

Attorney General. These sales meet with my approval and I have accordingly endorsed my approval upon the deed forms submitted, which are herewith returned to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

84.

HOLIDAY—LINCOLN'S BIRTHDAY—WHEN STATE OFFICES MAY LAWFULLY CLOSE.

SYLLABUS:

State offices may lawfully be closed upon Lincoln's birthday when in the judgment of the head of the office or department the public service will not be impaired thereby, but there is no provision of law expressly making such closing mandatory.

COLUMBUS, OHIO, February 11, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—I acknowledge your letter of February 9, 1929, as follows:

"Several of the departments have asked as to whether or not Lincoln's Birthday should be observed as a holiday.

I have noted the Opinion of February 9, 1928, which does not seem to clarify this matter for years other than those in which Lincoln's Birthday falls on Sunday.

The syllabus holds:

'The twelfth day of February, known as Lincoln's Birthday, is not a holiday for all purposes, but is only a holiday for the purpose of computing time in reference to payment and protest of commercial paper. The fact that February 12, 1928, falls on Sunday does not require state departments to observe Monday, February 13, 1928, as a holiday.'

I would appreciate it if I might be advised on Monday as to your definite opinion as to whether, under the statutes, Lincoln's Birthday on a year like this is a holiday. I find some of the departments so observe it and others not."

It is true that in the opinion of which you quote the syllabus my predecessor held that the 12th of February, known as Lincoln's Birthday, is not a holiday for all purposes but only for the purpose of computing time in reference to payment and protest of commercial paper. This conclusion is the obvious one to be deduced from the language of Section 8301 of the General Code, which is as follows:

"The following days, viz.:

1. The first day of January, known as New Year's Day;
2. The twenty-second day of February, known as Washington's Birthday;
3. The thirtieth day of May, known as Decoration or Memorial Day;
4. The fourth day of July, known as Independence Day;
5. The first Monday of September, known as Labor Day;
6. The twelfth day of October, known as Columbus Discovery Day;
7. The twenty-fifth day of December, known as Christmas Day;

8. Any day appointed and recommended by the governor of this state or the president of the United States as a day of fast or thanksgiving;

9. The twelfth day of February, known as Lincoln's Birthday; and

10. Any day which may hereafter be made a legal holiday, shall for the purpose of this division, be holidays. But if the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth of July, or the twenty-fifth day of December be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday."

You will observe that besides Lincoln's Birthday, New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Columbus Discovery Day, Christmas Day and Thanksgiving Day are all placed in exactly the same category. That is to say, these days are only made holidays for the purpose of the negotiable instruments act and not general holidays. They are not even denominated legal holidays. Labor Day is also included in the enumeration of the section, but, by the provisions of Section 5977 of the General Code, must be considered for all purposes as the first day of the week. Section 5977 also declares Armistice Day to be a legal holiday. The succeeding section makes Saturday afternoon "a half legal holiday for all purposes". Even the status of Sunday itself is not definitely determined by the provisions of the Code, although there are many statutes prohibiting specific acts on that day.

Your inquiry is whether Lincoln's Birthday is a holiday, and the implication is that your specific question is whether or not there is justification for a cessation of public business and the closing of public offices on that day. While, as I have before stated, Section 8301 of the Code does not itself even attempt to call Lincoln's Birthday, or any of the days therein enumerated, legal holidays, but only holidays for the purpose of the negotiable instruments act, yet, if the statute did specifically state that these days should be legal holidays, we would be as much in the dark as to what significance to attach to this provision of law as we are by reason of the statute as it exists at present. This is so for the reason that there is no definition relating to legal holidays whereby it may be determined whether or not the fact that a day is a legal holiday authorizes the cessation of public work. At the same time, however, it is somewhat significant that the Legislature, in amending Section 8301 of the Code, supra, to include Lincoln's Birthday therein, did so by an act entitled "To amend Section 8301 of the General Code, making the twelfth day of February, known as Lincoln's Birthday, a legal holiday." Thus it will be seen that the Legislature, while intending to make Lincoln's Birthday a legal holiday, did not in fact so state in the body of the act itself. This fact is in itself of some significance as indicating that the Legislature regarded all of the days enumerated in Section 8301 of the Code as legal holidays, with all of the attributes which legal holidays have. This is obviously true of such days as New Year's Day, Christmas Day and Independence Day, which, as a matter of long established custom, have been regarded as days upon which public business should not be transacted. It was evidently the purpose of the Legislature to place the other days in this section in exactly the same category, for it would be ridiculous for me to hold that there was no authority for the closing of public offices on Christmas Day, for instance, and yet there is no more legal justification therefor than there is for the closing of offices on Lincoln's Birthday. As a matter of fact, the legislation on the subject of holidays generally is in need of clarification. For example, Section 7687 of the General Code enumerates New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Christmas Day and Thanksgiving Day as days on which the teachers in the public schools may dismiss their schools. This enumeration does not include Columbus Discovery Day and Lincoln's Birthday, enumerated in Section 8301, supra.

While, as before stated, the Legislature has failed to clarify its meaning in the enactment of Section 8301, so that, if we are left to the express terms thereof, the conclusion must be reached that the days therein enumerated are only holidays for the purpose of the negotiable instruments act, yet in so providing there is, in my opinion, a recognition of the fact that business generally should not be transacted on those days, since it recognized that the rules with reference to the payment and protest of commercial paper should be varied as to those days. As stated in Section 8298 of the Code:

“When the day or the last day for doing any act herein required or permitted to be done falls on Sunday, or on a holiday, the act may be done on the next succeeding secular or business day.”

Clearly the inference is that persons will not transact business on a holiday. Attention should be directed to Section 154-20 of the Code, which provides in part as follows:

“All employes in the several departments shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.”

This section fails to clarify the situation for the reason that there is still doubt whether a declaration that certain days shall be holidays for the purpose of the negotiable instruments law makes the days so designated “days declared by law to be holidays” within the meaning of Section 154-20. It should also be noted that even in the case of holidays, the director of the particular department must determine that the public service will not be impaired by the observance of the holiday.

Because of the uncertainty of the law on the point concerning which you inquire, I do not feel that I can state definitely that the law does or does not require public offices to be open on Lincoln’s Birthday. There is no provision of law as to just what consequences attach to the fact that a day is denominated a legal holiday. By recourse to custom, however, I must conclude that cessation of business is authorized on certain of the days enumerated in Section 8301 of the Code, and for which no other provision is found in law. This is true, as I have heretofore stated, as to such days as Christmas and New Year’s, and since the legislative intent is clear to place Lincoln’s Birthday in exactly the same category, I am of the opinion that it would not be unlawful for public officers to close their offices on Lincoln’s Birthday.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that state offices may lawfully be closed upon Lincoln’s Birthday when in the judgment of the head of the office or department the public service will not be impaired thereby, but that there is no provision of law expressly making such closing mandatory.

Respectfully,

GILBERT BETTMAN,

Attorney General.