Land Leases, Indian Lake	
Peter Schlegel, Russels Point, O	$21,250 00
Earl R. Barnett, Washington C. H	500 00
Land Leases	
C. B. McConnell	$1,986 66
The Cleveland Electric Illuminating Co., Cleveland, O	1,500 00
Water Leases	*Annual Rental*
The Village of New Bremen, O	$150 00
The Delphos Bending Co., Delphos, O	96 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2209.

SHERIFF—DISCUSSION OF WHAT CONSTITUTES LEGAL NAME—HOW CHANGED—IDENTITY OF PERSON THING TO BE LOOKED AT—WHERE ONE "GEORGE L. EWING" SO CHRISTENED—SIGNS NAME "BOB EWING."

1. *A legal name consists of one Christian or given name and one surname or family name. The given name may consist of initials only. A middle name may be omitted in the legal designation of a person.*

2. *Both by statute and at common law a person can change his name. He can also change his name without legal proceedings, assuming and adopting one wholly different from that given at birth or baptism, when honestly, openly and sincerely done.*

3. *Under the opinions cited and the law, the identity of a person is the thing to be looked to, and your sheriff may sign as Bob Ewing any writs, processes or official papers of his office.*

COLUMBUS, OHIO, June 29, 1921.

HON. KARL TIMMERMEISTER, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion, which reads as follows:

> "The sheriff of Auglaize county was christened 'George L. Ewing,' but has always gone by the name of 'Bob Ewing' and has always signed his name in this manner. His name was so placed on the ballot and his commission is 'Bob' and bond given as 'George L. Ewing.'
>
> The question has arisen as to whether there would be any legal objection to his signature of 'Bob Ewing' on legal documents connected with his office.
>
> Your opinion on this matter will be appreciated."

The question you ask is unusual and interesting, but is not unknown or unique in the law, and has many times, in one form or other, been the sub-

ject of careful and exhaustive judicial discussion, research and determination.

Since your inquiry is general, or rather since it relates to no particular fact or act, the discussion of it herein must be more or less discursive and general in scope and statement.

From other sources, confirmative of the information your statement gives, it is learned that your sheriff since the time he was about four years old has used the name of "Bob" Ewing, and has neglected the name of "George L," by which he was christened.

It is interesting to remember that that great American soldier, Ulysses Sidney Grant, was christened "Hiram Ulysses." When he was appointed a cadet at West Point, by mistake his name became confused with that of his brother, by the person recommending the appointment. So that his name got upon the rolls of the military academy as Ulysses Sidney Grant and by that name he will forever be known. Another great American president was christened "Stepen Grover Cleveland," but in his early boyhood dropped the name Stephen and assumed that of Grover Cleveland—a name by which he will always be known. The great African explorer, Henry M. Stanley's real name was John Rowlands. James B. Taylor became Bayard Taylor; James B. Mathews, Brander Mathews. Mark Twain is the pseudonym or pen name of Samuel L. Clemens, and Artemus Ward, that of Charles R. Browne. George Eliot is the pen name of a woman, Mary Ann Evans.

This list might be much enlarged. Current history is not without similar examples. Woodrow Wilson, twice elected president of the United States, was christened Thomas Woodrow Wilson. At the very election, and perhaps on the same ballot by which Bob Ewing was elected sheriff of your county, there appeared a candidate for governor under his popular name of "Vic" Donahey, though for eight years prior thereto he had been signing his name officially as auditor of state for Ohio as A. V. Donahey, "Vic" being an abridgment of his second name.

So that your sheriff, who was christened "George L." but elected as "Bob" Ewing, has some very distinguished examples among former and recent great American officials to cite in support of a claim that identity of a person, as shown by the appellation by which he is best known in the community and among his friends, may indicate whether he shall sign himself by one name or another.

"Name" has been variously defined or described by dictionaries and courts. The following examples are quoted:

A name is

> "A word by which a person or thing is denoted; the word or words by which an individual person or thing, or a class of persons or things is designated and distinguished from others."
>
> *Century Dictionary.*

> "One or more words used to distinguish a particular individual."
>
> *Bouvier's Law Dictionary.*

> "The designation by which one is known in his community."
>
> *Laflin, etc., Co.* vs. *Steytler,* 146 *Pa. St.* 434.

From 29 Cyc. 264, the following is quoted:

> "By the common law, since the time of the Norman Conquest, a legal name has consisted of one Christian or given name, and of one

surname, patronymic or family name. The surname or family name of a person is that which is derived from the common name of his parents, or is borne by him in common with other members of his family; the Christian name is that which is given one after his birth or baptism, or is afterwards assumed by him in addition to his family name. Therefore, at common law, an indictment or affidavit, in a criminal prosecution was defective, unless, in addition to the surname of the defendant, it contained his Christian name, or an allegation that he had no Christian name, or that it was unknown. In a civil action a person may sue or be sued by his surname alone."

In the opinion of the court in the case of Uihlein vs. Gladieux, 74 O. S. 232, at page 247 we find the following:

"Coming to the direct question, did the justice of the peace acquire jurisdiction over Lucy Rogers? She was sued as Mrs. Wm. Rogers whose first name is unknown, and the judgment was rendered with the same designation. Was it her name in law? * * * The law recognized one Christian name or given name and one family surname. Bouvier's Law Dict., 467; 21 Am. & Eng. Ency. Law, 306. At marriage the wife takes the husband's surname, and, to distinguish her from the husband, is called Mrs. or Mistress, not as a name but as a mere title; but otherwise her name is not changed. This person's real and legal name, therefore, was Mrs. Lucy Rogers, and not Mrs. Wm. Rogers."

In Hare vs. Harrington, Wright 290, the syllabus says:

"Where one is sued by a wrong name, and declared against by his right name as sued by the wrong name, it is no error, particularly if the defendant appears and answers."

A person may change his name. This may be done by statute. See section 12209 G. C. The law governing change of name on the adoption of an infant not the child of the adopters is found in sections 8024 G. C. et seq. At common law one could change his name. Linton vs. Bank, 10 Fed. 894; Commissioners vs. Trainor, 123 Mass. 415. Statutes enacted for effecting a change of name are not usually in derogation of the common law, but rather in furtherance thereof, furnishing an additional method of effecting such change. See Laflin, etc., Co. vs. Steytler, supra.

Again, in 29 Cyc. 270, it is said:

"Without abandoning his real name, a person may adopt any name, style or signature, wholly different from his own name, by which he may transact business, execute contracts, issue negotiable paper and sue and be sued. * * * A man may legally change his name without resort to legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth. It is sufficient in legal proceedings that a person is designated by a name by which he is commonly known and called, even though it is not his true name."

In support of this dicta the following Ohio cases are cited:

Goodenow vs. Tappan, 1 Ohio, 61;
Mack vs. Schlotman, 3 Wk. L. Bull. 737;
Donaldson vs. Donaldson, 31 Wk. L. Bull. 102.

"A man may sue by the name by which he has been known from childhood instead of that given him by his parents."

Donaldson vs. *Donaldson,* supra.

"Plea in abatement misnomer in plaintiff's baptismal name; replication that the plaintiff is known by one name as well as the other, good. To the replication defendant demurred and the demurrer was overruled."

Goodenow vs. *Tappan,* supra.

The common law is but the sublimated experiences and usages of the centuries, gathered into maxims or rules, and fostered, developed and followed as the law of the land. So it is not strange that at common law one could change his name, when the history of the development and origin of names as designations of particular persons is followed and considered.

Surnames first began to appear after the Norman Conquest, which occurred more than eight hundred years ago. They were frequently accidental in origin, being chosen because of vocation, physical, moral or mental characteristics, fear, ridicule, color, and reputation. John, the smith, or William, the miller, became John Smith and William Miller. So we have Strong, Hardy, Long, Short, Moody, Wise, Stout, Good, White, Brown and Black. To distinguish father from son, we have John's son as Johnson or Johns. Among the Normans "Fitz" was added to the father's name to distinguish the son, as Fitzgerald, son of Gerald; among the Celts "Mac" was added to designate the son, and "O" the grandson, so, Shea, the father, had MacShea for a son and O'Shea for a grandson. But though for several centuries the practice of giving or assuming surnames was general, it extended little further than the particular individual of which it was the designation or mark.

In the reign of Henry VIII, Cromwell, secretary to the king, established a regulation by which a record was required to be kept in every parish of births, deaths and marriages. This operated to check caprice in the selection of names and fix the appellation, and so there slowly arose the custom of the children and the wife, at marriage, of taking the father's and husband's surname, as we have it today. See Snook's Petition, 2 Hilt. (N. Y.) 566.

"A Christian name may consist simply of a letter or letters, whether vowels or consonants, and where the surname is preceded by single letters there is no presumption that they are merely initial rather than the full Christian name of the person designated. The use of initials, however, instead of a Christian name, before a surname, is a common practice now and has come to be recognized as a sufficient statement of the person's name."

—29 Cyc. 269.

In Herf vs. Shulze, 10 Ohio 263, the opinion says:

"The general analogies of the law, both in England and in most of the United States, require a plaintiff to describe himself by his proper Christian, as well as surname. Names are the *indicia* by which

persons, as well as things, are distinguished from each other, and the want of either the Christian or surname, as well as a misnomer, may be taken advantage of by plea in abatement, or by motion to discharge on common bail."

In Price vs. State, 19 O. 423, the syllabus says:

"In a criminal proceeding, it is not necessary to insert the middle letter in a person's name; but if inserted, it must be proved as laid."

In Smith vs. State, 8 Ohio, 295, it is held that:

"An indictment designating the accused by initial letters, as a baptismal name, is good after verdict."

In Lasure vs. State, 19 O. S. 43, the indictment was presented against Henry Lasure. A plea in abatement disclosed his true name to be William H. Lasure, which, thus disclosed, was entered on the record and the trial proceeded. This was held good under section 13626 G. C., and not in contravention of section 10, article I of the Constitution of Ohio.

In the opinion in Wagner vs. Ziegler, 44 O. S. 65, the following is found:

"The reason urged in argument why the motion should have been sustained, is that C. F. Steinkamp, one of the parties named in the bond as appellant, was not a party to the suit. * * * One of the defendants of record is Christian Steinkamp, Sr. * * * For aught that appears, it may have been shown that the party named as C. F. Steinkamp in the bond was the identical party defendant named as Christian Steinkamp, Sr., in the petition. The middle initial is not infrequently dropped in the naming of parties, and it is not unreasonable to treat the affix of 'Sr.' as a superfluity."

In State vs. Miller, 13 O. C. C. 67; 7 O. C. D. 553; which was affirmed in 55 O. S. 685, it is held:

"A warrant describing the accused by the initials only of his given name, is not void, and justifies the arrest; and so though the affidavit also gave only initials."

In Mead vs. State, 26 O. S. 505, the syllabus says:

It is for the jury to say whether the *person* intended to be described in the indictment is the same as that described in the proof."

This case is one where the plaintiff was indicted for the murder of Elisha Davidson. The proof on trial showed the deceased's name to be Elijah B. Davison.

Again, in State vs. Schaeffer, 96 O. S. 215, the syllabus says:

"Where an indictment for manslaughter charges the defendant with having 'unlawfully killed Adelbert Chaky, sometimes otherwise known as Buley Csaki,' and there is no evidence tending to prove the alias, or that both names were the names of the same person, such failure is not a fatal variance, because it is not prejudicial to the

merits of the case and the substantial rights of the defendant. (Goodlove vs. The State, 82 Ohio St., 365, disapproved.)

In Smith, Admx., vs. U. S. Casualty Co., 197 N. Y. 420, Myron W. Maynard, in 1892, when about twenty-two years of age, assumed and adopted the name of Maurice W. Mansfield, and in 1901 took out a life insurance policy under his assumed name. In the syllabus the court says:

> "A man may, in good faith, for an honest purpose, change his name without resort to legal proceedings, by adopting a new one, and for many years transacting his business and holding himself out to his friends and acquaintenances thereunder with their acquiescence and recognition."

The court also held the policy valid, though taken out under the assumed name.

Excerpts and quotations from Ohio decisions, and decisions of other jurisdictions, have here been set out at considerable length, and considerable search has been made to show what the law holds to be a correct and legal name. It is believed that the authorities cited, which, by the way, do not exhaust the list, show that identity of a person in any case is controlling, and when so shown by proof will hold the designated person to the acts alleged; that a legal name may be assumed, though different from that given at birth or baptism, when honestly done; that a legal name consists of a given or Christian name and a surname or family name; that Mr. and Mrs. are titles; that a middle name or initial may be neglected in the description in a petition or process; that the affixes "Sr." and "Jr." are usually superfluities; and that the use of initials has become so much a custom among people as to be recognized as given names.

It is familiar law in Ohio that the maker of a negotiable instrument may be used by the name signed to such instrument, and proof adduced to show the identify of the person signing, though commonly known by another name, and that a wrongfully designated payee may sue under his right name. See Numlin vs. Westlake, 2 Ohio, 24; Osborn vs. McClelland, 43 O. S. 284.

It is provided by law that a plaintiff may sue defendant under a fictitious name (see section 11367 G. C.; and that an action must be brought in the name of the real party in interest (sections 11241 G. C. et seq.)

John Doe warrants and affidavits are common processes, quite effective against a proven and properly identified malefactor.

It is significant that our election laws look to the identity of the person. In section 4969 G. C., "Declarations of candidacy shall be signed and acknowledged by the person desiring to become a candidate." Section 5104 G. C. says: "The person having the greatest number of votes shall be declared duly elected, and the governor shall transmit to him by mail a certificate of his election;" and section 5109 G. C., that "the board of deputy state supervisors of elections * * * shall make and, upon demand, deliver to the persons elected * * * certificates of their election." In State vs. Foster, 38 O. S. 599, the opinion says:

> "If H. L. Morey and Henry L. Morey designate the same person, as appears from the returns read in the light of such facts of public notoriety connected with the election as every one takes notice of, the defendants have performed their duty correctly in giving the certificate to Henry L. Morey."

And the election to congress of Henry L. Morey, though voted for as H. L. and Henry L., was held valid, since no evidence was produced to show that he was not the person intended in each case to be voted for.

In view of the facts set out in your statement, and the decisions cited, it must be said that the identity of the person signing writs and processes is the thing to be looked to, and your sheriff may sign as Bob Ewing.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2210.

APPROVAL, REFUNDING BONDS OF WARREN CITY SCHOOL DISTRICT IN THE AMOUNT OF $200,000.

COLUMBUS, OHIO, June 29, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2211.

APPROVAL, BONDS OF LAKE COUNTY IN THE AMOUNT OF $89,000, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 29, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2212.

APPROVAL, BONDS OF SPRINGFIELD CITY SCHOOL DISTRICT IN THE AMOUNT OF $230,000.

COLUMBUS, OHIO, June 29, 1921.

Industrial Commission of Ohio, Columbus, Ohio.