

# Annual Report

OF THE

# ATTORNEY GENERAL

TO THE

Governor of the State of Ohio

FOR THE

YEAR ENDING DECEMBER 31, 1900.

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FRED J. HEER, STATE PRINTER.  
COLUMBUS, OHIO.

# Annual Report.

OFFICE OF THE ATTORNEY GENERAL, STATE OF OHIO.

COLUMBUS, OHIO, December 31st, 1900.

HON. GEORGE K. NASH, *Governor of Ohio.*

SIR:—I have the honor to submit herewith my annual report for the year ending December 31st, 1900.

This report includes:

First: A detailed statement of the moneys collected and paid into the State Treasury, amounting to \$139,841.60.

Second: A statement, in detail of the cases in the Supreme Court of the United States, Circuit Courts of the United States, the Supreme Court of Ohio, the Circuit and Common Pleas Courts of the various circuits and districts within the State, disposed of and pending, with the questions decided or involved.

Third: The opinions rendered by the office during the year, which, in my opinion, are of general interest to the public.

With reference to the cases that have been disposed of during the foregoing year, that were pending upon my advent to the office, quite a number have been denominated "trust cases", and deserve special notice.

These cases are as follows:

No. 2294. The State of Ohio ex. rel. Attorney General vs. The Standard Oil Company. In contempt.

No. 6416. The State of Ohio, ex. rel. Attorney General vs. The Standard Oil Company of Ohio. In quo warranto.

No. 6331. The State of Ohio, ex. rel. Attorney General vs. The Buckeye Pipe Line Company. In quo warranto.

No. 6349. The State of Ohio, ex. rel. Attorney General vs. The Solar Refining Company. In quo warranto.

No. 6350. The State of Ohio, ex. rel. Attorney General vs. The Ohio Oil Company. In quo warranto.

No. 6678. The State of Ohio, ex. rel. Attorney General vs. The Continental Tobacco Company. In quo warranto.

No. 1659. The State of Ohio, ex. rel. Attorney General vs. The Cleveland & Sandusky Brewing Company. In quo warranto.

The first case above mentioned grew out of a decree of the Court, entered in the case of the State of Ohio, ex. rel. Attorney General vs. The Standard Oil Company. 49 O. S., 137.

In December, 1896, E. B. Kinkead, of Columbus, Ohio, and W. L. Flagg, of New York, who represented Mr. George Rice, an oil refiner of Marietta, Ohio, and who was a rival of The Standard Oil Company, applied to the Hon. F. S. Monnett, my predecessor, and requested that he allow his name to be used in a proceeding which they desired to commence against The Standard Oil Company, for contempt, on the ground of an alleged violation of the decree of the Court, in the above mentioned case. No definite arrangement was then made, however, but in November 1897, Mr. Monnett was again appealed to to permit his name to be used, as Attorney General, in the proposed proceeding, as such proceedings must be commenced in the name of the State of Ohio, on relation of the Attorney General. The arrangement was then made, whereby he agreed that the proceeding might be commenced; that he would lend his name as Attorney-General, but he was to be relieved of responsibility; the preparation of the information in contempt, obtaining the evidence and preparing the argument in the case, to devolve upon the attorneys for Mr. Rice. I wish to say in this connection, however, that such arrangements are quite frequently made in this office. Especially where a proceeding must be commenced in the name of the State, but private parties are especially interested in the outcome.

The case proceeded under this arrangement for a period of ten or eleven months, when Mr. Monnett took active part in the prosecution of the case; and thus was the beginning of all the litigation above referred to.

I deemed it my duty to investigate carefully the evidence taken in the cases still pending, with a view to determine whether the averments of the petition were sustained; especially in view of the fact that the Supreme Court had just decided adversely to the State, thirteen insurance cases, because of want of evidence to support the averments of the petition; the questions raised in the petitions being that the defendant insurance companies had violated the anti-trust insurance laws of Ohio.

The first case to which my attention was directed was the State ex. rel. Attorney General against The Cleveland & Sandusky Brewing Company. This case had been commenced against this company at the request of the Leisy Brewing Company, of Cleveland, with the understanding, so I am informed by Mr. Bennett, who had the taking of the testimony specially in charge, that the Leisy Brewing Company was to bear the expense. The testimony had been taken, at a cost to the State of about twelve hundred dollars, but the record had not yet been printed. Before printing the record, I examined the evidence with a view to becoming familiar with the case.

This case was a proceeding to forfeit the charter of The Cleveland & Sandusky Brewing Company on the ground that it was a trust. The evidence disclosed that this company was organized under the laws of Ohio, and bought nine breweries located in Cleveland, and one located

in Sandusky, and operated all of them as the property of The Cleveland & Sandusky Brewing Company. There were five other breweries in the City of Cleveland, beside that of The Cleveland & Sandusky Brewing Company, all of which were rivals and competitors of that Company, and competitors of one another, the competition being sharp among these companies, especially so between The Cleveland & Sandusky Brewing Company, and The Leisy Brewing Company.

Besides these independent companies in Cleveland it appeared that in the State of Ohio there were 116 independent brewery companies, all of which were competitors of The Cleveland & Sandusky Brewing Company, besides many companies located outside of the State, competing for Ohio business.

The evidence having failed to sustain the averments of the petition, and the Leisy Brewing Company having refused, upon request, to pay the expenses already incurred, or to furnish money to print the record I deemed it my duty to save farther expense to the State, and dismiss the case. Before doing so, however, I consulted with Mr. Smith W. Bennett and he was also of the opinion that no case was made out in the evidence.

In the following cases, numbers 2294, 6416, 6331, 6349, and 6350, the evidence had been taken, and the record printed prior to my incumbency but the cases had not yet been finally submitted to the Court.

The contempt case has been submitted, and the Court found against the Relator, and in favor of the Standard Oil Company.

The record in the other four cases consists of 754 pages of printed testimony. I read this testimony with a view to the preparation of an argument in these cases. Upon its conclusion I was confronted with the fact that there was no evidence to sustain the charges in the petition, and there was but one of two things left for me to do: Either to be frank with the Court, admit the failure of evidence, and dismiss the cases; or make pretense of the confidence which I did not have, submit them to the Court, and thus throw the responsibility upon the Court, that belonged to me. I chose the former, and, with the consent of the Court, dismissed those cases.

The questions raised in the petition in the case of the State of Ohio, ex. rel. Attorney General against the Continental Tobacco Company were two:

First: That the Continental Tobacco Company, being a foreign corporation, could not engage in business in the State of Ohio without making its stockholders subject to double liability, the same as the stockholders of domestic corporations, it being the claim of my department that the Constitution, in this particular, is self executing, and that the burden of double liability was imposed upon foreign corporations by virtue of its engaging in business in the State of Ohio.

Second: That this Company was a trust within the meaning of that term as defined by the courts, and the anti-trust laws of Ohio.

I submitted the first question to the Court, upon the pleadings. The Court held against my contention. Nothing was left of this case except the question as to whether it was a trust. I then proceeded to take testimony with a view to establish the averments of the petition. Upon the taking of this testimony it developed that the Continental Tobacco Company had been organized as a New Jersey corporation, and had bought outright nine different plants, only one of which was located in Ohio. That was the P. J. Sorg Company, located at Middletown, Ohio. These plants were paid for either in money or stock of the new concern; as the sellers chose—sometimes all money, sometimes part money and part stock. The old companies thereupon ceased to exist, and the Continental Tobacco Company took these plants, and managed them as its own, and thereafter had no business relations whatever with any of the companies whose property it had purchased.

It also developed that there were one hundred and eighty other rival tobacco manufacturers in Ohio, and over twenty-six hundred in the United States; about four hundred manufacturers of plug tobacco alone. All these companies are competitors, and have no trust relation with one another.

The evidence thus failing to support the averments of the petition that this company was a trust, upon the consent of the Supreme Court, I also dismissed this case without printing the record in the case.

In all of this litigation the expenses to the State have been very large—the exact amount, however, I am unable to state, as these expenses were almost wholly incurred before I took charge of the office.

Respectfully,

JOHN M. SHEETS,  
*Attorney General.*

# INDEX.

	PAGE
Adevertising —	
Legal rates for.....	182
Public contracts.....	24
American Service Union .....	22
Arrests —	
Filing affidavits and transcripts.....	128
Right of health officer to make.....	39
Of persons violating order of Board of Health.....	150
Assessors—	
District, compensation of.....	112
Ashland county, duty in regard to certain school house.....	108
Asylums —	
Compensation, sheriff transporting patient to.....	50
Compensation, sheriff transporting patient to.....	71
Auditor —	
Board of Equalization, clerk of.....	10
Clerk hire, allowance for.....	27
Commissioners' Journal, compensation for keeping up.....	9
Commissioners' Journal, compensation for indexing.....	11
Ditches, special duplicates of.....	11
Entitled to compensation for what.....	10
Issuing warrants, Fish and Game law cases.....	105
Of Hamilton county .....	59
Registering county bonds, compensation for.....	11
Right to charge four per cent. on certain taxes.....	44
Salary, remains same during year.....	24
Voucher Book, indexing.....	10
Banks —	
Branch, right to establish.....	43
Bill becomes a law, time, when.....	81
Blind Asylum —	
Carpenter, salary of.....	96
Boards of Education —	
Catechism taught in public schools, right to authorize.....	15
Counsel, right to employ.....	45
Taxation .....	12
Village district, legal existence of in.....	73
Boards of Equalization —	
Extra time, compensation for.....	127
Pickaway county, compensation salaried officials.....	126
Salaried officials as members, compensation of.....	122
Taxes added, legality of.....	127
(See also various boards of equalization.)	
Board of Managers of Ohio Penitentiary —	
Products, right to sell.....	174
Board of Medical Registration and Examination —	
Power to issue certificates.....	167

	PAGE
Boards of Health —	
Arrest, right of health officer to make.....	40
Arrest, of person violating order of.....	150
Issuing permits, fees for.....	39
Nuisance, power to abate.....	107
O. S. & S. O. Home, power to abate nuisance at.....	133
Township trustees acting as, power to borrow money.....	188
Board of Public Works —	
Appropriation .....	53
Damages, allowance of.....	53
Lessee, right to remove personal property.....	157
Board of State Charities —	
Power to remove deaf and dumb from infirmary.....	119
Boxwell tuition .....	94
Boys' Industrial Home —	
Committing boys to.....	133
Child, committed to, by Probate Judge.....	130
New Trial by police court.....	180
Paroling boys .....	133
Building and Loan Associations —	
Right to invest funds.....	163
Candidate —	
Right to be present at counting of ballots.....	168
Cemetery Association —	
Tax of land.....	26
Centennial —	
Appropriation, constitutionality of.....	17
Ohio Centennial appropriation.....	68
Cincinnati law for stationary engineers, constitutionality of.....	151
City Board of Equalization —	
Right of member to be member of decennial board same year.....	74
Coal —	
Blasting of in mines.....	166
Collections —	
Brown, Hinman & Huntington Co.....	191
Columbus Bolt Works.....	190
Columbus Chair Company.....	190
Hayden Saddlery & Hardware Co.....	191
Howard, E. D. Co.....	192
Lanman Company, The E. B.....	189
National Broom Company.....	192
Reynolds, C. S. & Co.....	190
Sprague Cigar Co., The Geo. B.....	191
Commission —	
Soldiers' Relief .....	19
Commissioner of Labor —	
Power to remove appointees.....	88
Coroners —	
Duties of .....	123
County Clerk —	
Annual allowance of \$300.....	24
Court dockets, compensation for making.....	23
Reporting cases to Secretary of State, compensation for.....	20
Warrants, authority to issue.....	59

	PAGE
County Commissioners —	
Allowance to auditor for clerk hire, right to make.....	27
Board of Equalization, compensation as member of.....	122
Court House, right to improve.....	24
Decennial Board of Equalization, compensation as members of.....	124
Expenses of .....	28
Expenditure of money without certificate of auditor.....	8
Expenses Soldiers' Relief Commission, right to pay.....	19
Funds, transfer of by.....	97
Funds, transfer of by.....	109
Gravel, right to purchase and build roads.....	139
Journal, compensation for keeping up.....	9
Mileage of .....	33
Mileage of .....	111
Surveyor, right to employ.....	58
County officers —	
Compensation .....	54
Postage and stationery, allowance of.....	159
Right of auditor to charge four per cent.....	44
Sheriff, fees of.....	23
(See various county officers.)	
County Recorder —	
Appointment to fill vacancy.....	171
Election of .....	171
General Index, fees for.....	19
County Treasurer —	
County bonds, fees of, on.....	38
Funds, distribution of.....	109
Courts —	
Governor to certify to proceedings, authority of.....	56
Crater, Ernest C. vs. Philip Neighbor, et al.....	201
Criminal cases —	
Acquittal in Fish and Game law prosecutions, costs.....	105
Cost bill in.....	63
Culbert, A. E., State Ex rel. vs. Charles Kinney.....	203
Dairy and Food Commissioner —	
Reports of .....	36
Decennial Board of Equalization —	
Action, legality of.....	155
Cincinnati and Cleveland, payment of in.....	155
Compensation of .....	124
Extension of time to.....	155
Meeting places.....	135
Messenger, power to employ.....	137
Powers of .....	129
State Board, powers and duties.....	176
Stationery for State Board.....	173
Transfer amounts from one ward to another, power to.....	137
Dye, Edmund S. vs. John Foran, et al.....	198
Dynamiting streams .....	91
Edson, E. R., et. al. vs. Wm. N. Crangle, et. al.....	194, 205
Election —	
Publishing Sheriff's proclamation.....	172
Everett, D. H. vs. E. G. Coffin.....	200



	PAGE
Examiner Stationary Engineers—	
Appropriation for .....	86
License, right to revoke.....	151
Fines —	
Right of magistrate to remit.....	145
Fish and Game —	
Costs when failing to convict offenders.....	105
Fines collected by Commission.....	181
Laws, construction of.....	79
Secretary of Board, right of Chief Warden to act as.....	169
France, Watson A. vs. Asa S. Bushnell, et. al.....	199
Free Employment Bureau —	
Superintendent of .....	93
Fultonham Brick and Tile Co. vs. Columbus Construction Co., et. al.....	199
Garfield Corrupt Practice Act.....	70
Girls' Industrial Home —	
Probate Judge committing child to.....	130
Governor —	
Authority to certify to court proceedings.....	56
Guilbert, W. D., State ex. rel. vs. Aiken, Albert E, Auditor.....	194
Guilbert, W. D., State ex. rel. vs. Halliday, Wm. H., Auditor.....	202, 207
Hallock contract, construction of.....	89
Hall, Edward F., State ex. rel. vs. Charles Kinney.....	203
Hamilton county, fees in.....	59
Harris, Lem P. vs. W. D. Guilbert, Auditor.....	202, 207
Incorporations —	
American Clay Mfg. Co., right to incorporate.....	49
Mutual Benefit Society, sufficiency of articles.....	67
Savings & Loan Ass'n, acting as Safe Deposit & Trust Co.....	98
Indigent Prisoners —	
Counsel of, right to pay.....	35
Infirmaries —	
Deaf and dumb inmates, power to remove.....	119
Directors, expenses of.....	11
Directors, traveling expenses of.....	106
Inspector of Workshops and Factories —	
Right to condemn court house.....	29
Insurance Companies —	
American Service Union, standing of.....	22
Capital stock of.....	12
Employers Liability Insurance.....	21
Relief Department Pennsylvania lines.....	40
Taxation of .....	183
In the matter of the application of Gilbert D. Preston for a writ of Habeas Corpus .....	202, 207
Interstate Savings Investment Co., ex. rel. vs. W. S. Matthews.....	202, 206
Jury Service —	
Exemption of certain persons.....	166
Kennedy, James vs. E. G. Coffin.....	204
Labels —	
Bromo-Sedative .....	36
Flavorinig Extracts.....	27
Prepared mustard .....	125

	PAGE
Legal settlement for residence.....	111
Legal settlement .....	113
Legislature —	
Appropriations .....	86
Appropriations of money, right to.....	48
Appropriation, Centennial.....	17
Board of Public Works, appropriation for.....	53
Bill becomes a law, time, when.....	81
Ohio Centennial appropriation.....	68
President of Senate failing to sign bill, effect of.....	91
Lessee, right to remove personal property.....	157
Lewistown Reservoir .....	70
Libby, Hosea W. vs. Ohio State Board Medical Registration and Exam- ation .....	199
Liquor —	
Partnership in trafficking in.....	140
Matthews, W. S. vs. Guarantors Liability & Indemnity Co.....	199
Mercantile Nat. Bank of Cleveland vs. R. S. Hubbard.....	196
Mercantile Nat. Bank of Cleveland vs. Marcellus A. Lander.....	196
Merchants & Manufacturers Nat. Bank vs. Board of Trustees, O. S. U., et. al.	199
Mineral Lands —	
Taxation of .....	77
Maumee Island, sale of.....	47
Mutual Benefit Society, Articles of Incorporation.....	67
Nuisances —	
At Ashville .....	96
Abatement of, at O. S. & S. O. Home.....	133
Abatement of, power of State Board of Health.....	107
Ohio Agricultural Experiment Station —	
Power of Directors.....	141
Offices, incompatible .....	74
Ohio vs. Billow, costs in.....	63
Ohio —	
Jurisdiction of, over Ohio river.....	61
Ohio Canal Commission —	
Lewistown Reservoir, powers of.....	70
Maumee Island, sale of.....	47
Ohio Hospital for Epileptics, construction of contract.....	46
Ohio vs. Baldwin, Cyrus H .....	200
Ohio vs. Bope, Jonathan .....	201
Ohio vs. Bowers, W. P.....	201
Ohio vs. Cincinnati Ice Co.....	200
Ohio vs. Cincinnati Tin & Japan Co.....	200
Ohio vs. Fettig, Joseph .....	200, 210
Ohio vs. Gregg, Versa E.....	200, 211
Ohio vs. Hauser, Stephen, Sr.....	200, 210
Ohio vs. Kellner, Christ S.....	201
Ohio vs. Montgomery & Stitt.....	204
Ohio vs. Procter, Wm. N., et. al.....	200, 204
Ohio vs. Saup, Frank .....	201
Ohio vs. Schlund, Frank .....	200
Ohio vs. Sebald, Geo. H., et. al.....	200, 210
Ohio vs. Shell, John .....	201

	PAGE
Ohio vs. Victor Safe & Lock Co.....	200, 210
Ohio vs. Wagoner, Samuel ,.....	201, 211
Ohio vs. Wright, C. A. ....	201, 211
Oil —	
Ownership to, produced in and around St. Marys Reservoir.....	142
Inspector of, authority outside of Ohio.....	175
Wells, plugging of.....	87
Ohio National Guard —	
Encampment outside of State.....	101
2nd Regiment, election in.....	62
2nd Regiment, election in.....	114
Ohio Penitentiary —	
Hallock contract, construction of.....	89
Issuing permits to visit.....	128
Money due prisoners .....	48
Right of Board of Managers to sell product.....	174
Paupers —	
Medical assistance .....	57
Support of, liability of county for.....	188
Pharmacy Board —	
Certificate, right to revoke.....	31
Pharmacist, right to register.....	141
Proxy, member of voting by.....	31
Rules, right to establish.....	107
Postage —	
Allowance of to county officers.....	159
Prisoners —	
Indigent, payment of counsel.....	35
Parole of .....	158
Release and reaprehension of.....	92
Probate Judge —	
Allowance in criminal case.....	51
Appointing examiners of treasury, fees of in.....	76
Fees of under Section 533-1.....	31
Letters of guardianship, and reporting statistics to Secretary of State...	138
Lunacy cases, fees in.....	76
Prosecuting Attorneys —	
Ashland county, duty of in certain matter.....	108
Duty under Section 4364-9a (94 O. L., 332).....	140
Employment of by commissioners.....	136
Money collected by, distribution of.....	7
Salaries of, computed on which census.....	85
Pure Food Laws —	
Barnesville Spread .....	105
Labeling bromo-sedative .....	36
Labeling extracts for flavoring.....	27
Labeling prepared mustard.....	125
Mayors, jurisdiction of.....	182
Sugarose, sale of.....	174
Railroads —	
Repairing crossings .....	104
Rawlinson, Adella vs. Cleveland Life Insurance Co.....	204

	PAGE
Refunding Order —	
Issuance of .....	121
Relief Department of Pennsylvania Lines.....	40
Reservoir —	
Lewiston .....	70
Roads —	
Exemption from work on.....	166
Russell Salary Bill.....	52
Safe Deposit and Trust Company —	
Right of Savings & Loan Association to engage in business of.....	98
Salary Law —	
Russell .....	52
Tuscarawas county, officers of.....	54
Schools —	
Board of Education in village district, existence of.....	73
Boxwell Tuition .....	94
Catechism taught in public schools, right to authorize.....	15
Funds, division of .....	34
Joint sub-districts .....	7
Maximum levy for.....	168
Property, ownership of in a certain case.....	84
Relation of normal to public schools.....	162
Special districts, organization of.....	160
Sub-districts changed, and pupils conveyed to another.....	122
Teachers, employment of.....	112
School Examiners —	
Compensation of .....	102
Secretary of State —	
Engrossed copy of bill, failure to obtain possession of.....	81
Stationery for State Board of Equalization, right to furnish.....	173
Statistics furnished to by Probate Judge.....	139
Senate —	
President of failing to sign bill, effect of.....	91
Shell, John vs. Westbrook Still.....	204
Sheriff —	
Deputy, fees for attending court.....	23
Jail, allowance for care of.....	95
Lunacy cases, assistance in.....	51
Lunacy cases, fees in.....	50
Lunacy cases, fees in.....	71
Proclamation, posting of.....	23
Proclamation, publication of.....	172
Soldiers' Relief Commission.....	19
Stairs, right of owner of second story to construct.....	34
State ex. rel. vs. Aiken, Albert E., Auditor.....	194
State ex. rel. vs. Akron Underwriters' Association.....	194, 205
State ex. rel. vs. B. & O. R. R. Co.....	197
State ex. rel. vs. Buckeye Mutual Insurance Co.....	193
State ex. rel. vs. Buckeye Pipe Line Co.....	194, 206
State ex. rel. vs. Bushnell, Asa S., et. al.....	199
State ex. rel. vs. Capital City Dairy Co.....	193
State ex. rel. vs. Centennial Club, et. al.....	198, 209
State ex. rel. vs. C. H. & D. R. R. Co.....	193
State ex. rel. vs. C. H. & D. R. R. Co.....	194
State ex. rel. vs. C. C. C. & St. L. R. R. Co.....	195, 206

	PAGE
State ex. rel. vs. Cleveland & Sandusky Brewing Co.....	197, 208
State ex. rel. vs. Cleveland & Sandusky Brewing Co.....	198, 208
State ex. rel. vs. Colonial Investment Co.....	197, 208
State ex. rel. vs. Continental Tobacco Co.....	193, 206
State ex. rel. vs. Crescent Building & Loan Association.....	195
State ex. rel. vs. Dayton Traction Co, & Cincinnati & Miami Valley Traction Co.....	198
State ex. rel. vs. Diamond Contract Co.....	193, 205
State ex. rel. vs. Dusenbury, Jos. W.....	195, 206
State ex. rel. vs. Ewing Coal & Salt Co.....	204
State ex. rel. vs. Federal Gas & Fuel Co.....	203, 207
State ex. rel. vs. Findlay Building & Loan Association.....	197, 208
State ex. rel. vs. Franklin Savings & Loan Association.....	195
State ex. rel. vs. Halliday, Wm. H., Auditor.....	202, 207
State ex. rel. vs. Home Cooperative Union.....	202, 207
State ex. rel. vs. Interstate Savings & Investment Co.....	195, 206
State ex. rel. Interstate Savings & Investment Co. vs. Wm. S. Matthews, et. al.	202
State ex. rel. vs. Kinney, Charles.....	203, 207
State ex. rel. vs. Kinney, Charles.....	203, 207
State ex. rel. vs. Kinney, Charles.....	203, 207
State ex. rel. vs. Lake Shore Building & Loan Co.....	197
State ex. rel. vs. Lucas Co. Mfg Mutual Insurance Association.....	197
State ex. rel. vs. Manufacturers' Mutual Fire Insurance Co.....	194, 205
State ex. rel. vs. Manufacturers' Railway Co.....	198, 208
State ex. rel. vs. Matthews, W. S.....	202
State ex. rel. vs. Matthews, W. S.....	203
State ex. rel. vs. McKenney, Patrick J.....	198, 208
State ex. rel. vs. Morris, John B.....	203, 207
State ex. rel. vs. Mt. Hope College Co.....	202, 207
State ex. rel. vs. Mutual Home & Savings Association.....	195
State ex. rel. vs. National Salt Co.....	198
State ex. rel. vs. New Pittsburg Coal Co.....	197, 208
State ex. rel. vs. Ohio Manufacturers' Mutual Fire Insurance Co.....	194, 205
State ex. rel. vs. Ohio Oil Co.....	195, 206
State ex. rel. vs. Ohio State Board Medical Reg. & Examination.....	199
State ex. rel. vs. P. C. C. & St. L. R'y Co.....	195
State ex. rel. vs. Rapid Transit Co.....	198
State ex. rel. vs. Semler, Conrad M.....	204
State ex. rel. vs. Solar Refining Co.....	195, 206
State ex. rel. vs. Speidel, H. C., et. al.....	202, 206
State ex. rel. vs. Standard Oil Co.....	194, 205
State ex. rel. vs. Standard Oil Co. of Ohio.....	195, 206
State ex. rel. vs. Sullivan, John J., et. al.....	203, 207
State ex. rel. vs. Toledo, Fremont & Norwalk Railway Co.....	198, 209
State ex. rel. vs. Tontine Surety Co.....	193, 205
State ex. rel. vs. Union Dairy Co.....	197
State Fire Marshal —	
Appropriation for .....	87
Stationery —	
Allowance to county officers.....	159
For State Board of Equalization.....	173
Stationary Boilers —	
Placing safety devices on.....	150

	PAGE
Stationary Engineers —	
Law, discussion of.....	151
Licensing of .....	168
Street Assessments —	
Deducted from credits, right to do.....	103
Streets Western Stable Car Line Co. vs. W. D. Guilbert, Auditor.....	199
Surveyor —	
Deceased, electing successor of.....	170
Employment of .....	58
Unfinished work, right to complete.....	148
Vacancy in office, how filled.....	170
Taxation —	
Bell Telephone Co.....	118
Boards of education.....	12
Cemetery Association, land owned by.....	26
Deducting street assessments from credits.....	103
Fire Insurance Companies.....	183
Land containing oil.....	77
Merchandise under Section 2740.....	175
Secret societies, property belonging to.....	115
Taxes added by Board of Equalization, legality of.....	127
Tax Inquisitor —	
Fees of .....	65
Employment of, by retiring officer.....	162
Telephone Companies —	
Bell, taxation of.....	118
Thomas, Maria F. vs. George Folsom, et. al.....	204
Township Trustees —	
Acting as board of health, power to borrow money.....	188
Ditch supervisors, right to appoint.....	146
Tuscarawas county .....	54
Union Savings Bank & Trust Co. ex. rel. vs. W. S. Matthews.....	203
Warrant —	
Issuance of .....	59
Water Supply —	
Change of source in village.....	25
Wood, C. E., State ex. rel. vs. Charles Kinney.....	203
Young Men's Christian Association —	
Cincinnati, right to confer degrees.....	37

SECTIONS OF THE REVISED STATUTES, (BATE'S 1900), CONSTRUED  
OR REFERRED TO.

Section 2 .....	171
Section 11 .....	170
Section 18 .....	74
Section 56 .....	81
Section 63 .....	36
Section 98 .....	101
Section 123 .....	81
Section 137 .....	173
Section 148c .....	49
Section 148d .....	49
Section 218-8 .....	54
Section 218-32 .....	53

	PAGE.
Section 218-33 .....	54
Section 218-225 .....	70
Section 218-226 .....	70
Section 218-230 .....	70
Section 247 .....	104
Section 247d .....	105
Section 247e .....	105
Section 247f .....	144
Section 284 .....	183, 186
Section 297 .....	166
Section 298 .....	166
Section 299 .....	166
Section 300, 1, 2, 3 .....	166
Section 306-1 .....	87
Section 308 .....	93
Section 308a .....	88, 94
Section 394, 5 .....	175
Section 409 .....	169
Section 409a (94 O. L., 211) .....	170
Section 409d .....	105
Section 409-2 .....	142
Section 409-5 .....	142
Section 409-25 .....	25, 107, 133, 189
Section 409-29 .....	25
Section 475, 8, 80 .....	64
Section 533 .....	55
Section 533-1 .....	31, 32
Section 533-2 .....	31, 32
Section 546, 7 .....	138
Section 553 .....	23
Section 631 .....	51, 72
Section 632 .....	51, 72
Section 640, 1 .....	142
Section 700, 9 .....	72
Section 719 .....	71, 76, 78
Section 752 .....	135
Section 753 .....	131, 134
Section 759 .....	139
Section 769 .....	131
Section 795, 6, 7, 8, 9 .....	25
Section 850 .....	9, 11
Section 876 .....	109
Section 897 .....	24, 28, 29, 33
Section 964 .....	97
Section 968 .....	11, 106
Section 1020 .....	74
Section 1021 .....	10
Section 1029 .....	10
Section 1039 .....	44, 127
Section 1040 .....	127
Section 1069 .....	9, 27, 28, 52, 59, 60, 61
Section 1069a .....	60
Section 1070 .....	27, 28, 52

	PAGE
Section 1071 .....	44, 28
Section 1075 .....	28
Section 1076 .....	27, 28
Section 1078 .....	10
Section 1087 .....	182
Section 1094 .....	65
Section 1096 .....	24
Section 1117 .....	28, 60
Section 1122 .....	110
Section 1129 .....	76
Section 1136-1 .....	43
Section 1137 .....	171
Section 1142 .....	171
Section 1153, 4, 5, 6, 7, 8 .....	19
Section 1157 .....	60
Section 1163 .....	170
Section 1164 .....	74
Section 1167 .....	170
Section 1181 .....	149
Section 1211 .....	23
Section 1221 .....	124
Section 1248, 50 .....	20, 21, 138
Section 1260 .....	23, 60, 63
Section 1261 .....	24
Section 1268 .....	74
Section 1284 .....	160
Section 1297 .....	85
Section 1341 .....	59, 125
Section 1343 .....	59
Section 1345 .....	59, 125
Section 1343-1 .....	65
Section 1346 .....	125
Section 1365-14 to 1365-17 .....	61
Section 1443-1 .....	162
Section 1492 .....	111, 113, 188
Section 1493 .....	111, 113
Section 1494 .....	57
Section 1496 .....	57
Section 1527 .....	24
Section 1561a, b, c .....	73
Section 1615 .....	35
Section 1695 .....	172
Section 1719 .....	51
Section 1722 .....	74
Section 1792 .....	180
Section 1817 .....	182
Section 1824 .....	183
Section 2108 .....	134
Section 2112 .....	134
Section 2113 .....	39
Section 2115 .....	39
Section 2116 .....	96
Section 2121 .....	39, 133, 189



	PAGE
Section 2128 .....	133
Section 2131 .....	40
Section 2133 .....	39
Section 2137 .....	25
Section 2140 .....	39
Section 2148 .....	189
Section 2275a .....	12
Section 2369 .....	43
Section 2433 .....	62
Section 2503 .....	105
Section 2572 .....	29, 30, 107
Section 2572a .....	29, 30, 107
Section 2711-20 .....	11
Section 2730 .....	103
Section 2732 .....	26
Section 2732-3 .....	115, 117
Section 2740 .....	175
Section 2745 .....	183
Section 2749 .....	10
Section 2781, 2 .....	65, 127
Section 2781a .....	118
Section 2789 .....	112
Section 2792 .....	78
Section 2800, 1, 2, 3, .....	127
Section 2804 .....	10, 74
Section 2805 .....	127, 74
Section 2806, 7 .....	74
Section 2813a .....	124, 130
Section 2814 .....	129
Section 2815 .....	74, 135
Section 2816 .....	74
Section 2817 .....	74, 176
Section 2818, 19 .....	176
Section 2834 .....	97
Section 2834-b .....	25, 8
Section 2835, 6 .....	189
Section 2864 .....	172
Section 2938 .....	168
Section 2966 .....	23
Section 2966-38 .....	169
Section 2967 .....	23, 172
Section 2977 .....	172
Section 3022-1 .....	70
Section 3034 .....	101
Section 3045 .....	62
Section 3055 .....	166
Section 3078 .....	101
Section 3079 .....	101
Section 3107-51 .....	20
Section 3107-52 .....	19
Sectino 3107-54 .....	19, 20
Section 3235 .....	67, 100
Section 3236 .....	43

	PAGE
Section 3266 .....	50
Section 3269 .....	13
Section 3571 .....	26
Section 3587 .....	42, 186
Section 3596 .....	42
Section 3630 .....	183
Section 3630 <i>e</i> .....	183
Section 3630 <i>i</i> .....	186
Section 3631 <i>a</i> .....	42
Section 3631—23 .....	42
Section 3632 .....	13
Section 3634 .....	13, 186
Section 3641 .....	12, 13, 14, 15, 21, 22
Section 3641 <i>b</i> .....	14, 21, 22
Section 3653 .....	14
Section 3656 .....	183
Section 3660 .....	14, 22
Section 3662 .....	14
Section 3663 .....	15
Section 3664 .....	13
Section 3686 .....	183
Section 3718 <i>a</i> .....	183
Section 3726 .....	37
Section 3797 .....	43
Section 3821 .....	98
Section 3821 <i>g</i> .....	98
Section 3821 <i>r-z</i> .....	22
Section 3836—3 .....	163
Section 3836—4 .....	165
Section 3863 .....	50
Section 3871 .....	45
Section 3885 .....	160
Section 3893 .....	35
Section 3912 .....	73
Section 3921 .....	122
Section 3927 .....	98
Section 3934 .....	7
Section 3941 .....	7
Section 3951 .....	7
Section 3964 .....	8, 35
Section 3973 .....	12
Section 3977 .....	46
Section 4017 .....	112
Section 4022 .....	134
Section 4022—1-4-5-7 .....	131
Section 4022—8 .....	139
Section 4022—11 .....	132, 180
Section 4029—1 .....	94, 103
Section 4029—2-4 .....	103
Section 4075 .....	103
Section 4163 .....	7
Section 4200—6 .....	27, 36, 105, 125, 174
Section 4364—9 <i>a</i> (94 O. L., 332) .....	140

	PAGE
Section 4364—10 .....	121
Section 4364—11 .....	121, 140
Section 4366 .....	182
Section 4367 .....	172
Section 4369 .....	182
Section 4379—1 .....	88
Section 4405 .....	145
Section 4406 .....	107
Section 4407 .....	141
Section 4408 .....	107
Section 4410 .....	31
Section 4412 .....	145
Section 4454 .....	148
Section 4455 .....	149
Section 4494 .....	148
Section 4504 .....	11
Section 4664 .....	58
Section 4745—1 .....	139
Section 4745—5 .....	140
Section 4758 .....	58
Section 4760 .....	58
Section 4772 .....	58
Section 4773 .....	58
Section 4777 .....	38
Section 4796 .....	38
Section 4808 .....	38
Section 4812 .....	38
Section 4957 .....	23
Section 5050 .....	172
Section 5136 .....	23
Section 5198/ .....	166
Section 5393 .....	172
Section 5747 .....	92
Section 6044 .....	65, 66
Section 6419 .....	172
Section 6445 .....	172
Section 6467 .....	128
Section 6470 .....	51
Section 6871 .....	166
Section 6940 .....	135
Section 6961 .....	79
Section 6966 .....	181
Section 6966—1 .....	181
Section 6968 .....	181
Section 6994 .....	134
Section 7092 .....	132
Section 7095 .....	132
Section 7129 .....	40
Section 7229 .....	59
Section 7245, 46 .....	35
Section 7379 .....	95
Section 7388—5 .....	90
Section 7388—9 .....	158

	PAGE
Section 7388—12 .....	48
Section 7406 .....	174
Section 7417 .....	128

## SESSION LAWS, 1900.

94 Ohio Laws, page 33 .....	151, 168
94 Ohio Laws, page 66 .....	168
94 Ohio Laws, page 96 .....	139
94 Ohio Laws, page 142.....	146
94 Ohio Laws, page 197.....	167
94 Ohio Laws, page 210.....	169
94 Ohio Laws, page 211.....	170
94 Ohio Laws, page 246.....	124, 135
94 Ohio Laws, page 248.....	156
94 Ohio Laws, page 317.....	161
94 Ohio Laws, page 332.....	140
94 Ohio Laws, page 336.....	124, 135, 176
94 Ohio Laws, page 369.....	119
94 Ohio Laws, page 386.....	183
94 Ohio Laws, page 391.....	168
94 Ohio Laws, page 611.....	153
94 Ohio Laws, page 638.....	160

PORTIONS OF THE CONSTITUTION CONSTRUED OR  
REFERRED TO.

Article 1, Section 7 .....	15
Article 1, Section 12.....	16
Article 1, Section 14.....	128
Article 2, Section 1 .....	116
Article 2, Section 6 .....	154
Article 2, Section 9 .....	81
Article 2, Section 17.....	81, 92
Article 2, Section 20.....	24, 52, 54, 93, 95
Article 2, Section 22.....	49, 69
Article 4, Section 1 .....	56
Article 6, Section 2 .....	16
Article 7, Section 1 .....	120
Article 8, Section 1 .....	17, 18
Article 8, Section 2 .....	18
Article 8, Section 3 .....	18
Article 12, Section 2 .....	26, 116
Article 12, Section 3 .....	116
Article 12, Section 5 .....	98