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*Judgments; Clerks' Fees for Indexing.*

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*known* to have been shot down in the presence of witnesses. Such a body is not "found" in contemplation of the statute. Webster defines the word "find" as follows: "To meet with, or light upon accidentally; to gain the first sight or knowledge of, as of something new, or unknown, or unexpected." In the case of *Muzzy vs. Hamilton County*, reported in *Western Law Journal*, Vol. 2, 426, it was decided that "a coroner has no power to hold an inquest except where the cause of death is unknown." In a hasty examination, I find no reported case in which the contrary doctrine is held. I am aware that it is a common practice in the State to hold inquests in cases such as you mention, and there are often weighty reasons for doing so, such as the detention of witnesses, etc., but the weight of authority, it seems to me, is against such practice, except where the cause of death is unknown.

Very respectfully,  
D. H. HOLLINGSWORTH,  
Attorney General.

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JUDGMENTS; CLERKS' FEES FOR INDEXING.

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

*John M. Cook, Esq., Prosecuting Attorney, Steubenville, Ohio:*

DEAR SIR:—Your favor of 8th inst. has been received. Original section 5339, R. S., provides for keeping an index to the judgments, and included in this index, must be shown, among other things, "the number and time of issue of the execution." Sec. 1260 provides that the clerk for his services shall receive, "for indexing judgments, etc., fifteen cents," "for index to each execution, etc., eight cents."

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*Governor; Execution of Quit Claim Deed by.*

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Amended section 5339a provides that he shall receive for making the index, which is to be such an index as is mentioned in section 5359, the same fees as are now provided by law for making indexes to judgments. It is not very clear, but on a hasty examination, I am of the opinion that this must be held to include both fees, making a total of twenty-three cents in each case. Section 1263 makes this conclusion somewhat doubtful, but on the whole I am satisfied that the clerk, under section 5339a is entitled to twenty-three cents for making a *full* index to each judgment.

I may say that I gave considerable weight in coming to this conclusion, to the fact that Judges Home and Pearce advise payment of the claim of Clerk White at this rate.

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

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GOVERNOR; EXECUTION OF QUIT CLAIM  
DEED BY.

Attorney General's Office,  
Columbus, Ohio, January 10, 1884.

*Hon. Chas. Foster, Governor:*

I have examined the several acts of the General Assembly, and the within minutes of the board of public works, relating to the transfer of the Walhonding Canal to the Mt. Vernon, Coshocton and Wheeling Railway Company, and am of the opinion that the proposed transfer is legal and in accordance with the laws of the State.

It is doubtful, however, if it be essential to the valid completion of such transfer, that a quit claim deed should be executed by the governor on behalf of the State, as pro-

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*Prosecuting Attorney; Percentage on Fines and Costs.*

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vided in section 4115, R. S., yet I am satisfied that it would not be illegal or improper to execute such deed as requested by the board of public works.

D. H. HOLLINGSWORTH,  
Attorney General.

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PROSECUTING ATTORNEY; PERCENTAGE ON  
FINES AND COSTS.

Attorney General's Office,  
Columbus, Ohio, January 12, 1884.

*W. B. Baker, Esq., County Auditor, Xenia, Ohio:*

DEAR SIR:—Your favor of 11th inst. is received.

I am of the opinion that, under Sec. 1298, R. S., prosecuting attorneys are entitled to ten per cent. on all fines, forfeited recognizances, and costs in criminal cases, which are collected from defendants. I think the revised statutes did not in effect change this provision of the law. Costs, when paid by the State or county, are not *collected* in the sense in which the word is used in the above section.

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

*Trustees Appointed Under Act of April 18, 1883, Must be Confirmed by Senate—Toledo Asylum; Appointment of Trustees for.*

TRUSTEES APPOINTED UNDER ACT OF APRIL 18, 1883, MUST BE CONFIRMED BY SENATE.

Attorney General's Office,  
Columbus, Ohio, January 12, 1884.

*Hon. Chas. Foster, Governor, Columbus, Ohio:*

DEAR SIR:—The question on which you ask my official opinion is this:

Are the trustees to be appointed under section 4 of an act of the General Assembly, passed April 18, 1883, entitled "An act to provide for additional accommodations for the insane of the State" (O. L., Vol. 80, 181) required to be confirmed by the Senate?

I answer in the affirmative. Section 2, article 7, of the Constitution is, in my judgment, applicable to the appointment of these trustees the same as to those of other institutions.

Respectfully,  
D. H. HOLLINGSWORTH,  
Attorney General.

TOLEDO ASYLUM; APPOINTMENT OF TRUSTEES FOR.

Attorney General's Office,  
Columbus, Ohio, January 16, 1884.

*Hon. George Hoadly, Governor, Columbus, Ohio:*

SIR:—At your request I have examined the act passed April 18, 1883, entitled, "An act to provide for additional accommodations for the insane of the State" (80 O. L., 181), and am of opinion that the trustees named in section four of said act are such trustees as are provided for in sections 634 and 635 of the Revised Statutes, as amended April 14,

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*Toledo Asylum; Appointment of Trustees for.*

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1880 (77 O. L., 203), and that said trustees should be appointed as follows: One for one year, one for two years, one for three years, one for four years and one for five years. It must be confessed that the meaning of said section four is involved in some obscurity, but the construction given above seems to be the most reasonable one as well as the one in accordance with the intention of the legislature. The term "trustee" used in the section immediately preceding undoubtedly refers to the general trustees of such institutions. The word being thus used in an ascertained sense, it must be presumed that it continues to be used in the same sense unless otherwise defined or limited. If the legislature intended under section four to create trustees of a different kind from those previously mentioned, I cannot but think that such purpose would have been clearly declared. In the event that the new asylum had been located upon the grounds of an existing institution the trustees of such institution are by section three empowered to proceed with the erection of asylum buildings.

The same power is conferred by section four upon the trustees therein named. There seems to be no more occasion for a special board or building commission in the one case than in the other. Again, if a special board of trustees is contemplated no term of office for such trustees is provided, and no provision is made for the payment of their expenses, while the extent of their powers and duties is left in great uncertainty. I cannot think the act would be so incomplete in these respects had it been the intention to create such special board. By section 635 (77 O. L., 203) it is provided that "said trustees may *upon* the passage of this act be appointed as follows to-wit: One for one year," etc. I think that the word "upon" may well be read here as meaning "after" so that *after* the passage of said act the trustees may be appointed in the manner therein designated.

Respectfully submitted,

JAMES LAWRENCE,

Attorney General.

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*Insurance Company; Articles of Incorporation of.*

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## INSURANCE COMPANY; ARTICLES OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, January 16, 1884.

*Hon. James W. Newman, Secretary of State, Columbus, Ohio:*

DEAR SIR:—Your favor enclosing articles of incorporation of the "Equitable Accident Insurance Company of Cincinnati, Ohio" is received.

(1) It appears that one purpose for which the company is organized is insuring persons "against expenses and loss of time occasioned by accident." I find no authority under section 3670, R. S., for the incorporation of companies for such purpose.

(2) It is stated in the articles that "the property of said corporation will be located in Hamilton County, Ohio." This is not a compliance with section 3236, which requires the articles to state the place where it (i. e., the corporation) is to be located or where its principal business is to be transacted.

(3) I question also whether the statement that the "amount of capital stock necessary for the said corporation is the sum of \$100,000.00" is equivalent to stating what is the amount of such capital stock. I, therefore, am of opinion that these articles should not be filed in your office and advise that the same be returned to the incorporators.

Respectfully,

JAMES LAWRENCE,  
Attorney General.

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*Liquor Law; Removal of Dealer Who Has Paid Tax.*

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LIQUOR LAW; REMOVAL OF DEALER WHO HAS  
PAID TAX.

Attorney General's Office,  
Columbus, Ohio, January 18, 1884.

*B. F. Enos, Esq., Prosecuting Attorney, Defiance, Ohio:*

DEAR SIR:—Your letter to Senator White was by him handed to me for answer. I do not know whether Evansport and Sherwood are villages or not. If either is a village, I am of opinion that a dealer who removes from one place to the other must pay his tax under the "Scott law" for the remainder of the year, although he has paid it for the full year in the place from which he removed. If neither place is a village, I think he is not required to pay any further tax for this assessment year. I make this distinction owing to the provision in section seven concerning the distribution of the tax. If a dealer removes from one place to another in the same corporation or from one place to another in the same county outside of a corporation, there is no change in the district entitled to the tax, and there is no reason why he should be compelled to pay the second time. But where he removes from one tax district to another the case is different.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

Citizens Saving Bank Company; Articles of Incorporation of.

CITIZENS SAVING BANK COMPANY; ARTICLES  
OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, January 19, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the Citizens Savings Bank of Sandusky, Ohio, which I decline to approve.

(1) The constitutionality of the statutes under which the company proposes to organize (title 2, chap. 16, part II, R. S.), will probably be passed upon by the Supreme Court at an early day. I, therefore, express no opinion upon that point. This company, however, has attempted to organize for a purpose not authorized by said statutes to-wit: for the purpose of carrying on the banking business in the said city of Sandusky.

(2) The articles do not state the number of shares into which the capital stock is divided.

(3) The officer taking the acknowledgment signs as mayor of the city of Sandusky, while the certificate of the county clerk is that he is a notary public. I, therefore, advise that the articles be returned to the incorporators.

Yours truly,

JAMES LAWRENCE,  
Attorney General.



*Longview Asylum; Term of Office and Bond of Steward,  
Etc.—County Treasurer; Payment of Outstanding  
Warrants.*

LONGVIEW ASYLUM; TERM OF OFFICE AND  
BOND OF STEWARD, ETC.

Attorney General's Office,  
Columbus, Ohio, January 19, 1884.

*Dr. C. A. Miller, Superintendent of Longview Asylum, Car-  
thage, Ohio:*

DEAR SIR:—I am of opinion that a steward or assistant  
physician of Longview Asylum appointed in pursuance of  
section 725, Revised Statutes, holds his office until removed  
as provided in sections 729-731, and that the re-election of  
the superintendent does not create a vacancy in such offices.  
On such re-election it is not necessary that they be re-  
appointed nor is it necessary for the steward to renew his  
bond, provided his present bond runs during his term of  
office. I think I have answered all your questions.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

COUNTY TREASURER; PAYMENT OF OUT-  
STANDING WARRANTS.

Attorney General's Office,  
Columbus, Ohio, January 21, 1884.

*C. H. Buerhaus, Esq., Prosecuting Attorney, Logan, Ohio:*

DEAR SIR:—Owing to the press of other business, I  
have not had time until today to further examine the ques-  
tions stated by you. I am still of the opinion that where  
the outstanding warrants drawn upon the county treasurer  
exceed the amount in the treasury belonging to the fund

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*"Scott" Liquor Law; Tax Cannot be Transferred.*

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upon which they are drawn, the treasurer may lawfully apply the money on hand, so far as it will go, to the payment of such warrants, paying them in the order in which they were first presented to him. Nor in such case do I think it necessary for him to publish notice as provided in section 1109. The only object of such notice is to notify the parties holding warrants and to stop interest thereon.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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"SCOTT" LIQUOR LAW; TAX CANNOT BE TRANSFERRED.

Attorney General's Office,  
Columbus, Ohio, January 21, 1884.

*Mr. W. D. Poling, County Auditor, Lima, Ohio:*

DEAR SIR:—Yours of the 18th instant was duly received. I am of opinion that the assessment under the "Scott law" must be paid by each person engaged in the traffic in intoxicating liquors, and that the receipt for such payment or rather the immunity secured thereby, cannot be transferred to another. In case a dealer who has paid the tax sells to another during the assessment year the purchaser, if he continues the business, must pay the tax for the remainder of the year as provided in section two.

As the prosecuting attorney is the only county officer to whom the attorney general is authorized to give official opinions, you must take the foregoing for what it is worth.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Mutual Fire Insurance Company; Reinsurance by—Municipal Corporations; Issue of Bonds by "General" Election.*

MUTUAL FIRE INSURANCE COMPANY; REINSURANCE BY.

Attorney General's Office,  
Columbus, Ohio, January 22, 1884.

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

DEAR SIR:—On the case stated by you, I am of opinion that the Delaware Mutual Fire Insurance Company cannot reinsure its outstanding risks in the Capital City Mutual Fire Insurance Company of Columbus, Ohio. Such reinsurance would be in effect a consolidation of the companies for which there is no authority under our laws. In case of such reinsurance I know of no way whereby the Capital City Company could collect money to pay for losses on the risks thus assumed by it. I express no opinion as to whether a mutual fire insurance company, having issued policies on the stock plan, as provided in section 3653, Revised Statutes, can reinsure such risks in another mutual company, authorized to issue policies upon the stock plan.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; ISSUE OF BONDS BY "GENERAL" ELECTION.

Attorney General's Office,  
Columbus, Ohio, January 23, 1884.

*Mr. Will H. Waldron, Village Clerk, St. Paris, Ohio:*

DEAR SIR:—I am in receipt of your letter of the 22d instant. I think that the term "general" election used in

*Mutual Fire Insurance Company; Must Assess Members  
September 30th.*

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section 2837, Revised Statutes, refers to the regular annual election held on the first Monday in April and the second Tuesday of October, the term "general" being used in contradistinction to "special." I also think that the question of issuing bonds is properly submitted by a resolution, but the resolution must receive the concurrence of a majority of all of the members of the council, not merely a majority of those present at a meeting. Of course, you will understand that the attorney general is not authorized to give official opinion to municipal officers, but as there seems to be no controversy further than a doubt as to the construction of the statute, I have not thought it improper to give my opinion. You must consider it, however, merely as a private opinion and entitled to no more weight than that of any other lawyer.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUTUAL FIRE INSURANCE COMPANY; MUST  
ASSESS MEMBERS SEPTEMBER 30TH.

Attorney General's Office,  
Columbus, Ohio, January 24, 1884.

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

DEAR SIR:—I am in receipt of your favor of the 23d instant. Section 3650, Revised Statutes as amended April 15, 1882 (79 O. L., 133) provides that every mutual fire insurance company organized under the laws of the State "shall assess its members on the 30th day of September of each year, sufficiently to liquidate all liabilities of the company existing at the time of assessment." This is an important require-

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*Fidelity and Casualty Company; License of, Etc.*

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ment of the law and is mandatory in its terms. If any such company has not substantially complied therewith the superintendent of insurance cannot lawfully issue to said company a certificate that it has complied with the laws of the State relating to insurance.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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FIDELITY AND CASUALTY COMPANY; LICENSE  
OF, ETC.

Attorney General's Office,  
Columbus, Ohio, January 25, 1884.

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

DEAR SIR:—Your favor of the 17th instant with the accompanying papers, briefs and exhibits, was duly received. I have also heard the arguments of counsel upon the question submitted to me.

1. It appears that the "Fidelity and Casualty Company of New York" is a corporation organized under the laws of the State of New York prior to the 6th day of June, 1879, and by its charter is authorized to make (among others) the following kinds of insurance, to-wit:

(1) Against personal injury, disablement or death resulting from traveling or general accidents by land or water. (2) Guaranteeing the fidelity of persons holding places of trust, public or private. (3) Upon plate glass. (4) Upon steam boilers. By the laws of said State, in force when said company was organized and incorporated, corporations might lawfully be formed to make all of said four several kinds of insurance, but, by an act passed June 6, 1879, it was provided that no company thereafter organized

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*Fidelity and Casualty Company; License of, Etc.*

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should undertake or do more than one of said kinds of insurance, saving, however, that nothing therein contained should affect the business of any company theretofore duly organized. The said Fidelity and Casualty Company is now and has been engaged in the business of making all of said four kinds of insurance both in the State of New York and in other states. For several years past said company has annually received from the superintendent of insurance a certificate of authority to make within this State all of said kinds of insurance except that known as fidelity insurance. Said company, however, has during said period transacted within this State the business of fidelity insurance as well as the three kinds which it was licensed to do. I am informed that in the month of January, 1884, you revoked the certificate of authority granted to said company, and the question is now submitted to me whether you "can lawfully issue a license to said company to do the business of insuring against accidents to persons, business of plate glass insurance, business of steam boiler insurance or all or any of them." To this I reply, that in my opinion, if under all the circumstances you deem it proper, you can lawfully issue such license to said company to do all or any of said three kinds of insurance you name, but that if in the exercise of a sound discretion you refuse to issue such license, said company cannot compel you so to do.

2. It is contended that such license cannot lawfully be issued to said company because an insurance company organized under the laws of Ohio to make more than one of the several kinds of insurance which the Fidelity and Casualty Company is authorized to make, would not be permitted to do business in New York, and that, therefore, such company organized under the laws of New York must be prohibited from doing business within this State, by reason of what is called the reciprocal provisions of our statutes. The following is the provision relied on in this case.

"When by the laws of any other State or nation any taxes, fines, penalties, license fees, de-

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*Fidelity and Casualty Company; License of, Etc.*

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posits of money or of securities or other obligations or prohibitions are imposed on insurance companies of this State, doing business in such state or nation or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions of whatever kind shall be imposed upon all insurance companies of such other state or nation doing business within this State and upon their agents here." (Section 282 Revised Statutes.)

A company cannot be organized under the laws of Ohio to make what is known as fidelity insurance, but under section 3641 Revised Statutes a company may be organized to make all of said three other kinds of insurance above mentioned to-wit: against accidents to persons, on plate glass and on steam boilers. In New York a company cannot now be organized to make more than one of said several kinds of insurance. There is no express provision in the laws of New York prohibiting from doing business in that State corporations of other states which have been organized to make more than one of said several kinds of insurance, but the power is specially given to the superintendent of insurance to refuse admission to any company from another state applying to be admitted to transact the business of insurance in that State whenever in his judgment such refusal to admit shall best promote the interests of the people of the State. Should a company organized under the laws of Ohio to make more than one of the aforementioned kinds of insurance apply for permission to transact business in New York, I am advised that the company would be refused admission by the superintendent of insurance. It does not appear, however, that any such company has actually applied for admission there and been excluded. The prohibition complained of is, therefore, a mere power in the superintendent of insurance which has not yet been exercised against an Ohio company. In the case of the State ex rel. The Mutual Reserve Fund Life Association of New York vs Moore, decided by our Supreme Court November

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*Fidelity and Casualty Company; License of, Etc.*

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27, 1883, it was held that under the provisions of section 3630c of the Revised Statutes (80 O. L., 180) the insurance commissioner cannot be compelled to issue his certificate of authority to do business in this State to a corporation organized under the laws of another State to do insurance of lives upon the assessment plan, where, by the laws of such other State, Ohio companies organized to do the business contemplated in section 3630, Revised Statutes are not entitled as of right to a certificate of authority to do business therein. Admitting that the same principle would apply to the question under discussion, I do not think it extends so far as to make it unlawful for you to admit a New York company to do business in this State should you in the exercise of your official discretion deem it proper so to do, at least not until an Ohio company has been actually prohibited from doing business in New York.

3. It is further urged as a reason why it is unlawful for you to issue a license to this company that a part of the business which it does and is authorized to do, to-wit: that known as fidelity insurance, is not such insurance as is authorized by our statutes, and is not properly insurance at all. Section 3656 provides, among other things, that no company organized under the laws of any other State for any of the purposes mentioned in said chapter which does a banking or any other kind of business in connection with insurance, shall directly or indirectly transact any business of insurance in this State. Whatever may be thought of the character of what is known as fidelity insurance, it is certainly a branch of the insurance business. The fact that it is not a kind of insurance for which companies are now permitted to be organized in Ohio cannot change the nature of the thing itself. I do not think you would be authorized to admit a company into Ohio to transact the business of fidelity insurance, but the foregoing provision of section 3656 does not make it unlawful for you to issue a license to this company to do the three kinds of insurance you have specified.



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*Mutual Protection Association; Name Assumed by.*

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4. In my opinion the whole question as to the admission of this company to do the three kinds of insurance named is left to your official discretion. This discretion must not be exercised arbitrarily or oppressively but in good faith. If you deem fidelity insurance specially hazardous, and the capital of the company is thereby exposed to undue risks; if this company has heretofore persisted in carrying on such business in this State contrary to the orders of your department, or if in any respects not called to my attention the company has failed to comply with the laws of this State, you would in my opinion be justified in refusing to issue it a license.

Respectfully yours,

JAMES LAWRENCE,

Attorney General.

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MUTUAL PROTECTION ASSOCIATION; NAME  
ASSUMED BY.

Attorney General's Office,  
Columbus, Ohio, January 28, 1884.

*Hon. James W. Newman, Secretary of State, Columbus,  
Ohio:*

DEAR SIR:—I return herewith the articles of association of "The Farmer's Mutual Fire Insurance Company of Plain and Jackson Townships" which I decline to approve under the name assumed by said association. This name imports another and a very different kind of company authorized by our statutes and is certainly misleading. I think that it is at least contrary to the spirit of the law for a mutual fire protection association to call itself a Mutual

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*Township Trustees; Relief of Poor.*

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Fire Insurance Company. I find no other objection to the articles, and if the name is changed will approve them.

Respectfully yours,

JAMES LAWRENCE,

Attorney General.

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TOWNSHIP TRUSTEES; RELIEF OF POOR.

Attorney General's Office,  
Columbus, Ohio, January 29, 1884.

*Mr. John L. Guy, Township Trustee, Gallipolis, Ohio:*

DEAR SIR:—Yours of the 28th instant is received. If the family you mention have a legal settlement in the township, I think it is the duty of the township trustees to afford them relief. (But see sections 974 and 975 Revised Statutes). I suppose the board of health of Gallipolis has acted in pursuance of proper orders and regulations of the city council. If so, its action is authorized by law. The fact that such lawful action by the board of health, by preventing the family having the smallpox from leaving their house, may in part have occasioned the necessity for relief does not affect the obligation on the part of the trustees to afford such relief. Of course, you understand that the attorney general is not authorized to give official opinions in such cases as this, but the case being urgent, I have departed from the usual practice of the office and have given my views upon the matter. You must, however, take my opinion merely as that of any other lawyer and for what it is worth.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Mutual Protection Association; Name—County Commissioners; Expenses of; Official Business, Etc.*

MUTUAL PROTECTION ASSOCIATION; NAME.

Attorney General's Office,  
Columbus, Ohio, January 31, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I herewith return the articles of incorporation of the Farmer's Mutual Insurance Company of Plain and Jackson Townships which I decline to approve for the same reason stated before. This is the same paper submitted to me before except that some person has assumed to erase a word formerly therein. Nothing appears to show that the subscribers knew or consented to such alteration, but, however this may be, this association has no right to call itself a mutual insurance company.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

COUNTY COMMISSIONER; EXPENSES OF; OFFICIAL BUSINESS, ETC.

Attorney General's Office,  
Columbus, Ohio, January 31, 1884.

*W. Hyde, Esq., Prosecuting Attorney, Warren, Ohio:*

DEAR SIR:—Your favor of the 24th instant was duly received, but owing to the press of other business I have been unable to answer until now. You were undoubtedly right in refusing to approve the bill of Mr. Smith, one of your county commissioners, for his services and expenses while attending the recent meeting of the County Commissioners State Association at Columbus. The bill cannot be paid by the county. The business of Mr. Smith at the time re-

*Roads; Exemption Laws Apply to Judgment vs Person Failing to Perform Labor on.*

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ferred to was in no sense official business or business of the county pertaining to his office. Official business is such business as an officer transacts in the performance of the duties prescribed by law or in the exercise of the authority conferred thereby. I know of no law making it one of the duties of a commissioner to attend such a meeting or authorizing him to do so as a commissioner. The resolution of the board of commissioners cannot affect the question, for they cannot add to their duties or authority as fixed by law. It is perhaps true that the several counties indirectly derive benefit from these annual meetings of the commissioners, by reason of the increased knowledge and information thereby acquired by such officers. So, in all cases, the public is benefited by having officers acquainted with their duties. Indeed, generally speaking, the more education an officer has the better he can serve the people, but it would not be expected that the State should pay his expenses while he attended school.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ROADS; EXEMPTION LAWS APPLY TO JUDGMENT VS PERSON FAILING TO PERFORM LABOR ON.

Attorney General's Office,  
Columbus, Ohio, February 1, 1884.

*Hon. Louis Baley, Mayor of Ithaca, Ohio:*

DEAR SIR:—I find no provision in the statutes by which a claim for unperformed labor on the roads can be enforced "over the exemption laws." A judgment rendered under the circumstances you state is of the same force and no

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*Asylum for Insane; Construction of Statute, Etc.*

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more than any other judgment at law. Not being the official adviser of incorporated villages, you must consider this opinion as of no more weight than that of any other lawyer and not as coming from me officially.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ASYLUM FOR INSANE; CONSTRUCTION OF  
STATUTE, ETC.

Attorney General's Office,  
Columbus, Ohio, February 1, 1884.

*To the Senate:*

In response to Senate resolution No. 40, I have the honor to state that, in my opinion, the commission appointed by section two of the act of April 18, 1883, entitled, "An act to provide for additional accommodations for the insane of the State," was not authorized to award or enter into contracts for the erection of the asylum buildings mentioned in said resolution. Said commission was created by said act and its powers are thereby defined and limited. It was authorized to determine upon the manner in which said provisions for the care of the insane should be made, and in so doing to select a site and to adopt plans for a building or buildings to be erected thereon. By section four of said act it is provided that if the said commission shall select a site remote from either of the existing asylums for the insane, then the governor shall appoint five trustees, who shall proceed with the erection of the building as provided by law. I am of the opinion that it is the duty of the board of trustees appointed in pursuance of this section to award and enter into contracts for the erection of said buildings according to the plans adopted by the commission. It

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*Asylum for Insane; Construction of Statute; Etc.*

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seems clear that power to adopt plans for a building does not include power to enter into contracts for the erection of such building. I understand, however, that the latter power is claimed because the act provides that the expenditure for the purposes named shall not exceed the sum of five hundred thousand dollars, and it is said that until contracts were let it could not be ascertained whether the expenditure would exceed said amount. I do not think that such a construction can be admitted, nor is it necessary in order to carry out the purposes of the act. The whole matter is provided for in title VI, part 1st, of the Revised Statutes. The plans must be accompanied by full, accurate and complete estimates of each item of expense and the entire aggregate cost of the buildings when completed. No contracts can be made at a price in excess of such estimates nor to exceed in the aggregate the amount authorized by law. If it shall be found that contracts cannot be so let, the result would show that the commission had not adopted such plans as it is authorized to adopt, and it would be still in existence for the purpose of complying with the law in this respect. As in the case of the erection of any other public building either the plans would have to be modified or additional legislation obtained.

Respectfully submitted,

JAMES LAWRENCE,

Attorney General.

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*Children's Homes; Question of Establishing Must be Submitted to People.*

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CHILDREN'S HOMES; QUESTION OF ESTABLISHING MUST BE SUBMITTED TO PEOPLE.

Attorney General's Office,  
Columbus, Ohio, January 31, 1884.

*Frank P. McGee, Esq., Prosecuting Attorney, McArthur, Ohio:*

DEAR SIR:—Your favor of the 20th instant was duly received, but owing to the press of other business I have been unable to reply before now. I am of opinion that the county commissioners cannot purchase a house and lot for a children's home without first submitting the question of establishing such home as provided in section 929 (78 O. L., 81). No additional power as to establishing a home is conferred by the act of April 9, 1883 (80 O. L., 102). The purpose of section two of said act is to provide for disposition of indigent children in counties having no children's home. Nor do I think that the commissioners can build a building for such home on land now belonging to the county without submitting the question to a vote of the people. No such power is anywhere granted to them, and they cannot exercise it without a grant. Even if there was a general grant broad enough to cover the case, yet the statutes, having prescribed a particular mode in which children's homes may be established, it would be held exclusive of any other. You will observe in section 935 as amended March 9, 1880 (77 O. L., 49), where authority is given to accept a fund to establish a children's home, it is provided that the commissioners in accepting said fund shall not incur any additional expenditure beyond the same without first submitting the question of such additional expenditure to a vote of the people.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Board of Education; Building School House; Issue of Bonds, Etc.*

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BOARD OF EDUCATION; BUILDING SCHOOL HOUSE; ISSUE OF BONDS, ETC.

Attorney General's Office,  
Columbus, Ohio, February 1, 1884.

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

DEAR SIR:—Your favor of the 26th ult. was duly received, but owing to the press of business I have been unable to answer until now. If I understand the facts correctly the board of education of Eaton, having taken all the preliminary steps required, last spring submitted to a vote of the people, as provided in section 3991 Revised Statutes, the question of levying taxes and issuing bonds for the purpose of building a new school house to cost \$25,000.00. The question having carried, the board in pursuance of section 3993 issued and sold bonds for the sum, \$25,000.00, and thereupon entered into a contract for the erection of a building for the sum of \$40,000.00. The board had authority to build a school house without submitting the question to a vote of the people. The necessity of obtaining the vote was because the board, under the ordinary levy which it was authorized to make, could not provide sufficient means for paying the cost of said building. The question submitted to the people was not the building of the school house, but the issuing of the bonds and levying the necessary taxes. I am of opinion that the bonds so issued and sold are valid, having been issued in accordance with the vote of the people and in the manner prescribed by law. I am also of opinion that the board of education has no authority to make any further issue of bonds nor is there any provision authorizing it to again submit to the people the question of issuing an additional amount of bonds for that school house. If the ordinary levy authorized by law is insufficient to pay for the increased cost of the building, I know of no way to



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*President of Bank May Act as Its Attorney—Farmers'  
Home Joint Stock Fire Insurance Company of Ohio.*

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raise money for that purpose except by special act of the legislature.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PRESIDENT OF BANK MAY ACT AS ITS AT-  
TORNEY.

Attorney General's Office,  
Columbus, Ohio, February 2, 1884.

*Mr. H. L. Glenn, Lynchburg, Ohio:*

DEAR SIR:—Yours of the 1st instant is received. The attorney general is not authorized to give official opinions to private persons. Section III Revised Statutes, however, seems to cover the question you ask. This applies to an incorporated bank. I know of no objection to your president acting as attorney for the bank.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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FARMERS' HOME JOINT STOCK FIRE INSUR-  
ANCE COMPANY OF OHIO.

Attorney General's Office,  
Columbus, Ohio, February 2, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I herewith return "supplementary certificate to re-incorporate the Farmer's Home Joint Stock Fire Insurance Company of Ohio." I am unable to understand what is attempted to be accomplished by this certificate. If it is for the purpose of a change of name or reduction of capital stock, it is insufficient.

Yours truly,  
JAMES LAWRENCE,

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*Liquor Law; Payment of Tax, Etc.—Private Secretary of Governor; Fees in Requisition Cases.*

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LIQUOR LAW; PAYMENT OF TAX, ETC.

Attorney General's Office,  
Columbus, Ohio, February 4, 1884.

*L. H. Plattor, Esq., Prosecuting Attorney, Paulding, Ohio:*

DEAR SIR:—Your favor of January 31st is received. The act of April 17th, 1883, known as the "Scott law" provides that the assessment shall be paid by every person engaged in the business of trafficking in intoxicating liquors. There is no provision authorizing a dealer who has paid the assessment to transfer to another the immunity secured thereby. Upon the case you present I am of opinion that the purchaser must pay for the remainder of the assessment year as provided in section two.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PRIVATE SECRETARY OF GOVERNOR; FEES IN REQUISITION CASES.

Attorney General's Office,  
Columbus, Ohio, February 4, 1884.

*Hon. Dan. McConville, Governor's Private Secretary:*

DEAR SIR:—The press of other business has prevented me from sooner answering the question submitted by you as to the right to charge fees in requisition and extradition cases. I am of opinion that the practice of charging fees in such cases, heretofore prevailing in the governor's office, is without authority of law. Our statutes do not give the right and it is the well settled rule that where a service for the benefit of the public is required by law and no provision

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*Infirmary Directors; Cannot be Paid by County for Time and Expenses in Suit Against Them Individually, Although Suit Grew Out of Their Action as Directors.*

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for its payment is made, it must be regarded as gratuitous. This is matter for which the legislature should make some provision. Such cases often require much care and labor on your part, and you should be allowed a reasonable fee therefor.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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INFIRMARY DIRECTORS; CANNOT BE PAID BY COUNTY FOR TIME AND EXPENSES IN SUIT AGAINST THEM INDIVIDUALLY, ALTHOUGH SUIT GREW OUT OF THEIR ACTION AS DIRECTORS.

Attorney General's Office,  
 Columbus, Ohio, February 4, 1884.

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

DEAR SIR:—Your favor of the 24th ult. was duly received. The case you present is certainly a hardship upon your county infirmary directors, but I do not see how the county can pay them either for their time or expenses in the matter referred to. There is no general grant or power to the commissioners which would authorize them to expend money for this purpose, nor does the special authority conferred by section 968 extend so far. *Official* capacity must be limited to a capacity pertaining to the office of infirmary director. The services for which compensation can be allowed must be rendered in the performance of some duty prescribed by law or in the exercise of some authority conferred thereby. I do not think that it can in any sense be said that the directors attended this trial in their official

*Mutual Fire Insurance Company; Not Entitled to Certificate of Superintendent of Insurance When Assets Materially Reduced; Requisition to Fill Assets.*

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capacity. The suit was not against the county, but against them individually. It was a matter for which the county had no possible liability, and the suit could only have been maintained against them on the ground that they had acted beyond their official authority. I question whether it would be possible to obtain any legislation such as you suggest. The hardship here is no greater than in a similar suit against a sheriff or other officer. Indeed, a private individual may sustain equal loss when a groundless suit is brought against him. I do not see how any law can meet the case without being liable to great abuse.

Very truly yours,

JAMES LAWRENCE,

Attorney General.

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MUTUAL FIRE INSURANCE COMPANY; NOT ENTITLED TO CERTIFICATE OF SUPERINTENDENT OF INSURANCE WHEN ASSETS MATERIALLY REDUCED; REQUISITION TO FILL ASSETS.

Attorney General's Office,  
Columbus, Ohio, February 5, 1884.

*Hon. Chas. H. Moore, Superintendent of Insurance:*

DEAR SIR:—I am in receipt of your favor of the 4th instant in which you ask the following question "Whether a mutual fire insurance company of this State whose assets, as shown in its annual statement, are less than \$50,000.00 is entitled to receive from the superintendent of insurance the certificate mentioned in section 284 Revised Statutes." There is no provision in our statutes expressly and in terms requiring the assets of such companies to be maintained at the sum of \$50,000.00, but section 276 provides that if it

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*Mutual Fire Insurance Company; Not Entitled to Certificate of Superintendent of Insurance When Assets Materially Reduced; Requisition to Fill Assets.*

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appears to the superintendent of insurance that the assets of any such company are insufficient to justify its continuance in business, he shall proceed in relation to such company in the same manner as required in regard to joint companies and the trustees or directors of such company are made personally liable for any losses which are sustained upon risks taken after the superintendent has issued his requisition for filling up the deficiency in the assets and before such deficiency in the assets is made up. Construing this statute in connection with the provisions in similar cases in respect to joint stock companies, I am of opinion, that when it appears to you that the assets of a mutual company have been materially reduced from the amount required for its organization it is your duty to issue a requisition for filling up the deficiency in the assets, and that until such deficiency is made up said company is not entitled to receive the certificate mentioned in section 284 nor to take any new risks. I say "materially" reduced because the statutes leaves to you some discretion in determining when the assets of such company are insufficient to justify its continuance in business. I do not think it is imperative that you issue a requisition for a trifling deficiency, but, by analogy to the rule in the case of joint stock companies, such deficiency should never be permitted to exceed twenty per cent. The requisition when issued, must in all cases be to fill up the assets to the full amount originally required; that is, \$50,000.00 for companies organized under the present act.

Respectfully yours,  
JAMES LAWRENCE,  
Attorney General.

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*County Roads; Payment of Damages; Expenditure by County in Payment of Such Damages is Subject to Section 851 Revised Statutes.*

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COUNTY ROADS; PAYMENT OF DAMAGES; EXPENDITURE BY COUNTY IN PAYMENT OF SUCH DAMAGES IS SUBJECT TO SECTION 851 REVISED STATUTES.

Attorney General's Office,  
Columbus, Ohio, February 8, 1884.

*I. F. Siddall, Esq., Prosecuting Attorney, Ravenna, Ohio:*

DEAR SIR:—Yours of the 5th instant was duly received.

1. I must confess that I have some doubt as to the proper construction of that part of section 4651 to which you refer, but my opinion is that the commissioners in establishing a county road must either cause all the damages assessed to be paid by the county or require the whole to be paid by the petitioners, and that they cannot require the latter to pay a part and the county a part. This is certainly the most obvious meaning of the language employed. Yet there seems to be no reason why in a proper case the commissioners should not have the power to apportion the damages. I should be inclined to think that perhaps the legislature intended to give them sufficient power to do this, were it not that in section 4638 the authority to apportion the costs and expenses is conferred in the most explicit terms. I think we must presume that a different rule was intended in the two cases.

2. I am of opinion that section 851 applies to the expenditure authorized to be made by section 4651. The first named section is general in its terms, providing that "no proposition of any character," etc. If possible we must construe the two sections together so as to give effect to both. The power conferred under section 4651 can be fully exercised subject to the provisions of section 851, the only inconvenience being a delay of twenty days. Moreover all

*Ohio University; Taxation of Railroads Through College Lands; Valuation of Railroads in Athens and Alexander Townships; Not Subject to Rent Charge in Favor of University.*

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the reasons which make the restrictions of this section expedient in any case apply to an expenditure for establishing a road.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OHIO UNIVERSITY; TAXATION OF RAILROADS THROUGH COLLEGE LANDS; VALUATION OF RAILROADS IN ATHENS AND ALEXANDER TOWNSHIPS; NOT SUBJECT TO RENT CHARGE IN FAVOR OF UNIVERSITY.

Attorney General's Office,  
Columbus, Ohio, February 8, 1884.

*Hon. E. Kiesewetter, Auditor of State:*

DEAR SIR:—I am of opinion that valuation of the various railroads within Athens and Alexander Townships, Athens County, as apportioned to said townships, is not subject to a rent charge in favor of the Ohio University, but that State taxes must be levied and assessed thereon. Such valuation under our laws is personal property and must be taxed as such.

The right of the university in the college lands is subject to the paramount right of the public to appropriate the same for public uses. The law prescribes the manner in which this may be done by railroad companies. If in the present case the appropriation was not legally made the college may have a remedy; but the officers charged with the duty of levying and collecting taxes are not authorized to determine such questions. The apparent title

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*Prosecuting Attorney; Fees in Collection of Forfeited  
Recognizance.*

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to the property is in the railroad company and, upon the facts presented, it must be presumed that it was duly appropriated.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PROSECUTING ATTORNEY; FEES IN COLLEC-  
TION OF FORFEITED RECOGNIZANCE.

Attorney General's Office,  
Columbus, Ohio, February 8, 1884.

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

DEAR SIR:—I am in receipt of your favor of the 7th instant.

It appears that in 1873 the grand jury of Fairfield County found five separate indictments against one T. T. Baker for embezzlement and grand larceny which were entered in five cases on the criminal docket of your Common Pleas Court, numbered respectively 196, 197, 198, 199 and 200. Baker was apprehended in November, 1879, and entered into a recognizance in the sum of \$3,000.00 for his appearance at the next term of court, etc. The several cases were continued from term to term until the April term, 1882, a like recognizance being taken at each term. The entry in each case ordered the defendant to enter into a recognizance for \$3,000.00, but only one recognizance was taken at each term. That given at the January term, 1882, was taken in case No. 200. At the April term, 1882, case No. 199 was called and the trial commenced, but pending said trial the defendant fled the country. Thereupon the recognizance given at the January term was duly forfeited, the entry of such forfeiture being made in each



*County Surveyor; Entitled to be Paid by County for Keeping Record Required by Section 1178 Revised Statutes.*

case. Afterwards the then prosecuting attorney commenced a suit against Baker and his sureties to recover the amount of such forfeited recognizance. The petition set forth but one recognizance. The description of the case in which this was averred to have been given, applies to case No. 199. Afterwards a judgment was obtained in this action and the sum of \$3,076.68 was collected by the said prosecuting attorney of which he retained \$307.66 as his commission and paid the balance into the county treasury. The question presented to me is whether he was entitled to charge ten per cent. on the whole amount collected or was his commission limited to \$100.00 under section 1298 Revised Statutes. I am of opinion that he was only entitled to \$100.00. The money was collected on one recognizance and in one case, and the statute is clear that such commission shall not in any one case exceed \$100.00.

Very truly yours,

JAMES LAWRENCE,

Attorney General.

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COUNTY SURVEYOR; ENTITLED TO BE PAID BY  
COUNTY FOR KEEPING RECORD REQUIRED  
BY SECTION 1178 REVISED STATUTES.

Attorney General's Office,  
Columbus, Ohio, February 12, 1884.

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

DEAR SIR:—Your favor of the 6th instant was duly received. I am of opinion that a county surveyor is entitled to be paid by the county for keeping the record required by section 1178 (78 O. L., 286).

I think that the whole of such record is properly included in the term "plat," by which is meant not merely

*County Surveyor; Entitled to be Paid by County for Keeping Record Required by Section 1178 Revised Statutes.*

a drawing of a particular piece of land but the necessary words and figures to explain the same and to show monuments, angles, distances, etc. Practically these records are kept in the forms of maps with the particulars required by section 1178 appropriately thereon.

Section 1183 provides that the surveyor shall be entitled to charge and receive for recording a plat not exceeding six lines, seventy-five cents and for each one hundred words or figures therein six cents. In the case of a survey made in pursuance of section 1187, 1188 and 1189 all expenses, including the fees for recording the plat must be paid by the persons applying for such survey (section 1192). But in the case of an ordinary survey there is no provision requiring the person applying for the survey to pay for recording the plat, nor is there any reason why he should do so. The record in such case is for the benefit of the public and of succeeding surveyors. It is to include all information of value in future relocations of land, lines or corners adjacent to or forming part of said record, and any person may obtain a copy thereof. Moreover such record includes not merely surveys made by the county surveyor or his deputies, but other surveys deemed by the commissioners worthy of preservation. Section 1177, as it formerly stood, provided for the payment of the expenses incurred by reason of the preceding section and it was sufficient for that purpose. In 1881, section 1177 was amended (78 O. L., 285) by adding thereto the following: "For making and recording plats or maps or transcribing same, the surveyor shall receive such reasonable compensation as the commissioners may order, not exceeding the amount allowed by law for similar services and for indexing, the same fees as are allowed to recorders."

As this section originally applied only to section 1176, it may perhaps be said that the amendment must be limited to like application. I do not think so. It is neither necessary nor altogether applicable to that section and is general

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*County Ditch; Apportionment of Cost of; Must be Made in Money.*

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in its terms. It seems to have been incorporated there to avoid making a new section and "to preserve the symmetry of the code."

I am of opinion that section 1177 as thus amended applies to section 1178 and that it is the duty of the commissioners to allow the surveyor reasonable compensation for keeping said records not exceeding the amount allowed by law for similar services. I have the honor to be,

Yours, etc.,

JAMES LAWRENCE,

Attorney General.

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COUNTY DITCH; APPORTIONMENT OF COST OF;  
MUST BE MADE IN MONEY.

Attorney General's Office,  
Columbus, Ohio, February 13, 1884.

*Mr. Wm. C. Dennison, County Surveyor, Delaware, Ohio:*

DEAR SIR:—I am of opinion that, under section 4455 Revised Statutes, as amended April 20, 1881 (78 O. L., 204), the apportionment of the cost of location and the labor of constructing a county ditch must be made in money, and that under section 4475 (78 O. L., 206) the work must be sold out in sections for money. There is no authority to apportion a certain number of feet to a particular tract of land, as was formerly done. The change in these respects seems to have been the purpose of the amendments made in the above mentioned sections and I think there can be no doubt concerning the meaning of the language employed.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Certificate to Reincorporate Fire Insurance Company—  
Sheriff—Fees of for Attending Prisoner Before Court.*

CERTIFICATE TO REINCORPORATE FIRE INSURANCE COMPANY.

Attorney General's Office,  
Columbus, Ohio, February 13, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the "supplementary certificate to reincorporate the Farmer's Home Joint Stock Fire Insurance Company of Ohio" which I decline to approve.

I know of no authority under our laws to re-incorporate an insurance company in order to change the purposes for which it was originally incorporated. There are also some defects in the form of the certificate which it is necessary to notice.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

SHERIFF—FEES OF FOR ATTENDING PRISONER BEFORE COURT.

Attorney General's Office,  
Columbus, Ohio, February 13, 1884.

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

DEAR SIR:—YOUR favor of the 12th instant is received.

Section 1230 Revised Statutes, provides that the fees of a sheriff shall be sixty cents "for attending a person before judge or court." I am of opinion that this means sixty cents for each day that he so attends. In the case stated by you, where a prisoner is on trial when the court adjourns

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*County Commissioners; Publication of Report, Etc.*

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in the evening and the next morning the sheriff is ordered to bring him again into court, the sheriff is entitled to sixty cents for the second day as well as the first. Where, however, a court takes a recess at noon and the sheriff returns with the prisoner in the afternoon, he is not entitled to a separate charge for the morning and afternoon. Each day's session is considered as continuous and includes the entire day.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; PUBLICATION OF  
REPORT, ETC.

*George Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—Your favor of the 12th instant is received.

I am of opinion that the "detailed report" which the county commissioners are required to make by section 917 Revised Statutes, must be an itemized statement showing the amount and date of each payment and also for what and to whom paid. The statutes provide that the commissioners shall make a detailed report of their financial transactions, that the examiners, when they have completed their examination, 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. The statement thus required to be published evidently means the detailed report mentioned before, and the provision that it shall be published in a *compact* form refers to the manner of such publication and not to the matter to be published.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Municipal Corporation; Election of Council When Village  
First Divided into Wards.*

MUNICIPAL CORPORATION; ELECTION OF  
COUNCIL WHEN VILLAGE FIRST DIVIDED  
INTO WARDS.

Attorney General's Office,  
Columbus, Ohio, February 14, 1884.

*John F. White, Esq., Solicitor, Logan, Ohio:*

DEAR SIR:—It appears from your letter of the 12th instant that the village of Logan now having six members of the council elected at large, three for a term expiring in 1884, and three for a term expiring in 1885, has been divided into four wards.

Sections 1672 and 1673 Revised Statutes provide:

(1) That the legislative authority in villages divided into three or more wards shall be vested in a council composed of two members from each ward.

(2) That members of the council in office shall, *unless a vacancy sooner occurs*, serve until the expiration of their respective terms.

(3) That at each annual municipal election one member of council shall be elected in each ward to serve two years.

(4) That where new wards are created the mayor, in his proclamation, shall give notice to the electors to vote in each ward for one member for one year and one member for two years, designating the term on their ballots.

I am of opinion that at the next election two members of the council should be elected from each ward, one for one year and one for two years and that upon the organization of such council the terms of all the members of the present council will cease. In no other way can the above provisions be reconciled. The three members elected for a term expiring in 1885 were not elected for any ward nor is there any authority to assign them to the wards in which they reside. In fact two of them live in the same ward.

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*Municipal Corporation; Election of Council When Village  
First Divided into Wards.*

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Section 1672 provides that the legislative authority in villages not divided into wards, shall be vested in a council consisting of six members, but when the village is divided into three or more wards such authority shall be vested in a council composed of two members from each ward. Thus, when a village formerly not divided into wards is so divided, there is a change in respect to the constitution of the council. Thereafter the legislative authority of the village is not vested in a council composed of members elected at large, but in a council elected in a different manner, consequently the office and function of the former council must cease. But the election of members of the new council cannot be held until April, so that necessarily the operation of this change must be postponed until it can be called into requisition, which will be when the new council is legally organized. See section 1632 Revised Statutes. *Scovill vs. Cleveland*, 1 O. S. 126.

It will be observed that the provision that members of the council shall serve until the expiration of their respective terms is qualified "unless a vacancy sooner occurs." This qualification is not necessary to cover cases of death, resignation or removal, for in such cases the term itself ceases. It evidently contemplates that a vacancy may occur in some other manner. For instance, when a village is advanced to a city of the second class such vacancy occurs (section 1588), or if any ward by annexation or otherwise is entirely absorbed and its identity destroyed, the office of the councilman thereof shall cease (section 1680). So in the present case I think it may well be held that a vacancy will also occur. Considering the entire legislation upon the subject this seems to be the intention and the necessary result.

I have thus given my views upon the questions submitted. As the attorney general is not authorized to give official opinions in such cases, you must take them for what they are worth. The truth is that this is a matter for which

*Inmates of Soldiers' Home; Power of to Vote—Taxes;  
Power of County Commissioners to Refund.*

the statutes do not clearly provide and it might be well to obtain some additional legislation upon the subject.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

INMATES OF SOLDIERS' HOME; POWER OF TO  
VOTE.

Attorney General's Office,  
Columbus, Ohio, February 16, 1884.

*Mr. Dennis P. Morissey, National Home for D. V. S.,  
Togus, Maine:*

DEAR SIR:—On the facts, as you state them there is no doubt but that you are entitled to a vote in Ohio. If you went to Maine only for a temporary residence, you still retain your right to vote in Ohio.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

TAXES; POWER OF COUNTY COMMISSIONERS  
TO REFUND.

Attorney General's Office,  
Columbus, Ohio, February 18, 1884.

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

DEAR SIR:—Yours of the 12th instant was duly received.

The county commissioners have no authority under section 1038 to order any part of the claim of Edward Dines to be paid. Certainly the items for attorney's fees, surveyor's certificate, etc., must be excluded. The only ques-



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*Taxes; Power of County Commissioners to Refund.*

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tion can be concerning the amount paid at the delinquent tax sale and the subsequent payment of taxes.

The errors for which the commissioners are authorized to refund taxes collected, are not only such as would require correction by the auditor himself, if discovered by him before payment of the taxes, but such as, when so corrected, would require the taxes to be deducted from the duplicate. Prior to the sale of these lands at delinquent tax sales, they stood upon the duplicate in the name of P. and Smith H. Rollins. It now appears that there was no such person as Smith H. Rollins. No question is made that the land was not sufficiently described or that the taxes were not properly charged thereon. If P. Rollins, or whoever was the owner of the property, had applied to the auditor, this error in the owner's name could have been corrected, but it would not have followed that all taxes charged on the land should be deducted from the duplicate. It would only have been necessary to deduct them from the name so erroneously charged therewith, which would have still left them charged to P. Rollins. I take it also that the authority to refund taxes for such an error is limited to cases where by reason thereof a person has paid taxes not properly charged against him. To extend the rule any further would be paying too high a premium for clerical mistakes. The sale of the lands for delinquent taxes imposes no new obligation upon the county or its officers. The maxim "caveat emptor" applies to the purchaser. After such sale the lands were properly entered on the duplicate in the name of the purchaser and there was no error in this respect which the auditor could possibly have corrected. Sections 2881 and 2888.

It seems that the purchaser, having paid the taxes for a number of years, brought a suit in ejectment to recover the lands, and, of course, failed. He would have failed even though there had been no mistake in the owner's name. Except where adverse possession has intervened there has never been a tax title in Ohio good enough to support such

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*Municipal Corporation; Power to Borrow Money; Rule as to Expenditures.*

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a suit. The purchaser here has the same remedy that any other purchaser has, where a contest is made. He has a lien on the land for the amount paid at the tax sale and for subsequent taxes, with interest thereon from the time the same were paid.

I return herewith the papers submitted to me.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; POWER TO BORROW MONEY; RULE AS TO EXPENDITURES.

Attorney General's Office,  
Columbus, Ohio, February 18, 1884.

*Frank F. Metcalf, Esq., Prosecuting Attorney, McConnellsville, Ohio:*

DEAR SIR:—I think you are disposed to give too liberal a construction to section 2702 (80 O. L., 178). The statute is explicit and mandatory in its terms. No order for the expenditure of money can be issued until the auditor or clerk shall first certify that the money required to pay the expenditure is in the treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose. The money thus required to be in the treasury to the credit of the fund from which it is to be drawn may get there in two ways, either from taxes or other revenue previously collected, or from loans made for such fund. The practical question is, therefore, what authority has the council to borrow money in anticipation of the taxes levied for a particular fund. I answer, just such authority as the law has specially conferred upon it and no other. Under certain limitations the council may make loans in anticipation

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*Municipal Corporation; Council not Authorized to Transfer Funds.*

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of the tax authorized to be levied for sanitary and street cleaning purposes (section 2685), in anticipation of the general revenue fund (section 2700), and in anticipation of the collection of any special assessment (section 2704).

I do not think that section 2098 has reference to loans of this kind. The debts which the council is thereby forbidden to contract are debts relating to the expenditure of money for a particular purpose in excess of the amount of money from taxes and revenues from other sources received for such purpose.

Sections 2698 and 2702 must be construed together. Except in the cases where the law authorizes a loan to be made no debt can be contracted unless the money is actually in the treasury and available for its payment.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; COUNCIL NOT AUTHORIZED TO TRANSFER FUNDS.

Attorney General's Office,  
Columbus, Ohio, February 19, 1884.

*Mr. Finley Brothers, Village Clerk, Fredericksburg, Ohio:*

DEAR SIR:—The council of your village has no authority to transfer money from one fund to another unless it has obtained a special act of the legislature authorizing the same to be done. If there be no special act of that kind an ordinance directing such transfer would be entirely void and the clerk and treasurer could do no lawful act thereunder. See sections 2689, 2698 and 2702 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Municipal Corporation; Submission of Question to Vote of the People, Etc.*

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MUNICIPAL CORPORATION; SUBMISSION OF QUESTION TO VOTE OF THE PEOPLE, ETC.

Attorney General's Office,  
Columbus, Ohio, February 19, 1884.

*A. H. Balsley, Esq., Findlay, Ohio:*

DEAR SIR:—Your favor of the 18th instant is received. It is true that our constitution and laws require that certain questions submitted to the people must receive a majority vote of all those voting at the election in order to carry, but I cannot agree with you that, therefore, all questions submitted to the people must receive a like majority. On the contrary, the fact that such a majority is in some cases required by special provision would be one ground to infer that, in the absence of such special provision, a different rule was intended. The statutes in such cases, however, generally specify what kind of a majority is required.

I am not advised of the exact question submitted to the people of Findlay, nor under what section of the statutes the same was submitted. The legislature has power to authorize councils to construct water works and to levy taxes or to issue bonds to pay therefor, without submitting the question to a vote of the people at all. Section 1692 grants this power in respect to the construction of water works, and section 2683 authorizes the levy of a tax for that purpose. Section 2689, however, fixes a limit to the aggregate amount of all taxes levied by a municipal corporation, so that practically the ordinary levy is in most cases insufficient to provide the money required. Section 2687 authorizes a greater tax to be levied for such purpose if the proposition to make the levy shall have been first submitted to a vote of the electors of the corporation, and approved by a majority of those voting on the proposition. If this was the question submitted, there is no doubt that it only required the

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*Girls' Industrial Home; Claim Against; Why Cannot be Paid.*

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majority named, to-wit: a majority of those voting on the proposition.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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GIRLS' INDUSTRIAL HOME; CLAIM AGAINST;  
WHY CANNOT BE PAID.

Attorney General's Office,  
Columbus, Ohio, February 20, 1884.

*Rev. D. R. Miller, Superintendent Girls' Industrial Home,  
Delaware, Ohio:*

DEAR SIR:—Your favor of the 18th instant enclosing two bills of Mr. Held is received.

I do not think that the trustees of the Girls' Industrial Home have authority to pay either of said bills. Neither is approved by any officer of the institution and the contract and specifications to which my attention has been called contained no provision referring to the stone for which claim is now made. But, however this may be, both of these claims accrued in 1881, and the trustees have, therefore, no money which is available for their payment. No part of any appropriation heretofore made can be used for that purpose and all profits from the farm must be annually ascertained and funded. In short, nothing has been exhibited to me showing that these claims are valid, but, if they are valid, they can only be paid under a special appropriation for that purpose.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Benevolent Institution; Trustees of Asylum at Toledo Have Power to Acquire Real Estate for Right of Way for Railroad in a Certain Case, Etc.—Mutual Fire Insurance Company; Premium Note and Advance Payment Thereon.*

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BENEVOLENT INSTITUTION; TRUSTEES OF ASYLUM AT TOLEDO HAVE POWER TO ACQUIRE REAL ESTATE FOR RIGHT OF WAY FOR RAILROAD IN A CERTAIN CASE, ETC.

Attorney General's Office,  
Columbus, Ohio, February 20, 1884.

*Mr. R. G. Pennington, Toledo, Ohio:*

DEAR SIR:—Your favor of the 19th instant is received. The board of trustees of the asylum at Toledo have power to acquire the necessary real estate or right of way to furnish railway facilities during the erection of the asylum buildings. Section 623 Revised Statutes. If such right of way can be acquired by purchase, I think it may be paid for out of the general appropriation heretofore made. I remain,

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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MUTUAL FIRE INSURANCE COMPANY; PREMIUM NOTE AND ADVANCE PAYMENT THEREON.

Attorney General's Office,  
Columbus, Ohio, February 20, 1884.

*Mr. J. R. Vernon, Secretary Ohio Mutual Insurance Company, Salem, Ohio:*

DEAR SIR:—I am of opinion that it will be necessary for your company to modify its proposed plan of insurance on personal property. The directors of a mutual fire insurance

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*Mutual Fire Insurance Company; Premium Note and Advance Payment Thereon.*

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company may require an advance payment on premium notes, but the company cannot be permitted thereby to substantially take insurance on the cash plan. The same rate of advance payment must be required on all premium notes. The resolution or order of the board of directors requiring such advance payment is in the nature of an assessment, their authority to do this being derived from their authority to assess the members. In the case of an assessment the law specially provides that the sum to be paid by each member shall always be in proportion to the original amount of his deposit note, and this is also the measure of his liability. I am, therefore of opinion that, whatever be the kind of property insured or the term of insurance, a uniform rate of advance payment must be required of each member in proportion to the amount of his premium note. The difference in respect to kind of property or the term of insurance must be provided for in fixing the amount of such note.

The advance payments thus received of any member cannot be applied toward payment of any losses or expenses incurred prior to his becoming a member of the company, his liability being only to pay for losses and expenses thereafter accruing in proportion to the amount of his note. I also think that no further payment can be required of him until the amount advanced has been applied toward payment of his proportion of such losses and expenses.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Municipal Corporation; Power of Council to Issue Bonds,  
Etc.*

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## MUNICIPAL CORPORATION; POWER OF COUNCIL TO ISSUE BONDS, ETC.

Attorney General's Office,  
Columbus, Ohio, February 22, 1884.

*A. H. Balsley, Esq., Findlay, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 21st instant enclosing copy of an "ordinance to submit to the qualified electors of the village of Findlay, the question whether or not water works shall be constructed in said village for protection against losses by fire and for other purposes." As there is no provision of the statutes authorizing or directing the submission of such question to the people it is unnecessary to inquire what majority was required. The election has no legal effect whatever. The council seem to have submitted the question merely for the purpose of ascertaining the sentiments of their constituents. You say that the people remonstrated and requested council to refer the matter to them which the council did. You speak of this as a delegation of its power by the council to the voters. Concerning this it is sufficient to say that the law authorizes no such proceedings and the council cannot delegate its power of legislation. It seems to me that you are attacking this election on tenable grounds, whereas the whole thing is absolutely void. If the council had sufficient means it could construct water works though every vote at the election had been cast in the negative. What the council lacks is the power to levy a sufficient tax or issue bonds. Without money to pay the cost thereof an ordinance to construct water works would be futile. An additional tax cannot be levied except in the manner pointed out in my last letter. The only section of the statutes which authorizes the issue of bonds in such cases is section 2835, and it is doubtful if this is broad enough to include the construction of water works. If, however, it be construed broad enough for



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*County Commissioners; Erection of Soldiers' Monuments;  
No Power to Transfer Money Raised by Taxation  
Therefor.*

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that purpose, before any bonds are issued or tax levied the question of issuing the bonds must be submitted in the manner prescribed in section 2837, and if two-thirds of the voters, voting at such election upon the question of issuing the bonds vote in favor thereof, then and not otherwise the bonds may be issued and the tax levied. There is only one other way in which the requisite authority can be obtained, and that is by special act of the legislature. If the legislature should pass such an act it is to be presumed that both sides will be dealt with fairly and undoubtedly it would provide for a submission of the question to the people, specifying in the act what kind of a majority was required. I remain,

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; ERECTION OF SOLDIERS' MONUMENTS; NO POWER TO TRANSFER MONEY RAISED BY TAXATION THEREFOR.

Attorney General's Office,  
Columbus, Ohio, February 23, 1884.

*Hon. Wm. E. Haynes, Fremont, Ohio:*

DEAR SIR:—Your favor of the 20th instant was duly received.

I do not think that the county commissioners have authority to enter into the contract of which you enclose a copy, nor can they lawfully turn over to the Sandusky County Monumental Association any part of the money raised by taxation for the purpose of erecting a soldiers' monument. The commissioners are authorized to receive donations, etc.,

*County Commissioners; Power of Over Soldiers' Monuments.*

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but no authority is given them to aid any person or association in the erection of a monument. The law evidently contemplates that a monument erected either in whole or in part with money raised by taxation shall belong to the county. I am also of opinion that the money must be expended and the monument erected by the commissioners, and that their official responsibility, judgment and discretion in the premises cannot be delegated or transferred.

Very truly yours,

JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; POWER OF OVER  
SOLDIERS' MONUMENTS.

Attorney General's Office,  
Columbus, Ohio, February 23, 1884.

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

DEAR SIR:—Your favor of the 20th instant is received. I am also in receipt of a letter from Hon. Wm. E. Haynes, upon the same subject, enclosing copy of contract made between the commissioners of Sandusky County and the Sandusky County Monumental Association.

I am of opinion that the commissioners had no authority to enter into said contract, and that they cannot lawfully turn over to said association any part of the money raised by taxation for the purpose of erecting a soldiers' monument. Under section 891 the commissioners are authorized to receive donations, etc., for the purpose of erecting a monument and by section 893, if there is not a sufficient amount thus raised, a tax may be levied in order to furnish a sufficient amount for that purpose. By the act of April 8th, 1881 (78 O. L., 116), a tax may be levied to raise the fund wherewith to erect a monument. No authority, how-

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*Township Clerk and Treasurer; Compensation from School Funds; Board of Education; Estimate and Levy for Contingent Fund, Etc.*

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ever, is given to the commissioners to levy a tax for the purpose of aiding any person or association in erecting such monument. The law clearly contemplates that a monument, erected either in whole or in part with money raised by taxation, shall belong to the county. Under both acts also the money must be expended and the monument erected by the commissioners. Their official responsibility, judgment and discretion in the premises cannot be delegated or transferred.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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TOWNSHIP CLERK AND TREASURER; COMPENSATION FROM SCHOOL FUNDS; BOARD OF EDUCATION; ESTIMATE AND LEVY FOR CONTINGENT FUND, ETC.

Attorney General's Office,  
Columbus, Ohio, February 26, 1884.

*Hon. L. D. Brown, Commissioner of Schools:*

DEAR SIR:—The letter of Mr. Black, which you submit to me, presents the following question: "Can the clerk and treasurer take their pay out of funds levied for the payment of teachers?"

I am not sure that I understand the exact purport of this question. There is no fund specially levied for the payment of teachers, but all of the general school funds are applicable for that purpose. The statute provides that clerks and treasurers shall be paid out of the contingent fund on the order of the board of education. The treasurer of a township district is entitled to receive as compensation one per centum on the aggregate amount of all school funds disbursed by him, but the same can be paid only out of the contingent fund on the order of the board of education.

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*Township Clerk and Treasurer; Compensation from School Funds; Board of Education; Estimate and Levy for Contingent Fund, Etc.*

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The levy for the contingent fund is based upon estimates to be annually made by the board of education of the entire amount necessary to be levied for the several purposes named in section 3958. The object of such estimates is to determine the amount required to be levied, and when this amount is ascertained a single levy is made for the whole. In determining the amount to be levied for the contingent fund the board should estimate the sum required for payment of the clerk's and treasurer's compensation. Its failure to do this, however, does not affect the right of these officers to receive their compensation. The board, in the expenditure of the contingent fund, is not restricted by the estimates on which the levy was based, but such fund may properly be expended for any of the purposes for which the same can be levied. The first duty of the board in respect to the contingent fund is to set apart so much thereof as may be required for the continuance of schools after the State funds are exhausted, apportioning the same so that the schools in all the subdistricts of the township shall be continued the same length of time each year. The amount thus set apart is not available for the payment of other claims, but must be used for the purpose specified. The remainder of such contingent fund should be applied in payment of all claims properly payable therefrom, including the compensation of the clerk and treasurer. After the above amount has been set apart for the continuance of the schools the claims of the clerk and treasurer for their compensation stand on precisely the same footing with other claims payable out of said fund. If there is not enough to pay all, I suppose that such claims should be paid in the order in which they are presented and allowed.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Liquor Law; "Scott Law;" Change of Place of Business Within Same Corporation; No New Assessment—"Scott Law," Change of Place of Business Within Same Corporation; No New Assessment; When Ratable Proportion Returned to Dealer, Etc.*

LIQUOR LAW; "SCOTT LAW;" CHANGE OF PLACE OF BUSINESS WITHIN SAME CORPORATION; NO NEW ASSESSMENT.

Attorney General's Office,  
Columbus, Ohio, February 26, 1884.

*A. W. McConnell, Esq., County Auditor, Wauseon, Ohio:*

DEAR SIR:—Your favor of the 25th instant is received. Where the building occupied by a saloonkeeper who has paid his assessment under the "Scott Law" (80 O. L., 164), is destroyed by fire, I am of opinion that he can remove his place of business to another room within the same corporation without being liable to an additional assessment for the current year. The loss of his receipt is not material, for the fact that such assessment was paid will appear from the treasurer's books. If desired the treasurer may properly give a duplicate receipt though this is not necessary.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

"SCOTT LAW;" CHANGE OF PLACE OF BUSINESS WITHIN SAME CORPORATION; NO NEW ASSESSMENT; WHEN RATABLE PROPORTION RETURNED TO DEALER, ETC.

Attorney General's Office,  
Columbus, Ohio, February 27, 1884.

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

DEAR SIR:—Upon the first question presented in your letter of the 25th instant, I am of opinion that a dealer in

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*“Scott Law;” Change of Place of Business Within Same Corporation; No New Assessment; When Ratable Proportion Returned to Dealer, Etc.*

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intoxicating liquors who has paid his assessment under the “Scott Law” (80 O. L., 164) can in good faith close up his place of business and remove permanently to another room within the same corporation without being liable to an additional assessment for the current year, but, if he temporarily close his place of business and in the meantime engage in the traffic at different places throughout the county, he must pay the assessment for the remainder of the year for each place where he makes sales.

Upon passage of an ordinance by a village council prohibiting ale, beer and porter houses, a ratable proportion of the tax paid by the proprietors thereof, must be returned to them. A person to whom such proportion of his tax has been returned thereafter stands substantially in the same position as if he had never paid the tax. While such prohibitory ordinance is in force he cannot lawfully keep an ale, beer or porter house in that village, but he may engage in that part of the traffic which is not prohibited, and in that case must again pay the tax for the remainder of the year. Should he fail to pay the same within ten days after commencing business he is liable to a penalty of twenty per cent. as in other cases. For keeping an ale, beer or porter house shop he is amenable to such punishment as the ordinance provides, but he cannot be taxed under the “Scott Law” for such illegal business.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Corporations for Dealing in Real Estate Cannot be Organized; Corporations for Profit—Names Must End “Company.”*

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CORPORATIONS FOR DEALING IN REAL ESTATE  
CANNOT BE ORGANIZED; CORPORATIONS  
FOR PROFIT—NAMES MUST END “COM-  
PANY.”

Attorney General's Office,  
Columbus, Ohio, February 27, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the Big Land Shooting Club and advise that you refuse to file the same in your office.

Corporations cannot be organized under our laws for dealing in real estate, which seems to be the principal purpose for which this company is formed. The organization being for profit, its name must end with the word “company.” The articles, without authority, attempt to limit the duration of the proposed corporation and to select a board of directors to manage its affairs. The certificate to the official character of the officer taking the acknowledgment is also insufficient. The acknowledgment purports to have been taken before John C. Mason, the mayor of Rocky Ridge, whereas the certificate is that he is mayor within and for said county of Ottawa.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Municipal Corporation; Marshal of; Filling Vacancy in Elective Office of; Vacancy Filled by Mayor; Successor Must be Elected for Unexpired Term.*

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MUNICIPAL CORPORATION; MARSHAL OF;  
FILLING VACANCY IN ELECTIVE OFFICE OF;  
VACANCY FILLED BY MAYOR; SUCCESSOR  
MUST BE ELECTED FOR UNEXPIRED TERM.

Attorney General's Office,  
Columbus, Ohio, February 27, 1884.

*Mr. Dan. Babst, Jr., Mayor, Crestline, Ohio:*

DEAR SIR:—Your favor of the 25th instant was duly received, from which it appears that in April, 1882, D. Snodgrass was elected and qualified as marshal of Crestline. He having died, on April 26, 1882, one John Manoney was appointed by the mayor to fill the vacancy until the next regular municipal election. On April 2, 1883, J. A. Cover was elected marshal. Nothing in the election notice disclosed the fact that the marshal was to be elected for the unexpired portion of Snodgrass' term, and the ballots cast for him did not specify the term. The failure of the election notice and the ballots to state that a marshal was to be elected for an unexpired term cannot affect the question, for the law fixes the term, which cannot be extended by the mistake or misunderstanding of the voters. Section 1713 Revised Statutes provides that, when an office filled by the electors of the corporation becomes vacant, the mayor shall fill the vacancy till the next annual municipal election, when a successor shall be elected for any unexpired part of the term. This is clearly applicable to the present case, and I am of opinion that Cover was elected only for the unexpired portion of the term for which Snodgrass was originally elected, and that a marshal must be elected at the next April election for the term of two years.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.



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*County Treasurer; Fees on Costs Collected of Defendants  
or Paid by State in Criminal Cases.*

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COUNTY TREASURER; FEES ON COSTS COL-  
LECTED OF DEFENDANTS OR PAID BY  
STATE IN CRIMINAL CASES.

Attorney General's Office,  
Columbus, Ohio, February 27, 1884.

*Washington Hyde, Esq., Prosecuting Attorney, Warren,  
Ohio:*

DEAR SIR:—Your favor of the 21st instant was duly received. I agree with you as to the allowance to which the county treasurer is entitled on costs collected of defendants in criminal cases. The statutes clearly distinguish between "fines" and "costs" and we cannot suppose that the distinction was here lost sight of. Such costs must be included under "All other moneys collected," on which the treasurer is entitled to 8-10 of one per cent. on the first \$1,000.00 and 4-10 of one per cent. on all over that amount. Section 1117 (77 O. L., 115). I think that costs paid by the State in case of conviction of felony stand on the same footing, in this respect, with costs collected of defendants, and the treasurer is entitled to the same allowance on so much thereof as is paid into the county treasury.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Commissioners and County Officials; Power to Employ Counsel—Sheriff; Fees in Capital Cases.*

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COMMISSIONERS AND COUNTY OFFICIALS;  
POWER TO EMPLOY COUNSEL.

Attorney General's Office,  
Columbus, Ohio, February 28, 1884.

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

DEAR SIR:—Your favor of the 24th instant was duly received. In the cases mentioned in Sections 845 and 2862 (78 O. L., 121) the commissioners and other county officers are authorized to employ counsel whose fees, as provided in said sections, may be paid out of the county treasury. I think that they can select such counsel, and thus have the power to “ignore the prosecuting attorney” as you express it. Their authority to employ counsel, however, is limited to the cases specified in the statutes. They are not authorized to employ an attorney to act as their legal adviser. The prosecuting attorney is charged with that duty. (Section 1274).

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SHERIFF; FEES IN CAPITAL CASES.

Attorney General's Office,  
Columbus, Ohio, February 27, 1884.

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

DEAR SIR:—Your favor of the 23d instant was duly received. The services of the sheriff in capital cases, where the defendant is convicted but proves insolvent, are clearly included in the class of services for which the Court of Com-

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*County Commissioners; State Association; Pay for Attending; Papers and Files in Auditor's Office; Indexing; Possession.*

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mon Pleas, under section 1231, is authorized to make an allowance of not more than \$300.00 per annum to the sheriff, but I know of no other provision of the statutes authorizing the county to pay for such services. I suppose that in most counties the court would allow the sheriff the whole amount authorized, even though no capital case was tried, so that practically the law does not provide an adequate compensation for him in such cases. I agree with you that there ought to be some legislation on the subject.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; STATE ASSOCIATION; PAY FOR ATTENDING; PAPERS AND FILES IN AUDITOR'S OFFICE; INDEXING; POSSESSION.

Attorney General's Office,  
Columbus, Ohio, February 28, 1884.

*F. P. Magee, Esq., Prosecuting Attorney, McArthur, Ohio:*

DEAR SIR:—Your favor of the 25th instant was duly received.

1. County commissioners are not entitled to receive payment for their services or expenses while attending the late meeting of the County Commissioners' State Association at Columbus. Their business here on that occasion was in no sense official business or business pertaining to their office.

2. I can find no statute authorizing county commissioners to employ a person to rearrange and index the papers and files in the county auditor's office. It is certain that they have no authority to direct or allow such papers

*Costs in Misdemeanors; Allowance by County Commissioners.*

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and files to be removed from the auditor's office. The former auditor, on going out of office, should have delivered up to his successor all the documents, books, records, vouchers, papers, maps and other property in his hands belonging to the county. (Section 1033 Revised Statutes). I do not think that the present auditor can be held responsible for any papers which were removed before he went into office and not delivered up to him as the law requires. It is his duty, however, to recover possession of such papers and cause the same to be returned to his office.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COSTS IN MISDEMEANORS; ALLOWANCE BY  
COUNTY COMMISSIONERS.

Attorney General's Office,  
Columbus, Ohio, March 6, 1884.

*C. D. Clark, Esq., Prosecuting Attorney, Willoughby, Ohio:*

DEAR SIR:—Your favor of the 4th instant is received. I am of opinion that under section 1309 Revised Statutes the county commissioners cannot make an allowance in misdemeanors except where there has been a conviction and the defendant proves insolvent. In the case stated by you, where a defendant charged with a misdemeanor is bound over to a higher court by a justice of the peace and the grand jury fails to find an indictment or the State fails to convict upon trial, the costs made before the justice of the peace cannot be paid out of the county treasury.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Surveyor; Fees Recording Plat Section 1190 (70 O. O., 286)—Costs on Convictions for Felony; Liability Attaches to State at Sentence; Sheriff; No Mileage; Return of Warrant of Commutation.*

COUNTY SURVEYOR; FEES RECORDING PLAT  
SECTION 1190 (70 O. L., 286).

Attorney General's Office,  
Columbus, Ohio, March 6, 1884.

*J. B. Driggs, Esq., Prosecuting Attorney, Woodsfield, Ohio:*

DEAR SIR:—Your favor of the 4th instant is received. I am of opinion that the county surveyor cannot be paid by the county for recording the plat and certificate mentioned in section 1190 Revised Statutes (amended 78 O. L., 286). Such record is not for the benefit of the public but for the benefit of the owners of the land to which the survey applies. The cost of this record is clearly included in the expenses which section 1192 provides shall be paid by the person or persons applying for such survey, etc.

I have heretofore given an opinion that a county surveyor is entitled to be paid by the county for keeping the record required by section 1178 (78 O. L., 286).

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

COSTS ON CONVICTIONS FOR FELONY; LIABILITY ATTACHES TO STATE AT SENTENCE; SHERIFF; NO MILEAGE; RETURN OF WARRANT OF COMMUTATION.

Attorney General's Office,  
Columbus, Ohio, March 7, 1884.

*B. J. McKinney, Esq., Chief Clerk, Auditor of State:*

DEAR SIR:—Your favor of the 6th instant is received. Where a person is convicted of a felony and sentenced

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*Ohio National Guard; Contributing Member; O. N. G.  
Exempt from Service as Juror.*

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to the penitentiary but never brought there, the sentence being commuted by the governor to imprisonment in the county jail, I am of opinion that the State must pay the costs of his prosecution and conviction, unless the same are made from the defendant. The liability of the State in respect to such costs attaches from the sentence of a person for felony.

The sheriff is not entitled to be paid mileage by the State for making the return of the warrant of commutation to the governor, there being no statute authorizing such payment by the State.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; CONTRIBUTING MEMBER;  
O. N. G. EXEMPT FROM SERVICE AS JUROR.

Attorney General's Office,  
Columbus, Ohio, March 7, 1884.

*General E. B. Finley, Adjutant General:*

DEAR SIR:—Your favor of this date, referring to me a communication from Col. J. D. Norton is received.

I am of opinion that a contributing member of a company of the Ohio National Guard, whether he is over forty-five years of age or not, is exempt from service as a juror under section 3055 Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Election; Judge Court Common Pleas; 1 Sub- Div. 2 Jud. Dist.—One Mile Assessment Pike; Power of Commissioners; Errors in Tax Duplicate; Money Erroneously Paid in Taxes; Taxes for Two Mile Assessment Pike.*

ELECTION; JUDGE COURT COMMON PLEAS; 1  
SUB. DIV. 2 JUD. DIST.

Attorney General's Office,  
Columbus, Ohio, March 7, 1884.

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

DEAR SIR:—Your favor of the 5th instant is received.

I am of opinion that the act of March 21, 1879 (76 O. L., 35) does not authorize the election of an additional judge of the Court of Common Pleas in the first subdivision of the second judicial district, to succeed the incumbent of the five years' term of office created by said act (38 O. St., 344).

It must be confessed, however, that the question is not free from doubt, for it may be claimed with some force that the purpose to provide for the election of such successor is implied from the language of the third section of said act. I think the safest way will be to have the legislature repeal said act.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

ONE MILE ASSESSMENT PIKE; POWER OF COMMISSIONERS; ERRORS IN TAX DUPLICATE; MONEY ERRONEOUSLY PAID IN TAXES; TAXES FOR TWO MILE ASSESSMENT PIKE.

Attorney General's Office,  
Columbus, Ohio, March 8, 1884.

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

DEAR SIR:—Your favor of the 6th instant was duly received.

*One Mile Assessment Pike; Power of Commissioners; Errors in Tax Duplicate; Money Erroneously Paid in Taxes; Taxes for Two Mile Assessment Pike.*

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1. Under the statutes relating to one mile assessment pikes the road commissioners have no power to refund or remit taxes erroneously assessed upon property not within the limit of the road improvement. The last clause of section 4810 refers to reducing or abating levies as authorized by section 4778. I am of opinion that the county commissioners have power to relieve such property from all future assessments. Under section 4777 the board of county commissioners direct the levy to be made and the auditor is required to enter the same upon the duplicate for collection but only on the lands and taxable property within the bounds of the road. The fact that the levy in previous years has been entered upon the duplicate on property not subject thereto does not make the levy thereon legal, and I think the county commissioners have power to direct that such illegal levy be omitted in all future duplicates. If entered on the duplicate, collection thereof could not be enforced, and the tax payer would also have a remedy by injunction. There remains, however, the question, can the county commissioners order money heretofore paid by reason of such levy to be refunded? If so, their authority must be derived from section 1038. Under the decisions of the Supreme Court in the cases reported in the 31 O. St., 271, 38 O. St. 560 and 39 O. St., 168, I am inclined to think that they have not power to do this, unless the levy was entered against said lands merely by a clerical error and I think that such clerical error must have been made by the officer who entered it upon the duplicate. If the plats, etc., returned by the road commissioners included this land within the bounds of the road, the money cannot be refunded. In such case the taxpayer's only remedy is an appeal to the courts, where the real question will be whether the payment was voluntary.

2. In the second case stated, where two roads are being constructed, one under the one mile assessment laws, and the other under the two mile assessment laws, and the



*Paupers; Power of Township Trustees; Township Relief.*

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territory between them is divided upon a certain tract of land, the improvements being situated on that part of said tract set off to the two mile assessment road, I am of opinion that such improvements should be taxed for the latter road, and that they cannot be taxed for the one mile assessment road.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PAUPERS; POWER OF TOWNSHIP TRUSTEES;  
TOWNSHIP RELIEF.

Attorney General's Office,  
Columbus, Ohio, March 8, 1884.

*G. W. Taylor, Esq., Sarahsville, Ohio:*

DEAR SIR:—Your favor of the 4th instant was duly received. The relief of the poor is one of the purposes for which township trustees are authorized to cause an annual levy to be made; and in counties where there are no county infirmaries, a further township tax may be levied for that purpose. Sections 2827 and 2828 Revised Statutes.

By section 1491 the trustees of each township in the State are authorized and required to afford public support and relief at the expense of their township to all persons therein who may be in condition requiring the same. A record should be made of this finding, but I do not think it necessary to make an order formally declaring such person to be a pauper. If the county has an infirmary, the trustees, by proceeding in the manner required by sections 974 (amended 80 O. L., 108) and 975, may charge the expense of such relief upon the county. If, however, it be inexpedient to do this, I think that the trustees can furnish relief at the expense of the township without making a statement

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*Supervisor of Roads; Compensation of.*

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to the infirmity authorities so as to charge the county. Unless the circumstances be peculiar, relief so furnished ought to be confined to cases requiring only temporary assistance.

The trustees are in many instances charged with a very delicate duty, demanding the exercise of considerable judgment and discretion. Strictly speaking, I suppose that under our laws all persons receiving public relief are considered to be paupers, yet, unless the case is turned over to the county infirmity authorities, the word "pauper" need never be used.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SUPERVISOR OF ROADS; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, March 10, 1884.

*R. F. Wamsley, Esq., Township Trustee, Otway P. O., Ohio:*

DEAR SIR:—Your favor of the 3d instant was duly received. A supervisor of roads is entitled to payment only for the time he is actually employed on the roads. He is allowed no compensation for giving bond or settling his accounts.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Allowance for Labor on Roads; Powers of Supervisor and Trustees—Supervisor of Roads; Compensation of.*

ALLOWANCE FOR LABOR ON ROADS; POWERS OF SUPERVISOR AND TRUSTEES.

Attorney General's Office,  
Columbus, Ohio, March 10, 1884.

*Messrs. Marion H. Schwack and James A. Green, Newville, Ohio:*

GENTLEMEN:—Your favor of the 4th instant was duly received. The allowance for labor performed in pursuance of section 4755 Revised Statutes is, in the first instance, to be made by the supervisor. It is only where there is a dispute between the supervisor and the person interested that the matter is submitted to the trustees. In such case, I am of opinion that the trustees cannot exceed the amount which the supervisor is authorized to allow, that is, two dollars and twenty-five cents (\$2.25) for each team and driver and one dollar (\$1.00) for each hand per day for the time actually employed.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

SUPERVISOR OF ROADS; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, March 10, 1884.

*S. A. Rummel, Esq., New Springfield, Ohio:*

DEAR SIR:—Your favor of the 6th instant was duly received. I am of opinion that, under a fair construction of section 1533, the supervisor is entitled to receive \$25.00 when the number of persons in his district liable to do work on the public highway is not less than thirty-five nor more

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*Indictment; Evidence to Sustain "Arson of a Dwelling House."*

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than fifty, and in addition thereto he is entitled to an allowance not exceeding 8 per cent. on the amount of labor performed in working out the road tax in his district, provided that the total compensation shall not exceed \$1.50 per day for the time he is actually employed on the roads. If at the annual settlement the trustees failed to allow the supervisor the full amount to which he was entitled, I think that they can correct this error.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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INDICTMENT; EVIDENCE TO SUSTAIN "ARSON  
OF A DWELLING HOUSE."

Attorney General's Office,  
Columbus, Ohio, March 11, 1884.

*S. R. Gatshall, Esq., Prosecuting Attorney, Mount Vernon,  
Ohio:*

DEAR SIR:—Your favor of the 10th instant was duly received.

Under the common law rule as to what constitutes a "dwelling house" and the decisions of courts in other states upon the subject, I am inclined to think that a person charged with burning a dwelling house cannot be convicted on evidence that he burned a building erected for a dwelling house, but not quite completed and never occupied as such. You will find some authorities cited in "Waterman's Criminal Digest," pages 23 and 24. In the case of *Hall vs. The State*, 21 O. St., 233, the court say that the original designation of a building "does not determine its substantive character in the sense of the crimes act. This must be de-

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*Elections; Where to be Held; Precincts, Etc.*

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terminated from the nature of the uses to which the structure is appropriated at the time it is violated.”

The court was certainly wrong in charging that the burning of the building you describe was not the subject of arson, and I think under section 7303 it ought to have discharged the jury without prejudice to the prosecution. Under the rule laid down in the case of Price vs The State, 19 O., 423, I am of opinion that the defendant could still be convicted on a new indictment properly describing the building burned.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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ELECTIONS; WHERE TO BE HELD; PRECINCTS,  
ETC.

Attorney General's Office,  
Columbus, Ohio, March 11, 1884.

*F. A. Pettibone, Esq., Prosecuting Attorney, Ashtabula,  
Ohio:*

DEAR SIR:—Your favor of the 7th instant was duly received. In the case stated by you each ward of the municipal corporation composes one election precinct and the territory of the township outside of the corporation also composes one election precinct. The election for the township precinct shall be held at such place within the township as the trustees thereof shall determine, and for each of said ward precincts at such place therein as the council shall designate. The electors shall vote at the polls of the precinct in which they reside. Returns of the municipal election are to be made to the clerk of the corporation, and of the township election to the township clerk, sections 2923 (77 O. L., 40), 1725, 2927, 1728 and 2996 Revised Statutes.

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*Fees and Costs; When to be Paid by County, Etc.*

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I am of opinion that in each ward of the village there should be one set of judges and clerks, but two separate ballot boxes and poll books, so that the returns for the election of the municipal officers can be made to the village clerk and the returns for the election of the township officers to the township clerk. Each elector in the village is entitled to vote at one place in his ward for both sets of officers, and the electors in the township precinct should vote for the township officers at the place named by the trustees.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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FEES AND COSTS; WHEN TO BE PAID BY COUNTY, ETC.

Attorney General's Office,  
Columbus, Ohio March 11, 1884.

*Anson Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:*

DEAR SIR:—Your favor of the 7th instant was duly received.

1. In all cases of felonies, whatever be the disposition of the case, the fees of witnesses before the examining magistrate, the grand jury and the court should be paid out of the county treasury. Sections 1302 and 1308.

2. There is no authority to pay out of the county treasury any fees of a justice of the peace, mayor or constable except in cases of felonies where the defendant is convicted on trial in the Common Pleas Court; but section 1309 authorizes the county commissioners to make an allowance to any of said officers in lieu of fees, in cases of felonies wherein the State fails. This, I take it, means where the State fails at any stage of the case, whether before the magistrate or afterwards.

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*Municipal Corporation; Expenditure of "General Fund,"  
Etc.*

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3. In cases of misdemeanors the commissioners cannot make any allowance to the officers named unless the defendant has been convicted and proves insolvent.

4. In misdemeanors the fees of witnesses before the Court of Common Pleas, grand jury, or other courts of record, should be paid out of the county treasury, section 1302.

5. There is no statute authorizing the county to pay the fees of witnesses before a justice of the peace or mayor in cases of misdemeanors.

In respect to the fees of witnesses, it makes no difference what is the disposition of the case.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; EXPENDITURE OF  
"GENERAL FUND," ETC.

Attorney General's Office,  
Columbus, Ohio, March 12, 1884.

*Mr. Finley Brothers, Village Clerk, Fredericksburg, Ohio:*

DEAR SIR:—Your favor of the 8th instant was duly received. In my opinion the general fund of a municipal corporation may be expended for any of the general purposes for which such corporation is authorized to expend money, including the purchase of a fire engine. Money paid into such fund by reason of the "Scott law" is to be treated precisely the same as that received from the tax levy.

The difficulty in your case I fear is that the council has not observed the requirements of sections 2698 and 2702. Before the engine is purchased the council should have

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*Schools; Joint Subdistrict; When May be Dissolved.*

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determined from what fund the money was to be drawn, and the clerk should have certified that the money required for the expenditure was in the treasury to the credit of such fund and not appropriated for any other purpose. If this was not done, the contract for the purchase of the engine was illegal and void.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SCHOOLS; JOINT SUBDISTRICT; WHEN MAY BE  
DISSOLVED.

Attorney General's Office,  
Columbus, Ohio, March 14, 1884.

*S. A. Court, Esq., Prosecuting Attorney, Marion, Ohio:*

DEAR SIR:—Your favor of the 13th instant is received.

I am of opinion that under section 3950 a joint subdistrict may be dissolved at any time by the concurrent action of the several townships having territory included therein. I do not think that the limitation of three years prescribed by sections 3942 and 3946 is applicable in such case.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.



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*Schools at Children's Homes, Etc.; to What Portion of  
School Funds Entitled.*

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SCHOOLS AT CHILDREN'S HOMES, ETC.; TO  
WHAT PORTION OF SCHOOL FUNDS EN-  
TITLED.

Attorney General's Office,  
Columbus, Ohio, March 17, 1884.

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

DEAR SIR:—Your favor of the 14th instant was duly received.

I am of opinion that a separate school established at a children's home, orphan asylum or county infirmary in pursuance of section 4010 (80 O. L., 217) is not entitled to receive any part of the contingent fund raised by a levy upon the taxable property of the district in which such institution is located. While the language of the statute is not entirely clear, it can scarcely be supposed that the legislature intended to cast the burden of sustaining these schools upon the local tax payers. In my opinion "the full share of all the school funds of the district belonging to such children on the basis of enumeration," is their share of the school funds which are apportioned to the district on the basis of the enumeration of the children therein.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Physician's Prescription; Under Section Six of "Scott Law".  
—Mutual Protective Associations; Must Make State-  
ment to Superintendent of Insurance.*

PHYSICIAN'S PRESCRIPTION; UNDER SECTION  
SIX OF "SCOTT LAW."

Attorney General's Office,  
Columbus, Ohio, March 18, 1884.

*Mr. W. M. Cope, Smithfield, Ohio:*

DEAR SIR:—Yours of the 13th instant was duly received. I do not think that a physician's prescription must necessarily contain the name of the person to whom it is given or the date. The real question under section six of the "Scott Law" (80 O. L., 164) is, was the prescription issued in *good faith* by a reputable physician in active practice.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

MUTUAL PROTECTION ASSOCIATIONS; MUST  
MAKE STATEMENT TO SUPERINTENDENT  
OF INSURANCE.

Attorney General's Office,  
Columbus, Ohio, March 18, 1884.

*Mr. J. G. Giddings, President Edinburg Mutual Protection  
Association, Edinburg, Ohio:*

DEAR SIR:—Yours of the 13th instant was duly received. Section 3690 Revised Statutes as amended April 19, 1883 (80 O. L., 197) requires mutual protection associations to make a statement to the superintendent of insurance—see this act.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Sheriff; Fees for Committing and Discharging Prisoner from Jail; When Cannot be Paid by County Commissioners.*

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SHERIFF; FEES FOR COMMITTING AND DISCHARGING PRISONER FROM JAIL; WHEN CANNOT BE PAID BY COUNTY COMMISSIONERS.

Attorney General's Office,  
Columbus, Ohio, March 18, 1884.

*Perry M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:*

DEAR SIR:—Your favor of the 15th instant was duly received.

I am of opinion that the county commissioners cannot pay the fees of the sheriff for committing the prisoner to jail or discharging him therefrom, in criminal cases where the State fails to convict or the defendant proves insolvent, or the State enters a nolle, or the grand jury fails to indict. The two classes of cases last mentioned might properly be included in the first, all being cases "where the State fails to convict." The services of the sheriff in such cases, including the commitment and discharge of the prisoner, are provided for in section 1231 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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Attorney General's Office,  
Columbus, Ohio, March 20, 1884.

*John A. Pierce, Sheriff of Geauga County:*

DEAR SIR:—Your favor of the 19th instant was duly received.

I am of opinion that the sentence, of which a copy is given in your letter, means that Hewitt is to be confined

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*Municipal Corporation; Signature of Presiding Officer of Council not Essential to Validity of Ordinance.*

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within the jail of the county until the fine and costs are paid or secured to be paid or he is otherwise legally discharged.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; SIGNATURE OF  
PRESIDING OFFICER OF COUNCIL NOT ES-  
SENTIAL TO VALIDITY OF ORDINANCE.

Attorney General's Office,  
Columbus, Ohio, March 20, 1884.

*S. A. Wood, Esq., Cardington, Ohio:*

DEAR SIR:—Your letter of the 20th instant is received. In villages the mayor is president of the council, but has no vote, except in case of a tie. It is the duty of the presiding officer and clerk to sign all ordinances passed by the council, for the purpose of authenticating the same. The signature of the presiding officer, however, is not essential to the validity of the ordinance if it was regularly passed by the council. This fact may be shown by the record.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Board of Education; Election to Fill Vacancy in—Schools;  
Special Districts; Decision of Supreme Court in Respect  
Thereon.*

BOARD OF EDUCATION; ELECTION TO FILL VA-  
CANCY IN.

Attorney General's Office,  
Columbus, Ohio, March 20, 1884.

*Mr. L. D. Brown, Commissioner of Schools:*

DEAR SIR:—From the letter of Mr. N. Iddings, here-  
with returned, it appears that in 1883 there was a vacancy  
in the board of education of the Bradford school district,  
which was filled by the board in pursuance of section 3981.  
I am of opinion that at the election on the first Monday in  
April, 1884, a successor should be elected to fill out the  
unexpired term ending in 1885. The person appointed by  
the board will hold his office until the election and qualifica-  
tion of such successor. Yours truly,

JAMES LAWRENCE,  
Attorney General.

SCHOOLS; SPECIAL DISTRICTS; DECISION OF  
SUPREME COURT IN RESPECT THERETO.

Attorney General's Office,  
Columbus, Ohio, March 20, 1884.

*Hon. L. D. Brown, Commissioner of Schools:*

DEAR SIR:—I return herewith the letter of W. H. John-  
son, of Mentor, Ohio, who seems to be under a misappre-  
hension concerning the decision of the Supreme Court in  
the New London case (38 O. St., 54). The court did not  
hold "the law under which all special school districts have  
been organized to be unconstitutional." The decision re-  
ferred to relates only to a special district created by a special

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*Toledo Asylum; Selection of Site Therefor.*

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act of the legislature, and not to districts organized in pursuance of the general law. I infer from Mr. Johnson's letter that the Mentor special district was organized under the general law upon the subject. If the case is otherwise, please ask him to refer me to the special act creating the district, and I will examine the question further.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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TOLEDO ASYLUM; SELECTION OF SITE THEREFOR.

Attorney General's Office,  
Columbus, Ohio, March 20, 1884.

*Hon. Godfrey Jaeger, Senate, Columbus, Ohio:*

DEAR SIR:—Your favor of the 19th instant was duly received. The commission appointed by the act of April 18, 1883 (80 O. L., 181) having selected a site for the new asylum, as it was authorized to do, I am of opinion that under the present law, the question of location cannot be reopened.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Ohio Penitentiary; Construction of Act Relating Thereto—  
Municipal Corporation; Annual Statement of Clerk.*

OHIO PENITENTIARY; CONSTRUCTION OF ACT  
RELATING THERETO.

Attorney General's Office,  
Columbus, Ohio, March 21, 1884.

*Hon. George Hoadly, Governor:*

SIR:—In reply to your favor of the 19th instant, I have the honor to state that, in my opinion, the act relating to the Ohio penitentiary, passed March 18th, 1884, which repeals section 7432 Revised Statutes (78 O. L., 90) to take effect May 1, 1884, does not take away or in any manner affect the credits for good behavior gained prior to May 1, 1884, by any convict whether serving a minimum or other sentence.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; ANNUAL STATE-  
MENT OF CLERK.

Attorney General's Office,  
Columbus, Ohio, March 21, 1884.

*Mr. Ed. A. King, Village Clerk, New Lisbon, Ohio:*

DEAR SIR:—The law relating to the publication of the annual statement by clerks of municipal corporations was amended last winter. (See 80 O. L., 65). This statement must be an itemized statement, showing each item of receipts and expenditures, and all other particulars required by section 1756 as thus amended.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Recorder; When Fees Increased by Commissioner,  
by Whom Paid—Fines and Costs; Distinguished;  
Treasurer's Commission on Costs.*

COUNTY RECORDER; WHEN FEES INCREASED  
BY COMMISSIONER, BY WHOM PAID.

Attorney General's Office,  
Columbus, Ohio, March 21, 1884.

*Mr. J. L. Stir, County Recorder, Waverly, Ohio:*

DEAR SIR:—Your favor of the 18th instant was duly received. Where the county commissioners, in pursuance of section 1365 Revised Statutes, increased the fees of the county recorder, such increased fees are to be paid by the person presenting a deed or other instrument for record. For instance, if according to the fees prescribed in the statutes relating to his office he would be entitled to charge \$1.00 for making a certain record, should the commissioners increase his fees ten per cent., he would thereafter be entitled to charge \$1.10 for the same work. Whoever pays the fees must pay the increased rate.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

FINES AND COSTS; DISTINGUISHED; TREASURER'S COMMISSION ON COSTS.

Attorney General's Office,  
Columbus, Ohio, March 22, 1884.

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

DEAR SIR:—Your favor of the 20th instant was duly received. I think our statutes clearly distinguish between "fines" and "costs," and that the term fines, as used in



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*Penitentiary; Construction of Act Relating to; Obligation  
of Contracts.*

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section four of the act of April 8, 1880 (77 O. L., 137), cannot be held to include both fines and costs. I am of opinion that costs of every kind collected by the county treasurer are included under the designation "all other moneys collected," for which he is allowed one per cent. on the first \$10,000.00 and on any excess five-tenths of one per cent.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PENITENTIARY; CONSTRUCTION OF ACT RE-  
LATING TO; OBLIGATION OF CONTRACTS.

Attorney General's Office,  
Columbus, Ohio, March 24, 1884.

*Hon. George Hoadly, Governor:*

SIR:—Your favor of the 21st instant was duly received. The provision of the constitution of the United States, that no state shall pass any law impairing the obligation of contracts, applies to contracts made by a state as well as to those entered into between private individuals, so that, if section four of the act relating to the Ohio penitentiary, passed March 18, 1884, undertakes to abrogate existing contracts for convict labor, to that extent it is unconstitutional and void. This would not render the section void in toto but only so far as it affects existing contracts. For every other purpose it would be a valid enactment.

I prefer, however, to construe said section as relating only to future contracts for the employment of convicts. The language will bear that construction, and I think we must, therefore, suppose that the legislature intended the

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*Justice of the Peace; Election of.*

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act to have only a constitutional operation. In either view the practical result is the same.

Respectfully yours,

JAMES LAWRENCE,

Attorney General.

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JUSTICE OF THE PEACE; ELECTION OF.

Attorney General's Office,  
Columbus, Ohio, March 25, 1884.

*Hon. George Hoadly, Governor:*

SIR:—I am in receipt of your favor of 22d instant, stating that you are asked to commission a justice of the peace under the following circumstances: The term of a justice of the peace for Warren Township, Belmont County, expired November 28, 1883. No notice was given previous to the expiration of his commission as required by section 581 Revised Statutes. After the term expired a special election was held on March 12, 1884, under the supposed authority of section 567 Revised Statutes. In my opinion section 567 refers to cases where a vacancy occurs in the office of a justice of the peace before the expiration of a term. Where the term of office has expired a successor can only be elected at a regular spring or fall election.

I am, therefore, of opinion that the special election held on the 12th day of March, 1884, has no legal effect whatever, and that you cannot issue a commission to the person chosen at said election.

Yours respectfully,

JAMES LAWRENCE,

Attorney General.

*Revised Statutes; Volumes of; Furnished by H. W. Derby.  
Liquor Law; Purchaser of Business Must Pay Tax  
Under "Scott Law" for Remainder of Year.*

REVISED STATUTES; VOLUMES OF; FURNISHED  
BY H. W. DERBY.

Attorney General's Office,  
Columbus, Ohio, March 25, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I am in receipt of your favor of the 24th instant enclosing copy of report by special committee of the House of Representatives.

In my opinion, the volumes of the Revised Statutes furnished to the State by H. W. Derby, in accordance with the joint resolution of the General Assembly passed April 17, 1883 (80 O. L., 388), substantially comply with said resolution, and besides contain many valuable annotations not required thereby. I am, therefore, of opinion that you may properly pay for the same in full, as provided by said joint resolution, from the appropriations made for that purpose in the act of April 19, 1883 (80 O. L., 225).

Yours truly,

JAMES LAWRENCE,  
Attorney General.

LIQUOR LAW; PURCHASER OF BUSINESS MUST  
PAY TAX UNDER "SCOTT LAW" FOR RE-  
MAINDER OF YEAR.

Attorney General's Office,  
Columbus, Ohio, March 26, 1884.

*John M. Garven, Esq., Prosecuting Attorney, Cadiz, Ohio:*

DEAR SIR:—Your favor of the 21st instant was duly received. Where a dealer in intoxicating liquors, who has

*Board of Public Works; Allowance to Members for Traveling Expenses, How Paid; Auditor's Duty in Respect Thereto.*

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paid the tax under the "Scott" law, sells his business to another, the purchaser must pay the tax for the remainder of the current year, even though the business is continued in the same room and in every way precisely as under the former proprietor.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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BOARD OF PUBLIC WORKS; ALLOWANCE TO  
MEMBERS FOR TRAVELING EXPENSES, HOW  
PAID; AUDITOR'S DUTY IN RESPECT THERE-  
TO.

Attorney General's Office,  
Columbus, Ohio, March 26, 1884.

*Hon. Emil Kieseewetter, Auditor of State:*

DEAR SIR:—Complaint has been made to me that each member of the board of public works has heretofore drawn the sum of fifty dollars per month for alleged traveling expenses, without showing, either upon the order or by any statement filed in the office of the board, the nature of such expenses or how the same were incurred. The law requires the auditor of state to examine all claims presented for payment out of the State treasury, and if he find any such claim legally due, he shall issue a warrant on the State treasurer for the amount so found due. Evidently a claim presented for payment must show in some manner that it is legally due. The law does not give the members of the board fifty dollars a month for traveling expenses, but provides simply that they shall be entitled to their traveling expenses not to exceed fifty dollars a month. The sum named is a limitation upon the amount of such expenses. They are only en-

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*Legal Advertisement; Publication of Statement by Village Clerk is.*

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titled to receive from the State the amount actually paid by them for traveling expenses while traveling on official business, not to exceed fifty dollars in any one month. I am of opinion that an order presented for the payment of such expenses should contain an itemized statement thereof. This is the rule in all other departments of the State government and there appears no reason for an exception in the case of the board of public works. The provision in section 7655 Revised Statutes, that said expenses shall be paid monthly upon the order of the board, does not affect the question. This merely indicates the authority which is to draw the order.

I therefore respectfully request that you decline to issue a warrant for the amounts claimed for traveling expenses until a proper order is presented in accordance with what I have stated above. Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LEGAL ADVERTISEMENT; PUBLICATION OF  
STATEMENT BY VILLAGE CLERK IS.

Attorney General's Office,  
Columbus, Ohio, March 26, 1884.

*M. A. Jameson, Esq., Business Manager Gazette Printing  
Co., Lebanon, Ohio:*

DEAR SIR:—Your favor of the 25th instant is received. I am of opinion that the publication of the detailed statement by a village clerk is a "legal advertisement" under section 4366 Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Pharmacy; Act of March 20th, 1884 (81 O. L., 61) In Reference Thereto.*

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PHARMACY; ACT OF MARCH 20TH, 1884 (81 O. L., 61) IN REFERENCE THERETO.

Attorney General's Office,  
Columbus, Ohio, March 26, 1884.

*M. H. Virden, Esq., La Rue, Ohio:*

DEAR SIR:—Your letter of the 25th instant to Hon. B. G. Young has been handed to me for an answer. If you wrote to me the letter did not come to hand.

The pharmacy bill, recently passed, provides that every person now conducting or engaged in such business in this State as proprietor or manager of the same—who shall furnish satisfactory evidence in writing and under oath of such fact, within three months after the publication of notice by the board, shall be registered as a pharmacist—without examination.

The question is, therefore, one of fact whether, at the time said act was passed, you were conducting or engaged in the drug business in this State as proprietor or manager, and this question is to be determined by the State pharmacy board.

In my opinion, a temporary interruption of your business by reason of a fire does not prevent you from registering without an examination, providing you are otherwise entitled to do so.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Pharmacy; Act of March 20th, 1884, in Reference Thereto  
—Georgetown Horse League; Articles of Incorporation of.*

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PHARMACY; ACT OF MARCH 20TH, 1884, IN REFERENCE THERETO.

Attorney General's Office,  
Columbus, Ohio, March 26, 1884.

*Mr. B. F. Philips, North Jackson, Ohio:*

DEAR SIR:—Your favor of the 20th instant was received today.

I am of opinion that your former clerk to whom you have sold your drug business, will have to be examined by the State board of pharmacy, if he desires to continue the business. He was not conducting or engaged in the drug business as proprietor or manager when the recent pharmacy act was passed, nor had he been continuously employed or engaged for *three* years preceding the passage of said act as an assistant in a retail drug store.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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GEORGETOWN HORSE LEAGUE; ARTICLES OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, March 27, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the "Georgetown Horse League," and advise that you decline to file the same in your office. The corporation is attempted to be organized for "the mutual protec-

*Special School District, Created by Special Act; Decision of  
Supreme Court in Reference Thereto.*

tion of its members against the raids and operations of horse thieves throughout the community and surroundings." If I understand what is meant by this, it is a species of insurance not authorized by our laws.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

SPECIAL SCHOOL DISTRICT, CREATED BY SPECIAL ACT; DECISION OF SUPREME COURT IN REFERENCE THERETO.

Attorney General's Office,  
Columbus, Ohio, March 27, 1884.

*Hon. L. D. Brown, School Commissioner:*

DEAR SIR:—Your favor of the 26th instant is received. In the case of the State vs Powers (38 O. St., 54) the Supreme Court held that the act creating a special school district, comprising the township of New London, was unconstitutional, on the ground that laws regulating the organization and management of common schools must have a uniform operation throughout the State. I understand that, under this decision, any special act of the legislature organizing a particular territory into a school district is unconstitutional, and therefore void. A school district created by such an act has no legal existence whatever. The present status of the territory thus attempted to be organized into a school district, might, in some instances, depend on special circumstances, but, generally speaking, such territory remains just as it was when the act was passed and belongs to the district or districts which then comprised it.

Where a school district created under an unconstitutional law, but having a *de facto* existence, has issued bonds



*Board of Education; Election of Members of; Ballots, Etc.*

or incurred obligations of any kind, the question of the validity of such bonds or obligations might depend to some extent upon the facts of the particular case, and I prefer not to express an opinion upon that subject until an actual case has arisen.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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BOARD OF EDUCATION; ELECTION OF MEMBERS OF; BALLOTS, ETC.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*Hon. L. D. Brown School Commissioner:*

DEAR SIR:—I return herewith the letter of Mr. W. N. Ashbaugh, clerk of the Youngstown board of education, and also the copy of the recent act of the legislature amending sections 3886 and 3898 Revised Statutes.

Except in wards to which territory beyond the city limits has been attached for school purposes or in which an elector not residing therein is entitled to vote as provided in section 3898, members of the board of education in a city district of the first class may be voted for upon the same ballot with city officers and in a single ballot box. I think this is the mode contemplated by the law. Still the election would be valid if separate ballots and ballot boxes were used. In all cases separate poll books and tally sheets must be kept so that a separate return of the election for members of the board of education may be made.

I think that Mr. Ashbaugh has been misinformed as to the manner of voting for members of the board of education in Cleveland.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Laborers; Payment of Wages of; in "Scrip," Etc.—Shows;  
License of, Etc.*

LABORERS; PAYMENT OF WAGES OF; IN "SCRIP,"  
ETC.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

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

DEAR SIR:—I have examined the check or ticket said to be used by Guild Prendergast & Company in payment of the wages of their laborers, and return the same attached hereto.

In my opinion this "check" amounts to a due bill, for which the person to whom it is issued has a right to demand money, and on which he could sue and recover a money judgment. I do not think that the company could be convicted under section 7015 Revised Statutes for issuing said check. Of course if it could be established that it was intended to be used as money or in lieu of the lawful money of the United States, the case would be different, but I am inclined to think that it would be difficult to obtain proof of such intention. The laborers have a right to refuse to accept such checks, or, if accepted, they have a right to require payment in money.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

SHOWS; LICENSE OF, ETC.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*Mr. O. S. Cary, Bells Mills, Jefferson County, Pa.:*

DEAR SIR:—Your favor of the 25th instant is received. Section 4415 of the Revised Statutes of Ohio, as amended

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*County Treasurer; May be Member of School Board.*

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April 15, 1882 (79 O. L., 114), provides that "no proprietor or agent of the proprietor, of a traveling public show, not prohibited by law, shall exhibit or show any natural or artificial curiosity or exhibition of horsemanship in a circus or otherwise, for a price, until a permit has been obtained from the auditor of the county in which it is intended to show or exhibit, specifying the time and place such show may exhibit in the county; which permit the auditor shall not issue until there has been paid into the county treasury the following sums for each day such show is to be exhibited," etc., etc. The license fee is from \$25.00 to \$60.00. Whether yours is a "traveling public show" or not is a question of fact, upon which I do not care to express an opinion. In addition to the foregoing, municipal corporations have power to license "all exhibitors of shows and performances of any kind." No license is required from the State.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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COUNTY TREASURER; MAY BE MEMBER OF  
SCHOOL BOARD.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*James Irvin, Lima, Ohio:*

Yes; a county treasurer may be member of school board.

JAMES LAWRENCE,

(By telegraph.)

Attorney General.

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*Elections; Judges of in Townships Divided into Precincts.*

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## ELECTIONS; JUDGES OF IN TOWNSHIPS DIVIDED INTO PRECINCTS.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*Mr. S. A. Rummel, Township Trustee, New Springfield, Ohio.*

DEAR SIR:—In a township divided into two or more election precincts, each trustee shall act as judge of election in the precinct in which he resides, unless they all reside in the same precinct, when two only can so act therein, and the other trustee shall act as judge in any other precinct. Additional judges, so that there shall be three judges at each precinct, shall be chosen *viva voce*, provided that in all cases two political parties must have representation on the board. All three of the trustees thus act as judges. The person who received the highest number of votes for trustee of those not elected, is not one of the judges in a township divided into precincts. See section 2932 R. S. (amended 77 O. L., 51).

Where an election precinct is entirely included within the boundaries of an incorporated village, see section 1393 R. S. (amended 78 O. L., 123).

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Treasurer of Village School District; Compensation of How Paid; Municipal Corporation; Member of Council of, Etc.*

TREASURER OF VILLAGE SCHOOL DISTRICT;  
COMPENSATION OF HOW PAID.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*J. N. Hamilton, Esq., President Board of Education, Marysville, Ohio:*

DEAR SIR:—Your favor of the 24th instant was duly received.

I am of opinion that the compensation of the treasurer of a village school district is to be paid out of the funds of such district, and not out of the township treasury.

You do not say what kind of a district Marysville is, but I assume it to be a village district.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; MEMBER OF COUNCIL OF, ETC.

Attorney General's Office,  
Columbus, Ohio, March 28, 1884.

*Mr. Joseph Passman, Township Clerk, Ft. Recovery, Ohio:*

DEAR SIR:—Your favor of the 22d instant was duly received, but I have been unable to reply until now. To your questions I answer as follows:

1. A member of the council of a municipal corporation cannot be appointed to oversee or do work on the streets, and receive pay therefor from the corporation.

2. A member of the council may be a candidate for

*Corporation; Change of Principal Office of Manufacturing Corporation; Certificate Thereof not Required to be Filed in Office of Secretary of State.*

street commissioner, and if elected may serve, but he must resign his seat in the council before qualifying.

3. A member of the council who has still one year to serve, may resign and be elected village clerk.

Section 6976 Revised Statutes has no reference to other offices which a member of a council may hold after he ceased to be a councilman.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

CORPORATION; CHANGE OF PRINCIPAL OFFICE  
OF MANUFACTURING CORPORATION; CER-  
TIFICATE THEREOF NOT REQUIRED TO BE  
FILED IN OFFICE OF SECRETARY OF STATE.

Attorney General's Office,  
Columbus, March 31, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—Your favor of the 27th instant enclosing certificate of the president and secretary of the "Boyd Manufacturing Company" relative to the change of the principal office of said company from Levanna, Brown County, Ohio, to Ripley in said county, came duly to hand. You ask if such proceedings are legal, and if you are authorized to file and record such certificate.

Section 3855 Revised Statutes recognizes the right of a manufacturing corporation to change the location of its principal office. Notice of such change must be published in some newspaper of general circulation in the county, but no provision is anywhere made for recording a certificate thereof in the office of the secretary of state.

*Justice of the Peace; All Elections of for Full Term of  
Three Years.*

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You are, therefore, not required to file and record such certificate, but I see no objection to your doing so if you deem it proper.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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JUSTICE OF THE PEACE; ALL ELECTIONS OF  
FOR FULL TERM OF THREE YEARS.

Attorney General's Office,  
Columbus, March 31, 1884.

*Hon. George Hoadly, Governor:*

SIR:—I am in receipt of your favor of the 29th instant, enclosing letter from A. C. Stewart. It appears that in Troy Township, Richland County, at the regular election held on the 9th day of October, 1883, a justice of the peace was elected to fill a vacancy caused by the resignation of a former justice whose term would have expired in the spring of 1884. The person so elected was commissioned for the term of three years, but the question is now raised whether he holds his office for the full term of three years or only until his predecessor's term would have expired.

I am of opinion that all elections for justice of the peace are for the full term of three years, and that, in the present case, the person elected last October will hold his office for three years from the date of his commission.

The constitution provides that the term of office of a justice of the peace shall be three years, and no provision is made either in the constitution or statutes for an unexpired term. It is true that under section 567 Revised Statutes, when a vacancy occurs in the office of justice of the peace by death, resignation, etc., the trustees are required

*Pauper; Who is; Medical Aid to, Etc.*

to give notice to the electors of the township "to fill such vacancy," but no inference can be drawn from this, for precisely the same language is used in section 581 in reference to the election of a successor to a justice of the peace whose term has expired.

Yours respectfully,  
 JAMES LAWRENCE,  
 Attorney General.

## PAUPER; WHO IS; MEDICAL AID TO, ETC.

Attorney General's Office,  
 Columbus, Ohio, April 1, 1884.

*Hon. James H. Ferrell, House of Representatives:*

DEAR SIR:—The letter of Mr. Robert Skinning submitted to me presents three questions, which with my answers thereto are as follows:

1. Question. "Is a person requiring medical aid, but in other respects able to support himself, a legal pauper?"

Answer. I am not sure that I understand what is meant by "a legal pauper." Our statutes generally use the term pauper as applying to all persons requiring or receiving public relief (including medical services), although such relief is but temporary or partial. The word is used in this sense in the act of April 13, 1882 (79 O. L., 90) and in section 1494 Revised Statutes.

2. Question. "Have infirmary directors the right under present laws to contract with lowest responsible (competent) bidding physicians for medical care of the paupers of our township exclusive of all other townships, or without letting other townships by contract?"

Answer. Yes.

3. Question. "If a township is let as above, is it still the duty of township trustees to notify infirmary directors where medical aid only is required?"



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*Prescription of Physician.*

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Answer. Yes, if the trustees have furnished any aid which they wish to have paid out of the poor fund of the county, or if they ascertain that the person requiring aid has a legal settlement in some other county. If the physician, with whom the infirmary directors have contract, furnishes all the aid required and the trustees are not called upon, I see no necessity of their notifying the infirmary authorities.

I return herewith the letter of Mr. Skinning.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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PRESCRIPTION OF PHYSICIAN.

Attorney General's Office,  
Columbus, Ohio, April 1, 1884.

*Dr. F. H. Darby, Morrow, Ohio:*

DEAR SIR:—Your favor of March 26th was duly received with copy of prescription enclosed as follows:

“R. For T. J. Ireland.

½ Gall. pr. week best whiskey.

F. H. DARBY, M.D.”

I see no objection to the form of the prescription if issued in *good faith*.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Clerk of Courts; May be Member of Council of Municipal Corporation—Elections; Residence of Married Man.*

CLERK OF COURTS; MAY BE MEMBER OF COUNCIL OF MUNICIPAL CORPORATION.

Attorney General's Office,  
Columbus, Ohio, April 1, 1884.

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

DEAR SIR:—Your favor of March 31st is received.

I am of opinion that a clerk of courts may be elected and serve as a member of the council of a municipal corporation, or, if a candidate and defeated, he may serve as a judge of election. Yours truly,

JAMES LAWRENCE,  
Attorney General.

ELECTIONS; RESIDENCE OF MARRIED MAN.

Attorney General's Office,  
Columbus, Ohio, April 2, 1884.

*J. N. Mahaffie, Esq., Township Clerk, Calcutta, Ohio:*

DEAR SIR:—Your favor of the 1st instant is received. The place where the family of a married man resides is considered and held to be his place of residence, except where the husband and wife have separated and live apart. Section 2946 Revised Statutes. Subdivision four.

In my opinion the man you mention did not become a resident of Columbiana County until his family came there, and he is, therefore, not entitled to a vote at the coming spring election. Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Board of Education; No Power to Purchase Stock in Corporation—Benevolent Institutions; Bills for Incidental Expenses and Clothing Furnished Prior to Repeal of Section 632, R. S., Not Affected Thereby.*

BOARD OF EDUCATION; NO POWER TO PURCHASE STOCK IN CORPORATION.

Attorney General's Office,  
Columbus, Ohio, April 3, 1884.

*Hon. J. E. Myers, Senate:*

DEAR SIR:—I have examined the letter of D. S. Lyman which you submitted to me, and am of opinion that a board of education has no authority to purchase stock in a corporation. The fact that such purchase is made for the purpose of obtaining a seminary building belonging to the corporation with the view of converting it into a public school building, does not change the question. A board of education has no powers except such as the law confers.

I am further of opinion that the legislature cannot by special act authorize a board of education to purchase stock in a corporation, even for the purpose aforesaid.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

BENEVOLENT INSTITUTIONS; BILLS FOR INCIDENTAL EXPENSES AND CLOTHING FURNISHED PRIOR TO REPEAL OF SECTION 632 R. S. NOT AFFECTED THEREBY.

Attorney General's Office,  
Columbus, Ohio, April 3, 1884.

*Rev. D. R. Miller, Superintendent Girls' Industrial Home, Delaware, Ohio:*

DEAR SIR:—Your favor of the 1st instant was duly received. In my opinion the repeal of original section 632

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*Pharmacy; Act of March 20, 1884; Relating Thereto.*

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Revised Statutes by the act amendatory thereof (House Bill No. 73), passed March 25, 1884, does not affect the right of a State benevolent institution to collect from the several counties, as provided in said original section, the amount of all bills for incidental expenses and clothing furnished prior to the passage of said act. I think that such claims are within the scope of section 79 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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PHARMACY; ACT OF MARCH 20, 1884; RELATING  
THERE TO.

Attorney General's Office,  
Columbus, Ohio, April 3, 1884.

*Dr. I. L. Ackley, Oakwood, Ohio:*

DEAR SIR:—Yours of the 1st instant is received. Under the pharmacy act recently passed every person engaged in the drug business must register as provided in said act. Every person now conducting or engaged in such business as proprietor or manager, or who, being of age of eighteen years, has been continuously employed or engaged for three years preceding the passage of said act as an assistant in a retail drug store, may be registered without examination.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Prosecuting Attorney; Must Try Cases of Board of Education Without Compensation—Assessors; Election of in Cambridge Village and Township.*

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PROSECUTING ATTORNEY; MUST TRY CASES OF BOARD OF EDUCATION WITHOUT COMPENSATION.

Attorney General's Office,  
Columbus, Ohio, April 4, 1884.

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

DEAR SIR:—Your favor of the 2d instant was duly received. I am of opinion that under section 3977 Revised Statutes the prosecuting attorney must try cases for boards of education without any compensation.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ASSESSORS; ELECTION OF IN CAMBRIDGE VILLAGE AND TOWNSHIP.

Attorney General's Office,  
Columbus, Ohio, April 11, 1884.

*Geo. H. Botcher, Esq., Township Trustee, Cambridge, Ohio:*

DEAR SIR:—Your favor of the 10th instant is received. As Cambridge township and village are now divided there are eight election precincts, to-wit: the four wards of the village and the four township precincts. Eight assessors were, therefore, to be elected, one for each ward and one for each township precinct. I am of opinion that in such case an assessor must be a resident of the ward or township precinct for which he is elected, and hence that a resident of a ward in the village is not eligible to the office of

*Election; Township Clerk Having Removed from Township  
Not Entitled to Act as Clerk of.*

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assessor in a township precinct. The candidate receiving the highest number of votes in the third precinct of the township being thus ineligible, I am of opinion that there was no election therein for such office. The candidate receiving the next highest number of votes was not elected. See Cooley's Constitutional Limitations, page 620, note 1, and cases there cited.

Yours truly,

JAMES LAWRENCE

Attorney General.

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ELECTION; TOWNSHIP CLERK HAVING RE-  
MOVED FROM TOWNSHIP NOT ENTITLED  
TO ACT AS CLERK OF.

Attorney General's Office,  
Columbus, Ohio, April 11, 1884.

*J. H. Strong, Esq., Berea, Ohio:*

DEAR SIR:—Your favor of the 9th instant was duly received. The former clerk of Middleburgh Township, having removed from the township, was clearly not entitled to act as clerk of election, but I do not think that this invalidated the election, if the same was otherwise properly conducted.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Municipal Corporation; Issue of Bonds by Village for Construction of Water Works—Election; Residence Necessary to Qualify as Voter at.*

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MUNICIPAL CORPORATION; ISSUE OF BONDS  
BY VILLAGE FOR CONSTRUCTION OF WATER  
WORKS.

Attorney General's Office,  
Columbus, Ohio, April 12, 1884.

*Messrs. Pennock Bros., Minerva, Ohio:*

DEAR SIR:—Without a special act of the legislature your village cannot issue bonds for the purpose of constructing water works, until the question has been submitted to the voters of the corporation as provided in section 2837 and carried by the requisite vote.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; RESIDENCE NECESSARY TO QUALIFY AS VOTER AT.

Attorney General's Office,  
Columbus, Ohio, April 12, 1884.

*Charles C. Upham, Esq., Attorney at Law, Canton, Ohio:*

DEAR SIR:—Your favor of the 9th instant was duly received. You say that a man removed from Pennsylvania to Ohio a year ago last February who had a son not then of age. The son did not come into this State until last August, since which time he has come of age. In my opinion the son is not entitled to vote here until a year from the time he personally came into the State. He did not gain

Municipal Corporation; Expenditure of General Fund of

a residence in Ohio by the removal of his father to this State.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; EXPENDITURE OF  
GENERAL FUND OF.

Attorney General's Office,  
Columbus, Ohio, April 12, 1884.

*Mr. John K. Kimmel, Philo, P. O., Muskingum County,  
Ohio:*

DEAR SIR:—Your favor of the 7th instant was duly received. I think that the money paid into the general fund of a village under the act of April 17, 1883, known as the "Scott Law," may be expended for fencing and setting out trees in a public park of the village. No appropriation for such expenditure, however, can be made unless the money is at the time actually in the treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose. Section 2702 Revised Statutes must be strictly complied with.

If the ordinance for the expenditure of the money was passed before the money was in the treasury such ordinance is void and has no legal effect whatever.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.



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*Board of Education; Election of—Municipal Corporation;  
Compensation of Village Treasurer.*

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BOARD OF EDUCATION; ELECTION OF.

Attorney General's Office,  
Columbus, Ohio, April 14, 1884.

*Hon. L. D. Brown, Commissioner of Schools:*

DEAR SIR:—I return herewith the letter of W. S. Bullman, submitted to me. In my opinion, the election for members of the board of education for the village district mentioned in said letter was properly held at the school house on the first Monday of April, provided due notice was given as required in section 3909 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; COMPENSATION  
OF VILLAGE TREASURER.

Attorney General's Office,  
Columbus, Ohio, April 14, 1884.

*S. A. Wood, Esq., Cardington, Ohio:*

DEAR SIR:—Your favor of the 11th instant was duly received. The compensation of a village treasurer is subject to the allowance of the council. It cannot exceed the rates prescribed in section 1770 Revised Statutes, but may be less. Where money borrowed by the corporation comes into the hands of the treasurer and is disbursed by him for corporation purposes and afterwards money is received from taxes which is applied in payment of that previously borrowed, I think it is within the discretion of the council whether or not the treasurer shall be allowed full rates for paying out both items of money. This compensation is

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*Appropriation; Validity of a Certain.*

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given to him for his services and responsibility in handling the corporation money and the action of the council in making him an allowance should be governed by what is right under all the circumstances.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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## APPROPRIATION; VALIDITY OF A CERTAIN.

Attorney General's Office,  
Columbus, Ohio, April 14, 1884.

*Hon. E. Kieseewetter, Auditor of State:*

DEAR SIR:—In reply to your favor of this date, I have the honor to state that in my opinion the act of March 15, 1884, entitled "An act making an appropriation to rebuild the road leading from the south bridge in Athens, Athens County, to the Asylum for the Insane," required for its passage only the concurrence of a majority of all the members elected to each branch of the General Assembly. I am, therefore, of opinion that the appropriation made by said act is legal and valid.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Justice of the Peace; Election of, Etc.*

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## JUSTICE OF THE PEACE; ELECTION OF, ETC.

Attorney General's Office,  
Columbus, Ohio, April 16, 1884.

*Solomon Mercer, Esq., Justice of the Peace, Birds Run, Ohio:*

DEAR SIR:—Your letter of the 10th instant has just been handed to me by Mr. McConville of the governor's office.

The law does not prohibit a candidate for justice of the peace from acting as judge of election, and, in my opinion, his acting as such would not invalidate his election.

The candidate for justice of the peace should have been voted for upon the same ballots with the candidates for township officers and in a single ballot box, but separate poll books and tally sheets should have been kept so that a separate return of the election for justice of the peace might be made. It should be said, however, that the statutory provisions concerning this are regarded by the courts as directory only, and if the popular will can be ascertained they are likely to sustain it. Where separate ballot boxes are used for the election of a justice of the peace, I think the election would be held valid, provided it was otherwise properly conducted. In such case if a ticket was found in such separate ballot box containing the name of a candidate for justice of the peace and also the name of a candidate for road supervisor, the ticket designating the office for which each candidate was voted for, I am of opinion that such ballot should be counted as a vote for the candidate for justice of the peace.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Liquor Law; Assessments Under—Election, Residence of  
Husband Living Apart From Wife.*

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LIQUOR LAW; ASSESSMENTS UNDER.

Attorney General's Office,  
Columbus, Ohio, April 16, 1884.

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

DEAR SIR:—Your favor of the 12th instant came to hand yesterday.

Where a dealer in intoxicating liquors who has paid his tax under the "Scott Law" for one year, during the year sells his business to another and thereafter ceases to be engaged in such business no part of the tax paid can be refunded. This is in accordance with the opinion of my predecessor, Mr. Hollingsworth, which I adopt and approve. The purchaser also properly paid the proportionate part of the tax for the remainder of the assessment year.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTIONS, RESIDENCE OF HUSBAND LIVING  
APART FROM WIFE:

Attorney General's Office,  
Columbus, Ohio, April 16, 1884.

*Austin Church, Township Trustee, Chagrin Falls, Ohio:*

DEAR SIR:—In my opinion, the phrase "when the husband and wife have separated and live apart" as used in section 2946 Revised Statutes, means an actual separation with no present intention of living together again. It is not necessary that a divorce should have been obtained. If one abandons the other or if they mutually agree to live apart, it is sufficient to enable the husband to retain or acquire a resi-

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*State Benevolent Institution; Payment of Bills for Clothing  
Furnished Inmates Prior to March 25, 1884—Peniten-  
tiary; Power of Managers to Parole Prisoners.*

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dence in a different place from that where the wife resides.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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STATE BENEVOLENT INSTITUTION; PAYMENT  
OF BILLS FOR CLOTHING FURNISHED IN-  
MATES PRIOR TO MARCH 25, 1884.

Attorney General's Office,  
Columbus, Ohio, April 18, 1884.

*John D. Turner, Auditor of Montgomery County, Dayton,  
Ohio:*

DEAR SIR:—Your favor of the 18th instant is re-  
ceived. All bills for clothing furnished to inmates of the  
Reform School from your county prior to the passage of  
the act amending section 632 Revised Statutes, to-wit:  
March 25, 1884, must be paid by the county auditor as for-  
merly. The amended act applies only to bills accruing after  
its passage. See section 79 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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PENITENTIARY; POWER OF MANAGERS TO  
PAROLE PRISONERS.

Attorney General's Office,  
Columbus, Ohio, April 18, 1884.

*Hon. George Hoadly, Governor:*

SIR:—In reply to your favor of the 17th instant I have  
the honor to state that, in my opinion, the power to allow

*Alaska Fire Insurance Company; Articles of Incorporation of.*

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prisoners to go upon parole outside of the buildings and enclosures, conferred upon the board of managers by section eight of the act of March 18, 1884, relating to the Ohio penitentiary, does not extend to prisoners sentenced to the institution before the 1st day of May, 1884, nor to those sentenced after that date for a definite period; but is limited to such prisoners as shall after the first day of May, 1884, be sentenced under an indeterminate sentence in pursuance of section five of said act as amended April 14, 1884.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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ALASKA FIRE INSURANCE COMPANY; ARTICLES  
OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, April 21, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the Alaska Fire Insurance Company, which I decline to approve. One of the purposes for which the company is organized, is stated to be that of "causing itself to be insured against any loss or risk it may have assumed or incurred in the course of its business." There is no authority to incorporate a fire and marine insurance company for the special purpose of effecting re-insurance, and under the act of April 14, 1884, the right of such company to re-insure the risks taken by it is subject to the consent and approval of the superintendent of insurance, and the re-insurance must be made in a company authorized by law to transact a similar class of insurance business.

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*Township Clerk; Fee for Recording Official Bond—Liquor Law; Construction of.*

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I am of opinion that the clause quoted above is not properly contained in the articles of incorporation.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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TOWNSHIP CLERK; FEE FOR RECORDING OFFICIAL BOND.

Attorney General's Office,  
Columbus, Ohio, April 21, 1884.

*Mr. Joseph Passman, Township Clerk, Ft. Recovery, Ohio:*

DEAR SIR:—Yours of the 17th instant was duly received. In my opinion, the township clerk is entitled to charge fifty cents for recording each bond of a township officer, which is required by law to be deposited with him.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; CONSTRUCTION OF.

Attorney General's Office,  
Columbus, Ohio, April 22, 1884.

*David J. Nye, Esq., Prosecuting Attorney, Elyria, Ohio:*

DEAR SIR:—Your favor of the 19th instant was duly received. The term "intoxicating liquor," I take it, means a distilled or fermented fluid having qualities which produce intoxication, and I am of opinion that a person engaged in the business of trafficking in cider which has fer-

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*Liquor Law; Construction of.*

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mented and which has the qualities named, is required to pay the assessment under the act of April 17, 1883, known as the "Scott Law." Such liquor, being neither malt nor vinous, is not within the proviso contained in section one of said act, and a dealer therein must, in my opinion, pay the full sum of \$200.00 per year.

I should perhaps add that, until the question has been passed upon by the courts, it cannot be regarded as free from doubt. There are intimations in the act that the legislature did not intend to include cider under the term intoxicating liquors. One is that it is not mentioned along with malt and vinous liquors, the exclusive traffic in which reduces the tax one-half. Another is that section nine, in reference to sales on Sunday, limits intoxicating liquors to distilled, malt or vinous.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; CONSTRUCTION OF.

Attorney General's Office,  
Columbus, Ohio, April 22, 1884.

*Hon. J. E. Myers, Goshen, Ohio:*

DEAR SIR:—Your favor of the 21st instant is received. The assessment under the act of April 17, 1884, known as the "Scott Law," is imposed upon the business of trafficking in intoxicating liquors and not upon the property employed or sold therein. A dealer who has paid assessment must also return the average monthly value of his stock in trade, which is subject to taxation, the same as the property of other persons. Yours truly,

JAMES LAWRENCE,  
Attorney General.



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*Mayor; Salary of, in Village—Inspector of Shops and  
Factory; Construction of Act Creating, Etc.*

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## MAYOR; SALARY OF, IN VILLAGE.

Attorney General's Office,  
Columbus, Ohio, April 22, 1884.

*J. W. Barry, Esq., Attorney at Law, Cardington, Ohio:*

DEAR SIR:—Your letter of the 18th instant to Hon. E. B. Finley has been referred to me for answer. Where the council of a village by ordinance provides a salary for the mayor, no salary being previously allowed him, I am of opinion that the mayor then in office is not entitled to receive any part of such salary during the term for which he was elected. I think this is the fair construction of sections 1717 and 1753 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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INSPECTOR OF SHOPS AND FACTORIES; CON-  
STRUCTION OF ACT CREATING, ETC.

Attorney General's Office,  
Columbus, Ohio, April 22, 1884.

*Hon. Henry Dorn, State Inspector of Shops and Factories,  
Cleveland, Ohio:*

DEAR SIR:—I have the honor to submit the following answers to the questions presented in your favor of the 18th instant.

I. What is meant by "reasonable time" and "reasonable hours," as used in section 2573a of the act creating your office, may depend to some extent on the circumstances of a particular case. Generally speaking, however, I think that any time during the ordinary working hours of the

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*Penitentiary; Earnings of Convicts.*

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shop or factory about to be inspected would be considered reasonable.

2. Should any proprietor, his agents or servants, unlawfully prevent your entry into a shop or factory, it would be your duty to have the person so offending arrested for resisting and obstructing an officer in the execution of his office. See section 6908 Revised Statutes. Also case of *Woodworth vs The State*, 26 O. St. Reports, page 196.

3. In case of a violation of section 2573c of said act, the most practicable way to proceed will be to file an affidavit before a justice of the peace for the arrest of the person charged therewith.

4. I am of opinion that you have no jurisdiction over the shops in the Ohio penitentiary. The entire government and control of that institution is vested in the board of managers. I do not think that the convicts are employes nor persons employed in shops or factories, within the meaning of said act. However, it is probable that the board will permit you to inspect such shops and will give due attention to your recommendations.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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PENITENTIARY; EARNINGS OF CONVICTS.

Attorney General's Office,  
Columbus, Ohio, April 23, 1884.

*Hon. Isaac G. Peetry, Warden Ohio Penitentiary:*

DEAR SIR:—Your favor dated April 21st is received. Section nine of the recent act relating to the penitentiary takes effect from and after May 1st, 1884. Beginning May 2d accounts should be kept of the earnings of each prisoner not serving a life sentence, and such part thereof as the

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*Judges of Election; Compensation of.*

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board deems equitable and just, not exceeding twenty per cent, may be placed to such prisoner's credit. No allowance can be made or credit given for any earnings prior to that date. When said section takes effect it will apply alike to all prisoners not serving a life sentence, whether sentenced before or after said date.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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JUDGES OF ELECTION; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, April 25, 1884.

*Frank F. Metcalf, Esq., Prosecuting Attorney, McConnelsville, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 24th instant.

Your construction of section 2963 Revised Statutes is undoubtedly correct. The term "assessor" in said section includes a township assessor, and on the facts stated the judges of election were entitled to be paid \$2.00 by the county. It is true that in the act of April 3, 1862 (59 O. L., 39) the term "district assessor" is used but it cannot be supposed that the legislature afterwards dropped the word "district" without intending a different meaning.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Pharmacy; Construction of Act Relating to.*

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PHARMACY; CONSTRUCTION OF ACT RELATING  
TO.

Attorney General's Office,  
Columbus, Ohio, April 26, 1884.

*Philip H. Bruck, Esq., Secretary Ohio Board of Pharmacy,  
Columbus, Ohio:*

DEAR SIR:—The questions submitted in your favor of the 25th instant with my answers thereto are as follows:

*1st Question.* "Are wholesale druggists obliged to have their preparations made by registered pharmacists or assistant pharmacists?"

*Answer.* So far as the wholesale dealer himself is concerned, I answer No. But unless the preparations named in section 4405 have been compounded by a registered pharmacist or assistant pharmacist they cannot be retailed except by a registered pharmacist or a person who has a registered assistant pharmacist in his employ in charge of that part of the business.

*2d Question.* "Can country storekeepers purchase any preparations not specially exempted in bulk, that is, in quantities larger than the customer usually demands the article, and though said article be properly labeled according to the law, can the dealer out of such original package supply the wants of his customers?"

*Answer.* Only the preparations enumerated in section 4405, and other similar preparations, can be sold by a "country storekeeper," and these must have been compounded by a registered pharmacist or assistant pharmacist and put up in bottles or boxes bearing the label of such pharmacist or a wholesale druggist, with the name of the article and directions for its use on each bottle or box. It is not sufficient that the original package containing the article in bulk be thus marked and labeled. The preparation can only be sold to a customer in a bottle or box properly marked and labeled.

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*Pharmacy; Construction of Act Relating to.*

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*3d Question.* "Can the examination of parties desiring to register be held by one or more members of the board, or must the examination be before the full board?"

*Answer.* The examination must be held by the board. For that purpose a majority of the members composing the board will be a quorum, but a majority of the whole number must concur in the action taken. Thus three members would constitute a quorum, but, in such case, before a certificate can be issued, all three must be satisfied of the competency and qualification of the person examined. Business can only be transacted at the meetings appointed by section 4407 or at such additional meetings as the board may determine upon, of which each member has been duly notified.

*4th Question.* "Is it necessary that a person must at the time of the passage of the law have been employed as an assistant in the compounding of physicians' prescriptions, or is it sufficient that at any time previous to the passage of the same, he may have spent three years in compounding medicines on the prescription of physicians?"

*Answer.* I am of opinion that, in order to entitle a person to be registered as an assistant pharmacist without examination, he must have been *continuously* employed or engaged for three years immediately preceding the passage of said act as an assistant in a retail drug store in the United States, in the compounding or dispensing of medicines on the prescription of physicians.

*5th Question.* "Does the law interfere with the vending of patent medicines by the makers of the same, on public streets or other places?"

*Answer.* No. Section 4405 provides that nothing therein contained shall interfere with the making or vending of patent or proprietary medicines by any retail dealer. I do not understand that the term "retail dealer" is limited to one who sells at a store or fixed place.

*6th Question.* "Although the law exempts from the payment of the registration fee, all of those persons already

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*Treasurer of City School Districts; Not Entitled to Compensation for Disbursing School Funds.*

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registered under any law at the time in force, is it, nevertheless, not obligatory that such person should register under the present law?"

*Answer.* It is.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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TREASURER OF CITY SCHOOL DISTRICTS; NOT  
ENTITLED TO COMPENSATION FOR DIS-  
BURSING SCHOOL FUNDS.

Attorney General's Office,  
Columbus, Ohio, April 29, 1884.

*James J. Johnson, Esq., East Liverpool, Ohio:*

DEAR SIR:—Your letter of the 28th instant to Governor Hoadly has been referred to me for answer. Under section 4056 Revised Statutes, as amended April 3, 1883 (80 O. L., 95), treasurers of city districts cannot be allowed any compensation for disbursing the school funds. This applies to all cities including those which are not county seats.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*County Treasurer; Acting as City Treasurer; Compensation  
Must be Paid by City—State Benevolent Institution;  
Advertisement for Bids for Supplies.*

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COUNTY TREASURER; ACTING AS CITY TREASURER; COMPENSATION MUST BE PAID BY CITY.

Attorney General's Office,  
Columbus, Ohio, April 30, 1884.

*Thomas Johnson, Esq., City Solicitor, Ironton, Ohio:*

DEAR SIR:—Your favor of the 29th instant is received. I have received no other letter from you.

In cities of the second class embracing a county seat where the county treasurer acts as city treasurer, he must qualify in every respect as if he were elected to the office of city treasurer, and in respect to his duties as city treasurer becomes a municipal officer. In my opinion, his compensation as city treasurer must be paid by the municipal corporation. The county commissioners merely determine the rate of such compensation, but there is no authority for the payment thereof by the county.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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STATE BENEVOLENT INSTITUTION; ADVERTISEMENT FOR BIDS FOR SUPPLIES.

Attorney General's Office,  
Columbus, Ohio, May 2, 1884.

*J. L. Tyler, Esq., Steward Asylum for Insane, Columbus, Ohio:*

DEAR SIR:—I have been unable until today to make any further examination of the statutes, having been engaged

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*Taxation; Contract for Purchase of an Article Not Delivered  
or Paid for is not a Debt Which May Be Deducted from  
Credits.*

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yesterday in court. I find no statute prescribing the length of time that your board of trustees shall advertise for bids for supplies. Section 643 is the only provision upon the subject, and the matter is left therefore to the judgment of the board. Unless there be some reason for the contrary, it would perhaps be well to advertise for four weeks, which is the time usually fixed for similar advertisements.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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TAXATION; CONTRACT FOR PURCHASE OF AN  
ARTICLE NOT DELIVERED OR PAID FOR IS  
NOT A DEBT WHICH MAY BE DEDUCTED  
FROM CREDITS.

Attorney General's Office,  
Columbus, Ohio, May 2, 1884.

*F. E. Stoner, Esq., County Auditor, Tiffin, Ohio:*

DEAR SIR:—I am in receipt of your favor of April 29th, in which you ask my opinion whether an administrator of an estate, who has in his possession notes and other credits belonging to the estate, is entitled, in listing the same for taxation, to deduct therefrom a certain amount for a monument for the deceased contracted for and to be delivered and completed July 1, 1884.

The term "credits," as defined in section 2730 Revised Statutes, means "the excess of the sum of all legal claims and demands due to the person liable to pay taxes thereon over and above the sum of legal bona fide debts owing by such person." The whole question is, therefore, whether a mere contract for the purchase of an



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*Reciprocity Annuity Endowment Aid Association; Articles  
of Incorporation of.*

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article to be delivered and paid for at a future day was a debt owing by the estate. Clearly it was not. No debt exists until the consideration has been received. A debt owing by one person is the complement of a credit due to another. Could it be claimed that the other party to such contract would be required to return the amount of the purchase price as a credit?

The fact that the article contracted for was a monument does not change the question, there being no provision exempting from taxation funds set apart for building such monument.

The administrator must return the amount of credits due to the estate without any deduction on account of said contract.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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RECIPROCITY ANNUITY ENDOWMENT AID ASSOCIATION;  
ARTICLES OF INCORPORATION  
OF.

Attorney General's Office,  
Columbus, Ohio, May 2, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the "Reciprocity Annuity Endowment Aid Association," which I decline to approve.

The attempt is made to incorporate said association for a purpose not authorized by our statutes, to-wit: "the mutual protection and relief of its members, their heirs and assigns, in the payment of stipulated sums of money." Such associations are only authorized to be formed for the mutual protection and relief of its members and for the payment

*Mutual Fire Insurance Company; Liability of Member of.*

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of stipulated sums of money to the families or heirs of deceased members. The members are alone entitled to the mutual protection and relief provided, and in case of death, the family or heirs of such members are alone entitled to the payment of the sum stipulated for them.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUTUAL FIRE INSURANCE COMPANY; LIABILITY OF MEMBER OF.

Attorney General's Office,  
Columbus, Ohio, May 3, 1884.

*Mr. J. R. Davies, Sandusky, Ohio:*

DEAR SIR:—Your letter of the 2d instant is received.

Under our laws each person who effects insurance, in a mutual fire insurance company is liable for his proportion of losses and necessary expenses during the period of his insurance. To meet such losses and expenses assessments are made from time to time, the sum to be paid by each member being always in proportion to the original amount of his premium note.

See section 3650 Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*State Institution; Construction of Act forbidding Employment of Relative to Trustee of—Ohio National Guard; Compensation of Disabled Soldiers of.*

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STATE INSTITUTION; CONSTRUCTION OF ACT  
FORBIDDING EMPLOYMENT OF RELATIVE  
TO TRUSTEE OF.

Attorney General's Office,  
Columbus, Ohio, May 7, 1884.

*Hon. Benj. Eason, Wooster, Ohio:*

DEAR SIR:—Your favor of the 6th instant is received. The act of March 27, 1884, amending section 629 Revised Statutes, provides, among other things, as follows: "nor shall any officer or employe of any such institution be related by blood or marriage to either of said trustees." I am of opinion that under this act, your wife's sister cannot remain an employe while you are a trustee of the Reform School for Boys, even though she was employed before your appointment and though you were appointed prior to the passage of said act. The language quoted above does not refer merely to the appointment of an employe of such institution, but applies to all employes whenever appointed. They cannot be employes while a relative by blood or marriage is a trustee.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; COMPENSATION OF  
DISABLED SOLDIERS OF.

Attorney General's Office,  
Columbus, Ohio, May 8, 1884.

*Hon. George Hoadly, Governor:*

SIR:—I am in receipt of your favor of the 7th instant and, as requested, have examined the act of April 14, 1884,

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*Ohio National Guard; Compensation of Disabled Soldiers of.*

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entitled an "act making an appropriation to pay certain sums to a portion of the Ohio National Guard."

Prior to the passage of said act our statutes provided for the payment of officers and enlisted men of the Ohio National Guard, during their term of service, when serving under the orders of the governor or other proper authority to prevent or suppress riot or insurrection, but no provision was made for persons wounded or disabled by sickness while in the service of the State. The act of April 14, 1884, extends such payment to those officers and men who were wounded or disabled by sickness during the recent riots at Cincinnati. My construction of said act is, that the period, not exceeding one hundred and twenty days from the beginning of their service, during which such persons are unable to perform manual labor by reason of wounds received or sickness contracted, is, in respect to such payment, to be considered and treated as part of their term of service, and that the officers and men who come within the scope of section one of said act are only entitled to payment for a period commencing with the first day of their service under the call of the governor and continuing so long as they are unable to perform manual labor, but not exceeding one hundred and twenty days in all. I do not think that it was the intention of the legislature to make each person thus wounded or disabled a uniform allowance for one hundred and twenty days, without regard to the nature of his injuries or the loss of time thereby occasioned.

I have the honor to be,

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Liquor Law; Construction of—Judges and Clerks of  
Election; Compensation of.*

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LIQUOR LAW; CONSTRUCTION OF.

Attorney General's Office,  
Columbus, Ohio, May 8, 1884.

*John B. Driggs, Esq., Prosecuting Attorney, Woodsfield,  
Ohio:*

DEAR SIR:—Your favor of the 3d instant was duly received.

In my opinion, a person who sells intoxicating liquors after the second Monday of April, 1884, but quits selling on the day preceding the fourth Monday of April, 1884, is not required to pay the assessment under the act of April 17, 1883, known as the "Scott Law" or any part thereof. Section twelve of said act provides that the first assessment should occur on the fourth Monday of April, 1883, and, as such assessments are made yearly, the payment of last year should run for one year, to-wit: to the fourth Monday in April of the present year, which is also the date when said assessments become a lien on the real property in which the business is conducted.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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JUDGES AND CLERKS OF ELECTION; COMPEN-  
SATION OF.

Attorney General's Office,  
Columbus, Ohio, May 8, 1884.

*Mr. J. W. Scott, Bissell's P. O., Ohio:*

DEAR SIR:—Your favor of the 5th instant is received. If a justice of the peace or assessor was elected at the April

*Trustees of Cemetery, Owned in Common by Municipal Corporation and Township; Powers of.*

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election in your township, the judges and clerks of election were each entitled to receive two dollars (\$2.00) to be paid by the county. Where no justice or assessor is elected, the fee is one dollar and a half (\$1.50), which is also to be paid by the county.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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TRUSTEES OF CEMETERY, OWNED IN COMMON  
BY MUNICIPAL CORPORATION AND TOWNSHIP;  
POWERS OF.

Attorney General's Office,  
Columbus, Ohio, May 8, 1884.

*Mr. Joseph Hitchens, Port Washington, Ohio:*

DEAR SIR:—Your favor of the 7th instant is received.

The trustees of a cemetery owned in common by a municipal corporation and a township have power to determine the price of lots and the terms of payment therefor. I think that they have power to refuse to sell a lot except for cash in advance, but provision must be made for the interment in such cemetery of all persons buried at the expense of the corporation, and they should also provide for the burial of other persons who are unable to purchase lots. When a body has once been buried in a lot the trustees cannot take it up and remove it to another place.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*County Institute; County Commissioners Have no Power to Pay Expense of—Mayor of Village; Jurisdiction of in a Certain Case.*

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COUNTY INSTITUTE; COUNTY COMMISSIONERS  
HAVE NO POWER TO PAY EXPENSE OF.

Attorney General's Office,  
Columbus, Ohio, May 9, 1884.

*Mr. D. W. Stahl, North Liberty, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 8th instant in which you ask: "Does the law permit the county commissioners to grant money to defray part of the expense of a county institute?"

I answer "No."

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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MAYOR OF VILLAGE; JURISDICTION OF IN A  
CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, May 8, 1884.

*John B. Kramer, Esq., Mayor, Lithopolis, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 5th instant, in which you state that eight months ago the firm of Kramer Bros., of which you are a member, recovered a judgment before the mayor of your village. Stay of execution was thereupon taken, and, before the expiration of the stay, you were elected and qualified as mayor. I have not been able to make any special examination of the question, but I see no objection to your issuing, as mayor, an execution on a judgment in your favor, rendered by your predecessor. An action on the undertaking for the stay of

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*State Benevolent Institution; Bills for Clothing, Etc.  
Furnished to Inmates from Franklin County.*

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execution, however, cannot be brought before you as mayor by your firm. After you have issued an execution, which is returned unsatisfied, I think such action may be brought before a justice of the peace of the township.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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STATE BENEVOLENT INSTITUTION; BILLS FOR  
CLOTHING, ETC. FURNISHED TO INMATES  
FROM FRANKLIN COUNTY.

Attorney General's Office,  
Columbus, Ohio, May 9, 1884.

*W. H. Williams, Esq., Steward Institution for Deaf and  
Dumb, Columbus, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 7th instant enclosing bills for clothing and incidental expenses furnished and paid by your institution on account of pupils coming from Franklin County. All such bills which accrued prior to March 25, 1884, must be paid by the county as provided in original section 632 Revised Statutes before its amendment by the act of March 25, 1884. I advise that you again present said bills to the county auditor and, if payment is refused, I would institute a suit to compel such payment.

Yours truly,

JAMES LAWRENCE,  
Attorney General.



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*Children's Home; Powers and Duties of Trustees of.*

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CHILDREN'S HOME; POWERS AND DUTIES OF  
TRUSTEES OF.

Attorney General's Office,  
Columbus, Ohio, May 12, 1884.

*John M. Spriggs, Esq., Prosecuting Attorney, Dayton, Ohio:*

DEAR SIR:—Your favor of the 9th instant was duly received.

In my opinion the trustees of a children's home have no authority to adopt a resolution excluding therefrom all children under the age of two years. It is true that the statute gives them some discretion in determining whether sufficient reasons exist to render a child a suitable person to be admitted (as, for instance, whether in fact it has been abandoned or neglected by its parents), but they have no discretion in respect to the age which entitles a child to admission. Where a child of tender years has been abandoned by its parents it is the duty of the trustees to provide for it.

Should a mother with an infant in arms apply for admission to a county infirmary, I think it is the duty of the infirmary authorities to receive them, and in such case it is not necessary to separate the child from its mother, if thereby the life of the child would probably be endangered.

In the present case I am of opinion that the infant mentioned in your letter should be received into the children's home.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*State Institution; Construction of Act Forbidding Employment at, of Relative of Trustee of—Mutual Aid Association; Powers of.*

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STATE INSTITUTION; CONSTRUCTION OF ACT FORBIDDING EMPLOYMENT AT, OF RELATIVE OF TRUSTEE OF.

Attorney General's Office,  
Columbus, Ohio, May 13, 1884.

*Hon. Benj. Eason, Wooster, Ohio:*

DEAR SIR:—In my opinion, under the act of March 27, 1884 (81 O. L., 90) the fact that an employe of a State institution is related to a trustee of the institution would be a ground for the removal of such employe. I am of opinion, however, that until removed the employe would continue to hold his position, and this would not affect the title of the trustee to his office nor render his action as such illegal.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUTUAL AID ASSOCIATION; POWERS OF.

Attorney General's Office,  
Columbus, Ohio, May 15, 1884.

*A. L. Wiley, Esq., General Agent Home Mutual Aid Association, Zanesville, Ohio:*

DEAR SIR:—Owing to the press of other business, I have been unable to answer your favor of the 7th instant until now. Your association has no authority to change its plan of doing business as embodied in its charter, except such change is authorized or required by the statutes relating to such associations. The by-laws cannot modify the

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*County Treasurer; Vacancy in Office of; Election of Successor to.*

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charter, but are subordinate thereto. Under its charter the association cannot issue certificates for a uniform amount in every case and adopt a plan of graduated assessments to pay losses by death. The association may make an annual assessment for expenses, the amount to be determined by the association but not to exceed the sum reasonably required for such purpose. No part of the expense fund can be used to pay losses by death and *vice versa*.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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COUNTY TREASURER; VACANCY IN OFFICE OF;  
 ELECTION OF SUCCESSOR TO.

Attorney General's Office,  
 Columbus, Ohio, May 15, 1884.

*O. L. Bradbury, Esq., Prosecuting Attorney, Pomeroy, Ohio:*

DEAR SIR:—Owing to the press of business requiring immediate attention, I have been unable to answer your favor of the 8th instant until now. You state that Mr. Warner was elected county treasurer on the second Tuesday of October, 1882, and entered upon the duties of his office on the first Monday of September, 1883. A few days (less than thirty) prior to the second Tuesday of October, 1883, he died, and Mr. Hoyt was appointed to fill the vacancy thereby occasioned. Upon these facts I am of opinion that Mr. Hoyt will hold the office until the first Monday of September, 1885, and that at the October election, 1884, a treasurer must be elected for a full term of two years, commencing on the first Monday of September, 1885.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

*Village Marshal; Powers of—Taxation; Assignee Must List  
Insolvent's Property for.*

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VILLAGE MARSHAL; POWERS OF.

Attorney General's Office,  
Columbus, Ohio, May 15, 1884.

*Mr. Thomas Collins, Marshal, Ashtabula, Ohio:*

DEAR SIR:—Your favor of the 9th instant was duly received. A village marshal has authority to serve all writs issued by the mayor, for which purpose his jurisdiction extends throughout the county. He cannot as marshal execute a State warrant issued by a justice of the peace either inside or outside of the corporation, nor can he arrest on view outside of the corporation.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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TAXATION; ASSIGNEE MUST LIST INSOLVENT'S  
PROPERTY FOR.

Attorney General's Office,  
Columbus, Ohio, May 15, 1884.

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

DEAR SIR:—Your favor of the 13th instant was duly received. An assignee under our insolvent laws is a trustee of the creditors in respect to the insolvent's estate, and as such is, in my opinion, required to list for taxation all property belonging to said estate in his possession or under his control on the day preceding the second Monday of April. The fact that such property is expected to be distributed the latter part of June cannot affect the question. The property is subject to taxation and is to be listed by the person in whose hands it is found on the day fixed by

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*Liquor Law; Construction of.*

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the statute. It is the duty of the assignee to reserve sufficient funds to pay the taxes of this year.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; CONSTRUCTION OF.

Attorney General's Office,  
Columbus, Ohio, May 16, 1884.

*G. A. Marshall, Esq., Prosecuting Attorney, Sidney, Ohio:*

DEAR SIR:—Your favor of the 13th instant was duly received. You state that a dealer in intoxicating liquors in the village of Sidney who had previously paid his assessment for one year under the act of April 17, 1883, known as the "Scott Law," in August, 1883, closed up his business in Sidney and removed to another incorporated village in the same county, where he thereafter carried on the business of trafficking in intoxicating liquors. On these facts, I am of opinion that upon commencing business in the second village he became liable to again pay an assessment for the remainder of the assessment year. If not paid when due such assessment, with a penalty of twenty per cent. thereon, should be collected the same as in other cases.

It might be well, however, not to incur any expense in the matter until the Supreme Court passes upon the constitutionality of the law.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*State Institution; Construction of Act Forbidding Employment of Relative of Trustee of—Township Trustees; Power to Issue Bonds.*

STATE INSTITUTION; CONSTRUCTION OF ACT FORBIDDING EMPLOYMENT OF RELATIVE OF TRUSTEE OF.

Attorney General's Office,  
Columbus, Ohio, May 17, 1884.

*Hon. George W. Gardner, Cleveland, Ohio:*

DEAR SIR:—Enclosed please find copy of the act of March 27, 1884, amending section 629 Revised Statutes, referred to in your favor of the 16th instant.

The construction which I have given to said act is (1) that since its passage no relative of a trustee of a State institution can legally be appointed an officer or employe of such institution; (2) that where a relative of a trustee became an officer or employe prior to the passage of said act, the relationship would be a ground for the removal of such officer or employe; (3) but that until removed the officer or employe would continue to hold his position, and this would not affect the title of the trustee to his office nor render his action as such trustee illegal.

Yours truly,

JAMES LAWRENCE,

Attorney General.

TOWNSHIP TRUSTEES; POWER TO ISSUE BONDS.

Attorney General's Office,  
Columbus, Ohio, May 17, 1884.

*Mr. B. F. Hendricks, Township Clerk, Catawba, Ohio:*

DEAR SIR:—As the question presented in your favor of the 12th instant is one on which I am not authorized to give

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*County School Examiner; Cannot Sell Any Kind of Books.*

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an official opinion, and as the matter has already been submitted to Mr. Bowman, you must excuse me from saying more than that he is undoubtedly right in his opinion that the township trustees have no power to issue bonds to anticipate a tax levied for a town hall in pursuance of section 1443 Revised Statutes. Where a town hall costing more than \$2,000.00 is desired, section 1479 provides a mode whereby the trustees may obtain authority to issue bonds.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY SCHOOL EXAMINER; CANNOT SELL  
ANY KIND OF BOOKS.

Attorney General's Office,  
Columbus, Ohio, May 17, 1884.

*Mr. S. C. Patterson, Bluffton, Ohio:*

DEAR SIR:—Your favor of the 15th instant was duly received. The last clause of section 4069 Revised Statutes is not limited to school books, and I am of opinion that a county school examiner is not permitted to sell or take orders for any book whatever.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Municipal Corporation; Removal of Member of Council from Ward for Which He was Elected; County Treasurer; Term of Person Appointed to Fill Vacancy in Certain Case.*

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MUNICIPAL CORPORATION; REMOVAL OF MEMBER OF COUNCIL FROM WARD FOR WHICH HE WAS ELECTED; COUNTY TREASURER; TERM OF PERSON APPOINTED TO FILL VACANCY IN CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, May 19, 1884.

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

DEAR SIR:—Your letter dated May 14th, was received today.

1. I agree with you that where a member of the council removes from the ward for which he was elected, he thereby ceases to be a member of the council and his office becomes vacant. The opinion which you have given covers the whole ground and in my judgment is correct. Still some persons whose views are entitled to respect hold to the contrary. I remember two instances in Cleveland where a member of the council removed from the ward for which he was elected, but, although the question was raised, the member so removing was permitted to serve out his term. I think, however, in the last case, which occurred only a few months ago, this was done against the opinion of the city solicitor.

2. You state that Mr. B. C. Winters, then treasurer of Sandusky County, died on election day last fall, on which day he was re-elected for a second term. The county commissioners thereupon appointed W. E. Greene to serve as treasurer for the unexpired portion of Winters' first term.

Upon these facts it appears that there was no election for county treasurer last year, in which respect and in the fact that the deceased was an incumbent of the office under a former election, the case differs from that of The State



*Ohio Penitentiary; Construction of Act Relating to.*

vs Hopkins, 10 O. St., 509. There having been no election last year a treasurer should be elected on the second Tuesday of October, 1884, to serve for two years, commencing on the first Monday of September, 1885. Mr. Greene, having been appointed to fill the vacancy caused by the death of Mr. Winters, will, of course, serve until the first Monday of September, 1884. At that date it will be found that no successor has been elected and qualified, and, in my opinion by virtue of section eleven Revised Statutes, Mr. Greene will continue to hold the office until the first Monday of September, 1885, which is the earliest date at which the successor elected this fall can be qualified. I do not think it necessary that he be re-appointed next September, but simply as a matter of precaution, it might be well for him to renew his bond at that time.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

OHIO PENITENTIARY; CONSTRUCTION OF ACT  
RELATING TO.

Attorney General's Office,  
 Columbus, Ohio, May 19, 1884.

*Eugene Powell, Esq., Secretary Board of Managers, Ohio Penitentiary:*

DEAR SIR:—Your favor of the 16th instant is received. In my opinion the act of March 24, 1884, relating to the imprisonment of convicts in the Ohio penitentiary and the act amendatory thereof, passed April 14, 1884, have no reference to prisoners sentenced to the penitentiary by the authority of the United States except in so far as said acts prescribe the discipline and treatment of prisoners while confined in the institution. Under section 7433 Revised Stat-

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*State Benevolent Institution; Contract for Improvements,  
Claims of Sub-Contractors, Etc.*

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utes (amended 80 O. L., 101) United States prisoners during their confinement are subject to the same discipline and treatment as other prisoners, but they must be kept according to the sentence of the court by which they were tried, and the value of their labor is to be taken into account in determining the amount to be charged the United States for keeping them. Such prisoners are not entitled to diminish the period of their imprisonment by good conduct, nor has the board of managers, in my opinion, authority to allow them any part of their earnings.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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STATE BENEVOLENT INSTITUTION; CONTRACT  
FOR IMPROVEMENTS; CLAIMS OF SUB-CON-  
TRACTORS, ETC.

Attorney General's Office,  
Columbus, Ohio, May 20, 1884.

*Rev. D. R. Miller, Superintendent Girls' Industrial Home,  
Delaware, Ohio:*

DEAR SIR:—From the statements made and papers submitted to me, it appears that H. M. P. Dole & Co., the contractors for the work of "change of steam heating and new water system including water tower" at the Girls' Industrial Home, having failed to complete their contract according to the terms thereof, and having failed to comply with a requisition so to do, the trustees, with the approval of the governor, auditor of state and secretary of state, proceeded to complete said work. In my opinion the trustees should pay for all labor and materials furnished to them since they took charge of the work, deducting the

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*Special School Districts; Decision of Supreme Court in  
Reference to.*

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amount from the contract price to be paid said contractors. In regard to the claims of persons who furnished labor and materials to the contractors and have not received payment therefor, my advice is to proceed in accordance with the provisions of section 3193 and the following sections of the Revised Statutes relating to the claims of sub-contractors, material-men, etc. I do not say that this is necessary under your contract, but it will be the safest course and the fairest to all concerned. If the pump furnished by the contractors is not in accordance with the contract, the trustees may refuse to accept it, or they may allow it to remain and charge the contractors with the difference in value between it and the pump contracted for. They may also charge any amount required to be paid for resetting it. Should the trustees apprehend that the pump set up infringes any patent they ought to require a bond of indemnity in the event of allowing it to remain.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SPECIAL SCHOOL DISTRICTS; DECISION OF SUPREME COURT IN REFERENCE TO.

Attorney General's Office,  
Columbus, Ohio, May 21, 1884.

*Hon. Emil Kiesewetter, Auditor of State:*

DEAR SIR:—The letter of C. C. Baker, Esq., auditor of Columbiana County, which you have referred to me, asks for an opinion relative to the scope and effect of the decision of the Supreme Court in the case of the State vs Powers (38 O. St., 54), and especially whether that decision renders all

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*Special School Districts; Decision of Supreme Court in Reference to.*

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acts creating special school districts unconstitutional or whether it applies to the New London case alone.

Of course the only act directly before the court in the case referred to was the act of March 31, 1879, creating a special school district in New London Township, Huron County, but the principle of that case would undoubtedly be applied by the court to any like case hereafter brought, and it furnishes a rule for the guidance of all officers in their official action under similar statutes. A public officer is not lightly to assert an act of the legislature to be unconstitutional, but where by applying the rule laid down by the highest court of the State, its unconstitutionality is manifest, he is not bound to wait until there has been a direct decision of a court in reference to that particular act.

The court held that the act creating a special school district comprising the township of New London was in conflict with the constitution, on the ground that laws regulating the organization and management of common schools must have a uniform operation throughout the State. Any special act of the legislature organizing a particular territory into a school district is, therefore, unconstitutional and void. A school district created by such an act has no legal existence whatever. The act of April 17, 1880 (77 O. L., 409) creating a special school district in the townships of Madison, Elk Run and St. Clair, in the county of Columbiana, comes clearly within the decision in the New London case, and is, in my opinion, unconstitutional. Such being the case it is the duty of the county auditor to refuse to recognize in any way the existence of the special school district attempted to be created by said act.

I return herewith the letter of Mr. Baker.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Penitentiary; United States Prisoners—County Commissioners; Publication of Notices and Purchase of Stationery.*

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PENITENTIARY; UNITED STATES PRISONERS.

Attorney General's Office,  
Columbus, Ohio, May 21, 1884.

*Eugene Powell, Esq., Secretary Board of Managers, Ohio Penitentiary:*

DEAR SIR:—On further examination I find that the laws of the United States make provision for deductions from the terms of sentence of United States prisoners confined in a penitentiary of any State, and also provide that on the discharge from such prison of any person convicted under the laws of the United States on indictment and sentenced for a term exceeding six months, he or she shall be provided by the warden with one plain suit of clothes and \$5.00 in money, for which charge shall be made and allowed in the accounts of said prison with the United States. In a penitentiary of a State having a system of credits for good behavior for its own prisoners, United States prisoners are entitled to the same rule of credits for good behavior applicable to other prisoners in the same penitentiary.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; PUBLICATION OF  
NOTICES AND PURCHASE OF STATIONERY.

Attorney General's Office,  
Columbus, Ohio, May 22, 1884.

*Wm. W. Duniface, Esq., County Commissioner, Scotch Ridge P. O., Wood County, Ohio:*

DEAR SIR:—I am unable to give a direct answer to the questions contained in your favor of the 20th instant, for

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*County Commissioners; Publication of Notices and Purchase of Stationery.*

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there is no general rule upon the subject. Whenever the county commissioners are required to furnish stationery or cause an advertisement or notice to be published, and there is no contrary statutory provision, the board has authority to purchase such stationery and to direct in what newspapers such publication shall be made. For instance, under sections 523, 1181 and 1217 Revised Statutes, respectively, I think that the commissioners are authorized to buy the stationery required for the offices of the probate judge, county surveyor and sheriff. But under section 1264 the clerk may procure the stationery needed in his office, but the bills therefor must be allowed by the commissioners.

See 28 O. St., 589.

So with reference to the publication of notices and advertisements, I think the question depends on the statute relating to the particular case. My predecessor, Hon. Geo. K. Nash, held that the commissioners and not the auditor had power to make the contract for publishing their annual report in pursuance of section 917. There are other cases where the commissioners have such power, for instance in respect to the notice required by section 4622 and 4763. But there are many cases where the auditor or other county officer, who is required to cause a notice to be published, may direct in what newspaper the same shall be published.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Penitentiary; Indeterminate Sentences to; Transfer of Prisoners to Reform School.*

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PENITENTIARY; INDETERMINATE SENTENCES  
TO; TRANSFER OF PRISONERS TO REFORM  
SCHOOL.

Attorney General's Office,  
Columbus, Ohio, May 22, 1884.

*Hon. George Hoadly, Governor:*

SIR:—Your favor of the 21st instant was duly received. The act of March 24th, 1884, relating to the Ohio penitentiary and the amendments thereto passed April 14th, 1884 (81 O. L., pp. 72 and 186), authorize in certain cases a general sentence of imprisonment in the penitentiary, which may be terminated by the board of managers as provided in said act, but such imprisonment shall not exceed the maximum term nor be less than the minimum term provided by law for the crime of which the prisoner was convicted and sentenced. The board of managers, subject to the approval of the governor, are required to make rules and regulations for the government of the prison, therein making provision for the conditional and absolute release of prisoners sentenced under an indeterminate sentence as aforesaid. You state that rules and regulations in accordance with said act, providing for the absolute release of prisoners in certain contingencies, have been submitted to you by the board for approval, and you ask if such provision for the absolute release of convicts is consistent with the constitution of the State.

Under the general grant of legislative power, the legislature is authorized to prescribe the penalties for offenses against the laws of the State. Unless there be some constitutional provision to the contrary, it may prescribe as such penalty either imprisonment for a definite period or a general sentence of imprisonment to be terminated in such manner and at such time as the law directs. If there be any constitutional limitation, it must be because the termination of such indeterminate sentence would be the exercise of

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*Penitentiary; Indeterminate Sentences to; Transfer of Prisoners to Reform School.*

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the pardoning power, which, except in the case of treason, our constitution has vested in the governor exclusively. The question then comes to this, is the termination of such imprisonment, in the mode provided by the statute, the exercise of pardoning power. I do not deem it material that the rules and regulations adopted by the managers are subject to the approval of the governor, for, if the release amounts to a pardon, it is evident that the governor cannot grant pardons in that way. In my opinion, the mode provided for the termination of such sentences is not the exercise of the pardoning power. A pardon is an act of grace, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. (U. S. vs Wilson, 7 Peters, 160.) In the view which I take of it, the system of indeterminate sentences introduced by the recent act is merely a modification of the punishment inflicted for certain crimes. Such a sentence, with the mode provided for its termination as a constituent part thereof, is itself the punishment inflicted. When the convict is released there is no exemption from punishment, for he has then served precisely the sentence imposed upon him. See ex. parte Scott, 19 O. St., 581.

2. As requested I have also examined the legislation relating to the transfer of juvenile prisoners from the penitentiary to the reform school, and am of opinion that such transfer operates as, and is in effect a commutation of the sentence of the person so transferred. (See Victor case 31 O. St., 206), and that, unless the governor for satisfactory reasons remands such person to the penitentiary, he is entitled, upon arriving at full age, to be discharged, without reference to the term for which he was sentenced to the penitentiary. It is not necessary in such case that he be pardoned. Should a prisoner, who is transferred to the reform school be afterwards remanded to the penitentiary, he must serve out what remains of the period covered by his sentence. In short, I think that the legislation re-



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*Municipal Corporation; Mayor of Village Has no Right to Vote in Case of a Tie on the Passage of a Resolution or Order by the Council.*

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ferred to is not in conflict with the constitution and calls for the exercise of no power by the governor which he does not have by virtue of the constitution.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; MAYOR OF VILLAGE HAS NO RIGHT TO VOTE IN CASE OF A TIE ON THE PASSAGE OF A RESOLUTION OR ORDER BY THE COUNCIL.

Attorney General's Office,  
Columbus, Ohio, May 26, 1884.

*James M. Barnett, Esq., Mayor, New Paris, Ohio:*

DEAR SIR:—Your favor of the 21st inst. is received. In my opinion the mayor of a village has no power to vote in case of a tie on the passage of a resolution or ordinance by the council, and it makes no difference whether such ordinance be one of a general nature or not. The legislative authority of a village, not divided into three or more wards, is vested in a council consisting of six members (section 1672, Revised Statutes), and, except in the case of a vacancy, ordinances, resolutions and by-laws require for their passage or adoption the concurrence of a majority of all the members elected. (Section 1693, amended, 77 O. L., 34.) It is true that by section 1675, the mayor is ex-officio president of the council, but that does not make him a member of the council and his power to vote in case of a tie does not extend to cases where a majority of all the members elected is required. Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Ohio National Guard; Exemption of Contributing Member  
From Service as Juror.*

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OHIO NATIONAL GUARD; EXEMPTION OF CONTRIBUTING MEMBER FROM SERVICE AS JUROR.

Attorney General's Office,  
Columbus, Ohio, May 26, 1884.

*Hon. E. B. Finley, Adjutant General:*

SIR:—I adhere to the opinion expressed in my letter of March 7, 1884, that a contributing member of a company of the Ohio National Guard whether he is over forty-five years of age or not, is exempt from service as a juror, under section 3055, Revised Statutes. The District Court of the Fourth Judicial District having decided that contributing members over forty-five years of age are not thus exempt, its decision will undoubtedly be followed by all the courts in that district. It seems to me that a test case ought to be made up and brought to the Supreme Court so that the question may be finally settled. Whatever be the correct view as to his exemption from service as a juror, a contributing member over forty-five years of age is not entitled to receive back the sum paid by him for his annual dues.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Religious Societies; Articles of Incorporation of—Municipal Corporation; Improvement of Streets; Construction of Sidewalks, Etc.*

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RELIGIOUS SOCIETIES; ARTICLES OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, May 26, 1884.

*Rev. C. William Smith, Chandlersville, Ohio:*

DEAR SIR:—Your letter to the secretary of state has been by him referred to me for answer. I think that section 3241, Revised Statutes, is applicable to religious societies, and consequently that the articles of incorporation should be copied into a book and subscribed by the members.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; IMPROVEMENT OF STREETS; CONSTRUCTION OF SIDEWALKS, ETC.

Attorney General's Office,  
Columbus, Ohio, May 26, 1884.

*J. H. Platt, Esq., City Solicitor, Tiffin, Ohio:*

DEAR SIR:—You state that some property owners in Tiffin wish the city council to improve the street, on which their property fronts, by widening the sidewalk, laying stone instead of brick for the sidewalk and leaving about two feet of green turf nearest the curb; and assessing the costs and expenses on the abutting property. You also state that there is now a sufficient sidewalk all along the property intended to be charged. I think that the council has power to narrow the roadway of the street, by moving the curb nearer the center of the street and leaving a place for a grass plot between the curb and the sidewalk. This is not what I understand by narrowing a street, but comes under

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*Municipal Corporation; Regulation of Saloons by Council of.*

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the head of improving a street, and the necessary power is granted by the eighteenth specification in section 1692, Revised Statutes. I think an assessment may be made to pay the cost and expenses of such improvement, provided the owners of more than two-thirds of the feet front on the street petition therefor as required by section 2305.

I separate the sidewalk from the rest of the improvements. The council has power to make an assessment for sidewalks, subject to the provision of section 2333. If, as you say, there is now a "sufficient" sidewalk all along the property intended to be charged, of course no assessment can be made for a new one. I think, however, that the sufficiency of the present sidewalk and the necessity of constructing a new one, are questions to be determined by the council, and that the courts would not interfere except in case of an abuse of discretion. See *Longworth vs. Cincinnati*, 34 O. St., 101 (page 110).

I do not think it necessary that any number of the property owners petition for the construction of a sidewalk, provided two-thirds of the members elected to the council concur as required by section 2267.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; REGULATION OF  
SALOONS BY COUNCIL OF.

Attorney General's Office,  
Columbus, Ohio, May 27, 1884.

*Mr. Anson Pheteplace, Wilkesville, Ohio:*

DEAR SIR:—Your postal card of the 26th inst. is received. You ask whether town councils have the power

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*Taxation; Money.*

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to close saloons at 6 o'clock p. m. or not. I answer that they have such power, under the fifth clause of section 1692, Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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TAXATION; MONEY.

Attorney General's Office,  
Columbus, Ohio, May 27, 1884.

*F. A. Stumm, Cleveland, Ohio:*

DEAR SIR:—The language referred to in your letter of the 23d inst. defines what is meant by the term "money." The first part of the clause has reference to the bank, but the following, to-wit, "gold and silver coin, bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money on demand," applies to you or to a bank or to any other person who is the owner of such property. Your last question depends on whether or not the money on deposit in savings banks is in fact subject to be withdrawn on demand.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Fire Insurance Company; Reinsurance by; Articles of Incorporation of.*

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FIRE INSURANCE COMPANY; REINSURANCE  
BY; ARTICLES OF INCORPORATION OF.

Attorney General's Office,  
Columbus, Ohio, May 30, 1884.

*Messrs. Paxton and Warrington, Attorneys-at-Law, Cincinnati, Ohio:*

DEAR SIR:—Enclosed please find copy of act of April 14, 1884 (81 O. L., 179). I do not think that the clause you quote, from subdivision 3 of section 3641, refers to companies organized for the purposes named in the first subdivision. Of course a fire and marine insurance company, before the passage of the act of April 14th, had a right to reinsure, but the legislature, having undertaken to legislate upon the subject, I think the authority conferred by said act is exclusive, and all reinsurance by the companies named must be in accordance therewith.

I think that your company's right to reinsure is more limited than is expressed in the articles of incorporation, and that the company should be incorporated simply for the purposes named in sub-division 1 of section 3641. Whatever right of reinsurance it has, will follow by virtue of such incorporation.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*Pharmacy; Construction of Act Relating to.*

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## PHARMACY; CONSTRUCTION OF ACT RELATING TO.

Attorney General's Office,  
Columbus, Ohio, June 4, 1884.

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

DEAR SIR:—In reply to your favor of the 3d inst. I have to say:

First—The act of March 20, 1884, amending sections 4405 to 4412 inclusive, of the Revised Statutes (81 O. L., 61), applies in all respects to persons who have been heretofore registered under the former law, except that such persons are not required to pay the fee for registration. To entitle such persons to be registered under the present act without examination they must furnish satisfactory evidence in writing and under oath of the same facts required to be shown by other applicants for registration without examination.

Second—A non-resident of Ohio, who at the date of the passage of said act was *bona fide* the owner of a part interest in a pharmacy in this State is, in my opinion, entitled to register as a pharmacist without examination. A non-resident proprietor, however, though himself qualified, can not carry on a pharmacy in this State unless there be a registered pharmacist or assistant pharmacist in charge thereof.

Third—Sulphate of morphia is not one of the articles permitted to be sold by country stores not having a registered pharmacist or assistant pharmacist in charge of that part of the business. If the label (of which you enclose a copy) is all the mark on the bottle or box, it is also insufficient in not containing directions for the use of the article. I think the designation of the wholesale druggists would be sufficient provided the preparation was in fact compounded by a registered pharmacist or assistant pharmacist.

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*County Commissioners; Construction of Statute Relative to  
Mileage and Expenses of.*

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Fourth—I am of opinion that said act does not apply to persons employed by the State as druggists in the various state institutions, though I see no objection to your permitting such persons to register, if they are otherwise qualified.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; CONSTRUCTION OF  
STATUTE RELATIVE TO MILEAGE AND EX-  
PENSES OF.

Attorney General's Office,  
Columbus, Ohio, June 4, 1884.

*Irving H. Blythe, Esq., Prosecuting Attorney, Carrollton,  
Ohio:*

DEAR SIR:—Your favor of the 2d inst. is received. In my opinion under section 897, Revised Statutes (amended, 79, O. L., 139), a county commissioner, in a county having less than 100,000 inhabitants, is not entitled to mileage at five cents per mile when traveling on official business *outside* of his county. In such case I think he is only entitled to his allowance of \$3.00 per day for his services, and in addition thereto his reasonable and necessary expenses actually paid, including railroad fare and other traveling expenses. When traveling on official business within his county under the direction of the board, other than in attending regular or called sessions (of the board), he is entitled to \$3.00 per day for his services, five cents per mile for mileage, and in addition thereto his reasonable and necessary expenses actually paid, but not including anything for railroad fare or other mode of conveyance.

I construe the phrase "in addition thereto," as referring



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*County Commissioners; Construction of Statute Relative to  
Mileage and Expenses of.*

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to the allowance previously provided in the section for the respective cases specified. In that part of the section which precedes this phrase there is provided an allowance for mileage when traveling within the county but not when traveling outside of the county, while in both cases the \$3.00 per diem applies. My view is, therefore, that in the former case the allowance for expenses is in addition to the per diem and mileage, but that in the latter it is in addition to the per diem alone. I also think that, where an officer is allowed mileage and in addition thereto his expenses, he can not charge in his expenses anything for his means of conveyance. For this reason I think that a commissioner is not entitled to charge his railroad fare as part of his expenses when traveling within the county. Where no mileage is given I think the rule is different.

I am somewhat confirmed in the view I have taken of the matter by a comparison of the amended with the original section. As the statute formerly stood there is no question but that a commissioner traveling on official business outside his county was entitled merely to his per diem and expenses actually paid. The evident purpose of the amendment was (first) to give a commissioner traveling on official business within the county the same allowance for mileage as was allowed for attending the meetings of the board, and (second) to change the compensation of the commissioners in counties having a population of 250,000 or upwards. In respect to the allowance in cases where it is necessary for a commissioner to travel on official business outside the county, the language is the same in the amended as in the original section. The difficulty comes solely from the change in the preceding part of the section making it uncertain as to what the word "thereto" refers.

If one of the purposes intended was to change the allowance where a commissioner travels outside his county, such purpose ought clearly to appear. On the whole, it seems a fair inference that no change was intended.

*County Recorder; Statement Filed With, by Traders Need  
Not be Sworn to—Building Association; Can Not  
Amend Articles of Incorporation in Manner Proposed.*

I have thus stated my reasons at some length, because I find myself compelled to differ with my predecessor, Hon. Geo. K. Nash, a copy of whose opinion upon the question herewith find enclosed.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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COUNTY RECORDER; STATEMENT FILED WITH,  
BY TRADERS NEED NOT BE SWORN TO.

Attorney General's Office,  
Columbus, Ohio, June 5, 1884.

*Mr. W. W. Stevenson, County Recorder, Kenton, Ohio:*

DEAR SIR:—Your favor of the 4th inst. is received. It is not necessary that the statement filed with the county recorder under the act of April 10, 1884 (81 O. L., 131), be sworn to.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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BUILDING ASSOCIATION; CAN NOT AMEND  
ARTICLES OF INCORPORATION IN MANNER  
PROPOSED.

Attorney General's Office,  
Columbus, Ohio, June 5, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith certificate of the Excelsior Building Association submitted to me, and am of opin-

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*Ohio National Guard; Enlistments in; Right of Members to  
Vote, Etc.*

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ion that there is no authority of law for amending the articles of incorporation of a building association as proposed in said certificate.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; ENLISTMENTS IN;  
RIGHT OF MEMBERS TO VOTE, ETC.

Attorney General's Office,  
Columbus, Ohio, June 6, 1884.

*Hon. E. B. Finley, Adjutant General:*

DEAR SIR:—So far as relates to your inquiry, general order No. 4 issued by the governor April 29, 1882, is in substance that thereafter organizations of the Ohio National Guard will not be recruited above the minimum number allowed by law, except by special permission from headquarters, and that existing organizations whose strength is above the minimum allowed by law will be reduced as soon as practicable to the requirements of said order.

As I construe it, this order is not in conflict with any provision of the statutes, and the governor had power to issue the same. Taken in connection with the code of regulations and the statute relating to enlistments, it merely announced the policy adopted by the executive department as to receiving new organizations into the service, and prescribed a rule to govern the commandants of the companies, troops and batteries in respect to the enlistment of recruits into their respective commands. It does not undertake to interfere with the rights of any person then a member of an existing organization, nor does it invalidate subsequent enlistments made in accordance with sections 3041 and 3042, Revised

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*Ohio National Guard; Enlistments in; Right of Members to  
Vote, Etc.*

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Statutes, and paragraphs 123 to 136 inclusive, of the code of regulations.

If the governor, after issuing said order, actually received into the service an organization whose numbers exceeded the minimum, each and every person so received into the service must be considered as duly enlisted and entitled to all the rights and privileges of a member of the Ohio National Guard. So, also, a person duly enlisted into any company, troop or battery after its organization, thereby becomes a member and entitled to all the rights and privileges thereof, even though the membership of such organization exceeds the minimum required. In the latter case, unless permission was obtained from headquarters, the recruiting officer would be guilty of disobeying said general order No. 4.

It follows that each person thus duly enlisted into any company, troop or battery has the right, under section 3044, to vote at an election for colonel of his regiment, and there is no authority for limiting the number of votes to be cast by any company, troop or battery to the minimum membership allowed by law for such organizations.

Furthermore, I am of opinion that neither the governor nor the adjutant general has power to issue an order whose effect would be to so limit the number of votes to be cast by the members of an organization.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Recorder; Incorporated Companies Not Required to File Statement With—County Commissioners; as to Contract by.*

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COUNTY RECORDER; INCORPORATED COMPANIES NOT REQUIRED TO FILE STATEMENT WITH.

Attorney General's Office,  
Columbus, Ohio, June 7, 1884.

*Thos. M. Mishelly, Recorder, Dayton, Ohio:*

DEAR SIR:—Your favor of the 6th inst. is received. Under the act of April 10, 1884 (81 O. L., 131), it is not necessary for an incorporated stock company to file a statement with the county recorder.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; AS TO CONTRACT BY.

Attorney General's Office,  
Columbus, Ohio, June 7, 1884.

*J. Foster Wilkin, Prosecuting Attorney, New Philadelphia, Ohio:*

DEAR SIR:—Your favor of the 4th inst. was duly received.

First—It appears that no contract was entered into and signed by the commissioners and A. H. Andrews and Company. In my opinion under section 878, it is necessary in order to bind the county, that this be done and that the contract so executed be entered on the minutes of the commissioners' proceedings.

Second—The specifications are not explicit as to whether or not the opera chairs were included. Evidently

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*Municipal Corporation; Member of Council Who Removes  
From Ward For Which Elected, Ceases to be Member.*

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A. H. Andrews and Company did not intend to include them in the gross amount of its bid, while it seems equally clear that at least a majority of the commissioners thought otherwise. I think it may fairly be said that there was such a mutual misunderstanding upon this point that waiving the question of the regularity of the proceedings there is no contract which could be enforced against either party.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; MEMBER OF COUNCIL WHO REMOVES FROM WARD FOR WHICH ELECTED, CEASES TO BE MEMBER.

Attorney General's Office,  
Columbus, Ohio, June 12, 1884.

*H. R. Shoneo, Esq., Fremont, Ohio:*

DEAR SIR:—Your letter of the 10th inst. is received. In my opinion, by removing from the ward for which you were elected, you ceased to be a member of the council.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*County Board of Equalization; Powers of—Telephone Companies; Taxation of.*

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COUNTY BOARD OF EQUALIZATION; POWERS  
OF.

Attorney General's Office,  
Columbus, Ohio, June 12, 1884.

*Mr. J. C. Carver, Deputy County Auditor, Cadiz, Ohio:*

DEAR SIR:—Your favor of the 7th inst. was duly received. Section 2804, Revised Statutes, does not expressly provide that the county board of equalization, in reducing or increasing the valuation of real estate, shall act only upon satisfactory evidence, yet I think that this is the fair implication. The board is bound to give all persons interested an opportunity for a full hearing of the questions involved, and, in my opinion, its action must be based either upon evidence or the personal knowledge of the board. I do not think it is authorized to act upon the mere statement of a party interested. See *Fratz vs. Mueller*, 35 O. St., 397.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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TELEPHONE COMPANIES; TAXATION OF.

Attorney General's Office,  
Columbus, Ohio, June 13, 1884.

*John D. Turner, Esq., County Auditor, Dayton, Ohio:*

DEAR SIR:—Your favor of the 12th inst. is received. The legislature has made no provision for taxing the receipts of telephone companies, and such companies are not required to make report thereof to the county auditor. A "telephone" company is not a "telegraph" company as defined in section 2777, Revised Statutes, and the provisions

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*Road Tax; Liability for in a Certain Case—Pharmacy; Construction of Act Relating to.*

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in respect to the taxation of the receipts of the latter do not apply to the former.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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ROAD TAX; LIABILITY FOR IN A CERTAIN CASE.

Attorney General's Office,  
 Columbus, Ohio, June 13, 1884.

*Mr. L. Abell, Supervisor of Roads, Cortland, Ohio:*

DEAR SIR:—Your letter of the 11th inst. is received. A resident of Ohio does not lose his residence in this State by a temporary absence in another state. A married man thus temporarily absent, his family remaining here, retains his residence where his family resides. On the facts you state the person named was undoubtedly liable for the road tax, both last year and the present year.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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PHARMACY; CONSTRUCTION OF ACT RELATING TO.

Attorney General's Office,  
 Columbus, Ohio, June 14, 1884.

*Mr. P. H. Bruck, Secretary Ohio Board of Pharmacy:*

DEAR SIR:—Yours of this date is received. A person heretofore registered as a pharmacist under the law previous-



*County Recorder; Corporations Not Required to File Statement With—Mayor; Appointment to Fill Vacancy in Office of.*

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ly enforced, but who was not engaged in the drug business as proprietor or manager of the same at the time of the passage of the recent act, can not register as a pharmacist without examination. I think this matter is fully covered by my letter to you of June 4, 1884.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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COUNTY RECORDER; CORPORATIONS NOT REQUIRED TO FILE STATEMENT WITH.

Attorney General's Office,  
 Columbus, Ohio, June 14, 1884.

*Mr. James Flynn, County Recorder, Sandusky, Ohio:*

DEAR SIR:—Your favor of the 13th inst. is received. The act of April 10, 1884, requiring individuals and partnership traders to record their names does not apply to corporations.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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MAYOR; APPOINTMENT TO FILL VACANCY IN OFFICE OF.

Attorney General's Office,  
 Columbus, Ohio, June 17, 1884.

*W. H. Evans, Waynesburgh, Ohio:*

In my opinion, council has no power to order a special

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*Special School District; Certain Act Creating; Unconstitutional.*

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election, but must appoint some person to act as mayor until after the next annual municipal election.

JAMES LAWRENCE,  
Attorney General.

“By telegraph.”

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SPECIAL SCHOOL DISTRICT; CERTAIN ACT  
CREATING; UNCONSTITUTIONAL.

Attorney General's Office,  
Columbus, Ohio, June 18, 1884.

*James B. Matson, Esq., Attorney-at-Law, Cincinnati, Ohio:*

DEAR SIR:—Not being authorized to give an official opinion thereon, I must ask you to excuse me from answering the questions presented in your favor of the 16th inst., further than to say that I think the act of February 12, 1876, entitled “an act to create a special school district of certain territory in Miami Township, Hamilton County” (73 O. L., 255), is clearly unconstitutional under the decision of the Supreme Court in the case of the State vs. Powers (38 O. St., 54). Consequently the persons who assume to be the board of education for such so called special school district have no authority to certify a levy to the county auditor or to do any other official act. The auditor can not in any manner recognize the existence of such board.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Liquor Law; Assessment Under—Girls' Industrial Home;  
Superintendent of, Not Entitled to Extra Compensation  
For Certain Services.*

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LIQUOR LAW; ASSESSMENT UNDER.

Attorney General's Office,  
Columbus, Ohio, June 23, 1884.

*B. F. Power, Esq., Prosecuting Attorney, Zanesville, Ohio:*

DEAR SIR:—Your favor of the 19th inst. was duly received. Under the act of April 17, 1883, known as the "Scott law," a person who on the fourth Monday of April, 1884, was engaged in the business of trafficking in intoxicating liquors is liable for the entire assessment of \$200.00 for the year. His retirement from business during the year, whether before or after June 20th, does not relieve him from any part of such assessment. Of course, I speak on the supposition that the act is constitutional, a question which seems to be still unsettled.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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GIRLS' INDUSTRIAL HOME; SUPERINTENDENT  
OF, NOT ENTITLED TO EXTRA COMPENSA-  
TION FOR CERTAIN SERVICES.

Attorney General's Office,  
Columbus, Ohio, June 23, 1884.

*Hon. F. H. Thornhill, Richwood, Ohio:*

DEAR SIR:—Your favor of the 19th inst. is received. The superintendent of the Girls' Industrial Home, who receives a fixed salary as provided by law, is not entitled to receive any extra compensation for his services in superintending the completion of the waterworks, etc., at the insti-

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*Liquor Law; Does Not Repeal by Implication Certain  
Clauses in Statutes.*

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tution. Consequently I do not think that the item referred to in your letter is a proper charge against the contractor.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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LIQUOR LAW; DOES NOT REPEAL BY IMPLICA-  
TION CERTAIN CLAUSES IN STATUTES.

Attorney General's Office,  
Columbus, Ohio, June 23, 1884.

*Hon. S. P. Wolcott, Kent, Ohio:*

DEAR SIR:—Your favor of the 18th inst. was duly received. In my opinion, neither the act of April 17, 1883, known as the "Scott law," nor the act amendatory thereof, passed April 14, 1884, by implication or otherwise repealed sub-division 5 of section 1692, Revised Statutes. Consequently I think that an ordinance requiring ale, beer and porter houses and shops to be closed at 10 o'clock p. m. is valid and can be enforced.

The contrary of the above has been held by the mayor of Springfield.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Costs; What, Allowed by County Commissioners in Criminal Cases.*

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COSTS; WHAT, ALLOWED BY COUNTY COMMISSIONERS IN CRIMINAL CASES.

Attorney General's Office,  
Columbus, Ohio, June 24, 1884.

*Frank P. Magee, Prosecuting Attorney, McArthur, Ohio:*

DEAR SIR:—Your letters of the 20th inst. were duly received. I am of opinion that under section 1309, Revised Statutes, the county commissioners can not make an allowance in misdemeanors except where there has been a conviction and the defendant proves insolvent. Where a defendant charged with a misdemeanor is bound over by a justice of the peace and the grand jury fails to find an indictment or the State fails to convict upon trial, the costs made before the justice of the peace can not be paid out of the county treasury.

Where a *capias* is issued for a person indicted for a misdemeanor but the sheriff fails to arrest him, the sheriff's fees on such *capias* can not be allowed by the commissioners. This is one of the classes of services included in the general allowance authorized by section 1231, Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*Pharmacy; Rights of a Physician Under Act Relating to  
—Clerk of Courts; Fees of.*

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PHARMACY; RIGHTS OF A PHYSICIAN UNDER  
ACT RELATING TO.

Attorney General's Office,  
Columbus, Ohio, June 27, 1884.

*E. L. Wilkinson, M. D., Van Wert, Ohio:*

DEAR SIR:—Your favor of the 25th inst. is received. The recent pharmacy act (81 O. L., 61) does not interfere with the business of a physician or prevent him from supplying to his patients such articles as may seem to him proper, but if a physician, since the passage of said act, opens and conducts a drug store, filling prescriptions of other physicians and selling drugs to others than his patients, I am of opinion that he must be examined before being allowed to register as a pharmacist.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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CLERK OF COURTS; FEES OF.

Attorney General's Office,  
Columbus, Ohio, July 3, 1884.

*A. S. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:*

DEAR SIR:—Owing to my absence from the city your letter of the 28th ult. was not received until today. Upon the question you state, my predecessor, Mr. Hollingsworth, has given an opinion, a copy of which I herewith enclose. He held that for making the index provided for in section 5339a (80 O. L., 216) the clerk was entitled to charge twenty-three cents in each case. It is true that he expresses this opinion with some hesitation, but the statutes leave the

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*Liquor Law; Penalty for Non-Payment of Assessment Can  
Not be Remitted by Treasurer.*

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question in such obscurity that no one could do otherwise. The question has been presented to me before, and I have concluded to follow his ruling. It is desirable that there should be a uniform practice in the several counties, and I am not prepared to say that he is wrong.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; PENALTY FOR NON-PAYMENT OF  
ASSESSMENT CAN NOT BE REMITTED BY  
TREASURER.

Attorney General's Office,  
Columbus, Ohio, July 5, 1884.

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

DEAR SIR:—Your favor of the 4th inst. is received. Under the act of April 17, 1883, known as the "Scott law," if any assessment be not paid when due the county treasurer is required to collect the penalty thereon. He is not authorized to remit the penalty. The treasurer is also required to account to the auditor for all penalties collected by him.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Taxation; Place of Listing For, of a State by Joint Executors—Ohio National Guard; Municipal Corporation and Township Must, in Certain Case, Provide Armory For Company of.*

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TAXATION; PLACE OF LISTING FOR, OF A STATE BY JOINT EXECUTORS.

Attorney General's Office,  
Columbus, Ohio, July 5, 1884.

*R. R. Freeman, Esq., Prosecuting Attorney, Chillicothe, Ohio:*

DEAR SIR:—Your favor of the 1st inst. was duly received. Where one of two joint executors resides in Ross County and the other in an adjoining county and the estate (consisting of moneys and credits) is all in the latter county, I am of opinion that no part of such estate is subject to taxation in Ross County, but that the whole should be listed in the adjoining county.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; MUNICIPAL CORPORATION AND TOWNSHIP MUST, IN CERTAIN CASE, PROVIDE ARMORY FOR COMPANY OF.

Attorney General's Office,  
Columbus, Ohio, July 12, 1884.

*Mr. J. H. Rhotehaimel, Greenville, Ohio:*

DEAR SIR:—Owing to my absence from the city, your favor of the 5th inst. was not received until today. For the purpose named in section 3085, Revised Statutes, a municipal corporation must be considered as distinct from the township in which it is situated. As the majority of the



Pharmacy; Rights of a Physician Under Act Relating to.

members of the company to which you refer reside in the village of Greenville, I think that it is the duty of the village to provide a suitable armory for such organization, but that the expense thereof is to be divided between the corporation and the township in proportion to the number of members residing in the village and in the township outside of the village respectively.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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PHARMACY; RIGHTS OF A PHYSICIAN UNDER  
 ACT RELATING TO.

Attorney General's Office,  
 Columbus, Ohio, July 12, 1884.

*W. S. Makeman, M. D., Forest, Ohio:*

DEAR SIR:—Your favor of the 12th instant was duly received. The recent pharmacy act (81 O. L., 61) does not prevent a physician from filling his own prescriptions or supplying to his patients such articles as may seem to him proper, but, in my opinion, he can not as a druggist, fill prescriptions of other physicians without being registered as a pharmacist in accordance with said act.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

*Clerk of Courts; Limitation of Allowance to, Inoperative to Those Elected Before June 3d, 1879—Schools; Persons in Certain Case Not Entitled to Free Tuition in.*

CLERK OF COURTS; LIMITATION OF ALLOWANCE TO, INOPERATIVE TO THOSE ELECTED BEFORE JUNE 3D, 1879.

Attorney General's Office,  
Columbus, Ohio, July 14, 1884.

*Levi Hite, Esq., Prosecuting Attorney, Lancaster, Ohio:*

DEAR SIR:—I concur in the opinion that the limitation of three hundred dollars in respect to the allowance to the clerk of courts, under section seventeen of act of June 3d, 1879 (76 O. L., 124) and section 1261 Revised Statutes, did not apply to a clerk during the term for which he may have been elected before the 3d day of June, 1879.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

SCHOOLS; PERSONS IN A CERTAIN CASE, NOT ENTITLED TO FREE TUITION IN.

Attorney General's Office,  
Columbus, Ohio, July 14, 1884.

*Hon. L. D. Brown, State Commissioner of Schools:*

DEAR SIR:—I return herewith the letter of C. M. Stone, Esq., with enclosed plat and statement, which you submitted to me. It appears that certain persons, who reside in Middleburgh Township, Cuyahoga County, on several tracts of land each without the village of Berea and separated therefrom by a county road, also own certain lots in said village fronting on the opposite side of said road which is the corporation line.

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*Canals; Collection of Water Rents.*

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I am of opinion that these persons are not entitled to free tuition for their children in the public schools of the village district under section 4013 Revised Statutes. The village lots referred to constitute no part of their respective homesteads. A person's homestead is his dwelling house with his lands immediately connected therewith and contiguous thereto. It does not, in my opinion, include lands laid off into village lots and separated from the residence by a county road or a public street.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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CANALS; COLLECTION OF WATER RENTS.

Attorney General's Office,  
Columbus, Ohio, July 14, 1884.

*Mr. Fred. H. Whipple, Collector of M. & E. Canal, Toledo, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 12th instant stating that the Toledo, Cincinnati and St. Louis Railroad Company, which is in the hands of a receiver appointed by the U. S. court, is in default in the payment of certain water rents due to the State under a lease from the State. In my opinion, the fact that the property of said company is now under the jurisdiction of the said court, does not prevent the State from enforcing any forfeiture or penalty stipulated in said lease for the non-payment of such water rent as has accrued since the court assumed jurisdiction. Upon the facts you state I do not think that you would be guilty of contempt of court should you shut off the water. Before doing so, however, I would give the receiver reasonable notice.

If application be made to the court, I think that it

*Pharmacy; Construction of Act Relating to; Sales by Country Store; Manufacturing Pharmacists.*

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would order the receiver to pay all water rent due, and this perhaps would be the best course to pursue.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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PHARMACY; CONSTRUCTION OF ACT RELATING TO; SALES BY COUNTRY STORE; MANUFACTURING PHARMACISTS.

Attorney General's Office,  
Columbus, Ohio, July 15, 1884.

*Mr. P. H. Bruck, Secretary Ohio Board of Pharmacy:*

DEAR SIR:—Your favor of the 12th instant was duly received. I think that the label, of which you give a copy, should state how frequently a dose is to be taken. It will then be sufficient to permit the article named to be sold by a country store. If the article is so simple that it makes no difference how often it is taken, the label could state that a dose may be taken as often as desired.

By a manufacturing pharmacist, I understand you to mean one who compounds drugs for sale in bulk to dealers. I think that such persons are entitled to register as pharmacists under the act of March 20th, 1884 (81 O. L., 61), this being fairly implied from the latter part of section 4405. They must, however, be examined before being permitted to register, unless they come within the exceptions named in section 4409. The fact that they were engaged as manufacturing pharmacists at the time of the passage of said act, would not give them the right to register without examination.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*County Commissioners; Power to Levy Tax for Road and Bridge Purposes—Prosecuting Attorney; Costs in Criminal Cases, Paid by State; Not Entitled to Percentage on Collection.*

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COUNTY COMMISSIONERS; POWER TO LEVY  
TAX FOR ROAD AND BRIDGE PURPOSES.

Attorney General's Office,  
Columbus, Ohio, July 17, 1884.

*Mr. M. Stolzenbash, Clerk, Junction City, Ohio:*

DEAR SIR:—I am not authorized to give to you an official opinion upon the question presented in your letter of the 16th instant. I think, however, that there is no doubt that the county commissioners, under section 2824 Revised Statutes, have power to levy a tax for road and bridge purposes on all taxable property within their county, including that in municipal corporations. But see section 2661 Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PROSECUTING ATTORNEY; COSTS IN CRIMINAL  
CASES, PAID BY STATE; NOT ENTITLED TO  
PERCENTAGE ON COLLECTION.

Attorney General's Office,  
Columbus, Ohio, July 18, 1884.

*Perry M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:*

DEAR SIR:—Your letter without date was duly received. In my opinion, the prosecuting attorney is not entitled to a percentage on costs paid by the State in criminal cases. My predecessors, attorneys general Nash and Hollingsworth

*Board of Public Works; Resumption of Water Power by—  
State Inspector of Shops and Factories; Who to Provide  
Fire Escapes in Factories.*

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have each given a number of opinions to the same effect. I herewith enclose a copy of one by Mr. Nash.

Yours truly,

JAMES LAWRENCE,  
Attorney General

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BOARD OF PUBLIC WORKS; RESUMPTION OF  
WATER POWER BY.

Attorney General's Office,  
Columbus, Ohio, July 18, 1884.

*Davis Guy and Geo. W. Many penny, Salina, Ohio:*

In my opinion, there is no legal liability on the part of the State to Hall & Fauger by reason of the resumption of water power by the board of public works, but the lessees are merely released from the payment of rent from the time of such resumption.

JAMES LAWRENCE,  
Attorney General.

"By telegraph."

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STATE INSPECTOR OF SHOPS AND FACTORIES;  
WHO TO PROVIDE FIRE ESCAPES IN FAC-  
TORIES.

Attorney General's Office,  
Columbus, Ohio, July 18, 1884.

*Hon. Henry Dorn, State Inspector of Shops and Factories,  
Cincinnati, Ohio:*

DEAR SIR:—I am of opinion that under section 2573c of the act of April 4th, 1884 (81 O. L., 106), the proprietor

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*Liquor Law; Legal Proceedings Under.*

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of each separate factory, in a building occupied by a number of different manufacturers, is required to provide sufficient fire escapes for that part of such building occupied by him. Under section 2573, amended April 19th, 1883 (80 O. L., 188), the owner of the building (if more than two stories high) is also required to provide a convenient exit from the different upper stories of said building which shall be easily accessible in case of fire. Both the proprietor of the factory and the owner of the building are thus responsible. I think, however, you will find it better to notify the proprietor of the factory, so as to enforce the penalty named in section 2573c in case of a failure to comply with your notice.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; LEGAL PROCEEDINGS UNDER.

Attorney General's Office,  
Columbus, Ohio, July 21, 1884.

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

DEAR SIR:—Your favor of the 17th instant is received. As I said in my former letter, my advice to the treasurer is to institute no proceedings to enforce collection of the "Scott law" assessments until there has been a further decision of the Supreme Court. If, however, he deems it his duty to proceed in the matter, I think the best thing to do will be to bring an action for the recovery of the assessment in accordance with section 2859 Revised Statutes. In that case he would incur liability merely for the costs of suit, whereas, if he should undertake to seize property belonging to liquor dealers he would probably have to respond

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*Board of Public Works; Resumption of Water Power by;  
Liability of State.*

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in damages. I think a justice of the peace would have jurisdiction of the action suggested, but I would advise commencing at once in the Common Pleas Court.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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BOARD OF PUBLIC WORKS; RESUMPTION OF  
WATER POWER BY; LIABILITY OF STATE.

Attorney General's Office,  
Columbus, Ohio, July 22, 1884.

*To the Board of Public Works:*

GENTLEMEN:—As requested in your favor of this date I have examined the lease from the State of Ohio to Adam Baker, dated May 1st, 1853 (assigned to W. H. Beary) and the lease to Riley & LeBlond, dated November 1st, 1853 (assigned to Messrs. Hole & Fauger), whereby the State leased to said lessees, respectively, certain water power and certain premises at Celina, Mercer County, and I am also advised of the recent action of the board of public works resuming the water power so, as aforesaid, leased.

In my opinion there is no legal liability on the part of the State to pay to the assignees of said leases the value of any improvements erected upon said leased premises. By such resumption they are merely released from the payment of all future rents, and the leases cease and determine.

I do not deem it necessary to consider whether said leases provide for the payment for improvements in the event that said water power is resumed, for, in my opinion, the officer who made said leases for the State had no power to bind it by any such agreement.

Yours truly,

JAMES LAWRENCE,  
Attorney General.



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*State Benevolent Institutions; Payments by Trustees of  
Asylum for Imbeciles Upon Certain Contracts.*

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STATE BENEVOLENT INSTITUTIONS; PAY-  
MENTS BY TRUSTEES OF ASYLUM FOR IM-  
BECILES UPON CERTAIN CONTRACTS.

Attorney General's Office,  
Columbus, Ohio, July 22, 1884.

*G. A. Doren, M.D., Ohio Institution for Feeble-Minded  
Youth:*

DEAR SIR:—I return herewith the papers submitted to me, and respectfully report thereon as follows:

1. In respect to the controversy between George Elbrig and the Wassall Fire Clay Company, I am of opinion that under the assignment by Elbrig to said company of the contract with your board of trustees, the said Wassall Fire Clay Company is entitled to collect all moneys becoming due by virtue of said contract, including payment of that part of the work in which Elbrig retained an interest. The notices, served from time to time upon the board by Elbrig, do not affect this right nor impose any obligation upon the board to wait until it suits his convenience to institute proceedings in court. In my opinion neither the board nor its members individually will incur any liability by paying to said company the balance remaining unpaid in said contract. As said company offers to furnish a bond to Elbrig conditioned that it will pay him any amount found due to him upon settlement and also to furnish a bond of indemnity to the trustees, I respectfully recommend that, upon receiving such bonds, the trustees pay over said balance to said company.

2. In the matter of the contract with William Saint and the claim of Wright & Son, sub-contractors, I respectfully recommend that the board proceed to complete the work concerning which Saint is in default. If, then,

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*Corporations; Right of Cumulative Voting by Stockholders  
in.*

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upon a proper adjustment, anything is found to be coming to him it will be the duty of the board, as provided in the contract, to retain that amount until the claim of the sub-contractors is satisfied. For the present I would suggest that you require the sub-contractors to make an affidavit to their account similar to the affidavit required in the case of the statutory lien under section 3193 Revised Statutes, and that you furnish the principal contractor with a copy of such attested account.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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CORPORATIONS; RIGHT OF CUMULATIVE VOT-  
ING BY STOCKHOLDERS IN.

Attorney General's Office,  
Columbus, Ohio, July 23, 1884.

*Mr. A. E. Dent, Barnesville, Ohio:*

DEAR SIR:—Your favor of the 22d instant is received. Except as provided in section 3245a (81 O. L., 54) passed March 19th, 1884, the stockholders of a corporation organized under the laws of Ohio, have in my opinion, the right of cumulative voting in the election of directors

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*Surveyor or Engineer; Fees of, in Ditch Cases.*

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SURVEYOR OR ENGINEER; FEES OF, IN DITCH  
CASES.

Attorney General's Office,  
Columbus, Ohio, July 23, 1884.

*G. W. Emerson, Esq., Prosecuting Attorney, Bellefontaine,  
Ohio:*

DEAR SIR:—Your favor without date is received. I am of opinion that a surveyor or engineer appointed to examine and report as to the cleaning out of a ditch under section 4497 Revised Statutes amended (78 O. L., 204) is entitled to receive four dollars (\$4.00) per day for the time actually employed by him on the work.

When section 4497 was amended so as to authorize the appointment of a surveyor or engineer, as well as a disinterested freeholder of the county, evidently the fees fixed generally by section 4506 for a surveyor or engineer, for services under the chapter referred to, became applicable to a surveyor or engineer so appointed. There are thus two apparently inconsistent provisions in section 4506, which can only be reconciled by construing them as if they read:

The person appointed by the commissioners to examine and report as to the cleaning out of a ditch shall receive two dollars per day, but when a surveyor or engineer is appointed he shall receive four dollars per day.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Teachers' Institute—Children's Home; Duty of County Commissioners in County Where There is No.*

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TEACHERS' INSTITUTE.

Attorney General's Office,  
Columbus, Ohio, July 24, 1884.

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

DEAR SIR:—Your favor of the 23d instant is received. I think it apparent from your statement that the so-called teachers' institute of Champaign County is not such an institute as is contemplated by section 4086 Revised Statutes, but is really a school for the special training of teachers within the meaning of section 4069 Revised Statutes. It looks to me as if its organization as an institute is for the double purpose of evading sections 4069 Revised Statutes and of obtaining the benefit of the teachers' institute fund. If I am correct in the foregoing, Mr. Duell is not eligible to be a county school examiner.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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CHILDREN'S HOME; DUTY OF COUNTY COMMISSIONERS IN COUNTY WHERE THERE IS NONE.

Attorney General's Office,  
Columbus, Ohio, July 27, 1884.

*Maj. W. D. Shaw, Superintendent Soldiers' Orphan Home, Xenia, Ohio:*

DEAR SIR:—I am in receipt of the letter of Mr. J. L. Caldwell, which you have referred to me, and which I herewith return. Mr. Caldwell does not state the ages of the children referred to nor whether Pike County has a chil-

Ohio National Guard; "Subsistence;" What is Included in.

dren's home. If, as I infer, there is no children's home there, and the children are under sixteen years of age, the matter is governed by the act of March 27th, 1884 (81 O. L., 92). Unless there is an entire separation of children from adults in the county infirmary, it is the duty of the county commissioners to make temporary provision for said children as authorized by said act, until suitable homes can be obtained for them.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; "SUBSISTENCE;"  
WHAT IS INCLUDED IN.

Attorney General's Office,  
Columbus, Ohio, July 28, 1884.

*General E. B. Finley, Adjutant General:*

SIR:—I am in receipt of your favor of the 25th instant calling my attention to section 3082 Revised Statutes, amended April 19th, 1881 (78 O. L., 290) and also to the following item in the appropriation act of April 4th, 1884 (81 O. L., 108), to-wit: Transportation and subsistence O. N. G. eleven thousand dollars (\$11,000.00).

By section 3082 the State has assumed the obligation of paying for transportation, quarters, subsistence and other supplies required by the Ohio National Guard during encampments, provided that such subsistence shall not exceed 33 1-3 cents per day for each man. The language of this statute is broad enough to include all the items of expense mentioned in your letter, but the difficulty is that the appropriation referred to is limited to transportation and subsistence. I understand subsistence to mean provisions or that which furnishes support to animal life. Giving this the

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*County Surveyor; County Commissioners Not Authorized  
to Furnish Instruments to.*

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most liberal construction, I still think that the appropriation is not available for the payment of all the expenses named. In my opinion, "Subsistence" includes ice, fuel, feed for horses, etc., but not the expense of providing quarters or the hire of horses used by mounted officers.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY SURVEYOR; COUNTY COMMISSIONERS  
NOT AUTHORIZED TO FURNISH INSTRUMENTS TO.

Attorney General's Office,  
Columbus, Ohio, July 28, 1884.

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

DEAR SIR:—Your favor dated July 22d was not received until Saturday last. In my opinion county commissioners are not authorized to furnish instruments for a county surveyor. I think that the words "other suitable articles" in section 1181 Revised Statutes refer to office furniture and fixtures.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Coroner; Power of Burying Dead Bodies the Interment of  
Which is Not Otherwise Provided For—"Brief."*

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CORONER; POWER OF BURYING DEAD BODIES  
WHOSE INTERMENT IS NOT OTHERWISE  
PROVIDED FOR.

Attorney General's Office,  
Columbus, Ohio, July 31, 1884.

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

DEAR SIR:—Your favor of the 28th instant was duly received from which it appears that two tramps whose legal settlement is unknown, were accidentally killed in Clinton Township, Knox County. The coroner held an inquest and thereupon notified the township trustees to bury the bodies. This the trustees refused to do on the ground that the deceased did not belong to their township. The coroner thereupon buried the bodies, securing for that purpose cheap coffins and clothes and he now presents to the county commissioners a bill for the expenses thus incurred.

I am of opinion that the bill of the coroner for the expenses of burying the dead bodies referred to, should be allowed by the county commissioners as a proper and just claim against the county.

The question presented is a new one of some interest, and I have made a brief thereon, a copy of which I herewith enclose.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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"BRIEF."

*To S. R. Gotshall, Esq.:*

It is somewhat singular that our statutes contain no express provision for a case like this. The statutes relat-

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*Coroner; Power of Burying Dead Bodies the Interment of  
Which is Not Otherwise Provided For—"Brief."*

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ing to the relief and support of the poor apply only to living persons in need of such relief and support. As the obligation of townships and counties in this respect is purely statutory, I am of opinion that township trustees and other officers charged with the execution of the poor laws have, as such, no power or duties in the premises.

Yet there seems to be a duty imposed by the universal feelings of mankind to be discharged by some one toward the dead. To be returned to his parent earth for dissolution and to be carried thither in a decent and inoffensive manner has been recognized by high authority as a right of every man. (See *Pierce vs. Proprietors of Swan Point Cemetery*, 10 Rhode Island, 227). Our statutes provide, however, in the interest of science, that under certain restrictions the bodies of certain persons may be delivered to medical colleges for the purpose of dissection. In a recent case also, Justice Stephen charged the jury, that to burn a dead body instead of burying it, does not violate any right of the deceased and is not a misdemeanor unless it is so done as to amount to a public nuisance. (*Queen vs. Price*, 12 Q. B. D., 247 (Eng. Law Rep., 1884)).

At common law every householder, in whose house a dead body lies, is bound to inter the body decently, and, upon this principle, where a pauper dies in any parish house, the parish must provide for the interment (*Queen vs. Stewart et al.*, 12 Adolphus & Ellis, Rep. 773). In the case of *Reg. vs. Vain*, 5 Cox's Crim. Law Cases, 379, Lord Campbell, C. J., said that "there is no doubt that if a parent has the means of giving his child Christian burial, he is bound to do so, but he is not to be indicted for a misdemeanor if he has not the means, although the body of the child may occasion a nuisance for which the parish officers would probably be liable." There is a learned discussion of the general subject of the burial of the dead in 4 Bradford's Sur. Rep. N. Y., 503.

Returning to the case you have stated, in the absence of any statutory provision upon the subject, I should say that



*Coroner; Power of Burying Dead Bodies the Interment of  
Which is Not Otherwise Provided For—"Brief"—Clerk  
of Courts; Fees of.*

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there would be an obligation upon the public through some of its organizations to furnish a decent burial. I think, however, that section 3763 Revised Statutes (amended 78 O. L., 33) recognizes this obligation and that, by fair implication therefrom, all dead bodies in the possession of sheriffs or coroners, not claimed or identified and not delivered up for dissection, must be buried at the expense of the county. Section 1227 Revised Statutes adds something to this construction, for it is there provided that where property is found upon an unknown person over whose body an inquest has been held by the coroner, the same shall be applied first to pay the expenses of saving the body of the deceased, of the inquest and burial.

There is another view under which the obligation of the county to pay for the expenses of burial in the present case may be maintained with some force, and that is, in holding an inquest has not the coroner, independently of statutes, authority as a public officer, to incur for the county such expenses as are necessary for a proper execution of his office, including the decent disposal of the remains?

See Allegheny County vs. Watts, 3 Pa. St., 462.

Commonwealth vs. Harman, 4 Pa. St., 269.

State ex rel vs. Armstrong, 19 Ohio, 116.

JAMES LAWRENCE,

Attorney General.

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CLERK OF COURTS; FEES OF.

Attorney General's Office,  
Columbus, Ohio, July 31, 1884.

*John McGregor, Esq., Clerk of Courts, Canton, Ohio:*

DEAR SIR:—I have delayed answering your letter of the 15th instant until I could examine carefully the questions presented. It is to be remembered that no fees are

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*Clerk of Courts; Fees of.*

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allowed to an officer by implication, but only by express provision of the statutes. Also that upon sentence of a person for felony the State is liable to pay only the costs made in the prosecution.

1. As to the first item you mention amounting to \$20.44 "for entering other record in journal" the auditor says that he told the sheriff that he did not undertake to say that you might not be entitled to the amount claimed, but that it could not be paid as charged. In this I think he was right, for in the cost bills you had previously charged for entering on the journal all the records for which the law authorizes payment. If the "other record" is something additional you cannot charge for it, and if it is included in the other items it should be entered on the cost bills.

2. Having previously examined the question, I am satisfied that the clerk is, under the statutes, only entitled to charge once for entering the attendance of each witness.

3. I think that the clerk's fees for the lists required to be made by section 7189 Revised Statutes must be paid by the county (section 1262 R. S.) and that the same are not costs made in the prosecution of any particular case.

4. I can find no provision of the statutes authorizing the payment of any fees to the clerk for swearing persons examined as to their qualifications as jurors. I do not think that such persons are in any sense witnesses.

I am, therefore, compelled to agree with the auditor of state in his action upon the cost bills referred to.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Coroner; Vacancy in Office of; Term of Office of—Clerk of  
Courts; Fees of.*

CORONER; VACANCY IN OFFICE OF; TERM OF  
OFFICE OF.

Attorney General's Office,  
Columbus, Ohio, August 6, 1884.

*John J. Shockey, Esq., Coroner, McArthur, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 4th instant from which it appears that at the annual election in October, 1882, G. B. Dillon was elected coroner of Vinton County. He having failed to qualify, the office was declared vacant by the county commissioners and you were appointed to fill the vacancy. At the October election, 1883, candidates for the office of coroner were voted for, and you were elected and commissioned by the governor for the term of two years.

I am of opinion that under your election in October, 1883, you are entitled to hold the office for the full term of two years, and consequently that there can be no election for coroner this year. See section eleven Revised Statutes and State ex rel vs. Commissioners of Muskingum County, 7 O. St., 125.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

CLERK OF COURTS; FEES OF.

Attorney General's Office,  
Columbus, Ohio, August 7, 1884.

*J. R. Cook, Esq., Clerk of Courts, Eaton, Ohio:*

DEAR SIR:—In reply to your letter of the 1st instant addressed to Hon. D. A. Hollingsworth, I take the liberty

*Sidewalks; Advertisements for Construction and Repair of.*

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to state that in my opinion a clerk of courts is entitled to charge eight (8) cents for swearing a party to a pleading and fifteen (15) cents for certifying the same, making twenty-three (23) cents for the affidavit and certificate. The seal of the court is not required to be annexed to the certificate in such cases.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SIDEWALKS; ADVERTISEMENTS FOR CON-  
STRUCTION AND REPAIR OF.

Attorney General's Office,  
Columbus, Ohio, August 7, 1884.

*George Kinney, Esq., Prosecuting Attorney, Fremont, Ohio:*

DEAR SIR:—Your favor of the 2d instant is at hand. In my opinion, under section 2329 Revised Statutes as amended March 27th, 1884 (81 O. L., 88), it is necessary in all cases to publish for two weeks the resolution for the construction or repair of sidewalks, although all the owners of property abutting upon the sidewalk are residents upon whom notice is personally served.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Liquor Law—State Benevolent Institutions; Payment of  
Disputed Claims, Under Certain Contract.*

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## LIQUOR LAW.

Attorney General's Office,  
Columbus, Ohio, August 7, 1884.

*W. Hyde, Esq., Prosecuting Attorney, Warren, Ohio:*

DEAR SIR:—Your favor of the 6th instant is received. Where the first half of the assessment for 1884 under the act known as the "Scott Law" was not paid on or before the 20th day of June last, I am of opinion that a penalty of twenty (20) per cent. must be added thereto.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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STATE BENEVOLENT INSTITUTIONS; PAYMENT  
OF DISPUTED CLAIMS, UNDER CERTAIN  
CONTRACT.

Attorney General's Office,  
Columbus, Ohio, August 8, 1884.

*Hon. F. H. Thornhill, President Board of Trustees, Girls'  
Industrial Home:*

DEAR SIR:—I am in receipt of your favor of the 6th instant, in reference to the distribution of the balance due on the contract with H. N. P. Dole & Co., for steam heating and water works for your institution to which I make this general answer which I think covers the points suggested.

If the contractors dispute the claim of any sub-contractor, laborer or material man which has been filed, the board should notify in writing the owner of such claim to commence suit thereon, and it should refuse to pay out any of the money until this question is settled. If the person

*Ohio National Guard; Power of Arrest of Brigade Commander at Encampment of.*

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so notified refuses to commence such suit within sixty days, then I think the board would be authorized to pay the claims not in dispute. In other words, I think the board may proceed according to the rules prescribed in the case of statutory liens of this nature.

If when the amount coming to each has been adjusted, it is found that the balance due on the contract is insufficient to pay all in full, such balance should be distributed *pro rata* to the several claimants. If any one refuses to accept such *pro rata* amount the board may proceed to pay their shares to those who are willing to receive the same, retaining the remainder until the persons entitled thereto call for it.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; POWER OF ARREST  
OF BRIGADE COMMANDER AT ENCAMP-  
MENT OF.

Attorney General's Office,  
Columbus, Ohio, August 8, 1884.

*Col. Thomas F. Dill, Assistant Adjutant General:*

DEAR SIR:—I return herewith the communication of Col. Geo. D. Freeman, which you have referred to me.

In my opinion, the brigade commander of an encampment of the Ohio National Guard has no right to arrest persons engaged in selling intoxicating liquors from temporary stands outside the encampment. Except as to the troops under his command, the authority of such commander is confined to the limits of the encampment.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Infirmiry Directors; Expenses When Sued for  
Misconduct—County Treasurer; Power to Employ a  
Night Watchman.*

COUNTY INFIRMARY DIRECTORS; EXPENSES  
WHEN SUED FOR MISCONDUCT.

Attorney General's Office,  
Columbus, Ohio, August 8, 1884.

*S. C. Carpenter, Esq., County Commissioner, Painesville,  
Ohio:*

DEAR SIR:—The question presented in your favor of the 7th instant should be referred to the prosecuting attorney, as I am not authorized to give to you an official opinion thereon. A similar question, however, has been heretofore submitted to me, and I then gave it as my opinion that the expenses and attorney fees of county infirmiry directors, in defending suits brought against them for alleged official misconduct, cannot be allowed by the county commissioners or paid by the county.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

COUNTY TREASURER; POWER TO EMPLOY A  
NIGHT WATCHMAN.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*Messrs. S. R. Jenkins, and W. W. Duniface, County Com-  
missioners, Bowling Green, Ohio:*

GENTLEMEN:—Owing to my absence from the city your favor of the 7th instant was not received until today.

In my opinion, the county commissioners are not authorized to designate the person to be employed as night

*Municipal Corporation; General Revenue Fund of; What  
it May Be Expended for.*

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watchman under section 1135 Revised Statutes. You will observe that the statute does not say that the commissioners shall employ a night watchman, but that they shall authorize the county treasurer to do so. When the requisite authority has been granted and the compensation fixed by the commissioners, I think that the treasurer has authority to employ such night watchman and may select the person to be employed.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; GENERAL REVENUE FUND OF; WHAT IT MAY BE EXPENDED FOR.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*F. Newman, Esq., City Solicitor, Crestline, Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 12th instant was not received until today.

You submit to me the question whether the council of Crestline has authority to purchase a site and erect a town hall thereon, no levy having been made for that purpose, but there being sufficient money in the general fund with which to purchase a site, after providing for the other wants of the corporation. From your statement, I take it that there is not sufficient money in the general revenue fund to both purchase a site and erect a building thereon. The practical question is, therefore, whether the general fund of a municipal corporation may be expended for the purchase of a site for a town hall.

In my opinion it may. I think that the general fund may be used for any purpose for which the corporation is



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*Municipal Corporation; Purchase of Fire Engine By.*

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authorized to expend money or which may be necessary in order to carry out the powers conferred upon it by law, provided that no special fund has been created for that particular purpose. The power to acquire real estate for the use of the corporation is given by sub-division 34, section 1692 Revised Statutes and sub-division 36 of the same section authorizes it to erect and maintain public halls. It is true that section 2683 Revised Statutes authorizes the levy of a tax for any improvements authorized by title XII part 1st of the Revised Statutes and for the real estate for any improvements authorized thereby; section 2563 (amended 81 O. L., 40) also provides a special mode whereby a tax may be levied for the purpose of erecting a public hall. So also under section 2835, bonds may be issued for the same purposes. But, in my opinion, the authority to create a special fund for the purpose of purchasing a site or erecting a town hall does not prevent the expenditure of the general fund therefor, if such special fund has not in fact been provided for.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; PURCHASE OF FIRE  
ENGINE BY.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*Mr. W. H. H. Williams, Chief of Fire Department, Fostoria,  
Ohio:*

DEAR SIR:—Under section 2835 Revised Statutes the council of a municipal corporation may issue bonds for the purchase of a fire engine, but the question must first be

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*Municipal Corporation; Erection of Public Hall by Township and.*

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submitted to a vote of the people as provided in section 2837.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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MUNICIPAL CORPORATION; ERECTION OF PUBLIC HALL BY TOWNSHIP AND.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*P. W. Poole, Esq., Mayor, Crestline, Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 11th instant was not received until today. I have, also, received a letter from your solicitor, to whom I have written that, in my opinion, the general fund of a municipal corporation may be expended for the purchase of a site for a town hall, provided no fund has been created for that particular purpose. Your letter, however, presents a different question, I am of opinion that the council of a municipal corporation and the trustees of the township in which such corporation is situated cannot unite in purchasing a site and erecting thereon a public hall, without first submitting the question to a vote of the electors of the municipal corporation and of the township, holding separate elections, as provided in sections 2563, 2564 and 2565 Revised Statutes. The only authority for such joint erection of a public hall is conferred by these sections and accordingly the mode thereby prescribed must be followed.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Advertisements; Where There are Two Papers of the Same Party—Municipal Corporation; Power of Council to Close "Ale, Beer and Porter" Houses and Shops.*

ADVERTISEMENTS; WHERE THERE ARE TWO PAPERS OF THE SAME PARTY.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*J. D. and S. H. Olmstead, Editors, Gallia Tribune, Gallipolis, Ohio:*

GENTLEMEN:—Owing to my absence from the city, your favor of the 12th instant was not received until today.

Where, as in Gallia County, there are three newspapers, one Democratic and two Republican, the statutes do not provide in which of the two newspapers of the same political party, shall be published such public advertisements as are required to be published in two newspapers of different political parties. The matter is left to the officers who are required to make the publication.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; POWER OF COUNCIL TO CLOSE "ALE, BEER AND PORTER" HOUSES AND SHOPS.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

*George Strayer, Esq., Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—Your favor of the 14th instant was duly received. In my opinion the council of a municipal corporation has no authority under section 1692 Revised Statutes, to pass an ordinance requiring a place where nothing

*Taxation; Dealer in Live Stock, Subject to, as a Merchant.*

but distilled liquors are sold, to be closed at 7 o'clock p. m., nor can it by ordinance provide for the closing at such hour of places where only distilled and vinous liquors are sold. Its authority is limited to the regulation of ale, beer and porter houses and shops which do not include the places named.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

TAXATION; DEALER IN LIVE STOCK, SUBJECT  
TO, AS A MERCHANT.

Attorney General's Office,  
Columbus, Ohio, August 18, 1884.

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

DEAR SIR:—Owing to my absence from the city your favor of the 9th instant was not received until today.

In my opinion, a person who is engaged in buying and selling live stock with a view to profit is a "merchant" within the meaning of section 2740 Revised Statutes. By that section it is provided that every person who shall own or have in his possession or subject to his control, any *personal property* within this State with authority to sell the same, which shall have been purchased either in or out of this State, with a view to being sold at an advanced price or profit, etc., shall be held to be a merchant, and section 2730 defines "personal property" to be first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, etc.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*Monitor Fire Association.*

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## MONITOR FIRE ASSOCIATION.

Attorney General's Office,  
Columbus, Ohio, August 22, 1884.

*Hon. Henry J. Reinmund, Superintendent of Insurance:*

SIR:—Your favor of the 20th instant was duly received. The question of the propriety of permitting the Monitor Fire Association of Cincinnati to continue in business is scarcely within my province to determine. In the communication heretofore filed with me by you, a number of charges are made against said association, besides the one referred to in your last letter. All these would have to be considered before arriving at any just conclusion in the premises. Considering alone the charge that it has been doing business in other states without having complied with the laws of such states and that it has issued certificates of membership to non-residents of Ohio, I should say that said association might properly be permitted to continue on the terms stated by you, providing no loss or expense is in any manner imposed thereby upon the members residing in Ohio. Where it appears to be for the interest of the public or of innocent members, courts sometimes spare the life of a corporation which has abused its franchises or exercised franchises not belonging to it. On a disclaimer of the franchises wrongfully exercised, I think that you might, in a proper case, follow the same course, imposing such conditions as will protect all concerned.

From the facts stated to me, it appears that the Monitor Fire Association of Canton, Ohio, became liable to your department for a penalty of five hundred dollars (\$500.00) by reason of its failure to deposit in your office on the first day of January last or within thirty days thereafter the statement required by section 3690 Revised Statutes (amended 80 O. L., 197). As said Canton Association did not transact any business after the first day of January, 1884, it is not liable for the additional penalty

*Sheriff; What May Be Furnished by; to Prisoners in Jail.*

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named in said section. The only liability on the part of said Cincinnati Association in respect to said penalty arises from the fact that all the assets of said Canton Association have been turned over to it.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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SHERIFF; WHAT MAY BE FURNISHED BY; TO  
PRISONERS IN JAIL.

Attorney General's Office,  
Columbus, Ohio, August 22, 1884.

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

DEAR SIR:—Your favor of the 19th instant was duly received. In my opinion, the word “providing” in section 1235 Revised Statutes where the section reads “for keeping and providing for prisoners in jail” has reference to section 7379 Revised Statutes and includes the several things therein specified. The requirement to provide clothing I think implies that such mending shall be done as may be necessary to keep the same in decent and proper condition.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*County Commissioners; Publication of Report—Sheriff;  
What Jury Fees Must Be Accounted for by, Etc.*

COUNTY COMMISSIONERS; PUBLICATION OF  
REPORT.

Attorney General's Office,  
Columbus, Ohio, August 28, 1884.

*C. N. Gaumer, Esq., Mansfield, Ohio:*

DEAR SIR:—Your favor of the 25th instant is received. Enclosed please find copies of opinions heretofore given by Mr. Nash and myself in reference to section 917 Revised Statutes.

The financial statement mentioned in section 917 must necessarily include an exhibit of the receipts and expenditures for the past year, and in my opinion, the publication of such statement is a compliance with the last clause of section 852.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

SHERIFF; WHAT JURY FEES MUST BE AC-  
COUNTED FOR BY, ETC.

Attorney General's Office,  
Columbus, Ohio, August 28, 1884.

*I. H. Blythe, Esq., Prosecuting Attorney, Carrollton, Ohio:*

DEAR SIR:—Your favor of the 26th instant is received. I am of opinion that under section 5183 Revised Statutes the sheriff is liable and required to account only for such jury fees as have been paid to him or collected by him.

Under section 888 Revised Statutes, before the commissioners make any payment to the sheriff of moneys

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*Liquor Law; Compensation of County Auditor.*

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claimed by him for official services rendered for the county, he must account for all jury fees so received by him. If he has failed to pay over any of such jury fees, the same must be deducted from the amount coming to him from the county.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; COMPENSATION OF COUNTY  
AUDITOR.

Attorney General's Office,  
Columbus, Ohio, August 28, 1884.

*To the Board of County Commissioners, Canton, Ohio:*

GENTLEMEN:—Your letter of the 26th instant was duly received. The question of what is reasonable compensation to the county auditor, for the discharge of the duties imposed upon him by the act of April 17th, 1883, known as the "Scott Law," is left to the county commissioners. The statutes fix no rule for estimating such compensation and the commissioners must be guided by their best judgment, having reference to the services performed. Unless the amount fixed by them is grossly unjust or unreasonable, their action in the premises cannot be called in question.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.



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*Municipal Corporation; Authority of Marshal; Special  
Policeman, Etc.*

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MUNICIPAL CORPORATION; AUTHORITY OF  
MARSHAL; SPECIAL POLICEMAN, ETC.

Attorney General's Office,  
Columbus, Ohio, August 28, 1884.

*Eli B. Bingham, Esq., Mayor, Wellston, Ohio:*

DEAR SIR:—Not being the adviser of municipal officers, what I shall say concerning the question stated in your favor of the 26th instant is entitled to no more weight than the opinion of any other lawyer. Furthermore there may be some ordinance of your village which may have some bearing on the question. I do not think that you were authorized to appoint the special policeman to whom you refer, but that perhaps is not material in deciding the case now brought before you. The appointment of the special policeman did not take away or in any manner interfere with the authority of the marshal. Conceding that they were properly appointed, they had no more right to prevent the marshal from entering the hall than the persons conducting the dance would have had.

The real question is had the marshal at that time a right to enter the hall in the discharge of the duties of his office. This question probably depends on facts not stated and also upon the ordinances of the village. If there is no ordinance regulating the matter, the mere fact that certain persons are holding a dance in a public hall does not give the marshal the right to force an entrance against the wish of such persons. If, however, there be a disturbance or disorderly conduct in the hall, or if any person there present is in the act of committing an offence against the laws of the State or the ordinance of the corporation, or if he has a warrant for the arrest of a person in the hall, the case would be different.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Mutual Aid Association; Requirements for Admission to  
Ohio Reserve Fund, Etc.*

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MUTUAL AID ASSOCIATION; REQUIREMENTS  
FOR ADMISSION TO OHIO RESERVE FUND,  
ETC.

Attorney General's Office,  
Columbus, Ohio, August 29, 1884.

*Hon. Henry J. Reinmund, Superintendent of Insurance:*

DEAR SIR:—As requested in your favor of the 27th instant, I have examined the by-laws of the Ohio Valley Protective Union of Wheeling, W. Va., the form of membership certificates issued by said company and the explanatory circular accompanying the same, all of which I herewith return.

1. Before a company or association organized under the laws of another state to insure the lives of members on the assessment plan can be admitted to transact business in this State it must appear not only that such company or association is duly organized according to the laws of its own state, but that it is organized solely for the purposes mentioned in section 3630 Revised Statutes of Ohio; that it is authorized to transact the business contemplated in said section and no other business, and that it has complied with the laws of Ohio regulating corporations organized for the mutual protection of its members within this State. Such companies or associations of other states can only be admitted to transact the business contemplated in said section 3630, and they must transact the same in compliance with the laws of this State and under the same restrictions applicable to Ohio companies or associations. It follows that the manner and plan of doing business and the management of such foreign companies or associations and the certificates of membership issued by them must be such as would be authorized in the case of like companies or associations organized under the laws of this State.

2. The provisions of the by-laws of the Ohio Valley Protective Union relative to the powers and privileges of its

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*Mutual Aid Association; Requirements for Admission to Ohio Reserve Fund, Etc.*

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charter members whereby "the sole and supreme management of said association is vested in the incorporators and such other persons as may be duly elected and to whom may be issued charter member certificates" are clearly not in compliance with the laws of this State regulating such associations and in my opinion this association should not be permitted to do business in Ohio until each of its members is given an equal voice in the election of its trustees or managers.

3. I am further of opinion that the third condition in the certificate of membership issued by said association is contrary to the laws of Ohio. By this condition it is provided that certain specified percentages should be deducted from each claim accruing within five years after the certificate of membership was issued, and that the same should be placed in the reserve fund. In my opinion such an association is not authorized under our statutes to create or hold a reserve fund. It is authorized to collect money from its members for two purposes only (1) for its expenses, which shall be met by fixed annual payments or by assessments made and designated to be for such expenses; (2) for the relief of its members and for the payment of stipulated sums of money to the families or heirs of deceased members. No part of the mortuary fund can in any case be used to pay expenses and vice versa no part of the expense fund can be used to pay a loss by death. No endowment certificate or policy can be issued promising to pay to members during life any sum or guaranteeing any fixed amount to be paid at death except such fixed amount or endowment shall be conditioned upon the same being realized from assessments made on members to meet them. There is no authority for collecting money from the persons who are members today in order to accumulate a fund with which to pay losses which may happen or endowments which may accrue at some future time, when perhaps the entire membership of the company will have changed. Furthermore, no

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*Paupers; Burial of.*

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provision has been made for the investment of a reserve fund, and no sufficient security has been provided for its safekeeping.

4. Replying to your second letter of the 27th instant, I would say that the trustees of Mutual Protection and Aid Associations, organized in pursuance of section 3630 Revised Statutes are subject to all the general provisions of chapter I, title II, part 2, Revised Statutes which apply to corporations formed for purposes other than profit. (*State vs. The Standard Life Association*, 38 O. St., 281). After the first election, the trustees of such associations must be elected annually as provided in section 3246 Revised Statutes. You are correct in holding that trustees cannot be elected for fixed terms of two or more years.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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PAUPERS; BURIAL OF.

Attorney General's Office,  
Columbus, Ohio, August 29, 1884.

*Mr. Richard Lee, Township Trustee, Alliance, Ohio:*

DEAR SIR:—Your favor of the 28th instant is received. It is true that there is no statutory provision in reference to the burial of paupers who die within a township. The statutes relating to the relief and support of the poor apply only to living persons in need of such relief or support. Section 3763 Revised Statutes (amended 78 O. L., 33) recognizes, however, that there are cases where bodies must be buried at the expense of the county or township. I have recently had occasion to examine this question and the conclusion I have come to is this:

Every householder in whose house a dead body lies is

*Citizenship; Forfeiture of Rights of by Imprisonment in Penitentiary; Restoration to.*

bound to inter the body decently if he is able to do so. Also if a parent has the means he must give his child proper burial. But if the person who is thus charged with the duty of providing burial is unable to do so, then the township trustees at the expense of the township, should furnish sufficient relief to such living person to enable him to bury the deceased. The bill of the trustees for the relief as furnished must be paid out of the poor fund of the county as in other cases.

I am aware that the foregoing does not cover all possible cases that may arise, but it is as far as I care to go until an actual case has been presented.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

CITIZENSHIP; FORFEITURE OF RIGHTS OF BY IMPRISONMENT IN PENITENTIARY; RESTORATION TO.

Attorney General's Office,  
Columbus, Ohio, August 30, 1884.

*Hon. George Hoadly, Governor:*

SIR:—Your favor of the 29th instant was duly received.

By section 6797 Revised Statutes (amended 78 O. L., 90) it is provided that a person convicted of felony shall, unless his sentence be reversed or annulled, be incompetent to be an elector or juror, or to hold any office of honor, trust or profit in this State, but that a pardon of a convict shall effect a restoration of the rights and privileges so forfeited, or they may be restored as provided in section 7432.

The disenfranchisement thus imposed is not prescribed as a punishment for crimes committed within our jurisdic-

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*Citizenship; Forfeiture of Rights of by Imprisonment in Penitentiary; Restoration to.*

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tion, but as a qualification upon the privileges of voting or of being eligible to office within this State. The statute is general in its terms, and, in my opinion, applies not only to persons convicted of felonies in the courts of Ohio, but also to all persons convicted of offenses of the same grade in the courts of any other state or of the United States.

I am further of opinion that the provisions of section seven of the act of April 14th, 1884 (81 O. L., 186) in reference to the restoration of a convict of the rights and privileges forfeited by his conviction, which in this respect are substantially a re-enactment of section 7432 Revised Statutes, apply to all convicts in the Ohio penitentiary, whether imprisoned under sentences by the courts of this State or of the United States. The certificate granted by the governor in such case as an evidence of such restoration is not in the nature of pardon. The legislature, as an encouragement to good conduct, has simply provided a mode whereby certain disabilities imposed by our laws may be removed.

I am, therefore, of opinion that a citizen of this State, who has heretofore served a term of imprisonment in the Ohio penitentiary under a sentence of the District Court of the United States for the Northern District of Ohio, is thereby incompetent to be an elector or juror, or to hold any office of honor, trust or profit in this State, but that such person, upon compliance with the conditions prescribed in section seven of the act referred to, is entitled to be restored to the rights and privileges forfeited by his conviction.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Day and Winner Notes; Report to the State Treasurer Thereon.*

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DAY AND WINNER NOTES; REPORT TO THE  
STATE TREASURER THEREON.

Attorney General's Office,  
Columbus, Ohio, September 2, 1884.

*Hon. Peter Brady, State Treasurer:*

SIR:—By your favor of the 20th of August and a communication from the governor dated August 19th, 1884, I am advised that there are on file in your office receipts from this department for the following notes taken for collection to-wit: 4 notes of John L. Winner for \$2,187.50 each amounting in all to \$8,750.00 and 8 notes of D. W. H. Day for \$2,193.75 each amounting in all to \$17,550.00. As requested I have investigated the matter and make the following report:

(1) Notes of John L. Winner.

There were originally eight notes from John L. Winner to the State, each for \$2,187.50, dated May 2d, 1870, and due respectively in 2, 3, 4, 5, 6, 7, 8 and 9 years after date, with interest at 6 per cent. payable annually; all of which were secured by a mortgage on certain lots in the East Park Place addition to the city of Columbus, being a portion of what is sometimes called the Old Lunatic Asylum grounds. This mortgage is recorded in Vol. 34, page 492, of Franklin County Records of Mortgages. The receipt which you hold was given for the four of said notes last falling due.

On the 14th day of June, 1881, Attorney General Nash and Col. J. T. Holmes, as attorneys for the State, filed in the Court of Common Pleas of Franklin County a petition to foreclose said mortgage. The title of said action is:

The State of Ohio vs. Jennie Winner, Admr. of John L. Winner, deceased et al. (Appearance Docket P, page 74). Said petition sets forth that the first four of said notes, with the interest thereon, had been fully paid. That

*Day and Winner Notes; Report to the State Treasurer Thereon.*

on each of said 5th and 6th notes the following payments had been made, to-wit:

Interest paid to May 2d, 1872; July 20th, 1874, paid interest to May 2d, 1874. . . . .	\$273	79
May 16th, 1876, paid interest to May 2d, 1876 . . . . .	270	38
August 3d, 1877, paid interest to May 2d, 1877 . . . . .	133	22

That on said 7th note the following payments had been made, to-wit:

Interest paid to May 2d, 1872.		
July 3d, 1874, paid interest to May 2d, 1874. . . . .	\$273	79
May 16th, 1876 paid interest . . . . .	110	31
Aug. 3d, 1879, paid interest to May 2d, 1876 . . . . .	305	44

That on said 8th note the following payments had been made, to-wit:

Interest paid to May 2d, 1872.		
July 20th, 1874, paid interest to May 2d, 1874 . . . . .	\$273	79
August 3d, 1877, paid interest. . . . .	55	23

That there was due and unpaid on said four last notes the sum of \$8,750.00 with interest at 6 per cent. payable annually on \$6,562.50 thereof from May 2d, 1877, and on \$2,187.50 from May 2d, 1874, except the credit of \$55.23 on said last note, a partial payment of interest for the year ending May 2d, 1875.

A number of persons who had acquired interests in certain of the lots covered by said mortgage filed answers in said action. The case having been referred to a referee, on the 20th day of March, 1882, the report of the referee was confirmed and a decree entered finding that there was



*Day and Winner Notes; Report to the State Treasurer Thereon.*

due to the State on said mortgage and notes the sum of \$4,533.29; which sum was afterwards collected as follows:

April 8th, 1882 .....	\$1,101 98
May 15th, 1882 .....	2,200 00
July 14th, 1882 .....	994 05
Paid costs taxed vs. the State in another suit .....	185 22
May 10th, 1883 .....	52 04
	\$4,533 29

On the 15th day of April, 1882, the court ordered that the notes described in plaintiff's petition (being the notes you mention) be delivered to Jennie Winner, Admr. of John L. Winner; which was accordingly done.

It will be observed from the amount found due to the State by said decree that considerable payments had been made on said four last notes before the filing of said petition, but from the information at my command I am unable to state as to such payments. The trouble is that payments, extending through a series of years, were made to various State treasurers, attorneys general and agents of the State by a great many separate purchasers of lots, all of which payments appear to have been entered in your office simply to the credit of the general revenue fund. It is the opinion of Col. Holmes who is more familiar with the matter than any one else, that the amount found due by the aforesaid decree was the full amount then unpaid, and for reasons explained in his report, which I herewith return, he thinks that from first to last the State has received more than the original mortgage debt and interest.

I find vouchers for the following payments made to the State treasury through this department to-wit:

November 6, 1872, by Mr. Pond.....	\$4,405 12
February 12, 1875, by Mr. Little.....	1,202 10
February 13, 1875, by Mr. Little.....	413 26

*Day and Winner Notes; Report to the State Treasurer  
Thereon.*

March 7, 1875, by Mr. Little.....	\$85 80
March 24, 1875, by Mr. Little.....	204 15
May 3, 1875, by Mr. Little.....	546 88
September 25, 1875, by Mr. Little.....	199 77
October 9, 1875, by Mr. Little.....	108 65
December 8, 1875, by Mr. Little.....	660 39
May 26, 1876, by Mr. Little.....	523 16
September 11, 1878, by Mr. Pillars.....	136 65
March 7, 1879, by Mr. Pillars.....	1,317 69
April 17, 1879, by Mr. Pillars.....	1,610 68
Paid costs for the State as above stated	185 22
May 1, 1879, by Mr. Pillars.....	258 87
April 15, 1882, by Mr. Nash.....	1,101 98
April 17, 1882, by Mr. Nash.....	2,200 00
July 15, 1882, by Mr. Nash.....	994 05
May 10, 1883, by Mr. Hollingsworth....	52 04
Total .....	\$16,206 46

The balance due on said notes of John L. Winner having thus been merged into a decree, and the full amount found due by said decree having been paid to the State, the said notes should no longer appear on your books.

(2) Notes of D. W. H. Day.

I find in this office the eight notes of D. W. H. Day, mentioned in your letter, which with the mortgage securing the same I herewith enclose.

On the 9th day of November, 1872, a petition was filed in the Common Pleas Court of Franklin County to foreclose said mortgage, no part of the notes secured thereby having been paid. The title of said action is: The State of Ohio vs. D. W. H. Day et al. (Appearance Docket Z., page 107). The said mortgage contained a provision that upon payment of one-fourth of the original purchase money, which was \$20,050.00, the State would release its lien on any of the lots, on the payment of certain specified amounts. Owing to this provision and to the sale of lots by Day, the case became quite complicated, and it is difficult now upon examination to thoroughly understand the entire proceed-

*Day and Winner Notes; Report to the State Treasurer Thereon.*

ings. The case was twice referred to a master, and before a final decree was entered a portion of the lots were sold in pursuance of the order of the court. October 11th, 1873, Mr. J. Wm. Baldwin, the second master to whom the case was referred, filed his report, finding the liens in favor of the State on the lots not previously sold to be as follows:

Lot 80....\$1,162 66	Lot 86....\$979 06
Lot 195.... 428 35	Lot 291.... 146 85
Lot 202.... 489 53	Lot 304.... 134 65
Lot 74.... 1,101 45	Lot 117.... 611 92
Lot 77.... 1,132 05	Lot 294.... 146 85
Lot 307.... 134 65	Lot 308.... 134 65
Lot 309.... 134 65	
Lot 204.... 367 14	Total....\$7,104 46

January 12th, 1874, a final decree was entered in said action, confirming said master's report and ordering that out of the lots previously sold, after payment of costs, taxes and assessments, there should be paid to the plaintiff \$8,211.-82 and \$6,162.13, making \$14,373.95. It was "further ordered that any and all of the respective owners of said several parcels may pay the respective amounts so charged upon said respective parcels with interest as aforesaid up to the time of such payment (unless such payment shall be made within thirty days from this date in which case they shall not be required to pay interest after the first day of this term) into the clerk of this court at any time prior to the issuing of an order of sale thereof as hereinafter directed, who shall thereupon pay the same to the plaintiff, and also cause the same to be entered on the margin of the record of said mortgage as satisfaction of the lien thereof upon said parcel according to the statute in such case made and provided, and the court further finding that there was of said amounts so charged due upon the first day of this term, upon said lot \$423.56, lot 195 \$156.05, lot 202 \$178.33, lot 74 and 24 54-100 ft. off south side of lot 77 \$546.16, 25 ft. off north side of lot 77 and 7 52-100 ft. off south side

*Day and Winner Notes; Report to the State Treasurer  
Thereon.*

lot 86 \$178.33, lot 86 \$445.84, lot 291 \$53.49, lot 304 \$49.07, lot 117 \$222.92, lot 294 \$53.48, lot 307 \$49.07, lot 308 \$49.07, lot 309 \$49.07 and lot 204 \$133.74, etc."

From receipts entered on the docket it appears that the liens as found by the master on all of said lots except lots 80, 291 and 304 were paid in full. There appears to have been paid only that part of the liens on lot 80 and 291 which the court found to be due on the first day of the January term, 1874, but the receipts therefor are entered on the docket as for the entire liens on said lots, and in respect to lot 80 the following appears in the margin of the record of said mortgage: "The amount of lien on lot No. 80 in this mortgage having been paid in full to the clerk of the court by Wm. Monypenny for C. C. Chadwick under an order of the Court of Common Pleas made January 12th, 1874, said lot is hereby released from the lien of this mortgage."

J. S. ABBOTT, Clerk.

March 19th, 1874.

By J. C. Getren, Dpty.

No part of the lien on lot 304 appears to have been paid.

The following receipts for money paid by the clerk to attorney general Little appear on the docket:

April 23d, 1874 .....	\$2,278 28
June 27th, 1877 .....	2,653 53
July 6th, 1876 .....	902 60

(Paid to Little by a lot owner) .....	\$5,834 41
Deduct amount paid for costs by State in other cases .....	276 08

\$5,558 33

I think that possibly there is a small balance in the hands of the former clerk, Mr. Abbott, belonging to the State, but I cannot now speak positively as to this as there seems to be some confusion in reference to the payment of the costs in said action. I have spoken to Mr. Abbott about the matter and as soon as convenient he will make an exam-

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*Day and Winner Notes; Report to the State Treasurer  
Thereon.*

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ination of his books and accounts as clerk. It may be that last item mentioned in the following paragraph was received by Mr. Little from said clerk and not entered on the docket.

I find in my office vouchers for the following payments into the State treasury on account of the D. W. H. Day claim, to-wit:

January 13th, 1874, paid by Mr. Pond...	\$8,000 00
April 24th, 1874, paid by Mr. Little....	8,652 23
July 7th, 1876, paid by Mr. Little.....	902 60
August 4th, 1877, paid by Mr. Little....	2,377 45
November 10th, 1877, paid by Mr. Little.	252 58
	<hr/>
	\$2,184 86

It will be seen that the amount due to the State has been substantially paid.

I am told that the above named lots 80 and 291 have been sold and conveyed to a number of different purchasers since the liens thereon were receipted for on the docket as aforesaid. There is also some presumption at this late day that for some reason which I have not discovered these receipts were properly entered. At any rate I shall investigate the matter further. I shall at once take steps to collect the small amount charged on lot 304, which, from all that I can learn, has never been paid.

I respectfully recommend that you cease to carry the said notes of D. W. H. Day on the books of the treasury. While it is possible that something may still be collected on said decree, the notes are utterly worthless.

(3) Mortgage of Wm. Trevitt.

You have also verbally called my attention to a mortgage from Wm. Trevitt, which I herewith return. Two of these lots covered by said mortgage were released respectively March 17th, 1871, and August 15th, 1878. December 5th, 1878, in the case of Henry C. Taylor assignee of Wm.

Liquor Law; Return of Rateable Proportion of Assessment.

Trevitt vs. Peter Hayden et al. (Appearance Docket G.g., page 192 Franklin Common Pleas) a decree was duly entered finding the lien of the State on the remaining lot, by virtue of said mortgage, to be \$6,163.45, as stated in the report of Mr. Critchfield (the attorney for the State in said action) which I herewith return.

This amount was afterwards fully paid.

I find the following vouchers for payments into the State treasury by attorney general Pillars on account thereof:

December 5th, 1878 .....	\$2,700 00
September 12th, 1879 .....	2,605 00
January 10th, 1880 .....	1,038 00

\$6,343 12

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; RETURN OF RATABLE PROPOR-  
TION OF ASSESSMENT.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

*R. McKelly, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:*

DEAR SIR:—Under the act of April 17th, 1883, known as the "Scott law" as the same was in force last year, when a municipal corporation prohibited ale, beer and porter houses a ratable proportion of the tax paid by the proprietors thereof for the unexpired portion of the year should have been returned to such proprietors. It appears that on or about August 3d, 1883, the village of Wharton prohibited ale, beer and porter houses, and thereupon three-fourths of the ratable proportion of the tax previously

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*Soldiers' Home; Legal Settlement of Inmate of.*

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paid by a liquor dealer for the year was repaid to him by the village. I understand that the remaining one-fourth has never been returned. For this the dealer has, in my opinion, a valid claim against the county, which should be allowed by the commissioners.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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SOLDIERS' HOME; LEGAL SETTLEMENT OF IN-  
MATE OF.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

*Mr. John Whitaker, Superintendent Fulton County Infirmary, Ottókee, Ohio:*

DEAR SIR:—Your favor of the 3d instant was duly received. An inmate of the Soldiers' Home does not, in my opinion, obtain a legal settlement in Montgomery County by reason of his residence at the home and therefore, under section 1493 Revised Statutes, his settlement continues in the township in which he last obtained the same. If the person you name is in condition requiring public relief, I think that he is entitled to admission to your county infirmary.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Board of Education; Issue of Bonds by—Boards of Education of Superintendent; Making Notes by.*

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BOARD OF EDUCATION; ISSUE OF BONDS BY.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

*Hon. L. D. Brown, State Commissioner of Schools:*

DEAR SIR:—Your favor of the 1st instant was duly received. The board of education of city districts of the first class (except in Cincinnati) are authorized by section 3994 Revised Statutes to issue bonds for the purposes therein named, but no greater amount of bonds can be *issued* in any year than would equal the aggregate of a tax at the rate of two mills for the year next preceding such issue. The limitation has reference to the amount *issued* and not to the amount *falling due* in any year. It is not necessary that the question of issuing such bonds be submitted to a vote of the people.

In the case you mention if the amount limited as aforesaid is insufficient for the needs of the board, I see no other way but to wait until next winter and then obtain a special act of the legislature authorizing the issue of the requisite amount.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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BOARDS OF EDUCATION; ELECTION OF SUPER-  
INTENDENT; MAKING NOTES BY.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

*Hon. H. F. Van Fleet, Marion, Ohio:*

DEAR SIR:—I am still of opinion that under section 3982 Revised Statutes a majority of all the members of the



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*Insurance; Companies Operated Under Special Charter.*

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board of education is necessary in order to employ a superintendent, teacher or other employe. I think you will find on examination that the case of the State ex rel vs Green, 37 O. St., 227, presents a different question. When the requisite majority fails to agree, the only remedy is under section 3969 R. S.

I am further of opinion that your board of education has no power to issue notes or bonds except as authorized by section 3993 Revised Statutes. It is true that boards of education often raise money on notes, claiming the right to do so, I suppose, under the general power to contract given by section 3971. But the legislature having provided a particular mode whereby bonds may be issued, I think the better construction is that such mode is exclusive of any other.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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INSURANCE; COMPANIES OPERATED UNDER  
SPECIAL CHARTER.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

*Hon. Henry J. Reinmund, Superintendent of Insurance:*

DEAR SIR:—Your letter of August 27th enclosing letter from Mr. Wm. Turner, secretary of the Knox County Mutual Insurance Company was duly received. You ask me to give my "opinion relative to companies chartered by special act of the legislature in 1838 and since, prior to the organization of the insurance department." I am unable to give a general answer to this request, for the reason that the question depends to a large extent upon the terms of the charter and the facts of the particular case, and in

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*Prosecuting Attorney; Fees of.*

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some instances upon general statutes in force when the act of incorporation was passed. Many corporations created before the adoption of the present constitution have been affected by action taken by the corporation in pursuance of section 71 of the act of May 1st, 1852, which is now section 3233 Revised Statutes, and in some cases the charters of such corporations have been modified by reason of section 3234 Revised Statutes.

In respect to the Knox County Mutual Insurance Company the question presents less difficulty, for the charter granted to said corporation by the act of March 14th, 1838 (36 O. L., 288) provides that any future legislature may alter or repeal said act. Said corporation is thus under the control of the legislature, and, in my opinion, is subject to the statutes applicable generally to all mutual fire insurance companies and which do not relate to the creation or organization of such companies. For instance, I think that sections 272, 282, 284, 3650, 3654, 3655, 3664, 3666, 3668, 3669 and 3683, as well as many other sections of the Revised Statutes apply to said company. I do not think, however, that said company is required to file with you a copy of its charter. I return herewith the letter of Mr. Turner.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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PROSECUTING ATTORNEY; FEES OF.

Attorney General's Office,  
Columbus, Ohio, September 5, 1884.

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

DEAR SIR:—The question presented in your favor of the 2d instant was submitted a number of times to my predecessors, Messrs. Pillars, Nash and Hollingsworth, each

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*State Institution; Act Relating to Employment of Relative  
to Trustee of.*

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of whom held that prosecuting attorneys were not entitled to ten per cent. of costs paid by the State in cases of convictions for felonies. In this view I concur. I enclose herewith copy of an opinion by Mr. Nash which covers the question.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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STATE INSTITUTION; ACT RELATING TO EM-  
PLOYMENT OF RELATIVE TO TRUSTEE OF.

Attorney General's Office,  
Columbus, Ohio, September 9, 1884.

*D. McAllister; Trustee Asylum for the Blind, Columbus,  
Ohio:*

DEAR SIR:—Your favor of the 6th instant was duly received. So far as I am advised the act amendatory of section 629 Revised Statutes, passed March 27th, 1884 (81 O. L., 90) which provides that no officer or employe of any benevolent, reformatory or penal institution of the State shall be related by blood or marriage to either of the trustees thereof, is being complied with in the various State institutions. The act applies to every degree of relationship by blood or marriage. I do not think, however, that the widow of a deceased cousin of a trustee is a relative of such trustee within the meaning of said act.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*Election; Form of Ballot for Establishment of Children's Home.*

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ELECTION; FORM OF BALLOT FOR ESTABLISHMENT OF CHILDREN'S HOME.

Attorney General's Office,  
Columbus, Ohio, September 9, 1884.

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

DEAR SIR:—Your favor of the 8th instant is received. When the question of establishing a children's home is submitted to a vote of the people as provided in section 929 Revised Statutes (amended 78 O. L., 81) it makes no difference, so far as the legality of the vote is concerned, whether a ballot is printed "For Children's Home—Yes" or "For Children's Home—No" or whether as printed it contains both or neither of these expressions. The material thing is what is on the ballot when it is voted. Those who oppose the establishment of the home are at liberty to print negative ballots and those who favor it may print affirmative ones. When, however, a committee of a political party undertakes to furnish tickets to all the members of such party, good faith would seem to require such tickets to be so printed as to take no advantage either of those who favor or those who oppose the home.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*Morgan's Raid; Act of April 12th, 1884, Does Not Apply to  
—Day Notes; Supplementary Report to State Treasurer  
Thereon.*

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MORGAN'S RAID; ACT OF APRIL 12TH, 1884, DOES  
NOT APPLY TO.

Attorney General's Office,  
Columbus, Ohio, September 10, 1884.

*Mr. S. L. James, Barnesville, Ohio:*

DEAR SIR:—Your favor of the 9th instant is received. The act of April 12th, 1884 (81 O. L., 147) does not apply to claims growing out of the "Morgan Raid." For the nature of the claims referred to in said act see the act of April 6th, 1866 (63 O. L., 157) as amended May 5th, 1868 (65 O. L., 134).

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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DAY NOTES; SUPPLEMENTARY REPORT TO  
STATE TREASURER THEREON.

Attorney General's Office,  
Columbus, Ohio, September 10, 1884.

*Hon. Peter Brady, Treasurer of State:*

DEAR SIR:—In my letter of the 2d instant to you, I stated that I thought there was a small balance belonging to the State in the hands of Mr. J. S. Abbott, former clerk of courts of Franklin County, for money collected by him on the decree in the case of the State of Ohio vs D. W. H. Day et al.

I have since ascertained on settlement with Mr. Abbott that the amount thus due to the State from him in said case is \$316.19, and that there is due to him from the State

Liquor Law; Liability of Treasurer for Illegal Assessment.

the sum of \$167.05 for costs taxed against the State in sixteen other cases in the Court of Common Pleas of Franklin County, leaving the balance due to the State \$149.14. This amount Mr. Abbott has paid to me and I herewith pay the same into the State treasury.

As this money belongs to the general revenue fund I have deemed it proper to deduct the costs above mentioned, and will hand you the receipt therefor as soon as the same has been entered on the docket and returned to me.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; LIABILITY OF TREASURER FOR  
ILLEGAL ASSESSMENT.

Attorney General's Office,  
Columbus, Ohio, September 12, 1884.

*John H. Smick, Esq., Prosecuting Attorney, Kenton, Ohio:*

DEAR SIR:—Your favor of the 10th instant is received. I do not think that a county treasurer can safely pay out any money collected for assessments under the "Scott law" (80 O. L., 164) until the question of its constitutionality is definitely settled. Should it be declared unconstitutional, he would have to refund at least all assessments for this year which were paid under protest. In case there was not sufficient money then in the funds to which the same had been credited, he would have to pay the required amount out of his own pocket, trusting to getting the money back some time in the future. To satisfy a judgment rendered against him for an assessment, I think that an execution could be levied upon his individual property.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Ohio National Guard; Payment of Furniture for Armory  
in Certain Case.*

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OHIO NATIONAL GUARD; PAYMENT OF FURNI-  
TURE FOR ARMORY IN CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, September 12, 1884.

*General E. B. Finley, Adjutant General:*

SIR:—I am in receipt of your favor of this date, enclosing letter from Frank E. Monnett, Q. M. of Co. A 8th Regt. O. N. G.

Under section 3085 Revised Statutes, a municipal corporation, in which the members of a company of the Ohio National Guard reside, is required to provide for such organization a suitable armory and drill room. This might well include the wardrobes to be used for uniforms and guns. In the present case, however, the company quartermaster, so far as I am advised, without notifying the municipal corporation or requesting it to furnish the additional accommodations desired, caused wardrobes to be put up in the company drill room, contracting to pay therefor a reasonable price. While I think that the municipal corporation is authorized to pay for such wardrobes and might properly do so, yet I do not think that it can be compelled to pay for the same.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Advertisement; Notice of Rates of Taxation—Municipal Corporation; Legality of Ordinance in Certain Case.*

ADVERTISEMENT; NOTICE OF RATES OF TAXATION.

Attorney General's Office,  
Columbus, Ohio, September 13, 1884.

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

DEAR SIR:—Your favor of the 12th instant is received. The notice mentioned in section 4087 Revised Statutes is the same notice called in section 4367 Revised Statutes "Notice of rates of taxation." In my opinion such notice must be published in two newspapers of opposite politics, if there be such published in the county. As the sole authority of the treasurer for the publication of said notice is derived from section 1087, as modified by section 4367, I do not think he is authorized to cause the same to be published in more than two newspapers. Yours truly,

JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; LEGALITY OF ORDINANCE IN CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, September 17, 1884.

*Alvin M. West, Esq., Mayor, Ada, Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 12th instant did not come to hand until today.

1. If the first section of the ordinance of which you enclose a copy, stood alone it would be legal and within the power of the council. The council has power to provide by ordinance a compensation for the mayor and marshal in addition to the fees to which they are entitled. Section 1753



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*Municipal Corporation; Legality of Ordinance in Certain Case.*

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and 1850 Revised Statutes. Such additional compensation, however, would not apply to the mayor and marshal in office when the ordinance was passed. Section 1717 Revised Statutes.

2. The second section of the ordinance is illegal in so far as it provides that the salary of the mayor shall be paid from the police fund, for which there is no authority.

3. The third section is also, in my opinion, illegal, for the reason that the council has no power to establish the office of "Health Officer" and designate the person or official who shall fill it. This being so, that part of the ordinance which fixes the compensation of the marshal must also fall. Such compensation is given in consideration of the duties imposed by the third section, and the two provisions are so mutually dependent that the council cannot be presumed to have intended to adopt the one without the other.

4. If otherwise unobjectionable, I do not think any exceptions could be taken to the ordinance as containing more than one subject, nor do I think it would require for its passage more than a majority of all the members elected.

5. The council has power under section 1716 to provide a salary for the corporation clerk.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Liquor Law; Entering New Business Upon Duplicate—  
Constable; Fees of.*

LIQUOR LAW; ENTERING NEW BUSINESS UPON  
DUPLICATE.

Attorney General's Office,  
Columbus, Ohio, September 17, 1884.

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

DEAR SIR:—Your favor of the 13th instant was duly received. When a person has commenced the business of trafficking in intoxicating liquors after the fourth Monday of April in any year, it is the duty of the county auditor under the act of April 17th, 1883, known as the "Scott law" upon receiving satisfactory information of the fact, to enter such business upon the duplicate. The information must be such as is "satisfactory" to the auditor, and, in my opinion, may be based either upon personal knowledge or the statements of others.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

CONSTABLE; FEES OF.

Attorney General's Office,  
Columbus, Ohio, September 19, 1884.

*Mr. Thos. McKenna, Constable, Sandusky, Ohio:*

DEAR SIR:—Your favor of the 15th instant was duly received. In my opinion, a constable is entitled to one dollar per day for attendance before a justice of the peace only on a jury trial, a criminal trial, or in a forcible detainer case without jury.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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*County Recorder; Fees of—Ohio Penitentiary; Payment by  
Warden of an Execution in Certain Case.*

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## COUNTY RECORDER; FEES OF.

Attorney General's Office,  
Columbus, Ohio, September 19, 1884.

*Mr. John B. Foltz, County Recorder, Findlay, Ohio:*

DEAR SIR:—Your favor of the 15th instant was duly received. In my opinion a county recorder is entitled to charge eighteen cents (18c) for filing and entering a chattel mortgage having one grantor and one grantee.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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OHIO PENITENTIARY; PAYMENT BY WARDEN  
OF AN EXECUTION IN CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, September 20, 1884.

*Mr. James T. Shoup, Jr., Prosecuting Attorney, Delaware,  
Ohio:*

DEAR SIR:—Warden Petrey of the Ohio penitentiary has referred to me a writ of fi. fa. from the Common Pleas Court of Delaware County against one Charles Kenzie, a prisoner in the penitentiary for the costs of prosecution and \$50.00 adjudged to Mrs. Mary Shaffe as restitution. It appears that the costs of prosecution were heretofore paid by the State, and that the warden now has in his hands a sum of money belonging to said convict. My opinion is requested as to the warden's right to pay the amount of the execution from the money in his hands, and from a

*Election; Residence of a Canal Boatman—Justice of the Peace; Practice Before.*

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hasty examination I am inclined to think that he cannot do so.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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ELECTION; RESIDENCE OF A CANAL BOATMAN.

Attorney General's Office,  
 Columbus, Ohio, September 25, 1884.

*Mr. J. W. Wortman, Township Clerk, Reids, Paulding County, Ohio:*

DEAR SIR:—Your favor of the 24th instant is received. A canal boatman with no other place of abode than his boat does not acquire the right to vote in a township by temporarily stopping there with his boat. Whether the person referred to is entitled to a vote at any place is a question which I cannot answer from the facts stated.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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JUSTICE OF THE PEACE; PRACTICE BEFORE.

Attorney General's Office,  
 Columbus, Ohio, September 25, 1884.

*Quincy A. Gilmore, Esq., Attorney at Law, Lorain, Ohio:*

DEAR SIR:—Your favor of the 22d instant was duly received. In my opinion, section 558 Revised Statutes does not prevent a person not an attorney at law from conducting

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*School Board; Power of Directors of Sub-District.*

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or defending a case before a justice of the peace as agent for the plaintiff or defendant. See sections 6526, 6549 and 6578 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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SCHOOL BOARD; POWER OF DIRECTORS OF  
SUB-DISTRICT.

Attorney General's Office,  
Columbus, Ohio, September 27, 1884.

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

DEAR SIR:—I am in receipt of your favor of the 24th instant, submitting to me the letter of Mr. C. J. Heskett to you. It appears that the board of education of Goshen Township apportioned to a sub-district the sum of \$220.00 for the current year, but after such apportionment the local directors of the sub-district employed a teacher for the sum of \$250.00 and they have now certified to the township clerk such employment and the services rendered and the township clerk has accordingly drawn an order on the township treasurer for the amount certified to be due to the teacher under said employment. The question is, had the local directors a right to go beyond the amount so apportioned, and has the treasurer a right to pay said order. I am not able to tell certainly from Mr. Heskett's letter whether the \$220.00 is the amount of the contingent fund alone which was apportioned to the sub-district, or whether it is the sum of the State funds and the contingent fund together. I take it to be the latter. Under section 4018 Revised Statutes the local directors are authorized to employ the teachers in the sub-district and to fix their salaries

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*School Board; Power of Directors of Sub-District.*

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or pay provided that such salaries or pay shall not exceed in the aggregate, in any year, for any sub-district, the amount of money to which the sub-district is entitled for the purpose of tuition for such year. The thing to determine is, therefore, what is the amount of money to which the sub-district is so entitled; for this limits the power of the local directors in the premises. For the purpose of tuition in any year a sub-district is entitled to its share of the State funds and of other money in the county treasury for the support of common schools, and not otherwise appropriated by law, which shall be apportioned to it annually by the county auditor. In addition to this it is entitled to so much of the contingent fund as may be set apart by the township board for the continuance of schools in said sub-district after the State funds are exhausted.

In my opinion, the local directors have no power to employ a teacher for a sub-district at a greater salary in the aggregate than the amount of money thus apportioned to it. If I am correct in my understanding of the facts in the present case, as above stated, the township treasurer cannot pay any order in excess of \$220.00 nor has the clerk authority to issue an order for a greater amount.

If the local directors are not satisfied with the apportionment of the contingent fund, section 3967 provides a mode for revising the same by the county commissioners. I do not think that the case of *State vs Wilcox*, 11 O. St., 326, to which you call my attention, applies to the present case. The facts here are different, and the statutes also have been materially changed since that decision was rendered.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Election; Right to Vote in a Certain Case—Election; Precincts in Soldiers' Home.*

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ELECTION; RIGHT TO VOTE IN A CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, October 10, 1884.

*John M. Garven, Esq., Prosecuting Attorney, Cadiz, Ohio:*

DEAR SIR:—Your favor of the 6th instant is at hand. In my opinion, a citizen of Pennsylvania does not become a resident of Ohio merely by sending his family here without coming himself. His intention to follow them in a short time avails nothing. I do not think that the person referred to is entitled to vote in this State until one year from the time he actually came into the State.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; PRECINCTS IN SOLDIERS' HOME.

Attorney General's Office,  
Columbus, Ohio, October 10, 1884.

*Capt. John Combs, National Military Home, Montgomery County, Ohio:*

DEAR SIR:—I am in receipt of your favor of the 7th instant, in which you ask whether an inmate of the Soldiers' Home loses his right to vote by changing his barrack from one precinct to another in the same township within twenty days of the election. I answer, no. If he is a resident of the township and otherwise qualified he is entitled to vote in that precinct where he resides on election day.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Road Supervisor; Compensation of—Election; Votes in a Territory, Not One in Ohio.*

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## ROAD SUPERVISOR; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, October 11, 1884.

*Mr. Frank Mercer, Winona, Ohio:*

DEAR SIR:—Your postal card of the 9th instant is received. You do not state whether the supervisor of your township was required to repair any turnpike road. If he was not the allowance made to him was correct. When the number of persons in his district liable to do work on the public highway does not exceed twenty-five, the supervisor cannot receive more than \$12.00 and the commutation for his two days' labor on the roads. If, however, he is required to repair a turnpike road he shall be allowed, in addition to the above, not exceeding eight per cent, for the amount of the labor performed under his direction as supervisor, repairing such turnpike for working out the road tax in his district, but in no case shall he receive more than \$1.50 per day.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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ELECTION; VOTES IN A TERRITORY, NOT ONE  
IN OHIO.

Attorney General's Office,  
Columbus, Ohio, October 17, 1884.

*Mr. Tom E. Debruin, Clerk, Winchester, Ohio:*

DEAR SIR:—I was absent from the city when your telegram of the 14th instant came. In my opinion, a person who has been absent from this State for five years, and



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*Election; Separation of Husband and Wife; Residence of  
Husband.*

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while absent voted in Montana territory, is not entitled on his return to vote in this State, even though his family resided here during his absence. Under such circumstances a married man must be considered to have lived apart from his wife and to have lost his residence in Ohio.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; SEPARATION OF HUSBAND AND  
WIFE; RESIDENCE OF HUSBAND.

Attorney General's Office,  
Columbus, Ohio, October 18, 1884.

*Mr. C. Steinmetz, Marshallville, Ohio:*

DEAR SIR:—Your favor of the 13th instant was not received until today. In my opinion the person you mention is entitled to vote in your township. Husband and wife may live separate and apart within the meaning of section 2946 Revised Statutes without being divorced and during such separation the husband may acquire a new residence for himself.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Election; Separation of Husband and Wife; Residence of Husband—Election; When Township is Divided Into Precincts.*

ELECTION; SEPARATION OF HUSBAND AND WIFE; RESIDENCE OF HUSBAND.

Attorney General's Office,  
Columbus, Ohio, October 18, 1884.

*Mr. S. Brown, Cardington, Ohio:*

DEAR SIR:—Your letter of the 13th instant was not received by me until after the election. The person you mention is entitled to vote in Cardington, provided he has resided there the requisite length of time. Where a husband and wife have separated and live apart, but have not been divorced, he may acquire a new residence for himself.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

ELECTION; WHEN A TOWNSHIP IS DIVIDED INTO PRECINCTS.

Attorney General's Office,  
Columbus, Ohio, October 18, 1884.

*Mr. Geo. W. Rice, Miamiville, Ohio:*

DEAR SIR:—Your favor of the 16th instant is at hand. Where a township is divided into two or more election precincts, a person who is a qualified elector of the township is entitled to vote in that precinct where he actually resides on the day of election. No fixed period of residence in the precinct is required, and the rule is the same whether the person is married or single.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Municipal Corporation; Liability of Insurance Companies  
in a Certain Case—Officer; Court Stenographer is an.*

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MUNICIPAL CORPORATION; LIABILITY OF IN-  
SURANCE COMPANIES IN A CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, October 18, 1884.

*W. L. Mackenzie, Esq., City Solicitor, Lima, Ohio:*

DEAR SIR:—I was absent from the city when your favor of the 8th instant came, and have been so occupied since my return that I have been unable to reply until now. You state that certain insurance has been placed upon the city buildings at Lima, through Messrs. O'Connor & Sons, agents for the insurance companies, the policies being issued directly from the companies. John O'Connor, a member of the firm of O'Connor & Sons, is also a member of the city council of Lima. You ask whether, in case of fire, such insurance could be collected from the companies. In my opinion, the said policies are perfectly valid as between the city and the insurance companies, and in case of loss the companies could not avoid their liability on the grounds that one of the agents who placed the insurance was a member of the council.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OFFICER; COURT STENOGRAPHER IS AN.

Attorney General's Office,  
Columbus, Ohio, October 20, 1884.

*John W. Vorhes, Prosecuting Attorney, Millersburg, Ohio:*

DEAR SIR:—Your favor of the 13th instant was duly received. In my opinion, the position of the official ste-

Mutual Aid Association; Cannot Accumulate Reserve Fund.

nographer appointed in pursuance of section 475 Revised Statutes (amended 77 O. L., 238) is an office within the meaning of section four, article XV, of the constitution and consequently no one can be appointed to such office unless he possess the qualifications of an elector. Such stenographer is appointed by an authority which may lawfully be authorized to appoint to an office; he is appointed for a definite term and must take an oath of office; the payment of his fees is provided; his duties are prescribed by law and he is made ex officio the stenographer of the district and probate courts; he is given an office in the court house of the county and he has power to swear witnesses and to take and certify depositions in any of the courts of this State. Taking all these things together, and it seems to me that this position is within the proper definition of an office. See *State vs Wilson*, 29 O. St., 347. In the case of *Warwick vs The State*, 25 O. St., 21, it was held that the deputy clerk of the Probate Court was not an officer, but the decision was placed on grounds which do not apply here.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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MUTUAL AID ASSOCIATION; CANNOT ACCUMULATE RESERVE FUND.

Attorney General's Office,  
Columbus, Ohio, October 21, 1884.

*Mr. A. L. Wiley, Zanesville, Ohio:*

DEAR SIR:—Your favor of the 20th instant is received. In my opinion, a corporation organized and doing business in pursuance of section 3630 Revised Statutes, and the sections supplementary thereto, has no authority to accumulate

*Election; Right to Vote in Certain Cases.*

by assessments upon its members or otherwise a permanent fund to be used in payment of claims under certificates or policies issued by such corporation. By section 3630c the sums agreed to be paid to members either during life or at death must be conditioned upon the same being realized from the assessments made on members to meet them. Evidently such assessments must be made only upon persons who are members when the loss occurs, and the assessment must be made to meet the specific loss.

I am aware that the original section 3630 uses the term "invest," but that must be considered as limited by the supplementary sections. The corporation is certainly not permitted to accumulate and invest a fund which cannot be expended for any lawful purpose.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; RIGHT TO VOTE IN CERTAIN CASES.

Attorney General's Office,  
Columbus, Ohio, October 21, 1884.

*Mr. A. B. Phelps, Andover, Ohio:*

DEAR SIR:—Your favor of the 20th instant is received. By voting in Minnesota you lost your residence in Ohio, and are not entitled to vote here until one year from the time you actually returned to this State. The fact that you voted illegally in Minnesota does not change the question. You gained no residence here by the removal of your family, and the one year must date from the time that you return in person. See subdivision 8, section 2946 Revised Statutes.

The person referred to in your second question is entitled to vote in your township until he has in fact removed to some

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*Articles of Incorporation of Deutscher Gemeinschaftlicher  
Verein 3.*

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other place. The mere intention to acquire a new residence elsewhere does not deprive a person of the right to vote. See subdivision 7 of section 2946 Revised Statutes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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ARTICLES OF INCORPORATION OF DEUTSCHER  
GEMEINSCHAFTLICHER VEREIN 3.

Attorney General's Office,  
Columbus, Ohio, October 22, 1884.

*Hon. James W. Newman, Secretary of State:*

DEAR SIR:—I return herewith the articles of incorporation of the Deutscher Gemeinschaftlicher Verein No. 3, of Cincinnati, Ohio, together with the letter of Mr. F. Herstein accompanying the same. The fee for filing said articles of incorporation is \$25.00, said company being a mutual company not organized strictly for benevolent or charitable purposes.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Election; Expatriation of a Citizen of the United States—  
Election; of Presidential Electors a State Election.*

ELECTION; EXPATRIATION OF A CITIZEN OF  
THE UNITED STATES.

Attorney General's Office,  
Columbus, Ohio, October 23d, 1884.

*Mr. Geo. P. Bristol, Kelly's Island, Ohio:*

DEAR SIR:—Your favor of the 20th instant is received. A person born in the United States, who has expatriated himself and become the subject of any foreign power, ceases to be a citizen of the United States, and is not entitled to vote at any election held in this State. I am not sufficiently familiar with the matter to know what is the nature and effect of the oath taken by the person to whom you refer, and am, therefore, unable to answer your question further.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

ELECTION; OF PRESIDENTIAL ELECTORS A  
STATE ELECTION.

Attorney General's Office,  
Columbus, Ohio, October 23, 1884.

*Mr. T. Perry, Jewett, Ohio:*

DEAR SIR:—Your favor of the 22d instant is received. The election for presidential electors is a State election and is conducted in the same manner as the election for other State officers. The law does not require the clerks of election to be of different political parties.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Prosecuting Attorney; Payment by County of Expenses,  
Incurred Through Official Business Without His County.*

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PROSECUTING ATTORNEY; PAYMENT BY COUNTY OF EXPENSES, INCURRED THROUGH OFFICIAL BUSINESS WITHOUT HIS COUNTY.

Attorney General's Office,  
Columbus, Ohio, October 23, 1884.

*Charles Baird, Esq., Prosecuting Attorney, Akron, Ohio:*

DEAR SIR:—In your favor of the 8th instant you state that in the case of Ohio vs Alfred E. Anderson, pending in the Court of Common Pleas of Summit County on an indictment for horse stealing, depositions on behalf of the defendant were taken by consent at Pittsburgh, Pennsylvania, that you attended and cross examined on behalf of the State; and that your necessary expenses for railroad fare and hotel bills amount to \$12.60.

By section 1273 Revised Statutes the prosecuting attorney is required to prosecute on behalf of the State all complaints, suits and controversies in which the State is a party, and such other suits, matters and controversies, as he is directed by law to prosecute, within the county, in the Common Pleas Court, District Court and Probate Court. Section 7293 Revised Statutes provides a mode for taking the depositions of witnesses for the defendant in a criminal case, upon the order of the court, which order shall state in what manner and for what length of time notice shall be given to the prosecuting attorney. Where depositions are thus taken in pursuance of the statute, the prosecuting attorney, if the interests of the prosecution require it, should attend the examination, and if the performance of the duty so imposed upon him involves the expenditure of money, he has, in my opinion, a legal and valid claim against the county for such expenses. See *State vs Armstrong*, 19 O., 116, *Allegheny Co. vs Watts*, 3 Pa. St., 462, *Commonwealth vs Harrison*, 4 Pa. St., 269.

In your case the depositions were taken by consent and



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*County Ditch; Liability of Sureties on Bond Filed With  
Petition for.*

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not in pursuance of the statute, but, in view of the usual practice in such matters, it is not going too far to say that it was within the discretion of the prosecuting attorney to consent that the same be taken without a formal order of the court. If application had been made to the court for the appointment of a commission such application would undoubtedly have been granted as a matter of course.

I am, therefore, of opinion that the commissioners may properly allow your bill as a claim against the county, and that, upon such allowance, you are entitled to have the same paid out of the county treasury.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY DITCH; LIABILITY OF SURETIES ON  
BOND FILED WITH PETITION FOR.

Attorney General's Office,  
Columbus, Ohio, October 24, 1884.

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

DEAR SIR:—I agree with you that where a petition has been filed for the construction of a county ditch and the commissioners, after viewing the proposed line, find for the improvement, the bond filed with said petition in pursuance of section 4451 Revised Statutes becomes void. When the petition has once been granted by the proper authority the sureties on the bond are released from all liability thereon, and the subsequent dismissal or failure of the proceedings for any cause imposes no liability upon them.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Recorder; No Compensation for Making Report to Secretary of State; Right of Private Persons to Search the Records of.*

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COUNTY RECORDER; NO COMPENSATION FOR MAKING REPORT TO SECRETARY OF STATE; RIGHT OF PRIVATE PERSONS TO SEARCH THE RECORDS OF.

Attorney General's Office,  
Columbus, Ohio, October 25, 1884.

*P. M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:*

DEAR SIR:—Your favor of the 20th instant was duly received.

1. A county recorder is not entitled to any compensation for making reports to the secretary of state. It is well settled that a public officer is only entitled to such fees as the law expressly gives him, and where a service is required of him and no provision is made for its payment, it must be regarded as gratuitous. In this case not only is there no provision for such payment, but section 40 Revised Statutes expressly provides that the work shall be done without compensation.

2. The records in the county recorder's office are for the use of the public, and any person has the right at all reasonable times and in a proper manner to search and examine them. The registry system necessarily pre-supposes this, for it would be absurd to say that a person is charged with notice of the contents of such records without the right to examine them. The mere fact that the legislature has enacted in section 1027 Revised Statutes, that the county auditor shall have a right to examine the records of deeds in his county free of charge, is not sufficient to raise a presumption against the right of every other person. These records are not kept for the especial benefit of the recorder and auditor.

3. An abstractor of titles has the same right as any other person to examine the records, though, of course, he

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*County Commissioners; Power of, in Proceedings to Construct a County Ditch.*

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must not interfere with the use thereof by others, nor can he make the recorder's office a place to carry on his private business. When the recorder is requested to search the records, or when, in order to make a copy, it becomes necessary for him to do so, he is entitled to charge the fee allowed therefor, but he has no right to exclude any person from access to the books so that he may charge such fee.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; POWER OF, IN PROCEEDINGS TO CONSTRUCT A COUNTY DITCH.

Attorney General's Office,  
Columbus, Ohio, October 29, 1884.

*Hon. Isaac Johnson, Probate Judge, Wooster, Ohio:*

DEAR SIR:—I have delayed answering your favor of the 22d instant because the questions presented therein are not free from difficulty, and I have been unable until now to give them such consideration as I desired.

I. When a petition has been filed for the construction of a county ditch, it is discretionary with the county commissioners, after viewing the line of the proposed ditch, to find either for or against the improvement, but, if they find for the improvement, the provisions of the statutes in respect to their subsequent proceedings in the construction and completion of said ditch are mandatory. Unless the commissioners have power to vacate or reconsider their action in finding for the improvement or are otherwise authorized to abandon the proceedings, they must proceed to complete the same as provided in the statute, though, of course, where the manner of doing any act is left to their

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*County Commissioners; Power of, in Proceedings to Construct a County Ditch.*

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discretion, such discretion will not be controlled by the courts. (1) By section 849 Revised Statutes it is provided that the proceedings of the commissioners shall, as far as possible, be in conformity to the rules of parliamentary law. I do not think, however, that this includes the right to reconsider, at a subsequent meeting, a final order made by them in a quasi judicial capacity, and you will observe that the order in question in section 4463 is called a final order, from which an appeal is allowed. But even admitting the right to reconsider their action in finding for said improvement, yet I take it that, in that view, the reconsideration must be had before any further proceedings under and in pursuance of such finding. It would be too late after they have caused to be entered on their journal the order directing the county surveyor or an engineer to go upon the line, and such surveyor or engineer has made his report. (2) Neither do the statutes give to the commissioners power to vacate their order finding for said ditch improvement. By section 4499, however, they are authorized, on the proper petition and bond being filed and the same notice being given as is required in cases of the location of a ditch, to declare any ditch, whether located by the county commissioners or by the trustees of a township, vacated and abandoned. While this section seems to have primary reference to ditches which have been constructed and are in existence as ditches, yet I am inclined to say that it also confers power, upon proper proceedings being had, to vacate and abandon a ditch which has been located by them, but which has not in fact been completed. The original act of May 3d, 1873 (70 O. L., 249) evidently had such application, and I do not believe that the legislature, by the alterations made therein, intended the absurdity that the commissioners immediately after the completion of a ditch should have power to vacate and abandon it, but that, the work having once been begun, their hands are tied until the full measure of expense has been incurred. I do not lose sight of the provision in the

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*Election; Residence of Person Attending School.*

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present section making it applicable to township ditches, but I do not think that this is necessarily fatal to the construction here adopted. On the whole, therefore, I am of opinion that the commissioners in any stage of its construction have power to vacate and abandon a ditch improvement, in the manner provided in said section 4499.

2. In my opinion when the engineer has made his report on deepening and widening a ditch, the commissioners are not compelled to approve and confirm the same, unless it be satisfactory to them not merely in respect to the apportionment but also in respect to the other matters contained therein. The power to approve and confirm said report I think necessarily includes power to reject it. If the report be not satisfactory, I am of opinion, that the commissioners may refuse to confirm it, and may require a new report to be made, although this may increase or diminish the work.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; RESIDENCE OF PERSON ATTENDING SCHOOL.

Attorney General's Office,  
Columbus, Ohio, October 31, 1884.

*Mr. H. B. White, Institution for the Blind, Columbus, Ohio:*

DEAR SIR:—Your favor of the 30th instant is received. A person cannot have two distinct places of residence at the same time. Where a young man, who has a residence with his parents, leaves his home to attend school, but with the intention of returning to such residence upon the completion of the period of his attendance at school, he is, in my opinion, entitled to vote at the place where his parents reside, but not at the place where he attends school. There is no spec-

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*Election; Residence of Inmate of Soldiers' Home.*

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ial provision of the statutes upon this subject in reference to pupils of the institution for the blind.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; RESIDENCE OF INMATE OF SOLDIERS' HOME.

Attorney General's Office,  
Columbus, Ohio, November 6, 1884.

*Mr. John Hathorn, Loveland, Ohio:*

DEAR SIR:—Owing to my absence from the city your telegram was not received until today. I suppose that an answer is now too late to be of any service. I would say, however, that an inmate of the Soldiers' Home is by section 2947 Revised Statutes held to have his residence in the county and township in which such home is located, and he cannot vote elsewhere.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Officer; a Person Can be Constable and Member of the Legislature at the Same Time—Election; Disfranchisement of Convicts.*

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OFFICER; A PERSON CAN BE CONSTABLE AND  
MEMBER OF THE LEGISLATURE AT THE  
SAME TIME.

Attorney General's Office,  
Columbus, Ohio, November 7, 1884.

*Mr. R. H. Gilbert, Hamilton, Ohio:*

DEAR SIR:—Your favor of the 3d instant was duly received. The incumbent of certain offices cannot hold certain others, but there is nothing to prevent a man from being a constable and a member of the legislature at the same time. See section four, article II, of the constitution.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ELECTION; DISFRANCHISEMENT OF CONVICTS.

Attorney General's Office,  
Columbus, Ohio, November 7, 1884.

*Mr. Sol. Zarbaugh, Holgate, Ohio:*

DEAR SIR:—Your favor of the 5th instant was duly received. The statute in respect to the disfranchisement of convicts applies to all persons sentenced to be punished for felony in this State, and is not limited to those who are over twenty-one years of age. The person you mention is not entitled to vote until he has been restored to citizenship in the manner provided by law.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Children's Home; Support of—Prosecuting Attorney; Fees of.*

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CHILDREN'S HOME; SUPPORT OF.

Attorney General's Office,  
Columbus, Ohio, November 7, 1884.

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

DEAR SIR:—Your favor of the 3d instant was duly received. In a county where a children's home has been established, it is the duty of the county commissioners to provide means by taxation for the support of the same. So also where, in pursuance of the amendment to section two of the act of April 9th, 1883, passed March 27th, 1884 (81 O. L., 92), the county commissioners make temporary provision for children, such temporary home shall be supported in the same manner. The infirmary directors have nothing to do with providing said permanent or temporary home or with the support of the children placed therein. Where no special fund has been created for that purpose, I am of opinion that the expenses of such home may be paid out of the general county fund.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PROSECUTING ATTORNEY; FEES OF.

Attorney General's Office,  
Columbus, Ohio, November 8, 1884.

*Mr. Wm. T. Platt, County Auditor, Findlay, Ohio:*

DEAR SIR:—Your favor of the 5th instant was duly received. In my opinion the prosecuting attorney is not entitled to ten per cent. on costs paid by the State in crim-



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*Probate Judge; No Compensation for Report to Secretary  
of State.*

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inal cases, but is entitled to the ten per cent. where the costs are collected by the clerk and by him paid to the county treasurer. The prosecuting attorney is allowed his commission on all moneys *collected* on fines, forfeited recognizances and costs in criminal causes, and this is not limited to moneys actually collected by himself. I do not think, however, that the voluntary payment of costs by the State is in any sense a collection.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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PROBATE JUDGE; NO COMPENSATION FOR RE-  
PORT TO SECRETARY OF STATE.

Attorney General's Office,  
Columbus, Ohio, November 8, 1884.

*Anson Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:*

DEAR SIR:—Your favor of the 7th instant is received. The probate judge is not entitled to any allowance or compensation for making his report to the secretary of state. He is allowed eight cents for the registry of each birth and death returned to his office, but section 546 Revised Statutes expressly provides that he shall receive no other compensation for any service whatever that is necessary to complete the records or reports required. Section 140 also provides that each state, county and other officer under the laws of this State shall answer fully and promptly without compensation such special and general questions as the secretary of state may propose with the view of securing statistical information. Thus not only the report of births and deaths but any other report, which the probate judge may be called upon to make, must be made without com-

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*Liquor Law; Duty of County Treasurer.*

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pensation. Even if these provisions did not exist, the fact that there is no statute authorizing compensation would be fatal to the claim of the probate judge to an allowance, for an officer is only entitled to such fees or compensation as may be expressly allowed him by law.

Section 547 has reference solely to services similar to those in the Court of Common Pleas, and for which no provision is made in section 546.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; DUTY OF COUNTY TREASURER.

Attorney General's Office,  
Columbus, Ohio, November 10, 1884.

*Mr. Andrew Hopfinger, County Auditor, Port Clinton, Ohio:*

DEAR SIR:—Your favor of the 8th instant is received.

1. I see no way whereby the ten per cent. of the "Scott law" tax which has been paid into the State treasury in pursuance of the act of April 14th, 1884 (81 O. L., 206) can be drawn out again except by action of the legislature.

2. I am of opinion, however, that your county treasurer must refund the full amount of such tax paid this year under protest.

3. My advice to the county treasurer is to retain all moneys not paid under protest, until the right to a refunder of the same has been passed upon by the courts.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*Benevolent Institution; Power of Trustees to Remove Superintendent of "Blind Asylum"—Municipal Corporation; Council Cannot License Subscription Book Agent.*

BENEVOLENT INSTITUTION; POWER OF TRUSTEES TO REMOVE SUPERINTENDENT OF "BLIND ASYLUM."

Attorney General's Office,  
Columbus, Ohio, November 13, 1884.

*Prof. G. L. Smead, Superintendent for the Blind, Columbus, Ohio:*

DEAR SIR:—Your favor of the 12th instant is at hand. In my opinion, under section 638 Revised Statutes as amended April 14th, 1880 (77 O. L., 204) the trustees of the institution for the blind have power to remove the superintendent at any time. As the statute formerly stood the superintendent could only be removed for cause.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

MUNICIPAL CORPORATION; COUNCIL CANNOT LICENSE SUBSCRIPTION BOOK AGENT.

Attorney General's Office,  
Columbus, Ohio, November 17, 1884.

*Hon. C. D. Ward, Mayor, Bucyrus, Ohio:*

DEAR SIR:—Your favor of the 14th instant is received. In my opinion the council of a municipal corporation is not authorized to require a license of persons who sell books by subscription to be delivered at a future time.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Benevolent Institution; Longview Asylum; Legal Adviser of, Allowance to Directors of—Liquor Law; Refunding Illegal Assessments.*

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BENEVOLENT INSTITUTION; LONGVIEW ASYLUM; LEGAL ADVISER OF, ALLOWANCE TO DIRECTORS OF.

Attorney General's Office,  
Columbus, Ohio, November 18, 1884.

*Mr. May Fechheimer, Secretary Board of Directors, Longview Asylum, Carthage, Ohio:*

DEAR SIR:—Your favor of the 14th instant was duly received.

1. In my opinion, the directors of Longview Asylum have no authority to employ an attorney, either as legal adviser or to defend suits against them for damages.

2. The allowance to the directors for their loss of time and necessary expenses, as provided in section 724 Revised Statutes, cannot exceed \$250.00 per annum, but within this limit the amount is to be fixed by the county commissioners. It may be \$250.00 or less as the commissioners think proper. I am of opinion that the allowance thus made is to be paid out of the asylum fund in the county treasury from whatever source derived.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; REFUNDING ILLEGAL ASSESSMENTS.

Attorney General's Office,  
Columbus, Ohio, November 18, 1884.

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

DEAR SIR:—Your favor of the 14th instant was duly received. In my opinion, no assessments under the act of

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*Advertisement of County Commissioners' Annual Report;  
What Newspapers Published in.*

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April 17th, 1883, known as the "Scott law," which were paid more than one year ago can now be recovered back. At any rate there is but one course for the treasurer to pursue in respect to such payments, and that is to refuse to refund until it is decided by the Supreme Court that he must do so.

There can be no doubt that all money paid this year under protest must be refunded, but I do not think that the county commissioners have power to levy a tax, borrow money or issue bonds for that purpose. The money refunded should be apportioned to the several funds to which the same has been credited, and deducted from the shares or portions of revenue at any time belonging thereto.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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ADVERTISEMENT OF COUNTY COMMISSIONERS'  
ANNUAL REPORT; WHAT NEWSPAPERS  
PUBLISHED IN.

Attorney General's Office,  
Columbus, Ohio, November 19, 1884.

*Hon. John L. Vance, Gallipolis, Ohio:*

DEAR SIR:—Your favor of the 18th instant is received. The annual report of the county commissioners is required to be published in two newspapers of different political parties printed in the county, if there be two such papers there published. Where there are three newspapers printed in a county, one Democratic and two Republican, the commissioners may publish said report in whichever Republican paper they choose, without reference to the comparative circulation of the two papers. It is true that in a few cases advertisements are required to be published in a newspaper

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*Officers; Members of Municipal Council Are.*

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or newspapers having the largest circulation, but in the absence of a special statutory provision to that effect no such rule applies.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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OFFICERS; MEMBERS OF MUNICIPAL COUNCIL  
ARE.

Attorney General's Office,  
Columbus, Ohio, November 20, 1884.

*John Poe, Esq., Attorney at Law, Findlay, Ohio:*

DEAR SIR:—Your favor of the 17th instant was duly received. In my opinion, the term "officers," as used in section 1565 Revised Statutes includes members of the council, and, if a special election is held as therein provided, members of the council are to be elected as well as the other officers of the corporation. The persons elected at such special election will hold their offices only until the election and qualification of their successors, who are to be elected at the first regular annual municipal election. See *State ex rel vs Cook*, 20 O. St., 252.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

*County Commissioners; Power to Assist County Agricultural Society—Prosecuting Attorney; Fees of, for Service in Supreme Court in Certain Case.*

COUNTY COMMISSIONERS; POWER TO ASSIST  
COUNTY AGRICULTURAL SOCIETY.

Attorney General's Office,  
Columbus, Ohio, November 20, 1884.

*C. W. Osborn, Esq., Prosecuting Attorney, Chardon, Ohio:*

DEAR SIR:—Your favor of the 15th instant was duly received. By section 3702 Revised Statutes the county commissioners are authorized to assist a county agricultural society in the purchase or lease of a site whereon to hold fairs and the improvement of such site. Without submitting the question to a vote of the people, they can appropriate for that purpose an amount not exceeding the amount paid by such agricultural society or individuals for such purpose. This is the only limitation, and the expenditure thus authorized is in addition to the payment provided for in section 3697 as amended April 16th, 1883 (80 O. L., 142). I know of no statutes bearing on the matter except the sections to which you refer.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

PROSECUTING ATTORNEY; FEES OF, FOR SERVICE IN SUPREME COURT IN CERTAIN CASE.

Attorney General's Office,  
Columbus, Ohio, November 20, 1884.

*W. H. C. Echer, Esq., Prosecuting Attorney, Gallipolis, Ohio:*

DEAR SIR:—Your favor of the 17th instant was duly received. You do not state the nature of the bond on which

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*Corporations; Regulation of, With Special Charter.*

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suit was brought, but I take it to have been a forfeited recognizance. By section 7183 Revised Statutes the prosecuting attorney is required to prosecute by civil action all such recognizances by him received, and by section 1273 he is required to prosecute within the county, in the Common Pleas and District Court, such suits, matters and controversies as he is directed by the law to prosecute. I am of opinion, therefore, that for your services in the Common Pleas and District Courts, you cannot receive any compensation except your commission upon the amount collected. But the case having been taken to the Supreme Court and there decided in favor of the State (for the use of the county), the county commissioners may in my opinion very properly make you a reasonable allowance for services performed in that court, for the reason that the statutes do not require you to prosecute such cases beyond the District Court. I am inclined to think, however, that unless you were specially employed by the commissioners to attend to the case in the Supreme Court, you could not compel them to pay you for your services there, for, in the absence of such employment, the services would be presumed to be voluntary.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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CORPORATIONS; REGULATION OF, WITH SPECIAL CHARTER.

Attorney General's Office,  
Columbus, Ohio, November 21, 1884.

*Messrs. Warner and Shattuck, Attorneys at Law, Cincinnati, Ohio:*

GENTLEMEN:—I can only reply in a general way to your favor of the 20th instant, for you do not state in what



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*Officers; Power of County, to Employ Counsel.*

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respects the Vine Street Congregational Church desires to modify its charter.

1. When a corporation created by special act of the legislature, before the adoption of the present constitution accepts any of the provisions of title two, part two, Revised Statutes, as provided in section 3233 Revised Statutes, it is thereafter governed by all the provisions of said title applicable to such corporations, but such acceptance does not enlarge the purposes for which the corporation was created nor modify its charter, except in so far as such charter is inconsistent with the provisions of said title.

2. I know of no provision of the statutes authorizing such corporation to file with the secretary of state an amendment to its charter.

3. Neither can the corporation modify its charter by the adoption of by-laws inconsistent therewith, unless such by-laws amount to an acceptance of some provision of said title two, in which case of course so much of its charter as is inconsistent with the said title would be repealed.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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OFFICERS; POWER OF COUNTY, TO EMPLOY  
COUNSEL.

Attorney General's Office,  
Columbus, Ohio, November 22, 1884.

*Mr. James T. Shoup, Jr., Prosecuting Attorney, Delaware,  
Ohio:*

DEAR SIR:—Your favor of the 21st instant is received. In the cases mentioned in sections 845 and 2862 Revised Statutes (78 O. L., 121), the commissioners and other county officers are authorized to employ counsel whose fees, as provided in said sections, shall be paid out of the county

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*Liquor Law; Compensation to County Auditor.*

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treasury. I am of opinion that in such cases they are not compelled to employ the prosecuting attorney, but may select any attorney that they choose.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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LIQUOR LAW; COMPENSATION TO COUNTY  
AUDITOR.

Attorney General's Office,  
Columbus, Ohio, November 24, 1884.

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

DEAR SIR:—Your favor of the 22d instant is received. In my opinion, the county commissioners have no authority to allow the county auditor any compensation for services performed by him in carrying out the provisions of the act of April 17th, 1883, known as the "Scott law." I understand the recent decision of the Supreme Court to hold all of said act, except sections 9, 10 and 11, to be unconstitutional. Consequently so much of said act as imposes any duty upon the county auditor or authorizes any compensation to him was invalid from the beginning and was never a legal enactment for any purpose. The officers who have undertaken to perform any act thereunder were trespassers or mere volunteers as the case may be. So far as the auditor's claim to compensation is concerned, it seems to me that the matter stands precisely as if the act had never been passed. See Cooley's Constitutional Limitations (3d edition) p. 188.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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*County Commissioners; Compensation of.*

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## COUNTY COMMISSIONERS; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, November 26, 1884.

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

DEAR SIR:—Your favor of the 25th instant is received.

1. In my opinion, county commissioners when attending regular or called sessions of the board are not entitled to any allowance for traveling expenses. The allowance for expenses provided for in the latter part of section 897 Revised Statutes (amended 79 O. L., 139) does not apply to attendance at regular or called sessions of the board.

2. I think that the commissioners are not entitled to mileage for attending more than twelve sessions of the board in one year. The words "official business" in the clause reading "and five cents per mile when traveling within their respective counties on official business" refers to official business other than attending sessions of the board. The statute specifically limits the number of sessions for which mileage can be allowed, and it is scarcely to be supposed that the legislature, by the very next clause, intended to render this limitation of no force whatever.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Officers; Incompatibility of Certain Offices—Sheriff; Allowances to.*

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OFFICERS; INCOMPATIBILITY OF CERTAIN OFFICES.

Attorney General's Office,  
Columbus, Ohio, December 1, 1884.

*John Zumstein, Esq., Cincinnati, Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 26th ult. was not received until today. In my opinion the two offices of commissioner of Hamilton County and director of Longview Asylum are incompatible and cannot be held by the same person.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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SHERIFF; ALLOWANCE TO.

Attorney General's Office,  
Columbus, Ohio, December 2, 1884.

*Irving H. Blythe, Esq., Prosecuting Attorney, Carrollton, Ohio:*

DEAR SIR:—Your favor of November 29th was duly received. The allowance to the sheriff provided for in section 1231 Revised Statutes is limited to \$300.00, and, in my opinion, the county commissioners have no authority to make him any further or additional allowance for the services therein mentioned. The bill of the sheriff in excess of the amount allowed by the court cannot be paid out of the county treasury.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Corporations; Building Association; No Classification of Capital Stock—Advertisement; Charge for; When Containing Tabular or Rule Work.*

CORPORATIONS; BUILDING ASSOCIATION; NO CLASSIFICATION OF CAPITAL STOCK.

Attorney General's Office,  
Columbus, Ohio, December 2, 1884.

*Messrs. Ames and Gregg, Attorneys at Law, Cincinnati, Ohio:*

GENTLEMEN:—I take the liberty of answering your letter of the 29th ult. addressed to D. A. Hollingsworth, attorney general, which has been received by me. In my opinion, all the shares into which the capital stock of a building association is divided must be of equal amount, and such association cannot be incorporated under our laws with a capital stock divided into three classes as you suggest.

I am not advised as to the plan of the Dayton Association to which you allude, but shall esteem it a favor if you will give me the name of said association so that I can investigate the matter.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

ADVERTISEMENT; CHARGE FOR; WHEN CONTAINING TABULAR OR RULE WORK.

Attorney General's Office,  
Columbus, Ohio, December 4, 1884.

*Messrs. F. B. Kampf & Co., Proprietor Auglaize County Democrat, Wapakoneta, Ohio:*

GENTLEMEN:—Your favor of the 2d instant was duly received. Where advertisements mentioned in section 4366

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*County Auditor; No Compensation for County Commissioners' Report; Roads; Special Duplicate for Road Improvements.*

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Revised Statutes contain tabular or rule work, I am of opinion that the additional fifty per cent. which the publisher is entitled to charge applies to the entire advertisement, and not merely to that portion thereof which contains the tabular or rule work.

Yours truly,  
 JAMES LAWRENCE,  
 Attorney General.

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COUNTY AUDITOR; NO COMPENSATION FOR  
 COUNTY COMMISSIONERS' REPORT; ROADS;  
 SPECIAL DUPLICATE FOR ROAD IMPROVE-  
 MENTS.

Attorney General's Office,  
 Columbus, Ohio, December 4, 1884.

*L. H. Plator, Esq., Prosecuting Attorney, Paulding, Ohio:*

DEAR SIR:—Your favor of the 29th ult. was duly received. In my opinion the county auditor is not entitled to any extra compensation for making the annual report of the county commissioners. See section 1078 Revised Statutes.

I think that a special duplicate for the purpose of collecting the tax for a road improvement should be made out each year. Owing to the changes in the ownership of property it would seem absolutely necessary that this be done in order that such tax be properly collected. Where the county auditor annually makes out such duplicate, I am of opinion that under section 1075 Revised Statutes, he is entitled to charge each year therefor eight cents per hundred words.

Yours truly,  
 JAMES LAWRENCE,

*Ohio National Guard; Governor Has no Power to Issue Arms, Etc., Except to—Marshal; Fees of, Allowance to.*

OHIO NATIONAL GUARD; GOVERNOR HAS NO POWER TO ISSUE ARMS, ETC., EXCEPT TO.

Attorney General's Office,  
Columbus, Ohio, December 5, 1884.

*Col. Thos. F. Dill, Assistant Adjutant General:*

DEAR SIR:—Your favor of this date is received. In my opinion, the arms, accoutrements, etc., belonging to the State can be issued only to organizations of the Ohio National Guard and to volunteer recruits or the unorganized militia when called into the service of the State. The governor has no authority to consent that the same be issued or loaned to any private organization whatever. The last clause of section 3072 Revised Statutes, to which my attention has been called, is a limitation upon the control of the adjutant general over the arms belonging to the State, requiring the consent of the governor before any arms can be taken from the arsenal. I do not think that by implication therefrom power is conferred upon the governor to permit the public property to be used for other than public purposes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MARSHAL; FEES OF, ALLOWANCE TO.

Attorney General's Office,  
Columbus, Ohio, December 5, 1884.

*John M. Cook, Esq., Prosecuting Attorney, Steubenville, Ohio:*

DEAR SIR:—In your favor of the 2d instant you state that the marshal of Steubenville is also a constable of Steu-

*Liquor Law; Refunding Money Collected as Assessments Under.*

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benville Township, and that in criminal cases before the mayor of the city some of the writs issued to him by the mayor were issued to him as marshal and some as constable. His uncollected costs both as marshal and constable in such cases, for which the county commissioners are authorized under section 1309 Revised Statutes to make an allowance, exceed \$100.00 a year and he now claims that he should be allowed \$100.00 as marshal and \$100.00 as constable.

Upon the facts stated I am of opinion that he is not entitled to any allowance whatever as constable, for the reason that all writs issued to him by the mayor should have been issued to him as marshal and the writs issued to him as constable were improperly issued. I think, however, that the limitation upon the amount of the allowance authorized by section 1309 applies to the office and not to the person who holds the office, so that, where a person at the same time holds the offices of marshal and constable, he would in a proper case and for fees properly due him be entitled to a separate allowance in each capacity.

The claim of the mayor to a double allowance under said section can scarcely be made seriously. It is sufficient to say that he is not in any sense *ex officio* a justice of the peace.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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LIQUOR LAW; REFUNDING MONEY COLLECTED  
AS ASSESSMENTS UNDER.

Attorney General's Office,  
Columbus, Ohio, December 5, 1884.

*P. M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:*

DEAR SIR:—Your favor of the 4th instant is received. In my opinion all assessments under the "Scott law" paid



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*Coroner; Second Inquest by.*

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this year under protest must be refunded. The money refunded should be apportioned to the several funds to which the same has been credited, and deducted from the shares or portions of revenue at any time belonging thereto. If the treasurer has distributed the money collected and there is not sufficient money now on hand in the several funds, I see nothing to do but to "stand off" the person entitled to a refunder until said funds are repleted.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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CORONER; SECOND INQUEST BY.

Attorney General's Office,  
Columbus, Ohio, December 6, 1884.

*Samuel R. Gotshall, Esq., Prosecuting Attorney, Mt. Vernon,  
Ohio:*

DEAR SIR:—Your favor of the 1st instant was duly received. When in a proper case a justice of the peace, in the capacity of coroner holds an inquisition over a dead body, he is vested with all the powers and can perform all the duties of a coroner in that behalf. An inquisition having thus been held by a justice of the peace, the question in respect to the authority of the coroner of the county to hold a second inquest is precisely the same as if the first inquest had been held by such coroner. When an inquest has been held according to law either by the coroner, or a justice of the peace acting as coroner, and the return thereof has been duly made, I am of opinion that a second inquest cannot be held by the coroner. I have found but one reported case in this country bearing directly on the question. In a habeas corpus case before Justice Bacon of the Supreme Court, at Utica, New York (1860), it was

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*Coroner; Second Inquest by.*

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held that after an inquest *super visum corporis* has been held by a coroner and an inquisition has been found by the jury, a second inquest cannot be held by the coroner unless the first inquisition shall have been vacated or set aside, or shall have been absolutely void. *People vs Budge*, 4 Park N. Y., Cr., 519.

This case, however, went on appeal to the general term, when the court was equally divided on the question and no determination was reached.

It has been held in England that, after holding an inquest *super visum corporis* and recording the verdict, a coroner has no power, either at common law or by statute, to hold a second like inquest, *meto moto*, on the same body, unless the first has been quashed, nor can he inquire any further unless a *melius inquirandum* has been awarded.

*Regina vs White et al*, 3 Ellis & Ellis, Q. B., 137.

There is no provision of our statutes giving the coroner power to hold a second inquisition, but on the contrary, I think, it is clearly implied that there shall be but one, which is to be held forthwith after receiving the information which warrants it. When such inquisition has been held and return thereof made the coroner is *functus officio* as to that matter. As was said by Justice Bacon, in the New York case above cited, the holding of a second inquest would be liable to great abuse, and, as the object of the proceeding is merely preliminary, the main purpose being to ascertain whether it is probable that a crime has been committed and to examine the facts and circumstances while they are still fresh and easy of inspection and to preserve the evidence thereof, all the ends of the inquiry are answered by one inquisition.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Surveyor or Engineer; No Mileage in Location of County Ditch—Municipal Corporation; Power to License Peddlers.*

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SURVEYOR OR ENGINEER; NO MILEAGE IN LOCATION OF COUNTY DITCH.

Attorney General's Office,  
Columbus, Ohio, December 6, 1884.

*Smith Motley, Esq., County Surveyor, Port Clinton, Ohio:*

DEAR SIR:—Your favor of the 4th instant is received. In my opinion the surveyor or engineer employed in the location of a county ditch is not entitled to any mileage.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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MUNICIPAL CORPORATION; POWER TO LICENSE PEDDLERS.

Attorney General's Office,  
Columbus, Ohio, December 6, 1884.

*Mr. E. M. Ritz, Tiffin, Ohio:*

DEAR SIR:—Your letter of the 5th instant is received. The council of a city or village has authority under section 2669 Revised Statutes (amended 77 O. L., 74) to license peddlers. Such license is in addition to that issued by the county auditor in pursuance of chap. 14, title 5, part 2d, Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Taxation; Sale of Delinquent Lands—County Commissioners; Compensation of.*

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TAXATION; SALE OF DELINQUENT LANDS.

Attorney General's Office,  
Columbus, Ohio, December 6, 1884.

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

DEAR SIR:—Your favor of the 5th instant is received. The county auditor must publish the list of delinquent lands as provided in section 2864 Revised Statutes, and the county treasurer or his deputy must attend at the court house on the third Tuesday in January and proceed to offer for sale such delinquent lands, in accordance with section 2870 Revised Statutes. Both sections are mandatory in their terms.

Yours truly,  
JAMES LAWRENCE,  
Attorney General.

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COUNTY COMMISSIONERS; COMPENSATION OF.

Attorney General's Office,  
Columbus, Ohio, December 8, 1884.

*W. Hyde, Esq., Prosecuting Attorney, Warren, Ohio:*

DEAR SIR:—Your favor of the 6th instant is received. In my opinion the bill presented by one of your county commissioners for repairs to his buggy cannot be paid out of the county treasury and you should decline to approve the same.

By section 897 Revised Statutes (amended 79 O. L., 139) a county commissioner when traveling on official business within his county, other than in attending regular or called sessions of the board, is entitled to \$3.00 per day for his services, five cents per mile for mileage, and in addi-

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*Advertisements; In Regard to Certain Advertisements.*

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tion thereto his reasonable and necessary expenses actually paid. Being allowed mileage, he cannot include in such expenses anything paid for railroad fare, buggy hire or other means of conveyance. These are covered by the allowance for mileage.

Even were the rule otherwise, a commissioner could not be permitted to hire a horse and buggy from himself or keep the same at the expense of the county.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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ADVERTISEMENTS; IN REGARD TO CERTAIN  
ADVERTISEMENTS.

Attorney General's Office,

Columbus, Ohio, December 10, 1884.

*T. M. Proctor, Esq., Lebanon, Ohio:*

DEAR SIR:—Your favor of the 9th instant is received, together with the copies of certain legal advertisements. In my opinion the two notices entitled "Road Improvement Notice" should be published in two newspapers of opposite politics. I think they are "pike" notices within the meaning of section 4367 Revised Statutes. The "report of examination of county treasury" and the "ditch letting" notice are not required to be published in two newspapers.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*County Surveyor; Fees in Matter of Delinquent Lands—  
Ohio National Guard; Township Armory; How Paid  
for.*

COUNTY SURVEYOR; FEES IN MATTER OF DE-  
LINQUENT LANDS.

Attorney General's Office,  
Columbus, Ohio, December 10, 1884.

*Mr. E. E. Blanchard, C. E., County Surveyor, Warren, Ohio:*

DEAR SIR:—Your letter without date is received. For his fees in laying off land sold for delinquent taxes, the county surveyor must look to the holder of the certificate of purchase at whose request the work is performed. So far as this is concerned, I do not see that it makes any difference whether the tax title is good or invalid. In neither case is there any authority for paying the costs of the survey out of the county treasury. Yours truly,

JAMES LAWRENCE,  
Attorney General.

OHIO NATIONAL GUARD; TOWNSHIP ARMORY;  
HOW PAID FOR.

Attorney General's Office,  
Columbus, Ohio, December 10, 1884.

*Mr. H. C. Tuttle, Township Clerk, Burton, Ohio:*

DEAR SIR:—Your favor of the 9th instant is received. When in pursuance of section 3085 Revised Statutes a township is required to provide an armory for an organization of the Ohio National Guard, the expense thereof is to be paid from the fund for general township purposes levied in accordance with section 2827 Revised Statutes. No levy is authorized for the special purpose of providing such armory. Yours truly,

JAMES LAWRENCE,  
Attorney General.

*Municipal Corporation; Power of Trustees of Waterworks.  
Pharmacy Act; Period of Registration Without Examination.*

MUNICIPAL CORPORATION; POWER OF TRUSTEES OF WATER WORKS.

Attorney General's Office,  
Columbus, Ohio, December 11, 1884.

*P. W. Poole, Esq., Mayor, Crestline, Ohio:*

DEAR SIR:—Your favor of the 10th instant is received. Section 2702 Revised Statutes is applicable to the trustees of waterworks, who have no authority to contract an indebtedness in enlarging the reservoir at a cost exceeding the fund from water rents on hand. Furthermore, improvements of this kind can only be made from the surplus of the water rents and cannot be paid for out of any other fund.

In my opinion, the council of your village has no authority to issue bonds for the purpose of paying an indebtedness so incurred by its waterworks trustees.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

PHARMACY ACT; PERIOD OF REGISTRATION WITHOUT EXAMINATION.

Attorney General's Office,  
Columbus, Ohio, December 12, 1884.

*Mr. James F. Foley, Shawnee, Ohio:*

DEAR SIR:—Your letter of the 10th instant is received. By the pharmacy act, passed March 20th, 1884 (81 O. L., 61), the privilege of registering without examination is limited to three months after the publication of notice by

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*Clerk of Courts; Fees for Entering Attendance of Witnesses.*

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the State board of pharmacy. This period having expired, you cannot now register as a pharmacist without examination. For further information I refer you to P. H. Bruck of this city, secretary of the board.

Yours truly,

JAMES LAWRENCE,

Attorney General.

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CLERK OF COURTS; FEES FOR ENTERING ATTENDANCE OF WITNESSES.

Attorney General's Office,  
Columbus, Ohio, December 16, 1884.

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

DEAR SIR:—In reply to your favor of the 12th instant I have to say that, in my opinion, the clerk of courts, under section 1260 Revised Statutes, is not entitled to charge four cents for entering the attendance of a witness each day that such witness attends in a cause, but he can charge said amount only once for any period that the cause may be on trial. Where, however, a cause is set for trial and witnesses attend at more than one term of court, I think that the clerk may charge for entering the attendance of each witness at each of said terms.

Yours truly,

JAMES LAWRENCE,

Attorney General.



*Boards of Education; Power to Furnish Free Supplies—  
“Liquor Law;” Refunding Money Collected as Assess-  
ments Under.*

BOARDS OF EDUCATION; POWER TO FURNISH  
FREE SUPPLIES.

Attorney General's Office,  
Columbus, Ohio, December 18, 1884.

*Mr. J. H. Unger, Clerk, Eaton, Ohio:*

DEAR SIR:—Your favor of the 16th instant is received. Boards of education have authority, under section 4025 Revised Statutes, to furnish school books to pupils whose parents have not the means wherewith to purchase the same, but they cannot purchase books or other supplies for the use of any other pupils. The term books, as used in this statute, includes copy-books, pen, ink, paper, pencils and other similar articles.

There has been no decision of the Supreme Court upon this question, but in the Cincinnati Weekly Law Bulletin of October 6th, 1884, you will find a decision thereon by Judge Hamilton of the Cuyahoga Common Pleas Court. You can probably obtain a copy of the Bulletin from about any lawyer in Eaton.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

“LIQUOR LAW;” REFUNDING MONEY COLLECTED AS ASSESSMENTS UNDER.

Attorney General's Office,  
Columbus, Ohio, December 20, 1884.

*T. E. Peckinpaugh, Esq., County Auditor, Wooster, Ohio:*

DEAR SIR:—Your favor of the 19th instant is received. All assessments under the so-called “Scott law,” which were paid within a year under protest must be refunded. No act

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*Ohio National Guard; Court of Discipline of, Power to  
Compel Attendance of Witnesses.*

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of the legislature is required in order to authorize such refunder. In the case of *Catoir vs Watterson*, 38 O. St., 319, it was held that a person who had made a similar payment could maintain an action against the county treasury to recover the sum so paid. The money refunded should be apportioned to the several funds to which the same has been credited, and deducted from the shares or portions of revenue at any time belonging thereto. If the treasurer has distributed the money collected and there is not sufficient money now on hand in the several funds, I suppose that some arrangement can be made whereby the persons entitled to a refunder will wait until said funds are repleted.

In respect to assessments paid more than one year ago, and those which were paid this year, but not under protest, the only safe course to pursue is to refuse to refund until the Supreme Court has passed upon the question.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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OHIO NATIONAL GUARD; COURT OF DISCIPLINE OF, POWER TO COMPEL ATTENDANCE OF WITNESSES.

Attorney General's Office,  
Columbus, Ohio, December 20, 1884.

*Col. Thos. T. Dill, Asst. Adjutant General:*

DEAR SIR:—I return herewith the letter of Mr. Geo. C. Beis, which you have referred to me. In my opinion, a court of discipline of a company of the Ohio National Guard has no authority to enforce the attendance of a witness who is not a member of such company.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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*Surveyor or Engineer; Fees of in Matter of County Ditch  
and Road Improvement.*

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SURVEYOR OR ENGINEER; FEES OF IN MATTER  
OF COUNTY DITCH AND ROAD IMPROVE-  
MENT.

Attorney General's Office,  
Columbus, Ohio, December 22, 1884.

*L. H. Plattor, Esq., Prosecuting Attorney, Paulding, Ohio:*

DEAR SIR:—In reply to your favors of the 15th and 20th instant, I have to say that in my opinion, the surveyor or engineer employed to survey the line of a county ditch and to make a report, profile and plat of the same, in pursuance of sections 4454, 4455 and 4456 Revised Statutes, is entitled to receive four dollars per day for the time actually employed on the work designated for him to do, but is not entitled to any allowance for moneys paid out by him for conveyance or other expenses incurred in connection with such work. His compensation is regulated by section 4506 Revised Statutes, which makes no allowance for expenses. I take it to be a general rule that, where an officer or other person employed in a service for the public is allowed by law a definite sum per day for his services, with no provision for expenses, he cannot charge for the latter. So far as section 4506 is concerned, there is no more authority for allowing the surveyor or engineer his expenses than there is for making a like allowance to the chainmen and other persons employed on the work. It is true that section 4456 provides that "the surveyor or engineer shall make and file with his report an itemized bill of all costs made in the proper discharge of his duty under this and the preceding two sections." This provision, however, does not undertake to prescribe what such costs shall be, but its purpose is merely that all costs of the work, including the per diem of the surveyor, chainmen, rodmen and other persons employed thereon, shall be returned to the county auditor in order to be taxed in the proceeding.

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*Schools; Assessments on School Lands; Who to Pay.*

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The word "costs," it seems to me, is here used in the same sense as in section 4453, where, so far as the surveyor or engineer is concerned it is clearly limited to his per diem.

2. In my opinion, the surveyor or engineer, appointed in pursuance of section 4841 Revised Statutes (amended 78 O. L., 227) to superintend the performance and completion of the road improvement therein referred to, is entitled to receive four dollars per day for the time actually employed by him, but is not entitled to any allowance for mileage or expenses. By section 4849 Revised Statutes, he is to receive for said work such compensation as is fixed by law for the compensation of the county surveyor for like services in other cases. This, I take it, refers to the general provision in section 1183 Revised Statutes concerning the compensation of the county surveyor when employed by the day.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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SCHOOLS; ASSESSMENTS ON SCHOOL LANDS;  
WHO TO PAY.

Attorney General's Office,  
Columbus, Ohio, December 22, 1884.

*Hon. L. D. Brown, Commissioner of Schools:*

DEAR SIR:—I return herewith the letter of Mr. W. D. Patterson, president of the board of education of Marion Township, Hardin County, which you referred to me. The improvement mentioned therein, although not definitely described, I understand to be a county ditch within the meaning of section 4448 Revised Statutes. In respect to such an improvement, it is provided in section 4455 Revised Statutes (amended 78 O. L., 204) that the surveyor or

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*Sheriff; Allowance to; for Keeping Prisoners.*

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engineer shall make and return a *schedule* of all lots and lands that will be benefited with an apportionment of the cost of location, according to the benefits which will result to each. This clearly includes lands granted by Congress for the support of common schools, and section 4503 Revised Statutes provides that, when an assessment is made upon such lands or any part thereof, under the provisions of the chapter named, the board of education of the district interested therein shall, unless the same have been permanently leased, pay such assessment out of the contingent fund of the district, and may, if necessary for that purpose, increase the levy for that fund otherwise authorized by law. The plain inference is that where such lands have been permanently leased, the lessee must pay the assessment.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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SHERIFF; ALLOWANCE TO; FOR KEEPING PRISONERS.

Attorney General's Office,  
Columbus, Ohio, December 23, 1884.

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

DEAR SIR:—In my opinion, the word "providing" in section 1235 Revised Statutes, where the section reads "for keeping and providing for prisoners in jail" has reference to section 7379 Revised Statutes and includes the several things therein specified. The allowance under section 1235, not exceeding fifty cents per day for each prisoner, is in full of everything required to be furnished by the sheriff. I am of opinion, however, that, for any services performed by the sheriff in pursuance of chapter I, title III, part IV

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*Coroner; Fees of.*

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Revised Statutes, the county commissioners may make him a further allowance in such sums as they may see fit. This is also in addition to the allowance to be made by the Court of Common Pleas in pursuance of section 1231 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

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CORONER; FEES OF.

Attorney General's Office,  
Columbus, Ohio, December 29, 1884.

*E. G. Alcorn, M. D., Coroner, Gallipolis, Ohio:*

DEAR SIR:—Your favor of the 26th instant with enclosed "Coroner's Fee Bill" was duly received. The coroner can only charge such fees as are specially allowed him by law. Under section 1239 Revised Statutes he is allowed three dollars for view of a dead body, ten cents per hundred words for drawing all necessary writings, and ten cents per mile for traveling to the place of view. He is not entitled to charge anything for swearing witnesses or any other services in connection with the inquest not provided for in the statute named. I think, however, that the subpoenas issued by him are necessary writings, for which he may charge ten cents per hundred words.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

*County Auditor; Two Mile Assessment Pikes; Special Duplicate of; Fees for Making; Suit to Obtain Back Fees.*

COUNTY AUDITOR; TWO MILE ASSESSMENT  
PIKES; SPECIAL DUPLICATE OF; FEES FOR  
MAKING; SUIT TO OBTAIN BACK FEES.

Attorney General's Office,  
Columbus, Ohio, December 29, 1884.

*Geo. W. Emerson, Esq., Prosecuting Attorney, Bellefontaine, Ohio:*

DEAR SIR:—Your favor of the 24th instant came duly to hand. I have also received an opinion by Hon. W. H. West in reference to the second question presented by you.

1. By section 4845 Revised Statutes it is provided that all assessments on lands under the provision of the chapter in which said section is found—being the chapter relating to two mile assessment pikes—shall be placed upon a special duplicate to be provided by the county auditor, at the expense of the county. The word “duplicate” properly means an original instrument or document repeated, and, as used in said section 4845, I think it includes one book of the nature of the tax list for real property, mentioned in section 1034, and a true copy or duplicate thereof, as required in the case of such tax list by section 1042. In other words I think that the county auditor is required to make out two books of said assessments, one for himself and one for the county treasurer.

2. Replying to your second inquiry I am of opinion that, under section 1075 Revised Statutes, the auditor is not entitled to eight cents for each description of property contained in his special duplicate and a like sum for each description of said property as repeated in the treasurer's duplicate, but that he is only entitled to one sum of eight cents for each separate tract of land sought to be assessed for the improvement. You will observe that the statute

*County Auditor; Two Mile Assessment Pikes; Special Duplicate of; Fees for Making; Suit to Obtain Back Fees.*

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does not allow eight cents for each description contained in the duplicate, but the language is "on each and every description of lots, etc., sought to be assessed for such improvement." It seems to me that Judge West errs in limiting the word "description" to the mere act of setting down in the duplicate the appropriate designation of the property, whereas, I should say, it refers to the thing which is set down therein. In the latter view there can be but one description of each tract, although this may be repeated in any number of copies or duplicates.

3. By section 4981 Revised Statutes an action upon a liability created by statute, other than a forfeiture or penalty, is barred unless brought within six years after the cause of action accrues, and, referring to this section you inquire: "Can the auditor compel payment in any event back of six years?" I am inclined to say that he can, unless the court, before which an action to enforce his claim is brought, should find that he had been guilty of such *laches* as to justify a denial of the remedy sought. The statute of limitations referred to applies only to "civil actions," which, prior to the revision of the statutes, were held to include only such cases as were before the code known as actions at law or suits in equity—*Chinn vs Trustees*, 32 O. St., 236. Clearly the auditor has no remedy by civil action thus defined. Although it is possible that now the court might take a different view of what is a "civil action," I scarcely think that it would be held to include a suit in mandamus or the proceedings of the county commissioners in respect to the allowance of the auditor's claim for services, as provided in section 1077 Revised Statutes.

Yours truly,

JAMES LAWRENCE,  
Attorney General.



*Municipal Corporation; Term of Officers Elected at Special Election—County Commissioners; Proceedings for Annexation to Municipal Corporation; Costs.*

MUNICIPAL CORPORATION; TERM OF OFFICERS ELECTED AT SPECIAL ELECTION.

Attorney General's Office,  
Columbus, Ohio, December 30, 1885.

*C. C. Layman, Esq., Attorney at Law, Luckey, Wood County, Ohio:*

DEAR SIR:—In reply to your favor of the 29th instant I have to say that, where the first election of officers for a village is a special election held in pursuance of the latter part of section 1565 Revised Statutes, the officers elected at such special election will hold their respective offices only until the election and qualification of their successors, which successors are, in my opinion, to be elected at the next regular annual municipal election.

Yours truly,

JAMES LAWRENCE,  
Attorney General.

COUNTY COMMISSIONERS; PROCEEDINGS FOR ANNEXATION TO MUNICIPAL CORPORATION; COSTS.

Attorney General's Office,  
Columbus, Ohio, January 5, 1885.

*C. R. Truesdale, Esq., Prosecuting Attorney, Youngstown, Ohio:*

DEAR SIR:—I have before me your favor of the 29th ult. in which you state that, under the provisions of chapter 5, division 2, title 12, Revised Statutes, your board of county commissioners heard and determined a proceeding brought