supra, and in view of what has been said above, I am of the opinion that neither plan suggested can legally be carried out. The only plan that suggests itself to me and which, in my opinion, would be legal under the provisions of Section 6602-8h, General Code, is as follows: The county commissioners may amend the boundaries of the sewer district so as to exclude the narrow strip of state owned land immediately adjacent to the lake front and cause to be prepared detailed plans for the amended district. Upon approval of such plans by the director of health, tentative assessments may be prepared for the property within said district. The sewerage system should then be constructed and the cost thereof assessed upon the property within the amended district. If, thereafter, the lessees of the state owned land, or any of them, desire to be served by the improvement and make proper application for such service, the county commissioners may contract for such service and require the payment for such service of an amount which shall not be less than the original assessment for similar property within the amended district. The amount to be so paid would have to be paid in cash, because although Section 6602-8h, General Code, permits the assessment of such amount against the lots or parcels of land to be served in the same manner as provided for the original assessment, the Supreme Court of Ohio has declared the levy and collection by county commissioners of assessments against land owned by the state to be an illegal delegation of legislative authority. Upon the receipt of any moneys from lessees of state property outside of the sewer district for such service, the county commissioners are directed by Section 6602-8h to appropriate such moneys to and for the use and benefit of such sewer district. This would, of course, have the effect of reducing the assessments as levied against the property originally included in the amended sewer district and in that manner inure to the benefit of the owners of property within such district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2431.

COPYRIGHT BY STATE—RIGHTS OF RE-PUBLICATION SECURED FROM LEGISLATURE.

SYLLABUS:

Any re-publication of the Ohio State reports, which includes those portions of the reports which are the work of the official reporter and for which copyrights have been obtained by such reporter for the use of the state, constitutes an infringement of such copyrights as are now in existence. The right to publish the official copyrighted reports, in so far as such reports are subject to such copyright, can only be secured from the state by action of the Legislature.

COLUMBUS, OHIO, August 7, 1928.

HON. J. L. W. HENNEY, *Supreme Court Reporter, Columbus, Ohio.*

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

> "Enclosed herewith you will find a dodger issued by the Ohio Valley Law Book Company, 217 East Eighth Street, Cincinnati, Ohio, announcing Breitenbach's Ohio State Reports of Cases Argued and Determined in the Supreme Court of Ohio, in eight volumes instead of 136 volumes of the origi-

nal issue, together with specimen sheets of volume 88 Ohio Supreme Court Reports.

Under Section 1487 of the General Code, it is the duty of the Supreme Court Reporter to secure a copyright, for the use of the State, on each volume of reports so published by such official. Pursuant to that provision the present reporter, and his predecessors in office, have secured such copyrights.

The undersigned respectfully requests an opinion from you whether or not the publication of Breitenbach's Ohio State Reports will infringe upon the rights secured to the State by its copyright, and if so what action, if any, the undersigned shall take to protect the interest of the State in the copyright secured in the name of the State."

Section 1487 of the General Code, to which you refer, is as follows:

"The reports of the supreme court, of the courts of appeals and of inferior courts shall be printed on such paper and style of type as the supreme court directs, and bound in volumes in such manner and of such size as it prescribes. Each volume of the supreme court reports, reports of the court of appeals and of the inferior courts shall be issued at such time and cover such period of work as the supreme court orders. All reports shall contain an index, table of cases, list of citations, and other proper tabulation. The reporter shall secure a copyright for the use of the state for each volume of reports so published."

It is perhaps advisable to quote also provisions of the succeeding section which are pertinent to your inquiry:

"With the approval and under the direction of the supreme court, the reporter may contract with a responsible person, firm or corporation, resident of and doing business in the State of Ohio, to furnish materials, print and bind the reports of the supreme court, courts of appeals and such of the inferior courts of the state as are designated by the reporter, with the approval of the chief justice of the supreme court. Such contract shall provide for the delivery to the clerk of the supreme court of three hundred and fifty copies of each volume of reports without expense to the state. The said contract shall also provide for the furnishing of an additional number of copies of each volume sufficient to supply the demand of the citizens of the state to be sold by the contractor to persons or companies in this state at not exceeding two dollars and fifty cents per volume. No such contract shall be for a period greater than two years. The contractor shall have the exclusive right to publish such reports during the term of the contract."

It is unnecessary to quote largely from the provisions of the United States Statutes relative to copyrights. It is sufficient to state that the law provides protection to the authors or proprietors of any work made the subject of copyright. This protection is afforded for a period of 28 years from the date of the first publication and with an additional provision for renewal for a further term of 28 years upon an application therefor. It is my understanding, however, that no attempt has been made in any instance to renew copyrights upon the Supreme Court reports and accordingly whatever protection is afforded by the copyrights which you and your predecessors have obtained, would only extend back for the period of 28 years. Hence any reports published prior to 1901, although copyrighted and aside from any other question, would, by the limitation of the statutes governing copyrights, be without protection.

There are two questions in the consideration of your letter which naturally arise, namely, whether there exists authority in you, as section 1487 puts it, for the use of the state, to copyright the Ohio Supreme Court reports and, if this be answered in the affirmative, what portion of such reports are subject to copyright. With regard to the first question suggested, it is well to quote the provisions of paragraph 8, title 17 of the United States Code Annotated, which is as follows:

> "The author or proprietor of any work made the subject of copyright by this title, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this title. The copyright secured by this title shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation only:
>
> (a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or
>
> (b) When the foreign State or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection, substantially equal to the protection secured to such foreign author under this title or by treaty; or when such foreign State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.
>
> The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this title may require."

The section in its present form was adopted in 1909 and prior thereto there was considerable doubt as to whether a state could obtain a copyright, since the statute then limited the right to citizens or residents. This thought is expressed in Corpus Juris, volume 13, page 1053, as follows:

> "A state is neither a citizen nor a resident of the United States, and therefore could not obtain a copyright so long as that right was limited to citizens or residents. But since the removal of that restriction no reason appears why a state may not be entitled to copyright as a "proprietor," or even as an "author," under the provision that the word "author" shall include an employer in the case of works made for hire."

You observe that this authority believes the statute in its present form clearly would permit the state itself to obtain a copyright either as an author or as a proprietor. The doubt as to the right of the state to take out a copyright prior to the amendment of the then existing law in 1909 was suggested by reason of the decision of the Supreme Court of the United States in the case of *Banks* vs. *Manchester*, 128 U. S. 244, from which the author, in the note printed to the above notation, quotes the following language:

> "The State cannot properly be called a citizen of the United States or a resident therein, nor could it ever be in a condition to fall within the description in paragraph 4952, or paragraph 4954. The copyright claimed to have been taken out by Mr. De Witt in the present case, being a copyright 'for the State,' is to be regarded as if it had been a copyright taken out in the name of the State. Whether the State could take out a copyright for itself, or could

> enjoy the benefit of one taken out by an individual for it, as the assignee of a citizen of the United States or a resident therein, who should be the author of a book, is a question not involved in the present case, and we refrain from considering it and from considering any other question than the one above indicated."

It is interesting to observe that the case of *Banks* vs. *Manchester* was one arising under a prior section analogous to Section 1487 of the code and the language of the section then existing with reference to the copyright of the reports of the Supreme Court was the same as it now exists. While the court in that case did use the language which is quoted, it is to be observed that it specifically refrained from passing directly upon the question whether a state could in any event obtain a copyright for itself. The court did, however, say that the copyright there involved, being a copyright "for the state", was to be regarded as if there had been a copyright taken out in the name of the state. If this statement be true, then in the present instance, we must regard the copyright as having been taken out in the name of Ohio.

From what has been stated it is clear that, because of the failure to renew the copyright, neither the state nor yourself has interest in the reports published prior to the year 1901. In view of the language used by the court in the case of *Banks* vs. *Manchester*, supra, there may exist some question as to the right of the state with reference to the reports from 1901 to 1909. As to those reports published subsequent to 1909, I am inclined to agree with the author of the above quotation from Corpus Juris that the state may, in its own name, and of course through you as the reporter for the use of the state, take out a copyright. In other words, the Supreme Court reporter is an employee of the state and, as the employer, the state has an interest in the labor of the reporter which may be protected by copyright.

This brings us to the inquiry as to just what portions of the reports may properly be made the subject of a copyright. In the case of *Banks* vs. *Manchester*, supra, which also involved the right of the publication of the reports of the Supreme Court of Ohio, it was held on the facts submitted that the matter covered by the re-publication was not such as was the subject of copyright. The court in the course of the opinion on page 253 states as follows:

> "Judges, as is well understood, receive from the public treasury a stated annual salary, fixed by law, and can themselves have no pecuniary interest or proprietorship, as against the public at large, in the fruits of their judicial labors. This extends to whatever work they perform in their capacity as judges, and as well to the statements of cases and head notes prepared by them as such, as to the opinions and decisions themselves."

The court accordingly reached the conclusion that, since the publication in this instance did not cover anything other than the work of the judges, relief would be denied. Where, however, the reporter has himself performed certain labor in connection with the preparation of reports the Supreme Court has recognized that such matter is properly the subject of copyright. In the case of *Callaghan* vs. *Myers*, 128 U. S., page 617, a similar controversy was presented to the Supreme Court. In this instance, however, there was involved work in the preparation of the reports which was not the work of the judges. The court specifies what work of the reporter could be the subject of copyright in the following language on page 649:

> "Such work of the reporter, which may be the lawful subject of copyright, comprehends also the order of arrangement of the cases, the division of the reports into volumes, the numbering and paging of the volumes, the table of

> the cases cited in the opinion (where such table is made), and the subdivision of the index into appropriate, condensed titles, involving the distribution of the subjects of the various head-notes, and cross-references, where such exist. A publication of the mere opinions of the court, in a volume, without more, would be comparatively valueless to any one."

With this rule in mind it becomes necessary to examine the sample pages of the proposed publication in order to determine just what use of the Ohio State reports has been made. The sample pages start with volume 88 of the Ohio State reports, a table of cases reported with opinion being found on the first page. A comparison of this table with the table found in the regular volume of reports discloses that, while there is some variation therefrom, the table is substantially like the one in the official volume. The page numbering is identical.

The succeeding sample pages disclose that the publisher has in each instance made an exact copy of the pages contained in the official volume number 88 of the Ohio State reports, except that he has included in one of his sample pages four pages of the official volume. Each individual page of the official report is accordingly copied in identical language and this includes the arrangement of cases, the page numbering, the topical notes which precede the syllabus of each case, and the condensed arguments of counsel, all of which are the work of the reporter, as well as the style of the case, the syllabus, the statement of the case, and the opinion itself, which of course are the work of the court. By referring to the official volume, it is disclosed that the matter omitted, so far as the sample sheets submitted disclose, includes the title page, the succeeding page designating the members of the court and their terms together with other officers, the table of cases reported without opinion, the table of cases cited, the table of statutes cited, construed and determined, the memorial presented to the court, and the index. Thus it will be seen that, while there has been omitted a considerable portion of the work of the reporter included within the official report, yet the proposed publication includes a portion of his work and it is possible that, upon final publication, it will be found that other portions will be included.

Coming expressly within the language above quoted in the case of *Callaghan* vs. *Myers* are the order of arrangement of the cases, the division of the reports into volumes and the numbering and paging of the volumes. These matters have clearly been adopted, in the proposed publication. I believe that the reasoning of the Supreme Court of the United States would also include the head notes found prior to the syllabus in each case, the condensed arguments of counsel and the table of cases reported with opinion, since these are also manifestly the result of the labors of the reporter and are in no sense the work of the court.

Accordingly I am of the opinion that the proposed publication would, as to the matter hereinabove referred to, constitute an infringement of the state's copyright. This conclusion is based upon the cases heretofore discussed which are substantiated by the following from Corpus Juris, page 1037:

> "Law reports may be copyrighted, but such copyright will extend only to those parts which are the work of the reporter, such as the syllabi, abridgements of the arguments of counsel, statements of facts, and other like features."

Of course in Ohio the syllabi and statements of facts are prepared by the court and accordingly could not be copyrighted, but, as to the other matters mentioned, the right to copyright exists.

You further inquire if, in the instance cited, there constitute an infringement of a valid copyright what course you should pursue. Where a valid copyright exists, it will be protected by the courts by injunction and, if the publication be already made, an

action for accounting and damages will lie. In this instance publication has not yet been effected and accordingly injunction would be the proper relief. I am therefore of the opinion, it is your duty, as the officer having custody of the copyright for the use of the state, to institute an action by way of an injunction to prevent infringement of the copyright here involved. And in so doing you will of course have the co-operation of this office.

Your inquiry, however, suggests another consideration. The proposed publication is doubtless meritorious and would be of convenience and benefit to the legal profession and it should accordingly be determined whether or not, under existing law, any method exists by which the right to utilize this material can be granted. The Legislature in the enactment of 1487, G. C., supra, has not extended any right of license other than that contained in the succeeding section. You will observe that, if the contract for the printing of the official reports is let, Section 1488 provides "The Contractor shall have the exclusive right to publish such reports during the term of the contract." By this language the contractor is licensed to publish the reports during the term of the contract, but this would of course only extend during the period of the contract. There being no statutory authority in you to license anyone other than the contractor, I am of the opinion that whatever rights exist under the copyright in question reside in the state and that you have no power to license the publication in this instance.

I have further searched the statutes for any general authority residing in any other officer, board, commission or court to grant the use of the copyrighted material, but I have reached the conclusion that no such right exists. Accordingly, if any licenses should be granted for the publication of such material, it must be by action of the Legislature.

In answering your inquiry I have not in any way attempted to ascertain whether in each instance the copyright secured by the Supreme Court reporter was effected in accordance with the law. That is to say, I am not passing upon any questions with relation to the formalities attendant upon the securing of copyright, but am assuming that they were in each instance properly obtained. Summarizing and by way of specific answer to your inquiry, I am of the opinion that the publication of the Ohio State reports, as proposed in this instance, including as it does those portions of the reports which are the work of the official reporter and for which copyrights have been obtained by such reporter for the use of the state, would constitute an infringement of such copyrights as are now in existence and that it is the duty of the Supreme Court reporter to bring action to enjoin such infringement. The right to publish the official copyrighted reports, in so far as such reports are subject to copyrights, can only be secured from the state by action of the Legislature.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2432.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WHEELING AND LAKE ERIE RAILWAY COMPANY FOR GRADE SEPARATION PROJECT NEAR VALLEY JUNCTION STATION, TUSCARAWAS COUNTY, OHIO.

COLUMBUS, OHIO, August 7, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication under date of August 3, 1928, enclosing duplicate contract by and between the State of Ohio,