiary, Columbus, Ohio.

*Township Clerk—No Discretion to Refuse to Draw Warrant
for Teachers' Pay.*

TOWNSHIP CLERK—NO DISCRETION TO RE-
FUUSE TO DRAW WARRANT FOR TEACHERS'
PAY.

Office of the Attorney General,
Columbus, Ohio, January 27, 1880.

DEAR SIR:—Your favor of the 23d inst., has been received. I do not think that the township clerk has any discretion that would authorize him to refuse to draw an order upon a township treasurer when a teacher presents the proper papers entitling him to his pay. Therefore the proper court would issue an alternative writ of mandamus. Thereupon the clerk might reply, setting forth the ground of his refusal to draw the warrant. The court would examine into the whole case and if it found that the reasons set forth by the clerk were sufficient to justify him, it would not grant the peremptory writ of mandamus.

If the reasons were not sufficient, a peremptory writ would issue. From the statement of facts made in your letter, of course I cannot say what would be the result of an application to the court. I would suggest whether or not, under section 3967, of the Revised Statutes, the local board of directors ought not to have appealed from the decision of the township board of education to the county commissioners.

Yours truly,
GEO. K. NASH,
Attorney General.

To Martin Knupp, Prosecuting Attorney, Napoleon,
Ohio.

Insane Persons; Who Shall Pay Expenses of Removal From Asylum to Their Homes—Appraiser of Land; What Disqualifies.

INSANE PERSONS—WHO SHALL PAY EXPENSES OF REMOVAL FROM ASYLUM TO THEIR HOMES.

Office of the Attorney General,
Columbus, Ohio, January 28, 1880.

DEAR SIR:—At your request I have examined sections 709, 710 and 719 of the Revised Statutes, and after such examination, I conclude the county should pay the expenses for the removal of a patient from an insane asylum to the county from which he or she was sent.

My predecessor, Hon. Isaiah Pillars, in construing similar statutes announced the same conclusion.

When an order is made out for the discharge of a patient under section 709, and the notice thereof is given to the probate judge, as contemplated in said section, said judge has no discretion, but it is his imperative duty to issue the warrant set forth in said section.

Yours truly,

GEO. K. NASH,

Attorney General.

To Dr. W. H. Holden, Superintendent Athens Asylum for Insane.

APPRAISER OF LAND—WHAT DISQUALIFIES.

Office of the Attorney General,
Columbus, Ohio, January 29, 1880.

DEAR SIR:—Your favor of January 26th has been received. I think that an appraisement made by an appraiser, who was a resident of his district at the time the

Documents for General Assembly—How Ordered Printed.

election took place, and afterward was duly qualified, would be a legal appraisalment, notwithstanding the fact that he has since moved out of the district, but still lives in the same county.

I am not sure that he could be deprived of his office for this reason upon application made to a proper court. I nowhere find any provision, disqualifying the appraiser for moving out of the district after the election. Upon the other hand, the proper officers in filling a vacancy in the office of appraiser, are not limited to the district but to the county, section 2788. At least he would be an officer *de facto*, and in Ohio the acts of *de facto* officers are held to be legal.

In answer to your second question, I will say that I do not see how your treasurer, with absolute safety, can refund the tax until the three years have elapsed. He might perhaps take a bond of indemnity from each person to whom the money is repaid, and in this manner make himself safe.

This however would cause a great deal of trouble.

Truly yours,

GEO. K. NASH,

Attorney General.

To Mr. Frank Moore, Prosecuting Attorney, Mount Vernon, Ohio.

DOCUMENTS FOR GENERAL ASSEMBLY—HOW
ORDERED PRINTED.

Office of the Attorney General,
Columbus, Ohio, January 30, 1880.

DEAR SIR:—Your favor of the 29th has been received. Section 59, Revised Statutes provides that each branch of the General Assembly may order to be printed

House of Representatives—Cannot Order Labels to Be Printed.

two hundred and forty (240) copies of any paper or document coming before it.

It just as plainly declares that no extra copies; i. e.—no greater number than two hundred and forty (240) shall be printed unless the same be ordered by joint resolution within the proper time. It follows as a matter of course that I must answer your question in the negative.

Truly yours,

GEO. K. NASH,

Attorney General.

To Mr. W. I. Elliott, Supervisor Public Printing.

HOUSE OF REPRESENTATIVES—CANNOT ORDER LABELS TO BE PRINTED.

Office of the Attorney General,
Columbus, Ohio, January 31, 1880.

SIR:—YOUR favor of January 30th, together with a copy of the resolution of the House of Representatives, authorizing you to secure three hundred (300) printed complimentary labels for each of the members and officers of the House of Representatives, has been received.

I know of no law that would authorize you, as secretary of state, to have this printing done, and the House of Representatives, by its resolution can not confer such authority upon you. If the printing can be done at the expense of the State, it must be done by the parties who now have a contract for such printing as is necessary for the executive and legislative departments.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. Milton Barnes, Secretary of State.

Inspector of Oils—Hillman Not Legally Appointed.

INSPECTOR OF OILS—HILLMAN NOT LEGALLY APPOINTED.

Office of the Attorney General,
Columbus, Ohio, January 31, 1880.

SIR:—In reply to your favor of January 20th, I have the honor to submit this report:

The office of state inspector of oils was created by act of the General Assembly of Ohio, passed May 15, 1878, (O. L. Vol. 75, page 564). Section 2 of said act provides that the governor, by and with the advice and consent of the Senate, shall appoint a skilled and suitable person as state inspector of oils, whose term of office shall be two years from the date of his appointment, and until his successor shall be appointed and qualified.

On the 14th day of May, 1878, Frederick W. Green, of Cleveland, Ohio, was appointed to said office by Governor R. M. Bishop, for a full term of two years, and was duly confirmed and qualified.

Before the expiration of said term and while the Senate was in session, said Green died. Governor R. M. Bishop, on the 20th day of June, A. D., 1879, appointed W. B. Hillman, also of Cleveland, Ohio, to fill the vacancy. Said appointment was confirmed by the Senate on the 21st day of June, 1879, and a commission was issued to said Hillman by Governor Bishop.

The record in the governor's office shows that Mr. Hillman was appointed to fill the unexpired term of Green, deceased. The governor's message to the Senate declares the same fact. The senate journal shows that that body confirmed for the unexpired term, and the commission issued by the governor authorizes him to act for the same length of time.

Section 27, article II of the constitution of the state of Ohio, reads as follows:

Inspector of Oils—Hillman Not Legally Appointed.

"The election and appointment of all officers, (1) and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; (2) but no appointing power (3) shall be exercised by the General Assembly, except as prescribed in this constitution, and in the election of United States senators; and in these cases the vote shall be taken *viva voce*."

The act of May 15, 1878, creating the office of state inspector of oils, wholly failed to make provision for the filling of this office in case of a vacancy by death or otherwise, either while the Senate is in session or not. Prior to January 1st, 1880, there was no general provision of law for filling vacancies in appointive offices.

I seriously doubt whether, in view of the constitutional provision above quoted, Governor Bishop, by and with the advice and consent of the Senate, had authority of law for filling the vacancy in the office of state inspector of oils, caused by the death of Mr. Green, and if this doubt is well founded, the office of state inspector of oils is now vacant.

This matter has additional importance from the fact that the question has been raised whether or not, under the revised statutes, the governor, by and with the advice and consent of the Senate can fill a vacancy in any appointive office, occurring while the Senate is in session.

Respectfully submitted,

GEO. K. NASH,
Attorney General.

To Hon. Chas. Foster, Governor of Ohio.

*Board of Public Works—What Authority to Construct
Tramways.*

BOARD OF PUBLIC WORKS—WHAT AUTHORITY
TO CONSTRUCT TRAWAYS.

Office of the Attorney General,
Columbus, Ohio, February 3, 1880.

To the Board of Public Works:

GENTLEMEN:—I have the honor to acknowledge the receipt of the letter of Hon. George Paul, bearing date of January 19th, and written at your request.

He asks whether in my opinion your board has the authority to assist in building tramways from canals of the State to adjacent coal mines.

The law gives the board of public works the power, among other things, to perfect and render useful the public works of the State. If it is absolutely necessary to the usefulness of the canals that these tramways should be constructed, I think the board has the power to do so. In exercising this power, however, the board should be exceedingly careful and see that it is only done for the purpose of making useful the canals, and not in the interest of private parties.

I would suggest also, that such improvements ought not to be undertaken unless the board has on hand money that can clearly be used for these purposes.

Respectfully yours,

GEO. K. NASH,
Attorney General.

*Attorneys for Indigent Prisoners—Insane Persons; Who
Should Pay Expenses of Removal From Asylum to
Their Homes.*

ATTORNEYS FOR INDIGENT PRISONERS.

Office of the Attorney General,
Columbus, Ohio, February 4, 1880.

DEAR SIR:—The Common Pleas Court in Franklin County, interpreted the act in vol. 72, page 46, of the Ohio laws to mean that in case of homicide each attorney appointed to defend might be allowed not to exceed one hundred (\$100) dollars.

I am inclined to think that the same construction could be put upon section 7246, Revised Statutes.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To John P. Spriggs, Woodsfield, Ohio.

INSANE PERSONS—WHO SHOULD PAY EXPENSES OF REMOVAL FROM ASYLUM TO THEIR HOMES.

Office of the Attorney General,
Columbus, Ohio, February 4, 1880.

DEAR SIR:—In my opinion the warrant referred to in section 709 of the Revised Statutes has reference to patients discharged as cured, as well as incurable and harmless patients. Patients discharged as cured are most frequently in a delicate condition, and a slight shock would cause a return of their troubles. It was probably the intention of the Legislature that the public authorities shall return all patients to the counties from which

Public Lands Near the Mercer County Reservoir.

they came or to their homes, so that it should be done in a careful and prudent manner.

This interpretation was put upon the law by my predecessor, and I understand that the superintendents of the asylums construe the law in the same manner.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To A. H. Mitchell, Prosecuting Attorney, St. Clairsville, Ohio.

PUBLIC LANDS NEAR THE MERCER COUNTY
RESERVOIR.

Office of the Attorney General,
Columbus, Ohio, February 4, 1880.

SIR:—I have the honor to acknowledge the receipt of the letter written by Lorah E. Gale, and referred to me by your department. I understand that some time ago Mrs. Gale purchased from the State a piece of land, which at the time extended to the water's edge of the Mercer county reservoir. In her deed the property was specifically described. It seems that since that time the water has receded, and there is a strip between Mrs. Gale's land and the water's edge. As I understand, the land in the Mercer county reservoir was appropriated by the State for canal purposes, and according to a decision of the Supreme Court in the case of *Malone vs. Toledo*, 34 Ohio State Reports, page 541, the fee in such lands belong to the State. It results as a matter of course that this land, about which Mrs. Gale writes, belongs to the State and could only be leased or bought from the State.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. I. F. Oglevee, Auditor of State.

Copyright of Revised Statutes.

COPYRIGHT OF REVISED STATUTES.

Office of the Attorney General,
Columbus, Ohio, February 4, 1880.

To the General Assembly of the State of Ohio:

GENTLEMEN:—On the 31st day of January I had the honor of receiving a certified copy of the senate joint resolution, No. 16, in which you asked my opinion upon the following matters, to-wit:

I. Whether the copyright to the Revised Statutes of Ohio, 1880, by the secretary of state secures to the State the benefits of the United States statutes upon the subject of copyright.

II. If the State has or can secure a copyright for the Revised Statutes.

III. If a person publishes and sells the said statutes, can the State collect damages therefor and prevent future infringement?

I first call attention to section 4952 of the Revised Statutes of the United States, published in 1875, page 966, which reads as follows:

“Any citizen of the United States or resident therein who shall be the author, inventor, designer or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print or photograph, or negative thereof, or a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, assignees of any such persons shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same; and in case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works.”

Copyright of Revised Statutes.

In accordance with the provisions of an act of the General Assembly of the State of Ohio, passed March 27, 1875, Laws of Ohio, vol. 72, page 87, three commissioners were appointed by the governor of the State of Ohio to revise and consolidate the general statutes. After several years of labor they completed a revision of the statutes, arranged under suitable titles, divisions, sub-divisions, chapters and sections, with head notes briefly expressive of the matter therein contained, with marginal notes of the contents of each section, with reference to the original act from which it was compiled, and with foot-notes of the decisions of the Supreme Court upon the same. This work was peculiar by the product of the skill and ability of the gentlemen composing the commission. They were residents of the United States, and, I think, were authors, coming within the meaning of the United States statutes, in so far as the original notes of the contents of each section, the references to the original acts from which the various sections were compiled and the foot-notes of the decisions of the Supreme Court were concerned. They were, however, officers of the State of Ohio, and were paid by the State for their services. Their revision of the statutes was submitted to the General Assembly of the State, and by it re-enacted on the 23d day of June, 1879. By act of the General Assembly provision was made for the printing and distribution of the Revised Statutes, with marginal notes, references and notes of decisions, and among other things it was enacted that the secretary of state should secure for the use of the State a copyright of the said publication of Revised Statutes.

Upon this state of the case, I am of opinion that whatever interest the gentlemen composing the codifying commission had in this work as authors, passed to the secretary of state in trust for the benefit of the State.

It is probable that so much of this work as is the law could not be copyrighted, yet I am of the opinion that the right to publish this code with the marginal notes, refer-

Copyright of Revised Statutes.

ences and notes of decisions as arranged by the commissioners, was something that could have been copyrighted by the secretary of state, in pursuance with the act of Congress, recurring to the State the exclusive right of proprietorship in this work, as planned and completed by the commissioners. The members of the codifying commission must have been deemed to have accepted the terms and conditions of the various acts of the General Assembly, the effect of which was to vest their interest in the State, they receiving a compensation for their labors.

The secretary of state, to whom this assignment was made for the benefit of the State, held the legal interest in the marginal notes, references, and notes of decisions, as assignee of the authors and came therefore within the very words of the law before recited by me, entitling him to the copyright for the benefit of the State. I think that the above conclusions are fully sustained by the case of *Little et al vs. Gould et al*. Blotchford's Circuit Court reports, vol. II page 362.

I have given my opinion in regard to the law, but your question involves matters of fact as well as of law. Before a copyright can be secured certain things must be done; see section 4956, Revised Statutes of the United States, page 966. Before the book is published a printed copy of the title of the book must be delivered at the office of the librarian of congress, or deposited in the mail directed to him. Within ten days from the publication of the book, two copies of the same must be delivered to the librarian of congress or deposited in the mail properly addressed to him. Both of these acts are absolutely necessary to the validity of the copyright.

After the publication of the first volume of the statutes, no copy or copies were sent to the librarian of congress, although distributed and sold throughout the State. On the 23d of December, 1879, three hundred of the second volumes were delivered to the secretary of

Copyright of Revised Statutes.

state, and from that time they continued to be delivered to him. On the 30th of December, one hundred copies were given to the governor for distribution, and prior to that time copies were given to certain State officers entitled to three under the law. On the same date the copies to which Franklin County was entitled were delivered to her auditor.

On the 8th of January, 1880, two copies were delivered in the postoffice at Columbus, Ohio, for the first time, addressed to the librarian of congress, at Washington. The question now arises, "when was the publication of this work made?" If the work is to be considered published when the first copies of the second volume were delivered to the secretary of state, the State has lost her copyright, and it is too late now to secure one. If however, the publication is to be considered as made when the distribution of the second volume commenced through the governor and the auditor of Franklin County, possibly the deposit of the copies, addressed to the librarian of congress, in the postoffice at Columbus, on January 8th, may be held to be a compliance with the copyright law. I am inclined to the belief that the publication commenced on the 31st, and that the copyright is good. The publication was not made until both volumes were out. The giving of a few copies to the State officers for their private use before December 30th, would not be a publication. They were placed in their care and could not be used by them for the benefit of the public until January 1st, the time when the laws took effect. The governor and auditor of Franklin County gave copies out to the public for the first time on December 31st. If a copyright has been secured the State is entitled to the benefits arising from section 4964 of the United States statutes at large, edition of 1875, page 967.

"Every person, who, after recording of the title of any book as provided by this chapter, shall within the term limited, and without the consent of the proprietor

Recorders of Counties—How They Shall Record Instruments and Fees.

of the copyright first obtained in writing signed in the presence of two or more witnesses, print, publish or import, or knowing the same to be so printed, published or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

Respectfully submitted,
GEO. K. NASH,
Attorney General.

RECORDERS OF COUNTIES; HOW THEY SHALL
RECORD INSTRUMENTS AND FEES.

Office of the Attorney General,
Columbus, Ohio, February 6, 1880.

DEAR SIR:—Your favor of the 4th inst., has been received. Enclosed you will find a copy of an opinion given by Attorney General Pond, upon the subject-matter of your letter. From the language of section 4, Ohio laws, vol. 61, page 55, I think that he would be justified in expressing a still stronger opinion. The statute says that the recorder of each county shall record in a "*fair and legible handwriting*, in books to be by him provided for that purpose at the expense of the county, all deeds, mortgages, and other instruments, etc." When these words are used, I think the Legislature meant just what it said, and that a part of an instrument can not be made to appear in a printed blank, and the other part be recorded in a "*fair and legible hand writing*." Section 1145, Revised Statutes does not differ from the act of 1864. I am clearly of the opinion, therefore, that the use of these blanks

Treasurer of State—Settlement With County Treasurers.

is improper. If, however, this class of books is used and are furnished by the county, I do not think that the county recorder can charge fees for the printed words, for section 1157 R. S. says that the recorder shall receive twelve cents for every hundred words actually written on the records. I know of no construction or method of definition, that can make the word "written" mean printed.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To W. Hyde, Prosecuting Attorney, Warren, Ohio.

TREASURER OF STATE: SETTLEMENT WITH
COUNTY TREASURERS.

Office of the Attorney General,
Columbus, Ohio, February 6, 1880.

DEAR SIR:—I am in receipt of your favor of January 27th, calling attention to the seeming conflict between sections 181 and 3756 of the Revised Statutes, upon the one hand, and sections 224, 230 and 236 upon the other hand.

I think there can be a literal compliance with all of these sections by the commissioners of the sinking fund, the auditor of state and the treasurer in this manner, to-wit;

To enable the fund commissioners to comply with the provisions of section 230, let the auditor of state issue his general certificate as heretofore, as to the items of interest on the irreducible State debt. Then the commissioners of the sinking fund may issue a requisition to the auditor of state payable to their order for the gross amount of interest due on the irreducible State debt, specifying the amount due each county.

*Attorney General—Compensation of for Defending Cases in
Common Pleas Courts.*

This warrant should be endorsed by the commissioners of the sinking fund in favor of the treasurer of state, and he in his settlement with the county treasurers, will give each treasurer credit for the amount due his county as appears in said warrant.

I hope that these suggestions will enable you to find a satisfactory way out of this conflict in the law.

Truly yours,

GEO. K. NASH,

Attorney General.

To Hon. Joseph Turney, Treasurer of State.

ATTORNEY GENERAL; COMPENSATION OF
FOR DEFENDING CASES IN COMMON PLEAS
COURTS.

Columbus, February 7, 1880.

Hon. George K. Nash, Attorney General:

DEAR SIR:—On account of your indirect personal interest in the question submitted to you by the president of the board of trustees of the Ohio university, in his communication to you of the 3d inst., you request us to examine the questions and give you an opinion upon it.

The question is, whether or not the attorney general is entitled to be specially compensated for services rendered by him under an employment by the board, in the defense of suits against the university in courts inferior to the Supreme Courts. After an examination of the question, we are already of the opinion that it must be answered in the affirmative. Section 206 of the Revised Statutes requires the attorney general to give legal advice to the trustees. But the statute does not require him to defend actions brought against them. He is there-

County Surveyors; Fees of.

fore entitled to reasonable compensation where he is requested by them to defend such cases. His salary is intended as a compensation only for the legal services which the statute prescribing his duties requires him to perform.

Respectfully submitted,
JAMES L. BATES,
R. A. HARRISON.

COUNTY SURVEYORS: FEES OF.

Office of the Attorney General,
Columbus, Ohio, February 9, 1880.

GENTLEMEN:—Below will be found the questions propounded to us by you and our answers to them. We have not been able to give as much thought to them as is desirable, but we hope that our action will prove satisfactory to you.

Respectfully yours,
MILTON BARNES,
Secretary of State.
GEO. K. NASH,
Attorney General.

To Geo. P. Webb, Frederick Howell, B. F. Brown,
Committee.

QUERIES AND ANSWERS.

I. When a county surveyor is engaged on a county ditch, can he charge for traveling expenses in addition to the per diem, as provided in section 4506, R. S. O?

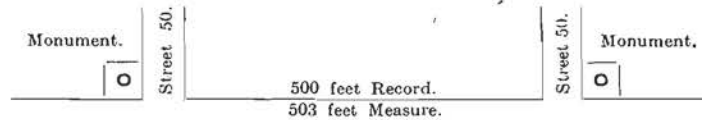
Answer. Yes, in accordance with section 4456 of the Revised Statutes of Ohio, 1880.

County Surveyors; Fees of.

II. Can a county surveyor be required to attend a meeting of county commissioners and give explanation of surveys, plats, profiles and estimates of a county ditch, for the fees allowed witnesses, or is he entitled to \$4.00 per day for such services?

Answer. For such services he should be paid \$4.00 per day for time actually employed.

III. How shall surplus and deficiency be divided?



Answer. The streets would not receive any part of the surplus, nor be diminished by the deficiency. If plotted into lots, and sold by number they would share equally in the surplus or deficiency. If sold by metes and bounds, the surplus would be in the original owner, unless it appears from the plot otherwise that he intended to part with the entire property.

IV. When a county surveyor is required to survey lands, who shall furnish the necessary data, upon which to make the survey?

Answer. It is the duty of the county surveyor to secure the necessary data, if the owner of the land is unable to give it to him.

V. When a county surveyor procures the necessary plot or description for a survey, how shall he make a legal charge for abstracting such data?

Answer. Four dollars per day for time actually employed in obtaining data.

VI. Is a county surveyor required to furnish the necessary instruments at his own expense, or is it there a discretion in the commissioners to do so?

Answer. We do not think that section 1181 confers upon county commissioners the authority to furnish surveying instruments to county surveyors.

County Surveyors; Fees of.

VII. Who shall determine whether a survey shall be done by the day or by the lines run?

Answer. It is a matter of agreement between the land owner and the surveyor as to whether the surveyor shall charge by the day or for fees.

VIII. Can a county surveyor charge for random lines?

Answer. Yes, if they are unavoidable.

IX. Can a county surveyor charge for auxiliary lines, whether measured or lined?

Answer. Yes.

X. Is a county surveyor restricted in his charges to the fee-bill for surveys other than official?

Answer. For such work he may charge what it is reasonably worth.

XI. What is an official survey?

Answer. Such a survey as the law requires him to make.

XII. What is an official day's survey?

Answer. The length of time that custom, in that kind of business, makes a day's labor.

XIII. Can a county surveyor charge for two days on the same date?

Answer. A surveyor should be allowed pro rata for whatever time he works beyond the ordinary time for terminating a day's work.

XIV. When a county surveyor is engaged on a board of equalization, what is his compensation?

Answer. His ordinary allowance, \$4.00 per day.

XV. Can a surveyor have mileage in addition to the \$4.00 per day?

Answer. Not if employed by the day.

XVI. In section 4527 of the Revised Statutes, does \$3.00 for plot and profile mean \$3.00 per diem or \$3.00 for the whole plot?

Answer. We think that he is entitled to \$3.00 per

County Surveyors; Fees of.

day, and that the Legislature intended to make a difference of \$1.00 per day between field and office work.

XVII. Are county commissioners required under the present law to employ the county surveyor to do all the engineering (if competent) that they may have to do in the county?

Answer. No, they have a discretion.

XVIII. Can a county surveyor and his deputy receive pay for work on the same survey in the same time, at the same rate?

Answer. Not without a previous agreement with the party having the work done.

XIX. Can a county surveyor maintain a lien on the land surveyed for his wages?

Answer. No.

XX. Can a county surveyor charge by the day for all work done?

Answer. This question was answered in answering question VII.

XXI. Can a county surveyor, when running a transit line employ a rodman or flagman in addition to chainmen and marker, and if so, what compensation shall be allowed for such services?

Answer. We think not, unless by agreement with the party having the land surveyed.

*Commissioner of Railroads and Telegraphs: Legality of
Appointment of G. Robinson.*

COMMISSIONER OF R. R. AND T.; LEGALITY OF
APPOINTMENT OF G. ROBINSON.

Office of the Attorney General,
Columbus, Ohio, February 10, 1880.

To the Members of the Ohio Senate:

GENTLEMEN:—I have the honor to acknowledge the receipt of Senate resolution No. 39, containing the following inquiries:

I. As to the legality of the appointment and confirmation of Hon. J. S. Robinson, to be commissioner of railroads and telegraphs, *vice* Hon. Wm. Bell, term expired.

II. Whether, when a vacancy occurs in any office filled by appointment by and with the advice and consent of the Senate, which vacancy occurs by expiration of the term of the officer, during the session of the Legislature, the governor has authority, under the existing law, to fill said vacancy by appointment.

III. Whether a vacancy now exists in the office of commissioner of railroads and telegraphs.

Hon. J. H. Robinson was nominated on the 16th of January by the governor, and afterward confirmed by the Senate, to be commissioner of railroads and telegraphs, *vice* Hon. Wm. Bell, term expired.

In considering this action of the governor and Senate, I desire to call your attention to a portion of section 245 of the Revised Statutes, which reads as follows:

“A commissioner of railroads and telegraphs shall be appointed by the governor, by and with the advice and consent of the Senate: and he shall hold his office for two years.”

And also to section 8 which reads as follows:

*Commissioner of Railroads and Telegraphs; Legality of
Appointment of G. Robinson.*

“Any person holding an office or public trust shall continue therein until his successor is elected or appointed and qualified, unless it is otherwise provided for in the constitution or laws.”

Hon. Wm. Bell was a person holding an office, to-wit: Commissioner of railroads and telegraphs, the term of which expired on the 15th of January, and as there was nothing in the constitution or laws providing otherwise, he continued to hold it until his successor was appointed and qualified.

I therefore say that a vacancy had not occurred in this office when the governor and Senate acted, and I can not conceive how a vacancy could occur by expiration of term.

Sections 245 and 8 read together, provide that by and with the advice and consent of the Senate, the governor may appoint a commissioner of railroads and telegraphs, who shall serve for the term of two years and until his successor is appointed and qualified. They authorize the governor by and with the advice and consent of the Senate once in two years on account of expiration of term, to appoint a commissioner of railroads and telegraphs.

In conclusion I answer your first question by saying that the action of the governor on the 16th of January in appointing Hon. J. S. Robinson to be commissioner of railroads and telegraphs for the term of two years, and the action of the Senate in confirming said appointment was authorized by law and therefore legal.

I answer the second question by saying there was not a *vacancy* in the office, but that the appointment was made of an expiration of term.

I answer the third question by saying that Hon. J. S. Robinson is the legally appointed, qualified and acting commissioner of railroads and telegraphs for Ohio.

Respectfully submitted,

GEO. K. NASH,
Attorney General.

County Commissioners; Mileage and Expenses of.

COUNTY COMMISSIONERS; MILEAGE AND EXPENSES OF.

Office of the Attorney General,
Columbus, Ohio, February 11, 1880.

DEAR SIR:—In accordance with your request of February 6th, I have carefully examined section 897 of the Revised Statutes.

I am of the opinion that a county commissioner is entitled to mileage once in each month or twelve times a year, and no more. This mileage must be for sessions held at the county seat, and for the distance from the commissioner's home to the county seat.

Section 897 does not provide for the expenses of commissioners when they are in other parts of the county than the county seat, upon the business of the county, and I do not believe that such expenses can be paid out of the county treasury without express provision of law. If this could be done, that portion of the section which provides for the expenses of county commissioners when absent from the county upon the county's business, is necessary.

If without provision of law you can agree that the necessary expenses of the county commissioners, when doing business within the county can be paid, you could with the same force, without provision of law, argue that their expenses could be paid, when attending to the county's business outside of the county.

This may seem to be a hard rule, but if a law is oppressive, it is not for its interpreters to change it, but for its makers to do so.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. John F. Neilan, Prosecuting Attorney, Hamilton, Ohio.

School Districts, Joint Sub; How Dissolved—Mutual Fire Insurance Companies; When May Issue Policies For Cash.

SCHOOL DISTRICTS, JOINT SUB; HOW DISSOLVED.

Office of the Attorney General,
Columbus, Ohio, February 12, 1880.

To the House of Representatives of the Sixty-fourth General Assembly:

GENTLEMEN:—I have the honor to acknowledge the receipt of House resolution No. 55.

In reply thereto I will say that I have not been able to find any provision of law for dissolving, changing, or altering joint sub-districts, except such as are contained in section 3950 of the Revised Statutes of Ohio, 1880.

Respectfully submitted,
GEO. K. NASH,
Attorney General.

MUTUAL FIRE INSURANCE COMPANIES; WHEN MAY ISSUE POLICIES FOR CASH.

Office of the Attorney General,
Columbus, Ohio, February 12, 1880.

DEAR SIR:—In reply to the questions asked by you in regard to the Lycoming County Mutual Fire Insurance Company, I have this report to make:

It appears to me that sections 3653 and 3682, Revised Statutes of Ohio, 1880, are directly in conflict with each other. I have not been able to reconcile them so that the provisions of both can stand.

When this company was first permitted to do business in Ohio, the same provisions of law were in exist-

Auditors of County; Power to Take Property From Duplicate.

ence. I am reliably informed that the same questions were raised at that time, that we are now considering, and the commissioner of insurance and the attorney general decided that a certificate might be issued to the company and it has continued to be issued for several years.

Under this state of the law and the facts, I would suggest that you do not deprive it of its right to do business, until the Legislature says in clear and unmistakable terms that it will not permit mutual insurance companies to sell policies for cash until they have two hundred thousand (\$200,000) dollars of assets invested as stock companies are required to invest their capital.

Respectfully submitted,

GEO. K. NASH,
Attorney General.

To Hon. J. F. Wright, Superintendent of Insurance.

AUDITORS OF COUNTY; POWER TO TAKE
PROPERTY FROM DUPLICATE.

Office of the Attorney General,
Columbus, Ohio, February 13, 1880.

DEAR SIR:—Your favor of the 11th inst., in regard to the Leonard case property leased by the city of Cleveland, has been received. I have carefully examined the law of 1873, the case reported in 31, O. S. reports, and sections 1038. I can not imagine what the Legislature meant by the words "or when property exempt from taxation has been charged with tax," unless it was to get rid of the effect of the decision in the 31st O. S. and clothe the county auditor with power to strike from the duplicate any property exempt from taxation.

Dogs; Taxes Upon.

I see that I differ from you somewhat upon this matter and I may be wrong.

It seems to me that this is a dangerous power to vest in the auditor, and it ought to be very carefully and prudently used by him.

I call your attention to section 166, Revised Statutes, and suggest whether or not this is not a proper matter for your auditor to submit to the auditor of state for his consideration. I think it is.

If it does come within the province of this section, your county auditor would be bound by the decision and instruction of the state auditor. I have some doubts as to whether the property mentioned is exempt from taxation, but upon this subject I have no well matured opinion. This part of the case ought to be carefully considered, and will be, if the reference I suggest is made.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. C. M. Stone, Prosecuting Attorney, Cleveland, Ohio.

DOGS; TAXES UPON.

Office of the Attorney General,
Columbus, Ohio, February 16, 1880.

To the House of Representatives of the Sixty-fourth General Assembly:

GENTLEMEN:—House Resolution No. 61 has been received by me. The questions you ask are as follows:

I. Can the funds arising from the assessment on dogs be used for other purposes than those specified in the general law?

Dogs; Taxes Upon.

II. Will a local law reducing the assessment on dogs be constitutional?

The sections of the Revised Statutes bearing upon these questions are numbered 2833 and 4215. Sections 2 and 5, Art. XII of the constitution of the State must also be considered in connection with them. Section 5, Art. XII of the constitution provides that no tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same, to which only, it shall be applied. Section 2833, of the Revised Statutes provides for the levying of a *per capita* tax on dogs which shall be disposed of as provided by law. Section 4215, provides that the funds so raised shall be expended in paying the damage done to sheep by vicious dogs, and the manner in which the surplus may be used.

I am of the opinion that under the section of the constitution referred to by me, the moneys already raised by this tax can not be expended for any other objects or purposes than those mentioned in section 4215. If the general law should be changed so as to provide that the fund so raised can be used for another purpose, the moneys raised in the *future* may be used for this other purpose. This, I believe, answers your first question.

In answer to your second question I will say that in my opinion Sec. 2 of Art. XII of the constitution provides that all taxes must be raised by a uniform rule.

A local law, which provides that the tax under consideration should be less in Franklin than in other counties in the State, would destroy the uniformity of this tax, and would therefore be void.

Respectfully submitted,
GEO. K. NASH,
Attorney General.

Notary Public; a Minor Can Not be Appointed.

NOTARY PUBLIC; A MINOR CAN NOT BE APPOINTED.

Office of the Attorney General,
Columbus, Ohio, February 17, 1880.

DEAR SIR:—My attention has been called to an endorsement which I made upon the back of your letter of January 26th. It was answered by me with a large mass of other correspondence, and without giving the subject proper thought. I glanced at the act of March 22, 1879, and compared it with the previous section of law, relating to notaries public, and without thinking further, answered that I thought you could be appointed notary public, notwithstanding the fact that you are a minor. Further reflection convinces me that there are fatal objections in the way.

Probably a minor could not execute a bond that would be binding upon him, and being a minor, probably he could not be held responsible for his official acts.

I fear that my hasty answer before given has caused you much trouble.

Yours truly,
GEO. K. NASH,
Attorney General.

To Mr. S. W. Craighead, Mansfield, Ohio.

Power of City Councils to Contract For Gas.

POWER OF CITY COUNCILS TO CONTRACT FOR
GAS.

Office of the Attorney General,
Columbus, Ohio, February 18th.

DEAR SIR:—Your favor of February 14th has been received. It is not made the duty of the attorney general to give legal advice or opinions to municipal corporations, their officers or representatives, and if he assumes to do so, his opinions should have no more weight than that of any other attorney; and in what I may say to you in regard to the subject matter of your letter, I want you to consider it as coming from me as an individual.

I enclose herewith a copy of an opinion of my predecessor in regard to the power of city councils in making contracts for the supply of gas. I can not speak any more definitely upon this subject than he did. Section 2702 is substantially a re-enactment of the Burns law, to which Mr. Pillars referred in his opinion. This section seems to be as stringent in its provisions as was the original Burns law.

It has occurred to me that Sec. 14, Chapt. 4, Ohio laws, Vol. 75, page 357, which was in force at the time Attorney General Pillars gave his opinion, may clothe city councils with some power in regard to this matter. Section 2491 is a re-enactment of the section last referred to by me. There is a blunder in this section; instead of the words "7551" at its close, there should have appeared 3551. I can hardly see how the provisions of section 2491 can be carried out if the provisions of section 2702 are to be strictly construed.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. F. P. Cunningham, Attorney-at-Law.

Officers Cannot Have Interest in Public Contracts.

OFFICERS CANNOT HAVE INTEREST IN PUBLIC CONTRACTS.

Office of the Attorney General,
Columbus, Ohio, February 20, 1880.

DEAR SIR:—I have received your favor of the 11th inst., in which you ask this question:

“Can an infirmity director, who is also an insurance agent, contract for the insurance on the county infirmity building or on any other county property?”

To this question I am compelled to answer no. Section 6969, Revised Statutes reads as follows:

“An officer elected or appointed to an office of trust or profit in this State, and an agent, clerk, servant or employe of such officer, who, while acting as such officer, agent, clerk, servant or employe, shall become directly or indirectly interested in any contract for the purchase of any property or fire insurance for the use of the State, county, township, city, town or village, shall be imprisoned in the penitentiary, not more than ten years nor less than one year.”

It will be observed that Sec. 36, Chapt. 8, of the criminal code, page 273, laws of 1877, contains the same provisions as Sec. 6969.

The provisions of Sec. 6969 are very sweeping in their character. If you give the words of this section their simple and ordinary meaning it appears to me, that they prohibit any officer, whether state, county, municipal, or township, from having an interest in any contract for the purchase of any property or fire insurance for the use of the State, county, township, city, town, or village, whether it be a contract in the making of which, such officer has some official duty to perform or not.

Truly yours

GEO. K. NASH, Attorney General.

To Mr. J. P. Winstead Prosecuting Attorney, Circleville, Ohio.

Security for Costs; Magistrate's Power to Make.

SECURITY FOR COSTS; MAGISTRATE'S POWER
TO TAKE.

Office of the Attorney General,
Columbus, Ohio, February 23, 1880.

DEAR SIR:—Under Sec. 4131, Revised Statutes an examining magistrate, in the case of a misdemeanor, may require security for costs from the complainant.

Section 1312, provides that when the magistrate takes insufficient security, the commissioners shall not take into account his fees in such case, in making his allowances. Section 1311 also provides that it must be shown that reasonable care was exercised in taking security for costs. The statutes not only authorize magistrates to take security for costs, but also make their fees in a great measure dependent on their doing so.

In the case which you present, the justice did what he was authorized and required by this law to do, and one hundred (100) dollars was deposited with him as security. The case failed, and I am clearly of the opinion that the magistrate can use the money deposited with him in payment of the costs. If he can not, all these provisions of law, giving magistrates power to require security for costs are vain things.

I do not think the commissioners can pay these costs out of the county treasury if the justice should give up his security.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To John T. Hire, Prosecuting Attorney, Hillsboro,
Ohio.

Allowance of \$100 to Attorneys.

ALLOWANCE OF \$100 TO ATTORNEYS.

Office of the Attorney General,
Columbus, Ohio, February 23, 1880.

DEAR SIR:—Your favor of the 19th inst., has been received. The question as to whether, under sections 7245 and 7246, where two attorneys have been assigned to defend an indigent person charged with homicide, \$100, can be allowed to each attorney, or whether only \$100, can be allowed to both, is not without difficulty.

Prior to January 1st, the act of March 3, 1875, O. L. Vol. 72, page 46, seems to have been the one in force upon this subject. You will see that this act is similar in its provisions to sections 7245 and 7246 of the Revised Statutes. If anything it is stronger against the allowance of \$100, to each attorney than the present law. Under that statute my predecessor, on the 4th of September, 1878, held that only \$100, could be allowed to both attorneys. On June 30, 1876, Hon. John Little, attorney general, construing the same statute, held that each attorney, in the discretion of the commissioners, could be paid \$100.

Hon. E. F. Bingham and Hon. E. P. Evans, judges of the Court of Common Pleas, for this county, have each construed the statute in the same way as Mr. Little did.

I am inclined to the opinion that where the words "the court shall assign him counsel not exceeding two," are used in Sec. 7245, we would be perfectly justified in supplying the word "counsel" after the word "two." If this be so, the word "counsel," as it appears in Sec. 7246, is used in the singular number, and each counsel, where there are two, could be allowed in the discretion of the commissioners, not exceeding \$100.

In reply to your second question, I am compelled to say that, for services, under sections 1052, 2754 and 2833,

County Commissioners; Power to Employ Counsel.

relating to the taxation of dogs the county auditor is not entitled to additional fees, and the commissioners could not allow him compensation for extra labor. Sections 1069 to 1078 inclusive prescribe the fees and compensation to be received by county auditors, and they can lawfully receive only such fees as are prescribed in these sections. Section 1078 seems to be very clear upon this subject.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. Frank P. Magee, Prosecuting Attorney, McArthur, Ohio.

COUNTY COMMISSIONERS; POWER TO EMPLOY COUNSEL.

Office of the Attorney General,
Columbus, Ohio, February 23, 1880.

GENTLEMEN:—Your favor of the 19th inst. has been received. In answering your question, I call attention to sections 1274 and 845 of the Revised Statutes. By Sec. 1274 I am of the opinion that county commissioners are limited to the prosecuting attorney for legal opinion and advice. For this purpose they could not retain counsel other than the prosecuting attorney.

In case the commissioners should bring an action or be sued; they are authorized by Sec. 845 to employ counsel, not exceeding two, and to pay a limited sum for their services. In this last event, however, I think that it would be best to retain the prosecuting attorney as one of the counsel, unless there be some good reason for doing otherwise.

Truly yours,

GEO. K. NASH,

Attorney General.

To F. N. Horton, Levi Colby, T. Newton, Commissioners of Defiance County.

Girls' Industrial Home; Contract Concerning.

GIRLS' INDUSTRIAL HOME; CONTRACT CONCERNING.

Office of the Attorney General,
Columbus, Ohio, February 24, 1880.

DEAR SIR:—I have carefully examined the matter presented by your board of trustees several days ago. The question is whether under sections 3193, 3194 and 3195, the persons who are sub-contractors under Harris W. Newell can obtain a lien for labor and materials furnished upon a building belonging to your institution prior to December 6, 1879.

I answer that they have not obtained a lien upon such structure, because it is "public property." When, however, the sub-contractors or material men performed labor or furnished material for said building, under the contract, and such contractor failed to pay them therefor, and such sub-contractors or material men filed attested accounts of such labor or materials unpaid for, with the board of trustees or the secretary, it became the duty of the board to notify the contractor of such fact, and to retain the amount due for the labor or materials out of any payment due or to become due the contractor at the time or after the filing of such attested account, for the use of the laborers or material men.

The foregoing agrees with an opinion heretofore given by one of my predecessors, Hon. John Little.

In this case the contractor on the 6th day of December made an assignment for the benefit of his creditors, and these accounts were not filed until the 8th of December, and the question which arises is, "whether or not such assignment would affect the rights, which the sub-contractors might otherwise have acquired?"

I am inclined to the opinion that, under Sec. 3203 and Sec. 16, of the act passed May 4, 1877, Ohio Laws,

Notary Public; a Minor Can Not be Appointed a.

Vol. 74, page 173, the rights of the laborers and material men were not in any way affected by the assignment.

It seems to me that these sections were made for the purpose of evading the effect of a decision of the Supreme Court, in the case of Copeland et al vs: Monton, 22d Ohio State Reports, p. 398.

My advice to the trustees is not to pay the money in their hands and due upon the contract of Newell, to his assignee, unless directed to do so by some court having jurisdiction of the case.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To I. W. Watkins, Secretary Girls' Industrial Home,
Delaware, Ohio.

NOTARY PUBLIC; A MINOR CAN NOT BE AP-
POINTED A.

Office of the Attorney General,
Columbus, Ohio, February 24, 1880.

DEAR SIR:—I have carefully examined the brief presented by yourself in support of the legality of the appointment of a minor as a notary public, but for your sake, I regret to be compelled to say that I am not convinced by it.

In addition to reasons before given by me, I present the following in support of my view:

Sec. 4 of Art. 15 of the constitution of the State says that, "No person shall be elected or appointed to any office in this State, unless he possess the qualifications of an elector."

Notary Public; a Minor Can Not be Appointed a.

Sec. 112, Revised Statutes three times speaks of the position of a notary public as an office. Sec. 113 speaks of the position as an office, and also says that a notary public shall provide himself with an official seal and with an official register. Sec. 114 also provides that he shall do certain things before entering upon the duties of his office.

I therefore cannot arrive at any other conclusion than that the person who holds the position of a notary public, is an officer, within the meaning of Sec. 4, Art. 15, of the constitution.

Those, who take a different view from myself, cite the case of *Norwick vs. the State*, 25th Ohio State Reports, page 21. Instead of that case supporting their view, I think that it supports the one I have taken, for the person in that case, whom the court held was not an officer, was simply a deputy, who could lawfully do no act against the will of her principal.

A notary public is an officer who acts for himself, and is responsible for his acts. The case of the *State vs. Wilson*, 29th Ohio State Reports, page 347, I think supports my position in this matter.

If I am correct, a minor, under the constitution of the State of Ohio, cannot be legally appointed a notary public.

You may say that if this reasoning is followed, women can not be appointed notaries public. That question is not now raised, and I shall not attempt to "jump that ditch" until I come to it.

I regret very much that in your case I am forced to this conclusion, for I feel certain that, so far as ability and knowledge are concerned, you are entirely qualified to perform the duties of a notary.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. S. W. Craighead, Mansfield, Ohio.

County Commissioners; Allowances of.

COUNTY COMMISSIONERS; ALLOWANCES OF.

Office of the Attorney General,
Columbus, Ohio, February 26, 1880.

DEAR SIR:—Your favor of yesterday has been received. I tried to be explicit in the opinion which I sent to you on the 11th inst., and regret that I have been unfortunate in the use of language.

I am of the opinion that the allowances that can be made to county commissioners are as follows:

First. Three dollars for each day that they are actually employed in their official duties.

Second. Five cents per mile for each commissioner's necessary travel for each regular or called session, not exceeding one session each month.

Third. When necessary to travel, on official business out of the county, each commissioner shall be allowed his reasonable and necessary expenses actually paid in the discharge of such duty, in addition to his per diem.

This statement applies to all counties having less than one hundred thousand inhabitants, at the last federal census.

Only such allowances can be paid to county commissioners as are provided by law, and as no provision is made for the payment of the expenses of commissioners, when traveling in their own county on official business (except the mileage above stated), they can not be paid out of the public funds.

The illustration which you present in your letter would of course be a hardship, but if the General Assembly has failed to make provisions for such cases, we can not remedy it. Only the makers of the law can do that.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To J. F. Neilan, Prosecuting Attorney, Hamilton,
Ohio.

*City Councils; Power of to Levy Taxes—Mayors Cannot
Solemnize Marriages.*

CITY COUNCILS; POWER OF TO LEVY TAXES:

Office of the Attorney General,
Columbus, Ohio, February 29, 1880.

DEAR SIR:—I have been so much engaged that I have not had time to give much thought to the question submitted by you.

I am inclined to the opinion that under Sec. 8267, if it is proposed to make a levy in addition to the one voted upon five years ago, it is necessary to submit the matter again to a vote of the people.

The council is no more bound by my opinion than that of any other attorney, as the attorney general is not their legal adviser and if you have given this matter careful consideration, your opinion is worth more than mine.

Truly yours,
GEO. K. NASH,
Attorney General.

Mr. C. H. McElroy.

MAYORS CANNOT SOLEMNIZE MARRIAGES.

Office of the Attorney General,
Columbus, Ohio, March 1, 1880.

DEAR SIR:—The mayor of a village is not authorized to solemnize marriages in Ohio.

GEO. K. NASH,
Attorney General.

To Mr. M. V. Payne, Marion, Ohio.

Assessors; Election of—"A Legal Settlement."

ASSESSORS; ELECTION OF:

Office of the Attorney General,
Columbus, Ohio, March 1, 1880.

DEAR SIR:—Section 1448 Revised Statutes authorizes the election of one assessor for each election precinct in a township.

If it did not intend this the words "or if the township is divided into two or more election precincts, three for each precinct" are of no use in the section.

Truly yours,

GEO. K. NASH,

Attorney General.

To Mr. M. C. Aldred, Carroll, Ohio.

"A LEGAL SETTLEMENT."

Office of the Attorney General,
Columbus, Ohio, March 4, 1880.

DEAR SIR:—I think that the term "a legal settlement," as appears in the form of an affidavit, as set forth in section 702, Revised Statutes, is defined in sections 1492 and 1493, Revised Statutes.

I infer that the person to whom you have reference lived in your county, and had a legal settlement there before he went to Putnam County. He was not in that county a sufficient length of time to gain a legal settlement. If this be so, he is still legally settled in your county.

Yours truly,

GEO. K. NASH,

Attorney General.

To Hon. W. D. Mathews, Probate Judge.

Surveyors; Fees of—Judges of Election.

SURVEYORS; FEES OF.

Office of the Attorney General,
Columbus, Ohio, March 4, 1880.

DEAR SIR:—Your favor of March 2d has been received. Sections 4506 and 4527 provide the fees to be allowed surveyors or engineers in the construction of county or township ditches.

Section 4664 provides compensation for the surveyor for services in connection with county roads.

All of these acts provide for a per diem, and make no provision for mileage.

As mileage can not be allowed these officers, or any officers, without provision of law, I am compelled, therefore, to answer that they are not entitled to it.

Yours truly,

GEO. K. NASH,

Attorney General.

To Mr. W. H. Wood, Tontogany, Wood County,
Ohio.

JUDGES OF ELECTION.

Office of the Attorney General,
Columbus, Ohio, March 5, 1880.

DEAR SIR:—Your favor of February 27th has been received. In my opinion the judges of election, appointed in your city in March, last, under the law to be found on page 58, of the 75th Vol., Ohio Laws, can not serve as judges at the coming April election.

Neither have your councilmen power to select such judges again, until the first Monday of September next.

Judges of Election—A Local Law.

Under these circumstances, if the wards of your city are divided into precincts, the two councilmen will be judges of election in the precincts in which they respectively reside at the coming April election. The vacancies must be filled by the electors present on the morning of the election, in accordance with section 2935, Revised Statutes.

Yours truly,
GEO. K. NASH,
Attorney General.

To Mr. H. A. Chamberlin, City Solicitor, Toledo,
Ohio.

A LOCAL LAW.

Office of the Attorney General,
Columbus, Ohio, March 5, 1880.

DEAR SIR:—The article to which you refer, on page 88, Vol. 75, O. L., is evidently a local law, having application only to some town having 1,417 inhabitants at the last federal census.

These figures were placed in the law, instead of the name of the town, in order to escape a constitutional provision against local legislation.

Yours truly,
GEO. K. NASH,
Attorney General.

To Hon. T. C. Ferrill, New Philadelphia, Ohio.

Enumerators of the Census.

Office of the Attorney General,
Columbus, Ohio, March 6, 1886.

DEAR SIR:—I think that you will find a full answer to the inquiry made in your favor of February 28th, in section 2794 of the Revised Statutes of Ohio, 1880, Vol. 1, page 728.

Respectfully yours,

GEO. K. NASH,
Attorney General

To Mr. H. A. Dilz, Hamilton, Ohio.

ENUMERATORS OF THE CENSUS.

Office of the Attorney General,
Columbus, Ohio, March 6, 1886.

SIR:—I have the honor to acknowledge the receipt of your favor of the 4th inst.

I know of nothing in the constitution or laws of the State of Ohio, that would prohibit township, municipal, or county officers from serving as enumerators at the approaching census of the United States.

Members of the General Assembly would forfeit their right to seats in that body if they should accept an appointment under the United States government.

In making your selections for enumerators I presume that your choice would generally fall upon township or municipal officers.

There is no legal objection to their selection, and in most cases, no practical objection, because as a general rule, their official duties require very little of their time.

Very respectfully,

GEO. K. NASH,
Attorney General.

To Mr. Francis A. Walker, Superintendent of Census, Washington, D. C.

Waterworks; Powers of Trustees.

Office of the Attorney General,
Columbus, Ohio, March 6, 1880.

DEAR SIR:—Your favor of February 5th has not been heretofore answered, because I have been trying to get some more definite information or description of the lands referred to therein.

My opinion may not be of much value, because of my lack of information in regard to the facts. If, however, the creeks, bays, and inlets are within the boundaries describing the lands in the deed, the State conveyed these creeks, bays, and inlets with the other parts of the described tract. If this be so, the persons owning the titles to the property described, would have the sole right to hunt and fish upon so much of these creeks, bays or inlets as are contained within the description of the premises. If you will send me an accurate description of two or three pieces of this land so that I may be able to locate it upon the surveys in the auditor of state's office, I may possibly be able to give you a more satisfactory opinion.

Truly yours,

GEO. K. NASH,
Attorney General.

To W. W. Montgomery, Locust Point, Ohio.

WATERWORKS; POWERS OF TRUSTEES.

Office of the Attorney General,
Columbus, Ohio, March 6, 1880.

DEAR SIR:—You ask this question in your favor of the 3rd instant:

Can a city or village council, by ordinance or otherwise, compel the trustees of waterworks to apply their surplus to the reduction of the principal and interest of waterworks bonds?

Waterworks; Powers of Trustees.

This question seems to me to be one of great difficulty, and I doubt whether it will be satisfactorily settled until we have an authoritative decision from the courts.

Section 2412 says that this surplus may be applied for three different purposes; one of which is the payment of interest upon any loan, made for the construction of waterworks. The section, however, is indefinite in its terms. It does not indicate when this surplus shall be ascertained, nor point out definitely as to who shall make the application.

Section 2413 provides that the trustees shall make monthly reports of their receipts to the council, and that the moneys collected shall be deposited weekly with the treasurer of the corporation. Section 2414 provides that the moneys deposited so, shall be kept as a distinct fund, subject to the order of the trustees.

Section 2415 authorizes the trustees to make contracts for the enlargement and repair of waterworks, etc.

Taking all of these sections together I am inclined to the opinion that the trustees have the right to determine when the surplus fund may be set aside for the purpose of a sinking fund, or the payment of interest on waterworks bonds.

I trust that your council and waterworks board will not be governed by this expression on my part, for I am not their legal adviser, and my opinion should have no more weight with them than that of any other attorney.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. D. Danford, City Solicitor.

Recorder; Fees of.

Office of the Attorney General,
Columbus, Ohio, March 8, 1880.

DEAR SIR:—Your favor of the 6th inst. has been received.

You will find enclosed an opinion given by Attorney General Pond, in 1870, and bearing upon this subject; and also one given by myself. The codified law supersedes the section referred to in your letter and contained in the act passed June 3, 1879.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To S. B. Woodward, Medina, Ohio.

RECORDER; FEES OF.

Office of the Attorney General,
Columbus, Ohio, March 9, 1880.

DEAR SIR:—Section 1157, Revised Statutes, provides what fees shall be paid by the person presenting a deed, or other instrument of writing, for record. These are twelve cents for every hundred words, and ten cents for recording same.

I infer that these fees have reference to services performed by the recorder under sections 1145 and 1153.

If this be so, the recorder can not require the person, who presents the deed, to pay the money spoken of in section 1155, and I think that the commissioners are authorized to pay the fees necessary to keep up the general index contemplated in section 1154.

Truly yours,
GEO. K. NASH,
Attorney General.

To S. B. Grimes, Esq., Recorder, Cadiz, Ohio.

County Commissioners; Powers to Levy Taxes.

COUNTY COMMISSIONERS; POWERS TO LEVY
TAXES.

Office of the Attorney General,
Columbus, Ohio, March 9, 1880.

DEAR SIR:—Your favor of the 3rd inst. has been received.

If your county commissioners took the proper steps under the acts of April 30, 1869, February 16, 1870, they would not again be compelled to submit the question to the people before levying a tax to pay for the turnpike roads then contemplated.

If, however, the commissioners now propose to construct turnpikes not then contemplated, and not considered by them in the vote which was then given, I am inclined to think that the "policy of constructing" these new roads must be again submitted to them.

I do not think that sections 4763, 4764, 4765 and 4766, Revised Statutes, alter the status of affairs. I think this must have been done under the repealed acts of 1869 and 1870.

Yours truly,
GEO. K. NASH,
Attorney General.

To Mr. J. H. Smick, Prosecuting Attorney, Kenton,
Ohio.

Assessors—Costs Paid by the State.

ASSESSORS.

Office of the Attorney General,
Columbus, Ohio, March 9, 1880.

MY DEAR SIR:—In addition to the sections of law enumerated in your letter, permit me to call attention to section 1448 of the Revised Statutes. Each precinct is clearly entitled to an assessor, and I think that the township trustees should include two assessors in the notice, naming the precinct for which each is to be elected.

Sincerely yours,

GEO. K. NASH,

Attorney General.

To Capt. E. A. Parish, Uhrichsville, Ohio.

COSTS PAID BY THE STATE.

Office of the Attorney General,
Columbus, Ohio, March 8, 1880.

DEAR SIR:—Your favor of the 5th inst. has been received. My impression is that the costs referred to in section 1298, Revised Statutes, are such costs as are collected from the defendants, and do not have reference to such sums as are paid by the State of Ohio in accordance with Sec. 7336.

The payment of these costs by the State is a mere gratuity to assist the different counties in the administration of justice, and imposes no duty to be performed by prosecuting attorneys.

I placed this construction upon the law during the four years I acted as prosecuting attorney, and never made any claim for a percentage upon costs paid by the State.

Justice of the Peace; Election of.

I do not believe that the sheriff is entitled to any poundage or per cent. on account of such moneys.

After the sheriff has collected these moneys, he may retain the amount of his own costs. He may also pay the clerk's costs out of the same, and the balance he must certify into the county treasury. I think that under Sec. 1117, the moneys so received by the treasurer may be counted in making up the amount upon which his percentage shall be allowed.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. James Conley, New Lexington, Ohio.

JUSTICE OF THE PEACE; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, March 9, 1880.

DEAR SIR:—In an election for township officers at which a justice of the peace is to be elected, whose jurisdiction is co-extensive with the township, they shall all be voted for upon the same ballot. A separate tally sheet must be kept for the vote of the justice of the peace, so that the proper returns may be made to your clerk of court.

Yours truly,
GEO. K. NASH,
Attorney General.

To Geo. L. Foley, Norwich, Ohio.

*Bounty Claims—Power of Commissioners to Purchase Toll
Roads.*

BOUNTY CLAIMS.

Office of the Attorney General,
Columbus, Ohio, March 9, 1880.

DEAR SIR:—Your favor of the 5th inst. has been received, and the contract carefully noted.

I am of the opinion that it was the design of the General Assembly by sections 1260 and 1264, R. S., to provide that soldiers having pension and bounty claims against the United States, should not be put to any expense whatever, when compelled to make oath to such claims before clerks of court, or when compelled to obtain a certificate in regard to the official character of the officer who had administered the oath. If a clerk of court, I should not feel authorized to make any charge in administering an oath in a pension or bounty case, or for certifying as to the official character of an officer in any such case.

Yours truly,
GEO. K. NASH,
Attorney General.

To Mr. Alex. A. Ruhl, Clerk of Court, Bucyrus,
Ohio.

POWER OF COMMISSIONERS TO PURCHASE
TOLL ROADS.

Office of the Attorney General,
Columbus, Ohio, March 10, 1880.

DEAR SIR:—Your favor of the 4th inst. has been received; and I have given the subject careful consideration.

George Young; Deed of.

In my opinion the act to be found on pages 1981 and 1982 of the Revised Statutes, contemplates the purchase of all the toll roads in a county, by the commissioners.

The words "or parts of toll roads" have reference to such portions of a toll road, that begins in one county, say Madison, and extends into another county, say Clark County.

The statute contemplates that such parts of toll roads shall be purchased as well as the toll roads beginning and ending in the county.

The statute does not contemplate the purchase and making free a portion of the toll roads in a county, and the leaving of such portions of the toll roads in the hands of corporations, upon which people must pay tolls in order to travel over them.

I am therefore of the opinion that your board is not authorized to submit to the vote of the people a proposition to purchase a portion of the toll roads in your county; that you must make an arrangement to purchase all the toll roads and parts of toll roads, or none at all.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Geo. H. Frey, President Board of Commissioners, Clark County, Ohio.

GEORGE YOUNG; DEED OF.

Office of the Attorney General,
Columbus, Ohio, March 10, 1880.

DEAR SIR:—The governor and myself have had under consideration the deed proposed to be issued by the State of Ohio, to one George Young, and the affidavits and other evidence accompanying the same.

George Young; Deed of.

Under the present state of the evidence, the governor refuses to execute the deed.

The only evidence tending to show that a deed was executed to George Young, is Mr. Gordon's statement that he believes that one was issued.

The evidence furnished from the state auditor's office, shows that the land was purchased by Mr. Young, but the report of the register is not endorsed by the words "deed recorded." We do not see how we can conclude that a deed was ever made. We are inclined to think that the deed should be issued under section 4120 Revised Statutes, instead of 4121, the section which seems to be contemplated by the applicant.

If this be so, the following evidence must be provided:

I. A certificate from the recorder of Paulding County, showing that a deed from the State of Ohio to Geo. Young has never been recorded in his office, and that Geo. Young never conveyed any portion of said land to any other person.

II. A certificate from the state auditor, setting forth all the facts appearing from his records, in connection with the sale of said land to Young.

III. Proof (the best attainable) as to whom the legal heirs of Geo. Young are.

IV. Proof of such other proofs as may be required under Sec. 4120.

In general terms, I may say that in all these cases the governor and I desire that the best evidence possible shall be produced. The affidavits of individuals as to what official records show, will not be considered, when the records themselves, or the official certificates of the officers having them in charge can be obtained.

We do not desire to be captious, nor to make unnecessary trouble for parties, yet in the discharge of the

Assessors. Recorder Can be a Notary.

duties imposed upon us by sections 4120 and 4121, and other sections of like character, we feel that we ought to require the best evidence attainable.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. J. F. Oglevee, Auditor of State.

ASSESSORS.

Office of the Attorney General,

Columbus, Ohio, March 11, 1880.

DEAR SIR:—When a township is divided into two precincts, I think that the people in each precinct elect their own assessor, and that the assessor should be a resident of the precinct for which he is elected.

Truly yours,

GEO. K. NASH,

Attorney General.

To Mr. Wm. J. Clarke, Prosecuting Attorney,
Franklin County, Ohio.

RECORDER CAN BE A NOTARY.

Office of the Attorney General,

Columbus, Ohio, March 13, 1880.

DEAR SIR:—Section 1162, Revised Statutes does not prohibit a man serving in the capacity of county recorder from becoming a notary public. It does prohibit a recorder, even if he is a notary public, from taking the acknowledgment of any instrument required to be filed or recorded in his office.

Judges of Election.

This must be the meaning of this section, because a county recorder by virtue of his office as recorder, is not authorized to take acknowledgment.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Edward Cujder, Recorder, Chillicothe, Ohio.

JUDGES OF ELECTION.

Office of the Attorney General,
Columbus, Ohio, March 13, 1880.

DEAR SIR:—Your favor of the 12th inst. has been received. I am not certain that I will be able to answer your questions correctly, as the statutes to which you refer have been repealed and are not now in force. The only laws now in force regulating elections are the codified laws, which took effect on the first of January, last. I presume that section 1730 of the Revised Statutes takes the place of the law to which you refer.

Under section 1730, the mayor and two councilmen would constitute a quorum, and could act as the judges at a municipal election.

Sections 3904 to 3910 inclusive, of the Revised Statutes of 1880, provide how the directors of village school districts may be elected. If the same territory that is within the corporation limits constitutes the village school district, then there is no necessity for but one set of judges. But if there is territory in the village school district, not included in the corporation, then there must be a separate set of judges, and the election must be conducted as prescribed in section 3908.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Dr. Wm. Warner, Congress, Ohio.

Prosecuting Attorney; Duty of; County Commissioner Acting as Assessor.

PROSECUTING ATTORNEY; DUTY OF.

Office of the Attorney General,
Columbus, Ohio, March 13, 1880.

DEAR SIR:—Your favor of the 8th inst., has been received. In reply thereto I will say that in proceedings to prevent crime, when a peace warrant has been issued, it is the duty of the prosecuting attorney, when the case reaches the Court of Common Pleas, to appear and prosecute for and on behalf of the State of Ohio.

All proceedings of this character are conducted under the criminal code. The State is the party plaintiff, and I have no doubt about the proposition that it is the duty of the prosecutor to appear for and on behalf of the State.

It is no part of the duty of the prosecuting attorney to conduct proceedings under the bastardy act.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. M. D. Mann, Prosecuting Attorney, Paulding, Ohio.

COUNTY COMMISSIONER ACTING AS
ASSESSOR.

Office of the Attorney General,
Columbus, Ohio, March 13, 1880.

DEAR SIR:—Your favor of the 12th inst., has been referred to me by General Gibson.

There is no law which prevents a county commissioner from acting as an assessor of real estate. There

Revised Statutes; Distribution of.

is a manifest impropriety in his so doing, as in his capacity as commissioner he will afterwards be required to act as a member of the county board of equalization, and as such be required to review his own acts as assessor.

I know of no law however that would prohibit him from so doing.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. N. S. Cole, Holgate, Ohio.

REVISED STATUTES; DISTRIBUTION OF.

Office of the Attorney General,
Columbus, Ohio, March 13, 1880.

DEAR SIR:—Your favor of March 8th to Hon. A. H. Pearl, has been referred to me.

Under the present condition of the law, the revised edition of Statutes, 1880, cannot be given to city clerks free of charge.

The secretary of state and county auditors can only deliver them to such officers as are named in the act authorizing their distribution.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. I. F. Beecher, Sandusky, Ohio.

Security for Costs, Etc.

SECURITY FOR COSTS, ETC.

Office of the Attorney General,
Columbus, Ohio, March 13, 1880.

DEAR SIR:—Your favor of the 8th inst., has been received. Sec. 1309, Revised Statutes, has reference to cases of misdemeanors wherein there has been a conviction, and the defendant proves to be insolvent.

Sections 1311 and 1312 have reference to cases wherein there has been a failure to convict for any cause, and wherein the examining magistrate was authorized to take security for costs at time of their commencement.

Under these last sections, if it should appear to the commissioners that the prosecuting witness was so poor that he was unable to give security for costs, and for that reason it was not required, the commissioners could allow the payment of the costs. If the prosecuting witness was amply able to secure costs and the magistrate does not require him to do so, then no allowance can be made.

If the magistrate exercised reasonable care in taking security, and he surely afterwards became insolvent, then an allowance could be made for his costs.

If the security was insufficient at the time of its being taken, then no allowance can be made.

In no case of a misdemeanor, when the State has failed, can an allowance be made for fees, until it is shown that the prosecuting witness is wholly unable to pay them.

You ask in what cases of misdemeanors can the allowances be made?

I answer, in the case of any crime, which is classed as a misdemeanor by our criminal laws.

Resignation of County Commissioners.

Always bear in mind that the aggregate amount of the allowance made to any officer under sections 1309, 1311 and 1312, must not exceed \$100 in any one year.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To John McVicker, Prosecuting Attorney, New Lisbon, Ohio.

RESIGNATION OF COUNTY COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, March 15, 1880.

DEAR SIR:—It is perhaps immaterial to whom a county commissioner addresses his resignation, as I do not understand that it is the duty of any one to accept it. It would be proper for him to address it to the board of which he is a member. I think also that it should be addressed to the probate judge, auditor and recorder of the county, as under Sec. 842, Revised Statutes, it becomes their duty to fill the vacancy.

Truly yours,

GEO. K. NASH,

Attorney General.

To Wm. H. Leete, Prosecuting Attorney, Waverly, Ohio.

Militia Exempt From Labor on the Highways—Stenographer of County; Office of.

MILITIA EXEMPT FROM LABOR ON THE
HIGHWAYS.

Office of the Attorney General,
Columbus, Ohio, March 15, 1880.

DEAR SIR:—Acting and contributing members of all companies, troops and batteries, duly organized under the militia laws of Ohio, are during their membership, exempt from labor on the public highways, and from service as jurors. See Sec. 3055, Revised Statutes of Ohio, 1880, page 794.

Section 3039, Revised Statutes, prescribes who may become a contributing member and what shall be required of such members. Respectfully submitted,

GEO. K. NASH,
Attorney General.

To Gen. Wm. H. Gibson, Adjutant General of Ohio.

STENOGRAPHER OF COUNTY; OFFICE OF.

Office of the Attorney General,
Columbus, Ohio, March 20, 1880.

DEAR SIR:—Your favor of the 18th inst. has been received.

I do not think that the county commissioners can provide an official stenographer with an office at any other place than at the court house.

Neither do I think that they can pay him a money compensation in lieu of an office.

Respectfully yours,

GEO. K. NASH,
Attorney General.

To Mr. F. T. McHenry, Lima, Ohio.

Revised Statutes; Distribution of—Publication of Advertisements in Newspapers.

REVISED STATUTES; DISTRIBUTION OF.

Office of the Attorney General,
Columbus, Ohio, March 20, 1880.

DEAR SIR:—Your favor of the 18th inst., has been received.

I think that you are entitled to a copy of the Revised Statutes as clerk of the Court of Common Pleas, and also to a copy as clerk of the District Court.

The secretary of state informs me that he puts this construction upon the law of last winter.

Yours truly,

GEO. K. NASH,
Attorney General.

To I. I. Zeller, Clerk of Courts, Ottawa, Ohio.

PUBLICATIONS OF ADVERTISEMENTS IN
NEWSPAPERS.

Office of the Attorney General,
Columbus, Ohio, March 20, 1880.

DEAR SIR:—You have called my attention to, and asked some questions in regard to section 4367, Revised Statutes, 1880.

There are many advertisements which the law requires shall be published in at least one newspaper.

For instance, Sec. 2971, requires that a sheriff's proclamation of an election must be published in one newspaper. Sec. 458 requires that the times of holding courts shall be published in at least one newspaper.

Section 4367 does not give a discretion to the officers named so that they may prevent publications that are required by other sections of the statutes.

Election Laws.

It does however give this kind of a discretion. If other sections require that the advertisement shall be published in one newspaper, the officers named in Sec. 4367 may determine whether it shall be published in two newspapers.

I think also that these officers have a right under this section to publish advertisements of general interest to the tax payers, other than those named in this section. But they should be *exceedingly careful* in the exercise of this discretion.

I do not think that public officers are authorized to make a contract to publish advertisements in four newspapers, even if each agrees to do the work at half legal rates. They may however make their contracts with two newspapers, and if those two newspapers see fit to divide the money received with two other newspapers, they have a perfect right to do so.

Please excuse me for not answering before, for I have had several important matters, which occupied my attention fully.

Truly yours,

GEO. K. NASH,

Attorney General.

To Mr. M. B. Earnhart, Prosecuting Attorney, Troy,
Ohio.

ELECTION LAWS.

Office of the Attorney General,
Columbus, Ohio, March 23, 1880.

DEAR SIR:—The question which you put depends so much upon the intention of the party that it is difficult to answer.

If a citizen of Ohio goes into Virginia for a temporary purpose and with the intention of returning to Ohio

County Recorder; Duties of.

when that purpose is accomplished, and exercises no right of citizenship in Virginia, he does not lose his right to vote in Ohio, no matter how long he may be absent. If, however, he should vote in Virginia, or do any other act that would fix his citizenship there, that would settle the matter.

If he did not have a fixed purpose to return to Ohio, when he left, after the accomplishment of his purpose, he would lose his right to vote here.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. B. F. Bell, Clerk, Hormor, Ohio.

COUNTY RECORDER; DUTIES OF.

Office of the Attorney General,
Columbus, Ohio, March 23, 1880.

DEAR SIR:—You are all right this time, I am pleased to say. All that a county recorder is bound to do under section 1147, R. S. of Ohio, is to furnish on demand an accurate copy of any instrument of record in his office, and to certify to the correctness of said copy and attach his official seal.

I do not believe that the recorder is required to certify that there are no liens upon a certain piece of property.

Truly yours,
GEO. K. NASH,
Attorney General.

To Mr. J. H. Mitchell, Prosecuting Attorney, New Philadelphia, Ohio.

Assessor; Election of—Vacancies in Office; How Filled.

ASSESSOR; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, March 23, 1880.

GENTLEMEN :—There are to be but three township trustees elected for each township, whether it has one or two precincts.

Where there are two precincts there must be an assessor elected for each precinct and the electors of each precinct vote for their own assessor. The assessor should be a resident of his own precinct.

The third question you ask arises under the revenue laws of the United States:

I understand that the United States officers hold that a druggist must take out a license in order to sell liquors for medical purposes.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Messrs. W. F. McQueen and P. F. Stacy; East Palestine, Ohio.

VACANCIES IN OFFICES; HOW FILLED.

Office of the Attorney General,
Columbus, Ohio, March 23, 1880.

DEAR SIR:—Your favor of March 18th has been received. Section 1754, Revised Statutes, provides how vacancies shall be filled in the office of mayor. It does not differ materially from the law as it existed prior to January 1st, 1880.

You will see that that section provides that where there is an election to fill a vacancy in the office of

City Clerk; Term of.

mayor, it shall be for the unexpired term.

I therefore conclude that your election in 1879 was not for two years, but for the unexpired term.

Respectfully yours;

GEO. K. NASH,

Attorney General.

To Mr. W. H. Corlin, Mayor, Congress, Ohio.

CITY CLERK; TERM OF.

Office of the Attorney General,

Columbus, Ohio, March 24, 1880.

DEAR SIR:—If you consider sections 1707 and 1709 standing by themselves, I think perhaps you might rightfully come to the conclusion that the clerks of cities of the second class in Ohio can hold their offices for the period of two years.

I think however that Sec. 1676 ought to be considered in connection with the two sections above referred to.

While the first two sections above can be construed to mean a two years' term, the section last referred to seems to give the council the power to elect a clerk each year, and that its organization is not complete without so doing.

I therefore conclude that a city clerk can hold his office for but one year only.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. S. C. Cole, City Solicitor, Massillon, Ohio.

*Insurance of Plate Glass by the "Lloyds."*INSURANCE OF PLATE GLASS BY THE
"LLOYDS."

Office of the Attorney General,
Columbus, Ohio, March 27, 1880.

DEAR SIR:—Your favor asking whether or not certain parties who are issuing insurance policies in Ohio upon plate glass, written at the "Lloyds," 130 and 132 Broadway, New York City, are violating the insurance laws of Ohio, has been received.

The parties for and in behalf of whom these contracts of insurance are made, are I understand, twelve in number, each one of whom agrees in the contract to pay one-twelfth of the loss, if any is incurred, and he is not in any way responsible for the agreement of his associates. It is claimed that a contract is made for each individual but for the sake of convenience alone, the contract is made upon a piece of paper, by common agents, and the policies are issued from one office, controlled by the twelve individuals.

I have given this question very careful consideration for the following reasons:

I. The gentlemen representing the twelve persons known as the "Lloyds," seem to be sincere in their desire to learn their rights under the laws of Ohio, and in their wish to observe in the strictest manner the provisions of our Statutes.

II. They have presented carefully prepared briefs and authorities, worthy of great consideration, in support of their theory.

III. On the 20th of March, 1879, my predecessor, Hon. Isaiah Pillars, gave a carefully prepared opinion upon the same subject and I should hesitate long before reversing an opinion which he had deliberately given.

It seems to me that this whole matter is governed by that portion of section 289, Revised Statutes of Ohio, which reads as follows:

Insurance of Plate Glass by the "Lloyds."

"And it is unlawful for any company, corporation or association, whether organized in this State or elsewhere, either directly or indirectly, to engage in the business of insurance, or to enter into any contract substantially amounting to insurance, or in any manner to aid therein in this State without first having complied with all the provisions of this chapter."

I think that the words "company or association," as used in this section, must have reference to bodies of persons not organized as a corporation under the laws of this or some other State. If this be not so, these words are mere surplusage.

The question which now arises is "are these twelve individuals doing business as the Lloyds, either a company or an association?"

A common definition for an association is "a union of persons in a company for some particular purpose." A company is commonly defined as "an association of persons for the purpose of carrying on some enterprise for the common benefit."

I conclude that the twelve individuals referred to in your letter, are either an association or company. They have common agents, who make contracts for them; they have an office in common; their contracts are made at the same time and place, and upon the same piece of paper, and it seems to me that they are in fact associated together for a common purpose, if for no other, at least, for the purpose of convenience.

I cannot come to any other conclusion than that these twelve gentlemen come within the provisions of section 289, Revised Statutes, herein before referred to, and that in accordance with the words of that statute, their business in this State is unlawful.

Respectfully yours;

GEO. K. NASH, Attorney General.

To Hon. Joseph F. Wright, Superintendent of Insurance.

Armory; Provided by Cities—Reform School For Boys.

ARMORY; PROVIDED BY CITIES.

Office of the Attorney General,
Columbus, Ohio, March 29, 1880.

DEAR SIR:—YOUR favor of the 25th inst. has been referred to me for reply by Wm. H. Gibson, adjutant general. Section 3085 makes it the duty of municipal corporations and townships to provide an armory and drill room for any company, troop, or battery located in any such municipality or township.

I think that the courts would hold that the word "armory" includes a hall with suitable furniture, such as gun racks, etc.

The expense of the armory with its appropriate furniture is, however, left to the discretion of the proper officers of the village or township providing the same.

These officers also in providing these must be careful and not violate the provisions of what is called the "Burns law."

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Wm. Manington, Esq., Waynesville, Ohio.

REFORM SCHOOL FOR BOYS.

Office of the Attorney General,
Columbus, Ohio, March 29, 1880.

DEAR SIR:—You ask for what period of time you can retain in custody a boy who has been committed by competent authority to the reform school for a period of one year.

Section 752, Revised Statutes, provides that all youth

Reform School For Boys.

committed to the reform school "shall be committed until they arrive at full age, unless sooner reformed."

If a court should commit a boy for one year, or for a less time than named in Sec. 752, it would be manifest error, and if such case should be taken to a higher court, it would undoubtedly reverse the findings of the court below.

During the period for which the sentence was given, a court would not release the boy upon *habeas corpus* proceedings, for it would hold that the proper remedy would be by proceedings in error.

After the time has expired, I think the case would be different.

If upon *habeas corpus* proceedings you should present the commitment, I believe the boy would be discharged.

It would only show that you had authority to hold him for one year, or whatever period it might specify, and if the period has expired I think the court would discharge. I may be mistaken in this view. If there are doubts upon this subject, and it is of importance, would it not be well for you to have an application for *habeas corpus* made upon the first opportunity, so as to have the matter passed upon by the courts?

II. I am of the opinion that the board of commissioners has no power to order the discharge of a boy committed to the reform school upon the request of his parents or relatives, before they have found and determined that he is reformed.

III. When it has been found by competent authority that an inmate has been "reformed," and he has been discharged, the order is final.

He can not again be taken into custody upon request of friends or upon his own request.

You have no authority to permit a boy, lawfully committed to your institution, to visit his family and friends. If a boy should be permitted to leave the institution by a person who has no authority to grant such permit, you

Reform School For Boys.

would have the same authority to pursue after and bring him back as if he had escaped.

V. If any one of the commissioners is a clergyman, I think that under section 628 it would not be lawful for him to act as chaplain, and receive pay, for his services as such chaplain.

These answers have been long delayed for the reason that there has been some trouble in getting a copy of your rules and regulations.

Respectfully yours,
GEO. K. NASH,
Attorney General.

Col. G. L. Innis, Superintendent Ohio Reform School,
Lancaster, Ohio.

Office of the Attorney General,
Columbus, Ohio, March 30, 1880.

DEAR SIR:—If four hundred and fourteen votes are cast for "C. F. French," and eighty are cast for John Smith, I have no doubt but what the courts would hold that Charles F. French is elected, notwithstanding the fact that only his initials appear upon the ballots.

I believe that it is the uniform holding of the courts that where the intention of the majority of the voters can be determined, they will give effect to it.

Yours truly,
GEO. K. NASH,
Attorney General.

To Mr. P. W. Pool, Crestline, Ohio.

Allowance For Fees by County Commissioners.

ALLOWANCE FOR FEES BY COUNTY COMMISSIONERS.

Office of the Attorney General.
Columbus, Ohio, March 30, 1880.

DEAR SIR:—If one reads section 1309 by itself, he would conclude that county commissioners could make an allowance in lieu of fees only in such misdemeanors as there have been convictions and the defendants prove insolvent.

I think however, that section 1311 enlarges the power of the commissioners in making allowances to justices of the peace, mayors and police judges. Under section 1311 I think that magistrates fees may be allowed in the following cases:

I. Where the prosecuting witness was so poor that it would have been impossible for him to give security for costs, and it is impossible to collect costs from him.

II. Where reasonable care has been exercised in taking security for costs, and the surety *afterwards* becomes insolvent.

Under sections 1309 and 1311 no more than \$100.00 can be allowed a magistrate in one year.

Sections 615 and 621 Revised Statutes, prescribe the fees to which a justice of the peace is entitled. If the claim of a town is placed in his hands for collection, and is voluntarily paid before suit, I know of no provision of law by which he can be compensated.

When an officer arrests a party for misdemeanor upon view, and then files his complaint with the magistrate, I think that it rests in the discretion of the magistrate as to whether security for costs shall be required or not.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. N. J. Dever, Prosecuting Attorney, Portsmouth, Ohio.

Justice of the Peace; Election of—Election of Directors of Corporations.

JUSTICE OF THE PEACE; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, April 2, 1880.

DEAR SIR:—Your favor of March 31st has been received. I see no objection to the name of a candidate for justice of the peace being printed upon the same ballot with the names of the candidates for other township offices. The same ballot box may be used, and of course only one set of judges and clerks are necessary.

After counting the ballots, it is necessary for the judges of the election to make a return of the vote cast for candidates for justices of the peace to the county clerk.

The using of one ballot and one ballot box will in no way interfere with their doing this.

Truly yours,

GEO. K. NASH,

Attorney General.

To Jeremiah Mills, Oregon, Ohio.

ELECTION OF DIRECTORS OF CORPORATIONS.

Office of the Attorney General,
Columbus, Ohio, April 6, 1880.

DEAR SIR:—At your request I have examined section 3245, Revised Statutes, relating to the election of directors of corporations.

The General Assembly sought in the enactment of this section, to provide means by which a minority of the stockholders in a corporation might gain a representation in its board of directors.

Medina County; Deed of Public Park.

If I am the owner of ten shares of stock in a corporation, and seven directors are to be elected, under section 3245 I am entitled to seventy votes, and these seventy votes I can cast as I please.

If I wish to cast them all for one man as director, I have the right to do so.

Truly yours,
GEO. K. NASH,
Attorney General.

To Hon. Lindsey Kelley, Ohio Senate, Columbus, Ohio.

MEDINA COUNTY; DEED OF PUBLIC PARK.

Office of the Attorney General,
Columbus, Ohio, April 7, 1880.

DEAR SIR:—I have carefully examined a copy of the deed made by Elijah Boardman in September, 1817, to Lathrop Seymour, in trust for the people of Medina County. This deed conveys certain property to a trustee, for the benefit of the people of the county, and not for the benefit of the corporation known as Medina County. I therefore conclude that the county has no such title and right in the premises conveyed by said deed, that her commissioners can sell or dispose of the same.

I am also of the opinion that the Legislature can not by any law that it may make, give the corporation of Medina County any more or better title and interest in said property than she now possesses. All of said land remaining is and has been used for many years as a public park in the village of Medina. For more than thirty years the village of Medina has improved and beautified said park, but in so doing, I am of the opinion that said village has not acquired any right or title to

Bonds; Vote Upon Issuing.

said park, except such as her inhabitants in common with the people of the whole county possess thereto.

I am inclined to the opinion that the commissioners do not possess the same authority to levy and collect a tax for the improvement of this park, that they would have if it had been conveyed for the benefit of the county of Medina, instead for the benefit of the people of Medina County.

But I am clearly of the opinion that the General Assembly may give them power to do so.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. S. B. Woodward, Prosecuting Attorney, Medina, Ohio.

BONDS; VOTE UPON ISSUING.

Office of the Attorney General;

Columbus, Ohio, April 7, 1880.

DEAR SIR:—I am inclined to the opinion that under section 2837, of the Revised Statutes, if two-thirds of the votes actually cast upon the question of issuing the bonds, are in favor thereof, the question must be decided as carried, and that it does not require an affirmative vote of two-thirds of the electors voting at the general election.

This is a matter that deserves careful consideration, and as I am not made your legal adviser, my opinion should have no more weight with yourself or with your council than that of any other attorney.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. G. G. Banker, City Solicitor, Delaware, Ohio.

Judges of Election—Elections.

JUDGES OF ELECTION.

Office of the Attorney General,
Columbus, Ohio, April 7, 1880.

DEAR SIR:—If an election is held for township officers, and justice of the peace upon the same day, and but one ballot box is used, and there is one set of judges and clerks, the judges and clerks will be entitled to two dollars (\$2.00) per day, to be paid by the county.

Truly yours,

GEO. K. NASH,
Attorney General.

To J. P. Mahaffey, Clerk, Cambridge, Ohio.

ELECTIONS.

Office of the Attorney General,
Columbus, Ohio, April 7, 1880.

DEAR SIR:—Your favor of the 5th inst. has been received.

If a man with a family moves from a township into a municipal corporation, he is not entitled to cast a vote at an election for officers of the corporation, until he has resided therein twenty days.

There is no conflict between sections 2945 and 1727. In construing them, the two must be read together, and the proviso added to section 2945 is just as effective and just as consistent as if it had been added to section 1727.

Truly yours,

GEO. K. NASH,
Attorney General.

To C. A. Seiders, Green Springs, Ohio.

*Judges and Clerks of Elections; Duties of—Infirmary
Directors; Duties of.*

JUDGES AND CLERKS OF ELECTIONS; DUTIES
OF.

Office of the Attorney General,
Columbus, Ohio, April 8, 1880.

DEAR SIR:—By section 1448, Revised Statutes, it is made the duty of the judges and clerks of election to determine by lot which of the persons is duly elected, in case any two or more persons have the highest and an equal number of votes for any one of the township offices to be filled at such election.

Of course judges and clerks who refuse to do this violate the law.

Truly yours,

GEO. K. NASH,

Attorney General,

Frank F. Metcalf, Esq., McConnellsville, Ohio.

INFIRMARY DIRECTORS; DUTIES OF.

Office of the Attorney General,
Columbus, Ohio, April 8, 1880.

DEAR SIR:—I think that Sec. 976, Revised Statutes, authorizes the infirmary directors in a county, not having a children's home, to place pauper children, under the age of sixteen years, in a children's home within their own county, maintained by private charity. It does not authorize infirmary directors to send these children outside of the county.

Truly yours,

GEO. K. NASH,

Attorney General.

To T. P. Magee, Prosecuting Attorney, McArthur,
Ohio.

*Treasurer of City Can Not be a Member of Council—
Elections.*

TREASURER OF CITY CAN NOT BE A MEMBER
OF COUNCIL.

Office of the Attorney General,
Columbus, Ohio, April 8, 1880.

DEAR SIR:—If a man holds the office of treasurer of your village, he is not eligible as a member of council, under section 1681.

Truly yours,

GEO. K. NASH,

Attorney General.

Mr. H. W. Dorwin, Mayor, Gettysburg, Ohio.

ELECTIONS.

Office of the Attorney General,
Columbus, Ohio, April 9, 1880.

DEAR SIR:—If the ballot you sent me was a correct sample of the ballots thrown out by your judges of election, they made a mistake in so doing. If two of the names for constables had not been erased they could properly have refused to have counted the ticket for constables, but they should have counted for the other officers designated thereon.

If two names for constables were erased, then they should have counted the ballot for all the other names thereon.

Truly yours,

GEO. K. NASH,

Attorney General.

Mr. F. L. Mason, Woodstock, Ohio.

Elections—Judges and Clerks of Elections.

ELECTIONS.

Office of the Attorney General,
Columbus, Ohio, April 9, 1880.

DEAR SIR:—If your town is divided into four wards, I do not understand how they can form one election precinct.

Section 1725, Revised Statutes, provides that there shall be at least as many places of holding elections as there are wards.

Section 1718 provides that each ward shall have an assessor.

If there has been no election of assessors by the different wards, I think there must be deemed to be a vacancy in each ward, and these vacancies must be filled as provided in Sec. 1713.

I have been so engaged that I could not answer your letter until today.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Mr. O. J. Ortendorf, Clerk, Delphos, Ohio.

JUDGES AND CLERKS OF ELECTIONS.

Office of the Attorney General,
Columbus, Ohio, April 9, 1880.

DEAR SIR:—Under section 2963, judges and clerks of election, where a justice of the peace or an assessor has been voted for, shall be paid two dollars, (\$2.00) per day *by the county*.

Truly yours,

GEO. K. NASH,

Attorney General.

Mr. D. L. Chase, Clerk, Mt. Gilead, Ohio.

*Assessor; Each Precinct Entitled to One—Judge of
Election; Appointment of.*

ASSESSOR; EACH PRECINCT ENTITLED TO
ONE.

Office of the Attorney General,
Columbus, Ohio, April 9, 1880.

DEAR SIR:—Under section 1448, each precinct is entitled to an assessor, and the people of the precinct shall elect their own assessor.

In the case you present, each candidate is legally elected assessor in the precinct wherein he lives.

Yours truly,

GEO. K. NASH,

Attorney General.

Mr. Warden Wheeler, Pike Station, Ohio.

JUDGE OF ELECTION; APPOINTMENT OF.

Office of the Attorney General,
Columbus, Ohio, April 10, 1880.

DEAR SIR:—Paragraph 2, section 2932, Revised Statutes controls the question asked in your favor of the 17th ult.

The Democrat getting the highest vote among the defeated candidates for trustees, is the proper person to act as judge at the next election.

If the defeated candidate receiving the highest vote is a Republican, and all the trustees elected are Republicans, he will have to give way to the Democrat receiving the highest vote. Respectfully yours,

GEO. K. NASH,

Attorney General.

To John Huddow, Clerk, Washington County, Ohio.

*Auditor; Compensation of—Assessor; Each Precinct
Entitled to One.*

AUDITOR; COMPENSATION OF.

Office of the Attorney General,
Columbus, Ohio, April 10, 1880.

DEAR SIR:—Your favor of the 8th inst. has been received.

I am of the opinion that a county auditor is entitled to such compensation only, as is provided for by sections 1069 to 1078, inclusive. Section 1078 seems to be very explicit upon this point.

If I am correct in this matter, a county auditor, for services rendered under sections 1052, 2754 and 4215, is not entitled to compensation unless it is provided for by the sections first referred to herein by me.

Respectfully yours.

GEO. K. NASH,

Attorney General.

To Mr. C. S. Kennedy, Prosecuting Attorney, Toledo, Ohio.

ASSESSOR; EACH PRECINCT ENTITLED TO
ONE.

Office of the Attorney General,
Columbus, Ohio, April 12, 1880.

DEAR SIR:—I am of the opinion that where a township is divided into two or more election precincts, each precinct is not only entitled to an assessor of personal property, but that the voters of each precinct must elect their own assessor.

This idea is not clearly expressed in the law, but it seems to be the general policy of our Statutes, for it is

Assessor; Each Precinct Entitled to One.

specifically provided that in cities and villages, each ward shall elect its own assessor.

There are cities in Ohio, where a precinct is composed of parts of two townships. In such cases, if any other rule than the one I have indicated should be adopted, it would be impossible to carry it out.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Hon. John F. Oglevee, Auditor of State.

Office of the Attorney General,
Columbus, Ohio, April 12, 1880.

DEAR SIR:—Your favor of March 30th reached me when very busy, and I have not been able to give it consideration until this time; and even now I have not examined authorities upon the question suggested.

It does seem to me that if I should sign your name to an order upon John Smith, requesting him to deliver a check, then in existence, to me, with intent to defraud, that I would be guilty of forgery under section 7091 as it now stands.

I think that the words "or delivery of goods or chattels of any kind," include a check in existence at the time the order is drawn.

Bonvier says that "personal chattels are properly things movable, which may be carried about by the owner, such as animals, household stuff, money, jewels, corn, garments, and every thing else that can be put in motion and transferred from one place to another." He also gives this definition of a chattel: every species of property, movable or immovable, which is less than a freehold."

It seems to me that a check or a note is just as fully covered by the word chattels, as would be a horse or a cow.

Elections.

It is possible that your court went off on the theory that the order set forth in your indictment, was an order to draw a check, and not upon the theory that a check is not a chattel.

If this be so, it may be that your court was right, and that section 7091 needs amendment in this respect.

I hardly think, however, that the amendment suggested by you, would remedy this difficulty.

It is too late to get the section amended, at this session of the General Assembly, and I suggest that you and I give the matter more thought, and if it is found necessary, prepare a bill in time for the next session.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Emmett Tompkins, Prosecuting Attorney, Athens, Ohio.

ELECTIONS.

Office of the Attorney General,
Columbus, Ohio, April 14, 1880.

DEAR SIR:—Sec. 1456 provides that if the aggregate number of votes given for supervisor in a district, is greater than the resident electors of such district, voting at such an election, then the election shall be void.

Respectfully yours,
GEO. K. NASH,
Attorney General.

L. M. Coughenour, Castalia, Ohio.

Election of Members of Board of Education.

ELECTION OF MEMBERS OF BOARD OF EDUCATION.

Office of the Attorney General,
Columbus, Ohio, April 15, 1880.

DEAR SIR:—Unfortunately I have mislaid Mr. Scott's letter, but I think that I can recall its contents. If I remember right, at the last election for member of the board of education in your town, there were three members to be elected; one for three years, one for two years, and one for one year. Certain ballots were found in the box, upon which was specified the term for which each man was voted for. Certain other ballots were found which contained the names of three candidates for school directors, but did not designate the term for which each was a candidate.

In order to make known the intention of the voter, it was necessary that the term should be designated upon the ballot.

I therefore think that the ballot upon which there was no designation as to the terms for which the several candidates were running cannot be counted.

Yours truly,

GEO. K. NASH,
Attorney General.

To Judge O. P. Taylor, New Philadelphia, Ohio.

Auditor of Cuyahoga County—Xenia.

AUDITOR OF CUYAHOGA COUNTY.

Office of the Attorney General,
Columbus, Ohio, April 15, 1880.

DEAR SIR:—In answer to the question hereto attached, I will say:

It is the duty of the auditor of Cuyahoga County to appoint the time and place for the meeting of the board of appraisers of the property of the A. & G. W. R. R. Co., and to notify the proper county auditors. He has the power to fix the time and place for such meeting.

Respectfully yours,
GEO. K. NASH,
Attorney General.

XENIA.

Office of the Attorney General,
Columbus, Ohio, April 15, 1880.

DEAR SIR:—At your request I have considered the letter of Col. Coates Kinney, president of the board of education of Xenia, addressed to yourself and bearing date of April 13th.

The difficulties suggested arise under section 3991 and 3992, Revised Statutes.

At the late election, the three propositions contemplated in 3991 were submitted to the electors of the city of Xenia. The third proposition appeared in the manner upon the ballots used by the electors, one-third amount to be levied each year till cost is raised; 15 cents on \$100.00. Some twelve or fifteen hundred ballots were cast with this proposition upon them. Through the misunderstanding of the judges, only four or five hundred

Xenia.

of these ballots were counted in favor of the proposition, and their returns show that the proposition was lost, while it was, in fact, actually carried by a large majority, as may be shown by the ballots in the boxes.

The question that now arises is, "can the board legally proceed in the same manner as if the judges had properly counted and certified the result?"

Section 3992 provides "if a majority of the electors at such election vote in favor * * * * the board shall certify, etc."

There is a total absence of any provision as to how a board of education shall be satisfied as to the result.

I suppose the return of the judges of election is one way of ascertaining the result. But is the board confined to this method alone? I think not.

If the board can obtain possession of the poll books used at such election, and of the ballots actually cast, and can ascertain the true result themselves, I am inclined to think that they may do so.

I desire to suggest, however, that others may differ with me in this matter, and possibly some tax payer may seek to enjoin the collection of the tax, and the issuing of the bonds.

In addition to the expense of the litigation that would follow, there might be such a cloud thrown about the legality of the bonds, as to seriously affect their value, and perhaps entirely prevent their sale.

In this view of the case, it might be less expensive, and better policy to submit these questions again to the people.

Very respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. J. J. Burns, State School Commissioner.

*Extradition Expenses; Power of City Councils Regards—
The Prosecuting Attorney is Attorney for School
Boards.*

EXTRADITION EXPENSES; POWER OF CITY
COUNCILS REGARDS.

Office of the Attorney General,
Columbus, Ohio, April 17, 1880.

DEAR SIR:—I do not believe that city councils have the power to pay extradition expenses in criminal cases. I doubt whether county commissioners can do so.

If you can raise money from private individuals, I think the General Assembly, next winter, would give your council authority to pay.

GEO. K. NASH,
Attorney General.

Duncan McDonald, Urbana, Ohio.

THE PROSECUTING ATTORNEY IS ATTORNEY
FOR SCHOOL BOARDS.

Office of the Attorney General,
Columbus, Ohio, April 20, 1880.

DEAR SIR:—By Sec. 3977, Revised Statutes, it is made the duty of the prosecuting attorney to act as the attorney of school boards in all civil actions that may be brought by or against them, in their official capacity. This is just as much a part of the prosecutor's official duty, as it is for him to appear before the grand jury or to prosecute a criminal case in the Court of Common Pleas.

Unless there is some special provision of law, providing that he shall receive extra compensation for this class of services, they must be considered as a part of the

Guard of the Ohio Penitentiary an Officer Under the Constitution.

services to be paid for by the fees and salary provided for in Sec. 1297 and 1298.

I have been unable to find any provision for extra services in this class of cases.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Mr. Geo. B. Smith, Prosecuting Attorney, Ashland, Ohio.

GUARD OF THE OHIO PENITENTIARY AN OFFICER UNDER THE CONSTITUTION.

Office of the Attorney General,

Columbus, Ohio, April 21, 1880.

DEAR SIR:—In my opinion a guard at the Ohio penitentiary is an officer within the meaning of the constitution.

I therefore conclude that no male person can be appointed to the place unless he be an elector.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Mr. E. G. Richards, Ashley, Ohio.

Prosecuting Attorneys; Pay of—Records in Probate Court.

PROSECUTING ATTORNEYS; PAY OF.

Office of the Attorney General,
Columbus, Ohio, April 21, 1880.

DEAR SIR:—I have carefully considered the matter suggested in your letter of the 11th inst., because it seemed to me to be entirely just that you should be paid for the services spoken of therein.

No matter how just the claim of a prosecuting attorney may be, it cannot be paid by the commissioners out of the county treasury without express provision of law therefor.

I am wholly unable to find any authority by which to pay prosecuting attorneys a compensation for extra services in securing evidence in a criminal case, either at home, or in another state.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. J. P. Spriggs, Prosecuting Attorney, Oatsfield, Ohio.

RECORDS IN PROBATE COURT.

Office of the Attorney General,
Columbus, Ohio, April 21, 1880.

DEAR SIR:—I have carefully considered the question suggested in your favor of the 14th inst.

It appears to me that section 528 of the Revised Statutes lays down a general rule as to what records and in what manner the records shall be kept in the Probate Court.

If no provision whatever had been made as to how the record in a lunacy case should be kept, I think that

Warden of Ohio Penitentiary; Expenses Paid by State.

it would fall under the general rule, and such a record would have to be made as is provided by section 528.

I am inclined to the opinion, however, that section 714 prescribes the manner in which the record shall be kept in case of lunacy, and therefore creates a special rule for this class of cases; and that only such record is required as the section provides for.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. John C. Miller, Probate Judge, Springfield,
Ohio.

WARDEN OF OHIO PENITENTIARY; EXPENSES
PAID BY STATE.

Office of the Attorney General,
Columbus, Ohio, April 21, 1880.

DEAR SIR:—Under Sec. 7366, Revised Statutes, when a new trial is ordered, it is made the duty of the warden to forthwith cause the defendant to be conveyed to the jail of the county, in which he was convicted.

The warden cannot well do this unless money is provided for this purpose, and it is the duty of the State to furnish him with transportation. When this is done, I think the warden should report the amount of these costs to the sheriff, and that they should be taxed up as other costs in the case, so that if the costs are ever collected from the defendant, the State may be remunerated. I think that this expense may be paid out of the appropriation for the prosecution and transportation of convicts.

Respectfully yours,

GEO. K. NASH,

Attorney General.

To Hon. B. F. Dyer, Warden of Ohio Penitentiary.

Printing; County—Trustees of Benevolent Institutions.

PRINTING; COUNTY.

Office of the Attorney General,
Columbus, Ohio, April 23, 1880.

DEAR SIR:—I am inclined to the opinion that section 6969 does not apply to printing done for the benefit of a county, and that it does not prohibit a newspaper establishment from doing printing for a county because its proprietor, or one of its proprietors, is a member of the General Assembly.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. J. P. Winstead, Prosecuting Attorney, Circleville, Ohio.

TRUSTEES OF BENEVOLENT INSTITUTIONS.

Office of the Attorney General,
Columbus, Ohio, April 30, 1880.

DEAR SIR:—At your request, I have examined section 629 of the Revised Statutes.

In my opinion said section does not have application to trustees of benevolent institutions (except the institution for the blind), whose terms of office expired prior to January 1, 1880.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Hon. Chas. Foster, Governor of Ohio.

*Costs Paid by the State—Prosecuting Attorneys Are Not
Entitled to a Percentage on Costs Paid by the State.*

COSTS PAID BY THE STATE.

Office of the Attorney General,
Columbus, Ohio, May 3, 1880.

DEAR SIR:—The State does not pay the cost of prosecution except in cases where the convicts are confined in the Ohio Penitentiary. Sections 7332 and 7336 clearly indicate this.

It follows that the State will not pay the costs in a case of murder in the first degree, where the accused suffers the death penalty.

I suppose that the State pays the costs where persons are confined in the penitentiary on the theory that the State will be reimbursed by the convict's labor.

Truly yours,

GEO. K. NASH,
Attorney General.

Mr. C. A. Reider, Prosecuting Attorney, Wooster,
Ohio.

PROSECUTING ATTORNEYS ARE NOT EN-
TITLED TO A PERCENTAGE ON COSTS PAID
BY THE STATE.

Office of the Attorney General,
Columbus, Ohio, May 4, 1880.

DEAR SIR:—I do not believe that prosecuting attorneys are entitled to a percentage in cases where the costs are paid by the State of Ohio.

I held the same opinion during the four years that I served as a prosecuting attorney, and you have certainly been right in not making a claim for a percentage on costs collected from the State.

*Reform School; Power of Governor to Transfer a Boy
From the Ohio Penitentiary to.*

Sec. 1298 provides that the prosecuting attorney is entitled to ten per cent. (10 per cent.) on all moneys collected on fines, etc. When a fine and costs are discharged by performing labor, it cannot be said that money has been collected.

Therefore I am of the opinion that in such case, the prosecuting attorney is not entitled to a percentage.

Respectfully yours,

GEO. K. NASEL,

Attorney General.

To Mr. J. C. Givin, Prosecuting Attorney, Cadiz,
Ohio.

REFORM SCHOOL: POWER OF GOVERNOR TO
TRANSFER A BOY FROM THE OHIO PENI-
TENTIARY TO.

Office of the Attorney General,
Columbus, Ohio, May 7, 1880.

DEAR SIR:—I have examined section 761, as amended last winter. I doubt whether, before the amendment, the governor had power to transfer a boy to your institution for a longer time than the period for which he was sentenced to confinement in the penitentiary.

Certainly, since the General Assembly has given clear expression to its intent by this amendment, I would not attempt to hold any boy for a longer period than the term for which he was sentenced to the penitentiary.

You cannot allow boys, transferred from the penitentiary, to gain time in accordance with the regulations of that institution. When transferred to your institu-

*Reform School; Power of Governor to Remove Boys
From the.*

tion, these boys can have such privileges as the law and rules provide for the reform school, and not such privileges as are provided for the inmates of the Ohio Penitentiary.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Col. G. L. Innis, Superintendent Ohio Reform School.

REFORM SCHOOL: POWER OF GOVERNOR TO
REMOVE BOYS FROM THE.

Office of the Attorney General,
Columbus, Ohio, May 7, 1880.

Hon. Chas. Foster, Governor of Ohio:

DEAR SIR:—I have examined the petition presented to you by Wm. C. Wyman, J. P., et al., asking that executive clemency be exercised in securing the discharge of one Wilson McAdams, from the reform school at Lancaster.

I have no papers before me except the petition, and have no information in regard to the case, except such as it discloses.

From this it appears that McAdams was committed to the reform school by the Probate Court of Shelby County, on account of incorrigibility. It does not appear that he was convicted of any crime and is enduring a sentence on account of such conviction. It is not, therefore, a case in which the governor can grant a reprieve, commutation, or pardon. Neither does the gov-

Sale of Reverted Land.

error have power to change, or do away, the order of any court, committing a boy to the reform school on account of incorrigibility.

Section 752 seems to contemplate that boys may be released from the reform school when reformed, but the Statute is silent as to who may determine when reformation has taken place.

I understand that the board of directors, for the reform school, has adopted rules for the regulation of that institution, and that those rules define what constitutes reformation, and that boys are sometimes discharged by the officers, in accordance with them. I have not got a copy of these rules.

Respectfully yours,
GEO. K. NASH,
Attorney General.

SALE OF REVERTED LAND.

Office of the Attorney General,
Columbus, Ohio, May 7, 1880.

DEAR SIR:—From the statement of facts contained in your favor of the 4th inst., I conclude the land referred to has reverted to the State, in trust for the township to which it belongs, as provided in Sec. 1432.

This being the case, my impression is that the township trustees must file a petition in the Court of Common Pleas, in accordance with Sec. 1421, and that the proceedings for the sale of the land must be conducted in accordance with sections 1421, 1422, 1423, 1424 and 1425, of the Revised Statutes:

I assume that a vote has been taken in the township for the sale of this land, and I think that the proceedings provided for in sections 1419 and 1420 may be dispensed with.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. S. D. Chambers, Auditor, Lima, Ohio.

Elections; Township—City Clerk; Power to Administer Oaths.

ELECTIONS; TOWNSHIP.

Office of the Attorney General,
Columbus, Ohio, May 8, 1880.

DEAR SIR:—I agree with you in saying that section 2963, Revised Statutes, extends to, and includes officers of elections, where township officers alone are voted for. It seems to me to be broad enough for this construction, and, like yourself, I have been unable to find any other provision of law for the payment of officers at township elections.

Truly yours,
GEO. K. NASH,
Attorney General.

Mr. G. G. White, Prosecuting Attorney, Upper Sandusky, Ohio.

CITY CLERK; POWER TO ADMINISTER OATHS.

Office of the Attorney General,
Columbus, Ohio, May 8, 1880.

DEAR SIR:—I do not think that, under Sec. 1762, Revised Statutes, a city clerk is empowered to administer oaths. Sec. 1765 gives a city auditor power to administer oaths, but does not impose it upon him as one of the duties of his office. Sec. 1762 provides that the clerk, in certain cases, shall perform the duties of the auditor, but does not grant to him power to administer oaths.

Respectfully yours,
GEO. K. NASH,
Attorney General.

To Mr. C. J. Ostendorf, Clerk, Delphos, Ohio.

Ohio National Guard.

OHIO NATIONAL GUARD.

Office of the Attorney General,
Columbus, Ohio, May 8, 1880.

DEAR SIR:—Your favor, asking my construction of Art. 60, of the code of regulations for the Ohio National Guard, has been received.

In my opinion, no member of a company, who has become ineligible to office, or has lost his right to vote, on account of being three months in arrears for dues and fines, can regain eligibility to office, or his right to vote, by partial payment of his arrearages. When the three months have elapsed, the delinquent member owes a certain sum of money, and that entire sum must be paid in order to relieve him. The member becomes ineligible to office, loses his right to vote so soon as he receives notice that he is three months in arrears for dues. The reading of a list of the members, who are in arrears, at a company meeting, is not sufficient notice, unless the member be present and hears the announcement. A verbal notice is sufficient, but it would always be better to give it in writing. If a member of a company has owed one fine for three months, and his regular monthly dues for the same period, I think he would be considered three months in arrears for dues and fines, and incur the disabilities provided in Art. 60, of your code, and must pay the entire sum due, in order to remove them.

Respectfully yours,

GEO. K. NASH,

Attorney General.

General W. H. Gibson, Adjutant General.

*Payment of Extra Salary to Employees of General Assembly
—Superintendent of Insurance.*

PAYMENT OF EXTRA SALARY TO EMPLOYEES
OF GENERAL ASSEMBLY.

Office of the Attorney General,
Columbus, Ohio, May 10, 1880.

DEAR SIR:—At your request I have considered the resolutions of the Senate allowing \$50 to each of its assistant clerks, and \$30 to one of its sergeants-at-arms, and the resolutions of the House of Representatives, allowing \$50 to each of its assistant clerks, \$50 to each of two assistant sergeants-at-arms, \$25 to each of four parties, and \$150 to Frederick Blankner, for services to be rendered after the adjournment of the General Assembly, and also your question as to whether the resolutions are such acts as would warrant you, as auditor of state, to draw your warrant for these various sums of money upon the state treasury.

The whole matter seems to me to depend upon the questions as to whether each branch of the General Assembly in the absence of statutory authority has the power to employ its officers or individuals by its simple resolution to do work?

I do not think it has such power.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Hon. John F. Oglevee, Auditor of State.

SUPERINTENDENT OF INSURANCE.

Office of the Attorney General,
Columbus, Ohio, May 11, 1880.

*Hon. Joseph F. Wright, Superintendent of Insurance,
Columbus, Ohio.*

SIR:—Your favor, submitting the following questions has been received.

Superintendent of Insurance.

I. "What course should be pursued by the superintendent of insurance, in case an Ohio Insurance Company, whose charter antedates the constitution of 1851, fails to file the annual statement, required by sections 3654 and 3655 of the Revised Statutes, and refuses to permit the examination provided for by section 2725."

II. "Has the status of the companies, whose charters antedate the new constitution, been in any manner affected, and if so, to what extent, by compliance with the law, relating to insurance companies, enacted since the adoption of our present constitution?"

I. The answer to your first question depends upon the power of the General Assembly to enact a law, requiring insurance corporations, chartered before the adoption of the present constitution, to make such reports as are contemplated in sections 3654 and 3655, and to submit to such examinations as is provided in section 272. I am of the opinion that it has such power, provided that it is exercised in such manner, as not to impair any vested right of the corporation. In this conclusion, I am sustained in an opinion, given by Attorney General West, on the 28th of July, 1868, and also by an opinion, given by Attorney General Little, on the 27th of March, 1874, copies of which I enclose herewith.

Our Supreme Court, in the case of "The State *ex rel.*, etc., vs. The Columbus Gas Light & Coke Company," 34 O. S., page 572, has said:

"Where a corporation, acting under a special charter, is invested with franchises, to be exercised to subserve the public interest, the terms upon which the corporation may be required to discharge its duties to the public, are subject to legislative supervision and control, unless it clearly appears from the terms of its charter that it was the intention to exempt it from such interference."

Unless the power to compel these corporations to make the report now required by law, and to vest some

Superintendent of Insurance.

officer with power to make examinations into the affairs of the corporations, as is provided in section 272, rests in the General Assembly, the public can never know, whether the implied contract, entered into between the State and the corporation, is being faithfully and honestly executed on the part of the corporation or not. This certainly is a right, or power, that the State ought to have, and which I think it does possess.

If I am right in this conclusion, then it follows that the same penalties may be enforced against an insurance company, chartered before the new constitution, which refuses to comply with the provisions of sections 272, 3654, 3655, and others relating to the same subject, as could be enforced against a company since organized.

II. In answer to your second question, I will say that I am certain that no company, whose charter antedates the new constitution, has lost any franchise or vested right, such as the right "to invest its funds in such way as the directors shall deem best and most advantageous," by filing annual statements, or by permitting the superintendent of insurance to examine into its affairs. I also think that any such company, by complying with these requirements in the future, will not impair or infuse its vested rights.

The reading of section 3234 may, possibly, cause one to differ, somewhat, with the opinion that I have just expressed. If read aright, however, I do not think that such will be the case. I think that that section is intended to provide, and does provide, that if any corporation, created before the adoption of the new constitution, shall take any action under our present laws, relating to corporations, that in any manner changes or alters its corporate powers, rights and franchises, such action shall be deemed to be a consent upon the part of the corporation, "to be a corporation, and to have and exercise all and singular, its franchises, under the present constitution and the laws passed in pursuance thereof, and not otherwise."

Asylum for Insane; Clothing, How Furnished.

The Legislature, by requiring that certain things, which it has a right to require, shall be done by these old corporations, and by prescribing a system of penalties in case they do not comply, cannot deprive them of their rights and franchises, if they see fit, to obey the law, and not incur the penalties.

Therefore I conclude that the General Assembly has the power to enact laws, requiring insurance companies, organized prior to the new constitution, to make annual reports, and to submit to a supervision by the superintendent of insurance, and that in obeying such laws, such companies do not forfeit any of their chartered rights and franchises.

Respectfully yours,
GEO. K. NASH,
Attorney General.

ASYLUM FOR INSANE: CLOTHING, HOW
FURNISHED.

Office of the Attorney General,
Columbus, Ohio, May 14, 1880.

J. P. Winstcad, Prosecuting Attorney, Circleville, Ohio:

DEAR SIR:—It is my opinion that it is the duty of the several counties of the State, under sections 631 and 632, to pay for the clothing furnished to their patients in the asylums for insane. By referring to section 706, you will see that it is made the duty of the probate judge, to see that every patient is provided with proper clothing when he or she is sent to the asylum. This being the case, I think that the General Assembly, in the enactment of sections 631 and 632, must have had in mind the clothing furnished to patients while they are inmates. You suggest that section 700 conflicts with this view. When

Assessor; Election of.

parts of the law differ, they must be construed together, if possible, and I think that the proper construction to be put upon section 700 is, that the patient shall be maintained at the expense of the State, except as to clothing.

Respectfully yours,

GEO. K. NASH,
Attorney-General.

ASSESSOR; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, May 14, 1880.

Messrs. Haag and Ragan, Napoleon, Ohio:

GENTLEMEN:—My attention has frequently been called to Sec. 1448, and I have on each occasion given it as my opinion that each precinct, in a township, is entitled to an assessor, and that the people of each precinct should elect their own assessor.

I had to come to this conclusion, because there are precincts in Ohio that are composed of parts of two townships.

If I understand aright, "P," who lived in the east precinct of your township, and "S," who lived in the west precinct, were voted for all over the township, and that "P" received a majority in each precinct.

I am clear in the belief that "P" was elected assessor of the east precinct alone, and that there was no election in the west precinct; therefore, the auditor did right in appointing an assessor for that precinct.

If "P" did any work in assessing the west precinct, I do not see how he can be paid for his services.

Truly yours,

GEO. K. NASH,
Attorney General.

Justice of the Peace; Election of—Boards of Education.

JUSTICE OF THE PEACE; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, May 15, 1880.

Messrs. J. R. Anderson and A. L. Morris:

GENTLEMEN:—When a vacancy occurs in the office of justice of the peace, and an election occurs to fill the vacancy, the person elected holds the office for a period of three years.

John Lauderman can hold the office of justice of the peace until October, 1881.

Truly yours,
GEO. K. NASH,
Attorney General.

BOARDS OF EDUCATION.

Office of the Attorney General,
Columbus, Ohio, May 15, 1880.

Mr. Frank Moore, Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—When a board of education has reduced the number of sub-districts in a township from five to four, in accordance with Sec. 3921, Revised Statutes, I am inclined to the opinion that their action is final. I do not think that either Sec. 3892 or Sec. 3969 affords a remedy to those who are dissatisfied.

Permit me, however, to call your attention to section 3946, and those following. I think that under these sections, proceedings may be commenced at once, for the creation of an additional sub-school district.

Truly yours,
GEO. K. NASH,
Attorney General.

Commissioner of Ohio; Seal of.

COMMISSIONER OF OHIO; SEAL OF.

Office of the Attorney General,
Columbus, Ohio, May 17, 1880.*Hon. Chas. Foster, Governor of Ohio:*

SIR:—The Statutes of Ohio provide that before a person shall be commissioned as a commissioner of the State of Ohio, he shall procure a proper seal of office. They are silent as to what device, if any, and as to what words, shall appear upon this seal. The object of the seal is to show the authority of the officer taking affidavits and depositions, to be used in the courts of this State, and also to show his authority in taking the acknowledgment of deeds, mortgages, leases, contracts, letters of attorney, or other written instruments, to be recorded or used in this State.

The office to be fulfilled by this seal is, therefore, an important one.

I understand the seal, contemplated by our statutes, to be an engraved stamp, to be used by a commissioner of the State of Ohio, for making an impression in wax, or other soft substance, to be attached to the documents, before herein referred to by me, or otherwise used upon them by way of authentication or security.

In order to make this seal of any value, it should contain words enough to indicate the character of the office, and the name of the State in which the officer is authorized to perform his duties.

To do this the following words must appear—"Commissioner of the State of Ohio, within the state of —," (naming the state in which the officer resides).

The question submitted by you is "whether the word 'Ohio' may be left off from the engraved seal, and afterwards, when an instrument has been authenticated, written within the impression made by the seal?" I think not. To admit that a portion of the words, necessary to appear

*Girls' Industrial Home of Delaware; Appropriation For
Steam Heating.*

upon a seal, may be written, is to admit that all those necessary words may be in writing, or that a mere scroll may be used.

Such is not the intention of our Statutes. That intention was, that a commissioner of the State of Ohio should provide for himself an engraved seal, that would plainly indicate the character of his office, and the state or territory, within which he is authorized to perform its duties. This is the more clearly shown from the fact that it is made the duty of the governor not to issue a commission to any person desiring to be a commissioner of the State of Ohio, until an impression of his seal has been transmitted to him, and filed in the office of the secretary of state.

Respectfully yours,
GEO. K. NASH,
Attorney General.

GIRLS' INDUSTRIAL HOME OF DELAWARE;
APPROPRIATION FOR STEAM HEATING.

Office of the Attorney General,
Columbus, Ohio, May 20, 1880.

Mr. F. A. Gartner, Delaware, Ohio:

DEAR SIR:—Your letter, in which you say that the trustees of the Girl's Industrial Home, ask for my opinion in regard to the appropriation for steam heating, has been received.

The appropriation, \$3,641, seems to be made for one specific purpose, and if the improvement is likely to cost more than \$3,000, you cannot dispense with the advertisement.

*Township Treasurers; Percentage Allowed to—Prosecuting
Attorney; Office Provided by County Commissioners.*

It would be a dangerous precedent to attempt to divide the improvement into three parts.

It is always the better way to strictly follow the letter of the law.

Truly yours,

GEO. K. NASH,
Attorney General.

TOWNSHIP TREASURERS; PERCENTAGE AL-
LOWED TO.

Office of the Attorney General,
Columbus, Ohio, May 20, 1880.

Mr. M. P. Sanderson, Richfield Centre, Ohio:

DEAR SIR:—My impression is, that, under section 1532, Revised Statutes of Ohio, a township treasurer is allowed two per cent. upon all moneys that come into his possession.

Truly yours,

GEO. K. NASH,
Attorney General.

PROSECUTING ATTORNEY; OFFICE PROVIDED
BY COUNTY COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, May 20, 1880.

*Mr. Frank P. Magee, Prosecuting Attorney, McArthur,
Ohio:*

DEAR SIR:—Your favor of the 19th inst. has been received.

Notaries Public; Appointment of Women as.

Section 859 of the Revised Statutes gives authority, it seems to me, to county commissioners to provide an office for the prosecuting attorney, as well as other county officers.

It leaves the matter *discretionary* with the commissioners.

Truly yours,

GEO. K. NASH,

Attorney General.

NOTARIES PUBLIC; APPOINTMENT OF WOMEN
AS.

Office of the Attorney General,
Columbus, Ohio, May 20, 1880.

Hon. Charles Foster, Governor of Ohio:

DEAR SIR:—Your favor, asking my opinion as to whether women can be appointed notaries public, has been received.

Section 110 of the Revised Statutes of Ohio, provides that you may appoint and commission as notaries public, females as well as males.

Section 4, Article 15, of the constitution ordains that "no person shall be elected or appointed to any office in the State, unless he possess the qualifications of an elector."

The only question to be determined is "whether a notary public is an officer."

Our Statutes, everywhere, speak of a notary public as an officer, even section 110 uses the words, "the duties of the office of notary public." Section 111 speaks of "the office of notary public." Section 112 provides that "each notary public shall hold his office for a term of three

Notaries Public; Appointment of Women as.

years." That before entering upon the "duties of his office" he shall give bond to the State of Ohio, for the faithful discharge of the "duties of his office," and that he shall take "an oath of office." Section 113 prescribes that he shall provide himself with an "official seal," and also speaks of the expiration of his "office." Section 114 also speaks of the position held by a notary public as an "office."

A notary public is appointed for a definite term. He must take the oath of office prescribed by the constitution. He must reside in the county in which he is authorized to perform his duties as notary public. His duties are prescribed by law, and not by contract. He is clothed with the right and correspondent duty to execute a public trust. He has a right to the fees attached to the office.

All of these things are laid down by the Supreme Court in the case of the State against Wilson, 29 Ohio State Reports, page 347, as the "indicia" of being an officer.

I conclude that a notary public is an officer, and that so much of section 110, of the Revised Statutes, as authorizes the governor to appoint and commission females as notaries public, is in conflict with section 4, article 15, of the constitution, and therefore void.

Respectfully yours,

GEO. K. NASH,
Attorney General.

Akron City Council; Election of President of.

AKRON CITY COUNCIL; ELECTION OF PRESIDENT OF.

Office of the Attorney General,
Columbus, Ohio, May 21, 1880.

Mr. C. P. Humphrey, City Solicitor, Akron, Ohio:

DEAR SIR:—When I wrote to you on Monday, last, I had not read your opinion in regard to the legality of the election of B. F. Goodrich, as president of your city council, and, of course, I had not given much consideration to the facts. Without determining whether I would commence proceedings in *quo warranto*, I asked you to prepare the pleadings so that there might be no delay in case I should decide to do so.

Since that time, I have fully examined the facts, carefully read your brief, and in other ways attempted to determine my duty in the matter.

In your opinion, which seems to have been carefully given, you concede that Mr. Goodrich was legally elected on the fourteenth ballot, and that the mayor erred in ruling to the contrary. In this conclusion I concur.

The point is made that the subsequent proceedings, in the taking further ballots for president, have the effect to deprive Goodrich of his right to serve as president of the council, to which office, it is conceded, he was elected.

I am inclined to differ with you in this respect, and to the opinion that Mr. Goodrich is entitled to act as president of the council.

Even if I am wrong in this belief, would I not obstruct the business of your city government by filing an information in the nature of *quo warranto*, rather than aid it?

About the first of July, the Supreme Court will take a recess for the summer. It will take much more than ordinary expedition to have the case passed upon before that time. The probability is that it would not be dis-

Marshal's Fees.

posed of until the court meets in September. Suppose the court should then hold that Mr. Goodrich was not elected. Your council would then find itself back in the same position it was before the fourteenth ballot was taken—unorganized and without any immediate prospect of organization.

If a majority of the members of the city council should see fit to proceed under the present organization, even if, as you think, the president was not properly elected, their acts would be valid. Our courts have frequently held that the acts of *de facto* officers are binding.

For these reasons I decline to proceed.

Truly yours,

GEO. K. NASH,

Attorney General.

MARSHAL'S FEES.

Office of the Attorney General,
Columbus, Ohio, May 21, 1880.

Mr. James A. Aleshire, Mayor, Jackson, Ohio:

DEAR SIR:—My impression is that under section 1850, Revised Statutes, a marshal's fee for attending a prisoner in the police court, is only twenty cents. That the fee mentioned in the latter part of that section, constitutes his compensation.

Truly yours,

GEO. K. NASH,

Attorney General.

Jurors Before a Justice of the Peace; Payment of—Peace Warrants; Power of a Probate Judge to Re-examine on a.

JURORS BEFORE A JUSTICE OF THE PEACE;
PAYMENT OF.

Office of the Attorney General,
Columbus, Ohio, May 22, 1880.

S. D. Wilcox, Justice of the Peace, Holland, Lucas County, Ohio:

DEAR SIR:—Section 6564 of the Revised Statutes seems to be the only provision in regard to the payment of jurors before a justice of the peace. Under that section, their compensation is fifty cents each.

Truly yours,
GEO. K. NASH,
Attorney General.

PEACE WARRANT; POWER OF PROBATE
JUDGE TO RE-EXAMINE ON A.

Office of the Attorney General,
Columbus, Ohio, May 24, 1880.

Hon. D. W. Mathews, Mt. Gilead, Ohio:

DEAR SIR:—If I understand your letter, a party has been arrested upon a peace warrant, and by a magistrate ordered to enter into a recognizance to appear before the Court of Common Pleas. Unable to give bail, he was committed to jail, and under Sec. 7165, demanded a hearing before you as probate judge. If you had jurisdiction over the matter, you had the same power as the justice of the peace had in the examination before him.

Under Sec. 7108 the magistrate had power to render

Reform School For Boys.

judgment for the costs against the complainant, in case of a discharge.

But have you any power, as probate judge to give a re-examination to a person arrested upon a peace warrant?

I am inclined to think that you have not.

Section 7165 relates to a person committed to jail, *charged with the commission of an offense*. Is a person committed upon a peace warrant, "charged with the commission of an offense?"

Section 7106 relates to a person of whom it is feared *that he will commit an offense*. If you had no jurisdiction, of course you could not collect any costs.

I feel rather uncertain in the matter, and suggest that you give the question of jurisdiction careful consideration.

Yours truly,
GEO. K. NASH,
Attorney General.

REFORM SCHOOL FOR BOYS.

Office of the Attorney General,
Columbus, Ohio, May 24, 1880.

*Col. G. P. Innis, Superintendent of Ohio Reform Schools,
Lancaster, Ohio:*

DEAR SIR:—As I wrote March 29th, I am still of the opinion that a court commits manifest error, if it sends a boy to your institution for any other period than until he is twenty-one years old, or until he is reformed.

Even if the court commits an error in sending a boy for three years, I am inclined still to the opinion that you cannot hold him for a longer period than three years.

Mutual Aid and Benefit Associations; Statement of Insurance Commissioner Sent Out to.

From your letter of the 20th inst., I infer that you have rules by which boys are given time on account for good behavior. I looked through the annual report, but did not find any rules of this character. I am therefore in the dark.

I do not think, under the law, that anything short of "reformation" will shorten a boy's time. I suppose he can be discharged when "reformation" takes place.

The law is silent as to who may determine when "reformation" has occurred, or as to what shall constitute "reformation." This law ought to be amended and made more explicit.

If the trustees have determined that this Allen County boy is reformed, when June 1st arrives, I think you would be safe in letting him go.

I do not think that you can discharge a boy transferred from the penitentiary, until his full time has expired.

Truly yours,

GEO. K. NASH,
Attorney General.

MUTUAL AID AND BENEFIT ASSOCIATIONS:
STATEMENT OF INSURANCE COMMISSIONER SENT OUT TO.

Office of the Attorney General,
Columbus, Ohio, May 26, 1880.

Hon Joseph F. Wright, Superintendent of Insurance:

DEAR SIR:—I have examined the blank annual statement sent out by you to the Mutual Aid and Beneficial Association, of this State, and also the objection, which has been raised to it because you require some questions to be answered in it, that are not specifically provided for in Sec. 3630a of the act of April 12, 1880.

Mutual Aid and Benefit Associations; Statement of Insurance Commissioner Sent Out to.

I am inclined to think that a law that confers upon a State officer, power to cause an examination into the affairs of a corporation by persons selected by such officer, and at the expense of a corporation, confers by implication, at least, upon such officer, the right to ask, and have answered, such questions as may inform him as to whether the corporation is legally conducting its business.

This proposition is seriously questioned, and the point is made that you have the right to have answered in the annual statement, only the thirty-four questions provided in the law.

It is probably true that the law is not as clear and specific as it should be, and certain companies, you inform me, have objected to answering some of the questions contained in your annual statement.

It is but a few months before the General Assembly will again convene, and I think it would be well at that time to have the Legislature clearly make known its intention in this matter.

In the meantime, I would suggest that you prepare a blank annual statement containing only the questions prescribed in the law, and let the companies, if they wish, make their statement upon this blank.

At the same time you might indicate that you prefer that the statement be made in accordance with the first blank sent by you.

Respectfully yours,

GEO. K. NASH,
Attorney General.

Wines, F. H.; Answers to Questions by.

CARE OF POOR; SPECIAL LAW.

Office of the Attorney General,
Columbus, Ohio, May 27, 1880.

Mr. C. A. Atkinson, Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—The act to which you refer in your favor of the 13th inst., and to be found on page 170, Vol. 76, Ohio Laws, is not repealed by implication by the general law.

It is in full force unless it is unconstitutional and void. I doubt very much whether the General Assembly can by local law authorize one township to take care of its poor in a different manner from all other counties in the State.

Perhaps the case of Ohio ex rel. vs. Covington et al., 29th O. S. Repts., page 102, will throw some light upon the question as to how far the General Assembly can go in this direction.

Truly yours,
GEO. K. NASH,
Attorney General.

WINES, F. H.; ANSWERS TO QUESTIONS BY.

Office of the Attorney General,
Columbus, Ohio, May 20, 1880.

Mr. Fred H. Wines, Expert and Special Agent, Springfield, Illinois:

I. Sections 6864 and 6880 of the Revised Statutes of Ohio became law at the same time. They are a part of our code, which passed the General Assembly in a body, and took effect on the first day of January, last. You suggest that these sections provide different penalties for the same criminal act.

Wines, F. H.; Answers to Questions by.

I think that there are two classes of crimes described in these sections.

Sec. 6880 provides a punishment for a person who wrongfully, and without lawful authority cuts down or destroys any vine, bush, etc.

Sec. 6864 provides a punishment for any person, who maliciously cuts down or destroys any vine, bush, etc. The crime described in the last section is punished more severely than the offense mentioned in Sec. 6880. The ingredient of malice exists in the offense described in Sec. 6864, and it is not an element in the offense described in section 6880.

This, it appears to me, is the only distinction between the two offenses.

II. In regard to your questions about sections 6902 and 6904, I will say that I agree with you in thinking that the "aid" mentioned in the latter section is intended to cover all species of aid except that specifically mentioned in Sec. 6902.

It seems to me that the plain reading of these sections does prescribe a lighter penalty for aiding a convicted felon to escape from a jail in a manner covered by section 6904, than in that prescribed by Sec. 6902.

III. I think that the distinction between the offenses described in sections 6932 and 6933 is this: Section 6932 covers the case where a man knowingly rents or permits a room to be used continually for the purpose of gambling.

Sec. 6933 covers the case where a man occasionally suffers a game to be played in his private room, office or place of business, but does not give up his property to be permanently used for such purposes.

IV. My reply to your fourth proposition is this; I suppose that I may lawfully keep in Ohio a place where I may sell spirituous liquors, provided that they are not drunk on the premises, and where I may sell malt liquors and native wines to be drunk upon the premises, provided I

do not sell them to minors, or to persons in the habit of becoming intoxicated. Sections 6944 and 6942 permit this. But under Sec. 6948, even such a place as this must be closed upon election days.

V. Section 6978 was amended by the last General Assembly so as to read as follows:

"A justice of the peace, or other person, who refuses to deliver up any docket, papers, files, laws, or statutes, on demand, by the person entitled thereto according to law, shall be fined not more than two hundred dollars, or imprisoned not more than six months, or both." Section 6597 should have been mentioned in the old section, instead of 6965.

VI. My understanding of the distinction between sections 7027 and 7030 is this:

Frequently medicines are advertised, and in the advertisement a caution is inserted, advising that females in a certain condition should not use them.

The real object sought to be obtained by such advertisement is to inform the public that they can be used to prevent conception. These are the secret drugs aimed at by section 7030.

Medicines that are openly sold, and openly bought for the purpose of preventing conception are the ones aimed at by section 7027.

I have to beg your pardon for the long delay in answering your questions.

I first sent them to a gentleman, who was a member of our codifying commission, believing that he could handle the subject much better than I could, but he was so much engaged that he was compelled to return them to me without answer.

I have been so much pressed with work, that I could not attend to the matter until today.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Peddlers; What Constitutes—Sheriff; Allowance to, For the Maintenance of Prisoners.

PEDDLERS; WHAT CONSTITUTES.

Office of the Attorney General,
Columbus, Ohio, June 11, 1880.

Mr. J. M. McGinnis, Prosecuting Attorney, Caldwell, Ohio:

DEAR SIR:—Your favor of the 8th inst. has been received.

It is my opinion that persons, who carry groceries throughout the country, and exchange them for butter, eggs, etc., are peddlers within the meaning of sections 4397 and 4398 of the Revised Statutes.

I do not think that, in order to constitute them peddlers, they should receive money in payment for the goods by them sold.

You are undoubtedly right in holding that such persons should procure licenses.

Truly yours,
GEO. K. NASH,
Attorney General.

SHERIFF; ALLOWANCE TO, FOR THE MAINTENANCE OF PRISONERS.

Office of the Attorney General,
Columbus, Ohio, June 12, 1880.

Mr. J. P. Spriggs, Prosecuting Attorney, Woodsfield, Ohio:

DEAR SIR:—Sec. 7378 of the Revised Statutes provides what the county commissioners, at the expense of the county, may do towards the maintaining of prisoners in the county jail.

Sec. 7379 points out what the sheriff shall provide towards the maintenance of these prisoners. Sec. 1235

Struck Jury; Payment of Fees For Striking.

says that the sheriff may be allowed not exceeding fifty cents per day for keeping and providing for prisoners in the jail.

It is my opinion that the words "keeping and providing," as used in Sec. 1235, cover all things that Sec. 7379 directs that the sheriff shall provide. I therefore conclude that the allowance mentioned in Sec. 1235 does not cover board merely, but also "washing," and everything else that is necessary for the proper keeping and providing for the prisoners.

I am unable to find any law, which authorizes county commissioners to pay the expenses of prosecuting attorneys, in seeking for evidence in criminal cases outside of their counties.

Very respectfully yours,
GEO. K. NASH,
Attorney General.

STRUCK JURY; PAYMENT OF FEES FOR
STRIKING.

Office of the Attorney General,
Columbus, Ohio, June 14, 1880.

Mr. John M. Cook, Steubenville, Ohio:

DEAR SIR:—Your favor of the 7th inst. has been received.

Section 5189 of the Revised Statutes provides that "the party who requires a struck jury, shall pay the fees for striking, summoning, impaneling, and qualifying the same, and one-half of all the fees of such jury."

It does not provide that security may be required for this payment. It would be impossible to tell how much the fees would amount to when the demand for a

Prosecuting Attorney; Salary of.

struck jury is first made, and I fear that it might be error to refuse to secure the jury on account of the fees not being paid, or secured to be paid.

I am informed that an effort was made in the Court of Common Pleas of this county, at this term, to do so, and that one of our judges held that the defendant could not be deprived of his right to a struck jury because of his inability to pay costs.

Respectfully yours,
GEO. K. NASH,
Attorney General.

PROSECUTING ATTORNEY; SALARY OF.

Office of the Attorney General,
Columbus, Ohio, June 14, 1880.

Mr. Jas. O. Troup, Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Sec. 1297 provides that in your county, the prosecuting attorney shall receive an annual salary, to be fixed by the commissioners of the county, not exceeding \$2.00 for each one hundred inhabitants, at the last preceding federal census. The salary is not fixed until the commissioners, by their order, do it. It is within their discretion to fix the salary at any amount less than \$2.00 for each one hundred inhabitants.

The question arises, when the commissioners may make this order fixing the salary.

If they made an order, fixing the salary of the prosecuting attorney before you entered upon the duties of your office, I think that salary must continue during your term, and that, if it should now be changed, the change

Prosecuting Attorney; Salary of.

would only affect your successor, or yourself, in case of a re-election.

My impression is that section 20, Art. II, of the constitution, which provides that no change shall affect the salary of an officer during his existing term, applies in your case. It is true that the General Assembly has not fixed the salary of the prosecuting attorney, but it had the power to do so. Instead of exercising it, it prescribed a limit beyond which the salary should not go, and delegated to the commissioners the power to say how much it should be.

The commissioners having once exercised this power, I do not think they could change the salary of the prosecutor during his existing term.

I would like to come to a different conclusion if I could, for I know that prosecuting attorneys are poorly paid in our State.

To show that I formed this opinion against my own interests, I will say that it was my fortune to serve as prosecuting attorney of Franklin County, for two terms. During the first term the limit which the commissioners could not exceed was \$900.00. About four weeks after I entered upon my second term, the General Assembly fixed the limit at \$1,500.00. The commissioners offered to fix my salary at that amount, but having entered upon the second term, I did not believe that they had the power, under the constitution, to increase my salary during that term. I served out the term at \$900.00 per year, and was the loser of \$1,200.00 on account of my opinion.

This may be cold comfort to you, but it at least shows that I was sincere in the opinion which I then formed.

Truly yours,

GEO. K. NASH,

Attorney General.

Taxing of Government Bonds; Extension of Charter of Corporation.

TAXING OF GOVERNMENT BONDS; EXTENSION
OF CHARTER OF CORPORATION.

Office of the Attorney General,
Columbus, Ohio, June 17, 1880.

Mr. A. J. Marvin, Cleveland, Ohio:

DEAR SIR:—Your letter of May 29th was received while I was away from the city, to which I returned on the 8th inst.

The delay since that time has been caused partly by accumulated business, but mostly from my desire to carefully consider your suggestions. I have considered them the more carefully because I am inclined to differ from you, and your well known standing as a lawyer causes me to feel that probably I may be wrong.

The laws of the United States exempt certain bonds of the government from taxation. A banking corporation of Cleveland, organized under the laws of Ohio (required to keep a certain per cent. of its assets as a surplus) has \$450,000 of that surplus invested in these bonds. The charter of the corporation was about to expire by its terms, but about two years ago it was extended in consideration of its agreeing to certain things. It is claimed that one of these things was to treat its surplus as money, whether invested in non-taxable bonds or not, and in so doing, agreed that its entire surplus be taxed.

Let us admit that it be true that the Legislature compelled the corporation to make an implied contract of this kind in order to secure the extension of its charter. What follows?

I am inclined to the belief that the courts would hold that so much of the State law as compels the corporation to agree that non-taxable United States bonds, lawfully held by it, may be taxed, and that so much of the contract entered into, in compliance with the State laws, assenting to the same thing, are in conflict with the laws of the United States, and therefore cannot be enforced.

Insurance Company; The Charter Oak.

I hope that you will give this opinion only such weight as it deserves, and will remember that I am as liable to be mistaken as any other lawyer.

Very respectfully yours,

GEO. K. NASH,

Attorney General.

INSURANCE COMPANY; THE CHARTER OAK.

Office of the Attorney General,

Columbus, Ohio, June 18, 1880.

Hon. Joseph F. Wright, Superintendent of Insurance:

DEAR SIR:—If I recall correctly, the verbal statement made to me by yourself a few days since in regard to the Charter Oak Insurance Company, it was substantially this:

The company, a few years ago, on account of financial losses and troubles, and the impairment of its assets, was compelled to retire from the State. Having recovered somewhat from its difficulties, it has again presented a statement of its affairs, and asked you to give it authority, under the insurance laws, to do business in the State of Ohio.

In your opinion its financial condition is not such as would justify you, under our laws, in issuing your certificate of authority. The company now states that all it desires to do in Ohio, is to make settlement with its old policy holders, and after making such settlement, issue a policy in place of the old one; and asks you to give a certificate authorizing it to do so.

The law does not confer any authority upon you to do this, and therefore you must refuse this request.

You ask whether or not this corporation, its officers or agents, would incur the penalties prescribed by Sec.

County Ditches; Construction of by Commissioners.

288 of the Revised Statutes, if they should now proceed to make settlement with its old policy holders, and issue a policy of insurance to the holder of an old policy, instead of the one now held.

In my opinion, the company, its officers and agents, if they should simply make settlement of an old matter, and in consideration of its old liability, should issue a policy, containing a statement that it is issued in place of an old policy, would not violate the laws of the State, or incur the penalties prescribed by our insurance laws.

Respectfully yours,

GEO. K. NASH,

Attorney General.

COUNTY DITCHES; CONSTRUCTION OF BY
COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, June 18, 1880.

Mr. Thomas L. Magers, Port Clinton, Ohio:

DEAR SIR:—Your favor of the 12th inst., has been received.

I think the conclusion which you have arrived at, in the matter of county ditches, is correct.

I think that it is fair to interpret the law so as to give the commissioners the same power to proceed in the matter of the construction of a county ditch, after the time has expired in which an appeal may be taken, as they would have in case an appeal had been taken, and their proceedings to that point had been confirmed.

Unless this construction is put upon the law, it would seem to me to be so defective as to be of no value whatever.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Sheriff; Allowance For Maintenance of Prisoners.

SHERIFF; ALLOWANCE FOR MAINTENANCE
OF PRISONERS.

Office of the Attorney General,
Columbus, Ohio, June 18, 1880.

Mr. Noah Dever, Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—In reply to your favor of the 40th inst., I will say that in my opinion, the allowance provided for the sheriff, under Sec. 1235, covers all things that the sheriff is required to furnish under Sec. 7379, for the prisoners in his charge. Fuel is one of the things that he is required to furnish under that section, and is therefore covered by the fifty cents per day allowance.

I make the same answer in regard to bed clothing. The washing for prisoners is spoken of in Sec. 7379, and is covered by Sec. 1235.

I do not see anything in Sec. 859 that expressly authorizes the county commissioners to furnish the fuel necessarily consumed in county offices. Neither is there anything in this section that expressly authorizes the commissioners to buy furniture for the county offices. I believe, however, that it is the custom all over the State for the commissioners to furnish the fuel and necessary furniture for these offices.

The naked offices would be very poor places in which to do business, without furniture, and without fuel in cold weather, and I presume that the commissioners have acted upon the theory that the authority to furnish offices for the county officers, gives them an implied authority to put in the offices such furniture and fuel as are necessary for the transaction of public business.

Truly yours,

GEO. K. NASH,

Attorney General.

Acts Amending Repealed Statutes Have no Effect.

ACTS AMENDING REPEALED STATUTES HAVE
NO EFFECT.

Office of the Attorney General,
Columbus, Ohio, June 19, 1880.

Mr. Lot Wright, Clerk, Lebanon, Ohio:

DEAR SIR:—I am not authorized to answer questions put by county officers, unless they are submitted by the prosecuting attorney.

In your case, however, I will do so on condition that you will explain the matter to your prosecutor, so that he may not think that I have been discourteous to him.

I think that the General Assembly, in its act of March 29, 1880, O. L., Vol. 77, p. 90, has made a mistake. It seems to be an attempt to amend repealed statutes.

The act first recited is repealed by paragraph 153, p. 801, Vol. 75, O. L. The second act recited is repealed by paragraph 167, p. 802, Vol. 75, O. L. The act last recited in the title is repealed by paragraph 1069, p. 1799, Revised Statutes of 1880.

I do not believe that an act amending repealed statutes has any effect whatever. You will see that Sec. 5182 of the Revised Statutes relates to the same subject as Sec. 14 of the act of last winter.

The General Assembly seems to have made no effort to repeal Sec. 5182, and this section is, I think, still in force.

Respectfully yours,
GEO. K. NASH,
Attorney General.

Report of Viewers and Surveyor; What it Should Contain.

REPORT OF VIEWERS AND SURVEYOR; WHAT
IT SHOULD CONTAIN.

Office of the Attorney General,
Columbus, Ohio, June 21, 1880.

Mr. J. C. Givin, Prosecuting Attorney, Cadiz, Ohio:

DEAR SIR:—Your favor of the 15th inst., and also the letter of your county auditor asking what it is that the report of the viewers and surveyor should contain, under Sec. 4835 has been received.

From the language used by Judge Gilmore, in the case of Burzett et al. vs. Norris, Treasurer, 25 Ohio State Reports, and to be found on page 313, I am of the opinion that the report should contain the names of the owners of the lots of land within two miles of the line of the proposed improvement, which would be benefited thereby, and that unless the report does contain this information, the commissioners can not act further.

Upon the next proposition, I am not quite so clear, but I am inclined to the opinion that when the viewers have once made their report, that they are *functus officio*, and can neither amend the report nor can they act further, if the commissioners refer the matter back to them. I trust that the commissioners will not be governed by this opinion, unless they are clearly satisfied that I am right. Of course your opinion or that of any other lawyer is just as valuable as my own.

Respectfully yours,

GEO. K. NASH,

Attorney General.

Fees in Misdemeanors, When the State Fails to Convict.

FEES IN MISDEMEANORS, WHEN THE STATE FAILS TO CONVICT.

Office of the Attorney General,
Columbus, Ohio, June 21, 1880.

Noah J. Dever, Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—I don't think that the fees in misdemeanors, wherein the State fails to convict, can be included under sections 1309 and 1311, by the commissioners in ascertaining the amount of the allowance. I suppose that under Sec. 7136 a magistrate may require security for costs where the offense charged is a misdemeanor, even when the offender has been arrested on view by a sheriff, constable, or other proper officer.

I am a little uncertain in regard to your third proposition, because I am uncertain as to what the word is that follows the words "when claims for." I think it is "taxes," however. I suppose too, that you have reference to proceedings to collect personal taxes as provided in section 2859. If this be so, and a justice should notify the party before suit should commence, that the claims have been left with him, and the parties should pay them without suit, I do not see how the justice could be paid, unless the treasurer saw fit to pay him out of his own pocket. I do not believe that the commissioners have anything to do with it.

I send you by today's mail, a copy of Attorney General Pillars' report which was delivered to me on Saturday. On page 76 you will find an opinion in regard to fees in criminal cases. I do not think that the laws have been materially changed since that opinion was written.

Respectfully yours,

GEO. K. NASH,
Attorney General.

Fees in Misdemeanors.

FEES IN MISDEMEANORS.

Office of the Attorney General,
Columbus, Ohio, June 22, 1880.

Mr. Frank E. Magee, Prosecuting Attorney, McArthur, Ohio:

DEAR SIR:—YOUR favor of the 19th inst., has been received.

I have been compelled to change, somewhat, the opinion that I formerly held in regard to Sec. 7130. I now think that the complainant or security, is only responsible for costs, in case the complainant is dismissed by the magistrate.

If there is enough in the case to justify the magistrate in holding the party, I think the complainant or surety are relieved from costs.

My understanding also is that the commissioners can not make an allowance in misdemeanors, except in cases where there has been a conviction, and the defendant proved insolvent. If this be so, a recovery could not be had against the commissioners in the case which you put.

My impression is that in the case of a felony, where two affidavits are filed, and two warrants are issued, and there is a failure in the second case, on account of the parties being convicted in the first case, the commissioners may pay the officer holding the second warrant, his proper fees under Sec. 1309. It is the case of a felony in which the State fails to convict.

I do not see how the county recorder can receive any compensation for making his annual statistical report to the Secretary of State under Sec. 140.

Very respectfully yours,
GEO. K. NASH,
Attorney General.

Bounty Claims; Application of the Statute of Limitations to.

BOUNTY CLAIMS; APPLICATION OF THE
STATUTE OF LIMITATIONS TO.

Office of the Attorney General,
Columbus, Ohio, June 23, 1880.

*Mr. Geo. C. Rawlings, Prosecuting Attorney, Springfield,
Ohio:*

DEAR SIR:—I have given your favor of June 3d some consideration since last writing to you.

The first two questions proposed by you relate to the statute of limitations as applied to veteran bounty claims.

The courts, so far as I am able to learn of their decisions in regard to this matter, are at variance. A Common Pleas Judge in Hamilton County, recently held that this class of claims is barred by the statute of limitations, but Judge Meeker, of Darke County, has taken the other side of the question.

An attorney connected with the Hamilton County case informs me that it is intended to bring the case to the Supreme Court as rapidly as possible.

With judges differing in this way and with a prospect that the Supreme Court will be called upon to decide the question, I do not think that it is of much use for attorney generals or prosecuting attorneys to give opinions upon it, and if they did so, it would be unsafe for county commissioners or township trustees to act upon them.

Who is a veteran volunteer?

This is a question upon which the authorities differ. For years it has been held in the auditor of state's office and is now held by the adjutant general, that a veteran volunteer is one who re-enlisted after having served more than twenty-four months in the service of the United States.

Upon the other hand Attorney General West, while in office, gave an opinion to the effect that if a person, re-

Board of Education; Powers of.

enlisted after serving nine months, he was a veteran volunteer.

This is precisely the question now involved in a case pending in the Supreme Court.

In answer to your fourth question, I will say that the adjutant general's department is of the opinion that "local bounty" includes not only money paid as bounty by township, municipal or county authorities, but also includes money advanced for the same purpose to soldiers by private individuals, associations, or committees.

I desire to say further, that it is my wish that all of these questions shall be passed upon by the Supreme Court, as soon as possible, and I will do all I can, whenever opportunity presents itself, in this behalf.

Respectfully yours,
GEO. K. NASH,
Attorney General.

BOARD OF EDUCATION; POWERS OF.

Office of the Attorney General,
Columbus, Ohio, June 29, 1880.

Mr. John C. Bethel, Flushing, Ohio:

DEAR SIR:—It is my opinion that under Section 3995, the board of education, for a township, has power to purchase unabridged dictionaries, and permit them to be used by the sub-districts.

Truly yours,
GEO. K. NASH,
Attorney General.

*State Inspectors of Oils—O. S. and S. O. Home; Who
Must be Confirmed as Officers of.*

STATE INSPECTORS OF OILS.

Office of the Attorney General,
Columbus, Ohio, June 29, 1880.

*Mr. Louis Smithwright, State Inspector of Oils, Cleveland,
Ohio:*

DEAR SIR:—When the State inspector of oils is called upon to inspect 51 barrels of oil, it is his duty to test each barrel.

If it turns out that there is but one kind of oil, it would be held that it was one lot of oil, and he could charge only five cents per barrel for the inspection. If there are two or more kinds of oil among the 51 barrels, there would be as many lots as there are kinds of oil, and the inspector could charge accordingly for his services.

Very respectfully yours,

GEO. K. NASH,
Attorney General.

O. S. AND S. O. HOME; WHO MUST BE CONFIRMED AS OFFICERS OF.

Office of the Attorney General,
Columbus, Ohio, June 29, 1880.

Gen. C. H. Grosvenor, Trustee O. S. and S. O. Home:

DEAR SIR:—At your request, as well as that of Major Shaw, I have examined sections 640 and 647 of the Revised Statutes. I do not think that the appointees, referred to in section 647, are covered by the words "other needed officers" in section 640, and therefore that such appointees need not be confirmed by the board of trustees.

The term "Cottage Matrons" is not equivalent to the

Subpoena "Duces Tecum," Refusal to Obey Officers of Private Banks.

word "matron" in section 640. They need not be confirmed by the board of trustees.

The only officers to be confirmed are the clerk, matron and physician.

Respectfully yours,
GEO. K. NASH,
Attorney General.

SUBPOENA "DUCES TECUM," REFUSAL TO OBEY OFFICERS OF PRIVATE BANKS.

Office of the Attorney General,
Columbus, Ohio, July 2, 1880.

Mr. M. W. Johnson, Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Your favor of the 29th ult. has been received.

I think that the county auditor has power, under section 2782, to issue a subpoena, requiring persons to appear before him, and testify, and under section 5247, a subpoena may contain a clause directing a witness to bring with him books, etc. Upon the refusal of a party to bring books and papers, and to answer questions, the probate judge, upon application of the auditor, may issue a subpoena, and that subpoena may contain a clause, requiring the parties to produce books, papers, etc. Sec. 5247.

If such persons refuse to answer proper questions, or neglect to obey the commands of the subpoena, they will be subject to proceedings under sections 538 and 543.

Officers, or persons connected with or running private or unincorporated banks, are subject to the same laws as other citizens of Ohio, and sections 2782 and 2783 apply to them, as well as to other citizens.

I have not got the national banking act before me, and therefore cannot answer your question.

A veteran in order to get a bounty from the State,

*The Cleveland Jury Act—O. S. and S. O. Home; Election
of Superintendent of.*

must make out his papers, showing all the facts, and make application to the auditor of state. If he refuses, then the next step is by mandamus. I do not find any enclosures, relating to the bounty case, with your letter.

Respectfully yours,

GEO. K. NASH,

Attorney General.

“THE CLEVELAND JURY ACT.”

Office of the Attorney General,
Columbus, Ohio, July 2, 1880.

John Lafabre, Clerk of Court, Georgetown, Ohio:

DEAR SIR:—The act of March 29, 1880, pages 90 and 91, Vol. 77, O. L., simply amends the act passed May 7th, 1877, O. L. Vol. 74, page 218, and known as “the Cleveland Jury Act.” Therefore the act of March 29th is local in its nature, having force and effect in the county of Cuyahoga alone.

Truly yours,

GEO. K. NASH,

Attorney General.

O. S. AND S. O. HOME; ELECTION OF SUPERIN-
TENDENT OF.

Office of the Attorney General,
Columbus, Ohio, July 2, 1880.

*Major Wm. S. Shaw, Superintendent O. S. and S. O. Home,
Xenia, Ohio:*

MY DEAR SIR:—Under Sec. 640 the nomination by the

County Commissioners; Power to Make a Contract, Agreeing to Pay a Part of Omitted Taxes to Informers.

superintendent to a board has no effect whatever, until a confirmation has been made by said board.

Sincerely yours,
GEO. K. NASH,
Attorney General.

COUNTY COMMISSIONERS; POWER TO MAKE
A CONTRACT, AGREEING TO PAY A PART
OF OMITTED TAXES TO INFORMERS.

Office of the Attorney General,
Columbus, Ohio, July, 1880.

J. C. Givin, Prosecuting Attorney, Cadiz, Ohio:

DEAR SIR:—I do not believe that the county commissioners have power to make a contract, agreeing to pay one-fourth, or any other part, of omitted taxes, placed upon the tax duplicate, and collected, to the person furnishing the information by which such action is taken. If county commissioners possess such power as this, the act of last winter, Vol. 77, page 205, is wholly unnecessary.

When the treasurer knows that the warrant presented to him is drawn upon an invalid contract, I suppose it is his duty to refuse to pay the same.

If there is any danger that money will be paid upon a contract entered into without authority of law, I suppose that it is the duty of the prosecuting attorney to institute proceedings to restrain the payment.

Respectfully yours,
GEO. K. NASH,
Attorney General.

Assessment of Damages by Jury. School Examiners.

ASSESSMENT OF DAMAGES BY JURY.

Office of the Attorney General,
Columbus, Ohio, July 13, 1880.

G. A. Marshall, Prosecuting Attorney, Sidney, Ohio:

DEAR SIR:—Your favor of the 8th inst., asking my opinion as to certain matters covered by Sec. 4834 of the Revised Statutes, has been received.

Under said section, whenever a demand is made to the commissioners to have the damages assessed by a jury, the claimant should cause a certified transcript of the proceedings before the commissioners, to be filed on appeal, with the probate judge.

The appeal should be perfected in accordance with sections 468 and 4690 of the Revised Statutes. After such appeal is perfected, the probate judge should summon a jury in accordance with section 4700.

Respectfully yours,
GEO. K. NASH,
Attorney General.

SCHOOL EXAMINERS.

Office of the Attorney General,
Columbus, Ohio, July 13, 1880.

Hon. G. B. Priddy, Probate Judge, Washington C. H., Ohio:

DEAR SIR:—In my opinion Sec. 4085, Revised Statutes does not affect school examiners in office on January 1, 1880. Sec. 13 of the Revised Statutes settles the matter.

Truly yours,
GEO. K. NASH,
Attorney General.

Recorder of County; Election of.

RECORDER OF COUNTY; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, July 15, 1880.

Mr. Ernest McCormack, Recorder, London, Ohio:

DEAR SIR:—Section 11 of the Revised Statutes answers the question contained in your favor of the 13th inst.

The new recorder will be elected at the October election.

Truly yours,

GEO. K. NASH,
Attorney General.

WHEN "MAY" MEANS "SHALL."

Office of the Attorney General,
Columbus, Ohio, July 13, 1880.

Mr. M. B. Earnhart, Prosecuting Attorney, Troy, Ohio:

DEAR SIR:—I am inclined to the opinion that "may" means "shall," in Sec. 1309, Revised Statutes. The question is not without doubt and difficulty. The Supreme Court of New York has held "that when a Statute declares that a public officer, or public body 'may' have power to do an act, which concerns the public interests or the rights of third persons, 'may' means *shall*, and the execution of the power may be insisted upon as a duty." I think that this is a case of this kind.

Truly yours,

GEO. K. NASH,
Attorney General.

Union Life Insurance Company of Maine.

UNION LIFE INSURANCE COMPANY OF MAINE.

Office of the Attorney General,
Columbus, Ohio, July 17, 1880.

*Mr. Carlos M. Stone, Prosecuting Attorney, Cleveland,
Ohio:*

MY DEAR SIR:—I have received your favor of the 14th inst. In reply, I enclose an opinion given by the auditor of state on the 18th of May, in which I concurred. I think this covers the case of the Union Life Insurance Company, of Maine. The agency of this company, located at Cleveland, should report to the Auditor of Cuyahoga County, and the one at Cincinnati, should report to the auditor of Hamilton County, the amount of its gross receipts. This amount should be entered upon the tax list of Hamilton and Cuyahoga Counties, subject to the same rate of taxation as other property in said counties.

The other counties in the State have no interest in this matter, and the agent has no report to make to their auditors.

As I was about to leave Cleveland, Judge Griswold handed me the account of Grannis and Griswold against your county, for legal services. I took the same, saying I would answer any questions you might ask in regard to the matter. My impression is that the cases in which Grannis and Griswold were employed, are such cases as are covered by section 2862 of the Revised Statutes, and that there is authority for the allowance of reasonable fees for such services, and that whatever is paid may be apportioned ratably by the county auditor between the State, county and city, the parties interested in the controversy.

When you come to the amount of fees to be allowed, it is a question of fact and not of law, and my opinion would be of no more value than that of any other wit-

*Prosecuting Attorney; Salary Fixed by County
Commissioners.*

ness. In fact, I do not feel that I am qualified to speak even as a witness, as I have been so unfortunate as never to have any connection with the United States Courts.

Sincerely yours,

GEO. K. NASH,

Attorney General.

PROSECUTING ATTORNEY; SALARY FIXED BY
COUNTY COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, July 19, 1880.

*Mr. John M. Cook, Prosecuting Attorney, Steubenville,
Ohio:*

DEAR SIR:—Your favor of June 30th has been received, and the answer has been delayed because the question is surrounded with difficulty, and required consideration.

Sec. 1297 provides that the prosecuting attorney shall receive a *salary to be fixed by the county commissioners*. The other matter contained in the section simply establishes a limit, beyond which the commissioners cannot go in fixing the salary.

In your county they may fix a salary that shall not exceed \$2.00 for each one hundred inhabitants at the federal census next preceding the time when they act.

I assume that the commissioners, immediately after the census of 1870, fixed the salary in your county at \$582.00, as your population was 29,188.

After the present census is officially promulgated, the commissioners may, if they see fit, fix the salary of the prosecuting attorney at a sum *not exceeding* \$2.00 for each one hundred inhabitants found in your county in 1880.

Prosecuting Attorney; Salary of.

It is discretionary with the commissioners as to whether they shall do this, and also as to what the amount shall be.

If the change should be made, there is a serious question, in my mind, as to whether you can be benefited during your present term.

I am inclined to think that Sec. 20, Art. 2, of the constitution deprives you of any benefit to be derived from an increase of salary fixed by the commissioners.

The salary was fixed at \$582.00 before you entered upon the present term of office, and I do not think that it could be changed so as to affect your compensation.

Truly yours,

GEO. K. NASH,

Attorney General.

PROSECUTING ATTORNEY; SALARY OF.

Office of the Attorney General,

Columbus, Ohio, July 19, 1880.

Mr. Jas. O. Troup, Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Your favor of June 17th was duly received. Other important matters have prevented me from replying sooner.

I think that I understand the questions contained in your letter.

If your county commissioners have not fixed a salary for the prosecuting attorney since the census of 1870, they have simply neglected the duty imposed upon them.

I suppose they have paid the prosecuting attorney \$490.00 a year, as the population of your county in 1870

*Reform School; Religious Worship at; Governor's Power to
Remove From Penitentiary to.*

was 24,596. Probably the allowance of this sum might be considered as the fixing of the salary.

I do not know when you went into office. I suppose, however, it was on the first Monday in January of this year. I think that the previous act of the commissioners had fixed the salary of the prosecuting attorney at \$490.00. That this was the amount of the salary when you took possession on the first Monday of January, and that any alteration made by the commissioners, after that time cannot affect the present term without violating Sec. 20, Art. 2, of the constitution.

If, after the present census is officially promulgated, the commissioners see fit to alter the salary of the prosecuting attorney, it can only affect your successor or yourself upon your next term. Your salary, in my opinion, must remain at the figure it was when you took possession.

Truly yours,

GEO. K. NASH,

Attorney General.

REFORM SCHOOL; RELIGIOUS WORSHIP AT;
GOVERNOR'S POWER TO REMOVE FROM
PENITENTIARY TO.

Office of the Attorney General,
Columbus, Ohio, July 19, 1880.

*Mr. Chas. Douglass, Superintendent Ohio Reform School,
Lancaster, Ohio:*

DEAR SIR:—I suppose that Sec. 760. of the Revised Statutes is broad enough, so that the trustees of your institution may determine what religious education or in-

Reform School; Religious Worship at; Governor's Power to Remove From Penitentiary to.

struction shall be furnished to the inmates. I think it is a matter to be determined by the board.

Section 761, as amended last winter, Vol. 77, O. L. page 312, authorizes the governor to remove certain persons, over the age of sixteen years to your institution. Whenever the governor so acts, it is your duty to receive the person so removed, notwithstanding the fact that they may be more than sixteen years of age. I know of no other case, in which the superintendent is authorized to receive a boy under ten or over sixteen years of age.

Truly yours,
GEO. K. NASH,
Attorney General.

SPECIAL SCHOOL DISTRICT IN BURTON TOWNSHIP.

Office of the Attorney General,
Columbus, Ohio, July 20, 1880.

Mr. J. P. Spriggs, Prosecuting Attorney, Woodfield, Ohio:

DEAR SIR:—In my opinion the intention of the act of April 8, 1879, (O. L., Vol. 73, page 292) was to have the special school district composed only of the territory within original sub-school district No. 4. That the words "that the territory composed in sub-district No. 4 of said Burton Township" determine the territory to be located within the special school district.

The other words of section seventeen, eighteen, twenty-three, and twenty-four, are merely descriptive, and only such parts of these sections will be included in the special district, as were a part of sub-district No. 4.

Truly yours,
GEO. K. NASH,
Attorney General.

Township Treasurers; Percentage Paid to on Moneys Passing Through Their Hands—Ohio Penitentiary; Contracts of Geo. W. Gill and the Patton Manufacturing Company, in.

TOWNSHIP TREASURERS; PERCENTAGE PAID
TO ON MONEYS PASSING THROUGH THEIR
HANDS.

Office of the Attorney General,
Columbus, Ohio, July 27, 1880.

Mr. Carlos M. Stone, Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—In reply to your favor of the 23rd inst., I will say that, in my opinion, a township treasurer, under section 1532 of the Revised Statutes, is entitled to two per cent. upon all moneys passing through his hands. The money that is paid him by his predecessor is "received" by him; the balance turned over to his successor is "paid out" by him, and all money, from whatever source received, is supposed to have been "safely kept" by him.

Therefore, I conclude that he is entitled to two per cent. upon all moneys passing through his hands.

Truly yours,

GEO. K. NASH,
Attorney General.

OHIO PENITENTIARY; CONTRACTS OF GEO. W.
GILL AND THE PATTON MANUFACTURING
COMPANY IN.

Office of the Attorney General,
Columbus, Ohio, July 28, 1880.

Capt. Noah Thomas, Warden Ohio Penitentiary:

DEAR SIR:—In compliance with your request, and with that of the board of directors of your institution, I

Ohio Penitentiary; Contracts of Geo. W. Gill and the Patton Manufacturing Company, in.

have examined the contracts which you have with Geo. W. Gill, and the Patton Manufacturing Company.

The contract with Geo. W. Gill, which was entered into upon the 9th day of May, 1879, gives to him the exclusive privilege of manufacturing stoves in the Ohio Penitentiary.

The contract with the Patton Manufacturing Company was entered into on the 6th day of August, 1879, and gives said company the right to manufacture "hollow-ware castings, etc."

The question that is presented is: "Has the Patton Manufacturing Company the right to manufacture stoves under that contract?"

The term "etc." may perhaps cover a multitude of sins, and should never appear in any written contract, for its only tendency is to make the contract vague and uncertain.

Hollow-ware castings have a definite and certain meaning. Hollow-ware is defined by Webster as follows: "Hollow vessels, a general trade name for hollow articles, such as cast-iron, kitchen utensils, earthen ware, and the like." This term, to my knowledge, has never been applied to stoves, or parts of stoves. I therefore conclude that the Patton Manufacturing Company, under the term "hollow-ware castings," has not got the right to manufacture parts of stoves. I do not think that the term "etc." gives them this right. If any force is given to this term, I think its only effect will be to give them the right to manufacture other articles appertaining to hollow-ware.

The intention of the parties should be taken into consideration. The intention of the directors and Mr. Gill, in the first contract, was to give to Mr. Gill the exclusive right of manufacturing stoves in the penitentiary. It does not appear from the face of the contract with the Patton Manufacturing Company that

*County Treasurer's Discretion to Receive Part of a Tax,
the Remainder Claimed to be Illegal.*

there was any intention to give them the right to manufacture stoves or parts of stoves in the penitentiary.

If Mr. Patton, under that contract, has the right to make parts of stoves, take them outside of the penitentiary walls, and set them up, it would be just as disastrous to Mr. Gill's business, as it would be to permit the company to manufacture their stoves in the Ohio Penitentiary.

I do not believe that it ever entered the minds of the persons composing the Patton Manufacturing Company, or of the directors of the Ohio Penitentiary, at the time that the contract was made, that under said contract, parts of stoves could be made by said company.

Truly yours,

GEO. K. NASH,

Attorney General.

COUNTY TREASURER'S DISCRETION TO RECEIVE PART OF A TAX, THE REMAINDER CLAIMED TO BE ILLEGAL.

Office of the Attorney General,

Columbus, Ohio, July 29, 1880.

A. Douglass, Jr., Prosecuting Attorney, Chillicothe, Ohio:

DEAR SIR:—I think that it lies within the discretion of the treasurer to receive a part of a tax, when the remainder is claimed to be illegal. I infer this from the language of Sec. 5851. If my inference be incorrect, how could a party "first pay" the sum admitted to be due?

It is the duty of the treasurer to proceed to collect the balance, with all the means afforded to him by the law, unless he be enjoined from so doing by the courts.

I am of the opinion that the "dog tax" is constitu-

*Trustees of Benevolent Institutions Cannot Receive Pay For
Acting as Secretary of Their Board.*

tional. One of my predecessors, Hon. John Little, gave an opinion upon this subject, a copy of which I enclose herewith.

As I concur in what he says, I hope that you will excuse me from giving my reasons for reaching this conclusion.

Truly yours,
GEO. K. NASH,
Attorney General.

TRUSTEES OF BENEVOLENT INSTITUTIONS
CANNOT RECEIVE PAY FOR ACTING AS
SECRETARY OF THEIR BOARD.

Office of the Attorney General,
Columbus, Ohio, August 2, 1880.

*Wm. L. Shaw, Superintendent O. S. and S. O. Home, Xenia,
Ohio:*

DEAR SIR:—I do not think that a trustee of your institution, or of any benevolent institution in the State of Ohio, is entitled to compensation as secretary of the board, to which he belongs. My impression is that Sec. 628 forbids it.

An agreement between the board, and one of its members, that said member shall serve as secretary of the board for pay, is a "contract on behalf of such institution," and a trustee cannot be interested therein, either directly, or indirectly.

I do not find any express provision authorizing trustees of benevolent institutions to fix and pay a salary to

*Board of Public Works; Can They Lease Canal Lands to
Railroad Companies For Crossings.*

a secretary of their board, and without express authority, they have no right to do so.

A voucher made by officers, who have no authority of law for making the contract covered by the voucher, is no protection to a disbursing officer.

Truly yours,

GEO. K. NASH,

Attorney General.

BOARD OF PUBLIC WORKS; CAN THEY LEASE
CANAL LANDS TO RAILROAD COMPANIES
FOR CROSSINGS.

Office of the Attorney General,
Columbus, Ohio, August 17, 1880.

*To the Members of the Board of Public Works, Columbus,
Ohio:*

GENTLEMEN:—Your favor of August 14th has been received. Two questions are asked, but I understand that but one legal question is involved in the matter presented, and that is this:

“Has the board of public works the right to agree with a railroad company upon what terms the company may construct its tracks across the Miami and Erie Canal, and lands adjoining thereto, belonging to the State?”

I am of the opinion that, under sections 3283 and 3317 of the Revised Statutes of Ohio, the board of public works has the right to permit a railroad company to cross with its tracks the canals of the State, and parcels of land adjoining the same, belonging to the State of Ohio.

The manner, terms and conditions upon which this

*Commissioners of Delaware County; Power of, to Pay
Scrip Issued to Volunteers.*

can be done is a matter of agreement between the board and the railroad company. If you cannot agree upon the terms and conditions, then another manner is provided for, in which the crossing may be secured. I believe it was the intention of the General Assembly to invest the board with this power.

If the adjacent land has been leased, the board can not deprive the lessees of any of their rights under said lease, and the railroad company must come to some agreement with the lessees.

Truly yours,
GEO. K. NASH,
Attorney General.

COMMISSIONERS OF DELAWARE COUNTY;
POWER OF, TO PAY SCRIP ISSUED TO
VOLUNTEERS.

Office of the Attorney General,
Columbus, Ohio, August 25, 1880.

Prosecuting Attorney of Delaware County:

DEAR SIR:—I attach hereto a copy of the scrip, or instrument in writing, issued to volunteers from Delaware County in 1864. I am inclined to the opinion that when the scrip has not been transferred, the commissioners of your county have power by act of April 16, 1880, (O. L., Vol. 77, p. 294) to pay the same.

Respectfully yours,
GEO. K. NASH,
Attorney General.

Tax Rates; Publication of in Two Newspapers—Police Officers; Allowance in Lieu of Fees. Prosecuting Attorney; Must Defend Action Against School Boards.

TAX RATES; PUBLICATION OF IN TWO NEWSPAPERS.

Office of the Attorney General,
Columbus, Ohio, October 15, 1880.

Hon. Joseph Turney, Treasurer of State:

DEAR SIR:—Your favor asking as to whether the publication of the notice of rates of taxation in a Republican and Greenback newspaper would be a compliance with Sec. 4367, R. S., has been received.

It would be a compliance with the letter of the law, but perhaps not with the spirit and intention, unless the Greenback paper has a larger circulation within the county, than the Democratic paper, if one be published therein.

The intention of the law is to give this notice the widest circulation possible, and to accomplish this purpose, two papers of opposite politics should be selected, having the largest circulation.

Respectfully yours,
GEO. K. NASH,
Attorney General.

POLICE OFFICERS; ALLOWANCE IN LIEU OF FEES. PROSECUTING ATTORNEY; MUST DEFEND ACTIONS AGAINST SCHOOL BOARDS.

Office of the Attorney General,
Columbus, Ohio, October 18, 1880.

T. L. Magruder, Prosecuting Attorney, Xenia, Ohio:

DEAR SIR:—I do not think that police officers are en-

Prosecuting Attorney; Counsel For Boards of Education.

titled to the allowance in lieu of fees, provided for in Sec. 1369 of the Revised Statutes.

I think that it is the duty of the prosecuting attorney, under Sec. 3977, to defend an action brought against the sub-school district, or the directors thereof, in their corporate or official capacity. For so doing he cannot receive any compensation, except such as is provided for in sections 1297 and 1298.

Truly yours,

GEO. K. NASH,
Attorney General.

PROSECUTING ATTORNEY; COUNSEL FOR
BOARDS OF EDUCATION.

Office of the Attorney General,
Columbus, Ohio, October 19, 1886.

Mr. G. A. Marshall, Prosecuting Attorney, Sidney, Ohio:

DEAR SIR:—When a prosecuting attorney acts as counsel for a board of education, as provided for in Sec. 3977 of the Revised Statutes, I do not think that he is entitled to any further compensation than such as is provided in sections 1297 and 1298 of the Revised Statutes.

Very truly yours,

GEO. K. NASH,
Attorney General.

Jury; Drawing of—Elector; An Ex-Convict in Another State Can be an.

JURY; DRAWING OF.

Office of the Attorney General,
Columbus, Ohio, October 19, 1880.

Jas. F. Conly, New Lexington, Ohio:

DEAR SIR:—I think that a jury drawn under section 6466 of the Revised Statutes, should be drawn in the same manner as the jury contemplated under Sec. 5167, and that the twelve first drawn should act as a jury.

Very truly yours,
GEO. K. NASH,
Attorney General.

ELECTOR; AN EX-CONVICT IN ANOTHER STATE CAN BE AN.

Office of the Attorney General,
Columbus, Ohio, October 19, 1880.

John Stevenson, Esq., Decatur, Ohio:

DEAR SIR:—If a man has served a term in the Kentucky Penitentiary, I do not think that this fact disqualifies him as an elector in this State, provided that he otherwise has the qualifications of an elector.

Very truly yours,
GEO. K. NASH,
Attorney General.

*Special Jury; Summoning of—County School Examiner;
a Bookseller Ineligible as.*

SPECIAL JURY; SUMMONING OF.

Office of the Attorney General,
Columbus, Ohio, October 19, 1880.

Mr. J. E. Lavhead, Prosecuting Attorney, Newark, Ohio:

DEAR SIR:—My impression is that the law to which you refer, upon page 132, Vol. 73, of Ohio Laws, has been repealed, and that Sec. 1230 of the Revised Statutes of Ohio is now in force. It is my opinion that the following words in said section, "summoning a special jury, including traveling fees, \$4.50," has reference to juries to be drawn under section 5172 of the Revised Statutes.

Truly yours,

GEO. K. NASH,
Attorney General.

COUNTY SCHOOL EXAMINER; A BOOK SELLER
INELIGIBLE AS.

Office of the Attorney General,
Columbus, Ohio, October 19, 1880.

Hon. S. D. Cowden, Probate Judge, Gallipolis, Ohio:

DEAR SIR:—I hope that you will pardon my delay in answering your letter. I have been very much engaged, and I hope that no harm has been done by my neglect.

I think that a person who keeps a book store, and sells all kinds of school books, is interested in the book selling business, and is, therefore, ineligible to the office of county school examiner.

Very truly yours,

GEO. K. NASH,
Attorney General.

*Prosecuting Attorneys; Allowance For Services Before the
Supreme Court—Justices of the Peace; Election of.*

PROSECUTING ATTORNEYS; ALLOWANCE FOR
SERVICES BEFORE THE SUPREME COURT.

Office of the Attorney General,
Columbus, Ohio, October 27, 1880.

Mr. H. Calkins, Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—Unless the law specifically authorizes the commissioners to make an allowance to prosecuting attorneys for services before the Supreme Court, they have no right to make allowances. I am not aware of any Statute conferring such authority upon the commissioners.

Very truly yours,

GEO. K. NASH,
Attorney General.

JUSTICE OF THE PEACE; ELECTION OF.

Office of the Attorney General,
Columbus, Ohio, October 27, 1880.

S. S. James, Esq., Barnesville, Ohio:

DEAR SIR:—In reply to your favor of October 20th, I will say that I think in electing a justice of the peace for your township, it would be safer to have a separate box, and a separate poll book. I am not certain that it would be illegal to place the name upon the same ticket with the candidates for electors, but I do think that it would be safer to conduct the election in the other way.

Very truly yours,

GEO. K. NASH,
Attorney General.

Naturalization; Recording of Plats.

NATURALIZATION.

Office of the Attorney General,
Columbus, Ohio, October 27, 1880.

Mr. E. L. Gibbs, Orwell, Ohio:

DEAR SIR:—Soldiers of foreign birth who served three years in the army, are entitled to receive their naturalization papers upon application, whether or not they ever applied for their first papers.

A foreign born person who comes to this country before he is 18 years of age, is also entitled to his final naturalization papers after he has been in the country three years. Convicts, who have served their time in the penitentiary, are not entitled to vote, unless they were restored to citizenship by the governor after their discharge.

GEO. K. NASH,
Attorney General.

RECORDING OF PLATS.

Office of the Attorney General,
Columbus, Ohio, October 27, 1880.

John M. Cook, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—I have not had time to give the question suggested in your favor of October 21st, a thorough investigation.

The auditor of state informs me that his understanding of Sec. 2791 is this: That all plats made under Sec. 2789, are not to be recorded, but that if the district assessor finds it necessary, in the performance of his duty, to have any particular tract surveyed and platted, he can have this done, and the plat so made is to be recorded.

Truly yours,
GEO. K. NASH,
Attorney General.

*O. S. and S. O. Home; Payment of Foreman in Shops—
Paupers; Must Vote at County Infirmary.*

O. S. AND S. O. HOME; PAYMENT OF FOREMEN
IN SHOPS.

Office of the Attorney General,
Columbus, Ohio, November 6, 1880.

Major W. L. Shaw, Superintendent, Xenia, Ohio:

DEAR SIR:—Your favor of the 1st inst., has been received, and I have delayed my answer that I may give the question some thought. Under Sec. 678, Revised Statutes, I find that the trustees have power to establish shops, wherein suitable trades may be taught. I suppose that the foreman of one of these shops may be considered the teacher of the pupils who are learning their trades therein.

I do not think that it would be any more proper to pay the salaries of these foremen out of what is known as the "current expense fund," than it would be to pay the salaries of the other officers and teachers out of that fund. I think that they must be paid out of the fund for "salaries of officers and teachers," or out of the fund for "industrial pursuits."

Truly yours,

GEO. K. NASH,
Attorney General.

PAUPERS; MUST VOTE AT COUNTY IN-
FIRMARY.

Office of the Attorney General,
Columbus, Ohio, November 9, 1880.

Hon. John A. Wilkins, Delta, Ohio:

DEAR SIR:—Your favor of the 6th inst. has been received. I have no recollection of ever having given such

*The Vacancy in the Nineteenth Congressional District
Caused by the Resignation of James A. Garfield.*

an opinion as you refer to, either to superintendents of infirmaries or to other persons.

I have carefully examined my office letter book and also my opinion book, and fail to find anything of the kind therein. I therefore think that my recollection cannot be at fault.

You are certainly right in the position you take so long as the case of *Sturgeon vs. Korte*, 34 O. S., page 525, stands unreversed. I will confess, however, that before an examination of that decision, I had been inclined to the other view of the matter. The decision of our court is law, and I cannot hold any opinion contrary to it.

Very truly yours,

GEO. K. NASH;

Attorney General.

THE VACANCY IN THE NINETEENTH CON-
GRESSIONAL DISTRICT CAUSED BY THE
RESIGNATION OF JAS. A. GARFIELD.

Office of the Attorney General,
Columbus, Ohio, November 10, 1880.

Hon. Chas. Foster, Governor of Ohio, Columbus, Ohio:

DEAR SIR:—Your favor of this date, in regard to the vacancy caused by the resignation of Hon. Jas. A. Garfield, Representative in the Forty-sixth Congress of the United States, from the Nineteenth Congressional District of Ohio, has been received.

That district, under the act of the General Assembly of the State of Ohio, passed May 13, 1878, (O. L., Vol. 75, page 582), was composed of the counties of Geauga, Lake, Ashtabula, Trumbull and Mahoning.

On the 26th of February 1880, (O. L., Vol. 77, page

*The Vacancy in the Nineteenth Congressional District
Caused by the Resignation of Jas. A. Garfield.*

11), the State of Ohio was divided into new districts for the purpose of representation in Congress. Under that act, the Nineteenth Congressional District is composed of the counties of Ashtabula, Trumbull, Portage, Geauga and Lake.

The question now arises whether the vacancy caused by the resignation of General Garfield shall be filled by the counties composing the Nineteenth Congressional District, as constituted by the act of May 15, 1878, or by the counties composing the Nineteenth Congressional District, as constituted by the act of February 26, 1880.

In my opinion, the Nineteenth Congressional District, as created by the act of May 15, 1878, has become possessed of a vested right. That right is to have a representative in the Forty-sixth Congress of the United States until March 4, 1881. Subsequent legislation upon the part of the General Assembly of the State of Ohio, cannot deprive this district of that right.

I am therefore of the opinion that the Nineteenth Congressional District of Ohio, as constituted by the act of May 15, 1878, has the right to fill the vacancy caused by the resignation of Jas. A. Garfield, as its representative in Congress.

Very truly yours,
GEO. K. NASH,
Attorney General.

*State Inspector of Mines; Enforcement of Penalties for
Violating the Statutes for the Protection of Miners.*

STATE INSPECTOR OF MINES; ENFORCEMENT
OF PENALTIES FOR VIOLATING THE
STATUTES FOR THE PROTECTION OF
MINERS.

Office of the Attorney General,
Columbus, Ohio, November 11, 1880.

Hon. Andrew Kay, State Inspector of Mines, Columbus, Ohio:

DEAR SIR:—Your favor calling my attention to sections 296, 297, 298, 299 and 300, of the Revised Statutes, and asking whether any penalties for the violation of these sections can be enforced by criminal prosecution, has been received.

These sections provide that certain things, intended for the safety of those employed in mines, shall be done, and makes it unlawful to do certain other things. But as these sections now stand, it seems to me that no penalty is prescribed for omitting to do the things in them required to be done, or for the doing of the things in them prohibited to be done.

It was probably the intention of the Legislature, in the enactment of section 6871, Revised Statutes, to prescribe a penalty for a violation of the sections of the Statutes referred to by you in your communication to me.

I am of the opinion, however, that this section fails to meet the case. If it had contained the words, "or fails to comply in any particular with the provisions of sections 296, 297, 298, 299 or 300 of the Revised Statutes of Ohio," penalties could then be enforced for the violation of these sections, or any one of them.

Truly yours,

GEO. K. NASH,
Attorney General.

*When, and How the Net Annual Income of the Public Works
Shall be Ascertained, and Credited to the Sinking Fund.*

WHEN, AND HOW THE NET ANNUAL INCOME
OF THE PUBLIC WORKS SHALL BE ASCER-
TAINED, AND CREDITED TO THE SINKING
FUND.

Office of the Attorney General,
Columbus, Ohio, November 16, 1880.

Hon. J. F. Oglevee, Auditor of State:

DEAR SIR:—Your favor, calling my attention to so much of section 7, Art. 8, of the Constitution of the State, which reads as follows:

“The said sinking fund shall consist of the net annual income of the public works, and stocks owned by the State, etc.”; and to section 236 of the Revised Statutes which contains substantially the same words, has been received.

Your suggestion contained two queries:

I. At what period of time must the net annual income of the public works be ascertained and credited to the sinking fund?

II. How shall the net annual income of the public works be ascertained at that time?

In answer to the first question I will say that I have no doubt but that the 15th of November of each year—the close of the fiscal year in all departments of the State government—is the proper time to ascertain the net annual income of the public works, and to certify the same into the State treasury to the credit of the sinking fund.

In reply to your second question, I will say that the gross income from the public works must first be ascertained. From this amount must certainly be taken all amounts actually and legally paid out for the support of the public works during the preceding year.

In addition to this, I think there should also be deducted, in order to ascertain the net income of the public

*When, and How the Net Annual Income of the Public Works
Shall be Ascertained, and Credited to the Sinking Fund.*

works, all legal liabilities incurred for the support thereof, during the preceding year.

Of what do these existing liabilities consist?

I am of the opinion that they consist of amounts due, or to become due upon tracts made for the repair and support of the public works, during the year preceding the 15th of November.

I think also that they consist of the wages that will become due to employes from the 15th of November until the 15th of February following. These wages have been guaranteed to these employes until the 15th of February by the act of the General Assembly in appropriating money out of the sums derived from the public works, sufficient in amount to pay these employes until the 15th of February.

This question is not without difficulty, and it may be that my conclusions are not correct. I think, however, that the intention of our constitution and laws is that the public works shall be self-supporting, and if, after they have supported themselves, any sums of money remain, such sums shall go to the benefit of the sinking fund.

I do not believe that it was the intention that money should be appropriated from the general revenue fund for the support of the public works during the first quarter of the year, and then, at the end of the fiscal year, whatever remains of the surplus earnings of the public works should go to the sinking fund.

If any other view is taken of these questions, except the one I have presented, this would be the case.

If it should now be held that all of the income of the public works, after deducting the moneys actually paid out during the last year, should go to the credit of the State treasury, it would leave the public works without any money for their support. During the next three months there is not any probability that the earnings of the public works would amount to any considerable sum.

Payment of Bills for Ice in the State Offices.

The inevitable result would be that the General Assembly, upon coming together, would be compelled to appropriate money from the general revenue fund, for the support of the public works, and the final result would be that the sinking fund would obtain a credit on sums of money taken from the revenue fund.

Therefore I believe that the course I have indicated in the beginning of this communication is in accordance with the spirit and letter of our constitution and laws.

Truly yours,

GEO. K. NASH,

Attorney General.

PAYMENT OF BILLS FOR ICE IN THE STATE OFFICES.

Office of the Attorney General,
Columbus, Ohio, November 16, 1880.

Hon. J. F. Oglevee, Auditor of State, Columbus, Ohio:

DEAR SIR:—The bills presented by Messrs. Allen & Riddle, for ice furnished the State offices, did not become due until after the 15th of February, 1880.

I therefore think that they can be paid out of the present appropriations for the contingent expenses of the various offices.

Truly yours,

GEO. K. NASH,

Attorney General.

Tax Notice; What it Should Contain.

TAX NOTICE; WHAT IT SHOULD CONTAIN.

Office of the Attorney General,
Columbus, Ohio, November 17, 1880.

Hon. Joseph Turney, Treasurer of State:

DEAR SIR:—Your request as to what the notice, provided for by section 1087, of the Revised Statutes, should contain, has been received.

It should certainly contain just what this section provides—that is, specify particularly the amount on each dollar valuation of tax levied on the duplicate for the support of the state government, for the payment of interest and principal of the public debt, for the support of State common schools, for defraying county expenses, for the repairing of roads, for keeping the poor, for the building of bridges, for township expenses, and for each other object for which tax may be levied.

This simply gives what is known as the rate of taxation. Of course, if this is given, together with the duplicate valuation of property in each township, the readers of the tax notice, by a little exercise in mathematics, can ascertain the amount of taxes to be collected for each purpose.

There are so many people, however, for whom this would be a difficult task, that I think it would be well to insert in the notice the amount of taxes to be raised for each purpose.

Truly yours,

GEO. K. NASH,
Attorney General.

*Appointment of Notaries Public and Railroad Policemen, and
Issuing Alias Warrants by the Governor.*

APPOINTMENT OF NOTARIES PUBLIC AND
RAIROAD POLICEMEN, AND ISSUING ALIAS
WARRANTS BY THE GOVERNOR.

Office of the Attorney General,
Columbus, Ohio, November 17, 1880.

Hon. Chas. Foster, Governor of Ohio:

DEAR SIR:—The first question upon which you ask my advice is as to whether Henry W. Horter, of Canton, Ohio, who is a partner in a private bank, can be appointed a notary public.

Section III provides that "no banker, broker, teller or clerk of any bank, banker, or broker, shall hold the office of notary public in this state."

The question now arises, is Henry W. Horter a banker? I understand from your communication that Mr. Harter is a partner in a private bank. If he was the sole owner and proprietor of a private bank, he would certainly be considered a banker, and I am of the opinion that being one of two or more owners of a private bank, he is a banker within the meaning of Sec. III.

Is there any limitation to the words already recited from Section III? The remainder of said section reads as follows:

"Nor shall any director, stockholder, attorney, agent, or other person holding any official relation to any bank, banker, or broker, be competent to act as notary public in any matter to which such bank, banker or broker is a party in interest."

From these words it may be inferred that a director, stockholder, attorney, agent, or other person holding any official relation to any bank, banker, or broker, may be appointed as a notary public, but that he is prohibited from doing any business as such notary public, for the bank with which he is connected.

*Appointment of Notaries Public and Railroad Policemen, and
Issuing Alias Warrants by the Governor.*

Does this limitation of the prohibition cover Mr. Horter's case? It does not, unless it is done by these words: "Or other person holding any official relation to any bank, banker or broker." I do not think that a partner in a bank can be said to hold an official relation to any bank, banker, or broker.

My conclusion is that he is a banker, and that he cannot be appointed a notary public.

Your next question is as to whether a person, who is not a resident of this State, is eligible to appointment by you as a railroad policeman.

Your authority in this matter is all derived from sections 3427, 3428, 3429, 3430 and 2431 of the Revised Statutes of Ohio.

The answer to your question depends upon the fact as to whether the position occupied by a railroad policeman is an office.

If it is an office, a non-resident of the State cannot be appointed thereto without a violation of Section 4, Article 15, of the Constitution of Ohio. See *State vs. Wilson*, 29th Ohio State, page 237. Section 3428 speaks of the duties to be performed by a railroad policeman as "the duties of his office." It also prescribes that he shall take and subscribe an oath of office.

It also clothes him with all the powers, and subjects him to all the liabilities of policemen of cities of the first class in the several counties in which he is authorized to act.

I cannot escape the conclusion that a person occupying a position imposing upon him these responsible duties, is an officer, and therefore, that a non-resident of Ohio cannot be appointed thereto.

The last question upon which you desire my opinion is as to whether, when a warrant has been issued from your office under section 79, of the Revised Statutes, and,

Coroner's Fees.

for any reason, is returned unexecuted, you have power to issue another warrant.

If, for any good reason, such as the escape of the prisoner, or the total inability of the officer to make the arrest, the first warrant is returned wholly unexecuted, my impression is that you have a right to issue an *alias* warrant. If, however, upon a full hearing of the case, after arrest made, the prisoner is discharged by a court having jurisdiction of the case, on account of the papers upon which you issued the writ being insufficient in law, you have no right to issue another warrant upon the same papers.

If the discharge is made without a full hearing of the case before the proper court, and on account of the inability of proper witnesses to appear, I still think that an *alias* warrant may be properly issued. It should not issue, however, without there being before you a full record of the court that discharged the prisoner upon the first arrest.

Very truly yours,
GEO. K. NASH,
Attorney General.

CORONER'S FEES.

Office of the Attorney General,
Columbus, Ohio, November 19, 1880.

*Mr. M. W. Johnson, Prosecuting Attorney, Youngstown,
Ohio:*

DEAR SIR:—Please excuse me for not answering your favor of the 15th inst., as I had to give the matter some consideration.

I am of the opinion that the coroner's fees, provided for by section 1239, can be paid out of the county treas-

*Certificate of Incorporation of the Ohio Loan and Trust Co.
of Van Wert, Ohio.*

ury. This section says that he "shall be allowed certain fees for his services." Section 1024 provides when the auditor may draw his warrant on the county treasury.

In cases where the amount due is not fixed by law, the claim must be "allowed" by the commissioners, or some other officer charged with that duty. As section 1239 does not fix the amount due, but simply gives a measure, by which it may be ascertained, I think the coroner's bill should first be allowed by the county commissioners.

I think that the reason that the preceding sections name what fees of sheriffs and coroners shall be paid out of the county treasury is this: The law provides that the greater part of the fees of sheriff, and coroners while acting as sheriffs, shall be taxed up as a part of the costs in civil actions, and judgments rendered therefor.

In this manner a specific way is provided, in which these fees shall be made secure.

This is not so with the fees provided in section 1239.

Truly yours,

GEO. K. NASH,

Attorney General.

CERTIFICATE OF INCORPORATION OF THE
OHIO LOAN & TRUST CO., OF VAN WERT,
OHIO.

Office of the Attorney General,
Columbus, Ohio, November 20, 1880.

Hon. Milton Barnes, Secretary of State:

DEAR SIR:—Your favor, referring to me the certificate of incorporation of the Ohio Loan & Trust Company, of Van Wert, Ohio, has been received.

You ask whether the laws of Ohio authorize the in-

*Certificate of Incorporation of the Ohio Loan and Trust Co.
of Van Wert, Ohio.*

corporation of a company for the purpose named in this certificate.

The business proposed to be carried on by this association is to loan money on real estate security, in conformity with such terms, by-laws, and regulations as it may establish in accordance with law, and to sell and negotiate said securities with or without the company's guarantee.

The purposes for which corporations can be organized are very numerous. According to section 3235 of the Revised Statutes, they may be organized for any purpose for which individuals may lawfully associate themselves, except for dealing in real estate or carrying on professional business.

The purpose stated in this certificate of incorporation does not come within either of the exceptions provided in section 3235. I do not believe that the loaning of money upon real estate security can be designated as the "business of dealing in real estate."

The only other limitation that there seems to be to the formation of corporations in Ohio, is that contained in section 7, Art. 13, of the Constitution of Ohio, which says that no act of the General Assembly, authorizing corporations with banking powers, shall take effect until it shall be submitted to the people at the general election next succeeding the passage thereof, and be approved by a majority of all the electors voting at such election.

The phrase "banking powers," as employed in the constitution, includes not only the power to issue bills intended to circulate as money, but also the power to discount notes, buy and sell exchange, and loan money, to receive deposits, and transact such other business pertaining to the carrying on of banking as are embraced in this phrase.

The constitution does not forbid the Legislature from conferring the power upon any corporation to re-

*Certificate of Incorporation of the Ohio Loan and Trust Co.
of Van Wert, Ohio.*

ceive and pay out money upon deposit, nor to loan money, nor does it prohibit the Legislature from clothing a corporation with any of these distinctive powers. The thing which the Legislature is prohibited from doing, is the conferring of banking powers in the aggregate, not a banking power, not some particular banking power, but the conferring upon any corporation "banking powers," as understood by the people of this State, at the time of the adoption of the constitution.

I do not think that the right to loan money upon real estate security, and to sell such securities is a conferring of "banking powers," as herein described by me.

The filing of the certificate in the secretary of state's office does not confer upon a corporation any power not authorized by statute.

If, therefore, a body of persons should attempt to form a corporation for a purpose not authorized by law, and should file their certificate of incorporation with the secretary of state, and should proceed to do business as a corporation, a proper court, upon proper application, would make such order as would destroy their corporate existence. It is, therefore, of more importance to the persons composing the corporation to know that they are organized for a purpose authorized by law, than to any one else.

Truly yours,
GEO. K. NASH,
Attorney General.

Jury Law; Amendment to—Publication of Legal Advertising.

JURY LAW; AMENDMENT TO.

Office of the Attorney General,
Columbus, Ohio, November 20, 1880.

J. B. Hatchford, Clerk, Troy, Ohio:

DEAR SIR:—Your favor of the 17th inst., has been received.

If you have reference to the act of March 29, 1880—laws of last winter, page 90—I will say that I do not think that that act in any way affects the Revised Statutes. It was intended simply as an amendment to sections 6, 12 and 14 of the act of May 7, 1877—Laws, 1877, page 218. That act was not repealed by the Revised Statutes, and relates simply to Cuyahoga County. The amendatory act, in my view of the case, has no effect except in that county.

There is a case pending in the Supreme Court, which will probably be decided in a few days, and will settle the effect of the act of March 29, 1880.

Truly yours,
GEO. K. NASH,
Attorney General.

PUBLICATION OF LEGAL ADVERTISING.

Office of the Attorney General,
Columbus, Ohio, November 22, 1880.

Mr. E. W. Stuart, Prosecuting Attorney, Akron, Ohio:

DEAR SIR:—Upon the 15th inst., I received from Col. Carson Lake of your city, a letter, in which he informs me that some question has arisen in your county in regard to the publication of legal advertising and in which

Reform School; Not Entitled to a Portion of the School Funds.

he also stated that you desired my opinion upon the subject. For this reason I address you as if the question came from you directly.

I understand that the controversy, if it may be so called, arises in regard to the following words in section 4367:

"Shall be published in two newspapers of opposite politics."

If there are three papers published in your county, one advocating the principles of the Republican party, one of the Democratic party, and the other of the Greenback party, I think that the advertisements mentioned in section 4367, should be published in two of these three papers. If, however, there is one paper representing the Republican party, and no paper representing any other political party, but a paper independent of politics, then the advertisements may be inserted in the Republican and independent papers.

Hoping that you will not think me intrusive in writing under these circumstances, I am,

Very truly yours,

GEO. K. NASH,

Attorney General.

REFORM SCHOOL; NOT ENTITLED TO A PORTION OF THE SCHOOL FUNDS.

Office of the Attorney General,
Columbus, Ohio, November 24, 1880.

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

DEAR SIR:—Your favor of the 22d inst., in which you enquire "whether any portion of the State school fund

*Right of the Auditor of State to Vote in the Decennial State
Board of Equalization.*

should be placed in the hands of the treasurer of the reform school for boys at Lancaster," has been received.

I know of no law that authorizes any portion of the school funds of the State to be used for the support of the reform school for boys at Lancaster. This institution is one of the benevolent institutions of Ohio, and the General Assembly is in duty bound to, and annually does make sufficient appropriations out of the general revenue fund for its support.

In the taking of the annual enumeration provided for by section 4030 of the Revised Statutes of Ohio, the inmates of the reform school should not be considered, for the reason that they are "temporarily" in the district in which said institution is located. They are sent there for limited periods of time, by virtue of orders made by the various courts of the State, and as soon as those periods expire they will go to other parts of the State. They are in the district for temporary purposes only.

Very truly yours,

GEO. K. NASH,

Attorney General.

RIGHT OF THE AUDITOR OF STATE TO VOTE
IN THE DECENNIAL STATE BOARD OF
EQUALIZATION.

Office of the Attorney General,
Columbus, Ohio, November 27, 1880.

Hon. J. F. Oglevee, Auditor of State:

DEAR SIR:—Your favor, calling my attention to section 2818 of the Revised Statutes, and asking whether you have a right to vote at the organization of the Decennial State Board of Equalization, which meets upon the 7th

Adjutant General's Office; Salary of Two Additional Transcribing Clerks.

of December next, has been received. That section says, "The Auditor of State, by virtue of his office, shall be a member of this board." As a member of this board, you are clothed with the same rights and privileges and have the same duties to perform as any other member. It follows that it is your right and your duty to be present at its organization, and to vote for its officers.

Very truly yours,
GEO. K. NASH,
Attorney General.

ADJUTANT GENERAL'S OFFICE; SALARY OF
TWO ADDITIONAL TRANSCRIBING CLERKS.

Office of the Attorney General,
Columbus, Ohio, November 29, 1880.

Hon. J. F. Oglevee, Auditor of State:

DEAR SIR:—You have called my attention to the clause in the appropriation bill of April 15, 1880, which reads as follows, and appears under items for the adjutant general's office: "Also for two additional transcribing clerks, if in the opinion of the adjutant general the same can be profitably employed, two thousand dollars." The question which you raise is this: "must the adjutant general pay such clerks salaries of one thousand dollars each?" I think not. He is limited to the expenditure of two thousand dollars in the year. If however he can get two clerks, who will do the work in ten months, I think that he has a right to pay the two thousand dollars for that period.

Very truly yours,
GEO. K. NASH,
Attorney General.

Payment of Extra Guards Stationed at Jail by the Sheriff.PAYMENT OF EXTRA GUARDS STATIONED AT
JAIL BY THE SHERIFF.

Office of the Attorney General,
Columbus, Ohio, December 1, 1880.

Hon. John McSweeney, Wooster, Ohio:

MY DEAR SIR:—YOUR favor of November 29th was received last evening, and I have found considerable difficulty in considering the question which you suggest and have not arrived at a conclusion entirely satisfactory to myself.

If I understand the matter aright, your jail was not considered sufficiently safe to securely hold the prisoners who were charged with murder in the Toomie murder case. That for this reason guards were kept upon the outside of the jail, and that the sheriff and his wife were put to a great deal of extra trouble and labor in keeping watch of the prisoners upon the inside of the jail.

Section 7382 seems to provide that the sheriff in any county in which the jail is insufficient, shall convey the prisoners to the jail of some adjoining county in which there is a secure jail. This, it seems was not done in your case, probably for the reason that the jails in the counties adjoining Wayne County were not considered any more secure than your own.

Section 859 seems to make it the duty of the commissioners to provide a court house, jail, offices for county officers, and an infirmary. It being the duty of the commissioners to provide a jail, I suppose that it follows that it is their duty to provide a jail sufficiently strong to safely keep the prisoners confined therein. If the jail is not strong enough for this purpose I think that there is an implied authority in this section for the commissioners to strengthen it, or make it safe by supplying guards, or in any other manner that they may deem best or cheapest for the county. I think therefore, that guards may be

Payment of Extra Guards Stationed at Jail by the Sheriff.

supplied for the outside and inside of the jail, if necessary, and paid by the commissioners out of the county funds. I think, therefore, that your commissioners have acted within the law in paying such guards as were stationed outside of the jail.

Section 7372 authorizes the sheriff to appoint one of his deputies to be the keeper of the jail. Section 1235 provides that the county commissioners shall make an allowance to the sheriff for *keeping* and providing for prisoners in the jail, not exceeding fifty cents per day. If the sheriff is put to extra trouble on account of the unsafe condition of the jail, I do not believe that he can be given any greater allowance than that provided by section 1235. Neither do I believe that the deputy, who is assigned by the sheriff as the keeper of the jail, can receive any other or greater allowance than he otherwise would receive as such deputy. If however, the unsafe condition of the jail makes it necessary to have an inside guard, that guard can as well be paid by the commissioners as an outside guard. If the sheriff's wife has performed the duties of an inside guard, on account of the unsafe condition of the jail, I do not think that the mere fact that she is the sheriff's wife would prohibit the commissioners from giving her a proper compensation.

As I said in the beginning, I am not entirely satisfied that my conclusions in this matter are correct. I hope that before submitting your conclusions to the commissioners, you will give this subject very careful consideration. I feel sure that after such consideration your judgment will be much more reliable than mine.

I have been so much engaged for some time, that I have not recently heard anything about the Home Insurance Company. I shall shortly give this matter attention, and will again write to you.

Very truly yours,

GEORGE K. NASH,
Attorney General.

Hartford Life and Annuity Insurance Company—County Surveyors; Allowance of Mileage, Oath of Office and Instruments; How Furnished.

HARTFORD LIFE AND ANNUITY INSURANCE COMPANY.

Office of the Attorney General,
Columbus, Ohio, December 1, 1880.

Hon. Joseph F. Wright, Superintendent of Insurance:

DEAR SIR:—In your favor of this date, you say that the Hartford Life and Annuity Insurance Company have made application for a license to do regular life insurance business in Ohio.

You also say, that from the statements of its agents and its advertising literature, you fear that it may do a business not authorized by law, and ask whether, under the circumstances you would be justified in refusing to issue a license. If this company presents such a statement as would authorize them to do a regular life insurance business in Ohio, my impression is that it is your duty to issue a certificate to them.

If you afterwards find that they are violating the law in any way, you can revoke the license.

Very truly yours,

GEO. K. NASH,
Attorney General.

COUNTY SURVEYORS; ALLOWANCE OF MILEAGE, OATH OF OFFICE, AND INSTRUMENTS HOW FURNISHED.

Office of the Attorney General,
Columbus, Ohio, December 6, 1880.

J. B. Stronn, Surveyor, Salem, Ohio:

DEAR SIR:—Your favor of November 29th has been received. The attorney general is not authorized to give

County Surveyors; Allowance of Mileage, Oath of Office and Instruments; How Furnished.

opinions to any county officer except the prosecuting attorney.

Your letter, however, seems to have been written with the knowledge of your prosecuting attorney, and I, therefore, venture to answer it, hoping that you will at once show it to him.

I first call attention to these words in section 365; "and shall also receive five cents for each mile by him necessarily traveled in that behalf." If these words stood alone, there would be no doubt about the examiner being allowed five cents for each mile by him necessarily traveled. But these words follow: "But no mileage shall be allowed for a greater distance than from Columbus to such district." These words, I suppose, mean something, and they have no meaning unless they are a limitation upon the preceding words.

I therefore conclude that the only mileage that you can be allowed, is not to exceed the number of miles from Columbus to the point where your duties are performed, by the routes most usually traveled.

II. When the county commissioners or a court calls upon a county surveyor to survey a county road, I suppose that it becomes one of his official duties to do so, and as he has already taken an oath of office, I do not think that it is necessary that he should be again sworn before entering upon the performance of this duty.

III. The secretary of state and I, last February, after making an examination of the law, came to the conclusion that the county commissioners have not the authority to furnish instruments for county surveyors.

It follows, if this conclusion be correct, that if the commissioners have purchased instruments, they have done so without authority of law, and I do not believe that the county surveyor can compel them to surrender them to him for his use.

Truly yours,

GEO. K. NASH,

Attorney General.

County Commissioners Cannot Pay Counsel Fees to Assist Paupers—Rates of Taxation; Publication of in Two Papers.

COUNTY COMMISSIONERS CANNOT PAY COUNSEL FEES TO ASSIST PAUPERS.

Office of the Attorney General,
Columbus, Ohio, December 13, 1880.

Mr. B. F. Enos, Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—I do not think that county commissioners have authority of law for expending money as counsel fees or otherwise in assisting a pauper, who has become a charge upon the county, in an action to recover damages for a personal injury. Sections 979 and 982 do not confer such authority. The action could not be maintained in the name of the county, or of the infirmary directors. I remember a case in this county, wherein a pauper recovered large damages against the city of Columbus, but the suit was brought in the name of the pauper, and the attorneys looked to him, or to the result, for their compensation.

Very truly yours,

GEO. K. NASH,
Attorney General.

RATES OF TAXATION: PUBLICATION OF IN TWO PAPERS.

Office of the Attorney General,
Columbus, Ohio, December 13, 1880.

Henry H. Ham, Esq., Prosecuting Attorney, Wauseon, Ohio:

DEAR SIR:—Under section 4367 of the Revised Statutes, there are certain advertisements which are com-

Reform School; Payment for Clothing Furnished Boys.

manded to be published in two newspapers of opposite politics.

Among these is the "notice of rates of taxation." I know of no other "notice of rates of taxation" than that provided for in section 1087.

I, therefore, cannot escape the conclusion that it must be published in two newspapers of opposite politics.

Truly yours,

GEO. K. NASH,
Attorney General.

REFORM SCHOOL; PAYMENT FOR CLOTHING
FURNISHED BOYS.

Office of the Attorney General,
Columbus, Ohio, December 13, 1880.

Mr. C. M. L. Wiseman, Steward, Lancaster, Ohio:

DEAR SIR:—Section 632 of the R. S., took effect upon the first day of January, A. D., 1880.

The account made out under said section should be addressed to the auditor of the county. It should show distinctly for whom the clothing was furnished, so that he may be able to collect it, if possible.

No legal steps have yet been taken to enforce this section. I dread to take them, and I am inclined to think that the meeting of the Legislature is so near that I had better get some expression from it before so doing.

Very truly yours,

GEO. K. NASH,
Attorney General.

*Publication of Report of Examiner of County Treasury—
Allowance to Sheriff in Cases Where the Court Fails
to Convict.*

PUBLICATION OF REPORT OF EXAMINER OF
COUNTY TREASURY.

Office of the Attorney General,
Columbus, Ohio, December 13, 1880.

Hon. L. W. Brown, Probate Judge, Wauseon, Ohio:

DEAR SIR:—Your favor of the 10th inst. has been received. The publication of a copy of the report of an examiner appointed by the probate judge to examine the county treasury, for one week in one newspaper, answers the requirements of section 1129. The above publication is mandatory, and must be made.

I think that this publication is of such general interest, that the probate judge, if he *deems it proper*, may, under section 4367, cause it to be published for one week in two newspapers of opposite politics.

My idea is that the second publication lies entirely in your discretion.

Very truly yours.

GEO. K. NASH,
Attorney General.

ALLOWANCE TO SHERIFF IN CASES WHERE
THE COURT FAILS TO CONVICT.

Office of the Attorney General,
Columbus, Ohio, December 20, 1880.

Mr. Chas. W. Pitcairn, Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of the 14th inst., has been received. From this letter I infer that under the act of April 8, 1876, Sec. 12, O. L., Vol. 73, p. 133, and Sec. 1231,

Allowance to Sheriff in Cases Where the Court Fails to Convict.

of the Revised Statutes, your court has made an allowance of \$300 "for services in criminal cases where the State fails to convict, or the defendants prove insolvent, and for other services not particularly provided for." Now your sheriff asks the county commissioners to make him a further allowance for services rendered in cases where "the State has failed to convict."

The commissioners have no legal authority for paying this claim. The annual \$3,000 stipend is intended to pay for all services rendered by the sheriff "in cases where the State fails to convict, when the defendants prove insolvent and in cases not otherwise provided for."

You cannot separate these things and say that the \$300 pays for "services in cases not otherwise provided for," and that another allowance may be made for services where the State fails to convict. Questions analogous to the one presented by you arose under the act of March 10, 1867—see S. S. Supplement to Revised Statutes, page 366. That act did not differ materially from the act now in force.

Sheriffs claimed under that act, and I doubt not claimed truly, that the \$300 did not fully compensate them for their services in these cases.

It was claimed that their services in serving witnesses to testify before grand juries were not covered by this enactment, and they presented bills to the county commissioners for this kind of service. In this—Franklin County, and I think in nearly all of the counties in the State, these bills are allowed and paid.

At last a case, *Kyle vs. the Commissioners of Greene County*, O. S. Repts., Vol. 26, p. 46, came to the Supreme Court, and was decided adversely to these claims.

I have no doubt that the case you present would be decided in the same way if it should come to the Supreme Court.

Very truly yours,

GEO. K. NASH,
Attorney General.

County Auditor's Fees.

COUNTY AUDITOR'S FEES.

Office of the Attorney General,
Columbus, Ohio, December 20, 1880.

Mr. J. E. Fenn, Prosecuting Attorney, Eaton, Ohio:

DEAR SIR:—I have been so occupied with cases in the Supreme Court that I have not had time to give your letter of the 3rd inst. attention.

I do not think that a county auditor is entitled to fees under section 1299 of the Revised Statutes. A fair construction of section 1078 would deprive him of them.

The auditor is entitled to \$3.00 per day while he serves on the board for the appraisalment of railroad property—see section 2775.

He is not entitled for extra services under section 2749. This section does not provide for the meeting of a board. It is simply a meeting of appraisers for the purposes of instruction.

Section 2804 and amendments thereto provide that annual county boards of equalization shall be composed of the county commissioners and the county auditor. There is no express provision for the payment of these officers. The commissioners render their services by virtue of their office, and as they are paid a per diem for each day actually employed, I see no difficulty in their cases. The auditor, however, can receive only such compensation as is provided for in the sections preceding section 1078.

If the compensation provided by section 1076 has been paid to the auditor, whose office expired on the 8th of November, 1880, it cannot again be lawfully paid to his successor. To ascertain what compensation an auditor is entitled to for services under section 4845, we must

Soldiers' and Sailors' Orphans' Home; Admission of Children to.

refer back to sections 1074 and 1075. Taking all of these sections together, I am of the opinion that the law only contemplates the making of one duplicate.

Truly yours,

GEO. K. NASH,

Attorney General.

SOLDIERS' AND SAILORS' ORPHANS' HOME;
ADMISSION OF CHILDREN TO.

Office of the Attorney General,
Columbus, Ohio, December 22, 1880.

Mr. B. F. Iback, Knightstown, Ind.:

DEAR SIR:—YOUR favor of December 6th, with the enclosures, which I return to you herewith, was duly received. So much of section 676 of the Revised Statutes of Ohio as relates to the admission of children to the Ohio Soldiers' and Sailors' Orphans' Home, reads as follows: "The trustees are authorized and required to receive into the home, under such rules and regulations as they adopt, the children and orphans residing in Ohio, of such soldiers and sailors as lost their lives in the army, or navy of the United States in the late civil war, or who have died by reason of wounds received or disease contracted in said service, that are found to be destitute of means of support and education."

The trustees of our home and the superintendent are of the opinion that any such children residing in Ohio, as are described in the above language, must be admitted to our home. In this opinion I fully concur.

If it should appear that the father enlisted and served in an Indiana regiment, they would still be admitted.

Mrs. Culver seems to be in an unfortunate position.

Body of Deceased Pauper; How Delivered to Medical Colleges.

Our law only admits orphans residing in Ohio. Your law only gives relief to the children of Indiana soldiers. Between the statutes of the two States, she is without relief.

In consideration of the fact that Indiana soldiers' orphans are admitted to the Ohio home, will not your State aid her?

Very truly yours,
GEO. K. NASH,
Attorney General.

BODY OF DECEASED PAUPER; HOW DELIVERED TO MEDICAL COLLEGES.

Office of the Attorney General,
Columbus, Ohio, December 27, 1880.

Mr. J. P. Winstead, Prosecuting Attorney, Circleville, Ohio:

DEAR SIR:—If the professor of anatomy of any medical college claims the body of a deceased pauper under section 3763, it should be delivered to him at the place of decease.

The object sought to be attained by the law was to furnish medical students with subjects for dissection purposes. But it was not the intention of the law that any portion of the expense of transporting bodies from the place of decease to the place where the parties to be benefited desire to use them, should be paid by the public.

It is the duty of the officer having in charge the body, to notify in writing the relatives of the deceased as quickly as possible. If it can be done as speedily by mail as in any other way, the notice may be thus sent.

A sufficient length of time should be allowed before delivering a body for dissecting purposes, to allow the

Body of Deceased Pauper; How Delivered to Medical Colleges.

notice to reach the relatives, and permit the relatives, by the usual route of travel, to take charge of the body. In no case should the body be delivered within twenty-four hours after the decease.

In the section I find these words:

"If such body has not been requested for interment by any person at his expense."

From these words I infer that a body cannot be delivered for dissecting purposes in any case where any person, be he relative or not, offers to take charge of the body, and bury the same without expense to the public.

I think that you are right in your conclusion that it is the duty of the officer to deliver the body to the professor of anatomy claiming the same, even if it is claimed by a relative or legal representative, unless that relative or representative agrees to enter the same without expense to the public.

Some time ago you asked me this question: "Have the county commissioners the legal authority, where a crime has been committed in their county, to enter into a contract with a person to pay him so much per day to investigate the case and find out the criminal?"

I have given the matter considerable thought, but have not been able to find any statute authorizing the commissioners of a county to make such a contract. In the absence of statutory authority, I do not believe that they have any inherent power or authority so to do.

Sections 918 and 919 authorize the county commissioners to pay a reward in certain cases after conviction, and section 130 authorizes them to pay certain expenses incurred by officers in pursuit of persons charged with felony, who have fled the country.

I suppose that these sections were placed in the law because in their absence the commissioners would not have authority to pay such rewards or such expenses.

If the commissioners in the absence of express pro-

*Power of County Auditor to Discharge from Confinement for
Non-payment of Costs.*

vision of law, cannot offer to pay rewards or such expenses as are mentioned in section 1310, they certainly do not have authority to enter into such a contract as the one suggested by you.

Very truly yours,

GEO. K. NASH,
Attorney General.

POWER OF COUNTY AUDITOR TO DISCHARGE
FROM CONFINEMENT FOR NON-PAYMENT
OF COSTS.

Office of the Attorney General,
Columbus, Ohio, December 29, 1880.

*Mr. M. W. Johnson, Prosecuting Attorney, Youngstown,
Ohio:*

DEAR SIR:—By reference to section 7327, it appears that an offender can only be sentenced to confinement in a county jail until the fine and costs are paid, in cases where a fine is the whole or a part of a sentence.

I think that in felonies, as a general rule, a fine is not made a part of the sentence. If this be correct, courts and magistrates only have power to sentence persons to confinement in the county jail until the fine and costs are paid in cases of misdemeanors. In section 6802 it is made the duty of any officer who collects any fine, to pay the same into the county treasury to the credit of the county general fund.

It is true that the misdemeanor has been prosecuted in the name of the State of Ohio, yet, after the prosecution is ended, the county has sole interest in the fine and costs. If the same are paid, the State has no interest in

*Power of County Auditor to Discharge from Confinement for
Non-payment of Costs.*

them, direct or indirect, and I think that it may well be said that they are due the county.

If this be true, under section 1028, the auditor has power to discharge from imprisonment, any person who is confined in the county jail for the non-payment of any fine or costs imposed after the conviction of such person for a misdemeanor.

II. There has been a diversity of opinion in regard to the construction that should be put upon section 7246.

Attorney General Little held that a sum not exceeding \$100 or \$50 could be allowed to each counsel appointed in accordance with section 7245. Attorney General Pillars held that only these sums could be allowed to both of the attorneys so appointed. The judges of the Court of Common Pleas in this county have held to the view entertained by Attorney General Little.

I, too, think that the statute will bear the construction given by him.

Of course, under this section it is the duty of the commissioners to determine what sum shall be allowed, but they cannot exceed the amounts named.

III. I am of the opinion that the costs for issuing subpoenas and returns thereon for witnesses to appear before the grand jury, and the fees of grand jury witnesses cannot be taxed up in the bill of costs in any particular case.

The controlling idea in our grand jury system is that its proceedings are entirely secret. The members thereof and the officers connected with it are in duty bound not to make known any of its proceedings to any person, unless called upon in a court of justice so to do; not even to give the names of witnesses to the public.

If the subpoenas issued by the clerk of the court should indicate the style of the case in which the witness is to testify, or if the cost bill should show the names of the witnesses who appeared in certain cases

Fines; Collection and Disposition of.

before the grand jury, a portion of the proceedings of that body would speedily become public property. In this way the secrecy of the proceedings of the grand jury would be destroyed.

Section 1262 provides a way in which clerks may receive a compensation for their services in this matter, and section 1230 provides how sheriffs may be paid for this kind of service.

Truly yours,
GEO. K. NASH,
Attorney General.

FINES; COLLECTION AND DISPOSITION OF.

Office of the Attorney General,
Columbus, Ohio, December 29, 1880.

Mr. Martin O'Donald, Prosecuting Attorney, London, Ohio:

DEAR SIR:—Your favor of the 28th inst., has been received. By reference to section 6802, you will see that it is the duty of any officer collecting a fine, to pay the same into the county treasury, where it goes to the credit of the county general fund.

This is the course to be pursued with all fines, unless there be some section providing otherwise. Sections 6951 and 6952 provide that certain fines shall be inflicted on account of acts of cruelty to animals, dog fighting, cock fighting, etc. I have not been able to find any statute providing that fines imposed by these sections shall be disposed of in any other way than that provided by section 6802.

Section 6985 provides that certain fines shall be paid to duly incorporated societies for the prevention of cruelty to animals.

Testimony of Convicts; How Taken.

The fines referred to in this section are those imposed by section 6984.

I know of no other fines that can, when collected, be paid to these societies.

Truly yours,
GEO. K. NASH,
Attorney General.

TESTIMONY OF CONVICTS; HOW TAKEN.

Office of the Attorney General,
Columbus, Ohio, December 30, 1880.

Messrs. Francis & Rhodes, Toledo, Ohio:

GENTLEMEN:—Under the order of the court committing convicts to the penitentiary, I suppose that the warden of the penitentiary would violate his duty, if he permitted any prisoner to leave that institution except for some purpose especially provided for by law. I know of no case in which this can be done except when, after a proper order of the court, a prisoner is taken out to testify in some criminal case.

If the warden should take Mrs. Myers to Henry County to testify in a civil action, I think it would be in violation of law, and I would not like to advise him to do this.

I would suggest that in taking her deposition, if she cannot speak the English language, you can secure an interpreter here, and use him to as good advantage as you could in the court room.

Very truly yours,
GEO. K. NASH,
Attorney General.

*Prosecuting Attorney; Allowance Under Section 1273--
Female Convict; Restoration to Citizenship.*

PROSECUTING ATTORNEY; ALLOWANCE UNDER SECTION 1273.

Office of the Attorney General,
Columbus, Ohio, January 3, 1881.

Mr. Medory D. Mann, Prosecuting Attorney, Paulding, Ohio:

DEAR SIR:—In answer to your favor of December 22nd, I will say that the commissioners are empowered to make a reasonable allowance to the prosecuting attorney for services rendered by him under section 1274 of the Revised Statutes. If the services are such as are required of the prosecutor by section 1273, then no allowance can be made for them. They come within his salary.

If the State is a party to the suits to which you refer, or if you are directed by law to bring them, an allowance cannot be made.

If the treasurer is the party, and the law imposes no obligation upon you in connection with him, then the allowance can be made.

Very truly yours,
GEO. K. NASH,
Attorney General.

FEMALE CONVICT; RESTORATION TO CITIZENSHIP.

Office of the Attorney General,
Columbus, Ohio, December 22, 1880.

Hon. Chas. Foster, Governor of Ohio:

DEAR SIR:—Under Art. III, Sec. 7432, of the Revised Statutes, I think that a female convict, as well as a

Payment of Bounties; Payment of County Scrip.

male, on presenting to the governor a certificate to the effect that she has passed the entire period of her sentence without any violation of the rules and discipline of the penitentiary, is entitled to receive pardon and be restored to citizenship.

I am also of the opinion that a pardon issued under the section above referred to, may release a convict from the costs of conviction, as provided in section 6797, as well as a pardon issued in accordance with sections 85 to 94, inclusive.

Of course it is for the governor to determine in what cases it is proper to release a convict from the costs of prosecution.

Respectfully yours,
 GEO. K. NASH,
 Attorney General.

 PAYMENT OF BOUNTIES; PAYMENT OF COUNTY SCRIP.

Office of the Attorney General,
 Columbus, Ohio, December 31, 1880.

Mr. H. S. Culver, Prosecuting Attorney, Delaware, Ohio:

DEAR SIR:—I have again carefully examined the act of April 18, 1880, relating to the payment of certain bounties. All of the law preceding that part providing for the payment of scrip, etc., heretofore issued, relates, it seems to me, to the payment of the one hundred dollars to a re-enlisted veteran volunteer.

I do not see how one, who enlisted for the first time, or "a common volunteer," as you call him could have even been legally paid the one hundred dollars bounty by any township, ward, city or county. In other words, the law never provided that this one hundred dollars

Payment of Bounties; Payment of County Scrip.

should be paid to a common volunteer; the re-enlisted veteran alone received this \$100.00.

Therefore the case which you present could not arise. All of the act relating to the payment of scrip, etc., and the proviso to which you call attention was added to the act of April 16, 1869, by the Legislature last winter. I suppose the proviso means something, and I cannot see what it does signify unless it means that scrip in the hands of a veteran volunteer, who has been paid the one hundred dollars bounty cannot be paid by the terms of this act.

The act places the common volunteer upon the same footing with the veteran, but not on a better footing. In the opinions I have given in regard to this bounty matter in your county, I may have erred. I would much prefer that your commissioners would not act on my advice alone. It is a matter of great importance. I hope that they will move slowly and not act until they are certain that they are going right.

In the matter of U. S. bonds listed for taxation by private banks, I have this to say: I believe that any law of a State providing directly or indirectly for the taxation of United States bonds is in conflict with the laws of the United States, and therefore void.

I would not advise an officer to enter into a suit at law when I felt certain that he would be beaten.

Truly yours,

GEO. K. NASH,

Attorney General.

Allowance by County Commissioners for Defense of an Indigent Person.

ALLOWANCE BY COUNTY COMMISSIONERS
FOR DEFENSE OF AN INDIGENT PERSON.

Office of the Attorney General,
Columbus, Ohio, January 3, 1881.

Mr. J. A. Cook, Xenia, Ohio:

DEAR SIR:—I have been very busy; hence the delay in answering your letter.

The county commissioners cannot allow to exceed fifty dollars for the defense of an indigent person charged with a felony, not a homicide.

My understanding is that this allowance must pay for the entire case, whether there be one or two trials, whether the case stops in the Common Pleas, or goes to the Supreme Court.

If but \$25.00 is allowed in the Court of Common Pleas, and the case is taken to the Supreme Court, I suppose that the commissioners, if they think proper, may make a further allowance, so that the entire sum shall not exceed \$50.00.

I have not been able to find the case referred to by you.

Truly yours,
GEO. K. NASH,
Attorney General.