election he knew he could not run for a full term, and that he could not lawfully serve out the term he was seeking. It was then known that before the beginning of this term he would have served more than two years, and that in order to serve out the term he would have been in office more than four years, which violates the law and the constitution. He was not a candidate for that office until June, but until the expiration of the term. He was not eligible for that office, not eligible to be elected to it. He, therefore, has not been the legal incumbent of the office but a mere intruder therein, a de facto officer only, and is entitled to serve only until the vacancy now existing in the office may be filled according to law."

I agree with this opinion.

In the question that you present the present incumbent in the sheriff's office, at the conclusion of the term of office which she is now serving, will have served three years and three months. The present incumbent possesses a disqualification that is bound to render her ineligible before the expiration of another term, viz., she may not serve more than four years, in any period of six years. As stated in the opinion above quoted:

"When a person is elected to an office he is elected for the lawful term of that office, and the question of his eligibility must be whether he is qualified to hold that office for the whole of that term, for the laws could not contemplate an election to a part of a term."

Answering your question specifically it is my opinion that:

1. By the provisions of Article X, Section 3, of the Constitution of Ohio, no person is eligible to the office of sheriff for more than four years in any period of six years.

2. When a person is elected to an office, he is elected for the lawful term of that office and the question of his eligibility must be whether or not he is qualified to hold that office for the whole of that term, the law not contemplating an election for a part of a term.

3. By the provisions of Article X, Section 3, of the Constitution of Ohio, a person who has served as sheriff for three years and three months in any period of six years, is ineligible to be a candidate for re-election to such office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1995.

CIGARETTES—WHOLESALE BUSINESS—COST OF LICENSE.

SYLLABUS:

A person, firm, company, corporation or co-partnership engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers, or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred ($200.00) dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership.

COLUMBUS, OHIO, April 20, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for my opinion, which reads as follows:

"An opinion on the following matter has been requested of us and we would appreciate very much having your opinion thereon.

A certain wholesale grocery company in this city obtained a wholesale license to sell cigarettes, etc., under General Code Section 5894. This company has recently opened up additional places of business in this city where cigarettes are being sold wholesale to the retailers. The company has only one wholesale license. Is it necessary for this company to obtain a wholesale license for the sale of cigarettes, etc., as aforesaid, under this section, for each place of business, or does the provision that a license shall be procured for each place where such business is carried on, apply only to places of business where cigarettes, etc., are sold at retail?"

Section 5394, General Code, reads as follows:

"A person, firm, company, corporation, or co-partnership, engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred dollars, or, if so engaged in such traffic in the retail business, the sum of fifty dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership."

Under date of March 21, 1927, this department rendered an opinion, bearing No. 215, addressed to you, in which it was held that where a manufacturing company was operating stands where cigarettes were sold to employes in package and carton lots, such transactions being retail sales, it must secure a retail cigarette dealer's license for each stand so operated.

Section 5894, General Code is clear, in so far as it requires a separate license for each place where a person, firm, company, corporation, or co-partnership engages in the retail traffic in cigarettes, but is somewhat ambiguous as to whether or not a person, firm, company, corporation, or co-partnership engaged in the wholesale business of trafficking in cigarettes is required to secure a wholesaler's license for each place where such business is carried on.

In Lewis' Sutherland on Statutory Construction, Volume 2, Section 450, it is said:

"It has been held in a number of cases that if a revision or code is plain and unambiguous it must be construed by itself and without resort to the original or prior acts which have been brought into it. In Rathbone vs. Hamilton, the Supreme Court of the United States says: 'The general rule is perfectly well settled that where a statute is of doubtful meaning and susceptible upon its face of two constructions, the court may look into prior and contemporaneous acts, the reasons which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it to determine its proper construction. But where the act is clear upon its face and when standing alone is fairly susceptible of but one construction, that construction must be given to it. * * * Indeed, the cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity that an extended review of them is quite unnecessary. The whole doctrine applicable to the purpose may be summed up in the single observation that prior acts may be resorted to to *solve*, but not to *create* an ambiguity * *.' "

In the case of *The Mutual Electric Company* vs. *The Village of Pomeroy*, 99 O. S. 75, the Supreme Court of Ohio says in the opinion on page 79:

"It is the settled rule of construction of this state, that, where the entire legislation affecting a particular subject-matter has undergone revision, the revised sections will be construed the same as the original sections, unless the language of the revision evidences an intention to change the meaning and intent of the original act. *State* vs. *Vanderbilt*, 37 O. S. 590, 640; *State ex rel* vs. *Commissioners of Shelby County*, 36 O. S. 326; *State* vs. *Jackson*, Id. 281; *Williams* vs. *State*, 35 O. S. 175; *Reed* vs. *Evans*, 17 Ohio 128, 134; *City of Ironton* vs. *Wehle*, 78 Ohio St. 41, 44, and *Stevenson* vs. *State*, 70 Ohio St. 11, 15."

On April 24, 1893, the Legislature passed an act entitled, "An Act to tax the business of trafficking in cigarettes or cigarette wrappers." (90 v. 235). Sections 1 and 2 of that act provided as follows:

Section 1. "Be it enacted by the General Assembly of the State of Ohio, That upon the wholesale business of trafficking in cigarettes or cigarette wrappers, or any substitute for either, there shall be assessed annually and shall be paid into the county treasury as hereinafter provided, by each person, firm, company, corporation or co-partnership engaged therein, for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership, the sum of three hundred ($300.00) dollars.

Section 2. That upon the retail business of trafficking in cigarettes or cigarette wrappers, or any substitute for either, there shall be assessed annually, and shall be paid into the county treasury as hereinafter provided, by each person, firm, company, corporation or co-partnership engaged therein, for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership, the sum of one hundred ($100.00) dollars."

The following year, to-wit, May 18, 1894, the above sections were amended, the only changes being that the tax upon the wholesale traffic in cigarettes or cigarette wrappers was reduced to thirty ($30.00) dollars per year, while that on the retail business was reduced to fifteen ($15.00) dollars per year. Sections 1 and 2 of the Act of April 24, 1893, supra, as amended in the Act of May 18, 1894, were codified as Sections 4364-31 and 4364-32, Revised Statutes. In the codification of 1910 sections 1 and 2, supra, or rather Sections 4364-31 and 4364-32, Revised Statutes, were consolidated into one section and designated as Section 5894, General Code. After such codification Section 5894, General Code, provided:

"A person, firm, company, corporation or co-partnership, engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers, or a substitute for either, shall annually be assessed and pay into the county treasury the sum of thirty dollars, or if so engaged in such traffic in the retail business, the sum of fifteen dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership."

Section 5894, General Code, was amended and placed in its present form on April 4, 1920 (108 v. Part 2, Page 1222).

Applying the rules as stated in Lewis' Sutherland on Statutory Construction and by the Supreme Court of Ohio in the case of *The Mutual Electric Company* vs. *The Village of Pomeroy*, supra, the conclusion is obvious that in view of the history of Section 5894, General Code, as outlined above, a person, firm, company, corpora-

tion or co-partnership engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers, or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred ($200.00) dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1996.

BANK—USE OF THE WORD "BANK"—SECTIONS 710-2 AND 710-3, GENERAL CODE, DISCUSSED.

SYLLABUS:

By virtue of the provisions of Section 710-3 of the General Code, the use of the word "bank" as a part of the designation or name of any person, firm or corporation doing business in this state is confined to banks, as defined in Section 710-2 of the General Code, and such use by any other person, firm or corporation is prohibited.

COLUMBUS, OHIO, April 20, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

> "The attorney for the incorporators of a proposed Ohio corporation which it is desired to name THE OHIO BANK-SECURITIES CORPORATION has been advised by this office that the name is not available because of the use of the word BANK. Our advice in this connection was based upon G. C. 710-3.
>
> The attorney for the incorporators contends that inasmuch as the word BANK is used in the adjective sense only the section of the Code mentioned does not apply.
>
> We enclose copy of his letters under date of March 27th and April 3rd. Your advice is requested as to whether or not the word BANK can be used in a corporate name where it is used as an adjective and also whether or not the word BANK can be used as a hyphenated word with some other word."

Without quoting the accompanying letters, I may state that the contention is made, in substance, that the word "bank" in this instance is used in its adjective sense only, qualifying the noun "securities"; that used in this manner there can be no deception of the public; that the prevention of deception is the object and purpose of the statute; and that the proposed name is the only way in which the business of the corporation can be aptly described.

Section 710-3 of the General Code, in so far as pertinent, is as follows:

> "The use of the word 'bank,' 'banker' or 'banking,' or 'trust' or words of similar meaning in any foreign language, as a designation or name, or