
Mutual Fire Insurance Companies; Reinsurance Fund.

MUTUAL FIRE INSURANCE COMPANIES; REINSURANCE FUND.

Attorney General's Office,
Columbus, Ohio, January 9, 1883.

Col. Chas. H. Moore, Superintendent of Insurance:

SIR:—I have received your favor dated December 18, 1882, in which you ask, "Are all mutual fire insurance companies organized under the laws of Ohio, required by law to have for the purpose of reinsurance, a sum equal to fifty per cent. of the cash premiums received for unexpired risks and policies?"

I do not conceive that any mutual fire insurance company has a right to require that any portion of the premium charged for a policy issued shall be paid in advance, but that the company must receive a note therefor, which note is subject to assessments for losses and expenses, unless especially authorized by law so to do.

Section 3653 authorizes certain mutual companies having a certain amount of assets to issue policies upon the stock plan.

Formerly section 3682 authorized mutual companies to sell insurance for cash, but this section was repealed in 1880.

Therefore I conclude that no mutual company organized under the laws of Ohio has the right to require its premiums to be paid in cash or partly in cash, except such as are mentioned in section 3653, and that paragraph seven of subdivision three of section 3654 has application only to the mutual fire insurance companies having the authority conferred by section 3653.

I may be wrong in my conclusion, and before you take any action upon it, I suggest that opportunity be given those who differ, to be heard.

Very truly yours,
GEO. K. NASH,
Attorney General.

Statute Cannot be Modified by Joint Resolutions—Corporations; Increase of Capital Stock by.

STATUTES CANNOT BE MODIFIED BY JOINT
RESOLUTIONS.

Attorney General's Office,
Columbus, Ohio, January 26, 1883.

Hon. O. J. Hodge, Speaker House of Representatives:

SIR:—I have the honor to make the following reply to the request contained in House Resolution No. 115:

The statutes of Ohio authorize the admission of residents of this State into the asylum for the deaf and dumb, the blind, feeble minded youth and insane, and into the Ohio Soldiers' and Sailors' Orphans' Home.

I think that it is a fixed principle of law that a statute cannot be modified, changed or repealed by a joint resolution of the General Assembly. If a joint resolution should be adopted conferring authority upon the officers of said institutions, other and different from that conferred by statute, such resolution would have no effect.

Of course the officers having charge of these institutions can only admit to the benefits thereof, such persons as the law authorizes them to admit.

Very respectfully yours,
GEO. K. NASH,
Attorney General.

CORPORATIONS; INCREASE OF CAPITAL
STOCK BY.

Attorney General's Office,
Columbus, Ohio, January 27, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—You have called my attention to section 3262 of the Revised Statutes providing that a corporation

Corporations; Increase of Capital Stock by.

for profit may increase its capital stock by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, and by letter addressed to each stockholder, whose place of residence is known, and a certificate of such action of the corporation shall be filed with the secretary of state.

At the same time you submitted for my consideration a certificate dated at Cincinnati, January 9, 1883, which the Queen City Malleable Iron Company desires to file in your office. This certificate sets forth that at a meeting of the stockholders of said company held at its office on January 9, 1883, the holders of nine hundred and eighty-eight shares of its stock were present in person, that the holders of twelve shares of stock were present by proxy, and that its entire capital stock is divided into one thousand shares. It is further shown by this certificate that "it was unanimously resolved" that the capital stock of the Queen City Malleable Iron Company be increased to \$250,000.

You ask whether this is such a certificate as section 3262 requires to be placed on file in your office.

It does not show that a majority of the directors of said corporation called a meeting of the stockholders for the purpose of acting upon the subject of increasing the capital stock of the corporation. It does not show that at least thirty days notice of the time, place and object of the meeting has been given by publication and by letter as required by said section.

It does not show that the proxies, who voted twelve shares of stock, were authorized by their principals to act upon the question of increasing the capital stock.

I think that in order to justify you in filing the certificate it must show that the action increasing the capital stock was taken at a meeting called by a majority of the board of directors. This affirmative action upon the part of the board of directors is as necessary to the valid increase

Sheriff; Fees of.

of the capital of a corporation as is the affirmative action of the stockholders.

If after such a meeting is called by a majority of the directors, and without the notice required by the statute, all the members assemble and in writing waive the want of notice, or all vote in favor of the increase of capital stock, I do not think that the action of the stockholders is valid on account of the failure to give the statutory notice.

If one stockholder is absent who has not received the required notice, or if present, refuses to give his consent to the proceedings, I think the action is invalid.

If a stockholder is present by proxy, it is necessary that the agent should be authorized by his principal to act upon the subject of waiving notice, and the subject of increasing the capital stock.

Very truly yours,

GEO. K. NASH,
Attorney General.

SHERIFF: FEES OF.

Attorney General's Office,
Columbus, Ohio, January 29, 1883.

Mr. M. S. Bartrom, Auditor, Ironton, Ohio:

DEAR SIR:—Section 3 of the act of March 16, 1867, provided that the sheriffs should receive not to exceed \$300 for services in criminal cases not otherwise provided for. At that time no provision was made for serving subpoenas on witnesses to testify before the grand jury, and other matters therein mentioned.

Kyle, sheriff of Greene County, claimed that the commissioners should pay him for these services in addition to the \$300 allowance. The court held that these services were included in the \$300 allowance.

Since that time the law has been changed, as section

County Surveyors; Instruments of—County Auditors; Duty of Under Section 4457.

1230 provides specifically for fees for these services in addition to the \$300 allowance provided for by section 1231.

Very truly yours,

GEO. K. NASH,
Attorney General.

COUNTY SURVEYORS; INSTRUMENTS OF.

Attorney General's Office,
Columbus, Ohio, January 29, 1883.

Mr. L. H. Potter, Prosecuting Attorney, Paulding, Ohio:

DEAR SIR:—I do not think that county commissioners are authorized to furnish field instruments for county surveyors. Section 1181 by the words "other suitable articles," only has reference to such furniture as is necessary for the office. Every man who is qualified to be a county surveyor is supposed by the law to have a set of instruments of his own ready for use.

Very truly yours,

GEO. K. NASH,
Attorney General.

COUNTY AUDITORS; DUTY OF UNDER SECTION 4457.

Attorney General's Office,
Columbus, Ohio, January 29, 1883.

Mr. L. C. Laylin, Prosecuting Attorney, Norwalk, Ohio:

DEAR SIR:—I have received your favor of the 25th inst. If I am not mistaken in my interpretation of section 4457, Revised Statutes, it requires the auditor to make out one

Sheriff; Allowance to in Criminal Cases.

notice to be served upon resident lot or land owners, and municipal or private corporations. This notice he must hand to the petitioners or one of them, and it is the duty of the petitioners to see that the parties are properly served.

To do this involves the making of the copies by the petitioners.

Very truly yours,

GEO. K. NASH,
Attorney General.

SHERIFF; ALLOWANCE TO IN CRIMINAL CASES.

Attorney General's Office,
Columbus, Ohio, January 30, 1883.

Mr. John C. Clark, Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—Section 1231, Revised Statutes, provides that the sheriff may be allowed not to exceed \$300 per annum for services in criminal cases where the State fails to convict, or *the defendants prove insolvent*.

Section 1261, Revised Statutes, provides that the fees accruing to the clerk for services rendered by him in any criminal cause wherein the State fails to convict, or *collect the costs* after due and diligent effort made therefor, shall be paid out of the county treasury, but not more than \$300 shall be paid in any one year.

You state that your sheriff and clerk have been paid the full amount of \$300 each for each year.

You also state that a man was convicted of murder in the first degree in one of these years, and that after diligent effort the courts cannot be paid out of his property. Now these officers want to have their costs in this case paid out of the county treasury. It cannot be done. The full power to recompense them from the treasury was exhausted when the \$300 was paid to them for services during the year in which this case was tried. Very truly yours,

GEO. K. NASH,
Attorney General.

Incorporation of "Saloonkeepers' Association of Cincinnati."

Attorney General's Office,
Columbus, Ohio, January 30, 1883.

Mr. W. P. Hurlburt, Cincinnati, Ohio:

DEAR SIR:—I do not know of any power that authorizes a public officer to delegate to another the right to perform his official duties. I do not think that you could give to another the power to act in your place in the board of trustees of Longview Asylum.

Very truly yours,

GEO. K. NASH,
Attorney General.

INCORPORATION OF "SALOONKEEPERS' ASSO-
CIATION OF CINCINNATI."

Attorney General's Office,
Columbus, Ohio, February 7, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I have had the honor to receive your favor of the 6th inst. enclosing the articles of incorporation of "The Saloonkeepers' Association of Cincinnati, Ohio."

An examination of these articles shows that the question raised is the same as the one passed upon by me in an opinion given to the secretary of state upon the 22d of April and 10th of May, 1882.

I think now as I did then that corporations organized for the purpose set forth in these articles of incorporation can not be created in Ohio.

Very truly yours,

GEO. K. NASH,
Attorney General.

Incorporation of Savings and Trust Company.

INCORPORATION OF SAVINGS AND TRUST
COMPANY.

Attorney General's Office,
Columbus, Ohio, February 8, 1883.

Messrs. Estep, Dickey and Squire, Cleveland, Ohio:

GENTLEMEN:—I am in receipt of your favor of the 7th inst. I regret very much that I have given you any trouble in regard to the articles of incorporation of the Savings and Trust Company.

I have been laboring under the idea that if a corporation is to be organized in Ohio to do the business of a savings and loan association, it must be organized in accordance with section 3797, etc., etc., and if a corporation is to be organized to do the business of a safe and trust deposit company, it must be organized in accordance with section 3821, etc., etc., laws of 1882, page 101, and I have had my doubts as to whether the two classes of business could be carried on by one corporation.

In examining the certificate of incorporation submitted to me by the secretary of state, it seemed to me that there was an effort to combine the business of two different classes of corporations in one.

I do not think that section 3235 helps the matter. That is a very general statute in which it is attempted to state briefly the purpose for which a corporation may be organized. If afterwards a particular business is singled out in the statutes, and it is provided that corporations for that business shall be organized in a particular way, I do not believe that they can be organized in any other way.

The question which came up in the mind of the secretary of state was as to whether the attorney general should approve the certificate of savings and loan associations.

I am very liable to be mistaken, as I am compelled by the many things I have to look after in this office, to take a sort of run and jump at everything that comes up.

County Commissioners; Detailed Report of.

If I am wrong, I shall be very glad to be corrected.
I will retain the certificate until I hear from you again.

Very truly yours,

GEO. K. NASH,

Attorney General.

COUNTY COMMISSIONERS; DETAILED RE-
PORT OF.

Attorney General's Office,
Columbus, Ohio, February 16, 1883.

Col. W. L. Curry, Marysville, Ohio:

DEAR SIR:—I am in receipt of your favor of the 12th inst.

Section 917, Revised Statutes, requires the county commissioners to make a detailed report of their financial transactions.

The common definition of the word "detail" is "to relate in particulars," "to particularize," "to report minutely and distinctly."

I do not see how this can be done without giving each item—that is, giving the date of payment, for what services paid, to whom paid, and the amount.

I suppose also that the object of having this report published is to give the people certain and definite information in regard to the financial transactions of the commissioners.

It seems to me that the object of the statute would not be wholly accomplished unless the word "detailed" is used in the sense which I have indicated herein.

By referring to any one of the annual reports of the auditor of state you will find a detailed statement of disbursements from the general revenue fund. This fills my idea of a detailed statement.

Very truly yours,

GEO. K. NASH,

Attorney General.

Ohio Farmer's Insurance Company; Returns for Taxation.

OHIO FARMER'S INSURANCE COMPANY; RE-
TURNS FOR TAXATION.

Attorney General's Office,
Columbus, Ohio, February 19, 1883.

Mr. C. J. Chase, County Auditor, Medina, Ohio:

DEAR SIR:—I am in receipt of your favor of the 6th inst. in which you enclose a copy of the action taken by your board of equalization upon the 3d of June, 1882, in regard to the returns for taxation made by the Ohio Farmer's Insurance Company.

The action of the board of equalization was taken upon the 3d of June, 1882. Long after that date the auditor of state issued an order to you in regard to placing the reserve fund of the Ohio Farmer's Insurance Company upon the tax duplicate. That order section 166, Revised Statutes, commands you to obey, and the former action of the board of equalization would not relieve you from this duty. No power in the State can do this except the courts, and the action of the board of equalization does not relieve the company from the duty to pay the taxes.

Looking upon the law as I do, the State will continue to insist that the Ohio Farmer's Insurance Company shall pay the taxes upon its entire reserve fund for the year 1882.

Very truly yours,

GEO. K. NASH,
Attorney General.

Incorporation of the Parkins File Company.

INCORPORATION OF THE PARKINS FILE
COMPANY.Attorney General's Office,
Columbus, Ohio, February 20, 1883.*Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:*

DEAR SIR:—I delayed answering your favor enclosing the certificate of increase of the capital stock of the Parkins File Company on account of pending legislature in the General Assembly.

It was a question of great doubt as to whether, under section 3262, Revised Statutes, the secretary of state could file a certificate of increase of capital stock where stockholders had attempted to waive the publication and notice required by said section. In order to settle this question and give more latitude, the General Assembly on the 16th of February amended said section by inserting after the word "known," and before the word "and," the following words:

"Or such increase may be made at any meeting of the stockholders at which all the holders of stock are present, by person or by proxy, and waive in writing such notice by publication and by letter, and also agree in writing to the increase of the capital stock naming the amount of increase to which they agree."

I think that the certificate of the Parkin File Company, even under the amended law, is defective in that it does not show that *all* the stockholders agreed in writing to the proposed increase of capital stock.

I think that the certificate ought not to be filed until this defect is cured.

Very truly yours,
GEO. K. NASH,
Attorney General.

County Auditor; Fees of.

COUNTY AUDITOR; FEES OF.

Attorney General's Office,
Columbus, Ohio, February 26, 1883.

Mr. Geo. Kinney, Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—By your favor of the 18th inst. I am informed that Mr. A. Hodes was elected auditor of Sandusky County in October, 1878, he therefore became auditor in November following for the term of three years, and was entitled to the fees prescribed by the act of April 24, 1877, O. L., Vol. 74, 124. This act was in force until June 1, 1879, when a new law went into force, regulating the fees of county officers. See 76, O. L., 17. Section 36 of this act provided among other things that "the provisions of this act shall not affect the salary or fees of any officer during the time for which he may have been elected or appointed before the passage of this act."

The act to revise and consolidate the general statutes of Ohio was passed June 20, 1879, and went into effect January 1, 1880. Section 1365 of said statutes also provides that "officers elected or appointed to any of said offices before the passage of this act, shall not as to their fees or salary for the time for which they have been elected or appointed, be affected, but they shall severally be entitled to the fees and salary prescribed for their respective offices before the passage of this act."

I think that Mr. Hodes, during his first term of office, commencing in November, 1878, was entitled to the fees provided by the act of April 24, 1877.

I do not think that your sheriff is entitled to any compensation under section 1309. The only officers to which this allowance can be made are those mentioned in sections 1306 and 1307.

Very truly yours,
GEO. K. NASH,
Attorney General.

County Commissioners; Duty of—The Provident Life and Trust Company

COUNTY COMMISSIONERS; DUTY OF.

Attorney General's Office,
Columbus, Ohio, March 5, 1883.

Mr. John M. Braderick, Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—In reply to your first question I will say that in my opinion section 850, Revised Statutes, requires that the roll shall be called each time the commissioners audit an account to be paid out of the county treasury.

I do not understand the second question. I do not see how a memorandum, showing a call of the yeas and nays can be entered upon the journal when it is not a fact. No account should be marked approved before the yeas and nays have been called.

When the commissioners are acting under sections 4896 and 4897, the auditor should not draw his warrant upon the approval of one director. All bills should be presented at a meeting of the board, and be allowed upon a call of the yeas and nays. It is not a compliance with the law to approve the bills after the money is given.

Very truly yours,

GEO. K. NASH,
Attorney General.

THE PROVIDENT LIFE AND TRUST COMPANY

Attorney General's Office,
Columbus, Ohio, March 10, 1883.

Col. Chas. H. Moore, Superintendent of Insurance:

DEAR SIR:—I have examined the act of the General Assembly of the State of Pennsylvania creating "The Provident Life and Trust Company, of Philadelphia," and by

Infirmary Directors; Compensation of.

section 9 of that act I conclude that said corporation is authorized to invest its capital stock and other moneys in any *good* securities.

I herewith transmit said act and the supplementary acts thereto, to you.

Very truly yours,
GEO. K. NASH,
Attorney General.

INFIRMARY DIRECTORS; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, March 26, 1883.

Mr. Wm. Southmoyd, Clerk, Akron, Ohio:

DEAR SIR:—I am in receipt of your favor of 23d inst. I think that the county commissioners are right in making the refusal which you speak of in your letter. They can only make such allowances as the law authorizes them to make. Section 968 provides that the county commissioners shall allow the directors of an infirmary for their services in attending the regular and called meetings of said board, a sum not exceeding \$2.50 for each day's attendance, and the directors may be paid a reasonable compensation for extra services rendered in their official capacity other than in attending regular or called meetings.

I suppose that this last provision has reference to services rendered in performing some duty imposed upon them by statute. I know of no statute making it the duty of infirmary directors to hold a state convention at Columbus, or elsewhere, and if they attend such a meeting it is a mere voluntary matter, and they cannot be recompensed for their time or expenses.

Very truly yours,
GEO. K. NASH,
Attorney General.

Ballots; Full Name Should Appear on—Jurors; Compensation of Talesman.

BALLOTS; FULL NAME SHOULD APPEAR ON.

Attorney General's Office,
Columbus, Ohio, March 27, 1883.

Mr. Benj. F. Sanford, Siam, Ohio:

DEAR SIR:—It is always best that the full Christian name of a candidate should be printed or written in full on the ballot. If, however, the name appeared upon all the ballots by initials as "E. B. Winship," they should all be counted for E. B. Winship, and if elected the certificate of election should be issued to E. B. Winship, and the man known as "E. B. Winship" is entitled to receive it.

If upon a part of the ballots the name "Edward B. Winship" should appear, and upon a part "E. B. Winship," and it was the evident intention of the voters casting the ballots for "E. B. Winship" to vote for Edward B. Winship, then all the ballots should be counted for Edward B. Winship.

Very truly yours,

GEO. K. NASH,
Attorney General.

JURORS; COMPENSATION OF TALESMAN.

Attorney General's Office,
Columbus, Ohio, April 6, 1883.

Mr. C. B. Winters, Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—In answer to your favor of the 6th inst. I will say that in my opinion the act passed March 27, 1881, O. L., Vol. 78, page 95, applies exclusively to Cuyahoga and

D. H. HOLLINGSWORTH—1883-1884.

3

Taxation of Moneys, Credits, Etc., Converted Into United States Bonds—Bids For Material and Labor on Public Buildings

TAXATION OF MONEYS, CREDITS, ETC., CONVERTED INTO UNITED STATES BONDS.

Attorney General's Office,
Columbus, Ohio, April 26, 1883.

E. N. Harvant, Esq., Prosecuting Attorney, Ashland, Ohio:

DEAR SIR:—I have yours of the 18th inst., in which you ask whether "moneys, credits, or other effects, converted into bonds or other securities of the United States are taxable for the time held as money, credits or other effects," and in reply would answer in the affirmative.

In my judgment the General Assembly, by section 2737, Revised Statutes, clearly intended to subject such property to taxation for the time and in the manner therein stated.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

BIDS FOR MATERIAL AND LABOR ON PUBLIC BUILDINGS.

Attorney General's Office,
Columbus, Ohio, April 27, 1883.

Mr. John T. Hire, Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—Your favor of the 23d inst. came duly to hand, and would have been answered sooner but for delay incident to a change in this office.

In reply I now have the honor to say that in my judgment a bid under section 3988, Revised Statutes, for a job of work which embraces both labor and materials, should be so formed that the board of education (or the commissioners in the case you mention) may accept the same for

*Costs in Criminal Cases; When Convict is Rejected by
Warden.*

either or both. Otherwise the object sought by paragraph five of the section would be wholly defeated.

A discretion is lodged with the board under paragraph six to "accept a bid for both labor and material which is the lowest in the aggregate," but this discretion does not obviate the necessity of the bidder putting his bid in legal form.

I find nothing in the section requiring the work to be divided into "branches," paragraph five contemplating only a division between "labor" and "materials." If, however, this be done, the same distinction between labor and materials should be made by the bidder in each branch of the work.

When the work is divided into branches, I see no reason why a bid may not be legal as to one branch, and informal as to another. The word "bid" as used in the section refers to the proposition of the bidder, whether for a part or all the work. In immaterial matters the board should exercise a sound discretion.

With these suggestions, I trust you may have no difficulty in applying section 3988 to the work in hand.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COSTS IN CRIMINAL CASES; WHEN CONVICT IS
REJECTED BY WARDEN.

Attorney General's Office,
Columbus, Ohio, April 27, 1883.

Mr. John C. Clark, Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—Your letter of the 18th inst. would have received attention before now but for unavoidable delay caused by a change in this office.

*Costs in Criminal Cases; When Convict is Rejected by
Warden.*

If I understand your statement correctly, it is as follows:

Two persons were separately indicted, tried, convicted and sentenced for the commission of felony in Darke County; after sentence an execution was issued in each case and properly returned unsatisfied for want of goods or chattels, lands or tenements whereon to levy; the convicts were then conveyed by the sheriff of the county to the penitentiary and an offer made by him to deliver them to the warden, together with properly certified copies of sentence and bills of cost, that thereupon the warden refused to receive them, or allow any part of the cost bills, and the sheriff was thus compelled to return the convicts to the jail of Darke County, from which one of them afterwards escaped, without fault of the sheriff, and was never recaptured.

The other one was subsequently returned to the penitentiary and received by the warden.

The question now arises what amount of costs should be allowed by the warden to be paid out of the state treasury.

In my judgment the liability of the State for costs attached at the time the sheriff first tendered the convicts to the warden, and that he was then bound by law to allow and certify all costs correctly charged in the cases. I find nothing in the statutes authorizing him to refuse to receive the convicts, because of their alleged exposure to the small-pox, and however worthy and proper his action may have been, on grounds of public policy, it would not relieve the State from liability for costs theretofore legally incurred.

I think, therefore, the warden should now certify all costs and expenses of transportation properly incurred in each case up to the time the convicts were tendered to him. As to the increased expenses of transportation, rendered necessary by reason of his refusal, I have more difficulty. The warden not being authorized to refuse to receive the convicts he could not by an illegal refusal increase the legal liability of the State for costs. I think, therefore, that the

Marriage by Non-Resident Minister.

State is not liable for the additional expenses of transportation, mileage, etc.

In this opinion I do not wish to be understood as reflecting upon the warden. I think his action was dictated by a prudent regard for public interests and the welfare of the inmates of the penitentiary, yet as the law stands, the additional expenses aforesaid can only be paid out of the state treasury by a specific appropriation for that purpose. This, I think, should be made by the next General Assembly.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

MARRIAGE BY NON-RESIDENT MINISTER.

Attorney General's Office,
Columbus, Ohio, April 27, 1883.

Hon. N. W. Goodhue, Probate Judge, Akron, Ohio:

DEAR SIR:—Yours of the 23d inst., asking my opinion as to the proper construction to be given to sections 6385 and 6386, Revised Statutes, is received. You add therein that the prosecuting attorney, the legal adviser of all county officers, has given an opinion to the effect that a regularly ordained minister, once licensed to solemnize marriage in this State, may continue so to do after a severance of his pastoral relations in, and his removal from, the State. It would seem indelicate for me to give an opinion, either corroborating or at variance with the one given by Mr. Baird, without a request from him, as contemplated by the statute which makes the attorney general his legal adviser. My opinion should, therefore, be given no other weight than that of any other attorney you might consult.

I find, upon examination of the files in this office, that my predecessor, Hon. Geo. K. Nash, in a similar case, but after the marriage had been solemnized, once gave an

Constitutional Amendment; Vote on.

opinion to the effect that such marriage was legal, and that the certificate of the fact of the solemnization, made by a minister so situated, should be accepted and recorded by the probate court. As a matter of fact, we know that such marriages are of common occurrence in the State. If, however, the question was entirely new, and properly before me for an opinion, I should hesitate to say that the words "within this State" are meaningless. As it is, I am not disposed to disturb the opinion of Mr. Nash, or interfere with the expressed views of Prosecutor Baird.

Regretting not to be able to give you a more definite opinion, I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

CONSTITUTIONAL AMENDMENT; VOTE ON.

Attorney General's Office,
Columbus, Ohio, April 27, 1883.

Mr. C. M. Kenton, Editor, Etc., Marysville, Ohio:

DEAR SIR:—I am in receipt of your favor of this date in which you say there seems to be "a diversity of opinion relative to the decision of ex-Attorney General Nash concerning the vote on the proposed constitutional amendments relative to the liquor traffic," and ask me to give an opinion on the subject in concise form for publication.

It is not the province of the attorney general to prepare opinions "for publication," yet I have no hesitancy in expressing my individual views on a subject of such general interest to the people.

I can not, however, conceive how any "diversity of opinion" can exist as to the opinions of my distinguished predecessor. On examination, I find on file in the office

Constitutional Amendment; Vote on.

copies of two letters written by Judge Nash which, in my judgment, effectually preclude the idea of any uncertainty on the subject, and which cover the exact point about which you inquire. I quote from each:

“A citizen, without doubt, can vote ‘yes’ on both propositions, or ‘no’ on both, or ‘yes’ on one and ‘no’ on the other.

“I have no doubt about the right of a citizen to vote ‘yes’ on both propositions, or about his right to vote ‘no’ on both propositions, or about his right to vote ‘yes’ on one and ‘no’ on the other.”

These letters are conclusive, and I fully concur in the opinions therein expressed.

If more were needed I might refer you to section 1, article 16 of the constitution itself, which distinctly recognizes the right of the General Assembly to submit more than one proposition at the same time, the only requirement being, as therein expressed, that “when more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately.”

This has been done in the present instance, and I submit that there is not the shadow of a doubt of the legality of the action of the General Assembly. It is idle to speculate on the possibility of the adoption of both amendments. It requires a majority of all the votes cast at the election to adopt either, and in the improbable event of both receiving such a majority, it is possible the court might hold that “the manufacture and the traffic in intoxicating liquors *to be used as a beverage*” is prohibited by one, and that the General Assembly is given power by the other to regulate the traffic and levy a tax on the sale of such liquors when sold for purposes other than “use as a beverage.” Indeed this would seem to be the legitimate result of the adoption of both.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

Change of Incorporated Town to Village.

CHANGE OF INCORPORATED TOWN TO
VILLAGE.

Attorney General's Office,
Columbus, Ohio, May 1, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I acknowledge the receipt, through your office, of a letter dated April 10, 1883, from Mr. W. H. Beebout, "recorder" of Richmond, Jefferson County, Ohio, in which he asks how the citizens of that place shall proceed "to have the act of incorporation changed from a town to a village of the second class.

In reply I have the honor to suggest that no action whatever is necessary. By section 1546, Revised Statutes, municipal corporations are divided into cities, villages and hamlets. Villages of the second class include those containing a population of over two hundred and not less than three thousand. (Sec. 1549, R. S.)

Although in the original act of incorporation Richmond may have been designated as a "town," I am of the opinion that by force of statutes enacted, it is now in name and in law "a village of the second class." If this be so, it obviates the necessity of answering Mr. Beebout's other questions.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

Armory; Construction of Word in Section 3085, Revised Statutes.

ARMORY; CONSTRUCTION OF WORD IN SECTION 3085, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, May 3, 1883.

Col. H. A. Axline, Assistant Adjutant General, Columbus, Ohio:

DEAR SIR:—I am in receipt of your favor of this date asking my opinion as to the proper construction to be given to the words "a suitable armory and drill room," as they occur in section 3085, Revised Statutes, and have considered the same.

Webster defines an armory to be "a *place* where arms and instruments of war are deposited for safe keeping," and in my judgment a drill room which does not contain or have connected with it such a "place," does not come within the purview of the language or the requirements of the section.

As to the force and effect to be given specially to the word "suitable," I express no opinion. Your military knowledge will be sufficient to determine in each instance when called upon to make an inspection.

The proper municipal and township authorities are charged with the duty of not only providing a room to drill in, but also "a suitable place"—otherwise an "armory"—to deposit the arms and accoutrements of a company of the State militia when not in use.

Respectfully submitted,
D. H. HOLLINGSWORTH,
Attorney General.

*Board of Public Works; Power Over Appropriations—
Public Advertising; Construction of Section 4369, Re-
vised Statutes.*

BOARD OF PUBLIC WORKS; POWER OVER
APPROPRIATIONS.

Attorney General's Office,
Columbus, Ohio, May 17, 1883.

*Hon. J. B. Gregory, Chief Engineer Board of Public Works,
Columbus, Ohio:*

DEAR SIR:—In reply to your inquiry of this date, concerning the power of the board of public works over an appropriation of \$10,000 made by the General Assembly to "rebuild the locks and make other necessary repairs in a portion of the Miami and Erie Canal (O. L., Vol. 79, page 11), I have the honor to say that I find no special limitation, either in the act or the general statutes, on the power of the board in expending the amount appropriated, except that it shall be used for the purpose expressed in the act itself. I am of the opinion that the board may, in its judgment, either let all or part of the work in the usual form of contracts, or have the same performed under its immediate supervision, or that of some suitable superintendent appointed for the purpose.

Respectfully submitted,
D. H. HOLLINGSWORTH,
Attorney General.

PUBLIC ADVERTISING; CONSTRUCTION OF SEC-
TION 4369, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, May 17, 1883.

Hon. J. K. Brown, Supervisor of Public Printing:

DEAR SIR:—In reply to your inquiry of recent date, I have the honor to say that, in my judgment, Chapter 9, Title

County Commissioners; Powers as to County Roads; Section 4654.

5, Revised Statutes, is intended to fix a definite price for public advertising where such price is not otherwise fixed by law, to-wit: "For the first insertion, one dollar for each square," etc., the square being a space occupied by two hundred and forty ems, as described in section 4369, as amended March 16, 1880 (O. L., Vol. 77, p. 40). The price of all, or nearly all public advertising being thus fixed, section 316, Revised Statutes has very little application to the amount to be paid for such work.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; POWERS AS TO
COUNTY ROADS; SECTION 4654.

Attorney General's Office,
Columbus, Ohio, May 17, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—I am in receipt of your favor of 14th inst. and have considered the same.

In my judgment "a public road laid out, improved and uninterruptedly used by the public for over thirty years," should not be interfered with by the commissioners under section 4654, Revised Statutes. That section seeks to correct the line of a road which has become uncertain "by reason of the removal of any monument or marked tree, and the power given to the commissioners should be used only in cases coming clearly within its provisions.

The application of section 4668 to the road you mention, would depend upon the fact whether any *substantial* part of the road remained unopened for public use for the space of seven years. Of this you can judge better than I can.

Constitutional Amendments. Vote on.

I think the section would not apply in case of a variance from the line of the established road, if an honest effort has been made to open the road as surveyed and laid out.

Otherwise this section would nullify other sections seeking to correct mistakes.

It must be an actual failure to open the road, or a substantial part thereof.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

CONSTITUTIONAL AMENDMENTS; VOTE ON.

Columbus, Ohio, May 17, 1883.

Mr. Frederick Merrick, Ohio Wesleyan University, Delaware, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 16th inst., in which you are pleased to say there are "two additional points" to those referred to in my letter to the editor of the Union County Journal on the subject of the vote on the proposed constitutional amendments, "upon which many would be glad to know my opinion." If I understand correctly, these points are:

First—If neither proposition receives the required majority to secure its adoption, will the no-license clause in the constitution be stricken out, in the event of the aggregate number of votes cast in favor of both being equal to a majority of all the votes cast at the election?

Second—If neither of the propositions shall receive the required majority, will the courts declare it void because the resolution does not specifically provide the form for a direct vote against them?

Both questions must be answered in the negative. The no-license clause cannot be stricken cut, unless one or both

Scott Liquor Law; Construction of Word "Person" in.

of the proposed amendments, taken singly, shall receive the necessary majority. If either shall receive such majority, it will become a part of the constitution, notwithstanding the fact that no form for a negative vote is provided in the resolution. This is not essential. The constitution only requires that proposed amendments "shall be submitted to the electors for their *approval or rejection*." By reference to the resolution you will see that this has been done. The fact that it contains a form for an affirmative ballot is not material. This might have been omitted, or a form also been given for a negative vote, without in the least affecting the legality of the submission. These are all matters of form, not of substance.

An elector can manifest his "rejection" of either or both propositions by a direct vote against or by refraining from voting at all at the election.

I regret that any confusion should exist in the minds of electors on a subject of so much importance, but feel sure a little careful thought will enable each individual voter to act intelligently.

With high regards I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

SCOTT LIQUOR LAW ; CONSTRUCTION OF WORD
"PERSON" IN.

Attorney General's Office,
Columbus, Ohio, May 17, 1883.

James F. Conly, Esq., Prosecuting Attorney, New Lexington, Ohio:

DEAR SIR:— I have the honor to acknowledge the receipt of your favor of 14th inst.

The inquiry you present is not without difficulty.

Section I of the act referred to seems to provide in

School Funds; Distribution Of.

quite positive terms that "every person engaged"—not even firm or partnership—shall pay the tax. It nowhere provides that partnerships shall pay but one tax for all members. The language is almost identical with the law of the United States imposing a similar tax, yet it was deemed necessary by Congress to provide in a separate section—section 3234 of the United States statutes—that "any number of persons doing business in co-partnership at any one place, shall be required to pay but one special tax."

I find no such provision in our State law, and hence conclude that the tax is payable by each individual member of a firm engaged in the business of trafficking in intoxicating liquors.

I doubt if this was intended by the framer of the law, but such seems to be its literal meaning.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

SCHOOL FUNDS; DISTRIBUTION OF.

Attorney General's Office,
Columbus, Ohio, May 22, 1883.

Noah J. Dever, Esq., Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—I am in receipt of your favor of 17th inst., and have considered the same.

The question you present is not without difficulty. I am of opinion, however, that under section 4010, Revised Statutes, the children in infirmaries and children's homes are entitled to their full distributive share on the basis of

County Commissioners; Allowance of Costs Certified by Mayors.

enumeration, of all school funds of the proper district, both State and local. School funds, as used above, do not include funds for building or contingent purposes. By reading sections 4010 and 3964 as amended (O. L., Vol. 77, p. 58) together, I arrive at this conclusion.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

COUNTY COMMISSIONERS; ALLOWANCE OF COSTS CERTIFIED BY MAYORS.

Attorney General's Office,
Columbus, Ohio, May 23, 1883.

John McSweeney, Jr., Prosecuting Attorney, Wooster, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 22d inst., in which you say you have advised the auditor of your county "that costs certified by mayors out of the county treasury in proper cases under section 1842, Revised Statutes, must be first allowed by the county commissioners before payment." You also enclose copy of your opinion, in which you say "section 1842 is in conflict with 1307." The question is one of considerable difficulty. Having, however, given your official opinion to the auditor as required, I presume he will act upon it, unless the court should hold otherwise in a proper proceeding in mandamus, and any opinion I might entertain would not and ought not to affect his action under an opinion already given by his only legal adviser.

The difficulty I encounter is in making a distinction between the duty of the clerk of court under section 1302, and the duty of a mayor under section 1842. They were

Bridges; Construction of Act of March 24, 1883.

evidently intended to be identical so far as the payment of witness fees is concerned. You will observe that there is a different rule in several sections between the payment of witness fees and the costs of officers.

I only make these suggestions for your further consideration in the event that any one should question your opinion in a proceeding against the auditor.

As requested, I herewith return the copy of your opinion.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

BRIDGES; CONSTRUCTION OF ACT OF MARCH
24, 1883.

Attorney General's Office,
Columbus, Ohio, May 29, 1883.

Mr. E. S. Dodd, Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—I am in receipt of your favor of the 21st inst., in which you ask for my construction of an act of the General Assembly passed March 24, 1883, entitled "an act to authorize certain cities to build bridges," etc., O. L., Vol. 80, p. 73.

As to the possible conflict of said statute with certain provisions of the constitution, relative to the passage of laws of a general nature, I express no opinion. I think it is clear from the statute itself that the legislature intended and did authorize the city or cities therein named to construct bridges and issue bonds as therein provided for, and that in order to provide for the payment for said bonds, the commissioners of the proper county, if requested by a resolution of the council of such city, are required to pay into

Scott Liquor Law; Exempts Manufacturers.

the city treasury all moneys arising from levies made upon the property of such city, by said commissioners for bridge or road purposes during the time any of such bonds remain unpaid, notwithstanding any other law then on the statute books.

The act of March 29, 1883, amending section 4895, is a general statute, and in my judgment, was not intended to modify or affect the operation of the act of March 24th. This seems to me to have been the intention of the General Assembly, and I think should be carried out in good faith by both the county commissioners and the city councils, at least until some court of competent jurisdiction shall determine the act to be unconstitutional. In this last expression I do not intend to express a doubt of the constitutionality of the act in question. Such legislation is very common in this State.

Hoping the foregoing may be satisfactory, I have the honor to be,

Yours very truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; EXEMPTS MANUFACTURERS.

Attorney General's Office,
Columbus, Ohio, May 29, 1883.

Mr. Chas. Baird, Prosecuting Attorney, Akron, Ohio:

DEAR SIR:—I have your favor of the 23d inst. In reply thereto I would say that section 6 of the act of April 17, 1883, relative to the traffic in intoxicating liquors, specifically exempts manufacturers from its provisions when they manufacture liquors from the raw materials and sell the same in quantities of not less than one gallon.

Justices of the Peace; Election of.

I have no doubt a manufacturer can transact such business through an agent, and when done in good faith, and not for the purpose of evading the payment of the tax, the action of such agent will not subject him to the payment of the tax contemplated in said act.

An agent need not necessarily be located in the same building or even in the same town with his principal.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

JUSTICES OF THE PEACE; ELECTION OF.

Attorney General's Office,
Columbus, Ohio, May 30, 1883.

Hon. Jas. W. Newman, Secretary of State:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 24th inst., enclosing two letters from the clerks of the courts in Clark and Wood counties, and asking my opinion concerning your duties as to the same.

The letter from Jas. H. Rabbitts, clerk of the courts of Clark County, and its accompanying certificate, show that on the 2d day of April last, Almon Bradford was "duly elected justice of the peace of the said county for a term of three years from the 6th day of September, A. D. 1883" as successor to M. Way, whose commission expires on that day. Since then Mr. Way has departed this life and you are asked to issue a commission to Mr. Bradford to commence immediately.

I am of the opinion that the law does not authorize a commission to be issued to Mr. Bradford as successor to Mr. Way, deceased, to take effect before the 6th day of Sep-

Justices of the Peace; Election of.

tember next. If not otherwise filled there will be a vacancy in said office until then.

The letter of W. S. Eberly, clerk of the courts of Wood County, shows that at the April election last, one Chas. J. Sage, who now holds a commission as justice of the peace of said county, dated August 24, 1880, and expiring August 24, 1883, was duly elected as his own successor; that thereupon a certificate of such election was sent to the secretary of state's office and a commission issued thereon to said Sage as justice of the peace, to commence immediately, and to continue three years from the date thereof, which commission has been returned to your office with a request that the same be cancelled and another be issued to take effect August 24, 1883.

I am of opinion that a commission can only issue to Mr. Sage under said election, to take effect August 24, 1883, and advise that you cancel the former commission and issue a new one.

The number of justices of the peace to which any township is entitled is governed by sections 566 and 568, and can only be increased or decreased by complying with the provisions thereof. Section 567 provides for filling the vacancy caused by the death of Mr. Way.

I have the honor to return herewith said letters.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

O. S. and S. O. Home; Superintendent of Schools at.

O. S. AND S. O. HOME; SUPERINTENDENT OF
SCHOOLS AT.

Attorney General's Office,
Columbus, Ohio, May 30, 1883.

*Hon. C. H. Grosvenor, President Trustees O. S. and S. O.
Home:*

DEAR SIR:—In reply to your favor of the 25th inst., I have the honor to state that, in my opinion, section 695, Revised Statutes, is not mandatory to the extent of requiring the board of trustees upon the nomination of the superintendent to appoint a superintendent of instruction if in the judgment of the board the same is not necessary to the well being of the institution. If it were otherwise a time might arrive, and doubtless will in the course of a few years when the institution would have a superintendent of instruction and corps of teachers, with no one in the State eligible as an inmate. Whenever the number of inmates warrants a reduction in the force of subordinates—the superintendent of instruction included—I am of the opinion the board has power so to order. The position of superintendent of instruction is not, in my judgment, an office within the meaning of section 4, article 5 of the constitution, or such as is described, in *State vs. Wilson*, 29 O. St., 347; hence it may be filled by a woman.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

*Ordinances; Publication of, Providing For Improvements
—Medical Attendance for Paupers; Payment for.*

ORDINANCES; PUBLICATION OF, PROVIDING
FOR IMPROVEMENTS.

Attorney General's Office,
Columbus, Ohio, June 7, 1883.

Mr. J. L. Hosler, Corporation Clerk, Bettsville, Ohio:

DEAR SIR:—In reply to your favor of the 5th inst. I regret to say that the attorney general is not permitted to advise corporation officers. The village solicitor is the proper person to apply to.

I am of opinion, however, that "ordinances of a general nature or providing for improvements" must be published in a newspaper of general circulation in the corporation, except in corporations where there is no newspaper published. The law does not designate the number of subscribers a newspaper must have. It ought, however, to be a paper of general circulation within the corporation.

In all cases of doubt, the clerk should make the publication without investigating the exact number of subscribers any paper may have, provided it is published in the corporation.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

MEDICAL ATTENDANCE FOR PAUPERS; PAY-
MENT FOR.

Attorney General's Office,
Columbus, Ohio, June 8, 1883.

*John M. Bradwick, Esq., Prosecuting Attorney, Marysville,
Ohio:*

DEAR SIR:—I am in receipt of your favor of 7th inst., enclosing interrogatory proposed to you by the board of infirmary directors.

Warden Ohio Penitentiary; Payment of Mileage to Sheriffs.

It would be impossible to answer their questions without information as to the particular case under consideration.

The act of April 13, 1882 (O. L., Vol. 79, p. 90), does not necessarily interfere in every instance with section 1494. Suppose the physicians employed under the above act should be temporarily absent or sick, would that defeat the right to public relief in proper cases? I think not.

So it might be in other cases. No bills for medical attendance on paupers in townships where contracts have been made under the act of April 13, 1882, should be allowed to physicians other than those contracted with, except in special cases such as I mention. Each case must be determined by the facts surrounding it. The right of the poor, in proper cases, to have public relief, is fixed by the general statute, and the above act is only one method of furnishing it.

Regretting that I am unable to advise you more fully, I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

WARDEN OHIO PENITENTIARY; PAYMENT OF
MILEAGE TO SHERIFFS.

Attorney General's Office,
Columbus, Ohio, June 8, 1883.

Capt. Noah Thomas, Warden Ohio Penitentiary:

DEAR SIR:—Yours of the 31st ult. received. In reply I would say that I know of no law, except section 7335, Revised Statutes, for the payment of compensation to county sheriffs for transporting convicts to the penitentiary. The sheriff of Franklin County is no exception. Under that section he is entitled to mileage the same as other sheriffs. The

Notary Public; Oath of; Can be Administered by a Notary.

fact that the sheriff of Franklin County has but a short distance to transport convicts from the county jail, it seems to me cannot affect the literal reading of the statute.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

NOTARY PUBLIC; OATH OF; CAN BE ADMIN-
ISTERED BY A NOTARY.

Attorney General's Office,
Columbus, Ohio, June 9, 1883.

Hon. Jas. W. Newman, Secretary of State:

DEAR SIR:—I am in receipt of your favor of this date, enclosing letter of Geo. W. Pettit, clerk of the courts of Adams County, Ohio, enquiring whether a person appointed notary public can take and subscribe the oath of office required to be endorsed on his commission before another notary or justice of the peace.

I am of the opinion that he can do so before any officer authorized to administer oaths generally, and therefore he can do so before either a notary public or justice of the peace.

The amended law makes no change in this respect.

I have the honor to return herewith the letter to Mr. Pettit.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

*School Boards; Power to Bring Suits—Scott Liquor Law;
Payment Can Not be Avoided by Quitting.*

SCHOOL BOARDS; POWER TO BRING SUITS.

Attorney General's Office,
Columbus, Ohio, June 12, 1883.

*John C. Clark, Esq., Prosecuting Attorney, Greenville,
Ohio:*

DEAR SIR:—Your favor of this date received. In reply I would say that I am of the opinion that school boards have no power in bringing suits in their corporate or official capacity, to ignore the prosecuting attorney provided for in section 3977, Revised Statutes (O. L., Vol. 79, page 26), and employ other counsel to be paid out of the public treasury.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; PAYMENT CAN NOT BE
AVOIDED BY QUITTING.

Attorney General's Office,
Columbus, Ohio, June 12, 1883.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your favor of the 8th inst. is received and considered. I find nothing in the act of April 17, 1883, "further providing against the evils resulting from the traffic in intoxicating liquors," which authorizes a dealer, after making his return and commencing business, to avoid payment of the tax by retiring from business before the 20th inst. The assessment becomes a lien on the fourth Monday of April of each year, and should be collected by the proper officer in the usual way, without reference to whether the

Gas Main From Deaf and Dumb Asylum.

dealer subsequently retires from business during the year or not. It is probable the county commissioners in a proper case would be justified in granting a refunding order for taxes of this character the same as in other cases.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

GAS MAIN FROM DEAF AND DUMB ASYLUM.

Attorney General's Office,
Columbus, Ohio, June 13, 1883.

Capt. Noah Thomas, Warden Ohio Penitentiary, Columbus, Ohio:

DEAR SIR:—Your favor of 12th inst. received. In reply I would say that, while your inquiries are not without difficulty, I am of the opinion that the board of directors of the Ohio Penitentiary is the proper authority to expend the \$4,000 appropriated by act of April 17, 1883, for a six-inch gas main from the State Home to the Deaf and Dumb Asylum. The gas works, mains, etc., are by law under control of the penitentiary authorities, and in one sense a part of the institution. This being so, the provisions of sections 782 and 783, Revised Statutes, relative to plans and specifications do not, in my judgment, apply. The act, however, seems to be defective in omitting the usual provision for taking up and utilizing the old mains. The act is silent on this point. So far as appears from it, the six-inch main might be put down on another route, and without interfering with the present pipes. I find nothing in the general laws to supply this defect; sections 7400, 7406 and 7416 seem to contemplate only the general management of the institution. Perhaps the sale of the old materials, if made

Board of Education's Bonds Not Exempt From Taxation
—Athens Asylum; Title to Lands of.

as proposed, would not be seriously objected to by any one, but as a matter of strict law I find no authority for it.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

BOARD OF EDUCATION'S BONDS NOT EXEMPT
FROM TAXATION.

Attorney General's Office,
Columbus, Ohio, June 20, 1883.

D. T. Clover, Esq., Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—Absence from the city has prevented an answer to your favor of 14th inst. at an earlier date.

I now have the honor to say in reply that, in my opinion, the bonds issued by boards of education are not exempt from taxation. I know of no law making any distinction between them and other forms of indebtedness which are required to be listed for taxation.

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

ATHENS ASYLUM; TITLE TO LANDS OF.

Attorney General's Office,
Columbus, Ohio, June 20, 1883.

Messrs. Grosvenor and Jones, Attornies-at-Law, Athens, Ohio:

GENTLEMEN:—I have the honor to acknowledge the receipt of your favor of 14th inst., enclosing copy of pro-

Scott Liquor Law; Tax Not Transferable.

posed deed of real estate to Athens Asylum, and requesting my opinion as to whether title of the lands of the institution should be taken in the name of the State or of the board of trustees.

In reply I would say that, in my judgment, title should be taken in the name of the board, its successors and assigns, as you propose. It may not be necessary, but it seems to me it would be proper to also mention the names of the present members of the board.

Enclosed I return proposed deed.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; TAX NOT TRANSFERABLE.

Attorney General's Office,
Columbus, Ohio, June 21, 1883.

Wm. G. Way, Esq., Attorney-at-Law, Marietta, Ohio:

DEAR SIR:—The attorney general is not permitted to give official opinions, except to certain public officers named in the statute. I will say, however, that I find nothing in the act commonly known as the "Scott law," which authorizes a transfer of the tax receipt from one dealer to another, so as to warrant the latter in doing business without payment of another assessment.

I enclose certified copy of the law for your examination.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Injunction Against County Auditor and Treasurer.

INJUNCTION AGAINST COUNTY AUDITOR AND
TREASURER.

Attorney General's Office,
Columbus, Ohio, June 20, 1883.

A. L. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Your favor of the 19th inst. enclosing a number of interrogatories by the county auditor and treasurer of Van Wert County, has been received. The questions relate solely to a matter now in litigation, and over which your courts have assumed jurisdiction, hence I have considerable hesitancy in giving any opinion on the subject. The better way would be for the auditor and treasurer, if in doubt as to their duties under an injunction, to apply to the court out of which it issued by a motion to modify and thus obtain a declaration of the court as to the scope and extent of the order. A mistaken opinion of the prosecuting attorney or the attorney general would not relieve them from liability for contempt of court in violating an injunction. However, since the questions are before me, I will endeavor to answer them as best I can.

The petition asks that the trustees "be forever enjoined from making any levy of taxes," etc., the auditor "from placing any other of said taxes on the duplicate," etc., and the treasurer "from attempting to collect any of said taxes now on the duplicate," etc. A temporary injunction was granted to restrain the above officers from doing the acts above severally set forth.

The trustees moved to modify the injunction as to them, and the court did modify it so as not to interfere with their right to levy *further taxes* on the property of citizens of the township, other than Smith Miller and E. M. Baker. But the question arises: How can this affect an order restraining the treasurer from attempting to collect taxes, now and heretofore on the duplicate? Or how can the modification of an injunction, which is made to apply in express terms

Scott Liquor Law; Prohibitory Ordinances Under.

to the trustees only, authorize the county auditor to do an act against which he is enjoined?

It is always safe for officers to literally obey an injunction until it is modified as to them, and I would, therefore, advise the auditor and treasurer to either continue to obey the order in question, or go into court, or before the judge in chambers, and ask to have it also modified as to them.

A court is the sole judge of a contempt of its own orders, and these officers can not avoid responsibility by seeking your or my advice, as to the effect and scope of a judicial order.

Regretting that I cannot more fully comply with your request to advise the auditor and treasurer as to their duties in the premises, I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; PROHIBITORY ORDINANCES UNDER.

Attorney General's Office,
Columbus, Ohio, June 21, 1883.

P. R. Kerr, Esq., Richwood, Ohio:

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

I am of the opinion that the recent act of the General Assembly, re-enacting the provisions of the municipal code under which incorporated villages were authorized to prohibit ale, beer and porter houses, etc., can not operate to revive ordinances which become void by reason of the repeal of such provision of the code. Ordinances to be effective must be re-enacted.

I have the honor to be, Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Justice of the Peace; Failure to Give Bond—Canton Mutual
Fire Insurance Company; Certificate.*

JUSTICE OF THE PEACE; FAILURE TO GIVE
BOND.

Attorney General's Office,
Columbus, Ohio, June 22, 1883.

*Walter L. Weaver, Esq., Prosecuting Attorney, Springfield,
Ohio:*

DEAR SIR:—Your favor of the 21st inst. is received. When a person elected justice of the peace fails to give bond as provided in section 579, Revised Statutes, the trustees should give notice of a new election as therein required. Section 567 provides how such notice shall be given. The election should be to fill the vacancy caused by the refusal to serve.

By carefully reading these two sections the trustees will have no difficulty in ascertaining their duties.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CANTON MUTUAL FIRE INSURANCE COMPANY;
CERTIFICATE.

Attorney General's Office,
Columbus, Ohio, June 29, 1883.

*Hon. C. H. Moore, Superintendent of Insurance, Columbus,
Ohio:*

DEAR SIR:—Your favor of 18th inst., relative to the "Canton Mutual Fire Insurance Company," has been received. I quite approve of your action in withholding from the company a certificate to the effect that it has in all respects complied with the laws of the State relating to insur-

*Scott Liquor Law; Payment Cannot be Escaped by Ceasing
After Return.*

ance. The assessment required to be made by section 3650, Revised Statutes, as amended April 15, 1882 (O. L., Vol. 79, page 133), on the 30th day of September of each year, is a substantial requirement, and until complied with, I am of the opinion you should not relicense the company. Should the company unreasonably delay or refuse to comply with this or any other provision of the statutes, it will become your duty, under section 268, to see that it is enforced.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; PAYMENT CANNOT BE
ESCAPED BY CEASING AFTER RETURN.

Attorney General's Office,
Columbus, Ohio, June 27, 1883.

S. M. Prugh, Esq., County Auditor, London, Ohio:

DEAR SIR:—Your favor of the 26th inst. received.

The prosecuting attorney is the only official authorized to advise county auditors, yet I will say in answer to your inquiry, that I am of the opinion that a person cannot escape the payment of the assessment under the liquor tax law by ceasing to do business after having made his return to the assessor and engaged in the business for any length of time.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Liquor Law; Payment Must be for Whole Year—
Board of Education; Powers Over School Property.*

SCOTT LIQUOR LAW; PAYMENT MUST BE FOR
WHOLE YEAR.

Attorney General's Office,
Columbus, Ohio, June 27, 1883.

Hon. W. S. Coppellor, County Auditor, Cincinnati, Ohio:

DEAR SIR:—I am of opinion the liquor tax must be paid for the entire year. If relief is possible at all to those going out of the business, it must come through a regular refunding order. It is not a matter of right.

D. H. HOLLINGSWORTH,
Attorney General.

BOARD OF EDUCATION; POWERS OVER SCHOOL
PROPERTY.

Attorney General's Office,
Columbus, Ohio, June 27, 1883.

W. H. Gavitt, Esq., Prosecuting Attorney, Delta, Ohio:

DEAR SIR:—Your favor of the 26th inst. has been received. I know of no law authorizing a board of education to grant the use of school property under its control for private purposes. Private schools are not exceptions. I think you will find all the authority necessary to support this view in 35th Ohio State, page 143.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Turnpike Roads—County Commissioners; Keeping Children
at County Infirmary.*

TURNPIKE ROADS.

Attorney General's Office,
Columbus, Ohio, June 27, 1883.

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

DEAR SIR:—In my judgment the authorities having the care and control of turnpike roads are the proper officers to see that they are not encroached upon by adjacent land owners. In some counties these roads are under control of the commissioners, in others the township trustees, and again in others they are managed by companies organized for that purpose.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; KEEPING CHILDREN
AT COUNTY INFIRMARY.

Attorney General's Office,
Columbus, Ohio, June 28, 1883.

*J. P. Winstead, Esq., Prosecuting Attorney, Circleville,
Ohio:*

DEAR SIR:—Your favor of the 23d inst. has been received. Under the law as printed, to which you refer (O. L., Vol. 80, page 102), I am of the opinion that the county commissioners can not provide for keeping children in a separate building, on the infirmary farm, and under control of the infirmary directors as you propose. The term "other charitable institution" as used in the statute, means, in my judgment, an institution, private or otherwise, away from and not under the same management as the county infirmary.

Coroner; Term of Office.

Having been a member of the General Assembly which passed the act, it seemed to me on reading your letter, that the law as printed under direction of the secretary of state, was not the same as when enacted by the legislature, and I therefore made an examination of the journals of the Senate and House with the following result:

After the word "infirmary" in line two of section 2, the words "unless separated from the adult paupers therein" should be inserted. They were left out by mistake of the clerk.

Under the law with this amendment added, I am of the opinion the proceedings you contemplate relative to the care of the children in your county infirmary will be legal. The difficulty arises, however, as to whether the certified copy of the law or the legislative journals shall control the question. The question, although difficult, is not entirely new. It is one for the courts to decide; yet I have no hesitancy in saying that, in my judgment, the journals of the two houses must govern.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

CORONER; TERM OF OFFICE.

Attorney General's Office,
Columbus, Ohio, June 28, 1883.

Emmett Tompkins, Esq., Prosecuting Attorney, Athens, Ohio:

DEAR SIR:—Your favor of 26th inst. is received. In reply I would say that, in my judgment, the coroner elected in Athens County at the October election, 1882, is entitled to hold his office for the full term provided by law. The question is not without difficulty, but I think you will find

Scott Liquor Law; Dealer Can Remove Business Within Corporation.

enough in the case of Ohio ex rel. vs. Commissioners, etc., 7th O. S., 125, to answer it satisfactorily.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LIQUOR LAW; DEALER CAN REMOVE
BUSINESS WITHIN CORPORATION.

Attorney General's Office,
Columbus, Ohio, June 28, 1883.

D. C. Badger, Esq., Prosecuting Attorney, London, Ohio:

DEAR SIR:—Your favor of this day received. I am of opinion that a dealer in intoxicating liquors who has paid his assessment under the Scott law, can remove his place of business, *in good faith*, from one room to another within the corporation, without paying an additional assessment. He cannot do business in two places at the same time without paying two assessments. I see no reason why a dealer may not remove his business as many times as he may think proper, and if so, he can absolutely close up and abandon his usual place, and transfer his business to another point for a few days at a time.

Your question is not without difficulty, but I think the above is a fair conclusion from the act, though not specially mentioned.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Power of Dealer to Change Place of Business
—Toy Pistols; What is Under Act.*

SCOTT LAW; POWER OF DEALER TO CHANGE
PLACE OF BUSINESS.

Attorney General's Office,
Columbus, Ohio, June 28, 1883.

D. R. Clover, Esq., Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—Yours of 27th inst. received. I am of the opinion that a dealer in intoxicating liquors, having paid his assessment under the Scott law, can in good faith close up his place of business and remove to another room within the corporation, without being liable to an additional assessment.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

TOY PISTOLS; WHAT IS UNDER ACT.

Attorney General's Office,
Columbus, Ohio, June 28, 1883.

W. B. Woolsey, Mayor, Nevada, Ohio:

DEAR SIR:—Your favor of recent date is received. The law relative to the sale of toy pistols describes them as "any pistols manufactured out of any metallic or hard substance, commonly known as the 'toy pistol,'" and I presume it is immaterial whether they use paper caps or not.

The statute is quite broad and I have no doubt was intended to cover the kind of a pistol you mention.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Penalty of Twenty Per Cent. Under.

SCOTT LAW; PENALTY OF TWENTY PER CENT.
UNDER.Attorney General's Office,
Columbus, Ohio, June 29, 1883.*Chas. R. Truesdale, Esq., Prosecuting Attorney, Youngs-*
town, Ohio:

DEAR SIR:—Your favor of 20th inst. is received. I agree with you that neither the auditor nor treasurer has any discretion to remit the penalty of twenty per cent. imposed by the Scott liquor law.

Their respective duties are clearly pointed out by the statute.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.SCOTT LAW; PENALTY OF TWENTY PER CENT.
UNDER.Attorney General's Office,
Columbus, Ohio, June 29, 1883.*A. Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:*

DEAR SIR:—Your favor of 27th inst. is received. It is the duty of the county treasurer under section 5 of the Scott law, when an assessment is not paid when due, to proceed to collect the same as therein provided, together with the twenty per cent. penalty, and when collected he must account to the auditor.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Tax Must be Paid for Entire Year—Scott Law;
Ordinances to Prohibit Under.*

SCOTT LAW; TAX MUST BE PAID FOR ENTIRE
YEAR.

Attorney General's Office,
Columbus, Ohio, June 29, 1883.

C. D. Clarksley Prosecuting Attorney, Painsville, Ohio:

DEAR SIR:—Your favor of the 28th inst. is received. I can find nothing in the law which authorizes a dealer in intoxicating liquors to pay the tax for a fractional part of a year, except when he commences business during the year, and then it must be paid in full for the remainder of that assessment year.

See section 2 of the Scott law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; ORDINANCES TO PROHIBIT
UNDER.

Attorney General's Office,
Columbus, Ohio, June 29, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your letter of 28th inst. is received. Your first inquiry is not answered by the statute. It is my opinion, however, that in the event that a village corporation shall prohibit ale, beer and porter houses within the corporate limits, by ordinance under section 9 of the Scott law, the ratable proportion of the taxes previously assessed and collected under the same law, should be paid out of the county and corporation treasuries, in the same proportion the taxes

Scott Law; General Opinion on.

are required to be paid into said treasuries by section 7 of the act.

Payments out of the county treasury should be made on warrant of the auditor, and those out of the corporation treasury on warrant of the clerk or mayor. These officers, before drawing their warrant in such case, should first be satisfied that such ordinance has been duly passed and legally published, either by the certificate of the mayor or other conclusive evidence.

As to your second inquiry, I would say that I find nothing in the statute which can be construed to give the treasurer discretionary power over the collection of the penalty of twenty per cent. in a proper case.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; GENERAL OPINION ON.

Attorney General's Office,
Columbus, Ohio, June 29, 1883.

C. A. Layton, Esq., Prosecuting Attorney, Wapakoneta, Ohio:

DEAR SIR:—Your favor of 27th inst., in which you ask for my official opinion on a number of matters relating to the execution of the Scott liquor law, has been received.

In reply I would frankly say that the questions you present are not without difficulty. The act, in some of its features, makes a new departure in the liquor legislation of the State, and its enforcement, like that of most laws of an important nature, when first enacted, will doubtless be attended with more or less friction, until its various requirements are better understood by the people. It is, therefore, proper that all officers who have anything to do with its

Scott Law; General Opinion on.

execution, should take special pains to understand and explain its provisions, to the end that as few misunderstandings may arise as possible.

It is not an act to destroy, but rather one to regulate a business. The language used in providing for an assessment on the business of trafficking in intoxicating liquors is almost identical with that of the United States statute imposing a similar tax on the same business, and to this extent we may safely look to the established construction of that statute to explain any matter which seems to be ambiguous or uncertain in the present one. Applying this test and giving to the language of the act itself a plain, common sense interpretation, I am of the opinion that your questions may be answered as follows:

First—The tax must be paid by each person engaged in the traffic, and the immunity secured by such payment cannot be sold or transferred to another dealer.

Second—The author of the act, as well as the General Assembly, I am convinced, intended to use the word "person" to designate not only an individual, but also a single firm or corporation; but whether the language used is susceptible of this construction or not may well be doubted. It is not unfair, however, to act upon the apparent intention of the General Assembly in construing any law until the courts decide to the contrary.

Third—A dealer who has paid the tax does not, by retiring from business before the end of the year, thereby become entitled to have a proportioned amount of the same refunded; nor can one who has been properly assessed escape payment by ceasing to do business after the tax year commences. Fractional assessments are only made when the business is commenced during the year, and then they are for the entire residue thereof.

Fourth—A person who carries on business at more than one place must pay a tax for each place. He may, however, change the location of his business in good faith from one room or building to another in the same corpora-

Scott Law; General Opinion on.

tion without thereby subjecting himself to an additional assessment. The size of the room or place where the business is conducted is immaterial, and the fact that it opens out on different streets does not increase the amount to be paid. There may also be more than one bar or drinking counter in the same "place" under a single management, and the dealer be required to pay but one assessment.

Fifth—Manufacturers from the raw material are not liable to be assessed, unless they sell in quantities of less than a single gallon at one time. The fact of the liquor being put up in pint or quart bottles is not material. It is the quantity sold, not the size or number of the vessels containing it which determines the question.

Sixth—A manufacturer may lawfully do by agent that which he is authorized to do himself.

Seventh—Physicians and druggists have no greater privileges than ordinary dealers; they may each sell on prescription and for certain purposes specially named in the act without paying the tax.

Eighth—I experience the most difficulty in satisfactorily answering your inquiries concerning the penalty of twenty *per centum* and the manner in which it is to be enforced. The language used is imperative and provides that "if any assessment shall not be paid when due, there shall be added a penalty thereto of twenty *per centum*, which shall be collected therewith." I find nothing in the law to authorize any officer to postpone the day of payment, or to remit any part of either the tax or penalty; they are to be collected together and accounted for by the treasurer. The assessments for this current year became due on the 20th inst., and should have been paid on or before that date. That they were not so paid is not the fault of the law. The present embarrassment is due to the fact that many dealers, acting on the advice of well meaning attorneys as to the constitutionality of the act, neglected to pay at the proper time. My difficulty, however, arises from another cause. In quite a number of counties in the State, the commissioners and

Scott Law; Manufacturer May Sell by Agent.

other officials having charge of the collection of taxes, undertook by resolution, and in some instances by a tacit or express understanding with the dealers, to extend the time of payment beyond the period fixed in the law.

This action, while it might have been quite reasonable in view of the then pending legislation to test the validity of the act, was not, in my judgment, warranted by the statutes of the State, but having been acted upon in good faith, it is questionable if it ought not now to be carried out in the same spirit of fairness. Indeed, it may be doubted if the officers of such counties are not estopped from exacting the penalty. I regret that your letter does not inform me whether any arrangement of this kind was made in Auglaize County, but with the above suggestions, I do not doubt that you will be able to properly advise your county officials relative to their respective duties. It is more important to deal fairly and justly with each citizen of the State than it is to add a few dollars of penalty to the public funds.

With regards, I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

SCOTT LAW; MANUFACTURER MAY SELL BY
AGENT.

Attorney General's Office,
Columbus, Ohio, July 4, 1883.

Joseph Stafford, Esq., County Auditor, Gallipolis, Ohio:

DEAR SIR: Your favor of the 2d inst. is received. The question you ask is one of fact rather than of law. Section 6 of the liquor tax law specifically exempts manufacturers from payment of the tax when they manufacture from the

Scott Law; Sale of Wine Under by Manufacturer.

raw material and sell in quantities of one gallon or more at any one time.

A manufacturer has the same rights as other business men to sell his wares through an agent appointed in good faith for that purpose. Perhaps the law ought to have restricted sales by manufacturers without payment of the tax, to the place where they carry on their business, in justice to other dealers who pay the tax and with whom the agents of manufacturers come in competition as in the case you mention. But this has not been done. Of course the appointment and acts of an agent must be *bona fide*, and not intruded as a mere evasion.

In case of doubt as to the application of the law in any case, the prosecuting attorney is required by law to advise with you relative thereto.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; SALE OF WINE UNDER BY MANUFACTURER.

Attorney General's Office,
Columbus, Ohio, July 4, 1883.

A. H. Peffley, Esq., Arcanum, Ohio:

DEAR SIR:—Your favor of 2d inst., in which you ask me if you “make wine from grapes of your own raising,” whether you “can sell or give it away” without paying the Scott liquor law tax, is received.

You can give it away at pleasure and may sell in quantities of not less than one gallon at any one time without paying the tax. You can not sell at retail without liability under the law.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Prohibitory Ordinances Under—Scott Law;
Duties of Druggists; Return of Tax When Prohibited.*

SCOTT LAW; PROHIBITORY ORDINANCES
UNDER.

Attorney General's Office,
Columbus, Ohio, July 5, 1883.

T. F. Hill, Esq., Aberdeen, Ohio:

DEAR SIR:—Your favor of 28th ult., on behalf of the village council of Aberdeen, is received.

I do not understand that village corporations are authorized to absolutely prohibit the sale of all kinds of intoxicating liquors within the corporation under the recent act of the General Assembly commonly known as the Scott law. The power to prohibit is expressly confined to "ale, beer and porter houses and places of habitual resort for tippling and intemperance."

Whether any particular place falls within the above or not is a question of fact to be determined by the circumstances in each case.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DUTIES OF DRUGGISTS; RETURN
OF TAX WHEN PROHIBITED.

Attorney General's Office,
Columbus, Ohio, July 4, 1883.

W. A. Welch, Esq., Attorney-at-Law, New Holland, Ohio:

DEAR SIR:—Your favor of the 29th ult. is received. I am of opinion that no prescription is necessary in selling intoxicating liquors for "exclusively known mechanical, pharmaceutical or sacramental purposes," by a person who

County Ditches.

has not paid the liquor tax. Our courts have not yet given a construction to the above terms. Probably the words "exclusively known" may be construed to mean that the use for which the liquor is purchased must be *known* to the seller, and must be *exclusive* of all purposes other than those enumerated. In fact, I see no other possible application.

Your second question is not in terms answered by the statute. I give it, however, as my opinion that in the event of a village corporation prohibiting ale, beer and porter houses, etc., under section 9 of the act, the ratable proportion of the taxes to be refunded should be paid out of the county and corporation treasuries in the same proportion in which they have been paid into such treasuries.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY DITCHES.

Attorney General's Office,
Columbus, Ohio, July 4, 1883.

D. T. Clover, Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—I am of opinion, under section 4454, Revised Statutes, that the surveyor should make an estimate of cost of each section of one hundred feet of ditch to be constructed and return the same with the report and plots required under that section.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

*Ohio State University; Payment of Street Improvements by
—Scott Law; Distribution of Tax Collected Under.*

OHIO STATE UNIVERSITY; PAYMENT OF
STREET IMPROVEMENTS BY.

Attorney General's Office,
Columbus, Ohio, July 4, 1883.

*Albert Allen, Esq., Secretary Trustees Ohio State University,
Columbus, Ohio:*

DEAR SIR:—Your favor of 2d inst., in which you enquire if the board of trustees has power "to divert any portion of the State funds to the improvement of High street, or pay any assessment for such improvement," is received.

I do not find that the question has ever been settled by the courts. It seems to me, however, on general principles, that the board has no such power unless specifically granted by the General Assembly. There is no doubt of the power of the legislature to make an appropriation for the purpose, either out of the general revenues of the State or by authorizing the trustees to use such funds of the institution as do not belong to the irreducible fund, or have not been otherwise specifically appropriated.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DISTRIBUTION OF TAX COL-
LECTED UNDER.

Attorney General's Office,
Columbus, Ohio, July 5, 1883.

M. D. Ward, Esq., Auditor, Mansfield, Ohio:

DEAR SIR:—Your favor of 4th inst. is received. All the revenues arising under the Scott liquor law should be

Insurance Companies; Must Have \$100,000 Cash Assets.

paid into the county treasury and passed to the credit of the poor fund, except that three-fourths of such as may be paid in on account of the traffic in cities and incorporations must be certified by the county auditor into the treasury of such corporations.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

INSURANCE COMPANIES; MUST HAVE \$100,000
CASH ASSETS.

Attorney General's Office,
Columbus, Ohio, July 5, 1883.

*Hon. C. H. Moore, Superintendent of Insurance, Columbus,
Ohio:*

SIR:—Your favor of the 29th ult. has been received. By it I am informed that a number of companies organized under the laws of other states of the United States, without capital other than the premium notes of the members, have made application to you to be admitted to do business in the State of Ohio; and that you desire my official opinion as to what amount of cash assets such companies are required to have by section 3656, Revised Statutes, before they are entitled to such admission. This section provides in the first instance that no insurance company, organized under the laws of any other State, shall do business in this State unless possessed of the amount of actual capital required by similar companies formed under the laws of this State, which capital stock must be fully paid up and invested in accordance with the laws of the State where such company is organized. Such companies cannot be organized under this State with a smaller capital stock than \$100,000—see section 3634. After this general provision in section 3656,

Scott Law; Exempts Manufacturers; Agents of; Personal Representative's Powers.

these words occur: "But if the company is a mutual company, *actual cash assets of the same amount and description*, invested and deposited as required by the laws of the State where it was organized, shall be accepted *in lieu of capital stock.*" The italics are mine. As I read this clause, it means that such mutual companies, in lieu of capital stock must have "cash assets" to the amount of and in place of such "capital stock," to-wit, not less than \$100,000, before they can do business in this State.

The object is clearly to protect policy holders in Ohio from imposition by companies of other States which are not subject to that rigid supervision possible in case of home companies. I admit that the question is not without doubt, and before you take any action upon it, I suggest that opportunity be given those who differ to be heard.

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

(Modified by letter of December 20, 1883.)

SCOTT LAW; EXEMPTS MANUFACTURERS;
AGENTS OF; PERSONAL REPRESENTA-
TIVE'S POWERS.

Attorney General's Office,
Columbus, Ohio, July 13, 1883.

Carlos M. Stone, Esq., Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—Owing to an absence of a few days on account of sickness, I did not receive your favor of the 7th inst. until today, and consequently it is impossible to comply with your request to answer by the 10th inst. I hope you will allow this as a valid excuse.

Scott Law; Exempts Manufacturers; Agents of; Personal Representative's Powers.

No doubt you have satisfactorily answered the questions contained in your letter, and any suggestions I might now make would fail to reach you in time to aid in forming a correct conclusion. I will say, however, that the question of agency which you raise under the Scott law is a new one, and is surrounded by many real difficulties.

The law in terms exempts from payment of the tax, a manufacturer who sells only in quantities of not less than one gallon, and I know of no legal reason, in the law or general statutes, why such manufacturer may not in good faith appoint an agent to act for him or assist him in making such sales without his agent becoming liable for the payment of the tax. To hold otherwise would certainly contravene the elementary principles of agency.

I doubt, however, if this exemption is broad enough to cover the case you mention of a person who procures beer by the barrel of a Milwaukee brewer for whom he claims to act as agent, and then bottles and sells it by the case in Ohio. It seems to me only reasonable that the law should be held to apply strictly to manufacturers as well as dealers who carry on business in this State. At least I am of opinion that immunity should not be allowed to such agents without first fairly testing the question before the courts. This would be but a simple act of justice to wholesale dealers who pay the tax in good faith. The same may be said of a brewer in the State who should undertake to evade the law by appointing, as you suggest, "a hundred grocery keepers and fifty saloon keepers his agents to sell on commission," for the purpose of enabling such grocers and saloonists to avoid payment of the tax. Not that a person may not appoint as many agents as become necessary in carrying on his business, but rather that such an exceptional proceeding would call for strict legal investigation to the end that the law may be enforced in both spirit and letter. It is not every commission merchant who is in law the agent of another to the extent of being relieved of responsibility, and all at-

Scott Law; Exempts Manufacturers; Agents of; Personal Representative's Powers.

tempts to evade this, as well as other laws, should be rigidly investigated, and, if possible, thwarted.

Your other questions are more easily answered, although in some respects they present parts which can only be certainly settled by judicial determination in the courts.

I am of opinion that the personal representatives of a deceased dealer, who has paid the tax, may continue the business at the same place during the current tax year for which such deceased person had paid an assessment, without paying an additional tax for the residue of the year.

This is not specifically provided for in the act, but any other construction would be manifestly unjust and, as I think, contrary to the ordinary rules of law. But I am at the same time convinced that the immunity secured by payment of the tax cannot be made the subject of barter or sale, and that it is more in the nature of a personal right not transferable from one dealer to another than a property right subject to the incidents of trade.

After the tax year has commenced and the assessment becomes a lien upon real estate, a dealer can not quit business and thereby avoid liability for the tax. The assessment is an entirety, and the time to quit business, if one wishes to avoid payment, is before it attaches as a lien.

A purchaser of intoxicating liquors from a manufacturer cannot resell them without payment of the tax.

This, I believe, answers all your interrogatories, but I must admit, in a somewhat unsatisfactory manner; at least not entirely satisfactory to myself. I trust, however, you will be able to so advise your county officials as to avoid the difficulties too frequently incident to the enforcement of new laws.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Secretary of State; Duties of—Scott Law Change of Place
of Business.*

SECRETARY OF STATE; DUTIES OF.

Attorney General's Office,
Columbus, Ohio, July 13, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—Your favor of this date, enclosing a letter from J. D. Johnson, recorder of the incorporated village of West Chester, is received.

If I understand it correctly, he makes a number of charges against the officials of the village, and wishes you to interfere to straighten out the tangle into which he claims they have drifted by reason of certain irregularities.

I am of opinion that the secretary of state has no power in the premises. Such duty belongs exclusively to the courts and to other official authorities within the proper county. I have the honor, therefore, to advise that you so instruct Mr. Johnson.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; CHANGE OF PLACE OF BUSINESS.

Attorney General's Office,
Columbus, Ohio, July 13, 1883.

W. C. G. Krouse, Esq., Prosecuting Attorney, Ottawa, Ohio:

DEAR SIR:—Your favor of 10th inst. is received. The law is silent on the questions you ask. I am of opinion, however, that a dealer in intoxicating liquors who has paid the assessment provided for by the recent act of the General Assembly, known as the Scott law, can change his place of business during the year from one room or building, within

Insane Persons; Care of Under Section 707, Revised Statutes.

the corporation where he pays the tax, to another without becoming liable to an extra assessment.

I do not think he can so remove his business from one tax district to another even in the same county—that is, from one village to another, or from village to country or the reverse.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

INSANE PERSONS; CARE OF UNDER SECTION
707, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, July 14, 1883.

*Mr. Emmett Tompkins, Prosecuting Attorney, Athens,
Ohio:*

DEAR SIR:—Your favor of the 6th inst. has been neglected by reason of an unavoidable absence from the city.

I am of opinion that, in counties where no provision has been made for the care of insane persons, who are not eligible to admission into the State asylum, they should in all instances be cared for, if necessary, under section 707, Revised Statutes.

I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Construction of Word "Place."

SCOTT LAW; CONSTRUCTION OF WORD
"PLACE."Attorney General's Office,
Columbus, Ohio, July 13, 1883.*R. R. Freeman, Esq., Prosecuting Attorney, Chillicothe,
Ohio:*

DEAR SIR:—I must apologize for not answering your favor of the 6th inst. before this, for the reason that I have necessarily been absent from the office since it came to hand.

The question you ask is rather one of fact than of law. It seems to me, however, if the two rooms opening on different streets are in fact separated so that persons passing from one to the other must go into the open air, they must be regarded as two places under the Scott liquor tax law. It is not distance from one room or place to another which determines the question, but the actual fact of separation. If such a connection as you state could be permitted to give the two rooms the character of one "place," it seems to me all the "places" in a village might be so connected. I think an assessment should be paid for each room.

Second—I know of no statute which authorizes the payment of counsel for defending indigent prisoners charged only with misdemeanors, out of the county treasury.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Immunity Can Not be Transferred—Scott Law;
Basis of Computation When Change is Made From Malt
to Spirituous Liquors.*

SCOTT LAW; IMMUNITY CAN NOT BE TRANS-
FERRED.

Attorney General's Office,
Columbus, Ohio, July 13, 1883.

Chas. Baird, Esq., Prosecuting Attorney, Akron, Ohio:

DEAR SIR:—Your favor of 6th inst. would have been answered sooner except for absence from the city.

I am of opinion the immunity secured by the Scott liquor tax is a personal privilege, and cannot be transferred by sale from one dealer to another.

Each successive dealer in the instance you mention, becomes liable to be taxed for the residue of the year from the date he commences business.

The Supreme Court decided that the lien is not effective on premises leased at the time the act took effect, and therefore in the case you mention, the tax due from Robert Cochran cannot be enforced as against the landlord of the leased premises.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; BASIS OF COMPUTATION WHEN
CHANGE IS MADE FROM MALT TO SPIRITU-
OUS LIQUORS.

Attorney General's Office,
Columbus, Ohio, July 14, 1883.

John M. Sprigg, Esq., Prosecuting Attorney, Dayton, Ohio:

DEAR SIR:—I am in receipt of your favor of the 12th inst., making enquiries under the so-called Scott liquor law.

County Commissioners; Index of Proceedings of.

The act itself is not specific in regard to the matters you mention; I am of opinion, however, where a dealer has been regularly assessed for the sale of malt and vinous liquors and has paid such assessment, and afterwards wishes to engage in the sale of other liquors, he should be assessed under section 2 of the act, provided he makes application therefor to the proper authorities before commencing such business. This assessment, it seems to me, should be on the basis of \$100, otherwise a dealer acting in good faith, with no intention to evade the law, might be required to pay more than \$200.

The item of \$250 mentioned in section 3 of the act, I regard in the nature of a penalty, to be enforced when a dealer undertakes to evade the law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; INDEX OF PROCEEDINGS OF.

Attorney General's Office,
Columbus, Ohio, July 14, 1883.

LeGrand A. Olin, Esq., Auditor, Ravenna, Ohio:

DEAR SIR:—Your favor of 6th inst., enclosing certain interrogatories at the request of the prosecuting attorney of your county, has been received.

I am of the opinion that section 850, Revised Statutes, as amended April 11, 1883 (O. L., Vol. 80, 114), only requires a general index to be kept of the future records made of the proceedings of county commissioners. They are authorized, however, at their discretion, to cause an index to be made of the past records. This part of the section is not mandatory on them.

County Commissioners; Cannot Allow Fees Under Section 547.

As to your second question, I would say that in my judgment section 1076, Revised Statutes, only authorizes county commissioners to make an additional allowance to auditors, as therein contemplated, "in the years when the real property is required by law to be reappraised."

By reference to section 2789 *et seq.*, you will see that this is to be done "in the year 1880, and every tenth year thereafter."

There is much equity in your suggestions of fact, but it seems to me the law is too rock-ribbed to admit of such allowance being made in any other year, however meritorious the case may seem.

I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; CANNOT ALLOW
FEES UNDER SECTION 547.

Attorney General's Office,
Columbus, Ohio, July 17, 1883.

Geo. Kinney, Esq., Prosecuting Attorney, Fremont, Ohio:

DEAR SIR:—Your favor of the 10th inst. is received. Section 140, Revised Statutes, provides in very plain language that for services performed thereunder, officers shall receive no fees, or rather, to use the exact words of the section, shall serve "without compensation."

In view of this provision I do not see how the commissioners of a county can legally pay for such services by an allowance under section 547, or any other section of the statutes. The board has no power to order money paid out of the county treasury except in pursuance of law. This

*Clerk of Courts; Probate Judges; Fees Under Sections 1250
and 140.*

may be a hardship in the cases you mention of probate judges and recorders, but in my judgment relief can only be obtained through action of the General Assembly.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

CLERK OF COURTS; PROBATE JUDGES; FEES
UNDER SECTIONS 1250 AND 140.

Attorney General's Office,
Columbus, Ohio, July 17, 1883.

Hon. L. W. Brown, Probate Judge, Wauseon, Ohio:

DEAR SIR:—Your favor of 13th inst. is received. By section 1248, Revised Statutes, the clerk of court is required to make certain reports to the secretary of state each year, for which he is paid specifically as provided in section 1250. I find nothing in any section making it a part of the official duty of the probate judge to furnish similar reports. He may, however, in the discretion of the secretary of state, be required to do so under section 140, but that section states distinctly that he shall serve "without compensation."

I do not see how section 547 can be made to apply to services performed under a section which in terms declares that no compensation shall be allowed. See last clause of section 546.

This may be a hardship, and I am sure there is much equity in your suggestions, but I am of opinion that relief can only be had through action of the General Assembly.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Liquor Can be Given Away at Public Dinner
—Recorder; Concerning Release of Mortgages.*

SCOTT LAW; LIQUOR CAN BE GIVEN AWAY AT
PUBLIC DINNER.

Attorney General's Office,
Columbus, Ohio, July 18, 1883.

Hon. M. B. Earnhart, Prosecuting Attorney, Troy, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 16th inst., enclosing an inquiry submitted to you by Father Feldman of the Catholic Church at Troy.

He proposes, if I understand your letter correctly, to give a dinner at the re-dedication of his church building which has recently been enlarged, and at such dinner to serve beer to the guests. Beer and dinner each to be free.

I am clearly of the opinion that this can be done without payment of the Scott liquor tax. The law is not intended to interfere with the hospitality of the people either in their church relations or the family circle.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

RECORDER; CONCERNING RELEASE OF MORT-
GAGE.

Attorney General's Office,
Columbus, Ohio, July 18, 1883.

C. A. Mills, Esq., Recorder, Chardon, Ohio:

DEAR SIR:—Your favor of the 13th inst. is received. Our law is not specific as to the particular manner of releasing a mortgage. The mere entry of satisfaction on the recorder's books, as between mortgagor and mortgagee, is

Prosecuting Attorney; No Pay for Advising School Boards.

not effective unless supported by the facts; neither is such entry on the backs of the mortgage valid unless supported in like manner. It follows that if an attorney who is not authorized undertakes to release a mortgage on behalf of the grantee, his action will be invalid, whether entered upon the recorder's record or not. I do not understand that the recorder is to be the judge of the sufficiency of the attorney's authority, and I know of no law requiring such authority to be made a matter of record. Our laws are very loose on this subject. You will find all there is on the subject in sections 4135, 4136, 4139 and 4142, Revised Statutes.

It is better for a recorder to make a mistake in entering for record an instrument not properly the subject of record than it is to make a mistake in refusing to record a proper instrument; the former cannot injure anyone, but the latter may cause trouble.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

PROSECUTING ATTORNEY; NO PAY FOR ADVISING SCHOOL BOARDS.

Attorney General's Office,
Columbus, Ohio, July 19, 1883.

Noah J. Dever, Esq., Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—Your favor of the 18th inst. is received. The equities of the case you present are so strong that I have carefully examined the statutes with the hope that I might find a legal way out of the difficulty.

My predecessor, ex-Attorney General Nash, left on file a number of opinions in which he holds that prosecuting attorneys are not entitled to compensation other than their

Scott Law; Member of Firm May Retire.

regular pay for acting as counsel for school boards in civil actions. In these opinions he also decides that where it is impossible for the prosecuting attorney to attend to an action by reason of sickness, having two or more cases on hand at the same time, or other proper cause, the board may employ and pay other counsel.

After investigation I am unable to say that these opinions do not state the law correctly, and as they cover the points you raise, I merely refer to them for my answer.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; MEMBER OF FIRM MAY RETIRE.

Attorney General's Office,
Columbus, Ohio, July 19, 1883.

L. H. Williams, Esq., Ripley, Ohio:

DEAR SIR:—If it be a correct construction of the Scott law, that a single firm or partnership is liable only for one assessment, I have no doubt but that one member thereof may retire from the firm without subjecting the other members to an additional tax.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Sale of Property Seized for Delinquent Taxes
—Scott Law; Prohibitory Ordinance Under.

SCOTT LAW; SALE OF PROPERTY SEIZED FOR
 DELINQUENT TAXES.

Attorney General's Office,
 Columbus, Ohio, July 25, 1883.

B. F. Dyer, Esq., County Treasurer, Georgetown, Ohio:

DEAR SIR:—Your favor of 21st inst. is received and informs me that you have seized certain chattel property to pay delinquent taxes under what is known as the Scott liquor tax law.

Section 5 of that act expressly provides that section 1104, Revised Statutes, and the provisions of the law of the State relative to the collection of taxes or assessments are hereby made applicable, etc. I think this includes the power to distrain goods and chattels as provided in section 1095.

Attorneys may differ as to the proper construction of the act, and should an effort be made to enjoin you from proceeding, it will be your duty to apply to the county prosecuting attorney, who is by law made the legal adviser of county officers, and be guided by his advice and direction.

Yours, etc.,
 D. H. HOLLINGSWORTH,
 Attorney General.

SCOTT LAW; PROHIBITORY ORDINANCE
 UNDER.

Attorney General's Office,
 Columbus, Ohio, July 24, 1883.

Hon. M. P. Brewster, Mayor of Bowling Green, Ohio:

DEAR SIR:—Your favor of 21st inst. is received. The recent act of the General Assembly known as the Scott law,

Scott Law; Prohibitory Ordinances Under.

specifically confers on municipal corporations the power to "regulate, restrain and prohibit" certain houses and places of habitual resort for tippling and intemperance; and under this power I see no reason why a village council may not, by ordinance, require such houses and places to be closed at 10 o'clock p. m. without, at the same time, requiring other business places to close. The council is the judge of the reasonableness of such regulation; the mayor has no discretion to refuse to enforce such ordinance when legally adopted.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROHIBITORY ORDINANCES
UNDER.

Attorney General's Office,
Columbus, Ohio, July 25, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of 19th inst. is received. Under section 9 of the Scott liquor law municipal corporations are given "full power to regulate, restrain and prohibit ale, beer and porter houses and places of habitual resort for tippling and intemperance." This is not a power to prohibit specific acts, but rather a power to regulate and prohibit certain houses and places of resort. I do not think a drug store, where distilled liquors alone are sold by the quantity, not to be drunk in or upon the premises, falls within the above descriptions. It is neither an ale, beer or porter house, nor is it a place of habitual resort for tippling or intemperance. I do not think, however, that beer or other malt or vinuous liquors can be sold in any manner at such a drug store, or

County Surveyor; Fees of—Scott Law; Immunity Not Transferable.

anywhere else within the corporation in violation of such an ordinance.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY SURVEYOR; FEES OF.

Attorney General's Office,
Columbus, Ohio, July 24, 1883.

R. W. Cahill, Prosecuting Attorney, Napoleon, Ohio:

DEAR SIR:—In reply to your favor of 18th inst. I will say that I know of no law which authorizes a county surveyor to charge *expenses* in addition to the per diem allowed by law, when employed by the day. You might as well pay the viewers and chain carriers, for instance, under section 4664, Revised Statutes, their livery and other expenses, as to pay the surveyor. He is paid \$5.00 per day by the same language the viewers and chain carriers receive \$1.50 and \$1.00 respectively, and no more.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; IMMUNITY NOT TRANSFERABLE.

Attorney General's Office,
Columbus, Ohio, July 26, 1883.

F. R. McLaughlin, Esq., Auditor, Etc., Bellefontaine, Ohio:

DEAR SIR:—Your favor of 24th inst. is received. I have heretofore decided, whether correctly or not, that the

Deaf and Dumb Asylum; Payment of Clothing by County.

immunity secured by payment of the Scott liquor tax cannot be sold or transferred from one dealer to another. As the act requires "every person" engaged in the business of trafficking in intoxicating liquors to pay the tax, I cannot see how one member of a partnership can sell and convey his interest in the firm to an outsider who, with the other members of the firm, constitutes a new firm under another name, without such new firm being liable to an additional assessment for the remainder of the year. Any other construction, it seems to me, would defeat the requirement that "every person" shall pay the tax, or in effect make the immunity secured by such payment a matter of barter and sale.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

DEAF AND DUMB ASYLUM; PAYMENT OF
CLOTHING BY COUNTY.

Attorney General's Office,
Columbus, Ohio, July 26, 1883.

*Benjamin Talbott, Esq., Acting Superintendent Deaf and
Dumb Asylum, Columbus, Ohio:*

DEAR SIR:—Your favor of 24th inst. in which you inquire what action is necessary to enforce the provisions of section 632, Revised Statutes, against delinquent county auditors, is received.

I am of opinion the proper remedy in cases where county auditors refuse to draw warrants for payment out of their respective county funds for supplies furnished by the stewards of benevolent institutions, under said section

Scott Law; Duties of Auditor and Treasurer Under.

632, is to commence proper proceedings in *mandamus* in court, to compel such auditors to perform the duty enjoined upon them by law. I do not say this is the only method, but it seems to me to be the most proper and expeditious one.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DUTIES OF AUDITOR AND TREASURER UNDER.

Attorney General's Office,
Columbus, Ohio, July 27, 1883.

B. M. Winters, Esq., County Treasurer, Fremont, Ohio:

DEAR SIR:—Your favor of 24th inst. is received. By section 4 of the Scott liquor law the county auditor is required to make up a special duplicate of the assessments made under the provisions of the act, a copy of which duplicate is to be furnished to the county treasurer for collection. By section 1117, Revised Statutes, amended April 2, 1880, the treasurer is entitled to five-tenths of one per cent. for "moneys collected on any special duplicate."

I am of the opinion this section is applicable to collections under the Scott law.

Should it become necessary to distrain goods and chattels as provided in section 1095, Revised Statutes, the costs thereof must be collected in addition to the tax, as provided in sections 1095 and 1096. If civil proceedings are commenced under section 1104 in court to enforce the lien, the treasurer is entitled to the services of the prosecuting attorney to attend to such actions, and in this instance I do not think he is entitled to extra compensation over or be-

*Scott Law; Power to Change "Place;" Construction of
"Place."*

yond the five-tenths of one per cent. for "moneys collected on any special duplicate."

The act itself is silent on this point, but I regard the foregoing as a fair construction of the general statutes relative to the compensation of county treasurers.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; POWER TO CHANGE "PLACE;"
CONSTRUCTION OF "PLACE."

Attorney General's Office,
Columbus, Ohio, July 27, 1883.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—On account of absence from the city, I failed to receive your letter of the 23d inst. in time to comply with your request to reply today.

The question you present is a most difficult one, and I am inclined to think you take the proper view of the law. However, I am satisfied the General Assembly only intended to exact the tax under the Scott law for such place where the traffic is carried on at the same time by one dealer. I have, therefore, in a number of instances, held that a dealer might in good faith change his place of business from one building or room to another, within the corporation or tax district in which he has paid his tax without thereby subjecting himself to another assessment. I have never been of the opinion that a dealer can thus change his business from one county to another, or from one tax district to another.

You present a case, however, in which the "place" of traffic of the S. S. T. society is evidently intended to be

County Commissioners; Compensation of.

wherever at a given time the society may be giving an entertainment to its members or friends. If Kelley's Island were within the corporate limits of Sandusky, I would have no difficulty in forming an opinion, satisfactory to myself at least. As it is there is just enough doubt about the matter to entitle the society to the benefit thereof, and unless some one insists on your making an effort to collect an assessment off the society, for holding its entertainment at Kelley's Island, I think you will be justified in not bringing suit or taking other means in that direction.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, July 27, 1883.

J. Foster Wilkins, Esq., Prosecuting Attorney, New Philadelphia, Ohio:

DEAR SIR:—I feel that I ought to modify or rather explain the opinion I mailed you yesterday relative to the compensation to be allowed to county commissioners to this extent, to-wit:

In order to entitle a commissioner to his reasonable and necessary expenses, in addition to per diem and mileage, when engaged within the county in attending to business pertaining to his office other than at a regular or called session of the board, such business or services must be performed under the specific direction of the board in its corporate or official capacity, and the order directing the same should, in my judgment, be made a matter of journal entry.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*Prosecuting Attorney; Not Entitled to Pay for Work Under
Sections 1274 and 1282.*

PROSECUTING ATTORNEY; NOT ENTITLED TO
PAY FOR WORK UNDER SECTIONS 1274
AND 1282.

Attorney General's Office,
Columbus, Ohio, July 27, 1883.

John McSweeney, Jr., Prosecuting Attorney, Wooster, Ohio:

DEAR SIR:—Your favor of 24th inst. is received. I agree with you in the opinion that the prosecuting attorney is not entitled to extra compensation for making out the statistical report required by section 1282, Revised Statutes.

This is a part of his official duty for which he receives an annual salary.

By section 1274, Revised Statutes, the prosecuting attorney is made the legal adviser of the county treasurer, and, although it may be doubted if this extends to appearing in court as an attorney, yet I have no doubt if he does so appear upon the request of the treasurer and performs valuable services, he is entitled to pay therefor. By section 5 of the Scott law the treasurer is authorized to commence suits to enforce the lien for delinquent assessments, and I see no reason why he may not call to his aid the prosecuting attorney of the county. He is not expected to act himself as an attorney. This being so, I am of the opinion that the county commissioners may allow the prosecuting attorney a reasonable compensation for his services, the same as for his legal advice under section 1274, for bringing and attending to actions on behalf of the county treasurer under section 5 of the act.

Yours, etc.,

D. H. HOLLINGSWORTH,
Attorney General.

*Notary Public; Fee for Acknowledgments—Scott Law;
Manufacturers.*

NOTARY PUBLIC; FEE FOR ACKNOWLEDGMENTS.

Attorney General's Office,
Columbus, Ohio, August 2.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—In answer to your inquiry of today, I have the honor to submit that, in my judgment, a notary public who takes and certifies the acknowledgment of husband and wife to the due execution of a deed or other instrument of writing, is entitled to charge therefor the sum of forty cents and no more.

I return herewith the letter of John C. Douglass, making the same inquiry of you.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; MANUFACTURERS.

Attorney General's Office,
Columbus, Ohio, August 3, 1883.

E. S. Dodd, Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—Your favor of 27th ult. is received. The recent act of the General Assembly, known as the Scott law, is silent as to how and where the tax shall be paid for a "place" on a steamer sailing between points within the State. On general principles, however, it seems to me the payment of one assessment in either county through or into which the vessel makes *regular* trips, is sufficient. By the very nature of the case, the "place" is movable, and any other construction would in effect defeat the object of the act or operate unjustly and unequally on those who do business on board a vessel.

Scott Law; Manufacturers.

Second—I am also of the opinion a manufacturer from the raw material may put up his products in bottles and sell them without paying the tax, provided he does not sell the same “in quantities of one gallon or less at any one time.” The size of the bottles is immaterial. To illustrate: I cannot see the distinction between the sale by a brewer of a barrel of beer to one person at one time, and the sale of the same quantity of beer in a case of bottles. It is the *quantity*, not the *number or size* of the vessel or vessels in which it is contained that must govern the question.

Third—I am not sufficiently acquainted with the business of rectifying to say whether, in all instances, one engaged in rectifying liquors must pay the Scott liquor tax or not. It seems to me, however, that he must as a general rule. A manufacturer is only exempted when he manufactures from the “raw material,” and I do not think this can be said of one whose business consists in refining or changing liquors already manufactured.

Your last question has given me much trouble. I have felt and have been disposed to hold that social clubs ought not to be required to pay the tax, but a careful examination of the rules and regulations of a number of them—the Draconian Club of Toledo included—convince me that they are required to pay the same as ordinary dealers. I am aided in coming to this conclusion from the fact that the United States courts hold that the United States tax must be paid by such associations. The language of the Ohio statute, and that of the United States are almost identical in assessing or providing for the assessment of the tax. Besides, in construing the act, we must keep in view its declared object, and the one on which the Supreme Court sustained it, to-wit, providing against the evils resulting, etc., and in this view it can make no difference whether the liquor is sold at “cost” or not.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Prohibitory Ordinances Under.

SCOTT LAW; PROHIBITORY ORDINANCES
UNDER.

Attorney General's Office,
Columbus, Ohio, August 3, 1883.

John A. Clark, Esq., Wadsworth, Ohio:

DEAR SIR:—Your favor of 1st inst. is received. It is very difficult to form a satisfactory opinion of the legality of any ordinance without having a copy of it to examine. Section 1692, paragraph five, as it now exists, or rather as it was before the passage of the Scott law, only authorizes village councils to “regulate beer, ale and porter houses and shops,” and to this extent I have no doubt the ordinance you mention was and is valid.

The council, however, can only exercise such power as is conferred by statute, and if the ordinance contains more than this, that is, if it goes beyond the power expressly conferred, I am of the opinion it is, and was invalid as to such excess. The recent act which authorizes municipal corporations to “regulate, restrain and prohibit ale, beer and porter houses and places of habitual resort for tippling and intemperance,” can not operate to render that part of an ordinance valid, which was invalid at the time of its adoption, although it may come expressly within the terms of this later act.

To accomplish this object the council must readopt and republish the ordinance. Of course, you understand that I am not the legal adviser of municipal officers and that, therefore, my opinion is entitled to no greater weight than that of any other attorney.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Ordinances Must be Passed in Accordance With Section 1693—Governor; Release Not Necessary Under Section 4122.

ORDINANCES MUST BE PASSED IN ACCORD-
ANCE WITH SECTION 1693.

Attorney General's Office,
Columbus, Ohio, August 3, 1883.

*Thomas T. McKee, Esq., Member of Council, Bloomville,
Ohio:*

DEAR SIR:—Your favor of 2d inst. is received. The attorney general is not the legal adviser of municipal officers, and my opinion, therefore, is entitled to no more weight than that of any other attorney.

I am of the opinion, however, that a village ordinance to be valid must be passed or adopted in strict accordance with section 1693, Revised Statutes, as amended, O. L., Vol. 77, 34, and therefore must receive a majority of all the members elected, etc. The mayor is not a member of the council and I do not think he can vote in case of a tie on the passage of an ordinance.

D. H. HOLLINGSWORTH,
Attorney General.

GOVERNOR; RELEASE NOT NECESSARY UNDER
SECTION 4122.

Attorney General's Office,
Columbus, Ohio, August 8, 1883.

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

DEAR SIR:—Your favor of this date, in which you ask my opinion as to whether the provisions of section 4122, Revised Statutes, relative to securing a release, apply to the deed authorized to be executed by the governor by

*Scott Law; No Recovery on Ceasing Business or at Death
of Dealer.*

special act of the General Assembly, dated April 18, 1883, to Charles E. and Flora Taylor, is received.

I am of the opinion, after an examination of the question, that they do not. It seems to me the special act is all the authority necessary to the execution of the deed. The recital of the fact that the grantees are minors would seem to preclude the idea that they should be required to execute a release. Besides, the special act shows that the original deed containing an erroneous description has already been declared null and void by decree of the Common Pleas Court of Montgomery County. These facts lead me to the conclusion that the release required by section 4122 is not necessary in this instance.

I have also examined the blank deed you enclose, and am of opinion the same is in proper form.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; NO RECOVERY ON CEASING BUSINESS OR AT DEATH OF DEALER.

Attorney General's Office,
Columbus, Ohio, August 8, 1883.

Ira P. Shissler, Esq., Attorney-at-Law, Van Wert, Ohio:

DEAR SIR:—I have the honor to acknowledge, through ex-Attorney General Nash, the receipt of two inquiries by you under the Scott law, to-wit:

First—Can a dealer in intoxicating liquors, having paid the tax, recover any portion of it back on retiring from business during the year?

Second—Can the administrator of the estate of a deceased dealer recover back a part of all the tax, upon proof

Transfer of State Stocks by Executors.

that such dealer died on the day after paying his assessment?

Third—The act (very unfortunately, I think) makes no provision for repaying any part of the tax, except in cases where municipal corporations prohibit ale, beer and porter houses within the corporation, and relief in the above instances, in my judgment, can only be had through an amendment or supplemental act of the General Assembly.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

TRANSFER OF STATE STOCKS BY EXECUTORS.

Attorney General's Office,
Columbus, Ohio, August 8, 1883.

Hon. Joseph Turney, Treasurer of State, Columbus, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 3d inst., enclosing telegram from Miller and Company, of New York.

They wish to know, if I understand their telegram correctly, whether State stocks can be transferred upon the authority of two executors, where four are named and acting under the will. I am of opinion that they cannot be safely transferred on such authority and so advise.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Distribution of Taxes Collected Under.

SCOTT LAW; DISTRIBUTION OF TAXES COLLECTED UNDER.

Attorney General's Office,
Columbus, Ohio, August 9, 1883.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—YOUR favor of 5th inst. is received. By it I am informed that the auditor of state has advised the auditor of Erie County "that all taxes collected under the Scott liquor law outside of municipal corporations should be placed to the credit of the poor fund of the county," and that the county auditor is not satisfied with this holding, but insists that a township is a municipal corporation under the law, and is entitled to have three-fourths of the revenue derived from assessments on dealers therein, passed to the general revenue fund of the township; therefore you submit the question to this office. Undoubtedly a township is a corporation in many senses. It is made so by statute (Sec. 1376, R. S.). But the question is whether it is such a corporation as is contemplated in section 7 of the act of April 17th last. It seems to me that this is not the correct construction to be given to the language used. Section 7 provides, as you will notice, that the revenues accruing under the act, shall be distributed as follows: "Three-fourths of the money paid * * * on account of any business aforesaid, carried on in any city or village, shall * * * be paid into the treasury of *such corporation* * * * the other fourth, *together with all other revenues* resulting hereunder in said county, shall be passed to the credit of the poor fund of such county."

Undoubtedly the words "such corporation" as used above, refer to city or village corporations; so also with the word "corporation" as used in the proviso. I am of the opinion, therefore, that the instructions of the auditor of state are correct, and that all revenues resulting under the

Scott Law; A Temporary Dealer Must Pay Tax for Year.

act, except in city or village corporations, should be passed to the poor fund of the proper county.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

SCOTT LAW; A TEMPORARY DEALER MUST PAY
TAX FOR YEAR.

Attorney General's Office,
Columbus, Ohio, August 10, 1883.

D. T. Clover, Esq., Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—Your favor of 9th inst. is received. I quite agree with you in the opinion that a temporary dealer in intoxicating liquors at a county agricultural fair, must pay an assessment under the Scott law, for the residue of the year, notwithstanding he may have paid the annual tax for doing business at a permanent but different place within the corporation. I have experienced much difficulty from this question. The distinction is not plain between a dealer who wishes in good faith to change his "place" of business from one room or building to another within the same corporation or tax district, and one who simply locks up his "place" temporarily for a day or two, and wishes in the meantime to engage in the traffic at another point or place.

It may be doubted if a dealer in either case is not liable to a second assessment, yet it has seemed to me to be the better opinion to hold that he may make such permanent change, but cannot make such temporary change without incurring the liability.

If I am right in this view, then your question becomes simply one of fact. Of course a dealer might wish to change his place permanently to the fair grounds, but certainly this

*Lake Shore and Sunday Creek Coal and Mining Company;
Incorporation of.*

would be an exceptional case, and could not interfere with the duty of the proper officers to assess those who temporarily do business on such grounds.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

LAKE SHORE AND SUNDAY CREEK COAL AND
MINING COMPANY; INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, August 10, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—Your favor of 4th inst., enclosing certificates by the incorporators of the Lake Shore and Sunday Creek Coal and Mining Company, of the amount of capital stock of said company subscribed and paid in, is received.

If I understand correctly, you wish to know my opinion as to whether said certificate is in form a compliance with the requirements of section 5244, Revised Statutes, amended April 15, 1880, Vol. 77, O. L., 266. That section provides that "as soon as ten per cent. of the capital stock is subscribed, the subscribers of the articles of incorporation of such company, or any five of them shall so certify, in writing, to the secretary of state." This seems to be the only positive requirement so far as the certificate is concerned, and in this respect the one enclosed is full and in proper form. At first view I thought it ought to show the giving of notice to the stockholders as provided in said section, and in section 3242, as amended (O. L., Vol. 80, p. 42), or a waiver thereof by the incorporators, but on a full examination I am satisfied that this is not necessary. The certificate appears to be a preliminary requirement before the notice

"Can One Woman Keep a House of Ill-Fame?"

for an election of directors can be given; and if so it need not contain any reference to the notice to stockholders.

I am, therefore, of the opinion that the enclosed certificate, which I herewith return, is sufficient in form and advise that it be received as a compliance with the statute.

Yours very truly,
D. H. HOLLINGSWORTH,
Attorney General.

"CAN ONE WOMAN KEEP A HOUSE OF ILL-FAME?"

Attorney General's Office,
Columbus, Ohio, August 10, 1883.

S. L. James, Esq., Attorney-at-Law, Barnesville, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 6th inst., in which you inform me of a prosecution pending before the village mayor, and ask my opinion of the following question:

"Can one woman keep a house of ill-fame?"

At first I was inclined to agree with you that she can. The question, however, does not seem to be settled by the courts of Ohio, at least I have not been able in a cursory examination to find a single precedent on the subject. It is discussed at length in the elementary works on criminal law, and I presume, in the absence of an authoritative decision, we must give credit to the opinions of law writers. A house of ill-fame and a bawdy-house seem to be synonymous terms.

On page 1088, section 1085, Vol. 1, Bishop on Criminal Law, I find these words under the title "bawdy-house:"

"There must be the keeping of a house. For a woman to be a common bawd, or merely to live

"Can One Woman Keep a House of Ill-Fame?"

alone, and receive one man or *many*, is not to keep a bawdy-house. And more women than one must live or resort together to make such a house."

In Archbold's Criminal Practice and Pleading, Vol. 2, p. 1786, these words occur:

"A bawdy-house is defined to be 'a house of ill-fame, kept for the resort and convenience of lewd people of both sexes.' The residence of an unchaste woman—single prostitute—does not become a bawdy-house because she may habitually admit one or *many* men to an illicit cohabitation with her."

The above authorities are supported by the case of the State vs. Evans, 5 Iradells N. C. Rep. 603. See also Bouvier's Law Dictionary, title "bawdy-house."

Of course my examination of the subject has necessarily been brief for want of time, but, not having been able to find a text book or reported decision to the contrary, I conclude your interrogatory should be answered in the negative.

The attorney general is not authorized to give official opinions to private persons or municipal officers, and you will, therefore, understand that my views are entitled to no greater weight than those of yourself or any other attorney on the subject.

With high regards, I am,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

Scott Law; Ordinance to Prohibit Must be Passed by Council—Scott Law; Prohibition Under; to What Extent.

SCOTT LAW; ORDINANCE TO PROHIBIT MUST
BE PASSED BY COUNCIL.

Attorney General's Office,
Columbus, Ohio, August 10, 1883.

S. S. Wheeler, Esq., Lima, Ohio:

DEAR SIR:—Your favor of 4th inst. is received. In reply I would say that, in my opinion, a power conferred upon a village corporation must be held to be a grant to the village council of the right to exercise such power by ordinance, in the absence of express words requiring a submission of the same to a vote of the electors of the village. This rule, it seems to me, is applicable to the provision in section 9 of what is known as the Scott law, authorizing municipal corporations to "regulate, restrain and prohibit ale, beer and porter houses," etc., and the same should be exercised by village councils without a vote of the people. There can, however, be no special objection to the people expressing their views on the subject in any proper way, either by petition to the council, an informal ballot, or otherwise.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROHIBITION UNDER; TO WHAT
EXTENT.

Attorney General's Office,
Columbus, Ohio, August 15, 1883.

L. C. Laylin, Esq., Prosecuting Attorney, Norwalk, Ohio:

DEAR SIR:—I am in receipt of your favor of the 11th inst., in which you enclose a copy of an ordinance recently

Scott Law; Prohibition Under; to What Extent.

adopted by the village council of Greenwich, and ask the following questions concerning the same:

First—Can a municipal corporation prohibit the sale of ale, beer and porter by the pint, quart, gallon, not to be drank on the premises?

Second—Does said ordinance prohibit such sales?

In answer to the first, I would say that the act of April 17th, known as the Scott law, gives municipal corporations full power to prohibit ale, beer or porter houses within the corporation and makes no distinction between houses where such liquors are sold to be drank, and those where they are sold in quantities to be taken off the premises for use. I therefore, with this qualification, to-wit, that the power is one to prohibit certain houses, and not specific acts, answer your question in the affirmative.

As to the second question, there is more doubt.

By a careful reading you will see that the ordinance only undertakes to prohibit places of habitual resort for tippling and intemperance, and places "where ale, beer or porter is habitually sold, given away or furnished to be drank in, upon or about the place where so sold, given away or furnished."

It seems to me this is rather an ordinance to regulate the business than one to actually prohibit the keeping of all kinds of ale, beer or porter houses, within the corporation, as might have been done under the act of April 17th afore-said. I am of the opinion, therefore, that the ordinance does not prohibit the keeping of a place where malt and vinous liquors are sold by the quantity to be taken off the premises, and not to be drank in, upon or about the same.

Of course this also answers your further questions relative to refunding the taxes paid by dealers before the passage of a prohibitory ordinance. It is only when a corporation actually prohibits the houses named that the proprietors are entitled to receive back a ratable proportion of the taxes paid by them, and not when the ordinance merely undertakes to regulate such houses. I can see, therefore, no way

County Treasurer; Publication of Tax Duplicate.

by which a dealer who continues to sell malt or vinous liquors by the pint, quart or gallon, after the passage of an ordinance, such as the one adopted by the municipality of Greenwich, can claim to have any portion of his taxes refunded. If I might be permitted to volunteer a little advice to municipal officers when preparing prohibitory ordinances, it would be to follow the exact language of the statute conferring the power. This would save much confusion.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY TREASURER; PUBLICATION OF TAX
DUPLICATE.

Attorney General's Office,
Columbus, Ohio, August 16, 1883.

A. M. Crisler, Esq., Prosecuting Attorney, Eaton, Ohio:

DEAR SIR:—Your favor of 15th inst. is received. I am of the opinion that the *duplicate* of taxes, as required to be published by the treasurer under section 1087, Revised Statutes, need not be inserted in more than one newspaper of the county.

Under section 4367 notice of the *rate of taxation* must be inserted in two newspapers of opposite politics, if there be such published in the county.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

"Chamber of Commerce of Lorain," Incorporation of.

"CHAMBER OF COMMERCE OF LORAIN;" IN-
CORPORATION OF.

Attorney General's Office,
Columbus, Ohio, August 16, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 15th inst., in which you are pleased to inclose the articles of incorporation of "The Chamber of Commerce of Lorain," and ask my opinion as to whether the objects of said corporation, as stated therein, are sufficiently definite to warrant you in receiving the same as a compliance with the laws of the State relating to the incorporation of such companies. These objects appear to be "to secure unity of action among the business and professional men of Lorain, for the benefit of the community."

How this "unity" is to be brought about is not shown, nor is it apparent how the incorporators propose to benefit the community.

In brief the purpose of the incorporation, in my judgment, is not sufficiently stated to form a compliance with section 3237, Revised Statutes. Besides, there are other minor defects in the certificate. The official character of the notary public is not certified, as required in section 3238, nor is his certificate of acknowledgment dated.

In these, and perhaps other defects which may occur to you, I advise that the certificate be returned to the incorporators.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

Scott Law; Prohibitory Ordinance Under.

SCOTT LAW; PROHIBITORY ORDINANCE
UNDER.Attorney General's Office,
Columbus, Ohio, August 16, 1883.*Hon. Chas. A. Bowersox, Bryan, Ohio:*

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 14th inst., in which you are pleased to submit this question:

“Under the ordinance section of the Scott law, can a municipal corporation prohibit the keeping of a place where bottled beer is sold *in bottles, not to be drank upon the premises?*”

I am of the opinion that your question must be answered in the affirmative. The power is specific to prohibit ale, beer and porter houses without exception. It seems to me that it is not necessary, in order to constitute a building an “ale, beer or porter house,” that the liquor sold in it shall be drank on the premises. If so, why should the entire residue of the tax paid for the year, for the sale of such liquors, be refunded in the event of the passage of such an ordinance?

The amount paid for the sale of distilled liquors is not so refunded when an ordinance is passed prohibiting “places of habitual resort for tippling and intemperance.” The distinction is obvious, and it appears to me to be plain that the General Assembly intended to and did confer on municipal corporations full power to prohibit all kinds of ale, beer and porter houses.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

*Prosecuting Attorney; Not Entitled to Ten Per Cent. on
Costs Collected From State.*

PROSECUTING ATTORNEY; NOT ENTITLED TO
TEN PER CENT. ON COSTS COLLECTED
FROM STATE.

Attorney General's Office,
Columbus, Ohio, August 16, 1883.

*A. H. Mitchell, Esq., Prosecuting Attorney, St. Clairsville,
Ohio:*

DEAR SIR:—Your favor of the 13th inst., in which you ask my opinion as to whether prosecuting attorneys are entitled, under section 1298, Revised Statutes, to ten per cent. on costs collected from the State in cases of felony, is received.

My predecessor, ex-Attorney General Nash, repeatedly, and as late as December 7, 1883, answered the same question in the negative. At least five such opinions are on file in this office, and I do not feel at liberty (even if the District Court in Licking County has decided, as you say, to the contrary) to hold differently until such decision has been affirmed by the Supreme Court.

It seems to me that the payment of costs in such cases by the State must be held to be voluntary payments with which the prosecuting attorney has nothing to do, and which are in no sense collected as contemplated in section 1298. I therefore concur in the opinions of General Nash on the subject.

It would give me pleasure to hold otherwise, as I know how inadequately prosecuting attorneys are paid, yet it seems to me such a holding would not be warranted by the statutes of the State.

I have the honor to be,

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Law; Distribution of Taxes Under—Scott Law; Can
Not Remove His Place Temporarily.*

SCOTT LAW; DISTRIBUTION OF TAXES UNDER.

Attorney General's Office,
Columbus, Ohio, August 16, 1883.

John N. Krier, Esq., Taylorsville, Ohio:

DEAR SIR:—Your favor of 13th inst. is received. The revenues arising under what is known as the Scott law, on account of the traffic in intoxicating liquors carried on in a village corporation having no public fund, are distributed as follows:

One-fourth to the poor fund of the county and three-fourths to the general revenue fund of the corporation. This fund I understand to be under control of the village council, for any lawful purpose, and I am of the opinion that it may be used in a proper case towards the establishment of a park for public use.

I trust this will fully answer your inquiries, and I am,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; CAN NOT REMOVE HIS PLACE
TEMPORARILY.

Attorney General's Office,
Columbus, Ohio, August 17, 1883.

*Jas. E. Lawhead, Esq., Prosecuting Attorney, Newark,
Ohio:*

DEAR SIR:—Your favor of 16th inst. is received. I am of the opinion that a dealer in intoxicating liquors, who pays the tax provided for in what is known as the Scott law, for carrying on the business at a particular "place" within

Scott Law; General Opinion.

a city corporation, obtains no right to temporarily close such place for a few days and engage in the traffic in the meantime on the fair grounds outside of the corporation, without becoming liable to a second assessment under the law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; GENERAL OPINION.

Attorney General's Office,
Columbus, Ohio, August 17, 1883.

Hon. W. S. Irvin, Mayor of Mt. Gilead, Ohio:

DEAR SIR:—Your favor of 10th inst. came to hand during my absence from the city, and therefore failed to receive prompt attention. In it you ask the following questions:

First—Can a grocer, who also keeps in his general business room, a "place" for the sale of intoxicating liquors, remove such "place" to another building—across a street or alley—and thereby avoid the penalty provided in section 9 of the Scott law for keeping open such a "place" on Sunday, when he allows his general business room to be open on that day for the sale of ordinary groceries?

Second—In case of such removal does the proprietor become liable to a second assessment under the Scott law, for the residue of the tax year, after such removal?

Undoubtedly the transfer or removal of the "place" for the sale of intoxicating liquors from, and the abandonment of such sale in, a room used also for general business to another room or building, will change the character of the first room so that the keeping of it open on Sunday cannot be held to be a violation of the Sunday closing feature of the Scott law. Business carried on in the room, after such

Scott Law; Sales by Manufacturers Through Agents.

removal, however, remains liable to regulation on Sunday under section 7033, Revised Statutes.

A dealer in intoxicating liquor can, in good faith, change the location of his place of business from one room or building to another room or building, within the same corporation or tax district, during the year, without thereby subjecting himself to a second assessment for taxation. Your second question must, therefore, be answered in the negative.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

SCOTT LAW; SALES BY MANUFACTURERS
THROUGH AGENTS.

Attorney General's Office,
Columbus, Ohio, August 7, 1883.

*Carlos M. Stone, Esq., Prosecuting Attorney, Cleveland,
Ohio:*

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 14th inst., in which you enclose a letter from the Phillip Best Brewing Company, of Milwaukee, Wisconsin, to John Panton, of Cleveland, and also a written opinion of Messrs. Jenkins, Winkler and Smith, attorneys, given to said brewing company, relative to its rights under what is known as the Scott law. By these enclosures I am informed that said company, being engaged in manufacturing malt liquors from the raw material, at Milwaukee, claims the right to ship its liquors so manufactured to John Panton who, it is alleged, is its agent at Cleveland, in barrels and have him bottle and sell the same in cases of not less than one gallon, without paying an assess-

Scott Law; Sales by Manufacturers Through Agents.

ment for trafficking in intoxicating liquors under the act. In other words, if I understand the position of the company, it proposes to ship its products to Cleveland, and without paying tax, compete directly with the wholesale dealers of the city who pay their assessments in good faith. The question is: "Can this be done under section 6 of the act, which exempts from its operation the 'manufacturing of intoxicating liquors from the raw material and the sale thereof by the manufacturer of the same in quantities of one gallon or more at any one time?'"

There may be no good reason for discriminating against manufacturers outside of the State, but there is certainly neither justice nor equity in allowing them greater privileges than our home dealers, and it should not be permitted, unless such injustice be clearly contemplated in the act. I do not think that the General Assembly so intended. In answer to your letter of July 7th, I therefore wrote you as follows:

"I doubt if this exemption is broad enough to cover the case you mention of a person who *procures* beer by the barrel, of a Milwaukee brewer, for whom he claims to act as agent, and then bottles and sells it by the case in this State. It seems to me only reasonable that the law should be held to apply strictly to manufacturers as well as dealers, who carry on business in this State. At least, I am of the opinion that immunity should not be allowed to such agents, without first fairly testing the question before the courts."

I am yet of this opinion, although I know that other and probably much better lawyers think differently. Surely it is a question of sufficient doubt to justify a proceeding in court to settle the dispute. A simple petition, under section 1104, Revised Statutes, against Mr. Panton, would answer the purpose. The nature and character of his agency would in this way be developed, and the court could then intelligently pass upon the point whether the exemption applies to manufacturers without the State or not.

Scott Law; Sales by Manufacturers Through Agents.

The act is one to regulate the traffic within the State to the end that the evils resulting therefrom may be provided against. It seems to me, therefore, that it can not be held to apply to business carried on, in whole or in part, outside of the State, or rather to that part of it which is so carried on. John Panton does not manufacture and sell liquors in this State, as agent or otherwise. The only thing he does in Ohio, separately or in connection with the "Phillip Best Brewing Company," is to bottle beer and sell it. This is included in the term trafficking in intoxicating liquors as used in the act. If he is exempt so are all agents similarly situated in the State, and the sooner the fact is settled by the courts the better, so that the proper relief may be provided by the next General Assembly.

I am not unmindful of the very able reasoning of Messrs. Jenkins, Winkler and Smith against the constitutionality of this feature of the act which, if I am right, distinguishes between the sale of liquors manufactured in, and the same kind of liquors manufactured out of the State. There is force in what they say and possibly the courts may accept their view of the law. The authorities they refer to, however, were presented and considered by the Supreme Court when the question of the constitutionality of the act was pending before it, not with reference to this particular feature, but generally. It was urged then, as now, that the act violates section 10, article I of the United States constitution, relative to laying imports and duties on imports and exports, yet the court thought otherwise. This is not a new feature in the legislation of the State. Section 6942, Revised Statutes, which has withstood the legal storms of nearly thirty years, makes a greater discrimination against wines not "manufactured from the pure juice of the grape cultivated in this State." Under all the circumstances, I think, before we take down the bars and admit manufacturers of other States to come in and compete unfairly with the wholesale dealers of the State, the right so to do should be authoritatively passed upon by the courts.

Girls' Industrial Home; Contract For Building.

It seems to me enough to allow this advantage to manufactures within the State. I am pleased to add that I came to this conclusion after consultation with a number of attorneys in whom I have confidence.

Of course you will understand that in this opinion I do not presume to advise, much less direct relative to the discharge of your official duties. I know full well and appreciate your ability to attend to all matters that arise, and only wish to suggest, knowing the trouble which is likely to arise all over the State from uncertainty on this question, and the gross injustice it would be to other dealers who pay their taxes, to allow the claim set up by the "Phillip Best Brewing Company," that it might be better for all concerned to have the question brought to a speedy issue in court. Hoping that I have not worried you with "many words and few ideas," I am,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

GIRLS' INDUSTRIAL HOME; CONTRACT FOR
BUILDING.

Attorney General's Office,
Columbus, Ohio, August 22, 1883.

J. H. Thornhill, Esq., and others, Trustees Girls' Industrial Home, Delaware, Ohio:

GENTLEMEN:—Your favor of this date, in which you say "the contractors for change of steam heating and construction of waterworks at the 'Girls' Industrial Home,' feel that your (my) certificate on the contract might be construed as not meeting with your (my) approval, and that there is a probability of litigation attending their entering upon the work of change and construction," is received.

Liquor Laws of Ohio; General Sketch of.

I think there can be no danger of this result. Before making the certificate, I was informed by you, and also by the auditor of state, that such certificate would be regarded as sufficient, and that the auditor of state would act upon and draw his warrants in accordance with the terms of the contract, when so certified.

Besides, I think there is no one to complain. There was, I am informed, no other bidder entitled to, or claiming the contract. The proceedings of the board seem to have been characterized by a desire to treat all bidders fairly, and to subserve the best interests of the State. The auditor of state expresses satisfaction with the contract, and so far as I know, there is no officer connected with the state department who thinks otherwise, certainly not in this office. My certificate was not so made with a view to litigation, but to express fully the exact facts as I found them to be. Under the circumstances I do not attach sufficient importance to the exception to delay you in going on with the work, or the contractors in complying with the terms of their contract so made. I so advise. I also advise that requisitions for payment of estimates be made in the usual manner, as the work progresses, and that the auditor of state honor the same and draw his warrants therefor, in accordance with law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

LIQUOR LAWS OF OHIO; GENERAL SKETCH OF.

Attorney General's Office,
Columbus, Ohio, August 22, 1883.

Hon. Chas. Foster, Governor, Columbus, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 16th inst., enclosing a communica-

Liquor Laws of Ohio; General Sketch of.

tion of the 11th inst. from the Swiss legation at Washington, which you are pleased to refer to this office for information concerning the subject matter thereof.

By it I learn that the president of Switzerland is desirous of being furnished, for the use of the High Federal Council of that country, with the provisions of law governing the manufacture of and traffic in spirituous liquors in the State of Ohio, together with such detailed information relative to the practical operation and effect thereof, as may be conveniently accessible.

The legislation of the State on this subject is in a very unsettled condition, and has undergone many changes within the past few years.

Prior to the year A. D. 1851, the traffic in intoxicating liquors was largely regulated by license charges, from which the State also derived considerable revenue. In that year the present constitution of the State went into effect and practically nullified the then existing laws. Section 18 of the schedule thereto reads as follows: "No license to traffic in intoxicating liquors shall hereafter be granted in this State; but the General Assembly may, by law, provide against the evils resulting therefrom."

The result of the adoption of this provision has not been all that the people hoped for and expected. Instead of being outlawed, the traffic under its operation soon become practically free.

No attempt was made, until recently, to tax or regulate it by the imposition of similar burdens. All who wished to, engaged in the business without let or hindrance, except the observance of certain statutes (hereafter explained) relating to the manner of making sales, and to the persons to whom they were prohibited from selling. The State received no revenues, directly or indirectly, except in the way of fines assessed for violating these statutes. The business, therefore, became a burden on the public.

On the 17th of April last, the General Assembly of the State undertook to partly relieve this burden by imposing

Liquor Laws of Ohio; General Sketch of.

other restrictions on the traffic and by providing by law for an annual tax assessment thereon. A copy of this act I attach to and make a part of this letter. Its validity was, at first, seriously disputed on the ground of alleged repugnance to the foregoing provision of the constitution, but, on application to the Supreme Court, its conformity thereto was authoritatively declared. This decision of the court was announced on the 26th day of June, and since then the act has gone into practical operation throughout the State. It appears to be generally satisfactory, and I believe is growing in favor with those who at first opposed it.

It is too early, however, to form any reliable estimate of practical results. As nearly as I can judge, its operation so far, has resulted in closing at least one-eighth of the saloons in the State, generally the more disreputable ones, and in bringing into the treasury of the different counties an aggregate of about two million dollars, thus enabling municipal and county authorities to largely reduce the tax levies for police and infirmary purposes, to which the fund is by law applied. Some opposition yet exists to the enforcement of the measure in the State, but I am led to believe this opposition is principally confined to those who believe in total prohibition, and to those who are interested in maintaining practical free trade.

There are also a number of purely *criminal statutes* on the subject by which the following acts are forbidden, under penalty of fine or imprisonment:

First—Keeping a place where intoxicating liquors, other than wine, manufactured from the pure juice of the grape cultivated in this State, ale, beer and cider are sold contrary to law. Penalty—A fine of not more than one hundred nor less than fifty dollars, or imprisonment not more than thirty nor less than ten days, or both.

Upon conviction of the keeper the place is declared to be a nuisance, and the court orders him to shut up and abate the same, unless he can make it appear to the court that he does not then sell liquor therein in violation of law, or gives

Liquor Laws of Ohio; General Sketch of.

bond to the satisfaction of the court that he will not sell therein in violation of law, and will pay all fines, costs and damages assessed against him therefor. See section 6942, Revised Statutes.

Second—Buying for or furnishing to a person who is at the time intoxicated or in the habit of getting intoxicated, or buying for or furnishing to a minor, to be drank by such minor, any intoxicating liquors, unless given by a physician in the regular line of his practice. Penalty—A fine of not more than one hundred, nor less than ten dollars, or imprisonment not more than thirty nor less than ten days, or both. Revised Statutes, section 6943.

Third—Selling or exposing for sale, giving, bartering or disposing of spirituous or other liquors at any place within the distance of four miles from where any religious society or assemblage of people is collected or collecting for religious worship, or for the purpose of holding a harvest home festival. Penalty—A fine of not more than one hundred, and not less than ten dollars. This provision does not extend to tavern keepers exercising their calling, or distillers, manufacturers or other persons prosecuting their regular trades at their places of business. Revised Statutes, section 6945.

Fourth—Selling intoxicating liquors at or within twelve hundred yards of the main building of the Ohio Soldiers' and Sailors' Orphans' Home, or within two miles of the boundary line of the Ohio Reform Farm, or within two miles of the place where any agricultural fair is being held. Penalty—A fine of not more than one hundred nor less than ten dollars, or imprisonment not more than thirty days, or both. Upon conviction of the proprietor the place wherein such liquors are sold, may, by order of the court, be shut up and abated as a nuisance. Revised Statutes, section 6946.

Fifth—Conveying into a jail, or for one having charge thereof, knowingly permitting persons therein to receive any spirituous or malt liquors, or wine, except upon pre-

Liquor Laws of Ohio; General Sketch of.

scription of a physician. Penalty—A fine of from ten to one hundred dollars, or imprisonment from ten to thirty days. Revised Statutes, section 6947.

Sixth—Selling or giving away spirituous, vinous or malt liquors, or being the keeper of a place where such liquors are habitually sold and drank, failing to keep the same closed on election day. Penalty—A fine of not more than one hundred dollars, and imprisonment not more than ten days. Revised Statutes, section 6948.

Seventh—Failing to brand on each package containing intoxicating liquor, by one engaged in the manufacture and sale of the same, the name of the person or company, manufacturing, rectifying or preparing the same, and also the words "containing no poisonous drug or other added poison." Penalty—A fine of not more than one thousand dollars, and imprisonment not more than six months nor less than one month. Revised Statutes, section 6949.

Eighth—Adulterating by mixing with any substance except for medical or mechanical purposes, any spirituous or alcoholic liquors, or selling or offering for sale such adulterated liquors, or importing such liquors into the State for sale, knowing the same to be thus adulterated and not inspected as required by law. Penalty—A fine of not more than five hundred nor less than one hundred dollars, and imprisonment not more than thirty nor less than ten days. Revised Statutes, section 6950.

Ninth—Adulterating for the purpose of sale, spirituous, alcoholic, or malt liquors, with any substance which is poisonous or injurious to health, or selling or keeping for sale such adulterated liquors. Penalty—A fine of not less than twenty nor more than one hundred dollars, or imprisonment not less than twenty, nor more than sixty days, or both. Also the necessary expenses and costs of analyzing such liquors. Revised Statutes, section 7082.

Tenth—Adulterating wine made from grapes grown in Ohio, or selling the same when so adulterated. Penalty—

Liquor Laws of Ohio; General Sketch of.

A fine of not more than three hundred nor less than fifty dollars. Revised Statutes, section 7081.

Eleventh—Using any active poison in the manufacture or preparation of any intoxicating liquor, or selling the same when so manufactured or prepared. Penalty—Imprisonment in the penitentiary not more than five years nor less than one year. Revised Statutes, section 7083.

Twelfth—Selling or offering for sale, any spirituous liquors, not inspected as required by law. Penalty—A fine of not more than five hundred nor less than one hundred dollars, and imprisonment not more than thirty nor less than ten days. Revised Statutes, section 4330.

Thirteenth—Being found in a state of intoxication. Penalty—A fine of five dollars. Revised Statutes, section 6940.

Any violation of either of the foregoing criminal enactments is punishable by indictment before a grand jury, and conviction by a jury of twelve citizens, having the qualifications of electors in the county where the offense is committed. Experience shows, however, that violations have been very inadequately punished in the past; so much so that some of the statutes are looked upon as practically obsolete.

It is estimated that the costs of prosecution far exceed, in the aggregate, the amount of fines assessed. These fines may be collected, either by commitment to the jail, until paid, or by execution issued against the property or person of the offender.

Civil liability, for injuries resulting from the sale of intoxicating liquors, also exists in the following instances:

First—A person who, by the sale of intoxicating liquor contrary to law, causes the intoxication of another person, is responsible in a civil action, for a reasonable compensation to any person who may take care of such intoxicated person, and one dollar per day, in addition thereto, for every day such person is so taken care of. Revised Statutes, section 4356.

Liquor Laws of Ohio; General Sketch of.

Second—Every husband, wife, child, parent, guardian, employer, or other person injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, may bring action against any person or persons, severally or jointly, who, by selling or giving intoxicating liquors, causes the intoxication in whole or in part, of such person, to recover for all damages sustained, as well as exemplary damages, by having given previous notice to the person or persons so engaged in selling intoxicating liquors, or by having filed a general notice with the clerk of the proper township or municipal corporation, not to sell to such person. Notice to the owner or lessor of the premises, in which such liquors are sold, creates a similar liability against him, and also a lien thereon for the satisfaction of the same. Married women and minors may bring and control such actions. Revised Statutes, section 4357.

Third—Buildings used or occupied, for the sale of intoxicating liquors, with the permission of the owner, are held liable for, and may be sold, in a civil proceeding, to pay all fines, costs, and damages assessed against the person so occupying the same. Revised Statutes, section 4364.

There are also certain *inspection laws* on our statute books, designated to guard against adulteration. By these it is made the duty of the probate judge of each county, when necessary, to appoint a gauger and inspector of domestic and foreign spirits who, before entering upon the duties of his office, is required to give bond in a sum not less than three hundred, nor more than one thousand dollars, to the satisfaction of the court, and take an oath to impartially execute the duties required of him by law. Each gauger and inspector, when so appointed and qualified, must provide himself with suitable instruments and, when called upon, is required to gauge any barrel or cask, and ascertain the quantity, quality and proof of the spirits contained therein. He also marks the same on the barrel or cask, when so inspected, together with the word "pure," if so found, and

Liquor Laws of Ohio; General Sketch of.

if otherwise, "impure," in the latter instance he is required to notify the prosecuting attorney of the county, who immediately institutes proceedings to test the accuracy of the inspection, and if found to be correct, the impure liquor is destroyed. The inspector is paid for his services, a fixed fee for each inspection, by the owner of the spirits, and is punished for misconduct in office, by suitable penalties. Revised Statutes, Chapter 6, Title 5, Part 2.

The foregoing provisions comprise, substantially, all the legislation of the State relative to the manufacture or sale of intoxicating liquors.

Our criminal courts follow the "common law" doctrine on the subject of drunkenness, as applied to the commission of crime. It is never allowed as an excuse, except where actual insanity has resulted from previous habits of intemperance.

I regret to say that this office is not supplied with the reports and other statistical information sought by the president of Switzerland, nor do I believe they are accessible anywhere in the State.

With sentiments of high consideration, I am,

Very respectfully,

D. H. HOLLINGSWORTH,

Attorney General.

INTOXICATING LIQUORS; PROCEDURE.

Attorney General's Office,

Columbus, Ohio, August 23, 1883.

W. H. Eiker, Esq., Prosecuting Attorney, Gallipolis, Ohio:

DEAR SIR:—Your favor of the 21st inst., enclosing the form of a proposed petition against A. T. Ray, *et al.*, to recover an assessment on the business of trafficking in intoxicating liquors, is received.

I consider the form thereof quite sufficient. However,

Scott Law; Distribution of Tax Under.

general judgment at law against all the defendants, when in fact you are only entitled to such a judgment against Mr. Ray. As against the owners of the real estate, I presume an equitable finding of the amount due, and a decree to sell the real estate to satisfy the same, is all you can expect. It might be well to put in the petition, as in the case of a suit on note and mortgage, two causes of action, asking in one a judgment at law against Mr. Ray, and in the other a simple finding and order of sale against all defendants.

This method of procedure would also have this advantage: Should it turn out that Mr. Ray holds a lease, executed before the passage of the law, you would still be entitled to a judgment against him on which execution could issue, but in a purely equitable proceeding a court might possibly dismiss the petition. The above suggestions, of course, are based upon the supposition that Mr. Ray's attorney would feel disposed to file a motion to separately state and number the causes of action in your petition, in its present form.

Wishing you success in vindicating the law, I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DISTRIBUTION OF TAX UNDER.

Attorney General's Office,
Columbus, Ohio, August 23, 1883.

F. R. McLaughlin, Esq., Auditor, Bellefontaine, Ohio:

DEAR SIR:—Your favor of 20th inst. is received. I am of opinion that all revenues arising under what is known as the Scott law, on account of any business carried on in the country, outside of any municipal corporation, should be

*Scott Law; Prohibition of Places of Habitual Resort; Tax
Not Remitted.*

passed to the credit of the poor fund of the county, and not that of the particular township where the traffic is conducted.

The act does not provide when the funds shall be distributed; hence I conclude this should be governed by a sound and reasonable discretion of the officer, whose duty it is to make such distribution, having reference to the probabilities, in each case, that municipal corporations may, during the year, prohibit the traffic and thus necessitate a return of a part of the amount.

The prosecuting attorney is by law made the legal adviser of county officers, and in case of doubt, his advice should be taken and followed.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROHIBITION OF PLACES OF
HABITUAL RESORT; TAX NOT REMITTED.

Attorney General's Office,
Columbus, Ohio, August 29, 1883.

*Jas. F. Conly, Esq., Prosecuting Attorney, New Lexington,
Ohio:*

DEAR SIR:—Your favor of 27th inst. is received. It is provided in section 9 of what is known as the Scott law, that "if any municipal corporation shall prohibit ale, beer and porter houses within the limits of such corporation, a ratable proportion of the tax, and I see no escape from the conclusion that such corporations may prohibit" places of habitual resort for tippling and intemperance without such repayment.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Cider—Daniel Hall Building Company; Incorporation of.

SCOTT LAW ; CIDER.

Attorney General's Office,
Columbus, Ohio, August 29, 1883.

W. E. Bowsher, Esq., Upper Sandusky, Ohio:

DEAR SIR:—Your favor of 27th inst., in which you ask my opinion as to whether “the sale of sweet, hard or boiled cider at retail” subjects a dealer to the payment of the tax provided for by the Scott law, is received.

The tax is levied upon the business of selling “intoxicating liquors,” without other designation. If cider be of an intoxicating character, I presume it is included; whether it is or not, can only be determined by examining or testing the particular article. This is not a question of law for the opinion of this office, and I trust you will excuse me from undertaking to answer it more definitely.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

DANIEL HALL BUILDING COMPANY; INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, August 29, 1883.

Hon. Jas. W. Newman, Secretary of State:

DEAR SIR:—Your favor of the 25th inst., enclosing articles of incorporation of the “Daniel Hall Building Company,” is received. The objects of the association appear to be somewhat vague, but after a careful examination of the articles, I am of the opinion that the purpose of the incorporators to pursue the business contemplated and named

*County Treasurer Shall Act as City Treasurer in City of
Second Class.*

in section 3833, Revised Statutes, sufficiently appears. This is a lawful purpose for which corporations may be formed. Of course the powers of the corporation in raising and loaning money, must be exercised in strict conformity to the general statutes governing such corporations, but this requirement does not affect the right to organize the company.

I have the honor, therefore, to return herewith said articles of incorporation, and advise that the same be received as a compliance with the law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY TREASURER SHALL ACT AS CITY
TREASURER IN CITY OF SECOND CLASS.

Attorney General's Office,
Columbus, Ohio, August 29, 1883.

S. C. Wheeler, Esq., Sandusky, Ohio:

DEAR SIR:—Your favor of 28th inst. is received. By section 1708, Revised Statutes, it is provided that the county treasurer shall act as city treasurer, in cities of the second class (such as Sandusky) embracing a county seat, and that no city treasurer shall be elected therein. He is required by section 1721 to qualify in every respect as if he were elected to the office, by taking the oaths of office, and giving bond to the acceptance of the city council.

It seems to me that this must be held to constitute him the holder of a "municipal office," as contemplated in section 1681; otherwise he would, if a member of the city council, occupy the exceptional position of being required

Scott Law; Powers of Druggists Under.

to give bond as treasurer, and to approve the same bond as councilman.

I am of opinion that such duties are inconsistent, and that the law does not contemplate that the same shall be discharged by one person.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; POWERS OF DRUGGISTS UNDER.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

*Horace Benton, Esq., President National Drug Association,
Cleveland, Ohio:*

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 27th inst., in which you are pleased to submit to this office, on behalf of the retail druggists of Ohio, the following question:

“If a retail druggist sells distilled liquors, knowing them to be for medical use, and not to be drunk on the premises, is he required, under the Scott law, to pay an assessment for trafficking in such liquors?”

The only exceptions to the operation of the act are found in section 6. It is there provided that the term “trafficking in intoxicating liquors” shall not include sales “upon prescriptions issued in good faith by reputable physicians in active practice, or exclusively known mechanical, pharmaceutical or sacramental purposes.”

The enumeration of certain purposes, as above, for which liquors may be sold without payment of the tax, it seems to me, must be held to exclude the right to sell for

Bounty; Payment to Re-enlisted Veteran Volunteers.

medicinal or other purposes, not so enumerated. Besides, the act clearly states the only manner in which such liquors can be sold for medicinal purposes, to-wit, upon prescriptions issued in good faith by physicians of reputation and in active practice. I quite agree with your statement that "there are hundreds of druggists who dispense liquors with as much care and caution as they use in selling strychnine," yet this fact, however creditable to them as individuals, cannot affect or alter the plain reading of an act of the General Assembly.

I am, therefore, of opinion that your question must be answered in the affirmative.

With sentiments of consideration, I am,

Very respectfully,

D. H. HOLLINGSWORTH,

Attorney General.

BOUNTY; PAYMENT TO RE-ENLISTED VETERAN
VOLUNTEERS.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

*John M. Broderick, Esq., Prosecuting Attorney, Marysville,
Ohio:*

DEAR SIR:—I have the honor to acknowledge your two favors of 24th and 25th inst., enclosing a certificate of the adjutant general showing that Benj. J. Haynes of Company K, 66th Regiment, Ill., V. V. I., re-enlisted on the 7th of April, 1864, and was credited to Claybourne Township, Union County, Ohio, and in which you ask my opinion whether the township trustees are liable for the payment of veteran bounty thereon.

I do not regard such certificate as conclusive by any means. If Mr. Haynes is, or was, in fact a re-enlisted

*Scott Law; Additional Tax Paid by Person Changing From
Malt to Spirituous Liquors Based on \$100.*

veteran volunteer, and received no local bounty upon said enlistment, the fact that he was assigned to an Illinois regiment can make no difference, provided he was credited upon the quota of the township under a requisition for volunteers by the President.

These are questions of fact of which the trustees should be satisfied by competent evidence, before making the payment. The law governing the matter will be found on page 294, O. L., Vol. 77.

For a full review of the subject, see *State ex rel. vs. Oglevee*, 36th Ohio St., page 394.

You will perceive from this case that the certificate is only conclusive of a very few facts.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; ADDITIONAL TAX PAID BY PERSON CHANGING FROM MALT TO SPIRITUOUS LIQUORS BASED ON \$100.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

Jas. T. Shoup, Jr., Prosecuting Attorney, Delaware, Ohio:

DEAR SIR:—Your favor of 24th inst. is received. A dealer in malt and vinous liquors, who has paid his assessment of \$100, under what is known as the Scott law, for carrying on the business within a municipal corporation, is undoubtedly entitled to be repaid a ratable proportion of the tax for the unexpired portion of the year, upon the municipal corporation prohibiting such traffic in the corporation. If he commences the business again outside of the corporation, he is liable to another assessment the same as a new dealer.

Township Treasurers; Fees on Collections and Disbursements.

As the taxes are not paid into the corporation treasury, for doing business outside, I do not think such dealer can claim, as a matter of right, to have the amount so to be refunded applied in payment of his new assessment. Of course, so far as he is concerned, there is no difference in the final result.

As a matter of convenience there might be nothing wrong in the auditor and treasurer arranging such refunder and new payment by simply applying one to the satisfaction of the other, before the corporation share of the original payment is paid into the corporation treasury; afterwards it would be manifestly impossible.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

TOWNSHIP TREASURERS; FEES ON COLLECTIONS AND DISBURSEMENTS.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

G. W. M. Bookwalter, Township Clerk, Gratis, Ohio:

DEAR SIR:—Your favor of 28th inst., relative to fees of township treasurers, is received. I enclose you a full copy of an opinion given to the prosecuting attorney of Cuyahoga County by my predecessor, ex-Attorney General Nash, July 27, 1880, upon the same subject. I hesitate to dissent from this opinion in any particular, knowing the eminent ability of Judge Nash as a jurist. However, I feel that possibly his attention may not have been called to the duties of township treasurers, as specified in section 1572, Revised Statutes.

The money "paid out" by the treasurer seems to be only such as is ordered to be so paid by the trustees; the money

School Examiner; Teacher of Select School Not Eligible.

remaining in the treasury at the expiration of his term of office is not "paid out," but delivered by law to his successor, the same as the books, papers and other property belonging to the township. Otherwise, it seems to me by repeated resignations the cost to the township, for handling its funds, might be indefinitely multiplied.

I am of the opinion, therefore, that under section 1532, Revised Statutes, the treasurer is only entitled to retain as fees, two per centum of the money actually received and paid out by him, on the order of the trustees.

The attorney general is not the legal adviser of township officers, as he is of the prosecuting attorney. The enclosed opinion of ex-Attorney General Nash was given in a proper case, and I have no authority to dissent from it, nor have I any desire to, unless the question should be presented in legal form. I therefore hope you will excuse me from further investigating the subject.

Yours respectfully,

D. H. HOLLINGSWORTH,

Attorney General.

SCHOOL EXAMINER; TEACHER OF SELECT
SCHOOL NOT ELIGIBLE.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

*John B. Driggs, Esq., Prosecuting Attorney, Woodsfield,
Ohio:*

DEAR SIR:—Your favor of the 27th inst., enclosing a copy of an advertisement of the "Beallsville Select School," is received.

The question you desire answered is whether Mr. McVey, the principal, is eligible as a school examiner under section 4069, Revised Statutes. No person who is con-

School Examiner; Teacher of Select School Not Eligible.

nected with, or interested in a normal school, or school for the special training of persons for teachers, can be appointed such examiner; hence the question you submit is simply this: Is the Beallsville Select School either a normal school or a school for the special training of teachers.

Of course this is purely a question of fact to be determined by all the circumstances, but in my opinion, the advertisements and declarations of those connected with the school, must be given controlling force in arriving at a correct conclusion. By your enclosure I learn that it is advertised as a school where pupils receive a "thorough drill in normal instruction for teachers;" lectures are given on "the theory and practice of teaching," and at the close a "teachers' examination" is held. Those wishing further information are requested to "call on or address" Mr. McVey. I am informed further by your letter, that Mr. McVey writes letters soliciting patronage, and therein uses such language as the following: "I say our school stands second to none for the training of teachers; of the members that attended our school, last term, thirty-two were examined and received certificates as follows: four for three years, six for two years, twelve for eighteen months, nine for one year, and one for six months. We will have an examination here at the close of school, and that will give you a decided advantage."

Unless Mr. McVey can controvert these stubborn facts, it would seem to me that his office, as school examiner should be declared vacant by the probate judge, and a new examiner should be appointed.

With sentiments of consideration, I am,

Yours, etc.,

D. H. HOLLINGSWORTH,

Attorney General.

Taxes; Collection of—Scott Law; Probate Court No Jurisdiction Under.

TAXES; COLLECTION OF.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of 24th inst. is received. I am of the opinion, where assessments are made and ordered to be placed upon the general duplicate, under section 4481, Revised Statutes, they should be collected as other taxes, in installments, unless the commissioners, in their order otherwise direct. When the territory within the limits of a municipal corporation is treated as a single parcel of land, under section 4484, the sum apportioned to it should be apportioned by the auditor to the lots and lands therein according to value, and not according to benefits, as when the proceedings are had under section 4483.

This distinction once made continues until all the bonds are liquidated or the indebtedness otherwise paid.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROBATE COURT NO JURISDICTION UNDER.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your favor of recent date, in which you enquire if the probate court in a county having concurrent jurisdiction with the Common Pleas, in cases of misdemeanors, under section 6454, Revised Statutes, can exercise

Scott Law; a Cellar or Storeroom Not a "Place" Under.

such concurrent jurisdiction to punish the particular misdemeanor named in section 2 of the Scott law, has been received.

This section seems to contemplate an indictment by a grand jury, and as there is no law authorizing a grand jury to be called in the probate court, I infer that the General Assembly intended to confine such prosecutions to the Common Pleas Court. The question is not without doubt, but because of this doubt, if for no other reason, I think it safer to begin in the Common Pleas.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; A CELLAR OR STOREROOM NOT A
"PLACE" UNDER.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

W. H. Harter, Esq., Prosecuting Attorney, Canton, Ohio:

DEAR SIR:—Your favor of 24th inst. has been received. I quite agree with you in the proposition that a wareroom or cellar, used exclusively for storing and bottling beer, can not be regarded as a "place" for trafficking in intoxicating liquors as used in the Scott law, unless such liquor is also sold at or from the same place. Section 6 of the act specifically defines such traffic to be "the buying or procuring and selling."

This does not mean simply the storing and bottling of liquors to be removed to another place for sale. I am of the opinion, therefore, on the state of facts presented by Mr. Fawcett and yourself, that no assessment should be made on the business done in the cellar, on lot No. 43, East Tuscarawas street, Canton, Ohio.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

County Treasurer; Compensation of.

COUNTY TREASURER; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

*W. H. Chandler, Esq., County Treasurer, Bellefontaine,
Ohio:*

DEAR SIR:—Your favor of 28th inst. is received. By it I am informed that the commissioners of Logan County, since you have been treasurer of the county, have issued bonds amounting to \$236,000, the proceeds of the sale of which you have received and disbursed, and you ask my opinion as to whether you are entitled to compensation therefor or not.

An officer is only entitled to such compensation as is provided by law. Section 1117, Revised Statutes, furnishes the rule for determining the fees of county treasurers; in it you will notice there is a distinct provision that "no compensation, percentage, commission or fees shall be allowed on any moneys received from the bonds of the county."

I see no escape, therefore, from the conclusion that fees cannot be allowed for the services you mention, however gross and inequitable such conclusion may be.

I have carefully examined the files of this office, and also inquired of my predecessor, ex-Attorney General Nash, and fail to find any opinion given by him such as you refer to as having been given to the treasurer of Guernsey County.

I can only add that my judgment of what the law is, and what it ought to be, are widely different.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

*Clerk of Court; Fees of—Constitutional Amendments;
Ballots.*

CLERK OF COURT; FEES OF.

Attorney General's Office,
Columbus, Ohio, August 30, 1883.

*Elmer C. Powell, Esq., Prosecuting Attorney, Jackson,
Ohio:*

DEAR SIR:—Your favor of the 23d inst. is received. In it you ask my opinion as to whether or not fees can be allowed to the clerk of the Common Pleas Court to be paid out of the county treasury, in a capital case, in excess of the \$300 provided for in section 1261, Revised Statutes.

The clerk is only entitled to such fees as are allowed by law and, as this is the only section under which he receives any compensation out of the county treasury for services in criminal cases, I see no escape from the conclusion that he is bound by the limitation therein. The law nowhere, so far as I have been able to discover, makes any distinction in this respect between capital and other offenses.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; BALLOTS.

Attorney General's Office,
Columbus, Ohio, September 5, 1883.

Rev. R. T. Kesler, Geneva, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received, in which you ask the following question: "Will a ballot that has no names of candidates for office, or that has all the names scratched off, and has simply on it the wording re-

Constitutional Amendments; Vote on the.

quired for voting on one of the propositions to amend the constitution, be counted as a ballot?"

In reply I would say that such a ballot ought to be counted. There is nothing in the law to prevent an elector from scratching any portion of his ticket.

Very respectfully,

D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; VOTE ON
THE.

Attorney General's Office,
Columbus, Ohio, September 5, 1883.

*F. G. Carpenter, Esq., Prosecuting Attorney, Washington
C. H., Ohio:*

DEAR SIR:—Your favor of the 3d inst. is received. I do not think it is necessary to the validity of the vote on the proposed constitutional amendments that any reference to them should be made in the sheriff's proclamation under section 2977, Revised Statutes.

Article 16, section 1 of the constitution prescribes how they shall be published, and section 4 of an act passed April 5th last (O. L., Vol. 80, p. 96) makes it the duty of the secretary of state to cause publication to be made. This is all the notice the law requires.

I see no special objection, however, to the sheriff making a brief reference to them in his proclamation, if he so desires.

I fail to find any positive provision of law which requires a sheriff to give notice of any election for more than fifteen days. He seems to have, however, a discretion under section 2977, Revised Statutes, and I presume in the coun-

Prosecuting Attorney.

ties you mention his proclamation is inserted in the newspapers for six weeks by custom.

It can do no special harm and may occasionally do good to give the notice a longer publication than the minimum of fifteen days.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

PROSECUTING ATTORNEY.

Attorney General's Office,
Columbus, Ohio, September 5, 1883.

John McSweeney, Jr., Prosecuting Attorney, Wooster, Ohio:

DEAR SIR:—Your favor of 30th ult. has been neglected in consequence of my absence from the city.

In reply I now say that I find nothing in the statutes forbidding the prosecuting attorney of one county from accepting employment as an attorney for "services to be performed in another county in defending a prisoner indicted for an offense committed in the other county." It is altogether a matter of propriety, and while I am not prepared to say that it is improper I should not care to decide in an official way that it is.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Dealer Can Not Take in Partner Under One Tax—Scott Law; Dealers May Change From Malt to Spirituous Liquors by Payment of Proportion of \$100.

SCOTT LAW; DEALER CAN NOT TAKE IN PARTNER UNDER ONE TAX.

Attorney General's Office,
Columbus, Ohio, September 6, 1883.

A. H. Ward, Esq., Corning, Ohio:

DEAR SIR:—Your favor of 3d inst. is received. I am of the opinion that the immunity secured by payment of the Scott liquor tax is purely personal, and that a dealer having paid his assessment can not sell interest in his business to another, with whom he forms a partnership, and together go on doing business without the payment of another assessment for the residue of the year.

If he can, then there is nothing to prevent him from retiring from the firm the next day by selling all his interest to his partner, and in this manner accomplish indirectly that which can not be done directly, to-wit, the barter and sale of his tax immunity.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DEALERS MAY CHANGE FROM MALT TO SPIRITUOUS LIQUORS BY PAYMENT OF PROPORTION OF \$100.

Attorney General's Office,
Columbus, Ohio, September 5, 1883.

D. C. Badger, Esq., Prosecuting Attorney, London, Ohio:

DEAR SIR:—In reply to your favor of recent date, I would say that I have on a number of occasions given an

Villages; Power to Borrow Money.

opinion to the effect that a dealer in malt liquors who has paid his assessment of \$100 may, during the year, also commence selling other liquors by paying an assessment for the residue of the year, based on another \$100; provided he *in good faith* applies to pay such tax *before* selling other liquors. The act is very ambiguous on the point, but it seems to me that the above is a fair construction.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

VILLAGES; POWER TO BORROW MONEY.

Attorney General's Office,
Columbus, Ohio, September 7, 1883.

Hon. G. T. Clark, Mayor, Lorain, Ohio:

DEAR SIR:—Your favor of the 5th inst. is received. Section 2700, Revised Statutes, limits the power of a village corporation to borrow money to the amount of \$15,000, in any fiscal year, and this only when previous loans have been fully paid off and cancelled.

I am of opinion that it would be a violation of this section to issue bonds as proposed by the village of Lorain without first procuring an act of the General Assembly for that purpose. A vote of the electors of the village cannot be substituted for this authority of the General Assembly. Sections 2408 and 2409 seem to contemplate that the construction as well as the management of waterworks shall be under the supervision of a board of three trustees, to be appointed by the council, as soon as the construction of such works is commenced.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Grand Jury; Power of Retaining Evidence.

GRAND JURY; POWER OF RETAINING EVIDENCE.

Attorney General's Office,
Columbus, Ohio, September 7, 1883.

R. W. Cahill, Esq., Prosecuting Attorney, Napoleon, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received. By it I learn that the grand jury at the April term of the Court of Common Pleas of Henry County for the current year, presented an indictment for forgery against one Geo. W. Ellis, the forgery consisting of the signing of the name of G. Brey as surety to a promissory note, without authority. The note was produced before the grand jury under a subpoena *duces tecum* issued against the owner and payee thereof, and afterwards was taken possession of and retained by you, to await the arrest and trial of the accused, he not having been arrested.

The question you ask is whether you have a right to so retain the note, notwithstanding the owner may demand to have it returned to him.

The question is a most important one, and if I could convince myself of the correctness of your view, that production of the note, on the trial, is essential to the conviction, I should unhesitatingly agree to your further proposition that personal interests must be subservient to the interests of the State in a matter of this kind.

After carefully examining the authorities you cite, and such other authorities as I have been able to find, I am of the opinion, however, that a conviction may be had upon secondary evidence, should the owner fail to respond with the note, on the trial, in obedience to the command of another *subpoena duces tecum*.

Under the strict construction of the authorities you cite, all that would be necessary on the trial to authorize the admission of secondary evidence would be to show that

Grand Jury; Power of Retaining Evidence.

the note had been paid by the accused, and that notice had been served on him to produce it.

I doubt if even this is necessary. There is a copy of the note in the indictment and, if you give it up to the owner, the payment of the note under the circumstances you mention would be an additional evidence of guilt.

In certain cases evidences of guilt may be retained by the sheriff—see section 7120, *et seq.*, Revised Statutes. The statutes, however, nowhere provide that property may be retained in the manner you suggest. The fact that one name on a promissory note is forged does not destroy its value to the owner. He may wish to bring suit to test by a civil action the genuineness of the alleged counterfeit signature. Besides, the accused may never be arrested. Under all the circumstances I am of the opinion that the owner is entitled to demand the custody of his note in the absence of any statute authorizing the prosecuting attorney to retain it.

It occurs to me that it would be very difficult for you to defend against a suit for unlawful conversion brought by the owner of the note after demand.

I heartily commend your anxiety to bring offenders to trial and punishment, but in doing this, great care must also be taken not to trespass upon the rights of innocent parties.

I have the honor to be,

Very respectfully yours,

D. H. HOLLINGSWORTH,

Attorney General.

Ditch Under Railways; Change of Location; Expenses.

DITCH UNDER RAILWAYS; CHANGE OF LOCATION; EXPENSES.

Attorney General's Office,
Columbus, Ohio, September 7, 1883.

Hon. Benj. Eason, Wooster, Ohio:

DEAR SIR:—Owing to some unaccountable delay, your favor of 29th ult. has just come to hand.

I am of the opinion, where it is sought to locate or change a ditch through or under the land of any railway company, as provided in sections 4447 et seq., Revised Statutes, and to charge the company with any portion of the cost thereof, as mentioned in section 4449, the railway officials should be served with the notice specified in section 4457, and be given an opportunity to be heard.

If, however, the county commissioners simply wish to exercise the power conferred upon them by section 4495, such notice and opportunity to be heard are not necessary, and they are authorized to proceed with the work therein contemplated after giving the required twenty days' notice. This seems to have been the plain intention of the General Assembly. Of course your letter does not contemplate, and I have not considered the possible constitutional question, as to whether section 4495 may not, in some instances, infringe upon the rights of private property without due process of law. This is probably the theory of the company in its opposition to the work.

This, however, is a subject for the courts to decide; until then, county commissioners should, in my judgment, be governed by the statutes as they exist. You will, of course, treat this only as a friendly letter, for the reason that the attorney general is not authorized to give official opinions to private persons, and therefore my views on the subject are entitled to and should receive no greater authority than your own, or those of any other reputable attorney.

Scott Law; Power of Corporations to Prohibit Under.

With sentiments of high consideration I have the honor
to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; POWER OF CORPORATIONS TO
PROHIBIT UNDER.

Attorney General's Office,
Columbus, Ohio, September 7, 1883.

Hon. Chas. Foster, Governor, Columbus, Ohio:

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of the 5th inst., in which you are pleased to enclose for the attention of this office, a letter from Rev. T. W. DeLong, of Fredericksburgh, Ohio, requesting an opinion as to the extent of the power of municipal corporations over the traffic in intoxicating liquors.

Section 9 of the act of April 17th last, commonly known as the Scott law, authorizes such corporations to "regulate, restrain and prohibit ale, beer and porter houses, and places of habitual resort for tippling and intemperance." This, it will be observed, is not a power to prohibit specific acts of sale, but rather a power to regulate, restrain and prohibit the keeping of certain houses and places of resort within the corporation. The municipal authorities, in this matter, can not go beyond the power expressly conferred by the act. Under it they have, in my judgment, full power to prohibit by ordinance, all kinds of ale, beer and porter houses, whether these liquors be sold therein by the dram or only by the pint, quart or other quantity.

When such prohibitory ordinance is adopted during the year, a ratable proportion of the tax of \$100, previously paid by the proprietors thereof, must be refunded for the unexpired portion of the year.

Scott Law; Power of Corporations to Prohibit Under.

Of course, if the proprietor of an ale, or beer or porter house be also engaged in the sale of spirituous liquors and continues to sell the same after the adoption of the ordinance, he can claim no repayment, for the reason that the full assessment of two hundred dollars is properly chargeable against him for the sale of spirituous liquors alone.

Municipal corporations may also prohibit the keeping of places of habitual resort for tippling and intemperance without reference to the character of the liquors sold at them. Tippling houses are defined to be "places in which liquors are sold in drams or small quantities, and where men are accustomed to tipple."

I infer, therefore, that the General Assembly did not intend by the act, to authorize corporations to prohibit the keeping of houses where distilled or spirituous liquors are sold only by the pint, quart or other quantity, and not to be tippled or drank on the premises. Such houses can in no sense be termed "places of habitual resort for tippling and intemperance."

This is manifest from the further fact that no provision is made for the return of any portion of the two hundred dollar tax paid upon the business of trafficking in intoxicating liquors, when a municipal corporation prohibits the keeping of such places of habitual resort. The tax is returned only when "ale, beer and porter houses" are prohibited, and then for only a ratable proportion of the one hundred dollars paid upon the business of trafficking exclusively in malt or vinous liquors.

Hoping that you may find in the foregoing a full answer to Mr. DeLong's question, I am, with sentiments of consideration,

Very respectfully yours,

D. H. HOLLINGSWORTH,

Attorney General.

County Commissioners; Power of Allowance Under Section 7136 Not Enlarged by Section 7136 as Amended.

COUNTY COMMISSIONERS; POWER OF ALLOWANCE UNDER SECTION 7136 NOT ENLARGED BY SECTION 7136 AS AMENDED.

Attorney General's Office,
Columbus, Ohio, September 8, 1883.

A. H. Mitchell, Esq., Prosecuting Attorney, St. Clairsville, Ohio:

DEAR SIR:—Your favor of 4th inst., in which you ask my opinion as to whether section 7136, Revised Statutes, as amended April 19th last (O. L., Vol. 80, p. 198), can be construed to enlarge the powers of county commissioners in making allowances in lieu of fees under section 1309, is received.

I made the point against the act, when it passed the Senate, that it was an attempt to impose duties on mayors and justices of the peace, without providing proper compensation therefor, but, notwithstanding my protest, it was passed and became a law.

The Supreme Court in the case of *Anderson vs. Commissioners, etc.*, 25th Ohio State, 13, decided that "when a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced."

The commissioners in the payment of fees cannot go beyond the power conferred upon them by the statute.

I am, therefore, of the opinion that the act does not change the former law, limiting the allowance of fees in cases of misdemeanors to those in which there has been a conviction.

I am not unmindful of the gross injustice this may work in some instances, yet the law must be enforced as it is, not as we would have it. Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; POWERS OF DRUGGISTS UNDER.

Attorney General's Office,
Columbus, Ohio, September 8, 1883.

*R. R. Freeman, Esq., Prosecuting Attorney, Chillicothe,
Ohio:*

DEAR SIR:—Your favor of the 6th inst. is received. I quite agree with you in the opinion that a prescription for intoxicating liquor, issued in good faith by a reputable physician to one of his patients, can not be refilled from time to time and made to do service during the year, by a druggist in such a manner as to relieve him from payment of the tax provided for in the Scott law. Such a construction would make nonsense of the law.

The language of the act in this regard is plain and unambiguous. It admits of no misconstruction. It simply means that when a physician in active practice issues a prescription for intoxicating liquors in good faith to a patient, believing that the use of such liquors will conduce to the restoration of his patient's health, such prescription may be filled by a druggist without the payment of a tax for trafficking in intoxicating liquors. It does not mean that the prescription may be hung up on a peg as a shield and be refilled from time to time as the appetite of the patient may demand.

Yes, I agree with you fully in your view of the law, and have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,
Attorney General.

County Commissioners; Allowance of Claims For Sheep Killed—Probate Court; Must Authorize Guardian to Sell Realty.

COUNTY COMMISSIONERS; ALLOWANCE OF
CLAIMS FOR SHEEP KILLED.

Attorney General's Office,
Columbus, Ohio, September 12, 1883.

B. F. Enos, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—Your favor of 7th inst. is received. Section 4215, Revised Statutes, does not specifically prohibit the county commissioners from allowing claims for damages caused by the killing or injuring of sheep by dogs, when such sheep are running at large upon the public highways, with their owner's knowledge and consent. Yet said section seems to give the commissioners a discretion in the matter, and it is proper that they should consider such negligence of the owners in determining whether their claims should be allowed.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

PROBATE COURT; MUST AUTHORIZE GUARDIAN
TO SELL REALTY.

Attorney General's Office,
Columbus, Ohio, September 12, 1883.

Hon. A. T. Dailey, Probate Judge, Van Wert, Ohio:

DEAR SIR:—Your favor of 9th inst. is received. Section 6280, Revised Statutes, seems to contemplate that only the probate court, appointing a guardian, can authorize such guardian to sell the real estate of his ward. It would seem to me, therefore, very questionable, whether the pro-

Constitutional Amendments; Vote on.

bate court can entertain a joint petition for the sale of land by guardians appointed in different counties. Of course you understand that the attorney general is not authorized to give opinions to county officers other than the prosecuting attorney, and you will, therefore, treat this opinion as of no more weight than that of one of the attorneys whom you say "split" on the subject.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; VOTE ON.

Attorney General's Office,
Columbus, Ohio, September 12, 1883.

J. B. Sprague, Esq., Richmond, Ohio:

DEAR SIR:—Your favor of 10th inst. is received. I have no hesitancy in saying that you are right in the opinion that, in determining the number of electors voting at any election, the names on the poll books and not the votes cast for any particular candidates, must be counted.

A voter, therefore, who scratches off all on his ticket but the prohibition amendment, simply throws away his vote so far as candidates are concerned, without any benefit to the amendment whatever.

An elector may, if he sees proper, vote a blank ballot, and yet his name goes on the poll books and counts one in determining the number of votes cast, and neither of the amendments can be adopted without receiving a majority of this number.

It is perhaps unnecessary to say that there is nothing in the constitution or laws to prevent overzealous people from disfranchising themselves, either in whole or in part.

They can not, however, in this way alter the plain rule

Constitutional Amendments; Ballots; Form of.

of the constitution which requires a majority of voters, voting at the election, to adopt an amendment.

Hoping the impression you speak of may be corrected, I am,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; BALLOTS;
FORM OF.

Attorney General's Office,
Columbus, Ohio, September 12, 1883.

Thos. J. Wallace, Esq., Chauncey, Ohio:

DEAR SIR:—Your favor of the 11th inst. received. I find nothing in the law to prevent party tickets from being printed, voted and counted, with either or all of the proposed amendments thereon. For the convenience of voters, party tickets have generally been printed with all the amendments followed separately by the words "yes—no," so that a voter may scratch off one or the other as he may choose. This form has the advantage of treating all electors fairly. It is strictly legal, however, to print party tickets with either amendment followed by the word "yes" alone, "no" alone, or by a blank space for the elector to fill in with either. The particular form is not material.

It is important, however, that the tickets shall be printed in such manner as not to deceive voters into voting for or against either amendment, contrary to their wishes; fraud, in this respect, might violate the adoption of either amendment.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Probate Judge; Prosecuting Attorney Not the Adviser of.

CLOSING OF BUSINESS PLACES.

Columbus, Ohio, September 12, 1883.

J. H. Blythe, Prosecuting Attorney, Carrollton, Ohio:

DEAR SIR:—Section 6946, Revised Statutes, does not contain the exemption found in section 6945 in favor of “persons prosecuting their regular trades, at their place of business,” and I therefore conclude that the General Assembly intended that regular as well as transient dealers should close their places of business as provided in section 6946.

Very respectfully,

D. H. HOLLINGSWORTH,
Attorney General.

 PROBATE JUDGE; PROSECUTING ATTORNEY
NOT THE ADVISER OF.

Attorney General's Office,
Columbus, Ohio, September 13, 1883.

D. T. Clover, Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—Your favor of the 11th inst. is received. The probate judge is an officer created by section 7, article 4 of the constitution, and his duties, which are mainly judicial, are pointed out by this and other sections of that instrument. In the nature of things, the prosecuting attorney can not be expected to advise him relative to these “official duties,” as contemplated in section 1274, Revised Statutes. Indeed, it would be highly improper for him to give the probate judge, in any case, a written opinion as to how any particular case should be decided. The parties have a right to be heard by counsel and if the advice of the prosecutor can be substituted for the judgment of the court, then this right is defeated, or counsel should appear before the prosecuting attorney to argue their causes instead of before the probate court.

Bridges.

It seems to me plain that the General Assembly did not intend that the prosecuting attorney should sustain any other relation to the probate court than he does to the Common Pleas or other courts of record. It may be doubted if the probate judge is in any sense a county officer such as is required to be provided by law under section 1, article 10 of the constitution. His office, as I have said, is created by the constitution itself. He has, however, a few purely ministerial duties to perform, and in case of doubt relative to these, it might be proper to call upon the prosecuting attorney for advice; further than this, I feel sure he ought not to go, and if he does, the services of the prosecuting attorney so rendered, must be regarded as personal or gratuitous, and not to be compensated under section 1274.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,
Attorney General.

BRIDGES.

Attorney General's Office,
Columbus, Ohio, September 3, 1883.

*J. P. Winstead, Esq., Prosecuting Attorney, Circleville,
Ohio.*

DEAR SIR:—Your favor of 9th inst. is received, in which you state in detail your construction of sections 860, 861 and 4940, Revised Statutes, relative to building bridges and the approaches and ways thereto.

I have fully examined the subject and am of the opinion that your construction of the same is correct in each

*Road Tax; Not a Poll Tax—Scott Law; Prohibition Must
be by Ordinance, and Not by Popular Vote.*

particular. I presume this will obviate the necessity for any analysis of the sections on my part.

I have the honor to be,

Your obedient servant,

D. H. HOLLINGSWORTH,

Attorney General.

ROAD TAX; NOT A POLL TAX.

Attorney General's Office,
Columbus, Ohio, September 13, 1883.

Hon. W. B. Woolsey, Mayor, Nevada, Ohio:

DEAR SIR:—Your favor of the 12th inst. is received. I am of the opinion that the law which requires certain persons to work on the public roads or pay a commutation, is constitutional. It is not a poll tax for State or county purposes as inhibited by section 1, article 12 of the constitution.

I have the honor to be,

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

SCOTT LAW; PROHIBITION MUST BE BY ORDI-
NANCE, AND NOT BY POPULAR VOTE.

Attorney General's Office,
Columbus, Ohio, September 19, 1883.

J. H. Dunning, Esq., Cincinnati, Ohio:

DEAR SIR:—Your favor of 18th inst. is received. I have not been able to draw a distinction between the expressions "council of any municipal corporation," and "the

Scott Law; Distribution of Tax.

municipal corporation" as used in section 9 of the Scott law. I do not think the words "municipal corporation" can be held to require a vote of the electors of such corporation before the council is authorized to adopt a prohibitory ordinance. The language of the section in this respect is somewhat loose, but this, it seems to me, is the only fair interpretation of the language used.

Of course you will understand that my opinion given to a private person is entitled to no greater weight than that of any other attorney.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DISTRIBUTION OF TAX.

Attorney General's Office,
Columbus, Ohio, September 19, 1883.

D. C. Carey, Esq., Oakwood, Ohio:

DEAR SIR:—Your favor of the 18th inst. is received. I do not see how a municipal corporation, created and organized after the liquor tax has been paid in and distributed, can claim any portion of the tax.

Of course you will understand that my opinion given to municipal officers is entitled to no more weight than that of any other attorney.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

*American Sash Balance and Lock Company; Incorporation
of—Elections; Place of Holding Fixed by Township
Trustees.*

AMERICAN SASH BALANCE AND LOCK COM-
PANY; INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, September 20, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I have your favor of 17th inst., wherein you enclose a certificate of the president pro tem., and the secretary pro tem. of "The American Sash Balance and Sash Lock Company," of Sandusky, showing that the stockholders of said company, at a meeting held on the 11th of this month, voted unanimously to change the principal office of said company to Cleveland, Ohio, and ask if this can be legally accomplished in the manner proposed. After an examination of the statutes, I am of the opinion that it can.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

ELECTIONS; PLACE OF HOLDING FIXED BY
TOWNSHIP TRUSTEES.

Attorney General's Office,
Columbus, Ohio, September 20, 1883.

B. F. Enos, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—Your favor of 18th inst. has been received. Section 1443, Revised Statutes, provides that township trustees shall fix the place of holding elections within the township, but I fail to find any statute regulating the time and manner of changing such place after it has once been fixed.

Hawk, Lewis; Power of Warden of Ohio Penitentiary as to Bill of Agent Who Pursued and Brought Him Back Under a Requisition.

I conclude, therefore, if the power to change is exercised, it should be done in a reasonable manner, and long enough before an election to give voters ample opportunity to become acquainted with the fact. In the absence of specific legislation on the subject, I am unable to answer your inquiry more definitely.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

HAWK, LEWIS; POWER OF WARDEN OF OHIO
PENITENTIARY AS TO BILL OF AGENT WHO
PURSUED AND BROUGHT HIM BACK UNDER
A REQUISITION.

Attorney General's Office,
Columbus, Ohio, September 21, 1883.

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

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 22d ult., containing the following enclosures:

First—A bill of the Columbus, Hocking Valley and Toledo Railway Company for expenses alleged to have been incurred in arresting and transporting Lewis Hawk, who was indicted for murder in the first degree and convicted of manslaughter in Delaware County, Ohio, to said county from Los Angeles and San Francisco, as per detailed statement, \$2,429.39.

Second—A certified copy of the journal entry and other proofs showing that the commissioners of Delaware County have allowed and paid the bill as a part of the costs of arresting and convicting said Hawk of the offense.

Hawk, Lewis; Power of Warden of Ohio Penitentiary as to Bill of Agent Who Pursued and Brought Him Back Under a Requisition.

The question you submit for my opinion is this: "Does the bill so paid by the authorities of Delaware County constitute a valid claim against the State of Ohio for repayment?"

No evidence is submitted as to the reasonableness or validity of the bill, except that it has been paid by Delaware County.

The detailed statement above referred to contained the following items:

Transportation Norris, prisoner, and two guards, special train	\$1,064 40
Sleeping car fare.....	35 00
Hotel bills (part estimated).....	232 50
Livery bills, etc.....	55 70
Sundry expenses embracing handcuffs, transfer of money by telegraph, cash to sheriffs, police officers and porters, cash to Hawk, postage, cigars and miscellaneous expenses not kept account of, "in all".....	168 34
Attorney fees at Los Angeles, San Francisco, Topeka and Kansas City.....	375 00
Telegrams	288 35
J. T. Norris, 42 days, \$5.00 per day.....	210 00
Total	\$2,429 39

These items would seem to indicate rather a royal pursuit of one fugitive from justice, yet this fact alone can not affect the legal liability of the State. Section 920, Revised Statutes, under which it is alleged this claim arises, provides that "when any person charged with a felony has fled to any other State or Territory, and the governor has issued a requisition for such person, the commissioners may pay to the agent designated in such requisition to execute the same, all necessary expenses of pursuing and returning such person so charged, or so much thereof as to them seems just, out of the county treasury."

Hawk, Lewis; Power of Warden of Ohio Penitentiary as to Bill of Agent Who Pursued and Brought Him Back Under a Requisition.

Section 7332 provides that "upon the conviction and sentence of any person for felony, there shall be included in the bill of costs, any sum paid by the county commissioners for the arrest and return of the convict on the requisition of the governor."

Section 7336 provides that "when a convict is received at the penitentiary, after an execution has been issued against him for costs and returned unsatisfied, the warden shall allow so much of the cost bill * * * as he finds to be correct, and certify such allowance, which shall be paid by the State."

You will observe, therefore, that the question resolves itself into this form: Is the warden, in certifying such cost bills concluded by the action of the county commissioners under section 920, or may he look beyond, to determine whether the expenses incurred were necessary, or were, in fact, properly incurred by the person presenting the bill therefore? Did the legislature intend to clothe the county commissioners with unlimited power to bind the State in such cases, and to fix the character and value of "necessary expenses" according to their discretion?

In a very similar case the Supreme Court of the State uses this language: "A power so liable to great abuse ought not to be raised by doubtful implication. To justify its recognition, the terms which confer it should be clear and unmistakable." 28th Ohio State Report, page 593.

So in this case, a power liable to such great abuse ought to be strictly construed. Section 920 limits such payments to "*necessary expenses to the agent designated in the requisition,*" yet it is insisted that under this power the Columbus, Hocking Valley and Toledo Railway Company may employ this same agent at \$5.00 per day and give him unlimited authority to hire and pay assistants and attorneys, and furnish them with "special trains," hotel bills "estimated," cash, telegrams, postage, cigars, and "miscellaneous ex-

Hawk, Lewis; Power of Warden of Ohio Penitentiary as to Bill of Agent Who Pursued and Brought Him Back Under a Requisition.

penses not kept account of," and then present an aggregate bill for the same to the State, through the commissioners, and arbitrarily demand payment in full. Such a power would indeed be a dangerous one.

If a bill of \$2,429.39 can be made in this way, so can one of ten or fifty times the amount. I do not believe the legislature so intended.

I am, therefore, of the opinion that it is the duty of the warden, under section 7336, to refuse to certify any item charged in a cost bill which he finds, either from an inspection of the bill itself, or from other satisfactory evidence, not to have been legally incurred. I do not regard the action of the commissioners, or the action of the court and clerk in certifying cost bills, conclusive against the State, and the warden, having in the exercise of a proper discretion, refused to allow this item of \$2,429.39, I do not think the auditor of state has any duty to perform in the premises. If the county commissioners feel aggrieved at the action of the warden, they have a remedy at law, either against the railway company to recover back, or in mandamus against the warden to enforce an allowance of the item, according to the actual facts in the case. I may add that, in coming to this conclusion, I make no question of the right of the agent of the State designated in a requisition, to sell and assign, in a proper case, his right to be reimbursed for reasonable expenses incurred in pursuing and returning a person charged with felony.

I return herewith all enclosures.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

Township Treasurers; Power to Deposit Public Funds in Bank—Elections; Place of Holding Fixed by Township Trustees.

TOWNSHIP TREASURERS; POWER TO DEPOSIT PUBLIC FUNDS IN BANK.

Attorney General's Office,
Columbus, Ohio, September 26, 1883.

C. E. Marlott, Esq., Township Clerk, Camden, Ohio:

DEAR SIR:—Your favor of 20th inst. is received. The act of March 6th last, amending section 6841, Revised Statutes, Ohio Laws, Vol. 80, page 43, does not alter the original section relative to the acts of township treasurers.

Under section 1513, Revised Statutes, they still have, in my judgment, the right to deposit public funds, with the consent of the township trustees, in certain cases specifically named in the section.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

ELECTIONS; PLACE OF HOLDING FIXED BY TOWNSHIP TRUSTEES.

Attorney General's Office,
Columbus, Ohio, September 26, 1883.

A. L. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Under section 1443, R. S., township trustees are required to fix the place of holding township elections, but I fail to find anything in the section or elsewhere, which forbid the holding of such elections within the limits of an incorporated village also within the township. In the absence of such law, I think the matter is discretionary with the trustees to fix the township

*County Infirmary; Superintendent of; Fees for Keeping
Insane Persons.*

voting place within or without the wards of such village,
as they may choose.

I think this opinion is confirmed by the change in
section 2923, as found in O. L., Vol. 77, page 40.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY INFIRMARY; SUPERINTENDENT OF;
FEES FOR KEEPING INSANE PERSONS.

Attorney General's Office,
Columbus, Ohio, September 26, 1883.

*W. S. Evans, Esq., Prosecuting Attorney, Georgetown,
Ohio:*

DEAR SIR:—Your favor of 21st inst. is received.

Evidently Ex-Attorney General Nash, by his opinion
of May 17, 1882, intended to hold that the superintendent
of a county infirmary is entitled to receive 35 cents per
day for each idiot or insane person kept in the infirmary,
but this opinion, in my judgment, should be confined to
such idiots and insane persons as are temporarily com-
mitted to his custody under Sec. 707. In case of continued
or permanent retention of any lunatic or idiot in the
county infirmary, he is to be cared for under sections 970,
971 and 972, R. S., and in such event the superintendent
is compensated under Sec. 962.

In the two cases you mention, I am, therefore, of
the opinion that the superintendent is not entitled to
charge the 35 cents per day.

I may add that I called Ex-Attorney General Nash's
attention to your letter, and he agrees with me that his
opinion should have been limited as herein indicated.

Constitutional Amendments; Votes on the.

I quite agree with your opinion as stated at length in your letter of the 21st inst.

Herewith find enclosed copy of your letter of the 18th inst. as requested.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; VOTES ON
THE.

Attorney General's Office,
Columbus, Ohio, September 26, 1883.

J. L. McIlwaine, Esq., New Philadelphia, Ohio:

DEAR SIR:—Your favor of the 26th inst. is received.

I quite agree with you that a ticket having on it the words Prohibition of Intoxicating Liquors—yes—no, cannot be counted as an affirmative vote for the amendment.

Section 1, article 16 of the Constitution provides that proposed amendments shall be submitted "to the electors for their approval or rejection," and it seems to me that an elector cannot be said to approve a proposition by the use of language which expressly negatives the idea of approval. Such a ballot as the above, in my judgment, should neither be counted for or against the proposed amendment, but should be counted in estimating the aggregate number of electors voting at the election, a majority of whom is necessary to adopt or approve the proposition.

The effect of such a ballot is, therefore, the same as a direct vote against. This, so far as my investigation goes, has always been the rule, and it is only recently that I have heard of any doubts being expressed by lawyers on the subject.

Constitutional Amendments; Lunch Counters at Polls in Favor of.

Of course, you understand that my opinion in a matter of this nature, is entitled to no additional consideration by reason of being attorney general. It is not a matter in which that official is authorized to give opinions.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; LUNCH
COUNTERS AT POLLS IN FAVOR OF.

Attorney General's Office,
Columbus, Ohio, September 26, 1883.

*Hon. E. B. Updegrove, Mayor, Etc., South Charleston,
Ohio:*

DEAR SIR:—By your favor of this date I am informed that a number of the citizens of South Charelston "are preparing to serve hot coffee and lunch in and at the same building that the election is held in, to be interspersed with singing and a general persuasion meeting for the purpose of advancing the cause of the second amendment." You further state that some of the other citizens of the village think that it is your duty, as mayor, to suppress such proceedings, and you ask my opinion on the subject.

In answer I would say that I find nothing in the statutes which makes it illegal or improper to keep open an orderly free lunch room on the day of election, provided that neither the officers of the election, nor the rights of the electors be disturbed thereby. Of course, any violation of the law, or disturbance of the public peace, should be prevented the same as at any other time. I am of opinion, therefore, that the mere act of keeping

Election; Officers of.

open a free lunch room, on the day of election, by the friends of the second amendment is not illegal, and that you have no power to suppress the same.

It ought, however, to be borne in mind that Sec. 7046, R. S., is applicable to all elections. It provides in express terms that "whoever gives, offers, or promises anything to any elector, to influence him in giving his vote or ballot, or uses any threat or force to procure any such elector to vote contrary to his inclination, or to deter him from giving his vote or ballot, shall be fined not more than five hundred dollars, and imprisoned not more than six months."

With sentiments of consideration I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

ELECTION; OFFICERS OF.

Attorney General's Office,
Columbus, Ohio, October 1, 1883.

E. A. Palmer, Township Clerk, Napoleon, Ohio:

DEAR SIR:—Your favor of the 29th inst. is received.

Section 2935, R. S., in my judgment, only applies when the regular judge or clerk fails to attend, or is a candidate at an election. In the event of the clerk being present, and an assistant being necessary to the proper discharge of the duties imposed on the clerk, I see no reason why he should not be permitted to select such assistant or deputy, the same as do other officers.

Of course, you understand that the attorney general is not authorized to give official opinions to municipal of-

Elections; Extra Clerks Under Section 1393.

ficers, and will therefore regard my opinion as of no greater weight than that of yourself or any other attorney.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

ELECTIONS; EXTRA CLERKS UNDER SECTION
1393.

Attorney General's Office,
Columbus, Ohio, October 1, 1883.

E. A. Palmer, Esq., Clerk, Etc., Napoleon, Ohio:

DEAR SIR:—After writing you today, it occurred to me that possibly your township might be divided into precincts, in which event the selection of extra clerks must be under section 1393, R. S., O. L., Vol. 78, 123, by a *viva voce* vote of "the electors of each precinct." The language of this section, strictly construed, might also leave in doubt the question of whether all extra clerks, as well as judges, in townships where there is but one voting precinct, should not be chosen in the same way, and in view of this doubt, I think it safer to have them so chosen.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; Ratable Proportion of Tax Must be Paid When Prohibited by Ordinance Under.

SCOTT LAW; RATABLE PROPORTION OF TAX
MUS BE PAID WHEN PROHIBITED BY ORDI-
NANCE UNDER.

Attorney General's Office,
Columbus, Ohio, October 8, 1883.

Hon. W. H. Hickey, Mayor, Leipsic, Ohio:

DEAR SIR:—Your favor of 2d inst. is received.

By a careful reading of section 9 of the Scott law, you will observe that it is only a ratable proportion of the tax paid for keeping "ale, beer and porter houses" which is required to be repaid, when such houses are prohibited within the limits of a municipal corporation. In no instance can this be more than a proportional amount of \$100, the maximum tax assessed upon the business of keeping such houses. If, therefore, dealers in intoxicating liquors continue the business of trafficking in spirituous liquors by the pint, quart or otherwise, after the adoption of a prohibitory ordinance, they cannot claim a repayment of any proportion of the \$200 paid by them. Indeed, it is difficult to see how a dealer in spirituous liquors can, in any event, get back any part of the tax paid by him.

So far as spirituous liquors are concerned, neither the law nor the ordinance you enclose, prohibits specific acts of sale; they only prohibit the keeping of "places of habitual resort for tippling and intemperance." This cannot be said of a house where distilled liquors are sold by the quantity, and not to be drunk on the premises. The situation of a saloonkeeper in an incorporated village who has paid his \$200 tax, and engaged in the traffic in distilled and malt liquors before the adoption of such ordinance is, therefore, as follows:

First—He cannot sell ale, beer or porter in any manner or form at his place of business.

Scott Law; Ratable Proportion of Tax Must be Paid When Prohibited by Ordinance Under.

Second—He must see to it that his place of business is not “a place of habitual resort for tippling and intemperance.”

Third—He may continue to sell liquors (other than ale, beer and porter) not to be tippled or drank on the premises.

Fourth—He can claim no repayment for any proportion of the \$200 tax paid by him.

This may not be exactly equitable, but it seems to me to be the only legal construction to be given to the act. In a proper case for the repayment of a ratable proportion of the \$100 tax, I think it should be repaid out of the funds to which it has been distributed.

Yours truly,

D. H. HOLLINGSWORTH,

Attorney General.

COMMISSIONERS' ANNUAL REPORT; DUTY OF AUDITOR.

Attorney General's Office,
Columbus, Ohio, October 8, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received.

The county auditor by virtue of his office, is the secretary of the board of county commissioners, section 102, R. S. Section 917 makes it the duty of the county commissioners to make an annual report, and if they require the auditor to aid them in preparing this report, it is certainly his duty to do as they may direct. His compensation for this and other services is provided for in sections 1069 and 1070; no extra pay can be allowed him except when provided by law. I know of no section of the statutes which authorizes the commissioners to employ an assistant for the auditor in doing the clerical work necessary on their report.

Sheriff's Proclamation; Need Not Include Full Text of Constitutional Amendments.

It would seem, therefore, that they may require him to assist in the preparation of an annual report to the extent of doing all the writing or clerical work necessary. My predecessor, Ex-Attorney General Nash, was also of this opinion.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SHERIFF'S PROCLAMATION; NEED NOT INCLUDE FULL TEXT OF CONSTITUTIONAL AMENDMENTS.

Attorney General's Office,
Columbus, Ohio, October 8, 1883.

Jas. K. Newcomer, Esq., Editor, Etc., Wilmington, Ohio:

DEAR SIR:—Your favor of 3d inst. is received.

The attorney general is not authorized to give official opinions to private persons, but if my individual views on the subject of your inquiry will be of any value, it will afford me pleasure to have communicated them to you.

It seems to me that the sheriff is not authorized to include in his proclamation for a general election, under section 2977, R. S., the full text of the proposed constitutional amendments. The Constitution (Sec. 11, Art. 16) and the act of April last (O. L., Vol. 80, p. 95) provide how notice of the submission of such amendments shall be given to the electors of the county, and this, in my judgment must be held to be exclusive of any other method, in the absence of other legislation on the subject.

So far as I have been able to discover, the law nowhere enjoins upon the sheriff any duty in the premises,

Board of Education; Powers Over School Property.

although I believe it has been customary—and I think it not improper—for him to include in his proclamation a brief mention of pending propositions to amend the Constitution.

If the sheriff is not authorized to have the full text of amendments published with his proclamation it follows that the county commissioners have no authority to order payment for such publication out of the county treasury. They can only audit and pay such bills for advertising as are made in pursuance of law.

Very respectfully,
D. H. HOLLINGSWORTH,

BOARD OF EDUCATION; POWERS OVER
SCHOOL PROPERTY.

Attorney General's Office,
Columbus, Ohio, October 8, 1883.

Joel Bushnell, Esq., Hartford, Ohio:

DEAR SIR:—Your favor of 2d inst. is received:

The attorney general is not authorized to give official opinions to private persons. I will say, however, individually that I am of the opinion that taxpayers of a school district can not require the directors to open the schoolhouse under their control, for the purpose of holding religious meetings of any denomination. The appropriation of school property to any other purpose than the use of the public schools, is unauthorized. See 35, O. S., Rep. 143.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

*Officers of Election; Compensation of—Clerks of Court;
Term of Office of.*

OFFICERS OF ELECTION; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, October 17, 1883.

Jno. G. Roberts, Esq., Gomer, Ohio:

DEAR SIR:—Your favor of 13th inst. is received.

The Constitution and laws contemplate that elections shall be held on a particular day in each year, and it seems to me the word "day" as used in section 2963, R. S., relative to the pay of judges and clerks, must be held to mean the time necessary to complete their duties as such. I am, therefore, of the opinion that judges and clerks are entitled to but one per diem, although they may protract the counting of ballots, until after 12 o'clock p. m. of the day of election.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CLERKS OF COURT; TERM OF OFFICE OF.

Attorney General's Office,
Columbus, Ohio, October 17, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I am in receipt of a letter from Harry Wilson, clerk-elect of the Common Pleas Court of Warren County, in which he asks when his term begins, having been elected to fill the vacancy. Ex-Attorney General Nash, on the 8th of February, 1882, gave an opinion on the same subject, or rather in a similar case, in which he decided that the term commences on the 9th of February following the election. I am aware that this is

County Treasurer; Powers as to Deposit of Public Funds in Bank.

not in accordance with the case of *Ohio ex rel vs. Neibling*, 6th Ohio St., 40, but in view of the fact that the statute has been materially changed since that case was decided, and the later authorities cited by Judge Nash, I do not feel free to give a contrary opinion.

Herewith find enclosed copy of General Nash's opinion.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

COUNTY TREASURER; POWERS AS TO DEPOSIT OF PUBLIC FUNDS IN BANK.

Attorney General's Office,
Columbus, Ohio, October 18, 1883.

E. S. Dood, Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—I am unable to find any law, except section 1513, R. S., which authorizes the custodian of public money to deposit it in bank; in all other cases it seems to me, amended section 6841, O. L., Vol. 80-43, expressly forbids it under penalty.

If this be so, it fully answers the inquiries made by your county treasurer, as section 1513 is not applicable to the cases he mentions.

Yours truly,

D. H. HOLLINGSWORTH,
Attorney General.

Justices of the Peace; Terms of Office—Governor; Power to Grant Conditional Pardons.

JUSTICES OF THE PEACE; TERMS OF OFFICE.

Attorney General's Office,
Columbus, Ohio, October 18, 1883.

E. E. Husted, Esq., Justice of the Peace, Wellington, Ohio:

DEAR SIR:—Your favor of today just received.

In reply would say that the Constitution, Sec. 9, Art. 16, limits the term of justices of the peace to three years. This term cannot be extended by a failure of the people to elect a successor. Section 597 provides that if no successor is elected, a justice shall, upon the expiration of his commission or term of office, deposit his docket and papers with the nearest justice of the peace in the township, who is authorized, under section 599, to proceed with all the business on such docket. If, therefore, your commission expires today, I think you should refrain from the performance of any official acts, until re-elected and qualified.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

GOVERNOR; POWER TO GRANT CONDITIONAL
PARDONS.

Attorney General's Office,
Columbus, Ohio, October 24, 1883.

C. R. Truesdale, Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Your favor of 22d inst. is received, Sec. 11, Art. 3, of the Constitution authorizes the governor to grant pardons "upon such conditions as he may think proper," and it is the province of the General Assembly

*Blandin, J. E.; Governor Not Authorized to Investigate
Charges Against.*

to provide the law for enforcing the conditions attached to such pardons.

The act of April 17, 1882 (O. L., Vol. 79, 122 and 123), is intended to accomplish this object, but it does not affect the legal rights of the convict in any way. It is remedial only.

In my judgment, therefore, it is applicable to conditional pardons granted before, as well as after its passage.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

BLANDIN, J. E.; GOVERNOR NOT AUTHORIZED
TO INVESTIGATE CHARGES AGAINST.

Attorney General's Office,
Columbus, Ohio, October 19, 1883.

Hon. Chas. Foster, Governor of Ohio:

DEAR SIR:—Your favor of this date with enclosures, is received. By these I learn that you are asked in your official capacity to make legal investigation of a charge of desertion, filed against E. J. Blandin, Esq., of Cleveland, recently elected to the office of Common Pleas judge, before issuing his commission. His accusers insist that he is disqualified from holding the office by reason of Sec. 1996, R. S., of the U. S., which declares that a deserter from the military or naval service of the U. S. shall be deemed to have voluntarily relinquished and forfeited his right of citizenship, which is undoubtedly essential to his right to hold any office in Ohio. No record is produced to show that Mr. Blandin has been tried for or convicted of the offense. Evidence to establish the charge, however, is offered in the form of an alleged con-

*Blandin, J. E.; Governor Not Authorized to Investigate
Charges Against.*

fession. An elaborate and carefully prepared brief is also filed, in which it is sought to be shown that it is the *fact of desertion*, and not the *trial and conviction*, which works a forfeiture of citizenship. On the other hand it is claimed that desertion is a crime to be tried by the courts, and that before a person guilty thereof can be punished, either by loss of citizenship or otherwise, he must first be convicted by due process of law, in a court of competent jurisdiction. This latter position is, in my judgment, sustained by the weight of authorities.

But, however this may be, the governor of Ohio has no judicial power to hear and determine a question of this character. The judicial power of the State, except in cases of impeachment, is vested exclusively in the courts. Section 1, article 4, of Constitution.

I am therefore of the opinion that commission should be issued to Mr. Blandin under Section 83, R. S., upon his compliance with the condition prescribed therein, to-wit: "producing to the secretary of state a legal certificate of his being duly elected."

Authorities might be cited in support of this conclusion, but I presume that this is not necessary at present. If Mr. Blandin be ineligible to office, a commission will not interfere with the adjudication of the question, should application be made to the proper tribunal, while a refusal to issue it might be attended with unpleasant complications.

I have the honor to be, with sentiments of high consideration,

Your obedient servant,
D. H. HOLLINGSWORTH,
Attorney General.

County Auditor; Not Entitled to Compensation for Preparing Commissioners' Report.

COUNTY AUDITOR; NOT ENTITLED TO COMPENSATION FOR PREPARING COMMISSIONERS' REPORT.

Attorney General's Office,
Columbus, Ohio, October 24, 1883.

John M. Broderick, Esq., Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—Some of the questions presented by you in your favor of 22d inst. are very troublesome. Section 1078, R. S., makes it unlawful for the county auditor to receive any compensation for his services except such as is expressly authorized by law. His ordinary fees are provided for under Sec. 1069 et seq., and unless extra compensation for the services you mention is expressly authorized by some special provision of law, it cannot be allowed.

The county auditor is by law made the secretary of the board of commissioners—Sec. 1021. I am, therefore, of the opinion that he cannot be allowed extra compensation for assisting the board in preparing its report under Sec. 917. I learn also from a number of opinions on file in this office that my predecessor, Ex-Attorney General Nash, took the same view of the subject.

I also fail to find any statute authorizing extra compensation for the increased labor of the auditor, incidental to the building of a new courthouse, and it appears to me that it cannot be allowed. Sec. 1365 is not, in my judgment, applicable to temporary allowances for extra work.

I am also of the opinion that the list of assessments made under Sec. 4480 is not necessarily included in the record to be made under Sec. 4504, and if this be correct, the auditor is not entitled to pay therefor under Sec. 4506.

County Auditor; Not Entitled to Compensation for Preparing Commissioners' Report.

I am aware that the law often works hardship in certain counties, and would be very glad to be able to advise somewhat differently, but it seems to me that the foregoing conclusions are consistent with the law as it exists, although I freely admit that the subject is not without doubt.

Second—The act of April 11, 1883, amending section 850, O. L., Indexing Records, Vol. 80-113, appears to be an anomaly in legislation. It clearly contemplates that the county auditor shall be paid for making an index of past records, but the rule by which this extra compensation is to be fixed is certainly ambiguous. He shall receive "such compensation as is provided for like services in other cases," says the act, but the difficulty is, that in other cases for like services he is paid by salary. The recorder receives fees for certain indexing; also the clerk of courts, and perhaps other officers. In the absence of further and more specific legislation, I see no way out of the difficulty but for the county commissioners, in the exercise of a discretion, to take into account the extra fees allowed the auditor in ditch and turnpike cases, together with his regular salary, and also the fees allowed to the recorder, clerk and other officials for like services, and from these determine as nearly as they can the reasonable value of the service. This amount, I believe, they would be justified in paying.

Remembering that the attorney general is as liable to reach a wrong conclusion as any other attorney, I have the honor to be,

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

Scott Law; "Place" Under—"County Medical Society."

SCOTT LAW; "PLACE" UNDER.

Attorney General's Office,
Columbus, Ohio, October 26, 1883.

*R. R. Freeman, Esq., Prosecuting Attorney, Chillicothe,
Ohio:*

DEAR SIR:—In answer to your favor of this date, I would say that, in my judgment, the owner or lessee of a building, one floor of which is used as a ball room, may establish a counter in such room for the sale of liquors, and supply the same by means of a dumb waiter connected with a saloon in the room below, the whole being under a single management, without being liable for more than one assessment under the Scott law.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

"COUNTY MEDICAL SOCIETY."

Attorney General's Office,
Columbus, Ohio, November 14, 1883.

Dr. E. G. Alcorn, Coroner, Gallipolis, Ohio:

DEAR SIR:—Your favor of 6th inst. came duly to hand.

Absence from the city has prevented an earlier reply. I now have the honor to state that in my opinion the words "county medical society," as used in revised section 3763, Revised Statutes, O. L., Vol. 78, 33, means

Constitutional Amendments; Publication of.

any such society, organized in good faith, whether it be auxiliary to a State association or not.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; PUBLICA-
TION OF.

Attorney General's Office,
Columbus, Ohio, November 14, 1883.

*Anson Wickham, Esq., Prosecuting Attorney, Bucyrus,
Ohio:*

DEAR SIR:—Your favor of 12th inst. is received.

Relative to your first inquiry I would say that I am of the opinion that Sec. 4 of the act of April 5, 1883, relative to the publication of the proposed constitutional amendments, imposes upon the secretary of state the duty of determining in advance the question as to whether any particular newspaper comes within the requirements of the act.

Having exercised his right in this matter, in the instance you mention, I do not think it proper for the commissioners to undertake to review his action. It seems to me their duty under Sec. 5 of the act is merely ministerial.

In reply to your second inquiry I would say that in my judgment the county commissioners are the judges of what bridges are "necessary" under sections 860 and 4938, R. S.

Of course, this discretion must be exercised in a reasonable manner, and not be abused.

In the particular case you mention, however, I am not sufficiently informed of the facts to give an opinion,

Scott Law; Dealer Cannot Recover if he Retires During Year.

even if it would be proper for me to do so, as to whether the commissioners are abusing their discretion or not.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; DEALER CANNOT RECOVER IF HE RETIRES DURING YEAR.

Attorney General's Office,
Columbus, Ohio, November 14, 1883.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Absence from the city has prevented an earlier reply to your favor of the 5th inst.

I am of the opinion that the county commissioners have no power to refund any portion of the \$200 tax paid by a dealer in intoxicating liquors, because of the retirement of such dealer from business during the year, either voluntarily or by reason of death.

I know this often works a seeming injustice, but as the law stands, I do not see how this can be avoided.

Under Sec. 2804, the annual county board of equalization has power to increase or reduce the valuation of real estate only in cases of "gross inequality," except as to new structures brought on the tax list since the last equalization by the decennial State board. The second question which you ask, therefore, is rather one of fact than of law; it is for the members of the board, after notice and investigation, to say whether such gross inequality exists in any particular case.

Under the rule laid down in the 29th Ohio St. Re-

Scott Law; Prohibitory Ordinance.

port, 608, it seems to me the county board should be very careful in extending its power in this direction.

Yours very truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROHIBITORY ORDINANCE.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

Robt. M. Applegate, Councilman, Beverly, Ohio:

DEAR SIR:—Your favor of 10th inst., enclosing copy of a proposed ordinance under the Scott law, is received.

If I understand the proposition of the council, from your letter, it is to prohibit "ale, beer and porter houses, and places of habitual resort for tippling and intemperance."

This is the extent of the power conferred on the council by the act. The law makes no mention of specific acts of sale. It is intended only to regulate or prohibit certain houses. Why not, then, in framing an ordinance, use the language of the act itself, without encumbering it with doubtful provisions?

An ordinance simply making it illegal to keep an "ale, beer or porter house, or place of habitual resort for tippling and intemperance," would cover everything authorized to be prohibited by the act.

It is doubtful if the council has power to prohibit a specific and single sale of any kind of liquor, "except for medical purposes," as mentioned in your proposed ordinance.

I only make these suggestions in a friendly way. The attorney general is not permitted to give legal opinions to municipal officers, and when he does so, his opin-

Election Day; Sales of Liquor on.

ions are not entitled to any other consideration than the opinions of other attorneys.

Very truly yours,
D. H. HOLLINGSWORTH,
Attorney General.

ELECTION DAY; SALES OF LIQUOR ON.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

Geo. Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of 14th inst., is received.

I am of the opinion that under Sec. 6948, R. S., the keeper of a grocery store and restaurant, in connection with a bar where spirituous, vinous and malt liquors are sold, cannot be convicted of a violation of that section, if in fact he neither disposes of such liquors nor keeps open the bar or place where they are usually sold, although the other parts of his room may be kept open on election for sale of provisions, etc.

Such may not be the literal reading of the section, but it certainly accords with the spirit of the law.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

*Ditches (County); Damages Caused by the Location of—
Flour; Duty of Millers and Mill Owners.*

DITCHES (COUNTY); DAMAGES CAUSED BY
THE LOCATION OF.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

*J. P. Winstead, Esq., Prosecuting Attorney, Circleville,
Ohio:*

DEAR SIR:—I have the honor to say that, in my opinion, Sec. 4479, R. S., as amended, O. L., Vol 78-208, makes a distinction between the compensation and damages caused by the location of a county ditch, and the costs and expenses of the construction thereof, but impliedly, at least, requires the whole to be placed on the duplicate of the lots and lands, etc., assessed for the improvement, under Sec. 4455, "according to benefits." I am more convinced that this is the proper construction to be given the statute from the fact that I find no other provision for the payment of such compensation and damages.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

FLOUR; DUTY OF MILLERS AND MILL
OWNERS.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

Mr. John O. McGowan, Youngstown, Ohio:

DEAR SIR:—The only provision of law that I know of relative to branding sacks of flour, is contained in Sec. 4282.

Commissioners of Deeds for Ohio; Certificate of.

It provides that "each miller or mill owner, shall brand or cause to be branded, on the head of each barrel or side of each sack, the quality of flour contained therein, and the initial letter of his Christian name and his surname in full; or if the mill is owned by more than one person, then the name of such person or company; and if any miller, mill owner or company neglects to so brand the same, or pack and expose for sale flour or meal in any sack aforesaid, of less quantity or poorer quality than branded thereon, he shall forfeit and pay for each offense the sum of ten dollars for the use of the county.

There are certain modifications of the requirements of this section, but not such as to affect an answer to your question. I am of the opinion, therefore, where a miller sells flour by the sack, that he should brand thereon the exact number of pounds, whether the same be 48 or 49 pounds, or any other number.

Very respectfully,

D. H. HOLLINGSWORTH,
Attorney General.

COMMISSIONERS OF DEEDS FOR OHIO; CERTIFICATE OF.

Attorney General's Office,
Columbus, Ohio, November 21, 1883.

D. E. Davis, Commissioner of Deeds, Pittsburg, Pa.:

DEAR SIR:—Your favor of 15th inst. to the private secretary of the governor, has been referred to this office for attention.

The usual form of acknowledgment used by notaries and justices in certifying the execution of deeds in Ohio,

Children's Homes.

is sufficient for a commissioner of deeds. The title of his office is the only difference.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CHILDREN'S HOMES.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

C. R. Truesdale, Esq., Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Necessary absence from the city has prevented a more prompt reply to your favor of the 7th inst.

I now beg to say, that in my judgment, the cost of maintaining indigent children in homes of adjoining counties under act of April 9th last, O. L., Vol. 80-103, should be paid in the same manner and out of the same fund that other infirmity expenses are paid, to-wit, the poor fund of the county. The proper incidental expenses, if any, and the per diem of the infirmity directors while engaged in negotiating contracts and placing the children in such homes, should be paid the same as for transacting other business of the board.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

*Insurance; Fees of Mutual Protective Fire Companies—
Mayor Cannot Vote on an Ordinance in Case of Tie.*

INSURANCE; FEES OF MUTUAL PROTECTIVE
FIRE COMPANIES.

Attorney General's Office,
Columbus, Ohio, November 15, 1883.

Hon. Chas. H. Moore, Superintendent of Insurance:

DEAR SIR:—By your favor of the 6th inst. you ask my opinion as to whether mutual protective fire associations, organized under Sec. 3686, R. S., are liable to pay the fees provided for in Sec. 282. That section relates to insurance companies proper, and I do not think the General Assembly intended it to apply to associations of persons for the mutual protection of each other against fire. I am, therefore, of the opinion that the insurance department should not require the payment of fees by these associations, at least without more specific legislation on the subject.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

MAYOR CANNOT VOTE ON AN ORDINANCE IN
CASE OF TIE.

Attorney General's Office,
Columbus, Ohio, November 21, 1883.

Hon. S. Heuch, Mayor, Shiloh, Ohio:

DEAR SIR:—Your favor of 15th inst. is received.

Section 1672, R. S., provides that the legislative authority of villages shall be vested in a council consisting of six members, or two from each ward, when divided into wards. Sec. 1693, R. S., as amended, O. L., Vol. 77-34,

*Campbell's System of Indexing Sufficient Under Section
5330.*

provides, except in a single case there mentioned, that ordinances shall require for their adoption, the concurrence of a majority of all the members elected. I am of the opinion, therefore, that the ordinance you refer to was not legally adopted. In a council composed of six members, it requires the concurrence of at least four to adopt a proposed ordinance, the mayor having no power to give a casting vote in case of a tie.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CAMPBELL'S SYSTEM OF INDEXING SUFFICIENT UNDER SECTION 5330.

Attorney General's Office,
Columbus, Ohio, November 21, 1883.

John Mehorg, Esq., Prosecuting Attorney, Ravenna, Ohio:

DEAR SIR:—Your favor would have received an earlier reply except for an unavoidable absence from the city.

I am of the opinion that "Campbell's" system of indexing, kept complete as you state, of all suits, etc., in the clerk's office, is a substantial and therefore a sufficient compliance with Sec. 5339, R. S.

Asking your pardon for delay, I am,

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

Workhouse; Marshal Amenable to Ordinances.

WORKHOUSE; MARSHAL AMENABLE TO ORDINANCES.

Attorney-General's Office,
Columbus, Ohio, November 21, 1883.

Hon. C. N. Snyder, Solicitor, Leetonia, Ohio:

DEAR SIR:—Necessary absence from the city has prevented an earlier reply to your favor of 16th inst.

Sec. 2099, R. S., fully answers your first inquiry. No distinction seems to be made between violations of the State law, and of municipal ordinances, in respect to committing offenders to the workhouses.

Your second question is really answered. The marshal of an incorporated village is amenable to the ordinances thereof. He can no more violate an ordinance without being liable to punishment than an ordinary citizen. The mayor may issue a warrant against him in the same manner as against an ordinary offender. This warrant should, of course, be put in the hands of some other person to be served, either a person specially deputized for that purpose, a deputy appointed by the council under 1847, R. S., or some other officer authorized to serve the same.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

*Prosecuting Attorney; Not Entitled to Ten Per Cent. on
Costs Paid by State—Board of Public Works.*

PROSECUTING ATTORNEY; NOT ENTITLED TO
TEN PER CENT. ON COSTS PAID BY STATE.

Attorney General's Office,
Columbus, Ohio, November 28, 1883.

*John B. Driggs, Esq., Prosecuting Attorney, Woodsfield,
Ohio:*

DEAR SIR:—Your favor of 27th inst. is received. In reply I would say that my predecessor, Ex-Attorney General Nash, gave several opinions to the effect that prosecuting attorneys are not entitled to ten per cent. on the costs collected from the State, in cases of felony, and in this opinion I concur.

Your obedient servant,
D. H. HOLLINGSWORTH,
Attorney General.

BOARD OF PUBLIC WORKS.

Attorney General's Office,
Columbus, Ohio, November 28, 1883.

*To the Honorable, the Board of Public Works of State of
Ohio, Columbus, Ohio:*

GENTLEMEN:—I have the honor to acknowledge the receipt of your favor of 27th inst. in which you are pleased to ask my opinion as to your power to transfer the Wallhonding Canal to the Mt. Vernon, Coshocton and Wheeling Railway Company, under a resolution of the board adopted September 12, 1882.

The act of the General Assembly of Ohio, passed April 13, 1868 (O. L., Vol. 65-68), as amended April 27, 1872 (O. L., Vol. 69, 175), in express terms confers this

Board of Public Works; Lease to Riley and LeBlond.

power on the board, and leaves the amount of consideration discretionary with it. The consideration named in the resolution is, in my judgment, sufficient in law, but as to its adequacy in fact, I express no opinion, that being the sole and exclusive province of the board to determine.

The form of the proposed bond of Gosham A. Janes and others, which you enclose, I also regard as sufficient in law, supposing, of course, all blanks to be properly filled and the signatures attached. In this connection I may be excused for calling attention to the fact that the resolution only requires that the amount of the bond shall not exceed \$50,000, whereas, I doubt not the intention of the board was to have it *not less* than that amount.

This can easily be fixed by having the proper amount inserted in the bond before its execution. The responsibility for making the proposed transfer rests with the board, but I have no hesitancy in expressing the opinion that its proposed action is strictly within the powers conferred upon it by the General Assembly.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

BOARD OF PUBLIC WORKS; LEASE TO RILEY
AND LeBLAND.

Attorney General's Office,
Columbus, Ohio, November 28, 1883.

*To the Honorable the Board of Public Works of Ohio,
Columbus, Ohio:*

GENTLEMEN:—Your favor of 26th inst., enclosing lease made June 7, 1853, by Alex P. Miller, acting commissioner public works, to Riley and LeBlond, for certain real estate and water privileges, is received. I am asked

County Commissioners; Report of.

to give an opinion as to the legal obligation which would follow the termination of such lease by the action of your body. After a careful examination of the terms of the lease, I am of the opinion that, unless the parties can otherwise mutually agree, such termination would result in a liability on the part of the board, to first pay or tender to the present owner of said lease, the value of all lasting improvements made by such owner or said lessees, and now remaining on the leased premises, to be determined by three disinterested persons to be chosen for that purpose, one by each party to the lease—at present the board of public works and the owner of the lease—and the third to be selected by these.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; REPORT OF.

Attorney General's Office,
Columbus, Ohio, November 28, 1883.

*E. Kieseewetter, Esq., Auditor, Etc., Columbus, Ohio: **

DEAR SIR:—Your favor of the 26th is received. Under section 917, R. S., the commissioners of a county are required to make a detailed report in writing, to the Court of Common Pleas, of their "financial transactions" during the year next preceding the time of making the same, which report, together with the action of the examiners appointed to investigate it, must be published in the manner pointed out in the section. I agree with you that this statement should include a complete transcript

*The Fidelity and Casualty Insurance Company of New
York.*

of all the financial actions of the board, to-wit, receipts, settlements, balances, expenditures, etc.

Your obedient servant,
D. H. HOLLINGSWORTH,
Attorney General.

THE FIDELITY AND CASUALTY INSURANCE
COMPANY OF NEW YORK.

Attorney General's Office,
Columbus, Ohio, November 30, 1883.

*Hon. Chas. H. Moore, Superintendent of Insurance, Colum-
bus, Ohio:*

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 16th inst., in which you are pleased to enclose a copy of the charter of the "Fidelity and Casualty Insurance Company of New York City," a complaint filed against the company in your office, the briefs of the respective counsel, and the evidence submitted in support of and opposed to such complaint, and a stenographic report of the hearing thereof in your office.

By these I learn that you are asked to recall or cancel the license heretofore granted, authorizing the company "to transact the appropriate business of insurance in this State, as per division 2, section 3641, R. S., in accordance with law."

The questions which you submit to this office relative thereto, are substantially as follows:

First—Has the superintendent of insurance in this State official authority, in such proceeding, to revoke the license issued to the Fidelity and Casualty Company, if it be satisfactorily shown, that the agents of the company

The Fidelity and Casualty Insurance Company of New York.

have been and are now exercising franchises in this State, not authorized by the laws of Ohio?

Second—Has such superintendent of insurance authority to revoke the license of the company, if it be shown that it is not, in fact, a company legally entitled to authority to do business in the State?

I answer the first question in the negative. The cause referred to in it, is not one of the causes for which the statutes authorize the superintendent to interfere by a revocation of the company's license. If it be doing an illegal business, in connection with a proper and legitimate one, the remedy for such infraction of the law, is to institute a legal prosecution in some court of competent jurisdiction, for the recovery of the penalties imposed by the statutes, and not by arbitrarily revoking its right to engage in a legal business.

The second question presents a different, and possibly a more difficult proposition. It presupposes a mistake in originally admitting the company into the State. In other words, that the superintendent has no authority to license the company to do business in the State, when he issued its certificate. It is not stated, nor is it important, whether this assumed mistake arose from a wrong construction of the law by the superintendent; or was the result of fraudulent practices on the part of the company's agents. In either event, the result is the same, and the only question to determine, it seems to me, is: Can such a mistake be corrected? It is admitted that there is no specific statute on the subject. In my judgment, however, this power must be held to exist in the very nature of the duties imposed upon the superintendent. He is required to see to the execution and enforcement of all laws relating to insurance. One of these duties is to prevent unauthorized companies from doing business in the State, and to hold that a license once granted to such company, cannot be annulled, if after-

The Fidelity and Casualty Insurance Company of New York.

wards discovered to have been illegally issued, would be to place the insurance department at the mercy of successful fraud. Certainly, the General Assembly did not intend this result, in the enactment of the insurance laws of the State. I am, therefore, of the opinion, that the superintendent has ample power to revoke the certificate of authority issued to the "Fidelity and Casualty" Company, to do business in the State, if in fact it has been made to appear that the company was not entitled to have such certificate originally granted. On this point the superintendent is required to exercise his own judgment. It may not be improper, however, to volunteer the suggestion, in reply to the very able argument of counsel for the company to the effect that the retaliatory feature of Sec. 283, R. S., is unconstitutional and inoperative, that a case involving the same principle has recently been decided in the Supreme Court of the State, adversely to the views of counsel. *State of Ohio ex rel. The Mutual Reserve Fund Life Association vs. Chas. H. Moore, Superintendent of Insurance*—not yet reported.

Having fully answered your inquiries, I have the honor to herewith return the enclosures accompanying your letter.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

Grand Jury; Cannot Compel Witness to Testify Against Himself—Constitutional Amendments; Vote on.

GRAND JURY; CANNOT COMPEL WITNESS TO TESTIFY AGAINST HIMSELF.

Attorney General's Office,
Columbus, Ohio, November 30, 1883.

S. R. Gotshall, Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—Your favor of 29th inst. is received.

A person cannot be compelled, in any criminal case, to be a witness against himself. Sec. 10, Art. 1, State Constitution.

No exception is made in cases pending for examination before a grand jury. A person charged with the commission of an offense may, however, at his own request be examined as a witness, but not otherwise. Sec. 7236, R. S. I am, therefore, clearly of the opinion that a charge to a grand jury by the judge, instructing the foreman to have any one subpoenaed whom he chooses, would not justify a violation of these plain provisions of the law.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

CONSTITUTIONAL AMENDMENTS; VOTE ON.

Attorney General's Office,
Columbus, Ohio, November 30, 1883.

Rev. W. A. Williams, New Athens, Ohio:

DEAR SIR:—Your favor of 27th inst. is received.

It is not the province of the attorney general to decide such questions as the one you ask, and it would be

*County Commissioner to Fill Vacancy Commissioned by
Governor.*

improper for him to assume to do so. I have no hesitancy, however, in giving it as my individual opinion that tickets having on them the words "prohibition of intoxicating liquors, yes-no," should neither be returned for nor against the amendment. Of course, such tickets increase the aggregate number of votes cast at the election, and as an amendment to the Constitution to be adopted, must receive an affirmative majority of this number, their effect indirectly is the same as so many plain negative votes.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONER TO FILL VACANCY
COMMISSIONED BY GOVERNOR.

Attorney General's Office,
Columbus, Ohio, November 30, 1883.

*Jas. F. Conly, Esq., Prosecuting Attorney, New Lexington,
Ohio:*

DEAR SIR:—Your telegram is received.

The governor is required to commission a person appointed to a vacancy in the office of county commissioner. See Sec. 83, R. S.

Send certificate of appointment to secretary of state.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

Prosecuting Attorney; Not Entitled to Fees for Services Under Section 1276—Road Laws; Violation of; Action For.

PROSECUTING ATTORNEY; NOT ENTITLED TO FEES FOR SERVICES UNDER 1276.

Attorney General's Office,
Columbus, Ohio, November 30, 1883.

Jas. F. Conly, Prosecuting Attorney, New Lexington, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received.

The duties required of a prosecuting attorney, under section 1276, it seems to me, are a part of the official business of his office, for which he receives a salary.

I am satisfied he is not entitled to make any other charge for work performed under that section. The fact that he is allowed compensation, other than his salary, for services required under Sec. 1274, by the express language of the section, would seem to preclude any inference in favor of such allowance under Sec. 1276.

Yours, etc.,

D. H. HOLLINGSWORTH,
Attorney General.

ROAD LAWS; VIOLATION OF; ACTION FOR.

Attorney General's Office,
Columbus, Ohio, December 5, 1883.

John M. Broderick, Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received.

After such consideration as I have been able to give the subject, I am of the opinion that the action provided for in section 4904, R. S., as amended March 4, 1880, O. L., Vol. 77-37, is in the nature of a civil action, and a de-

County Commissioners; Report of.

fendant is entitled to be sued where he resides, or may be legally served with summons, as in other cases.

The action mentioned in Sec. 4905 is different. It seems to contemplate arrest and the usual incidents to a criminal prosecution. In my judgment the one is no more a bar to the other than is a civil action for assault and battery to recover damages, a bar to a criminal prosecution for the same offense.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY COMMISSIONERS; REPORT OF.

Attorney General's Office,
Columbus, Ohio, December 5, 1883.

Geo. M. McPeck, Esq., Auditor, Marysville, Ohio:

DEAR SIR:—As the prosecuting attorney is by law made the legal adviser of the county commissioners, and the attorney-general is by law made his legal adviser, it is not proper for the latter officer to volunteer a legal opinion to the commissioners without being requested by the former. In view, however, of the urgency suggested in your letter, I would say that in my judgment the words "compact form," as used in Sec. 917, R. S., relate to the manner of publishing the report, rather than the matter contained in it. It should be printed without unnecessary display; otherwise, "in a compact form." The whole report should be printed. If it is desirable to abbreviate for any reason, it should be done in the report itself. As to the manner of itemizing the report, I refer you to an

County Auditor; Selects Papers for Publication Under Section 832, Revised Statutes.

opinion of my predecessor, Ex-Attorney General Nash, a copy of which I have the honor to enclose.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY AUDITOR; SELECTS PAPERS FOR
PUBLICATION UNDER SECTION 832 R. S.

Attorney General's Office,
Columbus, Ohio, December 13, 1883.

*J. Foster Wilkin, Prosecuting Attorney, New Philadelphia,
Ohio:*

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 12th inst. in which you are pleased to submit to this office the following question:

“Who has the right, under Sec. 832 R. S., to select the medium of publication therein provided for, the county commissioners, or the county auditor?”

In reply I would say that the question is not without difficulty. It never has been presented to the Supreme Court, in any reported case. A number of the subordinate courts of the State have, however, had it under consideration in various forms, and have uniformly, so far as I have been able to ascertain, decided in favor of the right of the auditor to make the selections. The question is not, therefore, entirely new, and in so far as these decisions are entitled to credit they should be respected and followed until the Supreme Court shall make an authoritative decision to the contrary.

County Ditches; Duty of Auditor Under Section 4457, Revised Statutes.

I only add that after a somewhat hasty investigation of the subject, I agree with the common pleas and district judges, and advise that the commissioners, in the cases mentioned in your letter, recognize the right of the auditor in the premises by making payment for the publications authorized by him.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

COUNTY DITCHES; DUTY OF AUDITOR UNDER
SECTION 4457, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, December 14, 1883.

John C. Clark, Esq., Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—In reply to your favor of 13th inst. I would say that, in my judgment, the county auditor is not required, under Sec. 4457, R. S. (Amended O. L., Vol. 78, 204), to furnish to the petitioners copies of the notice in writing which he is therein required to deliver to them or one of them, to be served upon the land owners and other interested parties; he has nothing to do with the service of such notice, except in case of non-residents. It follows, if this be so, that he cannot charge the county for furnishing such copies.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

Supreme Judges; Salary of.

lawfully associate themselves, except for certain enumerated purposes. Cremation is not one of these exceptions. I see no reason, therefore, why a corporation may not be legally organized for the purpose of constructing and operating a suitable structure for the incineration of dead bodies.

As to the propriety of such an organization, it would be improper for me to express an opinion.

Yours, etc.,
D. H. HOLLINGSWORTH,
Attorney General.

SUPREME JUDGES; SALARY OF.

Attorney General's Office,
Columbus, Ohio, December 20, 1883.

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

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 19th inst., in which you inform me that Hon. Geo. W. McIlvane, one of the judges of the Supreme Court of the State, claims that he is entitled to pay for his services at the rate of \$4,000 per annum, since the adoption of the recent amendment to the judicial article of the Constitution, and that he has requested you to draw your official warrant on the State treasury, in accordance therewith. You ask my opinion as to the legality of such claim. The question thus raised is not without difficulty, involving, as it does, a consideration of the title by which the judge holds his office.

Section 14, article 4, of the Constitution, provides that the compensation of the judges of the State, shall not be increased or diminished during their term of office. Judge McIlvane was elected at the October election, 1880, to serve for five years commencing on the 12th day

Supreme Judges; Salary of.

lawfully associate themselves, except for certain enumerated purposes. Cremation is not one of these exceptions. I see no reason, therefore, why a corporation may not be legally organized for the purpose of constructing and operating a suitable structure for the incineration of dead bodies.

As to the propriety of such an organization, it would be improper for me to express an opinion.

Yours, etc.,

D. H. HOLLINGSWORTH,
Attorney General.

SUPREME JUDGES; SALARY OF.

Attorney General's Office,
Columbus, Ohio, December 20, 1883.

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

DEAR SIR:—I have the honor to acknowledge the receipt of your favor of 19th inst., in which you inform me that Hon. Geo. W. McIlvane, one of the judges of the Supreme Court of the State, claims that he is entitled to pay for his services at the rate of \$4,000 per annum, since the adoption of the recent amendment to the judicial article of the Constitution, and that he has requested you to draw your official warrant on the State treasury, in accordance therewith. You ask my opinion as to the legality of such claim. The question thus raised is not without difficulty, involving, as it does, a consideration of the title by which the judge holds his office.

Section 14, article 4, of the Constitution, provides that the compensation of the judges of the State, shall not be increased or diminished during their term of office. Judge McIlvane was elected at the October election, 1880, to serve for five years commencing on the 12th day

Supreme Judges; Salary of.

of February, 1881. At that time the compensation fixed by law was \$3,000 per annum. It was not until April 15, 1882, that the salary was increased to \$4,000. Therefore, if the title of Judge McIlvane to the office rests alone on the election of 1880, he is not entitled to more than the \$3,000. But what are the facts? At the time of his election, the Constitution—sections 1, 2 and 11 of article 4—provided for a Supreme Court, consisting of five judges, whose term of office was limited to five years. By action of the electors of the State at the recent election, in adopting an amendment to the Constitution, all these sections, to use the language of the amendment, were “repealed and annulled.”

Had this been the extent of the amendment, it is obvious that the court itself would have been abolished, both in name and in fact. But other sections were adopted at the same time, in lieu of those repealed. Instead, however, of creating a new court in name, by the amended sections, to take the place of the Supreme Court, as was done in case of the Circuit Court, which takes the place of the District Court, abolished in the same manner, they provide for the organization of a Supreme Court, the judges of which “shall be elected by the electors of the State at large for such term, not less than five years, as the General Assembly may prescribe, and they shall be elected and their official term shall begin, at such time as may be fixed by law.” To prevent any interruption in the administration of justice, by reason of necessary delay incident to the organization of this court, it was further provided that “the judges of the Supreme Court in office when this amendment takes affect, shall continue to hold their offices until their successors are elected and qualified.” It was competent for the people, in the exercise of their sovereign right to alter and amend their constitution at pleasure, to have designated these judges by name, or they might have provided that any other five electors of the State should constitute the Su-

Municipal Corporations; Need Not Furnish Band Room.

preme Court for the time being, but in either event the title and tenure of such judges would have been the same, to-wit, the action of the people in so amending the Constitution.

It is not necessary in this investigation to inquire how, or when, or for what length of term, their successors shall be elected; it is sufficient to know that such successor to Judge McIlvane has not yet been "elected and qualified."

I am, therefore, of the opinion that Judge McIlvane holds office by virtue of this latter title; that his authority to act as supreme judge rests upon the action of the people at the October election, 1883, and that consequently he is legally entitled to claim the compensation then fixed by law, the same as the other members of the court.

Respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

MUNICIPAL CORPORATIONS; NEED NOT FURNISH BAND ROOM.

Attorney General's Office,
Columbus, Ohio, December 20, 1883.

Sergeant J. H. Merlin, Covington, Ohio:

DEAR SIR:—Your letter of 11th inst. addressed to Adjutant General Smith has been referred to this office for attention. In reply thereto, I would say that I find nothing in Sec. 3085, R. S., to require municipal corporations and townships to furnish places for the accommodation of bands of music. If there was anything in that section, or elsewhere in the law, requiring a militia company, troop, or battery to have a band, it might be a fair

Insurance; Cash Assets of Mutual Fire Companies.

inference from the language used that a place was to be provided for their special accommodation. I fail to find any such statute, however, and for that reason am of the opinion that no responsibility exists to furnish the accommodation you mention.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

INSURANCE; CASH ASSETS OF MUTUAL FIRE
COMPANIES.

Attorney General's Office,
Columbus, Ohio, December 20, 1883.

Hon. Chas. H. Moore, Superintendent of Insurance:

DEAR SIR:—After a more careful investigation of the subject matter of my communication to you on July 5, last, I am satisfied that I was in error in advising that mutual fire insurance companies, organized in other states, without capital stock than the premium notes of members, are required to leave at least \$100,000 cash assets, invested, etc., before commencing to do business in this State. As the whole subject has recently been by me presented to the Supreme Court for an authoritative opinion, I deem it advisable to await such opinion before undertaking to review the subject.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

SCOTT LAW; PROHIBITORY ORDINANCES
UNDER.Attorney General's Office,
Columbus, Ohio, December 20, 1883.*C. A. Layton, Esq., Prosecuting Attorney, Wapakoneta,
Ohio:*

DEAR SIR:—Briefly answering your favor of the 19th inst., I would say that I am of the opinion that a municipal corporation has no power, under the proviso contained in Sec. 9 of the Scott Law, to authorize by ordinance, the keeping open on Sunday of places where intoxicating liquors are sold, whether the sale of such liquors be confined to beer and native wine or not. It is made an offense to allow such places to be or remain open on that day, and in my judgment this provision cannot be suspended under what seems to be an authority to regulate and control the sale of such liquors. The proviso should be strictly construed. As to the extent and scope of this proviso there is much controversy. Grave doubts exist in the minds of many lawyers as to the right of the Legislature to authorize municipal corporations to sustain the operation of any criminal law of the State, but as this does not arise in answer to your inquiry, I refrain from giving any opinion on the subject.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

*Scott Liquor Law; Manufacturers of Wine—Children's
Homes; Support of by Public Funds.*

SCOTT LIQUOR LAW; MANUFACTURERS OF
WINE.

Attorney General's Office,
Columbus, Ohio, December 26, 1883.

*A. H. Stillwell, Esq., Prosecuting Attorney, Coshocton,
Ohio:*

DEAR SIR:—Your favor of 21st inst. is received.

I fail to find any exception in the law in favor of a manufacturer of wine, whether he raises the grapes in Ohio, or not, so far as the payment of the Scott liquor tax is concerned. Sec. 6 of the act fully explains what he, or any other manufacturer may do without paying the tax.

Neither do I know of any distinction made in the U. S. statutes, between a dealer in foreign or in domestic wines. See paragraph 4, section 3244, page 626, U. S. Statutes at Large, and authorities there cited.

Yours truly,
D. H. HOLLINGSWORTH,
Attorney General.

CHILDREN'S HOMES; SUPPORT OF BY PUBLIC
FUNDS.

Attorney General's Office,
Columbus, Ohio, December 26, 1883.

Mrs. F. H. Boalt, Norwalk, Ohio:

DEAR MADAM:—Your favor of 21st inst. is received.

I am not sure that I fully comprehend its import, if I do, it is that Judge Wickham and the county commissioners of Huron County have decided that the commis-

Banking; Partnership Firms Doing Banking Business.

sioners have no power "to permit unrestrained and unlimited spending of public money," in supporting a private children's home, without a vote of the people. I agree with them in this position. It is very doubtful if public funds can be diverted to the support of any strictly private eleemosynary institution. There are weighty reasons, as you suggest, why the names of children should, if possible, be kept off the rolls of public charity, but I see no way to do this, and at the same time make use of the public funds for their maintenance and support.

I regret that I am unable to look at the statutes differently, as it would afford me much pleasure to be able to point out a way by which you could obtain the necessary funds for the support of such an institution as you are connected with.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

BANKING; PARTNERSHIP FIRMS DOING BANKING BUSINESS.

Attorney General's Office,
Columbus, Ohio, December 28, 1883.

Hon. Jas. W. Newman, Secretary of State, Columbus, Ohio:

DEAR SIR:—I acknowledge the receipt through your office, of a letter from J. C. Elliott, Esq., of Greenville, Ohio, making complaint against the "Greenville Bank," and the "Versailles Exchange Bank," from which it appears that these have been assumed respectively by two partnership firms for the purpose of transacting partnership business. I find nothing in the statute to prevent this, provided the business be in itself lawful. If, however, the members are, as suggested by Mr. Elliott, vio-

Coroner; Duty of in Regard to Inquests.

lating the criminal statutes of the State relative to the business of banking, that fact should be presented to the grand jury of the county through the prosecuting attorney. Neither the secretary of state nor the attorney general have any duty to perform in the matter.

Of course, if the persons composing these firms act as a corporation, or assume to exercise corporate franchises, without being incorporated, they may be proceeded against in *quo warranto* under Sec. 6760 of the Revised Statutes, and in such event, I should be glad to aid Mr. Elliott in the prosecution. It will be necessary, however, before instituting the proceeding, for the attorney general to be fully advised of the facts and the evidence in support of them, and if Mr. Elliott will furnish these, the proper information will be filed. As I retire from the office on the 14th prox., I suggest that it would be more satisfactory to my successor, who will necessarily have charge of the proceedings, if Mr. Elliott would postpone final action until he can be consulted.

Yours, etc.,

D. H. HOLLINGSWORTH,
Attorney General.

CORONER; DUTY OF IN REGARD TO INQUESTS.

Attorney General's Office,
Columbus, Ohio, December 28, 1883.

Jas. P. Seward, Esq., Prosecuting Attorney, Mansfield, Ohio:

DEAR SIR:—Your favor of 28th inst. is received.

Section 1221, R. S., authorizes the coroner to hold an inquest when he receives information that "the body of a person whose death is *supposed* to have been caused by violence *has been found* within his county," but I do not think this can be said of the dead body of a person

Judgments; Clerks' Fees for Indexing.

known to have been shot down in the presence of witnesses. Such a body is not "found" in contemplation of the statute. Webster defines the word "find" as follows: "To meet with, or light upon accidentally; to gain the first sight or knowledge of, as of something new, or unknown, or unexpected." In the case of *Muzzy vs. Hamilton County*, reported in *Western Law Journal*, Vol. 2, 426, it was decided that "a coroner has no power to hold an inquest except where the cause of death is unknown." In a hasty examination, I find no reported case in which the contrary doctrine is held. I am aware that it is a common practice in the State to hold inquests in cases such as you mention, and there are often weighty reasons for doing so, such as the detention of witnesses, etc., but the weight of authority, it seems to me, is against such practice, except where the cause of death is unknown.

Very respectfully,
D. H. HOLLINGSWORTH,
Attorney General.

JUDGMENTS; CLERKS' FEES FOR INDEXING.

Attorney General's Office,
Columbus, Ohio, January 9, 1883.

John M. Cook, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—Your favor of 8th inst. has been received. Original section 5339, R. S., provides for keeping an index to the judgments, and included in this index, must be shown, among other things, "the number and time of issue of the execution." Sec. 1260 provides that the clerk for his services shall receive, "for indexing judgments, etc., fifteen cents," "for index to each execution, etc., eight cents."