Dow Liquor Law; Manufacturer May Sell Through Bona Fide Agents; Dow Liquor Law; Sale of Liquor Where a Prohibitory Ordinance Has Been Passed.

have considered the matter, and my opinion is that you are warranted, under the circumstances of this case, in paying said requisition. I do not intend by this to establish a precedent that a board of trustees may, in the erection, alteration, addition to or improvement of any State institution, asylum, or other improvement, contract an indebtedness, except by a substantial compliance with the provisions of section 782 of the Revised Statutes; but in view of the character of this particular work, and believing that the indebtedness has been incurred in good faith, I have concluded, without going at length into the reasons thereof, to advise that, as a matter of law, the claim is valid and as such, entitled to payment.

Yours very truly,

J. A. KOHLER,

Attorney General.

DOW LIQUOR LAW; MANUFACTURER MAY SELL THROUGH BONA FIDE AGENTS; DOW LIQUOR LAW; SALE OF LIQUOR WHERE A PROHIBITORY ORDINANCE HAS BEEN PASSED.

Attorney General's Office,
Columbus, Ohio, January 19, 1887.

A. J. Bradley, Esq., White House, Ohio:

DEAR SIR:—The Supreme Court did not touch upon the question in which you are interested in its recent decision.

In my judgment the sale of liquor by the gallon, under the circumstance stated, would not be protected against your ordinance under the provisions of the Dow liquor law.

A manufacturer can no doubt sell by his agent in the

regular and usual course of business, for instance, a "drummer" or traveling man taking orders, but such an independent business as specified would be a mere evasion of the law, and such as the courts would not sanction.

Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; MEANING OF TERM "PHARMACEUTICAL" AS USED IN SECTION 8 OF ACT.

Attorney General's Office,
Columbus, Ohio, January 20, 1887.

Campbell and Godfrey, Fostoria, Ohio:

GENTLEMEN:—Your favor of the 5th instant received. In my opinion the term "pharmaceutical," as used in the Dow liquor law, could not properly be interpreted as including what is generally understood by the phrase "medicinal purposes."

By referring to section eight of the above mentioned law, you will see that intoxicating liquors may be obtained, without the druggist paying the tax, when a person presents a prescription from a reputable physician, or when the pharmacist feels assured that he is dealing out liquors for mechanical, pharmaceutical or sacramental purposes.

The word "pharmaceutical" applies more particularly to the compounding of medicines, and that was doubtless what the law intended.

Yours very truly,

J. A. KOHLER,
Attorney General.

Sheriff; Not Entitled to Fuel for Residence at Expense of County—Fish and Game Law; Killing and Selling Deer Out of Season.

SHERIFF; NOT ENTITLED TO FUEL FOR RESIDENCE AT EXPENSE OF COUNTY.

Attorney General's Office,
Columbus, Ohio, January 22, 1887.

R. S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Your favor of yesterday to hand. I have carefully examined the inquiry you have presented, and can find no statute or decision of any court in this State making it obligatory upon the county to furnish light and fuel for the *residence* of the sheriff of the county.

The statutes provide for the keeping and support of the prisoners in the custody of the sheriff, and the expense thereof, with the limitations prescribed, must be at the expense of the county; but the fuel therein provided for cannot be used in the residence proper of the sheriff.

I therefore, give it as my best judgment that county commissioners are not authorized in paying expenses incident to the lighting and heating of the residence proper of the sheriffs in this State.

Yours very truly,
J. A. KOHLER,
Attorney General.

FISH AND GAME LAW; KILLING AND SELLING DEER OUT OF SEASON.

Attorney General's Office,
Columbus, Ohio, January 24, 1887.

W. H. Ward, Esq., Kenton, Ohio:

DEAR SIR:—Your letter of the 22d instant received. I have no authority to give you an official opinion on the

question you have presented and my view is simply that of an attorney at law.

While I do not feel at all certain that the intention of the General Assembly in amending section 6964 of the Revised Statutes (Ohio Laws, Vol. 79, p. 74) was to make it so stringent as to render it applicable to the selling of deer out of season, when lawfully killed in another state, I think that the wording of the section is sufficiently broad to warrant such interpretation.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; SALE OF WINE BY MANUFACTURER OR AGENT.

Attorney General's Office,
Columbus, Ohio, January 20, 1887.

Wm. Senn, Esq., Editor "Sandusky Demokrat," Sandusky, Ohio:

DEAR SIR:—Yours of the 5th instant received. In my opinion, under section eight of the Dow liquor law, wine manufactured from the raw material may be sold by the manufacturer thereof, or his duly constituted agent acting in good faith, in quantities of not less than one gallon at any one time, without rendering said manufacturer amenable to the tax imposed by said law.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Payment of Penalty Should Not be Enforced in Certain Case; Prosecuting Attorney; May be Employed by County Treasurer as Counsel.

DOW LIQUOR LAW; PAYMENT OF PENALTY SHOULD NOT BE ENFORCED IN CERTAIN CASE; PROSECUTING ATTORNEY; MAY BE EMPLOYED BY COUNTY TREASURER AS COUNSEL.

Attorney General's Office,
Columbus, Ohio, January 25, 1887.

J. P. Spriggs, Esq., Attorney-at-Law, Woodsfield, Ohio:

DEAR SIR:—Yours of yesterday to hand. Under the circumstances stated in your letter, I would suggest that if the tax under the Dow law was paid for the first half of the assessment, and at the end of that time he in fact discontinued the business and made that fact appear to the treasurer, the penalty should not be enforced.

In regard to your second question, the law has been construed thus: a county treasurer is authorized to employ counsel in any action brought by him for deliquuent taxes, and he need not employ the prosecuting attorney. If the prosecuting attorney is in fact employed, and renders services in the action, it has been held that he is entitled to compensation for such services. In other words, while by another section the prosecuting attorney is made the legal adviser of county officers, it does not preclude the payment to him for services rendered by him in an action in behalf of the treasurer.

I think that this was the case in Marion County, where the prosecuting attorney was paid for such services, and I was informed that the judges of the courts there took that view of the law. So that if the bill is reasonable and the service was rendered in an action as an attorney and was not merely a matter of counsel and advice, I would see no objection to the payment of the claim.

I know of no decision of the courts on this point, but

Dow Liquor Law; Power of Councils of Municipalities to Remit Fines and Penalties—Dow Liquor Law; Power of Councils of Municipalities to Remit, Etc.

my judgment is, that this would be fair and that the law would authorize it.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; POWER OF COUNCILS OF MUNICIPALITIES TO REMIT FINES AND PENALTIES.

Attorney General's Office,
Columbus, Ohio, January 27, 1887.

M. L. Snyder, Esq., City Solicitor, Fremont, Ohio:

DEAR SIR:—Your letter of the 25th instant to hand. I find nothing in the Dow liquor law granting to city councils any authority to remit any of the revenues or fines which have come into the city treasury from the payment of taxes and penalties imposed under the Dow law.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; POWER OF COUNCILS OF MUNICIPALITIES TO REMIT, ETC.

Attorney General's Office,
Columbus, Ohio, January 28, 1887.

M. L. Snyder, Esq., City Solicitor, Fremont, Ohio:

DEAR SIR:—The letter addressed to you yesterday should perhaps be qualified by the statement that under sec-

Directors of County Infirmary; Compensation for Extra Services.

tion eleven, when the sale of ale, beer and intoxicating liquors is prohibited in any municipal corporation, a ratable proportion of the tax for the year should be returned, but, as I understand it, this is not your case.

Yours very truly,

J. A. KOHLER,
Attorney General.

DIRECTORS OF COUNTY INFIRMARY; COMPENSATION FOR EXTRA SERVICES.

Attorney General's Office,
Columbus, Ohio, January 28, 1887.

J. F. Wilkin, Esq., Prosecuting Attorney, New Philadelphia, Ohio:

DEAR SIR:—Yours of the 25th instant received. In section 968 of the Revised Statutes, as amended Ohio Laws, Vol. 82, p. 14, no provision is made for expenses in attending sessions of the board, but county commissioners may allow for extra service rendered by the directors.

I think that you are correct in regard to your second inquiry, that is to say, that in removing such pauper the director makes the expense in his official capacity and is entitled to be recompensed by his county, and the board of directors may then look to the board of the county where such pauper has a settlement for its remuneration.

Yours very truly,

J. A. KOHLER,
Attorney General.

SECRETARY OF STATE; FEES OF, FOR FILING ARTICLES OF INCORPORATION.

Attorney General's Office,
Columbus, Ohio, February 4, 1887.

Hon. J. Robinson, Secretary of State:

DEAR SIR:—In reply to your inquiry for a proper construction of the amendatory act passed May 15th, 1886, entitled an act to amend section 148*a*, Ohio Laws, Vol. 83, p. 165, I will say that the act provides for the fees to be paid the secretary of state for filing articles of incorporation. The amount is regulated by the amount of capital stock. The minimum amount is five dollars and the maximum amount is two hundred dollars; so that a company can be incorporated for any sum over one million dollars and the fee for filing will be two hundred dollars.

The law provides the same proportionate rate for any increase of the capital stock, and I construe this to mean that every increase of the capital stock of the company is to be considered the same as if original articles were filed, so that if a company has filed articles of incorporation for a capital stock of over one million dollars and has paid the maximum fee of two hundred dollars, and desires to increase its capital stock, it must pay the same proportionate rate for the amount of such increase, up to the maximum of two hundred dollars, and this rule will apply to each and every subsequent increase of capital stock.

I think this explains my view of the law and I am free to say that upon first reading of the statute my impression was that where the company had, upon the filing of original articles, paid the maximum sum of two hundred dollars, that it could then go on and increase without further payment of fees, but a more careful examination of the law and subject to which it relates has convinced me that

Dow Liquor Law; Refunding Order Should Issue in Case Business is Discontinued.

such is not the meaning of the law, and that the fees to be charged are as I have above indicated.

Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; REFUNDING ORDER SHOULD ISSUE IN CASE BUSINESS IS DISCONTINUED.

Attorney General's Office,
Columbus, Ohio, February 4, 1887.

W. Severance, Esq., Attorney-at-Law, Chicago, Ohio:

DEAR SIR:—Yours of December 29th received. Owing to the many things demanding my attention, your letter has remained unanswered longer than I intended, indeed I did not see it until today, and make haste to answer that, in my opinion, where the business is in fact discontinued by the saloonkeeper, he is entitled to a refunding order for a proportionate amount of the tax paid.

I think when a man voluntarily discontinues the business, one object of the Dow law is attained. In my judgment, therefore, in the case you cite, the parties are not liable to the last half of the December installment. This is my view of the law; at least I think it accords with justice as well as the letter of the law.

Hoping that you will pardon the delay, I remain,

Yours very truly,

J. A. KOHLER,
Attorney General.

Auditor of County; Duty of, When False Returns, Etc., Have Been Made.

AUDITOR OF COUNTY; DUTY OF, WHEN FALSE RETURNS, ETC., HAVE BEEN MADE.

Attorney General's Office,
Columbus, Ohio, February 4, 1887.

J. W. Kinsey, Esq., County Auditor, New Philadelphia, Ohio:

DEAR SIR:—Since writing of the date of December 22d, 1886, I have had occasion to examine the act of the General Assembly as amended in Ohio Laws, Vol. 83, p. 82, more carefully and in respect to the penalty therein provided for, said act, in so far as it provides for the payment of a penalty for not exceeding five years prior to the year in which the inquiries and corrections are made, is objectionable for the reason that it is retroactive and would, therefore, be in conflict with the constitution. The rule is that laws must be prospective and not retrospective in their operation, and providing a penalty for the doing, or rather the omission to do a certain thing, when there was no such penalty provided at the time it was done, is in conflict with fundamental principles of law.

I am of opinion, therefore, that while the auditor may correct the returns, that in respect to the penalty of fifty per cent. it can only be added for an omission or false return made since said law was enacted. I think this answers your inquiry.

Yours very truly,
J. A. KOHLER,
Attorney General.

Recorder of County; Right of Private Person to Examine Records in Office of; Entitled to Fees When.

RECORDER OF COUNTY; RIGHT OF PRIVATE PERSON TO EXAMINE RECORDS IN OFFICE OF; ENTITLED TO FEES WHEN.

Attorney General's Office,
Columbus, Ohio, February 5, 1887.

H. C. Settledge, Esq., County Recorder, Wapakoneta, Ohio:

DEAR SIR:—Yours of the 2d instant to hand. The records in the office of a county recorder are for the use of the public, and any person has a right at all reasonable times and in a proper manner to examine the same, and in my opinion, publishers of newspapers have the same rights in this respect as are conferred upon other persons, and the fact that the results of such researches are intended for publication does not alter the matter.

When the recorder is requested to search the records, or when in order to make a copy it becomes necessary so to do, he is entitled to charge the fee allowed therefor, but has no right to exclude any person from searching the records for himself, and any person may do so without paying a fee therefor.

Yours very truly,
J. A. KOHLER,
Attorney General.

Publication; Fees for, of Public Advertisements, Notices, Etc.; Meaning of Terms "Rule" and "Tabular."

PUBLICATION; FEES FOR, OF PUBLIC ADVERTISEMENTS, NOTICES, ETC.; MEANING OF TERMS "RULE" AND "TABULAR."

Attorney General's Office,
Columbus, Ohio, February 6, 1887.

SIR:—Your attention is respectfully called to the following sections of the Revised Statutes relating to legal advertisements for State, county and city, with the opinion or construction placed on these laws regulating the publication of such advertisements containing "tabular" or rule work, with sample of these, and the opinion as to what should be designated as "tabular," or whether "tabular" is to be classed as "rule work."

The following are the laws still in force, and regulate the price for legal advertising, the most important being section 4366, Revised Statutes.

Section 4366. Publishers of newspapers may charge and receive for the publication of advertisements, notices and proclamations, the price or rate for which is not otherwise fixed by law, required to be published by any public officer of the State, or of a county, city, village, hamlet, township, school, benevolent or other public institution, or by a trustee, assignee, executor or administrator, the following sums, to-wit: For the first insertion, one dollar for each square, and for each additional insertion authorized by law, or the person ordering the insertion, fifty cents for each square; fractional squares to be estimated at the same rate for space occupied; *and in advertisements containing tabular or rule work, an additional sum of fifty per cent. may be charged in addition to the foregoing rates.*

This section (4366) of the Revised Statutes, as to the fees prescribed for legal advertisements, is ambiguous when taken in regard to the meaning of the words "tabular" or "rule work." There is a question of doubt as to the inten-

tion of using the word "tabular" in connection with "rule work," and whether they are to be separated or designated as one and the same thing. It has been my opinion, and I have so claimed, that "tabular" was inserted in the section to designate "figure work," and "rule work" where there is any justification or fitting in of brass rule, whether figures are to be used or not.

According to the above construction of the law, the printer would certainly be entitled to $1.50 per square of 240 ems for the first insertion, and 75 cents for each subsequent insertion.

Section 917. The county commissioners, annually, on or before the third Monday in September, shall make a *detailed* report in writing to the Court of Common Pleas of the county, of their financial transactions during the year next preceding the time of making such report, and the court shall cause the same to be investigated and examined by the prosecuting attorney of the county.

When they have completed their examination, they shall leave said financial statement, and the report of their examination, with the auditor of the county, for the use of the commissioners, who shall, immediately thereafter, cause said statement, together with the report of the examiners, to be published in a compact form for one week, in two weekly newspapers there published; if not, then a publication in one paper only is required; in case of any violation of the law, the prosecuting attorney is directed to cause the same to be prosecuted according to the nature of the case; and if any county commissioners in this State fail or neglect to make the report required of them by this chapter, at the time required, they shall be fined in any sum not exceeding one hundred dollars; and the prosecuting attorney of any such county shall prosecute in the Court of Common Pleas, as is provided by law in similar cases, any one or all of such commissioners who neglect or refuse to publish the required statement, as herein provided. (73 Vol., 141, p. 7.)

Publication; Fees for, of Public Advertisements, Notices, Etc.; Meaning of Terms "Rule" and "Tabular."

Section 852. At the September session, the commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures for the past year. (57 Vol. 7, p. 10).

The question, "What constitutes a detailed report under section 917?" is also of ambiguous nature. If we take the literal meaning of the word "detail," it would suggest that the advertisement should be itemized; i. e., each article and the cost of same should be given, and not as has been the custom, take the totals of each bill paid. It would certainly add to the cost of the publication of the commissioners' report, if the law be taken literally. The legal advertisements under sections 917 and 852 are both separate and distinct, one is the statement of the county auditor in total, the other is a detailed report of the county commissioners.

The following is a sample of what has been designated as "tabular."

General statement of the finances for 1886.

The balance in the treasury to the credit of the several funds at the close of the fiscal year 1885, were as follows:

General Revenue	$98,138 47
Sinking	88,974 21
State Common School	66,926 11
Total	$254,038 79
The receipts into the treasury during the year from all sources amounted to	$254,038 74
Total receipts including balances	6,029,942 53
Leaving cash balance in the treasury Nov 15, '86.....	$456,221 24
Disbursements for same period.	5,573,721 29

The above balance is to the credit of the following funds, to wit:

Publication; Fees for, of Public Advertisements, Notices, Etc.; Meaning of Terms "Rule" and "Tabular."

General Revenue.	$272,794 73	
Sinking	96,236 92	
State Com. Schools.	87,189 59	
		$456,221 24

The following is a sample of what is known as "rule work:"

The following statement shows the receipts, disbursements and balances of the foregoing funds:

Funds.	Balances in Treasury Nov. 16.	Receipts during fiscal year.	Total receipts including balance.	Disbs. during fiscal year.	Balances in Treasury Nov. 15, 1886.
Gen'l revenue	$98,138.47	$3,256,620.87	$3,354,759.34	$3,081,964.61	$272,794.73
Sinking	88,974.21	844,815.89	944,790.10	848,553.18	96,236.92
State com.sch'l	66,926.11	1,663,466.98	1,730,790.09	1,643,203.50	87,189.59
Total.....	$254,038.79	$5,775,903.74	$5,573,721.53	$5,573,721.29	$456,221.24

At the solicitation of the press of the State, to assist them in coming to some conclusion in the event of their bills being disputed, the above opinion is herewith given.

Yours respectfully,

J. A. KOHLER,

Attorney General.

Wm. C. A. Dela Court, Supervisor of Public Printing.

Directors of County Infirmary; Compensation of, for Extra Services.

DIRECTORS OF COUNTY INFIRMARY; COMPENSATION OF, FOR EXTRA SERVICES.

Attorney General's Office,
Columbus, Ohio, February 7, 1887.

J. F. Wilkin, Esq., Prosecuting Attorney, New Philadelphia, Ohio:

DEAR SIR:—Yours of January 31st duly received. Upon examining your letter more carefully and the specific inquiry you make, as well as section 968, as amended Ohio Laws, Vol. 82, p. 14, I feel inclined to give it a liberal construction, and it seems to me a reasonable discretion is conferred upon the county commissioners, and that in such a case as you relate, the commissioners may make a reasonable compensation for extra services fairly incurred in performing the same. I think the law contemplates instances when extra service is necessary and where expenses must be incurred in performing it, and in such cases as you state, they may, in their discretion, allow a reasonable sum for the extra service as well as the extra expense necessarily attending the same.

I believe this answers your question, and I think the statute will bear the construction.

Yours very truly,
J. A. KOHLER,
Attorney General.

Trustees of Children's Home; Duty of, in Transportation of Children to Home—Boy's Industrial School; Term of Convict, in Case of Transfer to, from Ohio Penitentiary and Return.

TRUSTEES OF CHILDREN'S HOME; DUTY OF, IN TRANSPORTATION OF CHILDREN TO HOME.

Attorney General's Office,
Columbus, Ohio, February 7, 1887.

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

DEAR SIR:—Your favor of the 4th instant to hand. In my opinion the trustee of a children's home of a county must provide for and meet the expenses incurred in the transportation of children to the home. I therefore concur in the opinion expressed in your letter, herewith enclosed.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOYS' INDUSTRIAL SCHOOL; TERM OF CONVICT, IN CASE OF TRANSFER TO, FROM OHIO PENITENTIARY AND RETURN.

Attorney General's Office,
Columbus, Ohio, February 7, 1887.

Chas. Douglas, Esq., Superintendent of "Boys' Industrial School," Lancaster, Ohio:

DEAR SIR:—Yours of the 2d instant received. The question you propounded has heretofore been presented for examination and an opinion; exactly how it came up I do not remember, but at all events, it was held that if a person was sentenced to the penitentiary by the judge of a court, and the sentence was a determinate one, the time so fixed by the judgment of the court could not be enlarged by sub-

sequently transferring the convict to the Boys' Industrial School. In other words, in such a case, if the boy was transferred back again to the penitentiary the time so spent in the school would have to be taken in as part of his sentence.

Some time subsequent to this opinion, your predecessor, Mr. Hite, called and presented some very strong reasons, I thought, why the rule should be otherwise, and I am not positive that the rule first laid down is correct.

I should be very glad to hear you in behalf of your institution if there is any serious objection to this, but this is the rule which we have heretofore given.

Yours very truly,

J. A. KOHLER,
Attorney General.

PUBLICATION; KIND OF NEWSPAPER REQUIRED UNDER 4370.

Attorney General's Office,
Columbus, Ohio, February 7, 1887.

J. M. Broderick, Esq., Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—I beg pardon for the delay in answering your letter, but my time is so fully taken up that I have hardly time to attend to the voluminous correspondence coming to this office.

I have examined the section in question, 4370 of the Revised Statutes, in connection with the supervisor of public printing, and his judgment is that a paper folded as the "Times" is, but having two sides printed in the county, would be practically and substantially a compliance with the section, and in this opinion I concur.

According to the strict letter of the law, it has not one entire side printed in the county, but the intent and

Dow Liquor Law; Wholesale Dealers; Social Clubs; Refunding Order; Assessment of Penalty; Bottling Beer; Treasurer's Percentage; Taxation.

meaning of the law doubtless was to prevent publication of advertisements, where the printing was done out of the county and there is no printing office or establishment in the county.

Under all the circumstances, I have concluded to advise that the case may be relieved from difficulty by adopting your suggestion, namely, let the publisher cut it in two and call one-half a supplement. It seems to me that this would meet the letter and spirit of the law, and in this the supervisor of public printing concurs.

Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; WHOLESALE DEALERS; SOCIAL CLUBS; REFUNDING ORDER; ASSESSMENT OF PENALTY; BOTTLING BEER; TREASURERS' PERCENTAGE; TAXATION.

Attorney General's Office,
Columbus, Ohio, February 8, 1887.

J. H. Southard, Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—I have your letter, calling my attention to the inquiry of your county auditor, Mr. Vortriede, in which a number of questions are asked.

I regret that want of time has compelled me to delay the answer. I will endeavor to answer the questions in the order presented.

1st. "Are wholesale dealers liable to the Dow law tax?" This question has just been argued in the Supreme Court. The Circuit Court of Hamilton County has very recently decided that wholesale dealers are liable to the

Dow Liquor Law; Wholesale Dealers; Social Clubs; Refunding Order; Assessment of Penalty; Bottling Beer; Treasurer's Percentage; Taxation.

Dow liquor law tax. The Supreme Court will doubtless decide the point very soon, but until the Circuit Court is reversed, that judgment will stand as the law.

2d. The law makes no exception in favor of clubs which sell exclusively to members. Such sales, in my judgment, would stand upon a footing with other cases where intoxicating liquors are sold.

3d. Your third question: "What is meant by the words 'the full amount of said assessment' as used in section three of said act?" I answer by saying that it seems to me this is tolerably clear and refers to the amount provided for according to the kind of liquors sold.

4th. In my judgment it does not matter when the business is commenced, but in no case can a refunding order be returned so as to make the amount actually retained in the treasury less than twenty-five dollars, and this also answers your sixth question.

5th. In case a party engaged in the business has not been assessed and there is no charge on the duplicate, I doubt whether a penalty of twenty per cent. could be added. In such case the party is in no default, there being no charge against him on the treasurer's book.

6th. Under section six the auditor is authorized to place the assessment of a party who engages in the traffic upon the duplicate, upon receiving satisfactory information that such business is carried on.

7th. Bottlers are not manufacturers, and under the decision of the court hereinbefore referred to, I should consider bottlers of beer, selling in a case of one dozen, as coming within the scope of the law. The decision of the Supreme Court will, however, settle that point.

8th. "Can a party who has engaged in the traffic of malt and vinous liquors, afterwards, during the same tax year, also engage in the traffic of spirituous liquors and pay only a proportionate amount of the two hundred dollar tax,

or would he be required to pay two hundred and fifty dollars extra?"

In such a case, I should say that where liquor is sold but not surreptitiously, he should be required to pay the proportionate amount of the tax of two hundred dollars. and that there would be nothing in the way of penalty.

9th. The question as to whether the treasurer has the right to charge the four per cent. collection fee, as provided for in section four of the act, in cases where the tax is not paid at the time specified for payment, but the delinquent comes forward and pays voluntarily before any steps have been taken to force payment, I answer in the affirmative.

In regard to your last question, as to the power of persons appointed under the act passed April 23d, 1885, Ohio Laws, Vol. 82, p. 152, this relates, in my judgment, to property omitted from the tax duplicate and has nothing to do with the valuation fixed by the board, where property is wholly omitted. Such persons can furnish the county auditor the facts necessary to authorize him to subject such property to taxation.

Yours very truly,
J. A. KOHLER,
Attorney General.

CORPSE; DELIVERY TO MEDICAL INSTITUTION FOR DISSECTION.

Attorney General's Office,
Columbus, Ohio, February 8, 1887.

B. P. Jones, Esq., Prosecuting Attorney, London, Ohio:

DEAR SIR:—Your letter of the 5th instant relating to the claim of the medical college for the body of a tramp, found in a railroad wreck on the 27th of January last, received.

Corpse; Delivery to Medical Institution for Dissection.

I have examined your statement of facts and also section 3763 of the Revised Statutes to which you call my attention. I have no doubt that this section was drawn or prepared by a doctor, for it is certainly indefinite and vague, not to say contradictory.

I am disposed to give the section a liberal construction in the interest of scientific investigation and to facilitate its evident object, namely, to place in the hands of the teacher of anatomy, subjects for dissection, when such subjects are found and not fully identified, and there are no claims to the body by friends.

I have no doubt that your advice not to deliver the body was based upon the clause in the section which speaks of tramps who died in the institutions named, and as the body was not found in any such institution, that the law did not apply. It seems to me, however, that in the first part of the section, applying to city hospitals, workhouses and other charitable institutions, and also township trustees, or coroner being in possession of the bodies not claimed, would give it a broader meaning and would apply to the case of the body of a tramp coming into the possession of the coroner under the circumstances set forth in your letter. In other words, when a dead body comes into the hands of a coroner, and is not identified or claimed, and is to be buried at the expense of the public, it may be given over upon the written application of the professor of anatomy in any medical college, and that it is not necessary that the body should have died in any of the institutions specified.

I dislike to disagree with you in opinion and do not say that you are wrong, but under the circumstances of this particular case, and with the objects in view which I have stated, I think I would, if applied to, advise that the body be given up, if proper application is made therefor.

Yours very truly,

J. A. KOHLER,
Attorney General.

Taxation; of State Lands—Costs; Payment of on Dismissal of Ditch Petition; Prosecuting Attorney; Not Entitled to Compensation for Certain Services.

TAXATION; OF STATE LANDS.

Attorney General's Office,
Columbus, Ohio, February 8, 1887.

C. M. Melhorn, Esq., Prosecuting Attorney, Kenton, Ohio:

DEAR SIR:—General Robinson has handed me a letter from Nicholas Miller, in regard to some taxes charged upon some marsh lands.

I have had the question presented, both orally and in writing, and give it as my opinion that the party is not liable to pay the taxes charged against the lands, prior to the time when the State gave the deed.

Yours very truly,
J. A. KOHLER,
Attorney General.

COSTS; PAYMENT OF, ON DISMISSAL OF DITCH PETITION; PROSECUTING ATTORNEY; NOT ENTITLED TO COMPENSATION FOR CERTAIN SERVICES.

Attorney General's Office,
Columbus, Ohio, February 8, 1887.

W. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Yours of January 11th to hand. I regret that the answer has been so long delayed, but absence and other duties prevented.

In regard to your first inquiry, relating to the payment of costs on dismissal of ditch petition, I do not think the costs should be paid out of the county treasury. If not paid

by the petitioners, resort should be had to the bond, as provided in section 4451 of the Revised Statutes.

Your second inquiry relates to the compensation of a prosecuting attorney for services rendered in school cases.

It has been held heretofore that in such cases the prosecuting attorney is not entitled to anything other than he receives in his official capacity.

Yours very truly,

J. A. KOHLER,

Attorney General.

TOWNSHIP TRUSTEES; SHOULD CONSTRUCT APPROACHES TO BRIDGES IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, February 9, 1887.

H. E. Bell, Esq., Prosecuting Attorney, Mansfield, Ohio:

DEAR SIR:—Yours of January 11th duly received. I regret the delay in answering your inquiries. Much of my time since then has been spent in the East and business here since my return, incident to the meeting of the General Assembly, has been so crowded that I have had more than I could attend to. I have examined the sections of the Revised Statutes to which you refer me, and it seems to me the practice of the two counties of Richland and Huron, in respect to the building of approaches to a joint bridge, is not the same, but I think that where the cost of the approaches to any such bridge does not exceed fifty dollars, that the trustees should do the work. In short, I think you state the case very fairly, and if called upon to advise, I think I would construe the several sections in the same manner.

Yours very truly,

J. A. KOHLER,

Attorney General.

Elector; Person out of Penitentiary on Parole Not an—Pharmacy Law; When New Certificate Should Issue Non-Resident May Receive Certificate; Board May Demand Affidavits; Board May Cancel Certificates if Fraudulently Obtained.

ELECTOR; PERSON OUT OF PENITENTIARY ON PAROLE NOT AN.

Attorney General's Office,
Columbus, Ohio, February 9, 1887.

A. T. Craig, Esq., Blanchester, Ohio:

DEAR SIR:—Your letter to the governor, dated January 31st, 1887, has been handed me for answer.

Section 6797 of the Revised Statutes will answer your question. A parole granted to a prisoner does not have the effect of a pardon, and hence a prisoner out on parole is not eligible as an elector.

Very truly,
J. A. KOHLER,
Attorney General.

PHARMACY LAW; WHEN NEW CERTIFICATE SHOULD ISSUE; NON-RESIDENT MAY RECEIVE CERTIFICATE; BOARD MAY DEMAND AFFIDAVITS; BOARD MAY CANCEL CERTIFICATES IF FRAUDULENTLY OBTAINED.

Attorney General's Office,
Columbus, Ohio, February 9, 1887.

P. H. Bruck, Esq., Secretary of the Ohio Board of Pharmacy, Columbus, Ohio:

DEAR SIR:—Your letter of January 2d received.

I will answer the questions in their order.

1st. Where a certificate has been issued to a person on account of his being the owner or part owner of a retail

Pharmacy Law; When New Certificate Should Issue; Non-Resident May Receive Certificate; Board May Demand Affidavits; Board May Cancel Certificates if Fraudulently Obtained.

drugstore, but who, at the expiration of such certificate, is not such owner or part owner, I should say that a new application should be made, and a certificate should not be issued as a renewal. The conditions have changed in such case and the board should act upon the case as then presented.

2d. In regard to this question it seems to me the law has reference to persons who have engaged or wish to engage in business in this State. A person might engage in the drug business in the State of Ohio—he has a right to carry on such business and employ agents to assist in its prosecution. It would seem to me, therefore, that actual residence within the State is not indispensable to the granting of a certificate to do business in Ohio. A man might live over the line, in the State of Indiana, for instance, but he might carry on business in the same town and still be within the State of Ohio.

3d. I think the board would have the right to require satisfactory evidence from every person who claims a renewal of his certificate. No arbitrary restrictions should be imposed, but it seems to me that the board would have the discretion, giving the facts necessary to procure such renewal.

4th. Where a certificate is obtained by fraud and falsehood, the party committing it should be duly notified to appear before the board at a time and place specified, to show cause why the certificate should not be canceled; should have opportunity to be heard, and in case of default on his part to give satisfactory explanation, a record should be made, showing the cancellation; and a person so violating the law would be very likely to be amenable to the provisions of section 4412 and could be prosecuted.

5th. In regard to your fifth question, it would seem

to me that when a certificate expires, that the party applying for a renewal should be treated as an original applicant and the certificate granted or not, according to his standing at that time. Your questions are numerous, upon which no court has ever passed or given a construction, and I am obliged to rely on my judgment entirely.

Yours very truly,
J. A. KOHLER,
Attorney General.

PEDDLER; WHAT IS A, IN CONTEMPLATION OF LAW.

Attorney General's Office,
Columbus, Ohio, February 10, 1887.

T. A. Jones, Esq., Mayor, Jackson, Ohio:

DEAR SIR:—Yours of the 8th instant received.

"Peddlers" are defined to be "persons who travel about the country with merchandise for the purpose of selling it," and if the person you refer to carried his goods with him instead of selling by sample there would be no doubt, and I am unable to see why the selling by sample on one day and simply delivering the goods pursuant to the sale on a subsequent day changes the case. My judgment is that it is to all intents and purposes "peddling."

Yours very truly,
J. A. KOHLER,
Attorney General.

County Commissioners; Two May Transact Business in Certain Case—Auditor of County; Compensation of, for Making Collections Under Dow Liquor Law.

COUNTY COMMISSIONERS; TWO MAY TRANSACT BUSINESS IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, February 10, 1887.

Robt. C. Miller, Esq., Prosecuting Attorney, Washington, C. H., Ohio:

DEAR SIR:—Yours of the 2d instant to hand. Of course under section 4488 of the Statutes, a commissioner who is interested (as one of the commissioners was in this case) cannot act, and if he did so, it would probably invalidate the proceedings; but, as I understand you, he did *not* act and *two* commissioners are a quorum. See last clause of section 4488. Now if the two commissioners, being disinterested, have duly acted in the manner pointed out by law, I can see no objection and think the proceedings would be regular.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; COMPENSATION OF, FOR MAKING COLLECTIONS UNDER DOW LIQUOR LAW.

Attorney General's Office,
Columbus, Ohio, February 17, 1887.

Thos. Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your favor of the 12th instant received. In my opinion county auditors are entitled to five-tenths of one per cent. for making collections of amounts due the State by virtue of the tax imposed by the Dow liquor law.

Dow Liquor Law; In Townships Having No Incorporated Villages Fines Arising Should be Paid Into Poor Fund of County.

There is no provision for such compensation in the act itself, but I think authority for such payment may be found in section 1117 of the Statutes, in the clause which reads: "On all moneys collected on any special duplicate."

The above opinion is in harmony with the views expressed by my predecessor, Mr. Hollingsworth, and in conformity with official opinions rendered by the present auditor of state.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; IN TOWNSHIPS HAVING NO INCORPORATED VILLAGES FINES ARISING SHOULD BE PAID INTO POOR FUND OF COUNTY.

Attorney General's Office,
Columbus, Ohio, February 17, 1887.

Hon. C. L. LeBlond, Member of House of Representatives, Columbus, Ohio:

DEAR SIR:—Yours of the 14th instant received. In townships having no incorporated villages, the funds arising from the Dow liquor law should be credited to the poor fund of the county.

This is the construction of the auditor of state in such cases, as he informs me, and I think the law so applies it.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Sale of Intoxicating Liquors for Known Culinary Purposes.

DOW LIQUOR LAW; SALE OF INTOXICATING LIQUORS FOR KNOWN CULINARY PURPOSES.

Attorney General's Office,
Columbus, Ohio, February 23, 1887.

J. A. Nipgen, Esq., President Ohio Board of Pharmacy, Chillicothe, Ohio:

DEAR SIR:—Your letter of the 18th instant received. In my opinion a pharmacist who has not paid the tax imposed by the Dow liquor law, violates the provisions of the same when he sells intoxicating liquors for known culinary purposes.

Section eight, of the act, in defining the phrase "trafficking in intoxicating liquors," names as exceptions: (1) selling or giving away on bona fide prescriptions issued by reputable physicians in active practice; (2) selling or giving away for exclusively known pharmaceutical, mechanical or sacramental purposes; (3) selling of intoxicating liquors made from the raw material by the manufacturer, in quantities of not less than one gallon at any one time. I am, therefore, of the opinion that in the case given, the man is violating the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

TAXATION; OF GROUNDS OF AGRICULTURAL SOCIETY.

Attorney General's Office,
Columbus, Ohio, February 23, 1887.

A. Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:

DEAR SIR:—Your favor of the 18th instant received. Last winter the question as to the exemption of the grounds of an agricultural society from taxation was submitted to me, and after consulting with the auditor of state I gave an opinion that, under section 2732, such grounds were exempted from being taxed.

The Circuit Court of Brown County has recently held, in an action against an agricultural society for damages received by a person on the fair grounds, that the society was not liable for the reason that it was not organized for profit, but was, in its nature, a public institution for public purposes. I must admit that it is a very close question and very many eminent lawyers take the position that the property is taxable and does not come within the legal exemptions of subdivision 8 of section 2732.

The question can easily be put to the test of a judicial decision if the auditor will place upon the duplicate the name of the society, which will then ask for an injunction restraining the tax. I wish it could be done. I am advised that, as a rule, agricultural societies in this State pay no taxes on their fair grounds.

In regard to your second question, I will not advise that the tax for the ditch must be paid by the county until the courts so hold. In the case you refer to, have the lands reverted to the county?

Yours very truly,
J. A. KOHLER,
Attorney General.

Solicitor of Village; Should Not at Same Time be Clerk of Village—Dow Liquor Law; What is Included in Term Intoxicating Liquors.

SOLICITOR OF VILLAGE; SHOULD NOT AT SAME TIME BE CLERK OF VILLAGE.

Attorney General's Office,
Columbus, Ohio, February 23, 1887.

R. S. Sweepstone, Esq., Attorney-at-Law, McArthur, Ohio:

DEAR SIR:—Your favor of the 16th instant received. I find nothing in the Revised Statutes, nor any decision of any court in this State, forbidding a person holding the offices of village solicitor and clerk of the same municipal corporation at the same time. I do not think, however, that it is advisable to do so as in each official capacity the officer is frequently called upon to be "judge in his own cause."

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; WHAT IS INCLUDED IN TERM INTOXICATING LIQUORS.

Attorney General's Office,
Columbus, Ohio, May 5, 1887.

Jasper Lisk, Esq., Attorney-at-Law, New Matamoras, Ohio:

DEAR SIR:—Your letter of the 4th instant received. The question as to whether cider is an "intoxicating liquor" within the meaning of section one of the Dow liquor law, is one of fact as well as of law, but I think that when the cider is of such a nature as to produce intoxication, it comes within the provisions of section one of the act, and a person dealing in the same, as defined in section eight, thereby

renders himself amenable to the tax imposed by virtue of the above mentioned law.

The above opinion is in harmony with the views expressed by my predecessors in regard to the "Scott law."

Yours very truly,

J. A. KOHLER,

Attorney General.

ASYLUM FOR INSANE; TOLEDO, PAYMENT FOR CERTAIN IMPROVEMENTS.

Attorney General's Office,
Columbus, Ohio, May 2, 1887.

Hon. R. G. Pennington, Trustee of Toledo Asylum for the Insane, Tiffin, Ohio:

DEAR SIR:—Yours of the 28th ult. received. I will endeavor to give you my construction of section 782 of the Revised Statutes.

This section relates to public buildings, and the language plainly indicates that before entering into any contract for the erection, alteration, addition to or improvement of such institution, asylum or other improvement, or for supplying of materials therefor, the aggregate cost of which shall exceed the sum of three thousand dollars, the trustees shall make full, complete and accurate plans, etc. Now this, in my judgment, relates to the erection of the building or buildings or the materials therefor. If it was intended that the same rule should apply in respect to the furnishings of such buildings, it seems to me it would have been specified. I draw the line between such things as pertain to the erection of the building and which constitute, when finished, the real estate or is connected therewith, and not when it is simply personal property and used merely for

furnishing and equipping the institution with articles of necessary use.

To hold that the section applies to the thousand and one things that must be provided to furnish such an institution would, it seems to me, be absurd. It would be very difficult to do it in any case. You must furnish crockery, furniture, household goods of every description, and to make complete plans and get the benefit of competition upon it would be a hard thing to do.

It is very likely that some of the things you specify, such as ranges, laundry machinery and other things, would become part of the real estate, depending upon what it is and how connected. In such cases it would come under the head of materials used in the erection and building of the institution and would properly come within this section, provided it exceeded the maximum cost of three thousand dollars; but in respect to what is movable property, used simply in furnishing the building, I do not believe that this section applies.

I do not know what view the auditor of state takes of it, but until the Legislature changes the law and makes it more specific or some court construes it differently, I shall, when applied to, so construe it. The argument you refer to, in regard to the lighting of the building, was based upon the ground that the apparatus for lighting was essentially part of the building, as much as the plumbing.

I need not say that this imposes upon the trustees a responsibility of exercising the utmost care in providing for and making these purchases, and in all cases where practicable, you should obtain the benefit of competition.

Yours very truly,

J. A. KOHLER,

Attorney General.

Municipal Corporations; First Election of Officers of, in City —Auditor of County; Penalty in Case Assessment for Sewer is Not Paid.

MUNICIPAL CORPORATIONS; FIRST ELECTION OF OFFICERS OF, IN CITY.

Attorney General's Office,
Columbus, Ohio, February 16, 1887.

F. B. Serage, Esq., Middletown, Ohio:

DEAR SIR:—Your favor of the 11th instant received. I have considered the matter carefully, as well as consulted a number of gentlemen well informed in matters of this character, and am of the opinion that the old officers hold over until the officers of the new corporation are elected, and that *the* election should take place at the first municipal election after the proceedings to advance to a city. As the General Assembly has the power to terminate an office, the clause of section 1588, "after the expiration of their term of office" must be read in connection with the first part of the section.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; PENALTY IN CASE ASSESSMENT FOR SEWER IS NOT PAID.

Attorney General's Office,
Columbus, Ohio, May 4, 1887.

A. Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:

DEAR SIR:—Your letter of the 1st instant received.

1st. Unless you can show some authority whereby the county auditor is entitled to draw the whole or any portion of the ten per cent. penalty provided for in section

2295 of the Revised Statutes, I will have to hold that he cannot receive any compensation therefor. There is certainly nothing in this section giving the right. If any other section does, please refer me to it.

2d. I think the auditor of the county is the proper person to add the penalty under the above mentioned section.

Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; MUNICIPAL COUNCILS MAY REPEAL PROHIBITORY ORDINANCE.

Attorney General's Office,
Columbus, Ohio, May 9, 1887.

H. C. Patten, Esq., Green Camp, Ohio:

DEAR SIR:—Your favor of the 7th instant received. In my opinion section 11 of the Dow liquor law gives to councils of municipal corporations the power to prohibit the sale of intoxicating liquors within the corporate limits, and I do not think the votes of a majority of the electors of the corporation are requisite.

Such being my construction of the law, my conclusion is that a council of a city or village has the authority to repeal an ordinance prohibiting the sale of intoxicating liquors the same as any other ordinance, although I think it *ought* not to be done in the face of the expressed sentiment of a majority of the electors of the corporation.

Yours very truly,

J. A. KOHLER,
Attorney General.

Prosecuting Attorney; Fees of for Collecting Fines Assessed By a Justice of the Peace; Duty, of, in Case of Overcharge.

PROSECUTING ATTORNEY; FEES OF FOR COLLECTING FINES ASSESSED BY A JUSTICE OF THE PEACE; DUTY OF, IN CASE OF OVERCHARGE.

Attorney General's Office,
Columbus, Ohio, May 7, 1887.

P. M. Smith, Esq., Prosecuting Attorney, Wellsville, Ohio:

DEAR SIR:—Your letter of the 28th ult. received. Your first question in regard to the commission of prosecuting attorneys upon justices' fines is a new one. My impression is that section 1298 of the Revised Statutes relates to fines paid upon indictments or other information of that character, and does not cover fines assessed by justices through the county. I believe the practice has been to allow commissions upon fines collected of the Court of Common Pleas. I think that under section 917 of the statutes, where the law has been violated by overcharges, the prosecuting attorney may proceed to collect the same without being directed so to do by the commissioners, but I think it would be advisable to have their approval for undertaking such collection.

Yours very truly,
J. A. KOHLER,
Attorney General.

Physician; Compensation of, for Attending Pauper—Damages; Payment of, on Location of Road.

PHYSICIAN; COMPENSATION OF, FOR ATTENDING PAUPER.

Attorney General's Office,
Columbus, Ohio, March 11, 1887.

H. S. Armstrong, Esq.,, Prosecuting Attorney, Woodsfield, Ohio:

DEAR SIR:—Your favor of the 5th inst. received. It is difficult to give an opinion from the brief statement of facts contained in your letter, but I am inclined to the opinion that if the physician attending the pauper gave due notice to the trustees of such attendance, he is, under section 1494 of the Revised Statutes, entitled to such compensation as the trustees may deem just and reasonable.

I presume the section upon which the trustees and infirmary directors rely is to be found in Vol. 79, p. 90, of the Ohio Laws, but I think that a contract so broad as to exclude a case like the one I imagine this to be, would interfere with the provisions of section 1494.

Yours very truly,
J. A. KOHLER,
Attorney General.

DAMAGES; PAYMENT OF, ON LOCATION OF ROAD.

Attorney General's Office,
Columbus, Ohio, March 11, 1887.

Thos. Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your favor of the 8th inst. received. As I understand it, one hundred and fifty dollars was allowed as damages *generally*, not simply to the extent of the lease-

Dow Liquor Law; How Prescriptions Must be Issued; Meaning of Term "Physician" as Used in Act.

hold interest. It seems to me in that case the owner of the lease cannot claim the entire amount of damages awarded, part of it rightfully belongs to the holder and owner of the legal title.

Your statment is somewhat brief, but if damages were awarded generally, as you say, it would seem to me that the entire amount should not go to the holder of the lease, although it is for ninety-nine years, renewable forever.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; HOW PRESCRIPTIONS MUST BE ISSUED; MEANING OF TERM "PHYSICIAN" AS USED IN ACT.

Attorney General's Office,
Columbus, Ohio, March 4, 1887.

D. E. Cowgill, Esq., Richwood, Ohio:

DEAR SIR:—Yours of the 2d inst. to hand. Section 8, of the Dow Liquor Law, requires that the prescription must be issued in good faith by a reputable physician in active practice. By good faith, I understand that the prescription must not be issued in order to evade the law, by giving prescriptions for the purpose of procuring intoxicating liquors to be used as a beverage; and I think an examination by the physician, or at least a knowledge on his part that it was necessary and proper, would be requisite.

I do not think that pharmacists, not paying the tax, should fill prescriptions of the kind commonly called "standing," and by this I mean a prescription that may be filled at any time during the year, and as often as the ap-

petite of the person may demand, but there is no penalty in the law for issuing such prescriptions.

I do not believe that the term "physician," as used in the Dow Liquor Law, includes veterinary surgeons.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; HOW WHOLESALE DEALER MAY SELL.

Attorney General's Office,
Columbus, Ohio, March 16, 1887.

Henry Gregg, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—Yours of the 14th inst to hand. The decision of the Supreme Court to which you refer in the Cincinnati case, requires wholesale dealers to pay the tax; in other words, such dealers are not exempt from the tax imposed under the Dow Liquor Law. Where, therefore, a wholesaler dealer pays the maximum tax, it would seem to me that he has the right to sell and that he is not confined in making such sales to the product of one manufacturer. The statement of facts in your letter is not very full, but from what is stated I should say that he has a right to sell the beer of the Cincinnati brewer as well as goods of other manufacturers; in other words, where the wholesale dealer pays the maximum tax, he is not required to pay a tax in addition thereto for each manufacturer whose product he sells. I may not apprehend your question fully, but I believe the above answers your question.

I would be very glad to have your views if you are of contrary opinion.

Yours very truly,
J. A. KOHLER,
Attorney General.

Treasurer of County; Compensation of, as City Treasurer Cannot be Changed During Term of Office—Mayor of Village; No Power to Cast a Vote on Passage of an Ordinance.

TREASURER OF COUNTY; COMPENSATION OF, AS CITY TREASURER CANNOT BE CHANGED DURING TERM OF OFFICE.

Attorney General's Office,
Columbus, Ohio, March 11, 1887.

John H. Lochery, Esq., Prosecuting Attorney, Pomeroy, Ohio:

DEAR SIR:—Your letter of the 4th inst. received. There is some question in my mind as to whether the council of Pomeroy or the county commissioners of Meigs County fixes the compensation of your city treasurer. See sections 1708 and 1770 of the Revised Statutes.

In regard to the question upon which you ask my opinion I would say that I think your city treasurer would come within the provisions of Sec. 1777, of the Revised Statutes, and that no change in the compensation to which your county treasurer is entitled for acting as city treasurer can be effected during his term of office.

Yours very truly,
J. A. KOHLER,
Attorney General.

MAYOR OF VILLAGE; NO POWER TO CAST A VOTE ON PASSAGE OF AN ORDINANCE.

Attorney General's Office,
Columbus, Ohio, March 17, 1887.

M. B. Leslie, Esq., Solicitor, Hubbard, Ohio:

DEAR SIR:—Your favor of yesterday duly received. The question you have presented for my consideration is one

upon which my predecessors, Messrs. Hollingsworth and Lawrence, have given opinion; and they held that the mayor of a village has not the casting vote in case of a tie on the passage of an ordinance.

I do not feel entirely clear in regard to the matter, but think it the better plan to stand by the opinions of my predecessors until the point is decided in the courts.

Yours very truly,
J. A. KOHLER,
Attorney General.

CORONER; FEES OF.

Attorney General's Office,
Columbus, Ohio, March 29, 1887.

Robt. C. Miller, Esq., Washington C. H., Ohio:

DEAR SIR:—Yours of the 23d inst. received. I have hastily examined the accounts enclosed as well as section 1239 of the Revised Statutes, allowing fees, and if there is any other statutory provision on the subject, it has escaped my attention.

The matter of coroner's fees has heretofore given considerable trouble. I am not inclined, however, to go beyond what the above mentioned section provides for, and I therefore concur in the opinion expressed by yourself to the auditor of your county, and you may so inform the coroner, Mr. House, from whom I have received a letter.

Yours very truly,
J. A. KOHLER,
Attorney General.

General Eelections in Ohio; Number and Time of—Dow Liquor Law; Effect of Lease on Premises Made Before Law Was Passed.

GENERAL ELECTIONS IN OHIO; NUMBER AND TIME OF.

Attorney General's Office,
Columbus, Ohio, March 17, 1887.

F. C. Semple, Esq., Prosecuting Attorney, Ashland, Ohio:

DEAR SIR:—Yours of the 9th inst. duly received. There are but two general elections in this State during the year: On the first Monday in April, and on the first Tuesday after the first Monday in November.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; EFFECT OF LEASE ON PREMISES MADE BEFORE LAW WAS PASSED.

Attorney General's Office,
Columbus, Ohio, March 18, 1887.

Thos. Dickson, Esq., County Treasurer, Marion, Ohio:

DEAR SIR:—Your letter of the 16th inst. received. I gather from your statement that the lease of the premises was made prior to the passage of the act of May 16, 1886, called the Dow Liquor Law. It is very doubtful whether he is obliged to surrender that lease. The question arose in this county and the prosecuting attorney and myself agreed that we would follow the decision of the Supreme Court under the Scott Law, until the Supreme Court decide otherwise.

In saying this I do not wish to be understood as saying that this is an accurate statement of the law; neverthe-

less it is better to be on the safe side and inasmuch as your county commissioners differ about it, I would not, if I were you, sell the lease until the doubt is removed by the decision of some court. Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; EFFECT OF PAVEY AMENDMENT TO.

Attorney General's Office,
Columbus, Ohio, March 29, 1887.

J. G. Adams, Esq., Yellow Springs, Ohio:

DEAR SIR:—Yours of the 23d inst. received. The effect of the Pavey amendment, to which you refer, is to prevent such gallon agency sales as you speak of, and such sales are prohibited by it, where a prohibitory ordinance has been passed. Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; PRESCRIPTIONS UNDER, HOW MUST BE ISSUED.

Attorney General's Office,
Columbus, Ohio, March 30, 1887.

N. R. Paint, Esq., Ada, Ohio:

DEAR SIR:—Yours of March 4th to the governor has been referred to me.

In respect to section 8, of the Dow Liquor Law, to which you refer, I will say that the sale of intoxicating liquor upon the prescription of a physician, to be of any avail

Board of Public Works; No Power to Offer Reward for the Detection, Etc., of Persons Injuring State Property.

to the seller, must be issued in good faith, and where the circumstances are such as to indicate that the prescription is not in good faith and that it is used simply for the purpose of evading the law, then the druggist should be regularly assessed for taxation and may also be proceeded against for violating the ordinance of the place.

Whether the prescription is issued in good faith and is filled by the druggist in good faith or not and in reliance upon such prescription is a question of fact, depending upon the acts of the parties and the circumstances.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOARD OF PUBLIC WORKS; NO POWER TO OFFER REWARD FOR THE DETECTION, ETC., OF PERSONS INJURING STATE PROPERTY.

Attorney General's Office,
Columbus, Ohio, March 30, 1887.

K. V. Haymaker, Esq., Attorney-at-Law, Defiance, Ohio:

DEAR SIR:—Yours of the 29th received. I have examined the Statutes and can find no authority permitting the board of public works to offer and pay a reward for the detection, arrest and conviction of the party or parties doing the damage to the Paulding County reservoir.

I did not know but that the contingent fund of the board might be used for this purpose, but the amount of this fund is so small that it would not avail.

Yours very truly,
J. A. KOHLER,
Attorney General.

Secretary of State; Fees of, for Filing Articles of Consolidation.

SECRETARY OF STATE; FEES OF, FOR FILING ARTICLES OF CONSOLIDATION.

Attorney General's Office
Columbus, Ohio, April 1, 1887.

W. S. Walker, Esq., Chief Clerk of Secretary of State:

DEAR SIR—Your inquiry in regard to the proper fee to be charged for filing articles of consolidation of the Covington and Cincinnati Elevated Railroad Bridge Co., received.

These articles, were, it seems, filed in August, last, under sections 3547 and 3581 of the Revised Statutes, and under section 148*a*, Ohio Laws, Vol. 83, 165, and the fee therein provided for was paid, to-wit: $150.00.

After executing the articles of consolidation, one of the parties of the consolidation filed a notice of recession of its action in the office of the secretary of state, and subsequently this action of recession was duly rescinded. The same articles are now filed again in order to make the record complete, and these last articles contain a statement of the action of the parties to the consolidation and the recession and cancellation of the resolutions above mentioned. So that the record taken as a whole shows the transaction fully, and I think it sufficiently appears that there has been but one incorporation and consolidation for which the legal fee has been paid, excepting the extra work of recording, etc., of the last transaction; for which a proper compensation should be paid, and perhaps ten dollars would cover this expense.

Yours very truly,
J. A. KOHLER,
Attorney General.

Elections; Discretionary Power of County Central Committee as to Primary—Dow Liquor Law; How Wholesale Dealers may Sell.

ELECTIONS; DISCRETIONARY POWER OF COUNTY CENTRAL COMMITTEE AS TO PRIMARY.

Attorney General's Office,
Columbus, Ohio, April 1, 1887.

W. T. Kackman, Esq., Waynesburg, Ohio:

DEAR SIR:—Your letter of March 26th duly to hand. I have examined the statutes of this State in regard to primary elections, and think that your central committee had the right to insert in the notice of election the requirement that a person voting at said election should have cast his vote for Foraker at the last gubernatorial election. I question somewhat the advisability of inserting such a qualification, but I do not believe it violates any of the provisions of Chapter 1, Title 14, Part 1, of the Revised Statutes, and section 2917 leaves a broad discretion with such committee.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; HOW WHOLESALE DEALER MAY SELL.

Attorney General's Office,
Columbus, Ohio, April 1, 1887.

J. B. Worley, Esq., Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—Yours of the 31st ult. received. You ask the following questions:

First—"Can a liquor dealer who has a general 'wholesale license' sell in quantities of one gallon to retail dealers?"

Answer—If you mean by the phrase "wholesale license" that he has paid the tax the same as a retailer, then he can

sell. There is no distinction between wholesale and retail dealers in this respect.

Second—"Can a wholesale dealer carry on his business in a corporation where local option has been adopted under the Dow Law, or must he close and quit business the same as retail dealers?"

Answer—Where a prohibitory ordinance has been duly passed, a wholesale dealer cannot sell in violation of such ordinance. If he is a manufacturer of intoxicating liquors from the raw material he may sell *at* the manufactory. If his manufactory is located in a town where a prohibitory ordinance is in force, he may sell at such place, but at no other. The Pavey amendment fully covers this point, and was intended to make the original act definite and certain in this respect.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTION; COMPENSATION OF JUDGES AND CLERKS OF.

Attorney General's Office,
Columbus, Ohio, April 8, 1887.

Sylvester Price, Esq., City Clerk, Galion, Ohio:

DEAR SIR:—Your favor of the 6th received. Under section 2963 of the Revised Statutes as amended at the last session of the General Assembly, judges and clerks of election are entitled to two dollars for their services at *every* election.

Yours very truly,
J. A. KOHLER,
Attorney General.

Commissioner of Labor Statistics; Appropriation for Office of—Schools; Separate, for Colored Youth Not Authorized.

COMMISSIONER OF LABOR STATISTICS; APPROPRIATION FOR OFFICE OF.

Attorney General's Office,
Columbus, Ohio, April 8, 1887.

Hon. A. D. Fassett, Commissioner of Labor Statistics:

DEAR SIR:—Yours of April 7th to hand, asking my opinion in regard to the effect of the appropriation for your office upon the following items, towit: Clerk hire, traveling expenses and contingent fund.

The appropriation for clerk hire, in my judgment, relates to the clerical force in your office, that is: Such clerk hire as you may need in your office work, where the employment is by the year or for other stated periods; and where, in the discharge of your duties under the law, it is necessary to employ a person or persons to do any special work connected with your department, it would seem to me, that such special service and labor might legally be paid from your contingent fund.

Yours respectfully,
J. A. KOHLER,
Attorney General.

SCHOOLS; SEPARATE, FOR COLORED YOUTH NOT AUTHORIZED.

Attorney General's Office,
Columbus, Ohio, April 9, 1887.

W. R. Dalbery and Others, Washington C. H., Ohio:

GENTLEMEN:—Yours of the 6th inst. received. I have no right under the Statutes relating to this office to give you

an official opinion in such cases, but will answer your question as well as I can unofficially.

I am aware that in many places it will be difficult to abolish the separate schools for colored youth. In many places the colored people desire and prefer to maintain them, but as a matter of law, the repeal of section 4008, Revised Statutes, takes away from the boards the right and discretion with which such boards were previously invested—to establish and maintain at the public expense separate schools for colored children.

There is no reference in sections 3987 and 4013 to *white* or *colored* children. The section above mentioned necessarily gives the board large powers and discretion, but in the face of the absolute repeal of section 4008, the only section conferring the right to create and maintain separate schools, I doubt very much whether it can now be done.

It was doubtless intended, in the enactment of the Arnott Law, to abolish separate schools for colored youth, and if it could be claimed that under sections 3987 and 4013, the separate school system could be kept up, I think that these sections would have been included in the repeal—or at least modified. To what purpose was section 4008 repealed if the same thing can be done under the unrepealed sections referred to?

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTION; DIVISION OF TOWNSHIP INTO ELECTION PRECINCTS.

Attorney General's Office,
Columbus, Ohio, April 30, 1887.

O. F. Edwards, Esq., New Lebanon, Ohio:

DEAR SIR:—Yours of the 26th inst. received. I see no objection, on constitutional grounds, against the enactment

Justice of the Peace; Allowance to in Cases of Misdemeanors Where Defendant is Discharged or not Indicted.

of a law creating two election precincts. Such acts have been passed at almost every session of the General Assembly for a number of years, and so far without objection. The question has been raised when an act was passed creating a special school district; and in one case was held unconstitutional; but these cases are not analogous.

In my judgment under section 1398, of the Revised Statutes, a township that was so divided may be again consolidated, as provided in said section; provided that a majority of the electors of *each* precinct vote in favor of such consolidation.

Yours very truly,
J. A. KOHLER,
Attorney General.

JUSTICE OF THE PEACE; ALLOWANCE TO IN CASES OF MISDEMEANORS WHERE DEFENDANT IS DISCHARGED OR NOT INDICTED.

Attorney General's Office,
Columbus, Ohio, April 30, 1887.

F. A. Kauffman, Esq., Prosecuting Attorney, Delaware, Ohio:

DEAR SIR:—Your letter of the 5th received, and considered, as well as the official opinion of Ex-Attorney General Little, on the same subject, and my conclusion is that your holding and decision in the premises is correct.

I think I need add nothing more, except to say that where a justice of the peace, in cases where complaint is made in misdemeanor cases, has the right to demand security for costs and fails to require the giving of such security, he cannot subsequently, in case the defendant is discharged or is not indicted, ask for the allowance for costs out of the county treasury.

Dow Liquor Law; Effect of Government License; How Wholesaler May Sell.

This is in substance the opinion of Attorney General Pillars and I concur in the same view.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; EFFECT OF GOVERNMENT LICENSE; HOW WHOLESALER MAY SELL.

Attorney General's Office,
Columbus, Ohio, May 2, 1887.

J. B. Worley, Esq., Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—Yours of April 27th received. It is somewhat difficult to give an opinion in regard to *your* ordinance. I am ignorant of its provisions except that you inform me that it is prohibitory, but applies only to "retail dealers." If this is clearly so, I doubt whether under it you could punish a wholesale dealer whether he holds a government license or not. In short: I don't see what the government license has to do with the case. It certainly cannot be used to override the laws of the State or municipality, where a municipal corporation passes an ordinance prohibiting the sale of liquor, and no exception is made in it in favor of *wholesale dealers*. Such dealers, holding a license from the government to sell in quantities of five gallons, will not, in my opinion, be protected thereby in violation of the ordinance. In short, where such prohibitory ordinance exists, the only sale that can be made is by a druggist on prescriptions and by a manufacturer whose factory is located within the town limits and who sells from the factory in quantities of not less than one gallon.

I think from the foregoing general statement, you will be able to get at my meaning and make application to the case presented by your ordinance.

Municipal Corporations; Members of Council Should Not Be Interested in Certain Contracts.

The Supreme Court has decided recently that *wholesale* dealers stand on the same footing with *retail* dealers, so far as the payment of the tax is concerned, and if your ordinance was general in its character and not *exceptional*, as you state, then such wholesale dealers would stand on a footing with the retail dealers in respect thereto.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATIONS; MEMBERS OF COUNCIL SHOULD NOT BE INTERESTED IN CERTAIN CONTRACTS.

Attorney General's Office,
Columbus, Ohio, May 2, 1887.

Chas. A. Judson, Esq., Sandusky, Ohio:

DEAR SIR:—Your letter of the 22d to hand. I think the question you present to me should have been submitted to your city solicitor, who is your legal adviser. While I have no right to advise in the matter, I may, however, say in answer to your letter that the facts stated in regard to Mr. Kuntz being a member of your city council and also interested in the contracts would very likely make same defective. Resignation as a member of the council on the one hand or an abandonment or release of all interest in the contract on the other would probably remove the difficulty.

There is no objection to the firm assigning the contract if the city council approve the same.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; No Exception Under, in Favor of Social Clubs.

DOW LIQUOR LAW; NO EXCEPTION UNDER, IN FAVOR OF SOCIAL CLUBS.

Attorney General's Office,
Columbus, Ohio, May 3, 1887.

W. L. Harp, Esq., Secretary of the Draconian Club, Toledo, Ohio:

DEAR SIR:—Your letter of the 26th ult. received. I have noted what you say as to the character of the club and the nature of sales of liquors to members of the club. I see the distinction which you point out between such business and the usual sales—when it is sold generally, to make money; but in interpreting the law I am obliged to take it as it is. You will see that section 1, makes no distinction, and the only qualification is that expressed in section 8.

The obligation to pay the tax under the provisions of the law does not depend upon the fact whether a profit is made or the amount of profit.

The inequalities and unfairness of which you complain are matters that should have been taken into consideration by the General Assembly in the passage of the law, but as it was not done, you can see that it is not in my power to make the exemptions.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Costs Incurred in Ascertaining Sentiment of Electors Regarding Local Option—Dow Liquor Law; Validity of Certain Municipal Ordinance.

DOW LIQUOR LAW; COSTS INCURRED IN ASCERTAINING SENTIMENT OF ELECTORS REGARDING LOCAL OPTION.

Attorney General's Office,
Columbus, Ohio, May 2, 1887.

Rev. Wm. A. Ferguson, Marysville, Ohio:

DEAR SIR:—Yours of April 22d received and contents noted.

The law does not require that the question of local option should be submitted by the council to the people. It has been done in many cases but merely to ascertain the sentiment of the people on the point; but no provision is made by law for the holding of such election and the payment of such expenses.

I must, therefore, as a matter of law, answer your question in the negative.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; VALIDITY OF CERTAIN MUNICIPAL ORDINANCE.

Attorney General's Office,
Columbus, Ohio, May 3, 1887.

J. E. Coburn, Esq., Hicksville, Ohio:

DEAR SIR:—Your letter of April 27th, enclosing a copy of a prohibitory ordinance passed by your village, has been duly received.

In my opinion the Pavey amendment to the Dow Liquor Law does not invalidate your ordinance.

Section 11, of the above mentioned law invests a great deal of discretionary power in the hands of the municipal corporations of this State, and I do not think that any court in Ohio would decide your ordinance invalid for the reason that you have not embodied the Pavey amendment in your prohibitory ordinance and made it a part of your municipal law.

Yours very truly,
J. A. KOHLER,
Attorney General.

TOWNSHIP TRUSTEES; BURIAL BY, OF UNCLAIMED DEAD.

Attorney General's Office,
Columbus, Ohio, May 3, 1887.

S. C. Jones, Esq., Prosecuting Attorney, Troy, Ohio:

DEAR SIR:—Your letter of last month has remained unanswered until now on account of absence from the city a great deal of the time and a press of work while here.

In regard to your second question I would say that the supplementary section to 1500 of the Revised Statutes, passed February 17, 1887, does not specify any particular kind of pauper, and I think the section is broad enough in its meaning to include all paupers who die within the limits of the township and who at the time of their death were not inmates of any penal, benevolent or charitable institution, and not claimed as the law provides.

Yours very truly,
J. A. KOHLER,
Attorney General.

General Assembly; Signature of Presiding Officers of Not Essential to Validity of Acts of.

GENERAL ASSEMBLY; SIGNATURE OF PRESIDING OFFICERS OF NOT ESSENTIAL TO VALIDITY OF ACTS OF.

Attorney General's Office,
Columbus, Ohio, May 3, 1887.

Wm. Johnson Esq., Attorney-at-Law, Uhrichsville, Ohio:

DEAR SIR:—Yours of April 12th duly received.

I presume the inquiry you raise is as to whether an act passed by the General Assembly and not signed by the presiding officers of the two houses is constitutional.

I will answer your question by saying that the signatures of the presiding officers of the house and senate are not indispensable to the validity of an act or resolution, provided that the journals of the two houses show that the act was regularly passed.

If, therefore, the act under which it is proposed to issue bonds was regularly passed and the fact can be shown by the official journals of both houses, then, in my judgment, it is a valid law, notwithstanding the omission of the presiding officers to attest it by their signatures, as the constitution requires.

It sometimes happens that in the haste of legislation and in the confusion incident to legislative bodies, that such omission to attest the enactment of the law happens; but where the regularity of the proceeding can be established by evidence, which the journals afford, the omission to sign a bill will not destroy its validity, and to this effect also is the opinion of my predecessor in office, Mr. Little.

Yours very truly,
J. A. KOHLER,
Attorney General.

Cemetery Trustees; Election of, When Township and Municipality are United in This Respect—Costs; Payment of, by State in Capital Cases.

CEMETERY TRUSTEES; ELECTION OF, WHEN TOWNSHIP AND MUNICIPALITY ARE UNITED IN THIS RESPECT.

Attorney General's Office,
Columbus, Ohio, May 4, 1887.

S. P. Cramer, Esq., Hubbard, Ohio:

DEAR SIR:—Yours of April 20th duly received. While I have no authority to give you an official opinion on the question, I will give my views as an attorney.

While I think that both persons elected as cemetery trustees for Hubbard Township should not have been residents of the municipal corporation of Hubbard, still if the electors of the township chose to waive this right and elect men dwelling within the village limits, I know of no law and have been unable to find a decision of any court which would under such an election be illegal or make the board so elected an illegal one.

Yours very truly,
J. A. KOHLER,
Attorney General.

COSTS; PAYMENT OF, BY STATE IN CAPITAL CASES.

Attorney General's Office,
Columbus, Ohio, May 4, 1887.

J. H. Lochery, Esq., Prosecuting Attorney, Pomeroy, Ohio:

DEAR SIR:—Your letter of yesterday received. Under

Ohio Penitentiary; Guard at, Cannot Draw Extra Compensation for Services During Vacation.

section 7332 of the Revised Statutes, it has not been the rule to pay costs in capital cases, but under section 7334, as amended in Ohio Laws, Vol. 83, 136, provision is made for the payment of such costs by the State.

Yours very truly,
J. A. KOHLER,
Attorney General.

OHIO PENITENTIARY; GUARD AT, CANNOT DRAW EXTRA COMPENSATION FOR SERVICES DURING VACATION.

Attorney General's Office,
Columbus, Ohio, May 6, 1887.

W. B. Cherrington, Esq., Deputy Warden Ohio Penitentiary:

DEAR SIR:—Yours of May 5th received. The act of May 19th, 1886, provides that each guard shall be allowed not to exceed fourteen days vacation each year without reduction of pay. The language is permissive merely. The guard may avail himself of it or not. If he does, the managers may doubtless employ another guard for the time, but in case the guard waives the right to this vacation and continues in his place, my opinion is that he cannot as the law reads, draw double pay for the time; that is to say, he cannot draw the regular compensation and also the pay which would be required to employ some one to take his place. The law makes no provision of that kind.

This being the law, it is unnecessary for me to pass upon what would be equitable under such circumstances.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; When Prohibitory Ordinance Has Been Passed, Tax Cannot be Collected in Municipality.

DOW LIQUOR LAW; WHEN PROHIBITORY ORDINANCE HAS BEEN PASSED, TAX CANNOT BE COLLECTED IN MUNICIPALITY.

Attorney General's Office,
Columbus, Ohio, May 7, 1887.

J. P. Caldwell, Esq., Prosecuting Attorney, Jefferson, Ohio:

DEAR SIR:—Your letter to hand. The question which you refer to me is one of no little difficulty. I find no decision of any court on that point. The proviso in section 11, is to the effect that when a corporation *prohibits* ale, beer and porter houses, a ratable proportion of the tax should be returned.

It seems the ordinance in Andover is a dead letter and the seller taking advantage of his own wrong, sets up the ordinance which he has violated as a bar to the enforcement of the tax provision.

The legal difficulty in the case is that when such prohibitory ordiance has been passed and is in force, the *presumption* is that it is enforced or may be enforced. In short, we must conclude that such drinking places within the limits of the corporation are prohibited. The corporation has in its power to do one of two things. It cannot do both. It cannot prohibit and collect the tax. Having passed such an ordinance it should enforce it and prohibit such drinking places. If it cannot enforce the ordinance it should be repealed and the tax collected.

I am inclined to the opinion therefore (and I have come to it rather reluctantly) that the ordinance having been duly passed and standing in full force as the law of the corporation, it must be taken that it has *prohibited* such ale, beer and porter houses within the corporation; and in such case no tax can be collected, and if one has been paid before the ordinance passed, a ratable proportion must be refunded.

General Assembly; Signature of Presiding Officers of, Not Essential to Validity of Act of.

I wish to say that this view is the judgment I have formed after consulting several others.

I am by no means certain that this opinion is right and would be very glad to get the decision of some court upon it.

Very truly yours,
J. A. KOHLER,
Attorney General.

GENERAL ASSEMBLY; SIGNATURE OF PRESIDING OFFICERS OF, NOT ESSENTIAL TO VALIDITY OF ACT OF.

Attorney General's Office,
Columbus, Ohio, May 7, 1887.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—Your communication of May 6th. calling my attention to the act to provide for publishing of Vol. 6, Geology of Ohio, O. L. Vol. 84, duly received.

I have examined this act as well as the certificates of the clerks of the house and senate relative to its alleged passage in both branches of the General Assembly.

I am of the opinion that where an act is properly passed, and has received the constitutional number of votes required for its passage, and the journals of both houses show conclusively that such act was *in fact* passed, it becomes a law notwithstanding the omission of the presiding officers of the senate and house to sign the same, as the constitution requires.

The "journals," however, should furnish this proof. It cannot be supplied dehors them; not even the certificates of the presiding officers and the clerks of the two branches after adjournment; for such certificates have no warrant in law. The journals alone contain the evidence of the action of the General Assembly (See State ex rel. vs. Moffit, 5 O., 358;

General Assembly; Signature of Presiding Officers of, Not Essential to Validity of Act of.

Miller and Gibson vs. State, O. S. 3, 475; Fordyce vs. Godman, 20, S. 1. Are then the journals so kept as to furnish proof of identity, etc.? They are ordinarily as to joint resolutions; for these are spread upon the journals of the house in which they originate, and the means of comparison are at hand; but it is different with respect to bills. Their titles, numbers and designation (as to whether House or Senate) are alone recorded, and there is no official copy (as there should be) required or authorized by law, of bills presented to each house to be kept. A legal standard of comparison as respects the body of the bill is therefore wanting. Are the title, number and description sufficient for identification? To illustrate: If a bill be presented, unsigned, with the representation that it has passed both houses of the General Assembly at the recent session, and, on examination of the journals you should find that a bill of the same description, title and number had in fact passed, would you be justified in concluding that the bill presented was the identical one passed? I think not. The danger of such a conclusion as a precedent would far out-weigh any possible good that might result from upholding the law. But if such bill had the signature of one presiding officer only, made as required by the constitution and evidenced by the proper journal; or if the bill was spread upon a journal, as sometimes happens where the entire measure consists of an amendment made by striking out the enacting clause and inserting, etc., so that a criterion of comparison would be at hand; that would be sufficient to complete the proof of identity and you would be justified in either case, in treating the bill as a law. The enrollment of a bill or resolution is not in the view taken essential to validity.

I think, therefore, you should treat as valid those unsigned joint resolutions deposited in your office, which are spread upon the journals, and shown thereby to have been *finally* passed by the requisite vote of each branch; likewise those bills so deposited, the passage of which is attested by

County Commissions; Employment of Persons to Discover Omitted Taxes; Dow Liquor Law; What are Included in Term "Intoxicating Liquors."

only one presiding officer. But I should not publish with the laws the bills reported passed but without the signature of either of said officers *unless* they are spread at length upon the journals and shown thereby to have received the requisite vote of each house which is unlikely.

My conclusion therefore, is, that the journals of the House and Senate do not show that the act was in fact passed. They show that the bill was introduced and the name of the author of the bill and the number thereof, but the question of identity is not, in my judgment, established by the journals to answer the requirements of the law.

I think, therefore, that the appropriation cannot, as a matter of law, be entered upon your books and the money paid, for the reasons I have stated.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONS; EMPLOYMENT OF PERSONS TO DISCOVER OMITTED TAXES; DOW LIQUOR LAW; WHAT ARE INCLUDED IN TERM "INTOXICATING LIQUORS."

Attorney General's Office,
Columbus, Ohio, May 13, 1887.

Chas. A. Vordtreide, Esq., County Auditor, Toledo, Ohio:

DEAR SIR:—Yours of the 18th and 20th ult. have been duly received.

I will endeavor to answer you as well as I can, but would suggest that you consult with your prosecuting attorney orally, as you can do it more satisfactorily than you can with me by letter.

County Commissions; Employment of Persons to Discover Omitted Taxes; Dow Liquor Law; What are Included in Term "Intoxicating Liquors."

I would refer you to the act passed April 23, 1885, Ohio Laws, Vol. 82, 152.

Upon reflection I am inclined to the opinion that this act is broad enough to authorize the commissioners to employ detectives.

I think that in such cases of fraudulent and surreptitious sales, I would enter the tax of four hundred dollars assessment as well as the penalty, and let the courts determine on the application of the parties, if they see fit. It would seem to me that where parties have engaged in the willful violation of the law, such penalty, as well as the additional two hundred dollars, would be proper.

In regard to the question of intoxicating liquors, this, it seems to me, is a question of fact, as the articles sometimes sold under the name of bitters are medicines in name only, and it frequently happens that the principal ingredient of such alleged medicines is whiskey.

I have read the statement enclosed in your letter, and while I have no particular knowledge of the article called "Wild Cherry Bitters," I have no doubt that whiskey is a principal element in that, and so far as my advice goes, I think that the sale of such bitters would come under the head of intoxicating liquors, for which a tax should be paid. It is perhaps true that "Wild Cherry Bitters" is manufactured as a medicine and intended by the manufacturer to be sold as such, nevertheless, where it is sold by a saloon keeper mainly as a beverage, I think there can be no doubt but that it is subject to tax.

Yours very truly,
J. A. KOHLER,
Attorney General.

Secretary of State; Fees of, for Filing Articles of Incorporation.

SECRETARY OF STATE; FEES OF, FOR FILING ARTICLES OF INCORPORATION.

Attorney General's Office,
Columbus, Ohio, May 11, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your favor of even date with accompanying documents duly received.

I have examined the articles of incorporation signed by Chas. A. Juergans and other; also the official opinion of Hon. Jas. Lawrence, attorney general, giving his construction of section 148*a*, O. L., Vol. 81, 52.

I see no reason whatever to dissent from the conclusions arrived at and stated by Mr. Lawrence, my predecessor, in regard to the above mentioned section, and I therefore concur in that opinion as to the effect of such insurance company and in the amount of fees to be charged. The reasons are fully and clearly stated in said opinion, and it is unnecessary for me to restate them here.

In regard to your first question, to-wit: Whether the purpose is correctly stated in said articles or in a manner permitted by law? I would say that I am inclined to think the purpose is *not* correctly stated.

If I may make the suggestion I would say, that it would be better to state the purpose of the incorporation according to the facts; "to transact the business of insurance on the assessment plan," following as nearly as possible the language of section 3630, Revised Statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

SCHOOLS; SEPARATE, FOR COLORED YOUTH NOT AUTHORIZED.

Attorney General's Office,
Columbus, Ohio, May 12, 1887.

D. W. A. Clough, Esq., Chillicothe, Ohio:

DEAR SIR:—Your letter of the 11th inst. received. While I have no authority to give you an official opinion on the questions you have presented, I am not averse to giving you my views as an attorney.

Section 4007 of the Revised Statutes makes it compulsory upon each board of education to establish "a sufficient number of schools * * * at such places as will be most convenient for the attendance of the largest number," but the repeal of section 4008, Revised Statutes, takes away from the boards of education of this State the authority to establish and maintain at the public expense *separate* schools for *colored children.*

I am aware that in many places the colored people desire and prefer to maintain separate schools, and if the colored children of your district wish to attend one school and the white children desire to attend the other, there can be no legal objection to their so doing. The colored children, however, stand on the same footing as white youth, and you cannot refuse admission to any of them, otherwise qualified, to the other school.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; What are Included in Term "Intoxicating Liquors."

DOW LIQUOR LAW; WHAT ARE INCLUDED IN TERM "INTOXICATING LIQUORS."

Attorney General's Office,
Columbus, Ohio, May 13, 1887.

Chas. A. Vortriede, Esq., County Auditor, Toledo, Ohio.

DEAR SIR:—Referring to my letter of a few days since I wish to say in addition on that subject and in order to harmonize my views as much as possible with the United States authorities, that there is no tax on medicines. As I understand it, it is not the practice of the United States officials to analyze any alcohol compounds. All medicines in a liquid form have cologne spirits or alcohol, and whether the compound is a medicine or beverage is now determined not by quantity of spirits which is contained in combination with herbs, etc., but the purpose for which it is usually sold. As "Wild Cherry Bitters" is labeled as a medicine, it may be so regarded until you obtain evidence as to the use to which it is put by the generality of persons who buy it and until such use shows it to be a beverage.

It is doubtless manufactured as a medicine and for that purpose, and where it is sold by druggists in good faith for medicinal purposes, it is not subject to the tax. But this exemption does not apply where it is sold by saloon keepers and others not as medicine but in fact as beverage. In such cases I think it is subject to a tax.

It is sometimes difficult to draw the line between such compounds as are medicines and are sold for that purpose and intoxicating liquors sold in the name of medicine. It is a question of fact and good faith and the rule I have given I think will furnish the guide to most cases.

Yours very truly,
J. A. KOHLER,
Attorney General.

TAXATION; OF "GREENBACKS."

Attorney General's Office,
Columbus, Ohio, May 13, 1887.

A. J. High, Esq., County Auditor, Crestline, Ohio:

DEAR SIR:—I have been furnished by Dan Babst, Esq., with tax notice for the year 1886, containing the following memorandum in pencil:

"Dan Babst, $11,000. Jason Babst, $11,000. Together $22,000. Had on hand undistributed during entire year in greenbacks, $12,000; leaving subject to taxation, $10,000."

As I understand it, the amount in greenback notes was specifically kept during the year, perhaps as a reserve fund, and that the money was not used, other than as such special deposit; and this was all in good faith.

Section 3701, Revised Statutes, of the United States, act passed February 25, 1862, provides that the stocks, bonds, treasury notes and other obligations of the United States shall be exempt from taxation by or under State, municipal or local authority.

I think all will agree that greenbacks (so called) are non-taxable for State, municipal or local purposes, either directly or indirectly; and in this being satisfied of the good faith of the parties having this money in possession, I think that the amount, to-wit: $12,000 is not subject to taxation, but is exempt therefrom.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Payment of Tax in Certain Case—Assessor; May Also be Member of Board of Equalization.

DOW LIQUOR LAW; PAYMENT OF TAX IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, May 21, 1887.

Jas. T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—Under circumstances stated, Liebenthal and Van Marter have paid the maximum tax and will not be required to pay the one hundred dollars additional.

J. A. KOHLER,
Attorney General.

(By telegraph).

ASSESSOR; MAY ALSO BE MEMBER OF BOARD OF EQUALIZATION.

Attorney General's Office,
Columbus, Ohio, May 19, 1887.

M. A. Daugherty, Esq., Prosecuting Attorney, Lancaster, Ohio:

DEAR SIR:—Your favor of the 3d duly received. * * * * I have examined and considered the inquiry contained in your letter and am of the opinion that there is no law in this State prohibiting a person who has been elected assessor, being appointed a member of the board of equalization in the same municipal corporation.

Yours very truly,
J. A. KOHLER,
Attorney General.

O. S. and S. O. Home; Contract for Erection of Buildings, How Signed—Dow Liquor Law; What are Included in Term "Intoxicating Liquors."

O. S. AND S. O. HOME; CONTRACT FOR ERECTION OF BUILDINGS, HOW SIGNED.

Attorney General's Office,
Columbus, Ohio, May 19, 1887.

Hon. I. F. Mack, President of Board of Trustees of O. S. and S. O. Home, Sandusky, Ohio:

DEAR SIR:—I have a letter from Major R. B. Brown, requesting me to advise you in regard to the execution of the contracts entered into for the erection of the "Home" buildings, and he asks whether they should be signed by all the members of the board or by the president and secretary alone.

Your minutes should show that the board of trustees, directed the president and secretary to sign the contracts for and in behalf of the board, and then your signatures as president and secretary of the board will, in my judgment, be sufficient execution on the part of the board of trustees.

The contracts should, of course, be signed by the contractors.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; WHAT ARE INCLUDED IN TERM "INTOXICATING LIQUORS."

Attorney General's Office,
Columbus, Ohio, May 21, 1887.

A. C. Wagner, Esq., Toledo, Ohio:

DEAR SIR:—Yours of May 19th, received and contents noted.

My duties are limited by law, and my communication to the auditor of your county was in the line of my duty. I

Sheriff; Fee of, for Summoning a Jury in Criminal Case

dislike very much to give what may be called *private advice* and strictly speaking have no right to do so, but I do not wish to be uncourteous and will, therefore, say in answer to your letter, that I endeavor, in the statement referred to, to submit a general rule, inasmuch as there are a number of preparations of medicines that come within the same definition.

Of course we have nothing to do with the government license in this State. That is a special matter and does not affect the question at all.

I have no reason to dispute the statements made by you in regard to the qualities of "Wild Cherry Bitters," and in the communication referred to, said that it was doubtless manufactured for medicinal purposes, but when an article of that kind contains spirits in sufficient quantities to make it intoxicating and is sold, in fact, as a beverage and not (in good faith) as a medicine, that in such case the seller subjects himself to the payment of the tax.

My information was that bitters (such as you prepare and others of like nature) were sold by saloon keepers and even by druggists; and sold under circumstances rebutting the idea of honesty in sales for medicinal purposes, and it seems to me that where such is the case, it should be regarded as a mere evasion of the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

SHERIFF; FEE OF, FOR SUMMONING A JURY IN CRIMINAL CASE.

Attorney General's Office,
Columbus, Ohio, May 21, 1887.

E. P. Middleton, Esq., Prosecuting Attorney, Urbana, Ohio:

DEAR SIR:—Yours of the 20th inst. to hand. I have examined section 1230, of the Revised Statutes, and I am not

clear in my mind whether the serving of a special venire for the talesmen entitles the sheriff to $4.50, and think there is much force in the suggestion that the sheriff is liable to be sent to any part of the county; but it might be said on the other hand that a special venire might issue for one or two and be served in the same neighborhood.

I am not disposed to be technical about it and prefer to err, if at all, on the side of the liberal construction and it seems to me, as the law reads, services for serving a special venire, where one is ordered, cannot be included. The law gives $4.50 for "serving and returning venire for petit juries," and the same for summoning a *special jury* and it seems to me the statute ought also to have said "for serving special venire," but in that respect the statute is silent, and as it could only be allowed upon the ground of summoning a special jury, I do not feel warranted in saying that summoning a special jury includes serving talesmen for filling the panel in any case.

I think it is the province of the General Assembly to furnish the remedy.

You do not state what your conclusions are. I would be very glad to hear, especially if you disagree with this opinion. I may be wrong about it and am perfectly willing to be set right. The matter is one of considerable importance to sheriffs, and I would have no reluctance in changing my views if satisfied of my error.

Yours very truly,

J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; PRESCRIPTIONS UNDER, HOW ISSUED.

Attorney General's Office,
Columbus, Ohio, May 23, 1887.

W. R. Wean, Esq., Mayor, Wellington, Ohio:

DEAR SIR:—Yours of the 21st inst. received. Referring to your first question: "If a physician gives a prescription, 'To let A have liquor whenever he wants it,' and the same is placed on file by the druggist and as often as A calls he gets his liquor on the same prescription, is such prescription given in 'good faith?'" You see that this is a question of fact and good faith, depending largely upon the circumstances. Such a prescription certainly cannot be used for the purpose of enabling a man to get a "drink" occasionally, and no reputable physician would give the prescription for this purpose. Very recently I submitted the question of "continuendo prescriptions" to the State Board of Health, composed of eminent physicians, and in the view of the members of said board, such prescriptions are improper, and I am inclined to the same view. I do not see the necessity of giving such prescriptions unless it is to enable a person to get whiskey very often without running to a physician for the prescription.

I will not say that a physician, as a matter of law, may not give a prescription in good faith, running for a series of sales or a number of days. It would depend very much upon the circumstances, such as the character of the patient, the nature of the ailment and other attending circumstances. Allowing such continuendo prescriptions might, in my judgment, lead to abuse and an evasion of the law, by simply imitating its forms.

I think the better practice would be for physicians, as well as druggists, when possible, to base each sale upon the prescription for that particular sale and furnishing.

As my official duties are prescribed by law, and the answer to your letter does not come within the duties en-

joined upon me, I respectfully submit the above as unofficial advice and a respectful answer to your letter.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; SALE BY AGENT FOR MANUFACTURER.

Attorney General's Office,
Columbus, Ohio, May 23, 1887.

A. B. Ackerman, Esq., Orrville, Ohio:

DEAR SIR:—Yours of the 21st received. I have endeavored to give the Dow Liquor Law (so called) the fair and reasonable construction which was doubtless intended to be given by the General Assembly.

These difficult questions are daily presented in reference to this act, and the points suggested in your letter have given me some trouble. You are aware that the General Assembly last winter amended the law by requiring that the sales should be made by the manufacturer *at the manufactory*. Now as I understand the case you present, you are the agent of the Reyman Brewing Co., and your agency is located at Orrville and you receive a fixed compensation for your services. The beer is shipped to you in car-load lots; you then ship to your customers, wherever the sale may be made. As I understand it, the sale is not made when shipped to you and your agency may be considered a depot, from which place the beer is shipped to your customers. This being the case is not the sale made from your place of business at Orrville instead of *"at the manufactory?"*

My opinion is, taking into consideration the amendment to the act referred to, that your business at Orrville is, un-

der the circumstances stated, subject to the payment of the tax.

Your frank and honest statement that you desire to know what the law requires and that you will cheerfully comply with it, satisfied me of your entire good faith in asking the question.

Yours respectfully,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; HOW PRESCRIPTIONS SHOULD BE ISSUED.

Attorney General's Office,
Columbus, Ohio, May 25, 1887.

Benon, Myers & Co., Cleveland, Ohio:

GENTLEMEN:—Yours of May 21st received. The duties enjoined upon me by law require that I shall give official advice to certain officers named in the Statutes. I have perhaps no right to give official opinions outside of what is so enjoined, but in consideration of the question you present and the perplexities of the law, as well as my knowledge of your firm, I will answer your question unofficially as well as I can.

Section 8 of the act referred to defines the phrase "trafficking in intoxicating liquor." The term does not apply where the sale is made for exclusively *known* mechanical, pharmaceutical or sacramental purposes, and where the sale is so made and in good faith, the seller is excepted from the tax.

I have examined the forms enclosed. The sale does not depend upon the form of the certificate alone but upon the good faith of the transaction. A druggist cannot shut his eyes and rely upon the certificate. Such certificate cannot

be used as a cover, nor will its possession by the druggist protect him where all the circumstances of the sale rebut the idea that it was sold exclusively for mechanical, pharmaceutical or sacramental purposes.

In respect to form No. 1, my judgment is that where an applicant of that age makes application, and the seller exercises due caution and believes that the sale is for the purpose stated, the certificate would be sufficient; and in respect to form No. 2, it cannot be said with truth that the druggist can sell and furnish intoxicating liquor and that all he has to do is to take such certificate and be protected against the payment of the tax. In short, the question of an excepted sale under section 8, does not depend upon the *form* of the certificate; *no* certificate is required. It is well enough that a druggist should have a certificate from the applicant, and the first form is, I think, a good one, but the language of the section is clear and imperative: "Exclusively known * * * *." A druggist, therefore, should not depend *wholly* upon the certificate, but he should exercise due care, so that he can say that it was sold in good faith and for exclusively known mechanical, pharmaceutical or sacramental purposes.

Cases will arise where a druggist, exercising the greatest care will be deceived and imposed upon, but when such is the case he will, in my judgment, be protected.

Yours very truly,

J. A. KOHLER,

Attorney General.

Dairy and Food Commissioner; Duty of, as to Disposition of Certain Fines.

DAIRY AND FOOD COMMISSIONER; DUTY OF, AS TO DISPOSITION OF CERTAIN FINES.

Attorney General's Office,
Columbus, Ohio, May 26, 1887.

Hon. S. H. Hurst, Dairy and Food Commissioner:

DEAR SIR:—Yours of the 17th inst. received, and in answer to your inquiry I have to say that I have examined the act passed May 8th, 1886, entitled: "An act to create the office of Dairy and Food Commissioner." I have also examined section 3 of the act of 1885: "To prevent fraud in canning fruit and vegetables."

The disposition of fines recovered where suit is instituted by any board of health in this State under section 3 of the act of 1885 is not the same as that provided by section 5, of the act of May, 1886, but, as you suggest, I can see no good reason for the difference. "The spirit of the law would indicate that these fines should be applied to a more efficient prosecution of the law," but it is a familiar principle of construction of statutes that where the language is clear and unambiguous, it cannot be varied, controlled or disregarded upon the ground that the intention of the General Assembly was otherwise. It is the duty of the commissioner or his assistants, to institute prosecutions in all cases of violation of the law, and section 5 of this act positively and unequivocally declares how fines assessed and collected under prosecutions begun by the commissioner or his assistants shall be disposed of. "One-half shall be paid into the state treasury and one-half into the county treasury," where the prosecution took place.

I think the General Assembly should by amendment make the section so as to harmonize with the law, where prosecutions are instituted by any board of health, but until such change is made in the law, it cannot, in my view, be

disregarded, and the fines collected should be paid over as provided in section 5, Ohio Laws, Vol. 83, p. 121.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS: PAYMENT OF COSTS, ETC., FOR CAPTURE AND RETURN OF FELON; PAYMENT OF LEGAL ADVICE. SCHOOLS; MEANING OF TERM "NORMAL."

Attorney General's Office,
Columbus, Ohio, June 1, 1887.

E. J. West, Esq., Prosecuting Attorney, Wilmington, Ohio:

DEAR SIR:—Yours of May 31st is before me. In regard to your question as to whether "section 920 of the Revised Statutes requires the county commissioners to pay to the agent or agents appointed under that section, the necessary expenses incurred," I will say that I do not regard the language of this section as mandatory. The law provides for the payment of the necessary expenses incurred, etc., but it follows, I think, that a large discretion is given to the commissioners; not an arbitrary discretion so as to deprive the party seeking compensation of all right or claim, but a reasonable discretion, under all the circumstances of the case. I think it is for the commissioners to say what the necessary expenses should be as above defined.

In regard to your second question: I think that where an agent is appointed for the purpose stated, it would seem that a reasonable compensation for the time occupied should be taken as part of the expenses. The right to employ any such agent in such case by the commissioners involves, I

Agricultural Society; Money Should not be Appropriated by General Assembly for District or County.

think, the right to award suitable compensation for the time so employed.

Your third question: "Have the county commissioners any authority to pay for legal advice for a county treasurer, where the matter in which the advice is asked, is not a matter where the treasurer acts for the county in his official capacity?" I will answer in the negative.

Your fourth question: As to what is meant, under section 4069, by the term "normal schools," my judgment is that a select or private school taught by a county examiner, etc., (as described in your inquiry) does not come within the meaning of "normal schools," as defined in the act. I am of opinion that the term was intended to apply to regularly established schools, of which there are a number in the State, and, as generally understood, means a regular institution or established school.

Yours very truly,
J. A. KOHLER,
Attorney General.

AGRICULTURAL SOCIETY; MONEY SHOULD NOT BE APPROPRIATED BY GENERAL ASSEMBLY FOR DISTRICT OR COUNTY.

Attorney General's Office,
Columbus, Ohio, June 1, 1887.

H. H. Young, Esq., East Palestine, Ohio:

DEAR SIR:—Your letter of May 27th duly received. In answer to your inquiries I would say that the General Assembly of this State has never passed any bills appropriating money for any district or county agricultural society. In my opinion such an act would be contrary to public policy

and would be favoring a certain section of the State at the expense of the entire commonwealth.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; NO EXCEPTION MADE IN FAVOR OF SOCIAL CLUBS.

Attorney General's Office,
Columbus, Ohio, June 1, 1887.

W. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Yours of the 30th ult. received. In regard to your first question my advice is that such a "club" as you mention and which is engaged in selling intoxicating liquors in the way you describe is subject to the payment of the tax provided by the act of May 14, 1886. I do not think it makes any difference because the customers buying the liquor are members of the club—as I understand you, the drink is sold to the members by the president of the club or an agent appointed for that purpose.

I will answer your second question in the affirmative. In my opinion it is not the less a sale within the meaning of the Dow Law because coupon tickets for drinks are sold as a condition of club membership. It is only a roundabout way of "selling." If the business is done in that way it is to all intents and purposes a "selling" and would be so regarded in law.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Notice not Requisite; Time Assessment Should Commence—County Commissioners; Terms of, When Two Are Elected at Same Time.

DOW LIQUOR LAW; NOTICE NOT REQUISITE; TIME ASSESSMENT SHOULD COMMENCE.

Attorney General's Office,
Columbus, Ohio, June 11, 1887.

O. L. Dodge, Esq., County Auditor, Portsmouth, Ohio:

DEAR SIR:—Yours of the 9th inst. received. I do not think that notice is necessary. The act itself is *notice* to all parties, hence the assessment should begin the fourth Monday of May, 1886.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; TERMS OF, WHEN TWO ARE ELECTED AT SAME TIME.

Attorney General's Office,
Columbus, Ohio, June 11, 1887.

S. R. Gotshall, Esq., Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—Your letter of the 4th inst. received. In my opinion the candidate receiving the highest number of votes is elected to be commissioner for the long term and one receiving the next highest number for the short term. My opinion is based on section 841, of the Revised Statutes, and is in accordance with an opinion heretofore rendered by my predecessor in office, Mr. Pond.

Yours very truly,
J. A. KOHLER,
Attorney General.

Mines; Use of Mechanical Appliances on Doors in Lieu of Attendants; Meaning of Word "Doors" as Used in Section 301.

MINES; USE OF MECHANICAL APPLIANCES ON DOORS IN LIEU OF ATTENDANTS; MEANING OF WORD "DOORS" AS USED IN SECTION 301.

Attorney General's Office,
Columbus, Ohio, June 11, 1887.

Hon. T. B. Bancroft, Chief Inspector of Mines:

DEAR SIR:— * * * My conclusion is that the law requiring the attendant to be present to open and close the doors, was framed with the idea that such attendant was necessary. It is a fundamental principle of law that the law does not require the doing of a vain thing. Where, therefore, the doors in a mine, by the aid of mechanical appliances, are so hung as to open and close with as much certainty and security as if done by the hand of an attendant, I am of the opinion that the spirit of the law is fulfilled; but such contrivance should be of a nature that it can be said to be as reliable and certain in the opening and closing of doors as if there was an attendant constantly present to perform that duty.

In regard to your second question my judgment is, that the language of section 301, Revised Statutes, contemplates all doors used in assisting or directing ventilation of a mine, and also all main doors or door in the main entry.

Of course doors used in assisting or directing ventilation in a mine should be so hung that they will stand closed and, as the law requires, cannot stand open.

Yours very truly,
J. A. KOHLER,
Attorney General.

Sheriff; Fees of, for Keeping and Providing for Prisoner.

SHERIFF; FEES OF, FOR KEEPING AND PROVIDING FOR PRISONER.

Attorney General's Office,
Columbus, Ohio, June 13, 1887.

W. C. Shepherd, Esq., Prosecuting Attorney, Hamilton, Ohio:

DEAR SIR:—Your letter of the 7th inst. received. In reply to the inquiry in regard to sections 1235 and 7379 of the Revised Statutes I would say that at a meeting of the county commissioners of this State, my predecessor in office, Mr. Lawrence, gave as his opinion that a sheriff was entitled to not exceeding fifty cents per day for keeping a prisoner, as provided for in section 1235.

In examining these two sections subsequently, I came to the same conclusion, believing that fifty cents per day was the maximum amount that could be allowed, notwithstanding Judge White's decision to the contrary.

Since this decision was rendered, however, the question has been further considered by Judge Arrell, of the Common Pleas Court, of Mahoning County, in a decision in which he reviews and holds as erroneous the decision of Judge White and which is in harmony with the views expressed by Mr. Lawrence, and myself.

Yours very truly,
J. A. KOHLER,
Attorney General.

Institution for Deaf and Dumb; Member of Board of Trustees of, not Entitled to Compensation for Acting as Secretary of Board—Recorder of County; Must Keep an Index for Each Volume of Records.

INSTITUTION FOR DEAF AND DUMB; MEMBER OF BOARD OF TRUSTEES OF, NOT ENTITLED TO COMPENSATION FOR ACTING AS SECRETARY OF BOARD.

Attorney General's Office,
Columbus, Ohio, June 20, 1887.

F. W. Herbst, Esq., Secretary Board of Trustees of Deaf and Dumb Institution, Columbus, Ohio:

DEAR SIR:—Your favor of a few days since received.

I have considered sections 628 and 637 of the Revised Statutes and the opinion of Judge Nash, while attorney general, construing the former section.

There is apparently a conflict between the two sections, but, in my judgment, the better course is to avoid all questions.

I give, as my opinion, therefore, that you, as member of the board, should not draw pay for services as secretary of said board of trustees. This is in accordance with the opinion of Judge Nash, a copy of which I herewith enclose.

Yours very truly,
J. A. KOHLER,
Attorney General.

RECORDER OF COUNTY; MUST KEEP AN INDEX FOR EACH VOLUME OF RECORDS.

Attorney General's Office,
Columbus, Ohio, June 21, 1887.

S. J. Post, Esq., County Recorder, Ravenna, Ohio:

DEAR SIR:—Yours of the 13th inst. received. Contents noted. I think you ought to have submitted this question to

Dow Liquor Law; Validity of Certain Prohibitory Ordinance.

the prosecuting attorney of your county, who is more properly your legal adviser in matters of this kind, and perhaps I ought to consult with him before answering your question. I will waive that, however, in this case and answer your question directly.

According to the opinion of my predecessor, Mr. Lawrence, I think you are required to keep up an index of each volume in addition to the general index. Mr. Lawrence expresses this view in several recorded opinions and in that respect I concur with him.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; VALIDITY OF CERTAIN PROHIBITORY ORDINANCE.

Attorney General's Office,
Columbus, Ohio, June 21, 1887.

J. C. G. Adams, Esq., Yellow Springs, Ohio:

DEAR SIR:—Yours of recent date received. I have examined the copy of the ordinance prohibiting the sale of intoxicating liquor in the village of Yellow Springs, Ohio, and while it is no part of my duty to officially advise as to the sufficiency of such ordinance, I have no hesitation in saying that your view of the objections that have been raised against it is, in my opinion, correct.

Your ordinance is not at variance with the Dow Liquor Law, nor is it necessary that you except sales for mechanical, pharmaceutical and sacramental purposes. These exceptions exist in the laws of the State and are applicable to the village of Yellow Springs, under your ordinance.

Under this ordinance, of course, parties charged with

County Commissioners; Power of, in Levying Taxes for Poor Fund—Board of Education; When Member of, May Vote for His Daughter as Teacher.

a violation of same, will be entitled to jury trial, if demanded.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; POWER OF, IN LEVYING TAXES FOR POOR FUND.

Attorney General's Office,
Columbus, Ohio, June 21, 1887.

Jno. H. Lochery, Esq., Prosecuting Attorney, Pomeroy, Ohio:

DEAR SIR:—Yours of the 17th inst. to hand. In arriving at the power of the county commissioners to levy taxes, the several sections you have cited must be taken together.

Section 2826 does not limit the power of the commissioners generally; it relates to the sum by which the tax may be increased, if necessary.

In my judgment your view of the several sections and the power of the commissioners is correct.

Yours very truly,
J. A. KOHLER,
Attorney General

BOARD OF EDUCATION; WHEN MEMBER OF, MAY VOTE FOR HIS DAUGHTER AS TEACHER.

Attorney General's Office,
Columbus, Ohio, June 21, 1887.

Philip Barth, Esq., Port Washington, Ohio:

DEAR SIR:—Your letter duly received. The section you

Insurance; Company Organized Under Territorial Laws Cannot Legally do Business in Ohio; Amount of Capital Stock Required.

refer to evidently relates to some pecuniary interest on the part of the board.

I do not think that a father is disqualified from voting for his daughter as a teacher in the schools unless he has some pecuniary interest, directly or indirectly, in such employment. The mere fact of blood relationship is not sufficient, I think, to render such employment improper under section 3974, Revised Statutes, or to prevent him from voting for her unless she is a minor or in fact the father receives her wages or any part thereof, directly or indirectly.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSURANCE; COMPANY ORGANIZED UNDER TERRITORIAL LAWS CANNOT LEGALLY DO BUSINESS IN OHIO; AMOUNT OF CAPITAL STOCK REQUIRED.

Attorney General's Office,
Columbus, Ohio, June 22, 1887.

Hon. S. E. Kemp, Superintendent of Insurance:

DEAR SIR:—Yours of June 15th duly received. The application of "The Joint Fire Insurance Company," of Dakota, organized under the laws of and located in that territory, for permission to do business in Ohio, raises the two questions which you desire me to answer.

First—Whether section 3656 of the Revised Statutes does not prohibit the admission of a company organized under the laws of a territory.

Second—Whether the same section does not prohibit the admission of a company which has an actual paid-up capital

Insurance; Company Organized Under Territorial Laws Cannot Legally do Business in Ohio; Amount of Capital Stock Required.

of $200,000.00, with authority to increase the sum to $500,000.00. I have considered these questions in their order.

Sections 2083 and 2084 of the Statutes, prohibit insurance companies, whether organized in this State or elsewhere, from engaging in the business of insurance unless duly authorized and licensed by the superintendent of insurance in conformity with the laws of this State. Section 3656 refers in express terms to companies, associations or partnerships incorporated, organized or associated under the laws of any other State of the United States or of any other foreign government; and such company, being otherwise qualified, may do business in this State, provided a license so to do is procured from the superintendent of insurance and having complied also and in all respects with the laws of this State.

There is no reference whatever in this section to insurance companies organized under territorial laws. Governments of this character, established under acts of Congress, are in no sense "foreign governments," as the term is used in this section, which clearly refers to foreign nations wholly independent of and foreign to the states of this Union. Such territories, having a local self-government, organized under acts of Congress and having a governor and territorial judges appointed by the president of the United States are not *states* in the sense in which the term is used in this section.

It may be said that, in the nature of things, if an insurance company, organized under the laws of California and complying with the laws of Ohio, can obtain a license from the superintendent of insurance to do business in this State, that there is no substantial reason why an insurance company, with an actual paid-up capital and organized under the laws of Washington Territory may not also do business in this State by procuring from the superintendent a license to do business. It is a sufficient answer to this to say that

Insurance; Company Organized Under Territorial Laws Cannot Legally do Business in Ohio; Amount of Capital Stock Required.

section 3656 does not extend this privilege to insurance companies organized under the laws of any other State or territory of the United States, but limits its application to insurance companies organized under the laws of the *states* of this Union.

It may be that it was intended to include insurance companies organized under our territorial government, but it seems to me that it is for the General Assembly of this State to make this explicit by an amendment of this section so as to include territories in express terms. In other words, my judgment is that it would not be wise to extend the provisions of this section so as to license such insurance company, organized under the laws of Dakota and in other territories, until express authority is given so to do.

I will, therefore, answer your inquiry in the affirmative.

In regard to your second question, it appears that the company has an actual paid-up capital of $200,000.00 and that among the articles of association the following appears: "Art. 5—The capital stock of this corporation shall be $100,000.00, provided the capital stock can, at the pleasure of the company, be increased to $500 000.00," Section 3634 provides that no company shall be incorporated under this chapter with a smaller capital than $100,000.00, etc., and section 3656 also provides that no company, organized under the laws of any other State shall take risks or transact the business of insurance in this State, directly or indirectly, unless the entire capital stock of the company is fully paid up and invested as required by the laws of the State where it was organized.,

The capital stock of this company, it appears, is $100,000.00, but in point of fact the capital stock actually paid-up is $200,000.00, so that it has possession of $100,000.00 or more than the amount of its capital stock. It has authority, it appears, to increase its capital to $500,000.00, but this has not been done and until it is so increased, as it is authorized to do, its capital stock must be held to be $100,000.00, which

Dow Liquor Law; Penalty May Be Remitted in Certain Case; Sale by Agent for Manufacturer.

amount is, as I stated above, in possession of the company.

Your second question I therefore answer in the negative.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; PENALTY MAY BE REMITTED IN CERTAIN CASE; SALE BY AGENT FOR MANUFACTURER.

Attorney General's Office,
Columbus, Ohio, June 27, 1887.

The John Kauffman Brewing Co., Cincinnati, Ohio:

GENTLEMEN:—Your letters of the 17th and 21st have been referred to me by Mr. Kiesewetter for answer. In your former letter you speak of the difficulties with the auditor of Jefferson County, but do not specify what the particular trouble is, so as to enable me to give any opinion upon it whatever, but if the difficulty consists of the penalty added by the auditor on account of your delay in paying the taxes, I would say that, under the circumstances, the penalty should not be insisted upon and would hereby authorize the auditor of Jefferson County to remit the same.

Now in respect to the question submitted in yours of the 21st inst., as to your liabilities for the taxes for the previous year prior to the amendment of March 21st, 1887, in accordance with interpretation given to this act called the Dow Law, prior to this amendment, I am of opinion that the business of your agent at Steubenville was liable to the payment of the tax. This view is in accordance with an interpretation of the law given in a number of cases previous to

Dow Liquor Law; What are Included in Term "Intoxicating Liquors."

the amendment. The object of this amendment was doubtless to make the law specific and clear, but, in my opinion, as the law stood before, it covers your case.

It is due to you to say that the question was a new and important one, and I did not then or now feel absolutely clear as to the scope of the law upon that subject prior to the amendment, but the above was the construction I had given with such light as I had on the subject. If there is any doubt about it I prefer to let it stand as so construed until the courts, upon your application or that of some other dealers in a similar case, shall decide otherwise.

Yours respectfully,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; WHAT ARE INCLUDED IN TERM "INTOXICATING LIQUORS."

Attorney General's Office,
Columbus, Ohio, July 12, 1887.

Farquhar Bros., Bucyrus, Ohio:

GENTLEMEN:—Your letter of the 23d of June was received in my absence.

In my opinion alcohol is an "intoxicating liquor" within the meaning of the Dow Liquor Law, as it is a liquid that produces intoxication and no exception is made in favor of it in said law. The exceptions made in the eighth section of act are on the *use* and not on the liquors as such.

If you are satisfied that the alcohol is to be used for exclusively known mechanical, pharmaceutical or sacramental purposes, or if a prescription is signed by a reputable physician in active practice, you may sell it without rendering

Municipal Corporations; Council of, May Abolish Board of Health—Secretary of State; Duty of, to File Articles of Incorporation.

yourself amenable to the tax imposed by virtue of the above mentioned law.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATIONS; COUNCIL OF, MAY ABOLISH BOARD OF HEALTH.

Attorney General's Office,
Columbus, Ohio, July 13, 1887.

Edward E. Hull, Esq., City Solicitor, Hamilton, Ohio:
Council may abolish. So held by State Board of Health.
J. A. KOHLER,
Attorney General.

(By telegraph).

SECRETARY OF STATE; DUTY OF, TO FILE CERTAIN ARTICLES OF INCORPORATION.

Attorney General's Office,
Columbus, Ohio, July 12, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your letter of June 24th, relating to articles of incorporation of the imposed "Delaware Club" and also similar articles of a number of other clubs, received.

I have given the matter careful attention, especially in view of the supposition that the real object of these clubs is for the avoidance of the provisions of the ordinance recent-

Secretary of State; Duty of, to File Certain Articles of Incorporation.

ly adopted by the councils of the city of Delaware, and other places where such clubs are being formed, prohibiting the sale of intoxicating liquor.

Section 3235 of the Revised Statutes, provides that "corporations may be formed in the manner provided in this chapter for any purpose for which individuals may *lawfully* associate themselves, except for dealing in real estate, or carrying on professional business; and if the organization is for profit, it must have a capital stock."

So far as the articles before me are concerned, nothing appears to indicate that the association has any unlawful purpose or design in view. Individuals may lawfully associate themselves for the purposes stated in these articles, and it cannot be assumed that the individuals entering into this organization will do any unlawful act or abuse the franchise granted.

I am, therefore, of the opinion that so far as these articles of incorporation are concerned, the proper fee being tendered, it is the duty of the secretary of state to file the articles.

Such incorporation would not, in my judgment give any warrant to such club or a member thereof to violate the provisions of an ordinance prohibiting the sale of or giving away intoxicating liquors. It will be sufficient to act when it is shown as a fact, that any unlawful or improper use is made of the act of incorporation, or that the law of the State or municipality is being violated. Until such acts are shown, it must be presumed that the laws of the State as well as any duly adopted ordinance of any municipality will be carefully observed.

Yours very truly,

J. A. KOHLER,

Attorney General.

Member of General Assembly Should Not at Same Time Be County School Examiner—Board of Education; No Power to Withhold Diploma in Certain Case.

MEMBER OF GENERAL ASSEMBLY SHOULD NOT AT SAME TIME BE COUNTY SCHOOL EXAMINER.

Attorney General's Office,
Columbus, Ohio, July 13, 1887.

Hon. Geo. P. Tyler, Probate Judge, Georgetown, Ohio:

DEAR SIR:—Your letter of July 1st received. Your question as to whether a member of the General Assembly in this State may also be a county school examiner, I will answer in the negative. See section 4, art. 2, of the Constitution of the State of Ohio.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; NO POWER TO WITHHOLD DIPLOMA IN CERTAIN CASE.

Attorney General's Office.
Columbus, Ohio, July 13, 1887.

S. Cohn, Esq., Mt. Gilead, Ohio:

DEAR SIR:—Yours of the 8th inst. received. You are probably aware that this matter is not within the scope of my official duty, and I have, therefore, no right to give an official opinion, but as a lawyer I will say that, in my judgment, under the circumstances stated, the diploma cannot be withheld, and the board should not arbitrarily deny such scholar the diploma which has been fairly earned.

In regard to the remedy: I think an application for a writ of mandamus would reach the case or perhaps a peti-

Dow Liquor Law; Dealer Not Liable to Tax on "Store House."

tion addressed to the Judge of Common Pleas for an order to deliver the diploma.

You had better consult an attorney near you in regard to this and proceed with the case.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; DEALER NOT LIABLE TO TAX ON "STORE HOUSE."

Attorney General's Office,
Columbus, Ohio, July 13, 1887.

J. P. Bailey, Esq., Prosecuting Attorney, Ottawa, Ohio:

DEAR SIR:—Your letter of the 6th inst. received. There is no doubt, from your statement of facts, that the party is liable for his saloon tax, and if he is doing business at another place as a wholesale dealer as agent or alleged agent, my judgment would be that he would be liable for the tax upon that place also. But your statement is to the effect that he has but one place of business and that at his saloon where he keeps his store house—where his beer is stored. If this is the case, I think he would not be liable for the tax upon such store house any more than if he storted a quantity of beer in an ice house. In short, from your statement of case, (and that is all I have to rely on) my judgment is that one tax would be sufficient under the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

Prosecuting Attorney; Counsel of Local School Board—Insurance; Returns by Agents of Foreign Companies.

PROSECUTING ATTORNEY; COUNSEL OF LOCAL SCHOOL BOARD.

Attorney General's Office,
Columbus, Ohio, July 14, 1887.

W. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Your letter of June 25th received. I have been absent from the city for three weeks, hence the delay.

I think that it is a part of your duty to defend the local board of school directors in the suit that has been commenced against it. This I know has been the practice in the northern part of the State and I think is properly a duty devolving upon prosecuting attorneys in this State.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSURANCE; RETURNS BY AGENTS OF FOREIGN COMPANIES.

Attorney General's Office,
Columbus, Ohio, August 4, 1887.

To the Honorable Samuel E. Kemp, Superintendent of Insurance, Columbus, Ohio:

DEAR SIR:—Referring to your letter of June 16, 1887, calling my attention to section 2745, Revised Statutes, and the duty of agents of life insurance associations organized under the laws of other states and admitted to do business in Ohio, and required to return the annual dues collected for the purposes of the association and the assessment collected for payment of death losses, or either of them, to county auditors for purposes of taxation, was duly received and for

some reason the letter escaped my attention until very recently.

I have examined the section referred to, and my conclusion in the matter is that such insurance associations, doing business in this State, are required by the section specified to make returns to the county auditor for the purpose of taxation of the amount of their gross receipts as provided in that section. In other words: I see no reason why such insurance companies should be excepted from the general rule requiring insurance companies doing business in this State to pay the taxation on an equal footing with other insurance companies.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROXY; USE OF AT POLITICAL CONVENTION.

Attorney General's Office,
Columbus, Ohio, August 4, 1887.

S. J. McDonnell, Esq., Attorney-at-Law, Toledo, Ohio:

DEAR SIR:—Yours of July 31st received. Contents noted.

The act passed March 21st, 1887, to amend section 2919, Revised Statutes, as amended May 17, 1886, is a general one. It contains a proviso as to judges and clerks which is local and applicable to Cincinnati alone; otherwise it is a general law, I think. Such is the construction given to it in various parts of the State, I am advised.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Druggist Liable to Pay Tax in Certain Case; Duty of County Auditor Under—Dow Liquor Law; Person Liable to Penalty for Violating Ordinance in Certain Case.

DOW LIQUOR LAW; DRUGGIST LIABLE TO PAY TAX IN CERTAIN CASE; DUTY OF COUNTY AUDITOR UNDER.

Attorney General's Office,
Columbus, Ohio, August 4, 1887.

Henry Gregg, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—Yours of the 1st received. I will answer your questions in the order stated by you.

The druggists you refer to as selling distilled liquor in the manner stated, must pay two hundred dollars each. You so advised the auditor and I concur in that opinion.

Your second question I am not so clear about. I think, however, it is the duty of the auditor, under section 6 of the Dow Liquor Law, to forthwith enter the same upon his duplicate and the amount becomes due as the original assessment and should, I think, be collected at once.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; PERSON LIABLE TO PENALTY FOR VIOLATING ORDINANCE IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, August 4, 1887.

Jno. D. Talbott, Esq., Barnesville, Ohio:

DEAR SIR:—Your letter of July 23d received. My absence from the city for the past week will explain the delay in answering.

Sheriff; Mileage of, for Removing Person to Insane Asylum.

I have carefully noted your statement touching the proceedings of the saloon keeper in your village and their efforts to evade the operation of your ordinance prohibiting the sale of intoxicating liquor.

I cannot agree with your mayor in the construction which you say he gives to the law. I cannot think that the law would give any sanction whatever to such a proceeding. It is a mere evasion of the law, in my judgment, as you state the case.

I think, however, you had better refer it to your prosecuting attorney and consult with him personally to the end that the ordinance may be enforced.

The ingenuity of some men seems to be taxed to devise ways by which the Dow Liquor Law, (as it is called) may be evaded. So that parties while observing the letter of the law do in reality grossly violate its spirit and purpose.

I have no desire to give it a forced construction, but I do not believe the parties can be held guiltless when they are selling intoxicating liquor in the manner indicated.

Yours very truly,

J. A. KOHLER,

Attorney General.

SHERIFF; MILEAGE OF, FOR REMOVING PERSON TO INSANE ASYLUM.

Attorney General's Office,
Columbus, Ohio, August 4, 1887.

J. P. Spriggs, Esq., Prosecuting Attorney, Woodsfield, Ohio:

DEAR SIR:—Your favor of July 22d duly received. In reply to your inquiry I would give as my opinion

Sheriff; Mileage of, for Removing Person to Insane Asylum.

that, under section 1230, of the Revised Statutes, as amended, Ohio Laws, Vol. 77, p. 116, your sheriff is entitled for removing an insane person from the Ohio Penitentiary to the insane asylum eight cents per mile both going and returning.

Yours very truly,
J. A. KOHLER,
Attorney General.

Attorney General's Office,
Columbus, Ohio, August 5, 1887.

A. B. Crockett, Esq., Attorney-at-Law, Oak Harbor, Ohio:

DEAR SIR:—The letter of July 30th, signed "Tax-payers" has been duly received.

I do not think that the trustees of your township have any authority to exclude the citizens referred to in your letter from the use of your town hall, as under section 2566, of the Revised Statutes, the power to lease, etc., is vested jointly in the council of Oak Harbor and the trustees of Salem Township. As I understand it, the ground for the site and the cost of constructing said building was paid for out of funds raised for that purpose by the municipal corporation and Salem Township, jointly, to be used by them in common, and, in my judgment, the control of said hall comes within the provisions of the section above given.

The above opinion cannot be regarded as official as I have no authority to give an opinion on the point in question.

Yours very truly,
J. A. KOHLER,
Attorney General.

Constable; Fees of, for Attendance at Justice Court.

CONSTABE; FEES OF, FOR ATTENDANCE AT JUSTICE COURT.

Attorney General's Office,
Columbus, Ohio, August 5, 1887.

John C. Welty, Esq., Prosecuting Attorney, Canton, Ohio:

DEAR SIR:—Your letter of recent date received. In answering your inquiry as to the fees of constables and marshals in certain cases, I am not certain that I am right inasmuch as I find nothing very specific in the statutes in this state except the provision that for every day's attendance before the justice of the peace on criminal trials the constables are entitled to one dollar.

You will notice that the law specifies the items of costs which constables are permitted to charge very carefully.

Now where a person is arrested and brought before a magistrate and when arraigned for trial or hearing pleads guilty, I doubt the right of the constable to charge one dollar for his attendance. It cannot be said that there is a trial. The plea of guilty takes the place of a trial. My judgment is that when a magistrate enters upon an investigation, witnesses are called, etc., that it is the duty of the constable to be present during the trial to maintain order and to execute whatever process may be issued. For this service he is entitled to one dollar.

A constable receives fees for everything he does down to the time the party is brought before a justice, and when the case stops on arraignment by reason of a plea of guilty, it cannot be truly said that there has been a trial. I think, therefore, that no charge can be made for attending trial. When, also, at the trial the defendant waives hearing and enters recognizance for his appearance, the same rule should apply as to fees.

You have not given me your own views in this matter

nor referred me to any particular section bearing upon the question.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSTITUTION FOR DEAF AND DUMB; SUPERINTENDENT OF, CANNOT BE EMPLOYED AS SUPERVISOR OF INDUSTRIAL DEPARTMENT.

Attorney General's Office,
Columbus, Ohio, August 6, 1887.

F. W. Herbst, Esq., Secretary of Board of Trustees of the Ohio Institution for the Education of the Deaf and Dumb, Columbus, Ohio:

DEAR SIR:—Referring to your letter of June 15th, requesting my opinion touching the power and right of your board of trustees under existing laws to make the compensation to Amasa Pratt as supervisor of the industrial department of the institution, under the rules adopted April 19, 1887, I will say that I have given the matter attention.

I called at the office of the governor to consult with him as you requested, but not finding him, I give you my best judgment.

As a matter of law entirely my conclusion is, that the extra compensation provided for by the resolution cannot be drawn from the treasury. The reason briefly stated is this: Mr. Pratt is an officer of the institution; as such in the language of the law he gives his entire time, and for his services he receives an annual salary. It readily suggests itself that his employment by the board in any other

Auditor of County; Should Make Record of Bonds Given By Contractor for Ditch Improvement.

capacity for a consideration paid would be inconsistent with his employment as superintendent.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; SHOULD MAKE RECORD OF BONDS GIVEN BY CONTRACTOR FOR DITCH IMPROVEMENT.

Attorney General's Office,
Columbus, Ohio, August 11, 1887.

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

DEAR SIR:—Yours of the 8th inst. received. I have examined sections 4476 and 4504 of the Revised Statutes, to which you have referred me, and my view of the matter is that it is the duty of your county auditor, under the latter section, to make a complete record of the bonds given by the contractors for such ditch improvements as are referred to in this section.

The mere filing away and preserving such documents is not, in my judgment, a sufficient compliance with the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

Schools; Meaning of Term "Practical Teachers" as Used in Section 4086—Incorporations; for Purpose of Doing Banking Business.

SCHOOLS; MEANING OF TERM "PRACTICAL TEACHERS" AS USED IN SECTION 4086.

Attorney General's Office,
Columbus, Ohio, August 11, 1887.

J. D. McColmont, Esq., Rock Creek, Ohio:

DEAR SIR:—

* * * * * * * * * *

In my opinion teachers of the graded common schools in this State are included in the phrase "practical teachers" as used in section 4086, of the Revised Statutes, as amended Ohio Laws, Vol. 84, p. 230.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCORPORATIONS; FOR PURPOSE OF DOING BANKING BUSINESS.

Attorney General's Office,
Columbus, Ohio, August 11, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your letter of July 14, 1887, duly received. Agreeably to your request I have examined the proposed articles of incorporation of the "Collateral Security Banking Company," signed by Isaac M. Jacobs, and four others, dated July 7, 1887; also the brief filed by the attorneys representing the incorporation, and in answer to your inquiry whether said articles are in legal form, and as to whether it is your duty to file and record the same, I will state the conclusion at which I have arrived after making such examination as the time afforded.

Incorporations; For Purpose of Doing Banking Business.

The purpose for which the company is said to be formed is the "loaning money on chattel security, the preservation, storage, sale and purchase of the collaterals, purchasing and selling merchandise, jewelry and other goods." It is not claimed that the corporation proposed to be formed comes under the provisions of the act passed April 16, 1885, entitled, "An Act for the Incorporation of Collateral Loan Companies," Vol. 82, O. L., p. 132. The purpose of incorporating under that act is expressly disclaimed, and the right to form a corporation for banking with other powers and privileges set forth in the certificate is claimed under and by virtue of section 3236, of the Revised Statutes of Ohio.

It is not necessary in this place to examine the question as to what constitutes a "bank" or the meaning of the terms "banking" and "banking powers."

The Supreme Court of this State in Dearborn vs. Northwestern Savings Bank held that the phrase "associations with banking powers," as used in section 7, art. XIII, of the Constitution of Ohio, relates only to banks of issue. This was the case of a savings bank incorporated under the act of February 26, 1873, entitled, "An Act to Incorporate Savings and Loan Associations." The corporate existence of the bank was put in issue on the ground that the act above specified never had any effect or force for the reason that it was an act assuming to confer "banking powers" and was never submitted to the electors of the State for their approval, as required by section 7, art. XIII, of the Constitution. A question somewhat similar arose in Bates vs. Peoples' Savings and Loan Association, 42, O. S. R., p. 655.

It is well understood that the business of "banking," in a commercial sense, authorizes the exercise of and includes other powers than that of issuing notes to circulate as money, such as receiving deposits, loaning money, etc., and while the phrase "banking powers," has been held to have the restricted meanings, namely: Power to issue notes to circulate as money, or, in other words, a bank of issue, nevertheless the business of "banking," in the commercial

sense referred to—such as the right to receive deposits, discount paper, make loans, deal in exchange, etc., has been specially provided for by legislation in this State. In short—the formation of banking companies exercising the power and transacting the business which this company proposes to exercise and engage in, in part at least, is provided for by special statutes, to-wit: The act of 1851, entitled, "An act to authorize free banking," Ohio Laws, Vol. 49, p. 41. Section 1 of that act provides "that any number of natural persons, not less than three, may engage in the business of banking, with all the rights, privileges and powers conferred by and subject to the restrictions of this act."

The certificate to be made in such cases, where to be deposited, capital stock, per cent. to be paid in, who may vote at elections, eligibility of officers and liability of stockholders, are matters carefully and minutely set forth in the act as well as the prohibition not to circulate evidence of debt as money.

Another act found upon the subject of banking is that relating to savings and loan associations—sections 3797-3821, Revised Statutes, Ohio Laws, Vol. 70, p. 40, in which the organization of such banks, their powers and duties, are minutely and carefully set forth.

The nature of the business of banking, the large amount of capital frequently employed and the trusts necessarily imposed are such that it seems to have been the settled policy of the State, from an early date, not to permit the formation of banking corporations to be carried on under general laws, but to make special provision for banking corporations dealing in money, making loans and having the custody in the aggregate of large sums of money.

To disregard the special Statutes relating to the organization and incorporation of banking companies and allow such associations to organize under the general provisions of section 3235, Revised Statutes, is, in my judgment, wholly inadmissible.

In the case of an insurance company in this State, or-

Incorporation; For Purpose of Doing Banking Business on Tontine Plan.

ganized under this last section, an action in "quo warranto" was instituted, and in a decision of the case Judge McIlvaine held: "That inasmuch as the subject of insurance was regulated in this State by special laws on that subject, that no insurance company could be incorporated under the general provisions of section 3235. State vs. Pioneer Live Stock Company, O. S. R., Vol. 38. p. 347.

I think, therefore, that the application should be, for the reasons stated, rejected.

If the persons named in this certificate desire to engage in the business set forth, ample provision is made on that subject and they have only to follow the steps marked out.

This perhaps disposes of the question, but as you call my attention to other objections in this certificate, namely: Whether the business of selling merchandise, jewelry and other goods can be carried on under the proposed incorporation, with the business of banking, I will content myself by answering this question in the negative.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCORPORATION; FOR PURPOSE OF DOING BUSINESS ON TONTINE PLAN.

Attorney General's Office,
Columbus, Ohio, August 17, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your letter of the 25th ult., requesting me to give my opinion as to whether the proposed articles of incorporation of "The Cincinnati Tontine Company," are proper and entitled to be filed in your office, is duly received, and in answer would say:

Ohio Penitentiary; Disposition of Corpse After Execution Act.

That practically the same question has been submitted to and passed upon by my predecessor in office, the Hon. James Lawrence, except that in that case the corporation was called "The American Tontine Society," and embraced the business of insurance on the tontine plan, whilst in this case the name adopted is "The Cincinnati Tontine Company," and the business involved is that of banking on the tontine plan. Mr. Lawrence advised the rejection of the articles of "The American Tontine Society," for the reason that insurance on the tontine plan is unauthorized by the laws of Ohio, and, in my judgment, the business of banking stands upon the same footing. For the reasons stated by Mr. Lawrence, and for a portion of the reasons given by myself in the matter of the incorporation of The Collateral Security Banking Co., I advise the rejection of the articles presented in this case.

Yours very respectfully,
J. A. KOHLER,
Attorney General.

OHIO PENITENTIARY; DISPOSITION OF CORPSE AFTER EXECUTION ACT.

Attorney General's Office,
Columbus, Ohio, August 31, 1887.

Warden of Ohio Penitentiary, Columbus, Ohio:

DEAR SIR:—As requested by you I have examined the act passed April 9, 1885, Ohio Laws, relating to the inflicting of the death penalty; also the act passed May 12, 1886, to amend sections 7341 and 7343 and to repeal section 7340.

There seems to be some confusion in the numbering of the sections, but I feel confident that sections 2 and 3 of the act of 1885 are unaffected by the repeal and are, there-

Justice of the Peace; May Solemnize Marriage on License Issued From Another County; Notary Public; Should Transact Business Where.

fore, in full force and effect, and it will be your duty to be governed thereby.

Yours very truly,
J. A. KOHLER,
Attorney General.

JUSTICE OF THE PEACE; MAY SOLEMNIZE MARRIAGE ON LICENSE ISSUED FROM ANOTHER COUNTY; NOTARY PUBLIC; SHOULD TRANSACT BUSINESS WHERE.

Attorney General's Office,
Columbus, Ohio, August 31, 1887.

Ahigah Jones, Esq., Bradford, Ohio:

DEAR SIR:—Yours of the 24th inst. received. Although not a matter of legal duty to answer your inquiries, I will, nevertheless, give you my judgment upon the two questions propounded.

First—I see no objection to your solemnizing marriage in *your own county* under circumstances stated.

Second—This question is not wholly clear in mind. The better course and regular way is to perform all your official acts in your own county and jurisdiction. I think your business should be in fact transacted in the county of your residence.

Yours very truly,
J. A. KOHLER,
Attorney General.

Real Property; Of Wife Cannot be Taken for Debts of Husband; Cannot be Taken on Execution from United States Court When Exempted by State Laws.

REAL PROPERTY; OF WIFE CANNOT BE TAKEN FOR DEBTS OF HUSBAND; CANNOT BE TAKEN ON EXECUTION FROM UNITED STATES COURT WHEN EXEMPTED BY STATE LAWS.

Attorney General's Office,
Columbus, Ohio, September 2, 1887.

E. A. Collins, Esq., Mayor, Huntsville, Ohio:

DEAR SIR:—Yours of August 30th, duly received. I will answer your question as a matter of favor, for the reason that I have no right to give you an official opinion in such cases.

Where property is exempt from execution and writ is in the hands of a marshal on judgment of the district court of the United States, the property cannot be taken as the exemption applies to such a judgment as well as judgments in a state court.

Second—The real estate of the wife cannot be taken for the debts of the husband unless the wife has bound herself in some way for the payment of the debt, which I presume is not the case in this instance. If a levy is made, the wife has but to demand the property and her rights must be respected. These infringement cases are very frequently swindling operations to compel ignorant people to pay money to buy peace.

Yours very truly,
J. A. KOHLER,
Attorney General.

Election; Expenses of Special, for Justice of the Peace—Treasurer of County; Term of, When Appointed to Fill Vacancy.

ELECTION; EXPENSES OF SPECIAL, FOR JUSTICE OF THE PEACE.

Attorney General's Office,
Columbus, Ohio, September 6, 1887.

E. S. Sauers, Esq., Attorney-at-Law, Mineral Point, Ohio:

DEAR SIR:—Yours of September 2d received. I have considered your question and also your suggestions in connection therewith, but I must decide the case against you.

My judgment is that in case of such special election the expenses must be borne by the township; that within the meaning of the law relating to the election of justices, such officers are, to all intents and purposes *township officers*. A justice of the peace is elected for the township by the electors therein; his jurisdiction is limited to the township, except in certain special cases. I therefore think that the expenses should be borne by the township.

Yours very truly,
J. A. KOHLER,
Attorney General.

TREASURER OF COUNTY; TERM OF, WHEN APPOINTED TO FILL VACANCY.

Attorney General's Office,
Columbus, Ohio, September 6, 1887.

J. McMurrey, Esq., Chairman Auglaize County Republican Executive Committee, Wapakoneta, Ohio:

DEAR SIR:—Yours of September 5th duly received. The question to which you call my attention, is, under the circumstances, one upon which I have no right to give an

Treasurer of County; Term of, When Appointed to Fill Vacancy.

official opinion. I will, however, give you what, in my judgment, is the law applicable to the case stated by you.

It seems that the office of county treasurer in your county became vacant prior to the 5th inst. by the absconding of your county treasurer, who was elected at the election in November last, and whose second term, pursuant to such election, would have commenced on the 5th of September, inst. The commissioners of your county, under section 1082, of the Revised Statutes, have filled the vacancy thus caused by the appointment of a suitable person, and the question arises whether the person so appointed shall serve until the expiration of the official term of the absconding treasurer or whether the people of the county shall choose a treasurer by electing one at the general election in November next.

Section 11, of the Revised Statutes, provides: "When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy; but this section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement of the same, of any one elected to such office before the occurrence of such vacancy." Under this section it seems to me that it is the right and duty of the people of your county to elect a successor at the coming November election and that the person appointed by the commissioners can serve until his successor is elected and qualified, and no longer.

Please look at case of State ex rel. Elias Ellis vs. The Com. of Muskingum Co., 7 O. S. R., p. 126.

Very respectfully yours,

J. A. KOHLER,

Attorney General.

Township Trustees; Burial By, of Unclaimed Dead.

TOWNSHIP TRUSTEES; BURIAL BY, OF UNCLAIMED DEAD.

Attorney General's Office,
Columbus, Ohio, September 6, 1887.

Robt. C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Yours of the 5th inst. received. The young man mentioned in your letter was not a "pauper" or "unknown person" within the meaning of the act found on page 29, Ohio Laws, Vol. 84. It seems, however, it was necessary to give him a decent burial and the trustees very properly attended to this duty and buried the remains at public expense.

Difficult questions sometimes arise in these cases. The amounts are not usually very large and in a sad case like the one you mention, people generally attend to the last thing that can be done for a man without standing upon technicalities of the law.

My judgment would be that the place of legal settlement of the young man could be looked to for reimbursement of the amount to give this unfortunate young man a Christian burial in a Christian land.

Yours very truly,
J. A. KOHLER,
Attorney General.

Clerk of County; Term of, When Elected to Fill Unexpired Term—Justice of the Peace; Entitled to Commission Although Returns of Elections Were Not Made Within Prescribed Time.

CLERK OF COUNTY; TERM OF, WHEN ELECTED TO FILL UNEXPIRED TERM.

Attorney General's Office,
Columbus, Ohio, September 13, 1887.

A. W. Rudolph, Esq., Clerk of Court, Bowling Green, Ohio:

DEAR SIR:—Your letter of the 7th inst. received. You ought to have submitted this question to your prosecuting attorney as he is the official adviser in such matters, while I am not except when requested by him.

I will, however, say that, in the case stated, in my judgment, your successors will be elected for the full term and will be entitled to the office for that time.

In this opinion I am sustained by one rendered by Judge Nash, while attorney general.

Yours very truly,
J. A. KOHLER,
Attorney General.

JUSTICE OF THE PEACE; ENTITLED TO COMMISSION ALTHOUGH RETURNS OF ELECTIONS WERE NOT MADE WITHIN PRESCRIBED TIME.

Attorney General's Office,
Columbus, Ohio, September 19, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Yours of the 14th inst. with the appended certificate of John J. Joyce, Clerk of the Court of Common Pleas of Franklin County, duly received.

Justice of the Peace; Entitled to Commission Although Returns of Elections Were Not Made Within Prescribed Time.

It appears that on the 4th day of April, 1887, George W. Lakin was elected justice of the peace for Perry Township, Franklin County, to fill the unexpired term of John L. Walcutt. The certificate before me bears date of September, 1887. The delay in making out this certificate has been occasioned by the fact that the returns were not made to the clerk at the time required by law.

The question is whether this neglect and delay in making out the returns defeats the election of the justice, or, in other words, deprives him of his commission. My opinion is that it does not.

The practice of withholding or delaying the returns of an election is not to be commended, but the certificate is prima facie evidence at least, that George W. Lakin was, by the electors of Perry Township, elected a justice of the peace for that township, and that, it seems to me, is the substantial and important thing. I do not think that the will of the people in making choice of a justice of the peace is to be defeated by the failure of ministerial officers to present the returns of the election within the time fixed by law.

Section 83, of the Revised Statutes provides that "each officer whose office is created by law, and not otherwise provided for, shall be entitled to receive from the governor a commission to fill such office, upon producing to the secretary of state a legal certificate of his being duly appointed or elected."

This certificate furnishes the evidence of such election, and although there has been great delay or great carelessness in presenting it, nevertheless, my judgment is, that the commission should be issued as provided for in the above mentioned section.

Yours very truly,

J. A. KOHLER,

Attorney General.

Prosecuting Attorney; Compensation of, For Trying Tax Case—Municipal Corporations; Members of Council of, Does Not Lose His Seat in Council on Account of Temporary Removal.

PROSECUTING ATTORNEY; COMPENSATION OF, FOR TRYING TAX CASE.

Attorney General's Office,
Columbus, Ohio, September 19, 1887.

I. H. Blythe, Esq., Prosecuting Attorney, Carrollton, Ohio:

DEAR SIR:—Yours of the 14th inst. received. I think that, under Section 265, of the Revised Statutes, and under the circumstances stated, you are entitled to commissions as claimed.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATION; MEMBER OF COUNCIL OF, DOES NOT LOSE HIS SEAT IN COUNCIL ON ACCOUNT OF TEMPORARY REMOVAL.,

Attorney General's Office,
Columbus, Ohio, September 19, 1887.

W. C. Robinson, Esq., Lancaster, Ohio:

DEAR SIR:—Yours of the 14th inst. received. I have noticed the statements made concerning your removal from one ward to another, as affecting your right to represent your ward in council.

You say your removal was only for a *temporary* purpose and not for a *permanent* one. In short—you intended to return. If this is so, you do not lose your right to your

Auditor of County; Compensation of, When Work is Done By Two Auditors.

residence and your right to a seat in the council cannot be questioned.

Yours truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; COMPENSATION OF, WHEN WORK IS DONE BY TWO AUDITORS.

Attorney General's Office,
Columbus, Ohio, September 19, 1887.

A. L. Corman, Esq., County Auditor, Medina, Ohio:

DEAR SIR:—I have consulted with the auditor of state in regard to the point you present.

His opinion is (and in it I concur) that the work should be paid for as it has been performed; or, in other words, the commissioners should award the compensation according to the amount of work performed by the outgoing and incoming auditors. Each should be paid for the portion of the work done by him.

Yours very truly,
J. A. KOHLER,
Attorney General.

Auditor of County; Annual Compensation of—Library Board of Dayton; Right of President of, to Vote.

AUDITOR OF COUNTY; ANNUAL COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, September 19, 1887.

Disney Rogers, Esq., Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Yours of recent date received. In answer to your inquiry I would say that the auditor should be paid for the time he occupied the office at the rate of compensation for the year.

The above is the judgment of the auditor of state, as well as my own.

Yours very truly,
J. A. KOHLER,
Attorney General.

LIBRARY BOARD OF DAYTON; RIGHT OF PRESIDENT OF, TO VOTE.

Attorney General's Office,
Columbus, Ohio, September 29, 1887.

R. M. Allen, Esq., Secretary of Library Board, Dayton, Ohio:

DEAR SIR:—Yours of September 20th received. I have examined the resolution enclosed in your letter, requesting my opinion upon the point, "whether or not the president of the board of education of the city of Dayton is entitled to a vote in the regular proceedings of said library board?"

Section 5 of the act in question makes the president of city board of education a member of the board. He becomes a member not in the same manner as the other members

O. S. and S. O. Home; Out of What Funds Certain Improvements Should be Made.

of the board, but by virtue of his office; and being a member, my judgment is that he is entitled to vote upon all questions the same as any other member of the board.

If I am wrong in this, my conclusion would be that as presiding officer he would still have the deciding vote.

Yours very truly,
J. A. KOHLER,
Attorney General.

O. S. AND S. O. HOME; OUT OF WHAT FUNDS CERTAIN IMPROVEMENTS SHOULD BE MADE.

Attorney General's Office,
Columbus, Ohio, October 1, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—Yours of September 26th received and the inquiry therein noted.

It is proper to say that two of the trustees of the Ohio Soldiers' and Sailors' Orphans' Home recently appeared before the auditor of state and attorney general and were orally heard upon the subject of your inquiry, and this hearing was had especially with reference to the objections of the auditor of state to paying the warrant of the trustees for the reason that the terms of the appropriations did not contemplate furnishing printing press, material, etc., as well as for the reason that the payment out of the appropriation for industrial pursuits had in part already been made; and in this view of the auditor of state I at the time concurred—the matter having been referred to me at that time.

By the act of March, 1887, Vol. 84, Ohio Laws, p. 198, the following appropriations were made among others: "Industrial pursuits, two thousand dollars;" "furniture and carpets, one thousand three hundred and fifty dollars"; heat-

ing and furnishing new industrial building, two thousand dollars." But it is claimed that the appropriation for "heating and furnishing new industrial building, $2,000.00," contemplated and was intended to authorize the trustees to equip and furnish the building with the proper machinery, apparatus and material necessary for an industrial building and that, in point of fact, as the building was erected for the purpose of a printing and publishing establishment and to teach the boys the art of printing, that the trustees are authorized by this appropriation to provide printing presses, type, material and appurtenances necessary for a printing establishment.

The appropriation, in my judgment, is loosely drawn, and in view of the fact that we have in this State a large number of similar institutions, it would be, in my judgment far better practice and would be of great assistance to the auditor of state to have these appropriations made as specific and definite as possible. For example: If the appropriation had read—$2,000.00 for furnishing industrial building with printing presses, type and material for a printing establishment, it would have been clear and explicit; but as it reads the trustees can furnish the building with any kind of equipment: printing house, laundry, machine shop or whatever the trustees saw fit to put into it, so long as it is furnishing an "industrial building," and it was this view of the matter that induced me to concur with the auditor of state in the opinion first expressed. But having given it further examination and wishing to give the language of the law a liberal and not a technical or close construction, I am inclined to think that I was wrong in the opinion expressed and that the language does warrant the use of the money for the printing presses, type, etc., as stated.

The word "furnish" has a relative meaning. Furnishing a house for dwelling purposes is one thing and contemplates such furniture and household goods as are usual in furnishing a home. Furnishing an industrial building fairly means

O. S. and S. O. Home; Out of What Funds Certain Improvements Should be Made.

such machinery, appurtenances and articles as may be used for industrial pursuits in such building. Webster's definition is: "To fit up; to supply with proper goods, vessels or ornaments, appendages; as to furnish a house or a room." Again: "The necessary appendages of anything, as to a machine, a carriage, a table, a horse and the like; as the furniture of a printing press, of a gig, of a ship, table furniture, horse furniture and the like." Within this definition, my conclusion and opinion is, that the trustees are authorized to purchase and provide printing presses, type, material and appendages for a printing establishment to the extent of $2,000.00, including the heating of this industrial building.

One thing more remains. Your letter informs me that the financial officer has bought a printing press for $1,500, and has charged $500 to the appropriation for industrial pursuits, and $1,000 to that for heating and furnishing new industrial building, and you inquire: "Are the amounts properly charged, or, in other words, can he use the two appropriations for the same purpose when they are for different purposes?"

These questions must be answered in the negative. It cannot be thus divided. The presses, etc., as well as the cost of heating and building should be paid out of specific appropriations for that purpose, and if any part of such expense has been paid out of some other fund it should be replaced and accounted for in the payment under which it should be made.

Yours very truly,
J. A. KOHLER,
Attorney General.

Insurance; Premium Notes May be Accepted as Part of Capital Stock; Certificate of Notary Public Not Sufficient Under Section 3634.

INSURANCE; PREMIUM NOTES MAY BE ACCEPTED AS PART OF CAPITAL STOCK; CERTIFICATE OF NOTARY PUBLIC NOT SUFFICIENT UNDER SECTION 3634.

Attorney General's Office,
Columbus, Ohio, October 6, 1887.

Hon. S. E. Kemp, Superintendent of Insurance:

DEAR SIR:—Your letter of October 4th duly received. You ask the following questions:

First—"Can a premium note, given by a non-resident of Ohio, in consideration of insurance on property located in another state, to an insurance company organized under the law of Ohio, be accepted as part of the capital, which such mutual companies are required to have, by section 3634, Revised Statutes?"

Section 3641 of the Revised Statutes as amended reads as follows:

"A company organized under this chapter may:

"First—Insure houses, buildings, and all other kinds of property, against loss or damage by fire and lightning or tornadoes, in and out of the State, and make all kinds of insurance on goods, merchandise, and other property in the course of transportation, whether on land or water, or on any vessel or boat wherever the same may be.

"Second—Make insurance on the health of individuals and against personal injury, disablement or death, resulting from traveling or general accident by land and water; make insurance against loss or damage resulting from accidents to property, from causes other than by fire or lightning (or tornadoes); guarantee the fidelity of persons holding places of public or private trust, who may be required to, or do, in their trust capacity, receive, hold, control or disburse public or private moneys or property.

Insurance; Premium Notes May be Accepted as Part of Capital Stock; Certificate of Notary Public Not Sufficient Under Section 3634.

"Third—Receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property; lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan which it may have on mortgage, bottomry or respondentia, and generally to do and perform all other matters and things proper to promote these objects; but no company shall be organized to issue policies of insurance for more than one of the above three mentioned purposes, and no company organized for either one of said purposes shall issue policies of insurance for any other."

By this it seems that a company organized under the provisions of this chapter is fully authorized to do business in any state and issue its policies and take premium notes, and as there is no limitation contained in section 3634, excluding notes taken upon insurance out of the State from being accepted as part of the capital stock, my judgment is that such notes (given by non-residents of Ohio) may be accepted as a part of the capital which such mutual companies are required to have by section 3634, of the Revised Statutes.

Second—"The Statute requires that such notes shall be accompanied by a certificate of a justice of the peace, that, in his opinion, the maker thereof is pecuniarily good and responsible for the same. Will a certificate of a notary public to that affect the requirement as contained in the section above named?"

The above section requires a certificate by a justice of peace touching the responsibility of the maker of the note. This is a very important provision and should be strictly enforced. These notes may be scattered far and wide through the country and unless care is taken the capital vested in such notes may be fictitious and not substantial.

You will notice that the provision requires a *certificate*

of a justice of the peace. If it required simply the administration of an oath or verification of such statement, I would be inclined to the opinion that this provision might be regarded as directory in its character, and that such oath could be administered by a notary public as well as by a justice of the peace; but as the law reads, I do not feel at liberty to extend its plain terms, and would, therefore, advise that you require in each case the certificate by a justice of the peace, containing the facts clearly and fully, as required by section 3634; and I think I would advise further that in all cases where notes are presented under this section, as part of the capital given out of the State and certified to by a justice of the peace of this State, that I would require the certificate of the clerk of a court of record, under the seal of the court, that such justice of the peace is such officer and authorized to act, and that his signature is genuine. My opinion is that unless such strictness is insisted upon, insurers in such companies may lose the benefit, to some extent at least, of their insurance.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTOR; PLACE OF RESIDENCE OF MARRIED MAN.

Attorney General's Office,
Columbus, Ohio, October 28, 1887.

Walter S. Thomas, Esq., Columbus, Ohio:

DEAR SIR:—Yours of the 27th inst. received. I have carefully noted what you say respecting your place of residence.

It appears that prior to coming to Columbus you had a residence in the city of Delaware, Delaware County, Ohio,

County Commissioners; Duty of, in the Construction of Bridges, Etc., Upon Certain Roads.

at which place you have voted for a number of years last, past. Upon receiving your appointment to a public office, you came to Columbus, and, as a matter of economy, brought your wife with you and have kept house in the city of Columbus. I undertsand that your coming to Franklin County was not with the view of changing your place of residence, but to enable you, for the time being, to discharge the duties of your position, and that when such duties have ceased, you intend to return to your home at Delaware.

Under these circumstances, I have no hesitation in stating that you retain your residence and right to vote at Delaware, Ohio, that being your home until, by a change of residence *in fact* as well as intention, you establish a residence elsewhere.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; DUTY OF, IN THE CONSTRUCTION OF BRIDGES, ETC., UPON CERTAIN ROADS.

Attorney General's Office,
Columbus, Ohio, October 28, 1887.

Samuel C. Dodds, Esq., County Commissioner, Marion, Ohio:

DEAR SIR:—Yours of the 26th inst. was handed to me this morning.

I have examined section 4800, of the Revised Statutes, as amended May 15th, 1886, and will give you my best judgment as to the proper meaning and application of the same, although my experience in cases of this kind is extremely limited.

It is clearly the duty of the commissioners to build any and all the bridges and culverts upon the roads provided for. It is also their duty to contract and pay for all material used in the construction or repair of such roads (free turnpike roads). I think this includes gravel, stone and whatever other material; and put it in proper shape for use in constructing and repairing the road—to illustrate: It includes not only the purchase of stone but stone crushed and made ready for proper use.

This answers I think the first question as suggested by Mr. Garberson, who handed me your note.

In regard to the second question, as to what funds should be drawn on for payment of the same, there is more difficulty.

Section 4800 as amended, is silent as to source or fund from which payment should come. The power, however, to do an act carries with it the means to execute that power, and until the courts hold otherwise or the General Assembly by an amendment makes the meaning of the section more specific, I would recommend the payment from your county or road fund. There is certainly nothing to indicate that when the commissioners have performed the duty positively enjoined upon them, that payment is to be made out of any specific fund or from any particular source.

Yours very truly,
J. A. KOHLER,
Attorney General.

PHYSICIAN; MAY DISPENSE MEDICINES TO HIS OWN PATIENTS.

Attorney General's Office,
Columbus, Ohio, November 5, 1887.

J. M. Lisle, Esq., Celina, Ohio:

DEAR SIR:—Your letter of October 31st duly received.

Attorney-at-Law; Why May Be Admitted to Examination For Admission to Bar.

In answer to your inquiry as to whether you may lawfully sell quinine to one of your own patients, I would state, that section 4405, of the Revised Statutes, as amended in Ohio Laws, Vol. 81, p. 61, gives to physicians the privilege of supplying medicines to their patients.

Yours very truly,
J. A. KOHLER,
Attorney General.

ATTORNEY-AT-LAW; WHY MAY BE ADMITTED TO EXAMINATION FOR ADMISSION TO BAR.

Attorney General's Office,
Columbus, Ohio, November 5, 1887.

Chas. R. Lyon, Esq., City of New York, New York:

DEAR SIR:—Your letter of October 26th duly received. If, under the laws of your State, a certificate of graduation from the Columbia Law School is equivalent to admission to practice law in your State, all the Statutes of Ohio require of you is to settle in this State with the intention of making this State your permanent place of residence, produce the required certificates, and pass the examination. If, however, you are admitted to practice in New York State when you come here, or have not practiced the time required by our Statutes in your State, a previous residence of one year is necessary.

Yours very truly,
J. A. KOHLER,
Attorney General.

Elector; Place of Residence of Married Man—County Commissioners; Duty of, as to the Construction of Certain Approaches to Bridges.

ELECTOR; PLACE OF RESIDENCE OF MARRIED MAN.

Attorney General's Office,
Columbus, Ohio, November 5, 1887.

J. A. Thomas, Esq., New Holland, Ohio:

DEAR SIR:—Yours of October 28th duly received. This is a question upon which the Statutes give me no authority to give an official opinion. If I was one of the judges of election, however, I would have no hesitancy in receiving his vote as I think he is justly entitled to a vote in your county, as you state the case.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; DUTY OF, AS TO THE CONSTRUCTION OF CERTAIN APPROACHES TO BRIDGES.

Attorney General's Office,
Columbus, Ohio, November 5, 1887.

Wm. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Your letter of October 28th received.

I have examined the opinion of the 3d of August, 1887, and observe that there are many intricate points involved in the proper construction of the sections quoted. Some of the questions have heretofore been presented to me, and my predecessor, Mr. Lawrence, as well as myself have given opinions in accordance with the views expressed in your opinion.

Secretary of State; Duty of, to File Certain Articles of Incorporation.

I have not given the matter very careful attention. The practice has not been uniform in the State on this subject, but I think your construction and interpretation is as I have applied these sections and I therefore concur in your opinion.

Yours very truly,

J. A. KOHLER,
Attorney General.

SECRETARY OF STATE; DUTY OF, TO FILE CERTAIN ARTICLES OF INCORPORATION.

Attorney General's Office,
Columbus, Ohio, November 5, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Yours of the 1st of November, relating to the proposed incorporation of the Knights of Honesty, of Adams County, Ohio, duly received.

I have examined the articles, certificate, etc., all of which appear to be in due and regular form. The object of the association is stated and appears to be one for which men may lawfully associate themselves together.

It has been my opinion heretofore and is now, that when articles are so presented, that it is the duty of the secretary of state, under the Statutes, to file and record the same for the reason that the secretary of state has no judicial power to inquire into and determine the truth of the matter stated in the certificate.

So far as your duty is concerned, the certificate is prima facie evidence, upon which you must act and I am, therefore, of opinion that it is your duty to file the certificate.

Now if it is true that this association is of the character stated by the protestants, then it should not exist as a

corporation. If the parties signing this certificate have fraudulently and corruptly stated the object of the association to be a lawful and proper one when in fact it is an unlawful and improper one, it should at once be exposed by a judicial investigation and the facts ascertained. If the facts stated by the citizens protesting against the filing of the certificate are true, there is a very speedy way of disposing of the whole matter, and that is by calling upon these incorporators to show their hands and by what right they are exercising the franchise granted.

It seems to me this is the regular and proper way, and relieves the secretary of state from entering into and inquiring as to the truth or falsity of the facts alleged as reasons for withholding the certificate.

Yours very truly,

J. A. KOHLER,

Attorney General.

ATTORNEYS-AT-LAW; ALLOWANCE TO FOR DEFENDING INDIGENT PRISONER.

Attorney General's Office,
Columbus, Ohio, November 9, 1887.

E. W. Marson, Esq., Prosecuting Attorney, Ravenna, Ohio:

DEAR SIR:—Yours of November 7th received. I have examined the sections of the Revised Statutes to which you called my attention, and my judgment is that the compensation which the commissioners are allowed to pay under these sections is limited to one hundred dollars in any one case, without regard to the number assigned to defend; or, in other words, that where two attorneys are assigned, the commissioners can pay but one hundred dollars.

Yours very truly,

J. A. KOHLER,

Attorney General.

TAXATION; OF GROSS RECEIPTS OF TELEGRAPH COMPANIES.

Attorney General's Office,
Columbus, Ohio, November 10, 1887.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—I am in receipt of the letter of the Western Union Telegraph Company, of September 7, 1887, addressed to you; also of a copy of the decision of the Supreme Court of the United States in the case of the Philadelphia and Southern Mail Steamship Company vs. The Commonwealth of Pennsylvania, decided in the October term, 1886.

In the letter above referred to, the Western Union Telegraph Company requests you to notify the auditors of the various counties throughout the State, to discontinue requiring telegraph companies to make a return of their gross receipts, but require that the returns be made of the receipts earned within the state limits, for the reason that the act of the General Assembly of this State levying the tax upon the gross receipts of telegraph companies, is in conflict with the constitution of the United States. See act of May 1, 1862, and amendatory act of April 13, 1865

In answer to your request for an opinion as to your duty in the premises, I will say that the Supreme Court of the State of Ohio, in the case of the Western Union Telegraph Company vs. Mayer, Treas., etc., O. S. R., Vol. 28, p. 521, after full argument and most careful consideration of the question and upon all the points involved, decided (Judge Johnson giving the decision of the court) that the act in question was constitutional, and that the telegraph companies were liable to pay the tax so assessed.

It is claimed, however, by the Western Union Telegraph Company, that the Supreme Court of the United States, in a number of recent decisions, decided that the law imposing a tax upon the gross receipts of such com-

pany is in conflict with the Constitution of the United States.

This act having been pronounced constitutional in every respect by the Supreme Court of Ohio, my judgment is that it is your duty, so far as you are called upon to act, to see that the tax upon the gross receipts of such companies are duly levied and paid. It will be time enough for you to send the auditors these notices, as you are requested to do, directing them to omit requiring telegraph companies to make returns of all their gross receipts when the Supreme Court of the United States shall so decide, in a case involving this question.

My judgment is, that the act of the General Assembly of this State, requiring telegraph companies to pay a tax upon their gross receipts, is not only a just and proper law, but that it is in accordance with the constitution.

Yours very truly,
J. A. KOHLER,
Attorney General.

TOWNSHIP TRUSTEES, COMPENSATION OF, HOW ESTIMATED.

Attorney General's Office,
Columbus, Ohio, November 12, 1887.

C. A. Miller, Esq., Galion, Ohio:

DEAR SIR:—Yours of the 4th inst. received. It is a general rule that the law knows no fractions of a day, and I do not think that it is necessary to count the hours. As a general rule any portion of a day is set down as one day, and I think it would be proper to estimate the compensation of township trustees accordingly.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; COMPENSATION OF, FOR CERTAIN SERVICES.

Attorney General's Office,
Columbus, Ohio, November 17, 1887.

H. S. Armstrong, Esq., Prosecuting Attorney, Woodsfield, Ohio:

DEAR SIR:—Yours of November 14th received. In regard to your first inquiry concerning the making of an allowance to the county auditor for extra services under the act of May 19, 1886, you say that the act being silent as to compensation, you wish to know whether any compensation can be allowed. The uniform rule in such cases is that remuneration can only be made by the commissioners where the law expressly authorizes it; and where an act of the General Assembly enjoins the performance of a duty upon an officer but makes no provision for compensation for the performance of that duty, then none can be allowed. This question has been decided in our courts.

Second—As to the matter of county roads, I have not examined the various sections and you have referred me to none; but the rule above stated applies.

If the Statute provides for compensation where the commissioners order the report, etc., to be recorded, then it is all right, but unless provision is expressly made for that service, my judgment would be against it; and the same rule answers your third question concerning allowance to the auditor as a member of the board of equalization. You can readily find the answer by examining the Statutes. If it is there expressly provided for, it may be paid, but if not provided for, whatever service may be rendered, no compensation can be paid out of the public money until the law in express terms as provided.

Yours very truly,
J. A. KOHLER,
Attorney General.

Clerk of County; Duty of, as to Making Index Under Section 5339a.

CLERK OF COUNTY; DUTY OF, AS TO MAKING INDEX UNDER SECTION 5339a.

Attorney General's Office,
Columbus, Ohio, November 17, 1887.

S. N. Schwartz, Esq., Prosecuting Attorney, Millersburg, Ohio:

DEAR SIR:—Yours of the 12th of November duly to hand and inquiry noted.

I have not examined the question very carefully, but my predecessors in office have recorded opinions to the effect that section 5339a, allows fifteen cents for making direct and reverse indexes and eight cents for execution docket; and this holding I do not wish to disturb. Upon the other point which you present, however, namely: Where there are a half dozen defendants and as many judgments, whether the clerk is entitled to as many times fifteen cents as there are defendants, I am not prepared to say that the amount can be allowed. The law says, "for each case," but it seems to me that this comprehends all the parties in the case.

I am aware that where there are a number of defendants and separate judgments for each one entered, that the labor of indexing is correspondingly increased, but it is for the General Assembly to remedy this by legislation. As the law reads, however, I must answer your question in the negative.

I have the statement of the clerk of your county to the same question at much greater length.

Yours very truly,
J. A. KOHLER,
Attorney General.

Constable; Allowance to, For Capture of Person Accused of Felony.

CONSTABLE; ALLOWANCE TO, FOR CAPTURE OF PERSON ACCUSED OF FELONY.

Attorney General's Office,
Columbus, Ohio, November 22, 1887.

J. B. Worley, Esq., Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—Your letter of the 21st inst. received. I have examined the sections of the Revised Statutes to which you call my attention, and taking section 1309, and considering it in connection with the two preceding sections my judgment is that the county commissioners may, in their judgment and discretion, allow the constable such sums as they may deem just for his services in the capture of the person escaping to the state of Illinois; provided, however, that the aggregate sum shall not exceed one hundred dollars during the current year.

I think this is warranted and the officer appears to have acted with due diligence and in good faith, and I feel that the matter is in the discretion of the commissioners of the county and within the scope of that section.

This being so it is unnecessary to pass upon the question of an allowance under section 1310.

If the constable claims more than one hundred dollars (the limit fixed for the allowance of the commissioners in any one year) my conclusion is that, under the circumstances, no allowance could be made under section 1310.

Yours very truly,
J. A. KOHLER,
Attorney General.

Physician; How He May Sell Medicine—County Commissioners; Allowance by, for Killing of Sheep When Owner is a Non-Resident of County.

PHYSICIAN; HOW HE MAY SELL MEDICINE.

Attorney General's Office,
Columbus, Ohio, November 19, 1887.

J. A. Nipgen, Esq., Secretary of the Ohio Board of Pharmacy, Chillicothe, Ohio:

DEAR SIR:—Yours of November 10th, enclosing mine of the 5th inst. duly received.

I will only add that you are undoubtedly right in your opinion that a physician cannot sell medicine in a commercial way unless he be a registered pharmacist.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; ALLOWANCE BY, FOR KILLING OF SHEEP WHEN OWNER IS A NON-RESIDENT OF COUNTY.

Attorney General's Office,
Columbus, Ohio, November 22, 1887.

John Pearson, Esq., County Commissioner, Mallet Creek, Ohio:

DEAR SIR:—Yours of the 21st inst. received. I presume you refer to section 4215 of the Revised Statutes. The language is quite clear and my judgment is, that, under the circumstances stated, the damage for the killing of the sheep should, upon a proper showing, be paid by the commissioners of Medina County. The sheep, it seems, were in fact killed by dogs in Medina County. This settles the matter. The residence of the owner under the Statute in ques-

Auditor of County; Compensation of, for Performing Extra Services.

tion, makes no difference. You had, however, better consult with your prosecuting attorney, who is your legal adviser.

Yours very truly,

J. A. KOHLER,

Attorney General.

AUDITOR OF COUNTY; COMPENSATION OF, FOR PERFORMING EXTRA SERVICES.

Attorney General's Office,
Columbus, Ohio, December 1, 1887.

John M. Mamara, Esq., County Auditor, McArthur, Ohio:

DEAR SIR:—Your letter duly received. Today I had a conversation with Mr. Kiesewetter, the auditor of state, relating to the matter of your compensation for changing on duplicate, etc., and while it is not officially my duty to give advice, I have nevertheless concluded to say in answer to your letter what my judgment is, and it is that I think the matter of compensation awarded you is properly within the discretionary power conferred upon your county commissioners and properly payable out of the general expense fund of your county. It seems that you have faithfully performed the work, the commissioners were satisfied in regard to the amount charged for your services and duly ordered it to be paid, and the same was drawn by you from the county treasury upon their warrant and order.

Such being the case, I do not think that it would be right or legal that you should pay it back. All of which is respectfully submitted.

Yours very truly,

J. A. KOHLER,

Attorney General.

Clerk of County; Term of, When Appointed to Fill Vacancy —Secretary of State; Distribution of Ohio State Reports By.

CLERK OF COUNTY; TERM OF, WHEN APPOINTED TO FILL VACANCY.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

John P. Bailey, Esq., Prosecuting Attorney, Ottawa, Ohio:

DEAR SIR:—Your letter received and contents noted. A vacancy having been created in the office of county clerk, by death, it is the duty of the commissioners to make an appointment to fill the vacancy, under section 1240, Revised Statutes. The person so appointed will hold the office until the next regular election in November, 1888, as provided in section 11, of the Revised Statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

SECRETARY OF STATE; DISTRIBUTION OF OHIO STATE REPORTS BY.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Yours of November 28th received. I have examined the act of May 1, 1871, Vol. III, of Revised Statutes, p. 867, and my judgment is that it was intended by this act to authorize a distribution of the volumes of the Supreme Court Reports to the counties in case of lost or missing volumes.

It seems to me that the scope of the enactment was not to supply whole sets of the reports outright. If such had

been the purpose, I doubt not the language of the law would have been sufficiently clear to that end, but the extent to which the secretary of state may make distribution is limited to cases where it is shown by certificate of the clerk that volumes of the reports have been lost, or, what is the same thing—missing.

Now in the case presented to you, you are not asked to furnish lost or missing volumes, but entirely new sets of reports, and it is placed upon the ground that the present volumes in the possession of the clerk are practically worn out.

Until the General Assembly shall provide that you may furnish new sets, under the circumstances stated I will have to advise that you have no authority under this act, to comply with the request.

If this was the rule, you would doubtless have a great many applications from clerks for full and complete sets, and it would be somewhat difficult to determine at precisely what point of wear and use they shall be considered as practically worn out and be replaced by new and fresh volumes. In short—I think it is best to adhere to the language of the law and limit the new supply to cases where the reports are lost or missing.

Very respectfully,
J. A. KOHLER,
Attorney General.

ELECTION; COMPENSATION OF JUDGES AND CLERKS OF.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

Jacob Burkhart, Esq., Woodsfield, Ohio:

DEAR SIR:—Your letter of November 23d received.

The act of March 21, 1887, Ohio Laws, Vol. 84, p. 217, settles the question. Judges and clerks of elections are each

entitled to two dollars per election whether it takes one or more days. The compensation is therefore limited to two dollars.

Yours very truly,
J. A. KOHLER,
Attorney General.

RECORDER OF COUNTY; REMOVAL OF FAMILY DOES NOT DISQUALIFY.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

John M. Brodrick, Esq., Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—Your letter of November 29th received. The recorder of your county having been duly elected, so long as he continues to discharge the duties of that office he is entitled to hold it.

I am not prepared to say that the removal of his family outside the county lines will, under the circumstances, disqualify him as such officer.

Yours very truly,
J. A. KOHLER,
Attorney General.

EMPLOYES; MINORS, EMPLOYMENT OF IN FACTORIES, ETC.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

The Union Collar and Net Company, Dayton, Ohio:

GENTLEMEN:—Yours of November 19th received. You are doubtless familiar with the act relating to the employment of minors, and I have no power to add or take from it. That is a matter entirely for the General Assembly. Whether it is reasonable or not is not for me to determine.

The request that you make would appear to be entirely reasonable and the course you have adopted heretofore has not only been mutually concurred in but is entirely satisfactory to all the parties concerned, and if it were for me to determine, I would not interfere to overrule what appears to have been the wish and convenience of employers and employes, children and parents included. But as you refer the matter to me for legal advice I can simply say that the act of the General Assembly (with which you are doubtless familiar) settles the question, and until that act is repealed or modified, you will have to be governed by it. At all events it would not be consistent for me to advise you to disregard it. I am with great respect,

Yours very truly,
J. A. KOHLER,
Attorney General.

Inspector of Workshops and Factories; Number of Reports Chief is Entitled to.

INSPECTOR OF WORKSHOPS AND FACTORIES; NUMBER OF REPORTS CHIEF IS ENTITLED TO.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

Hon. Henry Dorn, Chief Inspector of Workshops and Factories:

DEAR SIR:—Your letter of November 19th received. I have examined the act passed April 6, 1886, (O. L. Vol. 83, p. 65-7) to which you call my attention, and without setting forth in detail my reasons, I give it as my conclusion that the language of the act authorizes the publication of four thousand copies in the English language for the inspector.

The subsequent provisions, relating to the printing in the German language, has reference to the distribution of ten copies to each member of the General Assembly, and the proportion of these ten copies to be printed in the German language must be ascertained by the secretary of state in the manner pointed out in the act. But the number so printed cannot, in my judgment, be taken from the number to be published for the use of the inspector, to-wit: Four thousand copies.

I believe this answers your question and I therefore submit the same respectfully without further argument or explanation.

Yours very truly,
J. A. KOHLER,
Attorney General.

Armory; County Should Pay for Cases in, in Certain Case —Publication; Of Notice of Tax Rate.

ARMORY; COUNTY SHOULD PAY FOR CASES IN, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, December 2, 1887.

Ross W. Funck, Esq., City Solicitor, Wooster, Ohio:

DEAR SIR:—I have read your letter of November 25th, and note the opinion therein of the adjutant general upon the point suggested by your letter.

My judgment accords with that expressed by him as to the right of the city and the duty of the commissioners in the premises.

I need not give you a detailed opinion but will content myself by giving you my judgment in the matter.

Yours very truly,
J. A. KOHLER,
Attorney General.

PUBLICATION; OF NOTICE OF TAX RATE.

Attorney General's Office,
Columbus, Ohio, December 13, 1887.

Wm. H. Dore, Esq., Prosecuting Attorney, Tiffin, Ohio:

DEAR SIR:—Yours of December 6th received. I find that the question that you ask, in regard to the publication of the tax rate has been investigated and in fact decided by my predecessor in office, Hon. James Lawrence.

His recorded opinion is that such notice shall be published in two newspapers. As this opinion stands as a precedent, I adhere to it. If more is claimed, the question can be submitted to the courts.

Yours very truly,
J. A. KOHLER,
Attorney General.

Report of Committee Appointed to Examine Report of County Commissioners.

REPORT OF COMMITTEE APPOINTED TO EXAMINE REPORT OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, December 14, 1887.

S. A. Court, Esq., Prosecuting Attorney, Marion, Ohio:

DEAR SIR:—Absence from the city has prevented me from answering your letter until now.

Under the circumstances stated, the report submitted by the persons appointed by virtue of section 917, of the Revised Statutes is illegal and void for the following reasons:

First—All members of the committee were not notified of the meeting for the performance of the work devolving upon them.

Second—The parties appointed by the judge were not duly sworn before entering upon the discharge of their duties.

I would not advise you to file a minority report as this might be construed as a recognition of the validity of the act of the committee, but would refuse entirely to consider the committee as a legal one until you are duly notified and the persons duly sworn. Regretting my inability to answer you before today, I remain,

Yours very truly,
J. A. KOHLER,
Attorney General.

Taxation of Property Used for Catholic School Purposes—Inspector of Mines; Duty of, Regarding Enforcement of Laws Regarding Proper Ventilation of Mines.

TAXATION OF PROPERTY USED FOR CATHOLIC SCHOOL PURPOSES.

Attorney General's Office,
Columbus, Ohio, December 14, 1887.

A. R. Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your letter of the 12th inst. received. My understanding is, that such school property is not taxable, and the auditor of state informs me that such is the rule in respect to the property of Catholic schools.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSPECTOR OF MINES; DUTY OF, REGARDING ENFORCEMENT OF LAWS REGARDING PROPER VENTILATION OF MINES.

Attorney General's Office,
Columbus, Ohio, December 14, 1887.

Hon. Thos. B. Bancroft, Chief Inspector of Mines:

DEAR SIR:—Your letter of the 2d inst. received. Also correspondence enclosed.

I have considered your inquiry as to your discretion in the premises in the matter of the enforcement of section 298, of the Revised Statutes.

It is clearly apparent that in this particular case there are reasons showing that it would be better if the law was not applied. This often happens in respect to general laws, but the trouble is that you have no law making power. On

the other hand, you have no authority to suspend the operation of a law in any particular case. This power belongs to the General Assembly, and as you are simply an executory officer to enforce the laws passed by the Legislature, I do not see how you can do otherwise than see that the law is in force.

It would be in order at any time to apply to the General Assembly for a modification of the act or make such exception thereto as experience may show to be judicious and proper.

Yours very truly,

J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; POWER TO CONVEY REAL ESTATE IN CERTAIN CASES.

Attorney General's Office,
Columbus, Ohio, December 14, 1887.

J. E. Elliott, Esq., Prosecuting Attorney, Greenville, Ohio:

DEAR SIR:—Your letter received and inquiry noted. My opinion is, upon the statement of facts contained in your letter, that the commissioners may sell and convey the piece of land described. I think, however, before two commissioners may act in the matter that the vote should be given at a meeting when all the commissioners are present, or at least, of which there was due notice. In such case a majority only may act, and when the sale is made by them in good faith for the best interests of the county, they may execute a valid conveyance.

This question is a new one but this is my judgment upon the facts you have disclosed to me.

Yours very truly,

J. A. KOHLER,
Attorney General.

County Infirmary; Duty of Directors of, as to Transfer of Lunatic to Insane Asylum—County Commissioners; Annual Report of; How Published.

COUNTY INFIRMARY; DUTY OF DIRECTORS OF, AS TO TRANSFER OF LUNATIC TO INSANE ASYLUM.

Attorney General's Office,
Columbus, Ohio, December 20, 1887.

T. J. Lease, Esq., Superintendent of Infirmary of Seneca County, Tiffin, Ohio:

DEAR SIR:—Your letter of the 16th inst. received.

While I have no authority granted me by the statutes to give you an official opinion, on the inquiry presented, and the matter should perhaps, be submitted to your prosecuting attorney, I would give it as my private opinion that it is the duty of the directors of the county infirmary to transfer the lunatic from the infirmary to the asylum.

The above opinion is based entirely on the brief statements of facts contained in your letter. I think if there is any further question as to whose duty it is to make such conveyance, you had better consult the legal adviser of county officers.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; ANNUAL REPORT OF; HOW PUBLISHED.

Attorney General's Office,
Columbus, Ohio, December 20, 1887.

Robt. C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your letter of the 17th inst. received.

Ohio Penitentiary; Detention of Convict After Expiration of Term as an "Habitual Criminal."

First—I think the publishing of the report of your county commissioners in the manner indicated in your letter would be a substantial compliance with the Statutes.

Second—In my opinion, the report above referred to must be published as filed and any abridgment or revision of the same is not contemplated by law and is not permissible.

Yours very truly,

J. A. KOHLER,
Attorney General.

OHIO PENITENTIARY; DETENTION OF CONVICT AFTER EXPIRATION OF TERM AS AN "HABITUAL CRIMINAL."

Attorney General's Office,
Columbus, Ohio, December 20, 1887.

Hon. E. G. Coffin, Warden of Ohio Penitentiary:

DEAR SIR:—Yours of December 7th is before me.

I have given the question which you present consideration, and, indicated in my oral opinion to you, when the matter was first brought to my attention, my judgment is, that a prisoner who is serving a third term sentence, cannot be detained in the penitentiary after his term of sentence expires unless such detention and finding of fact by the court is made a part of the sentence.

The reason for this I will briefly state, inasmuch as you suggest that the board of managers differ somewhat in opinion as to the law. Neither the board of managers, nor the warden has any judicial function or power. They are executive officers. When a prisoner is sent to the penitentiary for the *third* time, he is to be regarded as an "habitual prisoner," but in point of fact he may have served one term in one state and another term in another state, and be sent for a

County Surveyor; Compensation of Assistants to, No Distinction Between Surveyor and Engineer Contemplated in Sections 4454, *and* 4494.

third term in Ohio. Now in the absence of a finding by the court who is to determine the matter? The prisoner whose term has expired is certainly entitled to a hearing as to whether he has been previously sentenced or not. In short, I do not think that the warden and board of managers can determine this question and that they can detain a prisoner after his term has expired by merely *charging* him with having previously served two terms. I doubt very much whether a court of competent jurisdiction could render a sentence for such life imprisonment as is indicated in the act, without a due and regular presentment and an opportunity given the accused to defend; but this question is not before me and it is not necessary that I should record an opinion on the question.

I will, therefore, answer your question in the negative.

Yours very truly,

J. A. KOHLER,

Attorney General.

COUNTY SURVEYOR; COMPENSATION OF ASSISTANTS TO, NO DISTINCTION BETWEEN SURVEYOR AND ENGINEER CONTEMPLATED IN SECTIONS 4454, AND 4494.

Attorney General's Office,
Columbus, Ohio, December 21, 1887.

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

DEAR SIR:—I have examined the questions embraced in your six interrogations, and from the somewhat hasty examination I have made will answer as follows:

First—No provision is made for assistants under section 4506, except the phrase "all other hands necessary."

County Surveyor; Compensation of Assistants to, No Distinction Between Surveyor and Engineer Contemplated in Sections 4454, *and* 4494.

This evidently does not refer to engineers' or surveyors' deputies; but an engineer or surveyor may appoint a deputy or assistant competent to do the work for such engineer or surveyor, and for this service the latter may receive the sum of four dollars per day—the principal may—but the amount paid to the agent is a private matter. I think this also covers your second inquiry.

Second—I can see no distinction between county surveyor and engineer under section 4454, either may be appointed and I think the same rule governs.

Third—If the county surveyor receives the appointment he may appoint his deputy to do the work, and for this he may charge four dollars per day, the work of the deputy is in fact the work of his principal, and he stands in the place of his principal.

Fourth—I do not see how, under section 4494, in the business provided for under section relating to county ditches, and so far as charges are concerned, the surveyor stands on a different footing from or has an advantage over an engineer who receives the appointment. A surveyor may employ his deputy to do the work and an engineer, being otherwise engaged, may employ a competent person to act for him.

There is nothing personal in the work that imperatively requires the personal service of the engineer or surveyor.

What either does by another competent to do it, is the act of the principal for which he may receive the compensation provided by law. The amount charged by such deputy or agent lies between him and his principal. With this the commissioners have nothing to do. I think this answers your last inquiry also. I believe I have covered all your inquiries and given you my best judgment.

Yours very truly,

J. A. KOHLER,
Attorney General.

Dow Liquor Law; Payment of Funds Into Township Fund in Certain Case—Election of Judge of the Court of Common Pleas; Validity of, in Certain Case.

DOW LIQUOR LAW; PAYMENT OF FUNDS INTO TOWNSHIP FUND IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, December 23, 1887.

T. K. Dissette, Esq., Assistant Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—Yours of December 19th duly received.

I have duly considered your statement regarding the proper distribution of the Dow Law fund in the township of East Cleveland.

Your statement shows that the village of Glenville has no poor fund; that the township in which Glenville is situated has a poor fund and in fact takes care of all the paupers of said township—including those of the village of Glenville. Under the circumstances my conclusion is that your advice in the premises is correct, viz.: That the money should go to the poor fund of the township.

As I am extremely busy at this season of the year, I know you will pardon me for not writing out a longer opinion, but I think I have covered your question.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTION OF JUDGE OF THE COURT OF COMMON PLEAS; VALIDITY OF IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 11, 1888.

Hon. J. B. Foraker, Governor of Ohio:

SIR:—Your letter of the 31st ult. enclosing certificate of election of Frank Davis to the office of Judge of the Court

Election of Judge of the Court of Common Pleas; Validity of, in Certain Case.

of Common Pleas and requesting an opinion touching the legality of said election received.

I have examined the question presented with some care. The act creating this judgeship was passed March 26, 1883, Vol. 80, O. L., p. 76. It is expressly provided that the term of office of the person elected shall begin on the 15th day of October, 1883, and continue for the period of five years. The second section of the act provides that all elections therefor shall be held on the second Tuesday of October next preceding the expiration of the term of office. It is very queer that the second Tuesday of October was fixed as the day of election for the reason that at that time the general state election, including the election of judges of Common Pleas Court, according to law the act then in force, was held on the second Tuesday of October. Under the recent amendments of the constitution and the act passed March 24th, 1886, Vol. 83, Ohio Laws, p. 35, entitled: "An act to amend sections 2978 and 2979 of the Revised Statutes of Ohio," this has been changed and judges of the Court of Common Pleas are elected on the first Tuesday after the first Monday in November.

The election of a judge under the special act passed March 26, 1883, was provided for by making the general election laws applicable thereto, but no machinery is now provided for holding an election in October. The object and purpose of amending the constitution and laws was to relieve the people of the necessity of holding two elections in the same year, and hence the officers formerly elected in October are now elected in November.

I am very clearly of the opinion that the election of Davis as Judge of the Court of Common Pleas, held on the 8th day of November last, was in all respects regular and legal, and that the objection made that the election should have been held on the second Tuesday of October, as provided in the original act of 1883, cannot be sustained. See E. D. Sawyer vs. The State ex rel. Morton T. Horr, Supreme Court, Oct. 11, 1887, Law Bulletin No. 19, p. 293.

Election of School Directors in Certain Case.

I find a newspaper report of the case of the State of Ohio ex rel. Thomas B. Barrett vs. W. H. Barbee, sheriff, appended to the clerk's certificate before me. I think this case is *not in point.* The decision of the court in that case stands upon a different state of facts. In that case the court held that section 2978, amended in Vol. 83, Ohio Laws, does not apply. In this case I think it does apply.

Very respectfully,
J. A. KOHLER,
Attorney General.

ELECTION OF SCHOOL DIRECTORS IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 9, 1888.

A. R. Johnston, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Yours of the 26th ult. duly received.

I have had but little time to examine the important question to which you call my attention, but I am of opinion that the last election ordered by the board and when the time of office was properly designated, should be respected. I believe the will of a majority of the voters, as expressed at the election, should govern.

Yours very truly,
J. A. KOHLER,
Attorney General.

STATE BOARD OF HEALTH; COMPENSATION OF MEMBERS OF.

Attorney General's Office,
Columbus, Ohio, November 11, 1887.

T. H. Beckwith, M. D., Member of Ohio State Board of Health, Cleveland, Ohio:

DEAR SIR:—Yours of the 9th received.

In estimating the time for which you receive compensation, the time occupied in coming and going to and from your place of residence is included.

You were in session two days, as I understand it, and instead of taking Friday next after your meeting, you left Thursday night, after adjournment, and reached home late that night. I don't think the spirit of the law requires that you should leave at night in order to save one day's time.

My judgment therefore is, that your claim is right and that you should be allowed compensation for three days.

Yours very truly,
J. A. KOHLER,
Attorney General.

STATE BOARD OF HEALTH; COMPENSATION OF MEMBERS OF.

Attorney General's Office,
Columbus, Ohio, January 9, 1888.

T. C. Hoover, M. D., Member of State Board of Health, Columbus, Ohio:

DEAR SIR:—Yours of December 14, 1887, duly received.

I have considered the question which you present, touching the per diem of members of your board and frac-

tions of a day. It seems to me that there should be but little question about a matter of this kind.

Members of the board, in presenting their account for time occupied in the service of the State, should be guided by the same rule, that would be applied in making out an account for professional services against an individual. It is difficult to lay down any precise rule. In the opinion heretofore rendered to Doctor Beckwith on the subject I intended to give a liberal construction, and it seemed to me that a member coming from a distance to attend a meeting of the board, after attending such meeting during substantially the whole of one day, that he would not be obliged to leave at a late hour at night to reach home in order to save the expense of another day; but where the business of the board in fact ends at such an hour in the day that he could leave for his home without traveling to a late hour in the night, I think it would be reasonable to expect him to do it. I do not name any hour, but will leave that question to be determined by what is the ordinary practice of physicians in their accounts with their patients.

Yours very truly,

J. A. KOHLER,
Attorney General.