

*Dr. Gundry; Eligibility of as Superintendent of Ohio Central Asylum—Boards of Education; Right to Insure Property.*

DR. GUNDRY; ELIGIBILITY OF AS SUPERINTENDENT OF OHIO CENTRAL ASYLUM.

Office of the Attorney General,  
Columbus, Ohio, January 4, 1881.

*Dr. A. G. Byers, Secretary State Board of Charities:*

DEAR SIR:—Your question as to whether Dr. Gundry is eligible to appointment as superintendent of the Columbus Asylum for Insane has been received.

The answer depends entirely on the fact as to whether Dr. Gundry "possesses the qualifications of an elector" in this State. (See Ohio ex rel. the Attorney General vs. Charles L. Wilson, 29th Ohio State Reps., page 847).

Sections 2945 and 2946 of the Revised Statutes of Ohio very clearly define the qualifications of an elector. I do not know that I can throw any light upon them by anything that I may say. If, however, you think I can do so, I will be very glad to confer with you at any time.

Very truly yours,

Attorney General.  
GEO. K. NASH,

BOARDS OF EDUCATION; RIGHT TO INSURE PROPERTY.

Office of the Attorney General,  
Columbus, Ohio, January 4, 1881.

*Mr. Noah J. Dever, Portsmouth, Ohio:*

DEAR SIR:—I owe you an apology for not answering your favor of December 8th, before this time. I have

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*When the Attorney General Must Prosecute in the Court of  
Common Pleas.*

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been so much engaged that it has been impossible to do so.

Sections 3971 and 3972 of the Revised Statutes seem to me to be very broad. They make the boards of education bodies corporate capable of suing and being sued, contracting and being contracted with; they intrust them with the power of acquiring, holding, possessing and disposing of the school property of their several districts.

With such broad power as these, it seems to me that they have a right to do anything that is necessary for the preservation and proper care of this property.

If they deem it wise or prudent to insure this property against loss by fire, I am inclined to the opinion that their authority is broad enough to do this. I think that it has been the custom, especially in the towns and cities, for boards of education to insure school property.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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WHEN THE ATTORNEY GENERAL MUST PROSECUTE IN THE COURT OF COMMON PLEAS.

Office of the Attorney General,  
Columbus, Ohio, January 5, 1881.

*Hon. J. R. Barnhill, New Philadelphia, Ohio:*

DEAR SIR:—I have delayed answering your favor of December 25th before this for the reason that the questions raised were new to me, and with all of the consideration that I have been able to give them, I have not formed an opinion that is satisfactory to myself.

I do not think that it is the duty of the attorney general, under section 202, to appear in any case in which the

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*When the Attorney General Must Prosecute in the Court of  
Common Pleas.*

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State is directly interested, in any court except the Supreme Court until he is directed to do so by the governor or the General Assembly. Even under this direction, I doubt whether it is his duty to appear in any other capacity than that of attorney for the State. The board of public works are the officers having the canals in their custody, and if it is necessary to bring an action for their protection, is it not their duty to see that it is commenced? If it is necessary to bring the action in the name of the State, may it not be done on the relation of the board of public works?

It is true that section 213 appears under the chapter relating to the attorney general, but it does not seem to me that its provisions are exclusively applicable to actions brought by the attorney general. Its terms are very broad. It says: "No undertaking or security is required on behalf of the State or any officer thereof in the prosecution or defense of any action, writ, or proceeding."

If the board of public works has authority to bring the proposed action in their name, or in the name of the State, is not this section broad enough to relieve them from the giving of a bond?

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Prosecuting Attorney; Salary of, How Fixed.*

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PROSECUTING ATTORNEY; SALARY OF, HOW  
FIXED.

Office of the Attorney General,  
Columbus, Ohio, January 6, 1881.

*Mr. E. W. Stuart, Prosecuting Attorney, Akron, Ohio:*

DEAR SIR:—Your favor of yesterday has been received. I have given considerable thought to the matter therein contained and it has been a troublesome one to me.

Originally the General Assembly had the right to fix the salary or compensation of the prosecuting attorney as well as of other officers.

By section 1297 of the Revised Statutes, the Legislature has delegated this power to county commissioners, which provides that in certain counties the prosecuting attorney shall receive an annual salary not exceeding two dollars for each one hundred inhabitants at the next preceding federal census. My idea is that after each census is officially promulgated, the commissioners of these counties may fix a salary for the prosecuting attorney, which shall not exceed two dollars for each one hundred inhabitants. They have the right, I think, at any time thereafter, to make an order increasing or diminishing the salary, provided that it does not at any time exceed the limit of two dollars for each one hundred inhabitants at the next preceding census.

At this point I think that section 20, of Art. II of the constitution steps in, and that if the commissioners increase or diminish the salary of the prosecutor as previously fixed by them, such order will not affect the salary of the prosecutor then in office. I suppose that after the census of 1870 was made known, the commissioners of your county fixed the salary at a sum not exceeding two dollars for each one hundred inhabitants. When the census of 1880 is made known, they will have the

County Commissioners; Power to Employ Attorneys.

right to again fix the salary at a sum not exceeding two dollars for each one hundred inhabitants found by this census. If your term of office commenced prior to the fixing of the order by the commissioners under the census of 1880, I fear that Art. II, Sec. 20, of the constitution prohibits you from receiving the benefits of any increase that may be made.

I have just glanced again at your letter, and I notice that your term of office expired last Monday. I hope that your commissioners made a new order, fixing a salary in accordance with the census of 1880.

If this matter has been delayed, until after Mr. Baird takes possession of the office, will not section 20, Art. 2, of the constitution operate against him during his whole term of two years?

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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COUNTY COMMISSIONERS; POWER TO EMPLOY ATTORNEYS.

Office of the Attorney General,  
Columbus, Ohio, January 6, 1881.

*Mr. John T. Hire, Prosecuting Attorney, Greenville, Ohio:*

DEAR SIR:—Under and by section 845 of the Revised Statutes, county commissioners are authorized to employ counsel *in all suits brought by or against them*. I do not understand that this section authorizes them to employ an attorney to act as their adviser. Section 1274 confers this responsibility upon the prosecuting attorney, and to his advice the commissioners are limited.

It is only in actions actually commenced, that they can employ counsel other than the prosecuting attorney.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Is an Indictment Rendered Fatally Defective by the Omission  
of Time and Place When Once Stated?*

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IS AN INDICTMENT RENDERED FATALLY DEFECTIVE BY THE OMISSION OF TIME AND PLACE WHEN ONCE STATED?

Office of the Attorney General,  
Columbus, Ohio, January 7, 1881.

*Hon. John McSweeney, Wooster, Ohio:*

DEAR SIR:—Since the receipt of your favor of December 27th, my time has been so employed that I have not had an opportunity to examine and answer your question until today.

I suppose that the indictment which you are considering, reads as follows:

“The jurors of the grand jury of the State of Ohio, impaneled and charged to inquire of offenses committed within the said county of Wayne, in the name and by the authority of the State of Ohio on their oaths do find and present that A. B., late of said county on the 2nd day of November, A. D., 1880, in the county of Wayne aforesaid, did unlawfully sell spirituous liquors to one C. D., said second day of November, A. D., 1880, being the day on which a certain election duly authorized by law, was held, as he, the said E. F., then and there well knew.”

If I understand your question, it was this: “Does the omission of the words ‘then and there,’ after the word ‘was’ and before the word ‘held’ in the 10th line make the indictment fatally defective?”

Section 7215 of the Revised Statutes cures many matters, which in former days were fatal defects in an indictment. You will find these words in the section, “Nor for the want of an allegation of the time or place of any material, when the time and place have once been stated in the indictment.” Do not these words hit your objection between the eyes? The time and place where the selling took place have been alleged. The fact of an election be-

*Compensation of County Auditors Under the "Dog-tax Law."*

ing held at the same time and place is a material fact. It seems to me that the defect which you point out is just such a defect as the General Assembly tried to cure by the words I have quoted from section 7215.

Very sincerely yours,

GEO. K. NASH,  
Attorney General.

COMPENSATION OF COUNTY AUDITORS UNDER THE "DOG-TAX LAW."

Office of the Attorney General,  
Columbus, Ohio, January 12, 1881.

*Hon. W. S. Copelle, Auditor, Cincinnati, Ohio:*

DEAR SIR:—Your favor bearing the date of the 11th inst., was received this morning.

I regret that it did not arrive earlier so that I could talk personally with you upon the subject therein contained.

I have given this subject some thought heretofore, and have consulted with Auditor Oglevee in regard to it.

I believe that it is conceded that the statutes regulating and prescribing the fees of county auditors do not prescribe directly a compensation for the extra work imposed by what is known as "the dog tax law." I understand that it is claimed by those who maintain that county commissioners may make an allowance for these extra services, that, in effect, the General Assembly does not possess the power to impose a new duty upon a public officer without providing compensation therefor. I do not think that this is a correct proposition. I do not doubt the power of the General Assembly to do this.

The commissioners of a county have no power to

*Power of Commissioners to Levy Tax for Children's Home.*

compensate any county officer, unless they are especially authorized so to do by the General Assembly. The power to fix the term of office and the compensation of county officials is, by Art. II, Sec. 20, of the constitution, vested in the General Assembly. If there is no provision of law providing a compensation for services rendered by auditors under the dog-tax law, my belief is that this service must be considered as paid for by the general compensation provided for county auditors in sections 1069, 1070, and 1072 of the Revised Statutes of Ohio.

The auditor of state concurs in the belief which I have expressed. The subject is not without doubt in my mind, and I wish that it could be definitely settled by some court of competent jurisdiction. Mr. Stroder, formerly auditor of this county, and, I am informed, our present auditor, have never received any compensation for serving under the dog-tax law. In one conversation Mr. Stroder informed me that he entertained some doubt about his legal right to be given such compensation. It is possible that he and our present auditor may take steps to determine their rights in the premises.

Very truly yours,

GEO. K. NASH,  
Attorney General.

POWER OF COMMISSIONERS TO LEVY TAX  
FOR CHILDREN'S HOME.

Office of the Attorney General,  
Columbus, Ohio, January 12, 1881.

*Mr. M. S. Bartram, Auditor, Ironton, Ohio:*

DEAR SIR:—Section 929 contains these words:

“And if a majority of electors voting at such general election in such county, or in the counties of such district, are in favor of establishing said home, then the commissioners of said county, or the



*Power of County Commissioners to Make Allowance to Auditor for Extra Labor in Making a Special Tax Duplicate.*

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commissioners of any two or more adjoining counties in such district, having so voted in favor thereof, shall provide for the purchase of a suitable site, and erection of the necessary buildings, to be styled the Children's Home for such county or for such district, and provide means by taxation for such purchase and support of the same."

If your Children's Home was established after a vote taken by your people in accordance with law, I think that there is no doubt about these words giving the commissioners power to levy a tax.

Truly yours,

GEO. K. NASH,

Attorney General.

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POWER OF COUNTY COMMISSIONERS TO  
MAKE ALLOWANCE TO AUDITOR FOR EX-  
TRA LABOR IN MAKING A SPECIAL TAX  
DUPLICATE.

Office of the Attorney General,  
Columbus, Ohio, January 13, 1881.

*Mr. W. H. Leete, Prosecuting Attorney, Waverly, Ohio:*

DEAR SIR:—You ask whether the commissioners of your county have authority of law for making an allowance to your county auditor for his labor in making a special duplicate, necessitated by the levying of a tax to pay the bonds, and interest, issued for the construction of an improved road, under the acts of May 20, 1879, and June 12, 1879.

I have carefully examined the matter, and conclude that they have the power. In this opinion the auditor of state concurs.

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*Notary Public; Must be Resident of State.*

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My conclusion is that the acts providing for the construction of this road, are improved road laws within the meaning of section 1075 of the Revised Statutes, and that your auditor is entitled to such compensation as that section prescribes.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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NOTARY PUBLIC; MUST BE RESIDENT OF  
STATE.

Office of the Attorney General,  
Columbus, Ohio, January 13, 1881.

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

DEAR SIR:—Mr. A. W. Gaines, in his letter, referred to me from your department, asks to be appointed a notary public.

From Mr. Gaines' letter it appears that he has resided in this State for about two months, and no more.

Article XV, Sec. 4, of the Constitution of Ohio provides that "no person shall be elected or appointed to any office in this State, unless he possesses the qualifications of an elector.

A notary public is an officer and his position is an office.

Article V, Sec. 1, of the constitution prescribes that no male citizen can be an elector, until he has been a resident of this State for one year.

Mr. Gaines is not eligible to the office he seeks.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Payment of Costs of Surveyors or Engineers—Clerks of  
the General Assembly.*

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PAYMENT OF COSTS OF SURVEYORS OR EN-  
GINEERS.

Office of the Attorney General,  
Columbus, Ohio, January 14, 1881.

*Mr. C. L. Kennedy, Prosecuting Attorney, Toledo, Ohio:*

DEAR SIR:—I have just been shown a letter which I wrote you upon the 23rd of November.

In coming to the conclusion which I did in answer to your letter, I overlooked section 4456 of the Revised Statutes, and in so doing made a serious blunder. These words appear in section 4456: "and 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."

These words, at least by implication, authorize the payment of all costs incurred by the surveyor or engineer under sections 4454, 4455 and 4456. This, I think, would cover transportation and subsistence.

I hope that this blunder has not caused serious inconvenience.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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CLERKS OF THE GENERAL ASSEMBLY.

Office of the Attorney General,  
Columbus, Ohio, January 24, 1881.

*Hon. J. F. Oglevee, Auditor of State:*

DEAR SIR:—I have received your favor enclosing a certificate drawn by Jno. A. Williamson, speaker pro tem. of the House of Representatives upon you, certifying that

*Clerks of the General Assembly.*

Larin Carr is entitled to the sum of forty-five dollars for nine days' attendance as an assistant clerk of the house for the adjourned session.

You inform me that Mr. Carr was employed by the clerk of the House of Representatives, and that he claims that his authority to act is given by certain proceedings of the House, had upon the 25th of March, 1880. These proceedings are as follows:

The speaker laid the following communication before the house:

"Columbus, Ohio, March 24, 1880.

"*Hon. Thomas A. Cowgill, Speaker of the House of Representatives:*

"SIR:—The business of the session is now so far advanced that additional clerical help is absolutely necessary for the prompt and efficient dispatch of the business of the House.

"I would therefore request that the House extend to me the power to employ additional aid as may be necessary.

"Very respectfully,  
"D. J. EDWARDS, Clerk."

Mr. Carpenter offered the following resolution:

"*Resolved,* That the clerk of this House be and is hereby authorized to employ such additional clerical force and to discharge the same from time to time as he may deem necessary."

The question being on the adoption of H. R. No. 77, the yeas and nays were ordered and resulted: yeas, 74; nays, 11.

This action was attempted to be taken by the house under section 29 of the R. S.

It is as follows:

"No additional assistant clerks or assistant sergeants-at-arms shall be elected or appointed in either branch of the General Assembly for two weeks after the organization thereof; and none

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*Clerks of the General Assembly.*

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thereafter, except on the application of the clerk or sergeant-at-arms, stating the number necessary, and the passage of a resolution by such branch, providing therefor, and such resolution may provide either for the election of such assistants, or for their appointment by the clerk and sergeant-at-arms respectively."

The action of the house upon the 25th of March, 1880, was void at the time it was taken, and the lapse of time has not given it validity. Before the house can authorize additional clerks, it must have an application from its clerk, "stating the number necessary." To give the house jurisdiction over the matter, it is just as vital that the clerk should state the number necessary, as it is that there should be an application from the clerk.

This the clerk did not do in the matter under consideration. The law has given the house ample means to secure all of the clerical force its necessities require. It has pointed out in plain and simple language how this may be done. If the clerk and the house attempt to secure clerks in another way, their action, like the actions of an executive officer who attempts to hire assistants and to pay them from the public funds in a way not authorized by law, is void.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Special Levy; How Anticipated.*

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## SPECIAL LEVY; HOW ANTICIPATED.

Office of the Attorney General,  
Columbus, Ohio, January 24, 1881.

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

DEAR SIR:—Your favor of the 22nd inst. has been received. I think that your commissioners have exceeded their authority in expending their bridge fund before it was collected.

Section 2823 provides when and how a levy for a special tax for bridge purposes may be anticipated. If the commissioners have power to anticipate and expend the fund for road and bridge purposes before its collection, it was a work of supererogation on the part of the General Assembly to provide how they could anticipate a special levy.

The law is silent as to when the council shall make demand for its share of the fund for road and bridge purposes.

It is my belief, however, that a demand made before its collection must be complied with. This is founded upon the idea that the commissioners have no right to expend it until it is collected.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Asylum for Insane; Discharge of Patients from.*

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## ASYLUM FOR INSANE; DISCHARGE OF PATIENTS FROM.

Office of the Attorney General,  
Columbus, Ohio, January 24, 1881.

*Mr. L. C. Laylin, Prosecuting Attorney, Norwalk, Ohio:*

DEAR SIR:—Your favor making inquiries in regard to sections 709 and 710 has been received.

I think it is within the discretion of the superintendent of the asylum to discharge a patient under section 710, or to give notice to the probate judge, as provided in section 709. When the probate judge receives such notice, he has no discretion. He must issue his warrant as provided in section 709.

In many cases, perhaps in most, when persons are discharged as cured, the mind is in such a feeble condition that a slight shock would again impair it. In such cases it would be the duty of the superintendent to require the probate judge to issue his warrant. In cases where there is absolutely no necessity for an attendant, the discharge may be made under section 710.

The matter should be left absolutely to the discretion of the superintendent of the asylum, as he can best judge of the necessities of the case.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Mayors of Cities; Power to Empanel a Jury, Etc.—Sheriff;  
Liability of Costs on Conviction of Felony.*

MAYORS OF CITIES; POWER TO EMPANEL A  
JURY, ETC.

Office of the Attorney General,  
Columbus, Ohio, January 24, 1881.

*Mr. Otto E. Young, Massillon, Ohio:*

DEAR SIR:—Section 1820 of the Revised Statutes empowers mayors of cities to empanel a jury of twelve men, and to try and finally dispose of a misdemeanor in the name of the State of Ohio, upon affidavit, and without indictment. This is not in conflict with section 10, article 1, of the constitution. See *Dillingham vs. State*, 5th O. R. Rep., 280.

In such a case the fees of witnesses and jurors, under section 1842 of the Revised Statutes may be paid out of the county treasury.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

SHERIFF; LIABILITY FOR COSTS ON CONVIC-  
TION OF FELONY.

Office of the Attorney General,  
Columbus, Ohio, January 25, 1881.

*Mr. John F. Hire, Prosecuting Attorney, Hillsboro, Ohio:*

DEAR SIR:—Your favor of the 17th inst. has been received. I have delayed answering in the hope that I might get time to investigate authorities and give an answer that would be satisfactory to you. This time I have not had at my disposal. The question raised is this: "Is a sheriff, who receives from the State the amount of



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*County Auditor; Power to Discharge from Jail for Non-payment of Fine.*

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the costs where a person has been sent to the penitentiary liable upon his bond therefor?" It has been the custom for years for the sheriffs, when they deliver prisoners at the penitentiary, to take the cost bills, after they have been approved by the warden, to the auditor of state, and to take his warrant to the treasury and to receive the money. If sheriffs' bonds are not responsible for this money it is high time that we would find it out. If you have a case of this kind, my suggestion is that you press it in the courts until a final authoritative decision of this question is obtained. The money received at the state treasury is composed of three parts: Sheriffs' fees, clerks' fees, and witness fees. The first belongs to the sheriff, the second to the clerk, the third to the county, as the witness fees have been paid out of the county treasury. My impression is that two actions should be brought, one in the name of the State for the use of the clerk, and one in the name of the State for the use of Highland County.

A careful examination of sections 4993, 4994 and 4495 of the Revised Statutes, and of the decisions cited in the foot notes, will probably disclose whether I am right.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY AUDITOR; POWER TO DISCHARGE  
FROM JAIL FOR NON-PAYMENT OF FINE.

Office of the Attorney General,  
Columbus, Ohio, January 28, 1881.

*Mr. M. W. Johnson, Prosecuting Attorney, Youngstown,  
Ohio:*

DEAR SIR:—I desire to modify somewhat, or perhaps to make more definite and certain, an opinion which I

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*Bondsmen of Sheriff Responsible for Costs in a Criminal Case.*

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gave to you upon the 29th of December, last, in regard to the duty of county auditors under section 1028 of the Revised Statutes, touching persons confined in jail, under sections 7327 and 7328.

I think that in my former opinion, I stated that auditors had power to discharge such persons for the non-payment of fine and costs. A more careful examination of section 1028 shows that he can only discharge for the non-payment of the fine. The costs must be paid before he has power to discharge for the non-payment of the fine.

The auditor, in exercising the power conferred by section 1028 should use great care, for the law says that he may discharge from imprisonment when it is made *clearly* to appear, etc.

Very truly yours,

GEO. K. NASH.

Attorney General.

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BONDSMEN OF SHERIFF RESPONSIBLE FOR  
COSTS IN A CRIMINAL CASE.

Office of the Attorney General,  
Columbus, Ohio, February 2, 1881.

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

DEAR SIR:—Since writing to you on the 25th of January last, I have given considerable consideration to the question as to whether the bondsmen of Wm. C. Newell, late sheriff of Highland County, can be held responsible for the costs of prosecution in the case of the State of Ohio vs. Simon Murphin paid to him by the sheriff after the delivery of the defendant to the warden of the Ohio Penitentiary on December 18, 1879. After such consid-

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*Bondsmen of Sheriff Responsible for Costs in a Criminal Case.*

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eration, and after consulting with three members of the judiciary committee of the Senate, including General Pond, formerly attorney general of the State, I am of the opinion that his bondsmen are liable.

Section 7335, it is true, only provides for the delivering of the cost bill to the warden by the sheriff, and is silent as to what else he shall do. If, however, you refer to section 7334, you will find that it is provided that when property has been levied upon and remains unsold, the clerk shall not certify to the sheriff the costs of such conviction, or any part thereof for payment from the state treasury. From these words, I think that it can be fairly inferred that in case the execution is returned with the indorsement, "no goods and chattels found upon which to levy," that it is the duty of the clerk to certify to the sheriff the costs for payment from the state treasury, and that it is the duty of the sheriff to receive them for payment to the proper parties.

I think that in construing section 7335, the court will consider section 7334 in connection with it, and that both sections read and construed together make it the duty of the sheriff, at least by implication, to receive the moneys from the state treasurer after convicts have been delivered at the penitentiary.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Girls' Industrial Home; Contract for a Building.*

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GIRLS' INDUSTRIAL HOME; CONTRACT FOR A  
BUILDING.

Office of the Attorney General,  
Columbus, Ohio, February 2, 1881.

*To the Trustees of the Girls' Industrial Home:*

GENTLEMEN:—I have received your questions in regard to the difficulties under which you are laboring in attempting to award the contract for a new family building for your institution.

I understand that the estimates and plans proposed by your architect for this building, under sections 782 and 783 do not contain an estimate for heating the same by steam. The appropriation made for this purpose reads as follows:

“For construction of one new family building and to provide for steam heating of the same, \$15,500.”

My opinion is that your architect, in making his estimates, ought to have included the cost of the steam heating apparatus. Under your present estimates, you have twice failed to award the contract, for the reason that all bids have been higher than the estimates of your architect.

Under section 786, I think that you now have power to change your plans, descriptions, bills of material and specifications so as to include the steam heating for the building. If in thus changing these plans, you should increase or decrease the present estimated cost of the building, exceeding \$1,000, they must be submitted to and receive the approval of the governor, auditor of state, and secretary of state.

Do not let your total estimate of entire cost of building exceed the amount appropriated for the purpose.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Deputy Auditor; Duty of.*

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## DEPUTY AUDITOR; DUTY OF.

Office of the Attorney General,  
Columbus, Ohio, February 5, 1881.

*Mr. Chester C. W. Naylor, Deputy County Auditor, West Union, Ohio:*

DEAR SIR:—I have been fully occupied for several days in the Supreme Court, and this must be my apology for not answering your letter of January 26th, before this time.

You inquire whether a deputy auditor may perform the duties imposed upon the county auditor by section 1028 of the Revised Statutes. Section 1018 provides for the appointment of deputy auditors. Section 10 provides what a deputy may do. If these Statutes are read literally, it would seem that the deputy auditor, in the absence or disability of the auditor, could do such things as the principal might do under section 1028.

It may be said that the case of *Hulse vs. The State*, 35 O. S. 421, is opposed to this view of the case. There is one element in the Hulse case which does not appear in the query now before me, and that element, I think, determined that case.

The act providing for struck juries says that the names shall be furnished by the clerk, auditor, and recorder. In the Hulse case, in the absence of the clerk and auditor, their deputies attempted to perform their duty. This the court held to be error. The statute, however, provides in cases of this kind, if either of the officers named are disabled, that the judge shall appoint some judicious disinterested person to take the place of the officer so disqualified. I think that it was this provision which caused the court to say that the deputy could not perform this duty.

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*Savings Banks.*

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I find no provision for any other person to act under section 1028 in case the auditor is absent.

I therefore conclude that his deputy may act, but he ought only to do so in extreme cases, and with great caution.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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SAVINGS BANK.

Office of the Attorney General,  
Columbus, Ohio, February 7, 1881.

*Mr. Wm. F. Hunter, Woodfield, Ohio:*

MY DEAR SIR:—I have been so much engaged that it has been impossible to give earlier attention to your letter of the 28th of January.

As I understand, the savings bank, which you represent was organized under the act of 1873. Section 3811 of the Revised Statutes was originally a part of the act of 1873, and was intended, as I think, to mark out a way by which savings societies, organized under the acts of 1867 and 1868 might become possessed of the same rights and powers as societies organized under the act of 1873. The revision has not altered the statutes, and I think that societies organized under the act of 1873 are entitled to all the benefits conferred by chapter 16, title II, without taking such action as is pointed out under section 3811.

Only societies organized under acts of 1867 and 1868 are compelled to do this.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Prosecuting Attorney; Not Entitled to Percentage on Costs Paid by State—Infirmary Directors; Compensation of.*

PROSECUTING ATTORNEY; NOT ENTITLED TO PERCENTAGE ON COSTS PAID BY STATE.

Office of the Attorney General,  
Columbus, Ohio, February 7, 1881.

*Mr. J. O. Grimes, Prosecuting Attorney, Cambridge, Ohio:*

DEAR SIR:—Your favor of January 28th was duly received. I do not think that prosecuting attorneys are entitled to a percentage upon costs paid by the State, when persons convicted of felonies are sent to the penitentiary.

In cases of murder in the first degree, the costs are paid by the county, if the prisoner proves insolvent. I do not believe that the prosecutor could successfully maintain that he should be paid ten per cent. upon the costs in this class of cases.

In other felonies the State has voluntarily stepped in by law and relieved the county by paying their costs herself. It is more a gratuity upon the part of the State, and I do not think that the prosecutor is entitled to a percentage upon the voluntary donation thus made.

Very truly yours,

GEO. K. NASH,  
Attorney General.

INFIRMARY DIRECTORS; COMPENSATION OF.

Office of the Attorney General,  
Columbus, Ohio, February 9, 1881.

*Hon. J. S. Conkling, Prosecuting Attorney, Shelby, Ohio:*

DEAR SIR:—It is a well settled rule that public officers can only be allowed such compensation as the Statute provides. The compensation of infirmary direc-

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*Clerk of Court; Duty of in Regard to Costs.*

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tors is fixed by section 968 of the Revised Statutes. It is of two kinds:

I. \$2.50 per day for attendance upon regular and called meetings of their board.

II. A reasonable compensation for extra services rendered in their official capacity, in addition to attendance upon meetings of the board.

Section 961 authorizes the appointment of one of its members as clerk. If the duties of clerk require this director to do official work upon days when there is no meeting of the board, I suppose that a compensation may be allowed for this class of work, at a rate of \$2.50 per day for the time actually so employed. The commissioners must ascertain the number of days actually employed, other than days when the board is in session, and make the allowance accordingly.

Very truly yours,

GEO. K. NASH,

Attorney General.

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CLERK OF COURT; DUTY OF IN REGARD TO COSTS.

Office of the Attorney General,

Columbus, Ohio, February 12, 1881.

*A. J. Porter, Prosecuting Attorney, Van Wert, Ohio:*

DEAR SIR:—The first three questions contained in your favor of the 9th inst., I will answer this way: All moneys collected on judgments, all costs collected, and all moneys deposited as tenders and security for costs, go into the hands of the clerk of court as an officer, and not as an individual. When his term of office expires, and his successor is duly qualified, he ceases to be an officer,



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*Net Annual Income of the Board of Public Works.*

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and no longer has a right to hold these moneys as an officer.

They should at once be paid over to his successor, the clerk of court.

For an answer to your fourth question, in regard to unclaimed costs, I desire to call your attention to sections 1339 and 1340. These sections prescribe what shall be done with unclaimed costs, and any disposition of unclaimed costs not in strict compliance with these sections is contrary to law.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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NET ANNUAL INCOME OF THE BOARD OF PUBLIC WORKS.

Office of the Attorney General.  
Columbus, Ohio, February 9, 1881.

*To the Board of Public Works, Columbus, Ohio:*

GENTLEMEN:—The sum of \$13,970.50 on the 15th day of November, 1880, was transferred from the canal fund to the sinking fund upon the books of the auditor of state and treasurer of state, under the misapprehension that the net annual income amounted to that sum. In ascertaining the supposed net annual income, the board of public works did not take into consideration a pre-existing liability amounting to \$18,820, then due, and which the Supreme Court has since ordered it to pay.

In this view of the case there was no net annual income from the public works for the year ending November 15, 1880. There was nothing in the canal fund that the sinking fund was entitled to have credit for, and it

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*Incorporation of Companies for Insuring Live Stock.*

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was an error to transfer \$13,970.50 from the canal fund to the sinking fund.

I think that it is entirely competent for the General Assembly to correct this error by authorizing the auditor of state and the state treasurer, upon their books to charge the sinking fund with the sum of \$13,970.50, the amount it was erroneously credited with, and to credit the canal fund with said sum of \$13,970.50, the amount taken from it.

Very respectfully,  
GEO. K. NASH,  
Attorney General.

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INCORPORATION OF COMPANIES FOR INSUR-  
ING LIVE STOCK.

Office of the Attorney General,  
Columbus, Ohio, February 10, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—Your favor of the 8th inst., asking, "can a company organized for the sole purpose of insuring live stock, be incorporated under the laws of Ohio," has been received.

My answer to your question is "no." Section 3235 relating to the organization of corporations, or defining for what purpose corporations may be organized in Ohio, embraces words broad enough to authorize the organization of a corporation for this purpose, if it stood alone. This section, however, is general in its character, and is subject to such restrictions and limitations as appear elsewhere in our Statute books. Insurance companies can only be organized in Ohio for such purposes as are provided in Chapter X and XI, Title II of the Revised Statutes of Ohio. Chapter X relates entirely to insur-

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*Compensation of Auditor for Duplicate Necessary for the  
Construction of a Free Turnpike Road.*

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ance upon the lives of individuals. Chapter XI authorizes the organization of insurance companies other than life companies. Sections 3641 and 3670 define the kinds of insurance that companies may do, organized under Chapter XI. In these sections, I do not find any authority for such companies to make the kind of insurance commonly known as live stock insurance.

Very respectfully,

GEO. K. NASH,

Attorney General.

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COMPENSATION OF AUDITOR FOR DUPLICATE  
NECESSARY FOR THE CONSTRUCTION OF  
A FREE TURNPIKE ROAD.

Office of the Attorney General,  
Columbus, Ohio, February 12, 1881.

*Mr. W. H. Leete, Prosecuting Attorney, Waverly, Ohio:*

DEAR SIR:—Yesterday afternoon the ex-auditor of your county and one of your county commissioners called upon me and asked for my opinion upon a question arising under section 1074 of the Revised Statutes. They indicated to me that they came with your knowledge and consent, and I therefore venture to answer the question as if it had been asked by you.

As I understand the question, it is this:

The auditor claims that in the making out of the duplicate necessary for the construction of a free turnpike road in your county, it was necessary to make two books, one for the use of the auditor, and a copy of this book for the use of the treasurer. The auditor claims that he

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*Louisville Underwriters' Insurance Company.*

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is entitled to pay, as provided in section 1074, for each book:

In my opinion this claim is not well founded, as the allowance can be made but once.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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LOUISVILLE UNDERWRITERS' INSURANCE  
COMPANY.

Office of the Attorney General,  
Columbus, Ohio, February 14, 1881.

*Hon. Joseph F. Wright, Superintendent of Insurance:*

DEAR SIR:—Your inquiries in regard to the Louisville Underwriters' Company have been received.

It appears from the papers submitted, that prior to 1878 these insurance companies, viz.: The Louisville, the Franklin and the Union, each with a capital stock of one hundred thousand dollars had been chartered by the Legislature of Kentucky, and had been organized and were doing business in the city of Louisville in said State.

February 20th, 1878, an act was passed by the Kentucky Legislature in regard to these companies, which act was amended April 1, 1880. By this act it was provided among other things:

I. That the Louisville Insurance Company, the Franklin Insurance Company and the Union Insurance Company shall be a body corporate under the name and style of the Louisville Underwriters, whose capital shall be three hundred thousand dollars, being the combined capital of the three companies, and under the name and style of the Louisville Underwriters, shall have such powers as generally are conferred upon corporations.

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*Louisville Underwriters' Insurance Company.*

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II. That under the name and style of the Louisville Underwriters it may insure all kinds of property against loss or damage by fire, and make all kinds of marine insurance on boats, freights and every description of property transported by land or water on the general conditions and principles of marine fire insurance, and that the capital stock, property, securities and assets of this company and of the three companies shall be liable and bound for the obligations, agreements and contracts made and entered into by this company.

III. That nothing in these acts shall be construed to repeal, abridge or modify the right of either of the said three companies to continue its separate business as heretofore, under their respective charters.

The effect of this legislation seems to authorize three insurance companies, each of which is carrying on separate business, as extensive as its officers can make it, and while continuing each to carry on and increase its separate business, to combine together, without any additional capital, and form a fourth corporation for the purpose of carrying on business of insurance independent of the other three.

The "Louisville Underwriters" has filed an annual statement with you, and asks you to give it authority to do business in Ohio. You ask whether you can do this.

Our law provides that no company organized under the laws of any other State shall transact business in this State unless possessed of the amount of actual capital required of similar companies formed under the provisions of our law.

It is for you to inquire whether a similar company can be organized under the laws of Ohio. If not, then this company cannot do business in this State, for in such case there is no measure or rule by which it can be determined whether or not it is possessed of the necessary amount of actual capital.

Respectfully yours,  
GEO. K. NASH,  
Attorney General.

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*Authority of Attorney General to Bring an Action in Quo Warranto Upon His Own Motion.*

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AUTHORITY OF ATTORNEY GENERAL TO  
BRING AN ACTION IN QUO WARRANTO  
UPON HIS OWN MOTION.

Office of the Attorney General,  
Columbus, Ohio, February 17, 1881.

*Messrs. Matthews, Ramsey & Matthews, Cincinnati, Ohio:*

GENTLEMEN:—I desire to ask you to consider sections 6760, 6761 and 6762 of the Revised Statutes, as to the authority of the attorney general to bring actions in *quo warranto* upon his own motion. You will observe that section 6762 by the words "in the preceding section" seems only to authorize the attorney general to commence proceedings in *quo warranto* upon his own motion under section 6761. Today I thought perhaps the letter "S" had been dropped off from the word "section," and then went to the original law in the secretary of state's office, and to my astonishment discovered that words "the preceding section" are not in the original in section 6762, but in their stead appear the words "section two" with a lead pencil mark run through them.

By referring to pages 814 and 815 of the laws of 1878 you will find the first work of the code commissioners in regard to *quo warranto*. Section 3 on page 815 reads precisely as section 6762 does in the enrolled law—the Revised Statutes—in the secretary of state's office.

One of the *quo warranto* cases brought by me on your request is against individuals. Have I any right to commence such action upon my own motion?

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Sheriff's Fees—Buckeye Mutual Accident Association.*

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## SHERIFF'S FEES.

Office of the Attorney General,  
Columbus, Ohio, February 18, 1881.

*Hon. John F. Oglevee, Auditor of State:*

DEAR SIR:—In section 1230, Revised Statutes of Ohio, relating to sheriff's fees, the following words appear, "traveling fees upon all writs, precepts and subpoenas, from place of return to the place of service, eight cents per mile."

By an amendment to said section made last winter, see O. L., Vol. 77, 116, the following words were substituted for the ones quoted above:

"Upon all writs, precepts and subpoenas, eight cents per mile going and returning."

In serving the writs above mentioned sheriffs are entitled to mileage upon the number of miles traveled in so doing.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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BUCKEYE MUTUAL ACCIDENT ASSOCIATION.

Office of the Attorney General,  
Columbus, Ohio, February 18, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—I have received from you the articles of incorporation of the Buckeye Mutual Accident Association. The gentlemen subscribing this paper are evidently seeking to form a corporation relying upon section 3630 of the Revised Statutes as amended in 1880 for their authority so to do. A company for the purposes named

*Canal Lands; Title of.*

in this certificate cannot be organized under this section. It only allows the payment of stipulated sums of money to the *families or heirs of deceased members*. In accident insurance one of the principal objects is to pay money to persons who have been insured and are still living.

The only authority in Ohio for the organization of accident insurance companies is to be found in section 3670, Revised Statutes. They must follow the provisions of Chapter II, Title II, Revised Statutes, and the general provisions regulating corporations for profit. They must be either stock or mutual companies. If stock, they must have a capital of not less than \$100,000. If mutual they must be governed by section 3664. Their names must commence with the word "The," and end with the word "company." They must come under the supervision of the superintendent of insurance. In short they must comply strictly with the insurance laws of Ohio.

I think that these articles of incorporation ought not to be filed in your office.

Very truly yours,

GEO. K. NASH,

Attorney General.

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CANAL LANDS; TITLE OF.

Office of the Attorney General,  
Columbus, Ohio, February 22, 1881.

*Mr. Albert Douglass, Attorney-at-Law, Chillicothe, Ohio:*

DEAR SIR:—I think that the case of *Malone vs. The City of Toledo*, et. al., 34th O. S., 541, settles the question of title raised in your favor of the 21st inst.

The land had under consideration by the court in that case was taken possession of about 1836, under an act of the Legislature, passed February 4, 1825.



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*County Auditor; Allowance for Extra Clerks.*

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My understanding is that that portion of the canal which runs through your city was constructed before that time, and after 1825.

If the land in question was appropriated by the State under the act of 1825, the State is the owner of the fee.

Does not this decision of the court settle the question which you raise?

The engineer in charge informs the board of public works that Dunlap has left the brush and tops of trees cut down so that it is likely to slide into the canal. Is this not a violation of section 7906 of the Revised Statutes?

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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COUNTY AUDITOR; ALLOWANCE FOR EXTRA  
CLERKS.

Office of the Attorney General,  
Columbus, Ohio, February 21, 1881.

*Mr. G. A. Rieder, Prosecuting Attorney, Wooster, Ohio:*

DEAR SIR:—Under section 1076 an allowance of twenty-five per cent. for clerk hire on account of the real estate appraisement can be made but once. That allowance is intended to pay for all of the extra clerks required by the reappraisement.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Legal Holiday; 22d of February—Surveyor; Bond of in  
Constructing a County Ditch.*

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LEGAL HOLIDAY; TWENTY-SECOND OF FEBRUARY.

Office of the Attorney General,  
Columbus, Ohio, February 19, 1881.

*Mr. Edward Orton, President Ohio University, Columbus,  
Ohio:*

DEAR SIR:—Our Statutes provide that the 22nd of February shall be considered as the first day of the week or Sunday "for all purposes whatsoever, of presenting for payment or acceptance, and the protesting or the giving of notice of non-acceptance, or of non-payment" of negotiable instruments.

They do not prohibit officers or the people from performing their ordinary duties upon the 22nd of February if they wish to do so, and I am inclined to the opinion that it must be considered as any other working day of the week except for the purposes above specified.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SURVEYOR; BOND OF IN CONSTRUCTING A  
COUNTY DITCH.

Office of the Attorney General,  
Columbus, Ohio, February 26, 1881.

*Mr. G. G. White, Prosecuting Attorney, Upper Sandusky,  
Ohio:*

DEAR SIR:—Your favor of the 21st inst. has been received. I regret that I cannot concur in the opinion you have given in regard to section 4494, Revised Statutes.

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*Surveyor; Bond of in Constructing County Ditch.*

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This section says that the commissioners *shall require* each surveyor or engineer appointed by them under the provisions of this chapter, to enter into a bond, etc.”

Section 4454 confers upon the commissioners the power to “direct” or “appoint” the county surveyor to do this work. I do not any where find that it is mandatory upon the county surveyor to obey this “direction” or to accept this appointment from the commissioners. In other words the law does not make it a duty attached to his office to do this work relating to ditches.

If this be so the sureties upon his bond as county surveyor could not be held for any delinquencies upon his part in connection with ditches.

Again, the words of section 4494 are “shall require each surveyor or engineer.” These do not seem to have any discretion with the commissioners and they certainly are so broad that they include the county surveyor.

Very truly yours,

GEO. K. NASH,

Attorney General.

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SURVEYOR; BOND OF IN CONSTRUCTING  
DITCH.

Office of the Attorney General,  
Columbus, Ohio, February 26, 1881.

*Mr. D. D. Hare, Upper Sandusky, Ohio:*

DEAR SIR:—I have today written to your prosecuting attorney in regard to the question as to whether a county surveyor must give a bond when appointed by the county commissioners in a county ditch matter. I think he must do so.

Section 4506 R. S., provides for the engineer’s com-

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*Surveyors' Fees.*

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pensation in ditch cases. No provision is made to pay mileage. I do not think that it was intended to do, as section 4456 makes provision, at least by implication, for the payment of all expenses.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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SURVEYORS' FEES.

Office of the Attorney General,  
Columbus, Ohio, February 28, 1881.

*Mr. Benj. Thompson, Urbana, Ohio:*

DEAR SIR:—I have carefully examined the enclosed table of surveyors' fees. Nearly all are correct. I will speak in detail of those upon which you and I differ, numbering them as they appear in the table:

*Item 2.* I do not think that mileage is allowed when the officer is employed by the day.

*Item 13.* I think that the surveyor is entitled to \$3.00 per day for making the "profile." Frequently this work, which should be carefully done, requires more than one day's time, and I believe that it was the intention of the law to make \$1.00 difference between office and field work.

*Item 17.* The compensation for this class of work is attempted to be fixed by Sec. 4773, R. S. You will observe that the surveyor is entitled to receive such compensation as is now allowed by law in the construction of State and county roads. In a State road it is \$2.50 per day. In a county road it is \$5.00 per day. Here seems to be a double measure. How can it be reconciled? I am sure that I cannot tell what the compensation should be.

*Items 18 and 19.* These items are fixed by sections

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*Publication of Report of County Commissioners.*

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4798 and 4849, and I am inclined to think that they will bear the construction of \$5.00 per day for the surveyor.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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PUBLICATION OF REPORT OF COUNTY COMMISSIONERS.

Office of the Attorney General,  
Columbus, Ohio, March 8, 1881.

*Mr. A. H. Stillwell, Prosecuting Attorney Coshocton, Ohio:*

DEAR SIR:—Your favor of the 7th inst. has been received.

The publications which are commanded by section 4368 to be published in a German newspaper, are only such publications as are provided for by section 4367.

Section 4367 does not in any way relate to the publication of the annual report of the county commissioners and the report of the examiners of that report, appointed by the Court of Common Pleas.

Section 917 is complete in itself, and commands that the annual statement, together with the report of the examiners shall be published in a compact form for one week in two weekly newspapers of different political parties.

I am of the opinion that the only publications that can be made of the commissioners' report and the report of the examiners thereon, is such as is authorized by section 917.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Sheriffs' Fees for Serving Venire—A Joint Resolution Cannot be Reconsidered by the General Assembly When Passed and Signed.*

SHERIFFS' FEES FOR SERVING VENIRE.

Office of the Attorney General,  
Columbus, Ohio, March 8, 1881.

*Mr. Grayson Mills, Prosecuting Attorney Sandusky, Ohio:*

DEAR SIR:—I have examined the question submitted in your letter of yesterday. Section 1230, of the Revised Statutes, was amended April 17, 1880, and as amended, will be found on pages 116 and 117, Vol. 77, Ohio Laws.

I am of the opinion that a sheriff, for serving and returning a venire for petit or grand jury is entitled to \$4.50, and no more, and for summoning a special jury he is entitled to the same amount and no more.

I do not understand from what you get the twenty-five cents extra. It may be that I have overlooked something, and if you will explain your reasons for coming to your conclusions, a little fully, I may find occasion to change the opinion above expressed.

Very truly yours,

GEO. K. NASH,  
Attorney General.

A JOINT RESOLUTION CANNOT BE RECONSIDERED BY THE GENERAL ASSEMBLY WHEN PASSED AND SIGNED.

Office of the Attorney General,  
Columbus, Ohio, March 9, 1881.

*To the Auditor of State:*

DEAR SIR:—A joint resolution adopted by both houses of the General Assembly more than one week ago, has been today signed by the presiding officers of each house.

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*Members of City Councils Cannot Be Interested in Any Contracts.*

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I am of the opinion that said resolution cannot now be reconsidered by the General Assembly, and is now binding upon the officers named therein.

Respectfully,  
GEO. K. NASH,  
Attorney General.

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MEMBERS OF CITY COUNCILS CANNOT BE INTERESTED IN ANY CONTRACTS.

Office of the Attorney General,  
Columbus, Ohio, March 14, 1881.

*Mr. John McSweeney, Jr., City Solicitor, Wooster, Ohio:*

DEAR SIR:—Your letter of the 8th inst., together with a printed copy of the opinion given by you on Dr. Wisner's bill for compensation, has been received.

I have been so much engaged that I have not given the subject careful consideration, and in what I may say, I cannot do much more than give you the result of first impressions. As the attorney general is not the legal adviser of officers of municipal corporations, of course, any opinion that I may give should not have any more weight with you than that of any other attorney.

In your printed opinion, I certainly think that you have stated the law correctly. Now, we come to section 6976 of the Revised Statutes. Its words seem to me to be very broad, and it prohibits all members of city councils from being interested, directly or indirectly, in the profits of any contract, job, work, or services for the corporation. If a fire engine should be out of repair, and it should be taken to a member of the council for repairs, I am inclined to think that he could be paid for the actual cost of the materials used, without making himself amenable to crim-

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*Compensation of Officers for Extra Services.*

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inal prosecution under section 6976. I do not think that he would be permitted to receive pay for his *labor* in making the repairs.

The object of the law is to prohibit members of the council from having any interest whatever in the furnishing of any supplies or in any work done for the municipal corporation, of which he is a member, and all members should strictly observe this law.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COMPENSATION OF OFFICERS FOR EXTRA SERVICES.

Office of the Attorney General,  
Columbus, Ohio, March 14, 1881.

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

DEAR SIR:—My answer to your favor of the 1st inst. has been delayed by absence from the city for a portion of the time.

Whenever the General Assembly, by law, imposes new duties upon an officer without increasing his salary or fees, the officer must perform such new duties without additional compensation.

County commissioners cannot pay money out of the public treasury without specific authority of law for so doing.

Very truly yours,

GEO. K. NASH,  
Attorney General.



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*Court May Order Prosecution to Produce Papers, Etc.*

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## COURT MAY ORDER PROSECUTION TO PRODUCE PAPERS, ETC.

Office of the Attorney General,  
Columbus, Ohio, March 15, 1881.

*Mr. Frank Moore, Prosecuting Attorney Mt. Vernon, Ohio:*

DEAR SIR:—From the little investigation which I have been able to give the subject suggested in your letter of the 13th inst., I have not been able to get much light.

In section 608, in the first volume of Wharton on Criminal Law, I find these words:

“When public justice requires, the court may make, before the trial, an order on the prosecution to produce papers for the defendant’s inspection.”

Wharton sustains this paragraph by reference to the case of *Regina vs. Collucci*, Foster and Finlason’s Nisi Prius Cases, Vol. 3, decided in 1861. In this case an indictment was pending for obtaining money under false pretenses. The pretense charge was that a certain parcel delivered by the prisoner to the prosecutrix, contained all the letters written by him to her (and which in pursuance of an agreement between them, were to be delivered up), whereas, in truth the parcel only contained one of them. The letters had been seized under a search warrant, and were to the number of above sixty, in the possession of the prosecutrix. The application on behalf of the prisoner was for an order for leave to inspect and take copies of them for the purposes of the defense. Keating, J., made an order for the *inspection of the letters, but not for copies.*

In your case there is an indictment for bigamy. In support thereof you propose to offer a transcript of the record of the defendant’s first marriage, as it exists in Pennsylvania, and also a copy of the Pennsylvania statutes.

If the defendant should make a motion, asking for an inspection of this documentary evidence, I think that it is

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*Justices of the Peace; Election of.*

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within the power of the court, if it thinks that the ends of justice will be promoted thereby, to make an order to that effect.

What follows may be mere sentimentality on my part, yet it seems to me that a person ought not to be convicted of a crime except upon such evidence as will bear the fullest and closest scrutiny upon the part of his attorneys.

Very truly yours,

GEO. K. NASH,  
Attorney General.

P. S.—Since writing the above, my attention has been called to section 7289.

I do not think that this section covers the point at issue, yet I think its spirit will go far to sustain the view which I have taken in regard to the power of the court.

NASH.

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JUSTICES OF THE PEACE; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, March 16, 1881.

*Mr. David Francis, Arcanum, Ohio:*

DEAR SIR:—By reference to section 569, you will observe that elections for justices of the peace must be conducted in the same manner as elections for members of the General Assembly.

Elections for members of the General Assembly must be conducted in accordance with chapter 2, title 14, on page 764 of the Revised Statutes.

You will observe also that township officers are elected in accordance with section 1442, and those following. On account of these different provisions, the manner of electing township officers differs somewhat from the way in which

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*Boards of Election; Election of.*

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justices are elected. If the people who elect the justice of the peace are the same voters who elect township officers, I think that it will not invalidate the election, if one set of judges officiate for both, and one ballot box is used, and candidates for township officers and justice of the peace are printed on the same ballot.

It would be necessary, however, to have a poll book and tally sheet kept for the justice of the peace to be returned in due form of law to the clerk of court.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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BOARDS OF ELECTION; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, March 19, 1881.

*Mr. John C. McClung, Leipsic, Ohio:*

DEAR SIR:—In village school districts, members of the board of education should be elected as prescribed in section 3908 of the Revised Statutes.

In following that section, the election should be conducted in such manner as to give every voter a full and fair opportunity to deposit his ballot. In order to do so, the meeting for the election of school directors should be opened at the same time and place as the election for township and village officers, and should not be closed until the township election is closed. I do not see as the members of the board of education have any duty to perform in connection with this election.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Champerty and Maintenance Not Punishable—Warden;  
Power Regards Commitments.*

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CHAMPERTY AND MAINTENANCE NOT PUNISHABLE.

Office of the Attorney General,  
Columbus, Ohio, March 19, 1881.

*Mr. James Jay West, Chicago, Ill.:*

DEAR SIR:—No statute has made champerty or maintenance punishable criminally in Ohio.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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WARDEN ; POWER REGARDS COMMITMENTS.

Office of the Attorney General,  
Columbus, Ohio, March 22, 1881.

*Messrs. Noble & Adams, Attorneys-at-Law, Tiffin, Ohio:*

GENTLEMEN:—I have examined the commitments now in the hands of the warden of the penitentiary, in the two cases of the State of Ohio vs. Diemer.

The commitment in case 1536 contains the ordinary sentence of one year in the Ohio Penitentiary. The commitment in case 1551 is like the one in 1536, except that it contains these words: "This sentence to commence on the termination of sentence in case number 1536."

These words are in the same handwriting as the balance of the commitment, but are written with red ink and seem to be part of the sentence of the court as certified to by the clerk.

The case of Williams against the State, 18th Ohio State, page 46, does not throw much light upon this case, for if the record be as set out in the papers transmitted to

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*Sheriffs' Fees in Serving Venire.*

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me by you, the reviewing court, examining it, could not well say that there was error in the record. Yet how can the warden of the penitentiary assume to say that the commitment sent to him by the clerk in pursuance of law is untrue? I doubt whether he has power to do anything else than to obey the writ committed to his care together with the prisoner.

This subject is not without difficulty for me, and I do not feel at all certain that I am right.

Very truly yours,

GEO. K. NASH,

Attorney General.

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SHERIFFS' FEES IN SERVING VENIRE.

Office of the Attorney General,

Columbus, Ohio, March 24, 1881.

*Hon. John F. Oglevee, Auditor of State:*

DEAR SIR:—Your favor as to what allowance can be legally made to sheriffs for services in procuring juries in capital cases has been received.

I am of the opinion that a sheriff is entitled to \$4.50 for serving each venire provided for in sections 7267, 7268, 7269 and 7270 of the Revised Statutes.

I am aware that this is not in accordance with an opinion given by Attorney General Little in February, 1874. By a comparison of the statutes then in force, with those now regulating this subject, I find such changes have been made as to fully sustain the opinion here given.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*Mutual Life Insurance Companies—Organization of Associations With Banking Powers.*

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## MUTUAL LIFE INSURANCE COMPANIES.

Office of the Attorney General,  
Columbus, Ohio, March 28, 1881.

*Hon. Joseph Wright, State Superintendent of Insurance:*

DEAR SIR:—I am of the opinion that a stock or mutual life insurance company licensed to do business as such in Ohio, cannot issue "certificates of membership" like those issued by mutual protection associations.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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ORGANIZATION OF ASSOCIATIONS WITH BANKING POWERS.

Office of the Attorney General,  
Columbus, Ohio, March 30, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—Section 7 of article 13 of the Constitution of the State of Ohio prohibits the organization of association with banking powers, under chapter 1, title 2, part 2, page 863 of the Revised Statutes of Ohio.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Ohio University at Athens; Appropriation of \$20,000.*

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OHIO UNIVERSITY AT ATHENS; APPROPRIATION OF \$20,000.

Office of the Attorney General,  
Columbus, Ohio, March 30, 1881.

*Hon. John F. Oglevee, Auditor of State:*

DEAR SIR:—Your favor of the 28th inst. with enclosures, has been received.

I am inclined to the opinion that H. B. No. 190, if otherwise valid became a law upon receiving the votes of a majority of the members elected to each branch of the General Assembly.

The act is very indefinite in its terms. It provides that the sum of \$20,000, from any money not otherwise appropriated, is hereby added to the fund now existing in the treasury of the State "for the purpose of repairing the buildings of the Ohio University."

I know of no fund in the State treasury, placed there by law or otherwise, "for the purpose of repairing the buildings of the Ohio University." I do not, therefore, see how it is possible for the General Assembly, by law, to make an addition to a fund that has no existence. But suppose such a fund does exist. Has the General Assembly the power to transfer moneys now in the State treasury and raised by taxes levied for other and specific objects those objects being specified in the act of March 26, 1879, O. L., Vol. 76, page 42, to a fund "for repairing the buildings of the Ohio University?"

Section 5 of article 12 of the Constitution provides that no tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

This constitutional provision clearly prohibits the use of moneys raised for one purpose for another purpose. I do not believe that the purpose for which it is sought to use this \$20,000 was one of the purposes included in the act of

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*Board of Education; Election of Members.*

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March 26, 1879 (O. L., Vol. 76, page 42), and under which the moneys now in the state treasury, subject to the warrant of the auditor of state were raised.

At least, I think that there is doubt enough about these questions to justify you in requiring a direction from the court before drawing your warrant upon the State treasurer.

This can be had without much loss of time, and without great expense.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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BOARD OF EDUCATION; ELECTION OF MEMBERS.

Office of the Attorney General,  
Columbus, Ohio, March 30, 1881.

*Hon. E. N. Hartshorn, Senate Chamber, Columbus, Ohio:*

DEAR SIR:—Enclosed you will please find a copy of a letter, which I think, in part, answers the question which you put to me yesterday.

In village districts, where there are two precincts, I do not think that it would invalidate the election if each precinct votes for members of the board of education. A poll book and tally sheet could be kept in each precinct, and be returned to the clerk of the board of education of the district duly certified, as provided by section 3910. The result could then be easily ascertained by the clerk.

Very truly yours,  
GEO. K. NASH,  
Attorney General.



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*O. S. and S. O. Home; Clothing of Inmates.*

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## O. S. AND S. O. HOME; CLOTHING OF INMATES.

Office of the Attorney General,  
Columbus, Ohio, March 31, 1881.

*To the Trustees O. S. and S. O. Home, Xenia, Ohio:*

GENTLEMEN:—I do not think that sections 631 and 632 of the Revised Statutes have reference to the clothing of children admitted to your institution under the provisions of section 676.

This section provides that the children in your institution shall be "supported and educated." Clothing is certainly necessary to their support.

In the other benevolent institutions of this State, persons are frequently admitted, who have property, or who have friends who are amply able and legally bound to furnish them with clothing. The law requires the counties to pay for the clothing of the inmates each has in these institutions, and then makes it the duty of the several county auditors, to collect the money thus paid, from the persons legally responsible for the same. The ultimate object of sections 631 and 632 seems to be to have the clothing of these inmates paid for out of the property belonging to them, or by persons responsible therefor.

As section 676 makes it a condition precedent to the admission of children into your institution that they shall be "found to be destitute of the means of support and education," no such object could be attained in this case. For these reasons I conclude that section 676 has exempted your institution from the operation of sections 631 and 632.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Clerk of Court; Commission on Receipts and Disbursements—Longview Asylum; Apportionment of Funds.*

CLERK OF COURT; COMMISSION ON RECEIPTS  
AND DISBURSEMENTS.

Office of the Attorney General,  
Columbus, Ohio, April 4, 1881.

*Mr. A. J. Porter, Prosecuting Attorney Van Wert, Ohio:*

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

Section 1260 of the Revised Statutes provides that the clerk is entitled to a commission for *receiving and disbursing* money, other than costs and fees, paid over to such clerks in pursuance of an order of court, or on judgments, etc. If, after judgment, a defendant pays the amount of a judgment direct to the plaintiff, and the plaintiff satisfies the judgment, I do not see how the clerk in any sense can be said to have *received and disbursed* the money, and it is for doing this that he is entitled to a commission. Section 1242 provides that the clerk of Common Pleas shall also be clerk of the District Court. Section 1245 clearly prescribes his duties in regard to making records.

Very truly yours,

GEO. K. NASH,  
Attorney General.

LONGVIEW ASYLUM; APPORTIONMENT OF  
FUNDS.

Office of the Attorney General,  
Columbus, Ohio, April 1, 1881.

At the request of the auditor of state, I have examined the foregoing letter.

When a joint appropriation is made for the Central Asylum for Insane, and for the Asylum for Feeble-Minded

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*Senatorial Districts; Apportionment of.*

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Youth, only such money can be considered in making an appropriation for Longview Asylum, under section 750 of the Revised Statutes, as is designed for the use of the Central Asylum.

When \$25,000 or any other sum is appropriated for the use of one of the asylums for insane, outside of Hamilton County, under section 750, Longview is entitled to an appropriation bearing a certain proportion to it. Suppose Longview has received her proportion, the first appropriation for any reason is not used for the purpose intended, lapses back into the State treasury, and in course of time is again appropriated. Is Longview Asylum entitled to another proportion when this \$25,000 is appropriated the second time?

It may be that the words of section 750, if read literally, would bear this interpretation, but I do not believe that it was the intention of the law to give Longview Asylum two proportions out of money that may as herein described happen to be appropriated twice.

Respectfully,

GEO. K. NASH,  
Attorney General.

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SENATORIAL DISTRICTS; APPORTIONMENT  
OF.

Office of the Attorney General,  
Columbus, Ohio, April 8, 1881.

*Hon. Chas. Foster, Governor; Hon. Chas. Townsend, Secretary of State; Hon. J. F. Oglevee, Auditor of State:*

GENTLEMEN:—I have given careful consideration to the question submitted to me by you as to the rule that should govern you, acting under article II of the Constitution, in regard to senatorial districts, that were attached to

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*Judges of Election; Election of.*

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each other by the apportionment made in 1870, and have the honor to submit the following conclusion:

Section 8 of article 11 provides that all rules shall be applied in apportioning the fractions of senatorial districts, and in annexing districts that are applied to representative districts.

Where are these rules to be found? In my opinion, the whole subject is embraced in sections 3, 4 and 5 of article 11, and that the directions laid down in section 4, is of the same force in regard to senatorial districts as the rules contained in sections 3 and 5.

Therefore, when two senatorial districts are once attached together, they cannot be separated until each has population large enough to entitle it to a senator in the General Assembly.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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JUDGES OF ELECTION; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, April 11, 1881.

*Mr. C. B. Selby, Gustavus, Ohio:*

DEAR SIR:—The one receiving two votes is entitled to the right to sit as a judge of election. The law plainly means that the person receiving the highest numbers of votes of those voted for and not elected, *and not of the same political party as the trustees elected*, shall be judge.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Duty of County Commissioners, Regarding Erection of  
Children's Home.*

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DUTY OF COUNTY COMMISSIONERS, REGARD-  
ING ERECTION OF CHILDREN'S HOME.

Office of the Attorney General,  
Columbus, Ohio, April 11, 1881.

*Mr. J. H. Mitchell, Prosecuting Attorney New Philadelphia,  
Ohio:*

DEAR SIR:—The question presented in your favor of the 6th inst. is not without considerable difficulty. I can find no law or decision that seems to reflect upon the question as to how long the commissioners may wait before proceeding to act upon the authority given to them by a vote of the people to erect a children's home. I should fear that after waiting more than three years, there would be so much doubt about the question as to affect the value of the bonds when offered for sale, or to prevent their sale altogether, or to cause some taxpayer to commence proceedings to enjoin the collection of the tax.

The thought has occurred to me that the question might be easily raised and decided in the courts.

Have the commissioners any right to postpone or delay the building of a children's home after the people have once voted in its favor? I think not. Section 929, R. S., says that "*they shall proceed,*" etc. Here is a duty the commissioners have neglected to perform, and still neglect. Why cannot you commence an action in mandamus against them, asking the court to direct them to proceed to perform this duty, in accordance with the chapter on mandamus? This may be done in the Common Pleas, District, or Supreme Court. See Ohio Laws, volume 77, page 265.

I think a decision from your Common Pleas or District Court would settle this question so that the commissioners could safely proceed.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Free Turnpikes; Election of Superintendents of—County  
Treasurer; Compensation of for Keeping Money.*

FREE TURNPIKES; ELECTION OF SUPERIN-  
TENDENTS OF.

Office of the Attorney General,  
Columbus, Ohio, April 11, 1881.

*Mr. S. H. Cooper, Point Pleasant, Ohio:*

DEAR SIR:—In answer to your favor of April 7th, I will say that from the hurried examination that I have given of the matter, township superintendents of free turnpikes are elected only in Shelby County. In the counties named in section 4889, it seems to me that these roads, by section 4891, are placed in charge of the township trustees. I have not had time to devote to this subject, as I am not the legal adviser of township officers or private persons. I suggest that you consult further with some lawyer in your county, who has full knowledge in regard to your turnpikes and the manner in which they were constructed.

Very truly yours,

GEO. K. NASH,  
Attorney General.

COUNTY TREASURER: COMPENSATION OF FOR  
KEEPING MONEY.

Office of the Attorney General,  
Columbus, Ohio, April 11, 1881.

*Mr. Carlos M. Stone, Cleveland, Ohio:*

MY DEAR SIR:—I had an unusual amount of work pressing upon me in the Supreme Court last week and could not answer any of my letters. Among them was your favor of the 5th inst. I should give the same construction to the former statute, Vol. 66, p. 14, as to Sec. 1532. The duty to

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*Ohio Mortgage Security Co.; Incorporation of.*

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safely keep the money is just as important as to receive and disburse it. For so doing the treasurer is as much entitled to compensation, as for any other duty performed. This duty attaches to all moneys, from whatever source coming into his hands.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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OHIO MORTGAGE SECURITY CO.; INCORPORATION OF.

Office of the Attorney General,  
Columbus, Ohio, April 16, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—I have examined, at your request, the articles of incorporation of the Ohio Mortgage Security Company. As the purposes of this proposed corporation are set forth in the certificate or articles, I fear that it comes within the prohibition mentioned in section 3235 of the Revised Statutes. As one of its objects it distinctly announces the purpose "of buying, selling, owning, and *dealing* in *real* and personal property necessary or *convenient* for the prosecution of" its business.

There is also another question as to whether or not the business set out "is not the exercise of 'banking powers' within the meaning of section 7, article 13 of the Constitution."

I think it would be well to suggest these difficulties to the gentlemen who propose to form this corporation, and have them give consideration before filing these articles.

Very respectfully,  
GEO. K. NASH,  
Attorney General.

*Board of Public Works; Reloading Coal at the Expense—  
Asylum for Blind; Powers of Board to Pay Money Out  
of the Current Expense Fund.*

BOARD OF PUBLIC WORKS; RELOADING COAL  
AT THE EXPENSE.

Office of the Attorney General,  
Columbus, Ohio, April 18, 1881.

*Mr. George Paul, Cuyahoga Falls, Ohio:*

DEAR SIR:—If you should cause the coal to be reloaded at the expense of the board of public works, which is at the expense of the State, it seems to me that it would be *indirectly* paying out of the State treasury for damages arising from injury to property and merchandise passing along the canal. This is prohibited by section 7895 R. S.

Very truly yours,

GEO. K. NASH,  
Attorney General.

ASYLUM FOR BLIND; POWERS OF BOARD TO  
PAY MONEY OUT OF THE CURRENT EX-  
PENSE FUND.

Office of the Attorney General,  
Columbus, Ohio, April 18, 1881.

DEAR SIR:—I hope that you will pardon delay in answering your favor of the 1st inst. I have been overwhelmed with work in the closing days of the session.

I think that your board has power to spend money out of the current expense fund for any purpose that they think necessary for the reasonable and proper protection of the State's property under their care.

Very truly yours,

GEO. K. NASH,  
Attorney General.

To Mr. G. L. Smead, Superintendent, etc.



*Recorder; Compensation of For Indexing Deeds, Etc.—  
Marriage Dowery Associations.*

RECORDER; COMPENSATION OF FOR INDEXING  
DEEDS, ETC.

Office of the Attorney General,  
Columbus, Ohio, April 20, 1881.

*Mr. Theo. S. White, Prosecuting Attorney Cardington,  
Ohio:*

DEAR SIR:—My idea is that the ten cents provided in section 1157, to be paid by the owner for indexing a deed, mortgage, etc., pays for the services of the recorder in making the alphabetical index provided for in section 1153. Sections 1154 and 1155 provide for a general index in addition to the alphabetical index. Section 1155 as amended in 1880, I think, provides that the expense of making and keeping up this general index shall be paid by the county.

The recorder should be paid out of the county treasury for the keeping up of this index, as well as for bringing it up and completing it.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

MARRIAGE DOWERY ASSOCIATIONS.

Office of the Attorney General,  
Columbus, Ohio, April 20, 1881.

*Hon. Joseph F. Wright, Commissioner of Insurance:*

DEAR SIR:—At your request I have examined the plan of doing business of "The National Marriage Dowery Association of Union City, Ind."

This association is not an insurance company, and it is not such an association as is contemplated within the mean-

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*County Auditors; Additional Allowance to.*

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ing of section 3630 of the Revised Statutes of Ohio, and the various sections supplementary thereto. It does not, therefore, come within the jurisdiction of your department and you cannot give it a certificate to do business in Ohio.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY AUDITORS; ADDITIONAL ALLOWANCE  
TO.

Office of the Attorney General,  
Columbus, Ohio, April 22, 1881.

*Mr. M. W. Johnson, Prosecuting Attorney, Youngstown,  
Ohio:*

DEAR SIR:—Your favor of the 13th inst. was duly received, but an answer has been deferred on account of increased labor during the last days of the General Assembly.

I am of the opinion that the additional allowance to auditors, provided for by section 1076, can only be made in the years 1880, 1890, 1900, etc. These are the years in which the reappraisal is made by the assessors, and it was clearly the intent of the General Assembly only to provide extra compensation for the year in which the appraisal is made. In this opinion I am sustained by my predecessor, Attorney General Pillars.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*U. S. Officers; Taxation of Property of.*

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## U. S. OFFICERS; TAXATION OF PROPERTY OF.

Office of the Attorney General,  
Columbus, Ohio, April 25, 1881.

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

DEAR SIR:—Colonel Wilson, an officer in the United States Army stationed by the orders of his superior officer in the city of Cleveland, has certain property, to-wit:

Household furniture valued at \$500.00.

Money deposited in bank, \$875.00.

This last money has been saved from his earnings as an officer. It is claimed that this property is not subject to taxation. In support of this proposition, I have been cited to the case of *Dobbins vs. The Commissioners of Erie County*, 16th Peters, page 435, and to an opinion given by Attorney General Black.

I do not understand that the proposition under consideration was passed upon in the case of *Dobbins*, nor considered by Attorney General Black. The proposition decided by them was that the salary of an officer of the United States could not be taxed. About this proposition there can now be no doubt.

The question presented by Colonel Wilson is an entirely different one. Here is \$500 worth of personal property and \$875 in money belonging to him as an individual, and situated in the State of Ohio. This property is within the State, and is entitled to the protection of its laws and its officers. It is also entitled to the protection of the officers and the county, and of the ordinances and officers of the municipal corporation within which it is situated. I think that it is subject to be taxed for the benefits received and anticipated from State and local government and protection.

Very truly yours,

GEO. K. NASH,  
Attorney General.

Naturalization of Foreigners—Who is Eligible as an Officer.

## NATURALIZATION OF FOREIGNERS.

Office of the Attorney General,  
Columbus, Ohio, April 22, 1881.

*Hill Standard Book Co., Chicago, Ill.:*

GENTLEMEN:—Your favor of April 11th has been received. The naturalization of persons of foreign birth of Ohio, is governed entirely by the laws of the United States. Our State laws are silent upon the subject. A man is not a voter in our State unless he is a citizen of the United States, and resides in this State for one year. Therefore a man of foreign birth cannot become a voter until he has taken out his final naturalization paper.

Very truly yours,

GEO. K. NASH,  
Attorney General.

## WHO IS ELIGIBLE AS AN OFFICER.

Office of the Attorney General,  
Columbus, Ohio, April 25, 1881.

*Mr. Anson Wesco, Hamilton, Ohio:*

DEAR SIR:—My understanding of the word "eligible" is that it means "proper to be chosen," "qualified to be elected." If this is the sense in which it is used in section 1020, a man cannot be a candidate for auditor while he is a county commissioner.

Please keep this opinion to yourself and not quote, as really I have no right to give opinions to any one except your prosecuting attorney, and if this should be given out, I might be charged with meddling with something that does not concern me.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Policemen Are Officers of the Municipal Corporation—  
Mayor; Appointment of to Fill Vacancy.*

POLICEMEN ARE OFFICERS OF THE MUNICIPAL  
CORPORATION.

Office of the Attorney General,  
Columbus, Ohio, April 25, 1881.

*Dennis W. Kimber, Mayor Wooster, Ohio:*

DEAR SIR:—I regret that I am compelled to differ with you. I think that policemen are officers of the municipal corporation in which they are appointed. I also think that section 1542 of the Revised Statutes applies to them as well as to other officers. I am inclined to believe that the codifiers held this view, for if they had not, they would undoubtedly have attached the same provision to section 2023, so that on account of the neglect or inability of the mayor and council to act, the city would not be left without policemen.

I am not the adviser of municipal officers, and I hope that you will not give any more weight to my opinion than that of any other lawyer.

Very truly yours,

GEO. K. NASH,  
Attorney General.

MAYOR; APPOINTMENT OF TO FILL VACANCY.

Office of the Attorney General,  
Columbus, Ohio, April 28, 1881.

*Mr. David Mercer, Racine, Ohio:*

DEAR SIR:—Section 1754 of the Revised Statutes gives the rule when a vacancy occurs in the office of mayor. The council must by a vote of a majority of all the members elected thereto, appoint the mayor. At the next municipal election occurring more than thirty days after the resigna-

*Forfeiture of Franchises of a Municipal Incorporation by  
Non-User.*

tion, a mayor may be elected to fill the vacancy. I do not find that any provision is made for a special election to fill the vacancy.

Very truly yours,

GEO. K. NASH,

Attorney General.

FORFEITURE OF FRANCHISES OF A MUNICIPAL  
INCORPORATION BY NON-USER.

Office of the Attorney General,

Columbus, Ohio, April 25, 1881.

*Mr. N. J. Dever, Prosecuting Attorney Portsmouth, Ohio:*

DEAR SIR:—Your favor of the 16th inst. reached me while the General Assembly was overwhelming me with work. Indeed this has been my condition for the last six weeks, but it has gone now, and I hope to have time for other matters.

I find that Sciotoville was incorporated for special purposes in 1875. This is what is known as a non-user in the Revised Statutes. I cannot find how long a municipal corporation can neglect to use its franchises without forfeiture, unless section 6780 of the Revised Statutes fixes the limit. I am inclined to the opinion that it does.

I do not believe, if this is so, that the question can be raised in any other manner than by proceedings in *quo warranto* to declare the forfeiture. If the present trustees should go ahead, the question could not be raised in proceedings to enjoin the collection of taxes, and if the people should acquiesce in their proceedings for any length of time, I do not believe that a forfeiture would be declared.

I have not forgotten your other questions. They have given me considerable trouble, but I hope to answer them in a few days.

Very truly yours,

GEO. K. NASH,

Attorney General.

*Power of City Councils to Issue Bonds for Building Railroads, Etc.*

POWER OF CITY COUNCILS TO ISSUE BONDS  
FOR BUILDING RAILROADS, ETC.

Office of the Attorney General,  
Columbus, Ohio, April 28, 1881.

*Mr. M. M. Murphey, Ripley, Ohio:*

DEAR SIR:—Your favor of April 27th has been received. It is not made the duty of the attorney general to advise municipal corporations or their officers, and if I answer the questions suggested in your letter, I may subject myself to the charge of interfering with matters that do not concern me.

To anything that I may say in this matter, no more value ought to be attached than to an expression of an opinion by any other attorney.

Section 6 of article 8 of the Constitution positively forbids any county, city, town or township from becoming a stockholder in any corporation, or from raising money for, or loaning its credit to or in aid of any such corporation.

The General Assembly has, within the last two or three years, made laws authorizing cities, towns and townships to build railroads and to lease and operate the same.

I have very grave doubts in regard to the constitutionality of such legislation, and the question is now pending in the Supreme Court.

In regard to the matter suggested in your letter, if my advice is desired, I would say "go very slow," and by no means should the council issue bonds until they have the very best legal advice that they have a right to do so.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Cemetery Ballot—Marriage Endowment Associations; Incorporations of.*

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## CEMETERY BALLOT.

Office of the Attorney General,  
Columbus, Ohio, April 28, 1881.

*Mr. W. R. Melvin, Trustee, Wellston, Ohio:*

DEAR SIR:—I dislike to answer the question in your favor of the 25th inst. The attorney general is not made the legal adviser of township trustees, and by so acting, I might be justly subjected to the charge of attending to something that does not concern me.

With the distinct understanding that my opinion is to have no more weight with your trustees than that of any other attorney, I will say that I think that if the question is brought before the courts, they will hold that each voter who placed in the ballot box a ticket upon which the word cemetery had been previously written, adopted that ticket as his own and that he did, constructively at least, place the word "cemetery" on the ballot. In other words, the difficulty which you suggest does not invalidate the election.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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MARRIAGE ENDOWMENT ASSOCIATIONS; INCORPORATIONS OF.

Office of the Attorney General,  
Columbus, Ohio, April 30, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—At your request I have examined the articles of incorporation of "The Union Marriage Endowment Association of Bellefontaine, Ohio," "The American Mar-



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*Marriage Endowment Associations; Incorporations of.*

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riage Alliance" and "The Greenville Matrimonial Advancement Company," which have been tendered to you for the purpose of being placed on file in your office, and have the honor to submit the following conclusions:

A Pennsylvania court has followed the example of Ohio and has refused to issue articles of incorporation to a "matrimonial society." Judge Ross, in denying the application, gave the following reasons:

First—Because the companies enlarge the circle of mercenary motives prompting to marriage and tend to make money the sole motive, which is contrary to good morals.

Second—They encourage frauds in marriage and upon innocent parties, a premium will be placed on bigamy and unsuspecting men and women will become the prey of sharpers.

Third—They tend to increase divorces and the collusion and fraud by which divorces are often procured.

Fourth—They offer an inducement to allege marriage where none exists and thus throw a cloud on the legitimacy of issue.

Fifth—They tend to encourage marriages between parties physically and mentally immature. The judge further said: "A great moral writer has said that the two great pillars of society are the sanction of an oath and the institution of marriage. This court will not lend its aid to sap the foundation of either. Such, however, would be the effect of incorporating societies of this character. It must be understood, therefore, that this court will refuse all such applications."

In the certificate of the "Union Matrimonial Association of Bellefontaine, Ohio," the subscribers set forth that they do "hereby associate themselves together for the purpose of organizing an association under the provisions of section 3630 of the Revised Statutes of Ohio." They further set forth that the object of their association is to "encourage small contributions at determinate periods, to a general fund designated as the endowment fund for the mutual

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*Marriage Endowment Associations; Incorporations of.*

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benefit of those who contribute to such fund, and from the accumulations created in this way, to bestow, at marriage, on persons so contributing their mutual and *pro rata* portion of such fund."

Under section 3630 of the Revised Statutes of Ohio, a company or association may be organized "for the purpose of mutual protection and relief of the members, and for the payment of stipulated sums of money to the families and heirs of the deceased member of such company or association." While companies organized under this section may furnish protection and relief to their members during life, yet it is also necessary that they should provide for the payment of a stipulated sum of money to the family or heirs of the deceased members of such companies or associations.

Nothing of this kind is proposed in this certificate, and section 3630 certainly does not furnish authority of law for filing the certificates.

The object set forth in the articles of incorporation of the American Marriage Alliance is the mutual benefit of its members by paying each member a sum of money within ninety days after the filing of proofs of marriage. It is also provided that if a member is married within two hundred days after becoming a member of the association, he or she shall forfeit all rights arising from such membership, and that after a lapse of two hundred days, there shall be credited to the members on the books of the association the sum of twenty dollars per month for each month thereafter that the member remains single, provided that in no case shall the amount paid upon marriage exceed \$2,400.00.

The plan for doing business by this association certainly offers a money consideration for people to remain unmarried for a long period of time. If one is married within two hundred days after joining the association, he or she loses all benefits that are expected from it, and after the two hundred days have expired, a premium of twenty dollars per month for the period of ten years is offered to each member who remains unmarried. Nearly eleven years must

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*Marriage Endowment Associations; Incorporations of.*

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elapse before the full moneyed benefits expected from this association, can be received.

This kind of business is not sanctioned by section 3630 before referred to. This section makes the principal benefit depend upon the happening of an event beyond the control of man. Whereas, in this proposed association, the principal benefit is constantly increased for the period of ten years by the voluntary deferment of a marriage contract, which contract it is the policy of all civilized nations to encourage and promote.

The same objection exists in regard to the business proposed to be carried on by the Greenville Matrimonial Advancement Company. According to its articles of incorporation, a member is not entitled to the full moneyed benefits proposed to be conferred, until he or she has been a member of the association and remained unmarried for the period of four years.

Section 3235 of the Revised Statutes provides that "corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves together, except dealing in real estate and carrying on professional business."

It may be claimed that, under the broad provisions of this section, corporations organized for the purposes of those now under consideration, may be formed.

I do not believe that individuals can lawfully associate themselves together for the purposes proposed to be accomplished by these associations.

The purpose is to get large numbers of young people to combine together, and to hold out inducements to them to refrain from entering upon the marriage relation until certain sums of money are accumulated.

All admit that marriage is a contract coeval with and essential to the existence of society. Many good people hold it to be a sacrament, and although many others do not so esteem it, yet they account it as of Divine origin, and invest it with the sanction of religion.

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*Columbus Asylum for Insane; Expenditure of Money Arising From Bequest.*

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For individuals to associate themselves together for the purpose of effecting and surrounding this kind of a contract by and with the considerations proposed in these articles of incorporation is against public policy, because against the public welfare, and if against public policy, it is unlawful.

I suggest that you refuse to place these articles of incorporation upon file in your office.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COLUMBUS ASYLUM FOR INSANE; EXPENDITURE OF MONEY ARISING FROM BEQUEST.

Office of the Attorney General,  
Columbus, Ohio, May 2, 1881.

*Dr. H. C. Rutter, Superintendent Columbus Asylum for Insane:*

DEAR SIR:—I have received your letter bearing date of April 27th. You ask whether the trustees of your institution, in building a conservatory with the money arising from the bequest of Matthew Russell, are governed by the same legal restrictions that apply to the expenditure of money appropriated by the State for the erection of public buildings?

After a careful examination, I will say that I think, as a matter of law, that they are not.

Permit me, however, to make the suggestion that, unless it would result in positive injury to those who are intended to be benefited by the donation, it will be well for the trustees to expend this money under the same rules that

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*County Commissioners; Erection of Bridges By.*

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they expend money appropriated by the State. Many will reason that if these rules are necessary to the expenditure of public funds, they ought to be applied in the expenditure, by public officers, of money, intrusted to them by private persons, for the same purposes.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COUNTY COMMISSIONERS; ERECTION OF  
BRIDGES BY.

Office of the Attorney General,  
Columbus, Ohio, May 4, 1881.

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

DEAR SIR:—Your favor of April 30th has been received today.

I am inclined to the opinion that the commissioners, if they find that the plans for a bridge, agreed upon by them, are insufficient, may change these plans, even after the contract has been let.

Sections 782 to 793, inclusive, of the Revised Statutes, provide the manner in which buildings may be erected by State officers. You will observe that section 786 contains a prohibition against a change of plans by these officers.

In the clauses relating to county buildings, bridges, etc., I find no such prohibition. I infer that the General Assembly thought that State officers without this prohibition would have the discretion to change and alter plans, and therefore made it. Having omitted the prohibition in the sections relating to county structures, it would look as if the General Assembly intended to clothe the officers having charge of such structures with a discretion to change plans and specifications.

*County Commissioners; Construction of Bridges By.*

Of course, in the exercise of such discretion, great caution should be used.

I would suggest that before making the change mentioned by the commissioners in your recent letter, the change be submitted to the commissioners, county auditor and county surveyor for approval, as is provided shall be done in the case of State officers in section 786, and that the changed plans be deposited with the county auditor as is provided in section 797. I have no doubt about the power of the commissioners to do this, and if they exercise this power in the manner suggested by me, I do not see how any one could justly complain.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COUNTY COMMISSIONERS; CONSTRUCTION OF  
BRIDGES BY.

Office of the Attorney General,

Columbus, Ohio, May 5, 1881.

*Mr. W. H. Leete, Prosecuting Attorney, Waverly, Ohio:*

DEAR SIR:—The act of June 5, 1879, O. L., Vol. 76, page 289, authorizes the commissioners of Pike County to build a bridge across the Scioto River near Sharonville in said county. I think that it authorizes them to construct this bridge at the point where a county road crosses said river nearest said village. It does not clothe them with the power to locate the bridge one and one-half miles further away from the nearest point to said village, where the river is crossed by a county road, and at a point where there is now no road, county or otherwise, crossing the river.

I think that proceedings had in accordance with section 4642 must be at one of the *regular* sessions.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*Bonds of Township Officers; Recording of—Free Roads;  
Repairs of.*

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BONDS OF TOWNSHIP OFFICERS; RECORDING  
OF.

Office of the Attorney General,  
Columbus, Ohio, May 9, 1881.

*Miles Hari, Demos, Ohio:*

DEAR SIR:—There certainly can be no doubt as to who should pay for the recording of the bonds of justices of the peace, township treasurers and constables. Sections 1506, 1507 and 1508 certainly provide that an officer giving a bond shall pay for its recording. Section 5 provides that bonds given under section 1515, as well as other bonds, shall be recorded. It would be proper for the officer giving the bond to pay for the recording.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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FREE ROADS; REPAIRS OF.

Office of the Attorney General,  
Columbus, Ohio, May 9, 1881.

*M. D. Mann, Prosecuting Attorney, Paulding, Ohio:*

DEAR SIR:—After a free road has been constructed under the provisions of the two-mile assessment law, I suppose that they must be kept in repair in accordance with the provisions of chapter 10, page 1191, of the Revised Statutes. Section 4889, as amended in 1880 certainly makes each township in Paulding County a road district, and the trustees of each township have full charge and control of the road after being notified as provided in section 4891. I suppose that the word "such" in section 4896 has refer-

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*Power of Prosecuting Attorney to Compromise Suits.*

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ence to the same class of roads as are mentioned in section 4889, and the sections following 4896 provide how the road shall be cared for in counties not mentioned in section 4889.

Very truly yours,

GEO. K. NASH,

Attorney General.

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POWER OF PROSECUTING ATTORNEY TO COMPROMISE SUITS.

Office of the Attorney General,  
Columbus, Ohio, May 9, 1881.

*Mr. C. W. Gerard, Cincinnati, Ohio:*

DEAR SIR:—I readily see that in such cases as you refer to in your favor of the 25th ult., frequently a compromise might be made advantageous to the State.

I agree with yourself and the prosecuting attorney that he has no power to make such a compromise. In your letter you intimate that he may get such authority from me. After a somewhat careful examination of the statutes, I have been unable to discover that I have any authority to make such a compromise or to authorize the prosecuting attorney to do so.

This seems to me to be one of those cases in which no officer is authorized to take the action suggested by you. If, however, I have overlooked any section conferring power upon myself or any one else, I would be under obligation if you would call my attention to it.

Very truly yours,

GEO. K. NASH,

Attorney General.



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*Who Is "Eligible" as an Officer.*

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## WHO IS "ELIGIBLE" AS AN OFFICER.

Office of the Attorney General,  
Columbus, Ohio, May 6, 1881.

*Messrs. Morey, Andrews and Morey, Hamilton, Ohio:*

GENTLEMEN:—Your favor of May 5th, enclosing a slip cut from the Cincinnati Enquirer, has been received.

I presume that the letter referred to in that slip was one written by me to Mr. Anson Wesco, attorney, Hamilton, Ohio, upon April 25th. In that letter I said:

My understanding of the word "eligible" is that it means "proper to be chosen," "qualified to be elected." If this is the sense in which it is used in section 1020, a man cannot be a candidate for auditor while he is a county commissioner.

The inhibition contained in section 1020, I think, makes void all votes cast for a judge of any court, clerk of any court, county commissioner, recorder, surveyor, treasurer or sheriff, for the office of county auditor, at any regular election at which said office is to be filled.

I do not think that this inhibition extends to primary elections held under sections 2916 to 2921 inclusive.

If any one of the officers named in section 1020 should cease to be such officer at any time before the regular election for county auditor, votes cast for him for said office are, I think, valid.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*A Member of a Council Can Have No Interest, Etc.—  
Stewards; Appointment of in State Institutions.*

A MEMBER OF A COUNCIL CAN HAVE NO INTEREST, ETC.

Office of the Attorney General,  
Columbus, Ohio, May 10, 1881.

*Mr. J. Frank Beelman, Plymouth, Ohio:*

DEAR SIR:—I am not made the adviser of municipal corporations or their officers, therefore any opinion that I may express is of no more value than that of any other attorney.

Section 6976 is very sweeping in its character. I do not think that it makes any difference whether you vote for or against ordinances that require publications in your paper as a member of the council.

I am of the opinion that you are prohibited from having any interest, direct or indirect, in any moneys paid for the publication of the village advertisements.

Very truly yours,

GEO. K. NASH,  
Attorney General.

STEWARDS; APPOINTMENT OF IN STATE  
INSTITUTIONS.

Office of the Attorney General,  
Columbus, Ohio, May 10, 1881.

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

DEAR SIR:—In reply to your favor of May 3d, I have the honor to say that, in my opinion, the laws of Ohio require that each benevolent institution of the State, including the Ohio Soldiers' and Sailors' Orphans' Home and the Institution for Feeble Minded Youth shall have a steward or financial officer.

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*Stewards; Appointment of in State Institutions.*

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It is evident that it is not the intention of the law that the superintendent of any benevolent institution should act as its financial officer. Section 649 provides that the financial officer shall act under the direction of the superintendent. Section 654 provides that the state treasurer may, from time to time, advance a sum of money not exceeding \$3,000, to meet the current expenses of any benevolent institution, to the financial officer of such institution. This can only be done upon the order of the financial officer, approved by the superintendent and a majority of the trustees.

All through the law pertaining to benevolent institutions there seems to prevail the idea that the superintendent and financial officer are two distinct and separate officers.

Section 640 certainly confers sufficient authority upon the trustees to appoint a steward or financial officer, and I am inclined to think that this section makes it mandatory upon the trustees to appoint a steward. It is true that the word "may" is used, but in the interpretation of statutes "may" should be read as "shall," where the intent of the legislature requires that it be done. From the reading of all the sections relating to benevolent institutions, nothing can be plainer than that the General Assembly intended that each institution shall have a steward or financial officer, for the state treasurer is not authorized to advance money to pay the current expenses of the institution, except upon the order of the steward or financial officer, approved by the superintendent and a majority of the trustees.

Each financial officer must give a bond in the sum of ten thousand dollars.

Very respectfully yours,

GEO. K. NASH,  
Attorney General.

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*Clerk of Courts; Fees of—County Auditor; Election of.*

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## CLERK OF COURTS; FEES OF.

Office of the Attorney General,  
Columbus, Ohio, May 11, 1881.

*Mr. Fenton Bagley, Zanesville, Ohio:*

DEAR SIR:—Your favor of May 4th has been received and considered by me. I am inclined to think that all fees that the clerk is entitled to by the words "for entering an order, verdict, rule or judgment on the journal, eight cents for each hundred words," section 1260, should be charged up and collected as a part of the costs in the case pending when the order is made.

If under these words he is entitled to fees for the order of the court, in opening and closing the court, it seems to me that they must be charged as a part of the costs of the case pending the time the order is made. The clerk can, of course, only be paid such fees out of the county treasury as the law specifically prescribes shall be so paid.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY AUDITOR; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, May 11, 1881.

*Mr. Geo. F. Sailer, Auditor of Williams County, Bryan, Ohio:*

DEAR SIR:—As you have been appointed auditor by the county commissioners, as provided in section 1017, Revised Statutes, I think your successor will be elected at the next October election.

Section 11 of the Revised Statutes seems to settle this question.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Who is "Eligible" as an Officer?—Incorporation of Companies For Constructing Railroads.*

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WHO IS "ELIGIBLE" AS AN OFFICER?

Office of the Attorney General,  
Columbus, Ohio, May 12, 1881.

*Mr. J. F. Neilan, Hamilton, Ohio:*

DEAR SIR:—My understanding of the word "eligible" is that it means "proper to be chosen," "qualified to be elected." I suppose that it is used in this sense in section 1020, and that votes cast for a candidate for county auditor at any regular election, while he is a county commissioner, are void.

I do not think that his inhibition extends to primary elections held under sections 2916-2921.

In primary elections the question to be decided is not whether a man shall fill a particular office, but whether a party to which he belongs shall support him for said office at a subsequent election to be held under the laws of Ohio.

If any one of the officers named in section 1020 should cease to be such officer at any time before the regular election for county auditor, votes cast for him for said office are, I think, valid. Very truly yours,

GEO. K. NASH,  
Attorney General.

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INCORPORATION OF COMPANIES FOR CON-  
STRUCTING RAILROADS.

Office of the Attorney General,  
Columbus, Ohio, May 12, 1881.

*Hon. Chas. Townsend, Secretary of State, Columbus, Ohio:*

DEAR SIR:—At your request I have carefully examined section 3237 of the Revised Statutes of Ohio.

In my opinion this section has application to associa-

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*Liquor; Prosecution For Selling.*

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tions which are organized for the purpose of constructing, owning and operating an improvement which is not located at a single place, and that it does not have application to a corporation which is organized for the simple purpose of doing the work of making the improvement for the company that proposes to construct, own and operate it.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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LIQUOR; PROSECUTION FOR SELLING.

Office of the Attorney General,  
Columbus, Ohio, May 13, 1881.

*Mr. Hiram Merlin, Celina, Ohio:*

DEAR SIR:—I suppose that a violation of section 6944 of the Revised Statutes, as amended, must be prosecuted in the same manner as any other misdemeanor under the laws of Ohio.

I think that section 7147 answers the question contained in your favor of the 7th inst.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Ohio Soldiers' and Sailors' Orphans' Home; Duties of Superintendent.*

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OHIO SOLDIERS' AND SAILORS' ORPHANS'  
HOME; DUTIES OF SUPERINTENDENT.

Office of the Attorney General,  
Columbus, Ohio, May 13, 1881.

*Major W. L. Shaw, Xenia, Ohio:*

DEAR SIR:—Your favor of May 12th has been received.

Section 682, and those following, as they appear in the Revised Statutes of 1880, placed upon the superintendent the duty of keeping full and true accounts of the receipts and disbursements of your institution. Section 685 made it his duty to make all contracts on behalf of and all purchases for said institution. These sections certainly imposed upon him the duties of the financial officer. By the act of April 14, 1880 (O. L., Vol. 77, page 203), all of these sections were unconditionally repealed. This being the case, I am of the opinion that the financial affairs of your institution must be conducted like those of other benevolent institutions. Section 649 of the Revised Statutes, and section 650 as amended April 14, 1880, fully direct how this shall be done. It may be that the office of clerk and financial officer can be combined in one person. If this be done, he must give a bond of \$10,000 as financial officer.

I am quite sure that the office of financial officer and superintendent cannot be combined in one person. Section 649 says that the duties of the financial officer must be performed under the direction of the superintendent. Section 650 provides that his balance sheets must be endorsed by the superintendent and two trustees, and section 654 prohibits the state treasurer from advancing money except upon the order of the financial officer, approved by the superintendent and three trustees. The duties of the financial officer and superintendent are so diverse that they could not be performed by one person. Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Power of Attorney General and Auditor to Compromise  
Judgments.*

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POWER OF ATTORNEY GENERAL AND AUDITOR  
TO COMPROMISE JUDGMENTS.

Office of the Attorney General,  
Columbus, Ohio, May 16, 1881.

*Mr. C. W. Gerard, Attorney-at-Law, Cincinnati, Ohio:*

DEAR SIR:—I do not believe that section 180, Revised Statutes, confers upon the auditor and attorney general power to compromise judgments rendered against defendants for costs in criminal cases. I think that this power only extends to claims that have not been put in judgment.

I am confirmed in this view by the fact that the claims relating to adjustment, only speaks of claims, while the next paragraph which authorizes them to extend the time for payment, speaks of any claim or judgment.

Again, these officers can only adjust claims where a "set off" or "abatement" is set up. No "set off" can be brought against these judgments. What the legislature meant by "abatement" I do not know. I suppose that it means that the auditor and attorney general may allow in making settlement, any reduction previously made by any board or officer having power to make a reduction.

I wish we had the power to make these settlements, for I think that we could get quite a sum of money for the State. If it cannot be done without, an effort should be made with the next General Assembly to have this power conferred upon some one.

Very truly yours,

GEO. K. NASH,  
Attorney General.



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*County Auditor; Correction of Tax Returns—Savings and Loan Association; Capital Stock Must Not be Less Than \$50,000.*

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COUNTY AUDITOR; CORRECTION OF TAX  
RETURNS.

Office of the Attorney General,  
Columbus, Ohio, May 16, 1881.

*Mr. Chas. Evans, County Solicitor, Cincinnati, Ohio:*

DEAR SIR:—I do not believe that the fact that a citizen has been cited to appear before the annual city board of equalization, has so appeared, and the value of his property has been increased or diminished by said board, will excuse him from the operation of sections 2781, 2782 and 2783 of the Revised Statutes, provided such a state of facts exists as said sections are intended to correct.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SAVINGS AND LOAN ASSOCIATIONS; CAPITAL  
STOCK MUST NOT BE LESS THAN \$50,000.

Office of the Attorney General,  
Columbus, Ohio, May 23, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—I have carefully examined the letter of Captain Cape, dated March 17th, to W. C. Mooney, Woodfield, Ohio, and also the letters of Messrs. Hunter and Malloy, in reply thereto, dated March 23d, in reference to the attempted reduction by the Monroe bank of its capital to less than \$50,000.

I am inclined to think that this cannot be done. Section 3264 of the Revised Statutes confers upon corporations

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*Savings and Loan Associations; Capital Stock Must Not  
be Less Than \$50,000.*

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generally the right to reduce their capital stock, but I think that section 3797 deprives associations organized under Chapter 16, Title II, of the Revised Statutes of this right.

To be sure this section only says, "No such association shall commence business with a subscribed capital less than \$50,000," yet I am inclined to think that it was the intent of the General Assembly that the capital stock of such association should be kept up to the minimum of \$50,000.

In considering the meaning and intent of the Revised Statutes, it is fair to go back to the original acts from which the sections were taken. Section 4 of the act of February 26, 1873, and which is intended to be incorporated in section 3797, provided that "for the purpose of *carrying on the business of said corporation and for the security of depositors*, it shall be the duty of the persons named in said certificate of incorporation, and such others as shall be associated with them, to raise and form a capital of not less than \$50,000. Provision was made in this act that the capital stock might be increased, but no provision was made for its reduction. I think that it is certain that so long as the act of February 26, 1873, was in force, the capital stock of a savings and loan association could not have been less than \$50,000.

It was the general idea of the Revised Statutes that there should be a revision, but not a radical change in our old laws. When, therefore, we find the intent of the General Assembly to be obscure in the revision, I think we have a right to go to the old act to ascertain that intent.

Following this rule in this case I conclude that the capital stock of a savings and loan association cannot be less than \$50,000.

Very respectfully,

GEO. K. NASH,  
Attorney General.

*Probate Judge; Can Grant Leave to File Petition in Error in Absence of Common Pleas Judge—Ohio Reform School; Rules Governing Boys at.*

PROBATE JUDGE; CAN GRANT LEAVE TO FILE PETITION IN ERROR IN ABSENCE OF COMMON PLEAS JUDGE.

Office of the Attorney General,  
Columbus, Ohio, May 28, 1881.

*Hon. W. D. Matthews, Mt. Gilead, Ohio:*

DEAR SIR:—I have not had time to give the question contained in your letter such consideration as it deserves, and the opinion I may give ought not to receive such weight as that of a lawyer who has studied it carefully.

In the absence of a common pleas judge from the county, I think that a probate judge may grant leave to file a petition in error in the Common Pleas Court in an action for forcible entry and detainer.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

OHIO REFORM SCHOOL; RULES GOVERNING  
BOYS AT.

Office of the Attorney General,  
Columbus, Ohio, May 28, 1881.

*Mr. Chas. Douglass, Superintendent Ohio Reform School,  
Lancaster, Ohio:*

DEAR SIR:—About the only material change in section 761 of the Revised Statutes made last winter, is that after the word "penitentiary" in the sixth line, there appears these words:

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*School District; Transfer of a Sub to a Special.*

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"Shall while at the reform school be governed by the same rules and regulations relative to deportment and discharge as other persons committed to said institution, and the governor may, for satisfactory reasons, remand to the penitentiary," etc.

I understand that this arrangement places boys transferred from the penitentiary under the same regulations as to discharge as other boys committed to your institution, and applies to all boys in the institution.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SCHOOL DISTRICT; TRANSFER OF A SUB TO A  
SPECIAL.

Office of the Attorney General,  
Columbus, Ohio, May 28, 1881.

*Mr. C. J. Chase, Auditor, Medina, Ohio:*

DEAR SIR:—If I read your letter aright, an effort was made to transfer a sub-school district in Hamsville Township to the special district of Lodi. That afterwards this proceeding was taken to the courts, and on account of invalidity of proceedings the sub-district was detached.

*Query*—Is the sub-district responsible for any part of a debt created while the sub-district was so attached?

My answer is that it is not liable.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Incorporation of Wood Turners' Protective Union—O. S.  
and S. O. Home; Employment of Teachers of.*

INCORPORATION OF WOOD TURNERS' PROTEC-  
TIVE UNION.

Office of the Attorney General,  
Columbus, Ohio, June 3, 1881.

*Hon. Chas. Townsend, Secretary of State, Columbus, Ohio:*

DEAR SIR:—I am of the opinion that individuals may lawfully associate themselves together for the purpose named in the articles of incorporation of the Wood Turners' Protective Union, of Cincinnati, Ohio, and therefore think that said articles may be properly filed in your office.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

O. S. AND S. O. HOME: EMPLOYMENT OF  
TEACHERS AT.

Office of the Attorney General,  
Columbus, Ohio, June 4, 1881.

*Major Wm. L. Shaw, O. S. and S. O. Home, Xenia, Ohio:*

DEAR SIR:—The fact that I have been out of the city a portion of the time and that I have been very busily engaged since my return, has prevented an earlier reply to your letter.

Section 647 is a general provision, applying to all the benevolent institutions of the State. The sections contained in Chapter 8 relate exclusively to your institution. Whenever they come in conflict with or are inconsistent with the general provisions relating to benevolent institutions, I understand that the provisions in Chapter 8 are to be enforced and followed. Section 678 gives the superintendent power,

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*O. S. and S. O. Home; Employment of Teachers at.*

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*under such regulations* as the board may adopt, to employ "proper persons to teach the pupils," and to dismiss such instructors for cause. In performing the duty of employing and dismissing teachers, the superintendent must follow the regulations of the board strictly. In the employment of other needed officers and employes of the institution, sections 640 and 647 must be followed. Under section 678 the superintendent may dismiss a teacher or instructor, but in so doing, he must follow the regulations of the board of trustees. The officers named in section 640 can only be removed by the trustees. They may be suspended by the superintendent, but the board of trustees may at once remove the officers or restore them to their work as they think best. Under section 647 attendants, nurses, servants and employes of like grade may be discharged by the superintendent.

I think that the officers named in section 695 as being entitled to receive as compensation for their services, a certain amount per month, can only be paid for the months in which they are actually employed.

I think that it is within the province of the trustees to determine by their regulations for what period of time the superintendent may appoint the teachers provided for by section 678.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Members of Board of Equalization; Officers and; Receive Salary—Allowance for Defense of Indigent Prisoner.*

MEMBERS OF BOARD OF EQUALIZATION; OFFICERS AND. RECEIVE SALARY.

Office of the Attorney General,  
Columbus, Ohio, June 5, 1881.

*Mr. C. M. Stone, Prosecuting Attorney, Cleveland, Ohio:*

DEAR SIR:—In my opinion members of a board of equalization are officers, and the per diem which they receive for their services, is a salary. In the case of the State against Wilson, 29th O. S., page 347, the question "who is an officer," is quite clearly settled, and in the case of Thompson against Phillips, 12th O. S., page 617, I think that the court regards any periodical payment as a salary. If my conclusion is correct, section 20 of Article 2 of the constitution prevents members of boards of equalization, who have entered upon the discharge of their duties prior to the passage of the act of April 16, 1881, from receiving the benefits of its increase. I have reached this conclusion against my will, and have delayed giving it to you before with the hope that I might come to a different one.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

ALLOWANCE FOR DEFENSE OF INDIGENT PRISONER.

Office of the Attorney General,  
Columbus, Ohio, June 10, 1881.

*Mr. B. G. Young, Prosecuting Attorney, Marion, Ohio:*

DEAR SIR:—Your favor of the 6th inst. has been received.

I hesitate about giving an opinion adverse to the ruling

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*Taxation of United States Bonds Under Section 2757.*

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of the common pleas judges of the State, yet if you have stated the facts in your letter, I am compelled to come to the conclusion that an error has been committed.

The Common Pleas Court only has jurisdiction to make an allowance to attorneys for service in defending prisoners when that jurisdiction is given to it by statute.

Section 7246 gives such jurisdiction, but the court has no power to make an allowance in excess of the amount named in said section. If the most liberal construction be given to this section, only \$100 can be allowed to each attorney for defending an indigent prisoner when charged with homicide, and this sum must pay for all the services in the case, no matter if there be a dozen trials and the case is taken to the court of last resort.

If a court attempts to allow in excess of this amount, it is going beyond its jurisdiction. It may be that I have overlooked some statute under which Judge Dodge acted, but upon the investigation which I have made I cannot come to any other conclusion than the one indicated.

Very truly yours,

GEO. K. NASH,

Attorney General.

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TAXATION OF U. S. BONDS UNDER SECTION  
2757.

Office of the Attorney General,  
Columbus, Ohio, June 20, 1881.

*Mr. W. A. Waldon, Attorney-at-Law, Steubenville, Ohio:*

DEAR SIR:—Your favor of the 18th inst. has been received.

I have before had my attention called to section 2757 of the Revised Statutes in regard to listing the property of unincorporated banks and bankers for taxation.



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*Extradition from Foreign Country; No Allowance for.*

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If this section is carried into effect, it will certainly result in the taxation of the United States bonds in the hands of such bankers.

The change that has been made in section 10 of the original act, shows, I think, a deliberate attempt upon the part of the General Assembly to do this.

I have no doubt of this act being in conflict with the laws of the United States, and presume that our courts, upon the first opportunity, will so declare it. I have so stated to the State auditor. He feels, however, that he is an executive officer with no power to declare laws void in advance of the action of the courts, and for this reason has instructed the county auditors to proceed in accordance with the provisions of this section—2757.

Very truly yours,

GEO. K. NASH,

Attorney General.

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EXTRADITION FROM FOREIGN COUNTRY; NO  
ALLOWANCE FOR.

Office of the Attorney General,  
Columbus, Ohio, June 22, 1881.

*Mr. J. F. Neilan, Prosecuting Attorney, Hamilton, Ohio:*

DEAR SIR:—I have delayed answering your favor of the 14th instant for the reason that I desired to give the subject careful consideration.

Section 5278 of the Revised Statutes of the United States, in so far as it relates to costs, has reference only to cases wherein the executive authority of a state or territory within the U. S. makes a demand upon another state or territory within the Union. As you say, it is silent in regard to cases wherein the government has made a demand

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*Extradition from Foreign Country; No Allowance for.*

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at the request of the executive of a state or territory upon a foreign government.

Section 920 of the Revised Statutes of Ohio seems to have provided for such cases as are contemplated by section 5278 of the U. S. statutes.

In such cases the county commissioners may pay to the agent designated in the requisition of the governor, all necessary expenses. The sum thus paid may be included in the cost bill mentioned in section 7332 of the Ohio statutes, and will be paid by the State upon conviction, provided they cannot be collected from the defendant.

In regard to the case presented by you, our statutes as well as the statutes of the United States seem to be silent. In this condition of the statutes, I do not think that the county commissioners have any power to pay the expenses out of the county treasury. They would not have the right to do so in the case of a requisition for a fugitive from justice, by the governor of Ohio upon the governor of Indiana, were they not authorized so to do by section 920. I do not know of any law that would authorize any State officer to draw a warrant upon the State treasury for these expenses.

There is no reason, except want of authority to do so, why the costs made for extraditing a fugitive from justice, in a foreign country for prosecution under our State laws, should not be paid in the same manner as when the fugitive is returned from another state or territory. It seems to be an omission upon the part of the General Assembly not to have provided for these cases.

It is probably only necessary to call the attention of the General Assembly to this matter to have proper provision made, and upon the first opportunity I shall do so.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*Railroad Commissioner; Duty to Inspect Roads in the Hands  
of a Receiver.*

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Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Mr. C. W. Armstrong, Armstrong's Mills, Ohio:*

DEAR SIR:—The question which you ask in your favor of June 8th is difficult to answer.

My impression is that it was the intention of the legislature that a majority of the voters, as ascertained by the election to be held in accordance with the provisions of the act of March 25, 1880, should determine the question of the sale and investment of stock.

It is a question which will remain an open one until the courts determine it.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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RAILROAD COMMISSIONER; DUTY TO INSPECT  
ROADS IN THE HANDS OF A RECEIVER.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Hon. H. Sabine, Commissioner of Railroads and Telegraphs:*

DEAR SIR:—Your favor of the 23d instant has been received. I think that the first paragraph of section 247 of the Revised Statutes clearly authorizes you, when you have reasonable grounds to believe that any of the tracks, bridges, or other structures of *any* railroad, whether in the hands of, and operated by a receiver or not, are in a dangerous and unfit condition, to cause the same to be examined and inspected.

In the second paragraph there is some difficulty. It makes it your duty to inform the executive officers of the

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*Railroad Commissioner; Duty to Inspect Roads in the Hands  
of a Receiver.*

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*company* operating such road of the defects found and the precautions necessary for the safety of life and property. This seems to take from under your control roads which have passed into the hands of receivers. I can hardly think that it was the intent of the General Assembly to exempt these roads from the benefits that are to be derived from examinations by the railroad commissioner. The fact that the companies owning them are poor generally causes such roads to be in bad condition, and more dangerous to life and property than other roads.

In the case of roads in the hands of a receiver, I think you would be entirely justified in causing examinations to be made, and in giving to the receivers the same notice and information that you would to the executive officer of a railroad company. I would also give the court under whose direction the receiver is acting full information as to what has been done, and as to the condition in which the road is found.

Yours very truly,  
GEO. K. NASH,  
Attorney General.

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REVENUE FUND.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Mr. Henry R. Probasco, Cincinnati, Ohio:*

DEAR SIR:—As the attorney general is not made the legal adviser of municipal corporations, I have not given much attention to this branch of the law. For this reason perhaps much weight ought not to be given to the answer which I may give in reply to the questions contained in your favor of the 10th instant.

In answer to your first question, I will say that sections 2685 and 2700 seem to be the only authority that authorizes

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*Supervisor Who Has Failed to Deposit Bond.*

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the borrowing of money in anticipation of taxes. They specify what taxes may be anticipated.

My idea of the general revenue fund is that it is the fund authorized to be raised by section 2682, and that levies authorized by the statutes for other purposes do not belong to this fund.

Yours very truly,  
GEO. K. NASH,  
Attorney General.

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SUPERVISOR WHO HAS FAILED TO DEPOSIT  
BOND.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Hon. C. L. Allen, Fayette, Ohio:*

DEAR SIR:—If a man who has been elected supervisor has failed to deposit with the clerk a bond approved by the trustees, I do not think that he is any more an officer than any other private citizen, and that there is a vacancy in the office which should be filled in accordance with section 1451 Revised Statutes.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Decoration Day not a Legal Holiday—Dayton Asylum;  
Improvements at.*

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## DECORATION DAY NOT A LEGAL HOLIDAY.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Mr. A. H. Myers, Atwater, Ohio:*

DEAR SIR:—Your postal card to Governor Foster has been referred to me. Decoration Day is not a legal holiday.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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DAYTON ASYLUM; IMPROVEMENTS AT.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Dr. Tobey, Superintendent Dayton Asylum:*

DEAR SIR:—I have concluded that the building which you propose to construct may be considered one improvement, and if they will cost less than \$3,000 the board may proceed to put them up, without advertising the bids.

The machinery for the manufacture of gas is another improvement, and if it costs more than \$3,000, plans must be prepared and the contract let in accordance with the statutes which we examined.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Probate Court; Cannot Commit Boys to Reform School—  
Associations With Banking Powers.*

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PROBATE COURT; CANNOT COMMIT BOYS TO  
REFORM SCHOOL.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Hon. W. H. Mozier, Van Wert, Ohio:*

DEAR SIR:—Under section 753, as amended April 18, 1881, I am of the opinion that the Probate Court has not jurisdiction to commit boys to the reform school, except in counties wherein this court has criminal jurisdiction.

Under this amended section they cannot be committed until they have been convicted of some offense against the laws of the State, and my idea is that this commitment to the reform school must be made by the court having jurisdiction thereof, instead of inflicting the penalty attached by law to the offense.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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ASSOCIATIONS WITH BANKING POWERS.

Office of the Attorney General,  
Columbus, Ohio, June 25, 1881.

*Mr. F. L. Hammer, Van Wert, Ohio:*

DEAR SIR:—I regret that I have been compelled to delay answering your letter so long, and even now I have to write in haste upon the eve of my departure for New York upon business for the State.

I have been of the opinion that section seven of article thirteen of the constitution would prevent the organization of associations with banking powers under the provisions

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*Member of Board Cannot be Employed as Teacher.*

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of section 3235 of the Revised Statutes, and am still of that opinion.

I have even had doubts as to whether associations organized under chapter 16 of title 2 of the statutes, page 962, were not prohibited by the constitution. I know, however, that associations of this kind have been organized, and I have not felt called upon to advise the secretary of state to refuse to file articles of incorporation presented as is provided by section 3797. I know that these institutions in every essential particular, except in issuing bank bills, do a banking business, yet I have not felt it to be my duty to inquire into their authority by *quo warranto* or otherwise.

Is there any reason why your clients cannot accomplish their purposes by forming one of these savings and loan associations?

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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MEMBER OF BOARD CANNOT BE EMPLOYED AS  
TEACHER.

Office of the Attorney General,  
Columbus, Ohio, June 29, 1881.

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

DEAR SIR:—In looking over some old papers, I found that I had mislaid your letter of April 4th and have sadly neglected you. I beg pardon and regret the occurrence very much.

I have examined the sections referred to in your second question, and I am of the opinion that a township clerk, who is also a member and clerk of the board of education,



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*Election of Street Commissioners.*

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cannot be legally employed as a teacher in the schools of the township.

I am compelled to leave the city tonight and cannot answer your first question without examining the rolls in the adjutant general's office. That office is now closed for the night, but I will do so as soon as I return.

Very truly yours,

GEO. K. NASH,

Attorney General.

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ELECTION OF STREET COMMISSIONERS.

Office of the Attorney General,

Columbus, Ohio, June 27, 1881.

*Mr. Frank Taylor, New Baltimore, Ohio:*

DEAR SIR:—I beg pardon for not answering your letter of April 27th before. It has been overlooked in some way until I fished it out from some old papers tonight.

Under section 1706, I am of the opinion that the street commissioners should be elected by the people, and the amendment which was made to said section March 11, 1881, O. L., Vol. 78, page 46, shows very clearly that he must be elected in that way.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*Assignment for Defense of Indigent Prisoners—Appropriations; Lapse after Two Years.*

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ASSIGNMENT FOR DEFENSE OF INDIGENT  
PRISONERS.

Office of the Attorney General,  
Columbus, Ohio, July 11, 1881.

*Hon. Wm. H. Safford, Chillicothe, Ohio:*

DEAR SIR:—Your favor of June 25th would have received earlier attention, but for the fact that I have been absent in New York for ten days.

I have given the subject about which you write, some thought—my attention having been called to it in a case where I was assigned to defend some two or three years since. The conclusion which I then reached, and to which I still adhere, is that counsel assigned under section 7245, are the prisoner's counsel during the whole pendency of the case, whether there be one or more actual trials in the court, and that the compensation provided for by section 7246 is for the entire service rendered in the case, whether there be one or more trials. Even if the case should be taken to the Supreme Court, I do not think that any greater compensation can be allowed.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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APPROPRIATIONS; LAPSE AFTER TWO YEARS.

Office of the Attorney General,  
Columbus, Ohio, July 11, 1881.

*Dr. A. B. Richardson, Athens, Ohio:*

DEAR DOCTOR:—Your letter of the 5th instant would have received earlier attention, but for the fact that I have been absent from the city.

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*Prosecuting Attorney Not Entitled to Percentage on Costs Paid by State.*

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In accordance with the provisions of our constitution, all appropriations remaining unexpended, lapse into the treasury at the end of two years after they have been made.

I think that the appropriation you speak of, made in 1878, is no longer subject to the control of the officers of your institution.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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PROSECUTING ATTORNEY NOT ENTITLED TO  
PERCENTAGE ON COSTS PAID BY STATE.

Office of the Attorney General,  
Columbus, Ohio, July 18, 1881.

*Mr. J. S. Conkling, Prosecuting Attorney, Sidney, Ohio:*

DEAR SIR:—For a number of days I have been so nearly sick with a severe cold that I have not been able to work. This accounts for the delay in answering your favor of the 6th instant.

Under section 1298, the prosecuting attorney is entitled to ten per cent. on all moneys collected on fines, on forfeited recognizances and costs in criminal cases. I interpret this to mean that he is entitled to ten per cent. on fines collected in cases in the Court of Common Pleas or higher courts, in which the law imposes some official duty upon him, and does not include fines collected by magistrates.

The percentage upon costs does not include costs paid by the State when convicts are received at the penitentiary. This commission is to be paid upon the entire costs collected from defendants, whether received by the sheriff, clerk or prosecuting attorney.

The course which you suggest as to having all costs and

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*Prosecuting Attorney Not Entitled to Percentage on Costs  
Paid by State.*

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finer paid to the prosecutor, and by him paid into the treasury, to be paid out upon warrant of the auditor to the parties entitled to them, would undoubtedly produce uniformity. When I was prosecuting attorney, I did not retain fees from moneys passing through my hands, but presented the bill to the court, and upon their allowance the auditor drew his warrant upon the treasury.

You also ask, In what criminal cases (less than felony) in which the State succeeds, are the sheriff and clerk authorized to draw their fees out of the county treasury?

*Sheriffs.* Section 1230 provides that sheriffs shall be paid from the county treasury for services in subpoenaing witnesses to appear before the grand jury. Section 1231 provides that not to exceed \$300 may be paid to sheriffs in criminal cases where the State fails to convict, or the defendants prove insolvent, or for other services not provided for.

When the State succeeds in a misdemeanor, and the defendant proves insolvent, I suppose the sheriff may secure his fees in this allowance; not otherwise.

*Clerks.* I think that section 1261 provides that the clerk's fees may be paid out of the county treasury in all cases, after diligent effort made to collect from the defendant.

Truly yours,

GEORGE K. NASH,  
Attorney General.

*Auditor; Secretary of Board of County Commissioners;  
Compensation—Cemetery; Tax for Payment for*

AUDITOR; SECRETARY OF BOARD OF COUNTY  
COMMISSIONERS; COMPENSATION.

Office of the Attorney General,  
Columbus, Ohio, July 25, 1881.

*Mr. J. P. Spriggs, Woodfield, Ohio:*

DEAR SIR:—The county auditor, by virtue of his office, is made secretary of the board of county commissioners, and section 1021 provides that he shall aid them, when requested, in the performance of their duties. It is one of their duties to make an annual report to the Court of Common Pleas. If the commissioners request him to aid them in the performance of this duty, by preparing the work, or doing the clerical work, it is his duty to do so. This is a part of the service that the auditor must render under the compensation provided in section 1070, unless there be special provision made elsewhere in the statutes for payment for this labor. I know of no such provision.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

CEMETERY; TAX FOR PAYMENT FOR.

Office of the Attorney General,  
Columbus, Ohio, July 26, 1881.

*Mr. A. R. Holmes, Auditor, New Philadelphia, Ohio:*

DEAR SIR:—I do not think that the fact that Dennison does not support a cemetery changes the opinion which I have given. Section 2532 provides that the councils of two or more municipal corporations, and the trustees of a township may unite in the purchase and management of a

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*County Auditor; Compensation for Computation of Real Property.*

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cemetery. The council of Urichsville and the township in which it is situated have so united, but the council of Denison has had nothing to do with the matter. I, therefore, think that the property within that corporation cannot be assessed to pay for this cemetery.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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COUNTY AUDITOR: COMPENSATION FOR COMPUTATION OF REAL PROPERTY.

Office of the Attorney General,  
Columbus, Ohio, July 29, 1881.

*Mr. F. E. Freeman, Prosecuting Attorney, Eaton, Ohio:*

DEAR SIR:—Your favor of July 27th has been received. I do not think that the county auditor is entitled to \$3.00 per day for the time employed in making the computations of real property after the county and State boards of equalization have adjourned.

This duty is performed by him, not as a member of the board, but as county auditor.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Election of Successor of Appointee to Fill Vacancy—City Council; How Vacancy in Must be Filled.*

ELECTION OF SUCCESSOR OF APPOINTEE TO  
FILL VACANCY.

Office of the Attorney General,  
Columbus, Ohio, July 29, 1881.

*Mr. A. C. Tonner, Canton, Ohio:*

DEAR SIR:—Your favor of the 28th instant has been received.

I think that section 11 of the Revised Statutes answers the question suggested by you.

I think that the successor of the commissioners' appointee must be elected in October.

Very truly yours,

GEO. K. NASH,  
Attorney General.

CITY COUNCIL; HOW VACANCY IN MUST BE  
FILLED.

Office of the Attorney General,  
Columbus, Ohio, August 1, 1881.

*Mr. C. L. Maxwell, Xenia, Ohio:*

DEAR SIR:—Under section 1713, it occurs to me that it is the duty of the mayor, with the advice and consent of the council, where a vacancy occurs in the council less than sixty days and more than ten days before an annual municipal election, to fill the vacancy.

In the case which you present, the vacancy was not filled as required by section 1713. This, it seems to me, is just the case where section 1673 provides that an or-

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*Costs in Habeas Corpus Proceedings.*

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ordinance is legally passed when it has received the votes of a majority of the members qualified to vote thereon.

As I am not the legal adviser of municipal officers, I do not know as I should have ventured to give an opinion in this case, and, of course, the opinion which I have given ought to have no more weight than that of any other lawyer.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COSTS IN HABEAS CORPUS PROCEEDINGS.

Office of the Attorney General,  
Columbus, Ohio, August 1, 1881.

*Mr. Walter C. Tisdell, Painesville, Ohio:*

DEAR SIR:—I have not had time to give the question contained in your letter of July 20th very careful consideration. I have, however, entertained the belief that in *habeas corpus* proceedings the costs are paid out of the county treasury only in cases where the person seeking the relief has been confined by virtue of some proceedings under the criminal statutes of Ohio.

Very truly yours,

GEO. K. NASH,

Attorney General.



*Jury Fee in Penitentiary Cases. Transfer of Dog-tax to  
Agricultural Society.*

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## JURY FEE IN PENITENTIARY CASES.

Office of the Attorney General,  
Columbus, Ohio, August 5, 1881.

*Mr. R. B. Milliken, Clerk, Hamilton, Ohio:*

DEAR SIR:—In answer to your favor of the 4th instant, I will say that I think that it has been the custom of the auditor of state to pay a jury fee of six dollars in each penitentiary case. Section 1330 provides that a jury fee of six dollars shall be taxed in the bill of costs. Section 7333 provides that an execution must be issued against the property of the convicted person for the costs of the prosecution. This, of course, includes the jury fee of six dollars. Section 7336 provides when the cost bill shall be paid by the State.

It occurs to me that this jury fee of six dollars is just as much a part of the cost bill, as the fees of witnesses, the clerk or the sheriff.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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TRANSFER OF DOG-TAX TO AGRICULTURAL  
SOCIETY.

Office of the Attorney General,  
Columbus, Ohio, August 15, 1881.

*Mr. J. D. Horton, Prosecuting Attorney, Ravenna, Ohio:*

DEAR SIR:—Your favor of the 3d instant has been received.

My impression in regard to the act of April 18, 1881, O. L., Vol. 78, page 392, is that it simply empowers and

Election of Justice of the Peace; Payment of Expenses.

authorizes the commissioners of Portage County to pay one thousand dollars from the dog-tax fund to the county agricultural society. I do not think that the statute is mandatory. I think that it simply clothes the commissioners with the power to do this, and that it then lies in their discretion whether to do it or not.

It would be a very easy matter to raise the question in the courts. The society could demand of the commissioners the transfer. If they refuse, an application might then be made to a Court of Common Pleas for a writ of mandamus, directing them to make the transfer.

If the law is mandatory in its character, the application would then be granted.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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ELECTION OF JUSTICE OF THE PEACE; PAYMENT OF EXPENSES.

Office of the Attorney General,  
Columbus, Ohio, August 15, 1881.

*Mr. Alex A. Ruhl, Bucyrus, Ohio:*

DEAR SIR:—There has been considerable controversy about the question, as to who shall pay the expenses of an election where justices of the peace are to be elected. In my opinion, at the spring elections, when assessors or justices are to be elected, the compensation of judges and clerks must be paid by the county. I am also of the opinion that at a special election for a justice of the peace, the judges and clerks must be paid by the county at the rate of \$2 per day.

Yours very truly,  
GEO. K. NASH,  
Attorney General.

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*Fees of County Treasurer.*

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## FEES OF COUNTY TREASURER.

Office of the Attorney General,  
Columbus, Ohio, August 19, 1881.

*Mr. C. L. Kennedy, Prosecuting Attorney, Toledo, Ohio:*

DEAR SIR:—Since writing to you a few days ago in regard to the act of April 18, 1881, relating to the fees of the treasurer of your county, I have given the matter further and more consideration. I probably wrote too hastily in the first instance.

Section 28, article II of the constitution provides that, "The General Assembly shall have no power to pass retroactive laws."

Up to April 18, 1881, a law was in force prescribing what fees the treasurer should receive for his services. On February 24, 1881, a settlement was made, and the treasurer was allowed and paid such fees as he was then entitled to under the law.

The act of April 18th provides in effect that a new settlement shall be made for February, 1881, and that for services already rendered and paid for, the treasurer shall be paid an additional compensation.

Is this act "retroactive?" Story has defined a "retroactive" or "retrospective" law as follows: "Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions already past, must be deemed retrospective." 15 O. S. Reps., page 210.

Does not this statute create "a new obligation in respect to things already past?" I am inclined to think that it does. It creates an obligation upon the various corporate bodies entitled to the funds included in the February settlement, to pay an additional compensation to the treasurer for services rendered a considerable time before the 18th of April. Upon more careful consideration, I am, therefore, con-

*Election of Successor of Appointee to Fill Vacancy.*

strained to think that so much of the act as relates to the February settlement of 1881, is retroactive, and, therefore, in conflict with the constitution.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

ELECTION OF SUCCESSOR OF APPOINTEE TO  
FILL VACANCY.

Office of the Attorney General,  
Columbus, Ohio, August 20, 1881.

*Mr. A. C. Tonner, Canton, Ohio:*

DEAR SIR:—Referring to my letter to you, I desire to modify, or rather explain it somewhat.

Sullivan was removed from office more than thirty days before the October election, 1881. Wise was duly appointed to fill the vacancy. His successor will be elected at the October election, 1881, for the full term of two years, but his term of office will not commence until the first Monday of September, 1882. Wise can hold the office until then.

This opinion is fully sustained by the court in the case of *The State ex rel. etc. vs. The Commissioners of Muskingum County*, 7 O. S., Repts., page 125.

I am also informed that there is some question in regard to the coroner's office in your county. As I have the facts, a coroner was elected in your county at the October election, 1879. He qualified and took possession of his office on the first Monday of January, 1880, but shortly afterwards resigned. Mr. Cox was duly appointed to fill the vacancy.

Following the statute and the decision in the O. S. Repts., I think that the successor ought to have been elected

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*Bounty; Interest on.*

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in October, 1880, for the full term of two years, and taken possession of the office on the first Monday in January, 1881.

As I am informed, this was not done, and Mr. Cox continues to hold the office, and I think rightfully, under section 8 of the Revised Statutes.

The only course now to be taken is to elect a successor in October, 1881, for the full term of two years, commencing on the first Monday of January, 1882.

Very truly yours,

GEO. K. NASH,

Attorney General.

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BOUNTY; INTEREST ON.

Office of the Attorney General,  
Columbus, Ohio, August 20, 1881.

*Mr. F. E. Daugherty, Waverly, Ohio:*

DEAR SIR:—In reply to your letter of the 12th instant I will say that in my opinion the soldier entitled to receive the \$100 bounty, is only entitled to interest thereon from the time the bond is issued, or from the time that he has made legal demand therefor, and not from the time of the passage of the law giving bounty.

Yours very truly,

GEO. K. NASH,

Attorney General.

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*Convict; Deduction for Good Behavior—Jury.*

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## CONVICT; DEDUCTION FOR GOOD BEHAVIOR.

Office of the Attorney General,  
Columbus, Ohio, August 20, 1881.

*Mr. Philip Long, Perrysville, Ohio:*

DEAR SIR:—I think that the deduction provided by paragraph "C," section 7432, must be made from the time that the prisoner remains in the penitentiary after he has been there two years, and not for the whole time.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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JURY.

Office of the Attorney General,  
Columbus, Ohio, August 22, 1881.

*Mr. Frank Taylor, North Baltimore, Ohio:*

DEAR SIR:—My understanding is that, for the trial of a defendant, who has offended against the ordinances of a village, a jury of twelve men is required, unless the defendant, by some act, has waived his right, and consented to a less number of jurors. See section 1819, R. S.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Township Trustees; Compensation for Relief to Paupers—  
Auditor and Treasurer; Settlement of.*

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TOWNSHIP TRUSTEE; COMPENSATION FOR RELIEF TO PAUPERS.

Office of the Attorney General,  
Columbus, Ohio, August 20, 1881.

*Mr. H. S. Culver, Prosecuting Attorney, Delaware, Ohio:*

DEAR SIR:—I am of the opinion that a township trustee may be allowed a reasonable compensation for services rendered by him under section 975, and that it may be paid as other costs and charges incurred in affording relief to paupers, are paid.

It would be a better practice to have these services included in the bill of costs and charges for each case. If this is not done, I think it would be proper for the commissioners to allow a bill at any time after the service rendered, but it should carefully specify the amount of service rendered in each case. Great care ought to be exercised by the commissioners in bills of this character.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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AUDITOR AND TREASURER; SETTLEMENT OF.

Office of the Attorney General,  
Columbus, Ohio, August 22, 1881.

*Mr. Chas. Evans, Prosecuting Attorney, Cincinnati, Ohio:*

DEAR SIR:—My understanding of section 1043 as amended, is that the auditor and treasurer first make their settlement, and ascertain how much money there is in the treasurer's hands, and with which he should be charged,

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*Marriage Endowment Associations; Incorporation of.*

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and that immediately afterwards the auditor, after correcting any error, shall certify the balance due to the several funds.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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INCREASE OF STOCK.

Office of the Attorney General,  
Columbus, Ohio, September 3, 1881.

*Hon. Stephen Johnson, Piqua, Ohio:*

MY DEAR SIR:—I do not think that the increase proposed in your letter of August 31st can be accomplished under section 3263. I do not think, however, that you can accomplish your purpose of saving time under section 3262 by securing from *all* of the present stockholders a *written waiver* of the notice provided for in section 3262.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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MARRIAGE ENDOWMENT ASSOCIATIONS; INCORPORATION OF.

Office of the Attorney General,  
Columbus, Ohio, September 3, 1881.

*Hon. Chas. Townsend, Secretary of State:*

DEAR SIR:—In my opinion the laws of Ohio do not authorize the formation of corporations for the purposes contemplated in the enclosed articles of incorporation of the Marriage Endowment Association of Ohio.

Very truly yours,  
GEO. K. NASH,  
Attorney General.



*Probate Judge; Jurisdiction in Criminal Matters—County Solicitors; Compensation of.*

PROBATE JUDGE; JURISDICTION IN CRIMINAL MATTERS.

Office of the Attorney General,  
Columbus, Ohio, September 14, 1881.

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

DEAR SIR:—The question suggested by you in your letter of the 7th instant is a new one to me.

In our county the probate judge does not have jurisdiction of criminal matters and for that reason I am not familiar with such brought before that court. I am inclined to think, however, that the justice of the peace had the power to send the matter before the probate judge for assault and battery, if his judgment indicated that the proof required him to do so. And when a transcript is once filed with the probate judge, section 6455 seems to make it mandatory upon the prosecuting attorney to file immediately an information; and section 6456 seems to limit him to the offense specified in the transcript from the docket of the justice of the peace. Very truly yours,

GEO. K. NASH,  
Attorney General.

COUNTY SOLICITOR: COMPENSATION OF.

Office of the Attorney General,  
Columbus, Ohio, September 14, 1881.

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

DEAR SIR:—Your favor of the 10th instant has been received.

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*Veteran Bounty Claims.*

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By act of April 8, 1881, you were made solicitor or attorney for your county, and duties in addition to those performed by the prosecuting attorney were imposed upon you. The same act provided that a salary of \$1,500 per annum should be paid for your services as solicitor. I am not able to see any constitutional objection to this law. Before the passage of this act, the statutes provided that the commissioners, and county officers might ask your advice in writing upon any matter touching the official duties to be performed by them. The statutes further provide that the commissioners could pay a reasonable compensation to the prosecuting attorney for such services. This act simply provides another way in which you shall be paid for these services, and fix the amount of compensation that you shall receive. I see no objection to your receiving the salary provided in the act from the time you entered upon the performance of these new duties.

Very truly yours,

GEO. K. NASH,

Attorney General.

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VETERAN BOUNTY CLAIMS.

Office of the Attorney General,  
Columbus, Ohio, September 14, 1881.

*Mr. S. C. Wheeler, Sandusky, Ohio:*

DEAR SIR:—Referring to your favor of September 2d, I will say that the proper remedy to enforce the collection of soldiers' bounty, if there has been a refusal to pay, is by mandamus.

Courts of Common Pleas now have jurisdiction in this class of cases. There has been one case decided in the Supreme Court since I have been attorney general, and in that case the question was as to a re-enlisted veteran volunteer.

Vacancies in Coroner's and Treasurer's Offices; Filling, Etc.

The court determined that a re-enlisted veteran volunteer is a soldier who enlisted for three years, and having served more than two years, re-enlisted for three years, or during the war, while yet in the field.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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VACANCIES IN CORONER'S AND TREASURER'S  
OFFICES; FILLING, ETC.

Office of the Attorney General,  
Columbus, Ohio, August 20, 1881.

*Mr. A. C. Tonner, Canton, Ohio:*

DEAR SIR:—I have your letter making inquiry as to how long Henry A. Wise, the present treasurer of Stark County, can hold his office.

If I have the facts correctly, Sullivan, the treasurer of Stark County, was removed from his office more than thirty days before the October election. Wise was duly appointed to fill the vacancy. His successor will be elected at the October election of 1881 for the full term of two years. But his term of office will not commence until the first Monday of September, 1882. Wise is entitled to hold his office until that time. This opinion, I think, is fully sustained by the Supreme Court in the case of *The State ex rel., against the commissioners of Muskingum County*, 7th O. S., Repts., page 125.

You also make inquiry in regard to the expiration of the term of office of your coroner. The facts, I believe, are these: At the October election, 1879, a coroner was elected in your county. He qualified and took possession of his office on the first Monday of January, 1880; but shortly afterwards resigned. Dr. Cock was appointed to fill the

*Prosecuting Attorney; Legal Adviser of School Boards.*

vacancy. In October, 1880, Mr. Cock was elected to the office of coroner. He is entitled to hold his office under said election for two years from the first Monday in January, 1881.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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PROSECUTING ATTORNEY; LEGAL ADVISER OF  
SCHOOL BOARDS.

Office of the Attorney General,  
Columbus, Ohio, September 14, 1881.

*Mr. Martin Knupp, Napoleon, Ohio:*

DEAR SIR:—Your favor of the 3th instant has been received.

It is the duty of the prosecuting attorney under section 3977 Revised Statutes, to prosecute all actions that may be brought against members or officers of the school boards in his county, and to act as the legal adviser of such boards. Unless there is a specific provision of law providing for the payment of such services, he must render the same for the compensation provided for him as prosecuting attorney. I know of no such provision, and have always entertained the belief that he must render such services for the general compensation given to him as prosecutor.

I have also entertained the opinion that boards of education might, if they thought best, secure counsel other than the prosecutor.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Inmate of County Infirmary; Residence.*

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## INMATE OF COUNTY INFIRMARY; RESIDENCE.

Office of the Attorney General,  
Columbus, Ohio, September 27, 1881.

*Mr. John Whittaker, Superintendent, Ottokee, Ohio:*

DEAR SIR:—Your favor of the 21st instant has been received.

The Supreme Court held, in the case of *Sturgeon vs. Korte*, 34 O. S., page 525, that an inmate of a county infirmary, who has adopted the township in which the infirmary is situated as his place of residence, having no family elsewhere, and who possesses the other qualifications required by law, is entitled to vote in the township in which said infirmary is situated.

Very truly yours,

GEO. K. NASH.

Attorney General.

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Office of the Attorney General,  
Columbus, Ohio, September 22, 1881.

*Mr. Geo. M. Ziegler, Prosecuting Attorney, Galion, Ohio:*

DEAR SIR:—In reply to your letter, I will say that in my opinion the following questions should be submitted to the people:

For new county jail—Yes.

For new county jail—No.

For appropriation of \$28,000—Yes.

For appropriation of \$28,000—No.

I am not sure that it is necessary to submit the last proposition, but if it is unnecessary, no harm can be done by submitting it.

As the commissioners are to provide the ballots, I

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*Judges of Election; Duty in Returning Poll Book.*

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think that a separate ballot and a separate box should be used, and separate poll sheets be kept.

Notice may be given by the sheriff in the same proclamation he issues for the election of State and county officers.

Very truly yours,

GEO. K. NASH,

Attorney General.

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JUDGES OF ELECTION; DUTY IN RETURNING  
POLL BOOK.

Office of the Attorney General,

Columbus, Ohio, October 15, 1881.

*Mr. Chester W. Naylor, West Union, Ohio:*

DEAR SIR:—Your favor of the 14th instant has been received.

Of course the opinion which I may give upon the question suggested in the letter should have no more weight than that of any other attorney, as I am not called upon, in my official capacity, to give any opinion upon the subject.

If section 2961 stood alone, it would seem to me that the poll book of a township, where it is returned by a clerk instead of a judge, would be considered and counted in ascertaining the results of an election; for the section seems to me to be directory rather than mandatory.

But when we come to consider section 2981, it seems to be mandatory in its character, and declares that the clerk and justices shall not receive any paper as poll book, unless it has been delivered at the clerk's office by one of the judges of the election.

I am inclined to the opinion that a poll book, returned by a clerk of an election, instead of a judge, cannot be considered in ascertaining the result of the election.

Very truly yours,

GEO. K. NASH,

Attorney General.

*Vacancy in Office of Prosecuting Attorney; How Must be Filled—Successor of Appointee to Fill Vacancy.*

VACANCY IN OFFICE OF PROSECUTING ATTORNEY; HOW MUST BE FILLED.

Office of the Attorney General,  
Columbus, Ohio, October 15, 1881.

*Mr. Mark S. Bartram, Ironton, Ohio:*

DEAR SIR:—When a person is appointed to fill a vacancy in the office of prosecuting attorney, he holds his office until the first Monday in January, provided the vacancy occurs more than thirty days before the October election. The person who is elected will take possession of the office on the first Monday in January. I think you will find that this opinion is sustained by the Supreme Court in the 7th O. S. Reps., page 125.

Yours very truly,  
GEO. K. NASH,  
Attorney General.

SUCCESSOR OF APPOINTEE TO FILL VACANCY.

Office of the Attorney General,  
Columbus, Ohio, October 17, 1881.

*Mr. W. S. McCune, Ironton, Ohio:*

MY DEAR SIR:—My idea is that you do not have the right to take possession of your office until the first Monday in January, 1882. I think that the man appointed to fill the vacancy can serve until that time. You will find a case decided by our Supreme Court on page 125, O. S. Rep., No. 7, which, I think, settles this question.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Notary Public; Surety Cannot be Released; Removal From Office.*

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NOTARY PUBLIC; SURETY CANNOT BE RELEASED; REMOVAL FROM OFFICE.

Office of the Attorney General,  
Columbus, Ohio, October 18, 1881.

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

DEAR SIR:—Your favor referring to me the letter of Solomon Young, of Union City, Indiana, has been received.

In that letter you are requested to release Mr. Young from his responsibility as surety on the bond of O. A. Baker, notary public.

The laws of Ohio do not confer upon you any authority to release sureties upon the bond of a notary public, or to revoke the commission of such officer. If you should attempt to do so, your act would be entirely void, and would be of no avail to the surety.

Section 112 of the Revised Statutes provides that a notary public shall hold his office for the term of three years, "if so long he behave well." It does not provide for what conduct he shall be removed, or who shall deprive him of his office.

Section 123 supplies the deficiency, and provides that "any notary public, who charges or receives any fee or reward for any act or service rendered by him, greater than the amount herein limited, or who dishonestly or unlawfully discharges any of his duties as notary public, shall be removed from his office by the Court of Common Pleas."

The only relief that Mr. Young can have is this:

If the notary public, to whom he refers, has committed any of the acts above specified, he may file a complaint in the Court of Common Pleas in his county, and if the complaint is substantiated, the court will remove the notary from his office. Yours very respectfully,

GEO. K. NASH,  
Attorney General.



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*Charter Oak Life Insurance Company.*

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## CHARTER OAK LIFE INSURANCE COMPANY.

Office of the Attorney General,  
October 20, 1881.

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

DEAR SIR:—YOUR favor of the 10th inst. has been received.

On the 18th of June last, I gave to your predecessor, as my opinion, that the Charter Oak Life Insurance Company would not violate section 288 of our statutes by making settlement of an old policy, and in consideration of its old liability, issuing a policy containing a statement that it is issued in place of the old one.

What the company at that time proposed to do, as I was informed, was this:

It had outstanding in the State of Ohio, a number of policies which it called "running policies." These, by the consent of the policy holders, it proposed to take up, and issue in their stead paid up policies for smaller amounts. By this settlement, the policy holders would be relieved from the payment of premiums, and the amount of the liability to the citizens of Ohio would be decreased.

There was such a settlement of an old business as, it seemed to me, could be made by an insurance company debarred from doing a new business in the State, without subjecting it to the charge of doing new business or issuing new policies. This is the full extent to which I intended my opinion of June 18th to go.

You now inform me that this company claims the right to make the following sort of arrangement with its old policy holders:

To take up a paid up policy for \$1,000 and issue in its stead a running policy for \$2,500, the company agreeing to pay the premium thereon for the term of five years, and after that time the premium to be paid by the policy holders.

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*Appropriation for Actuary in Insurance Department.*

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You also state that the party securing the new policy is compelled to undergo a new medical examination.

One of the objects sought to be accomplished by the insurance laws of Ohio is to protect the people of the State from irresponsible companies. Therefore it is provided that it shall be unlawful for a company, after the insurance commissioner has found its capital and assets to be impaired to a certain extent, to make any new contracts of insurance within the State.

If such company can do the business now proposed, it may, through its old policy holders, increase its liabilities to them and their obligations to pay premiums to the company to an unlimited extent. In this manner one of the objects sought to be accomplished by our laws would be completely thwarted.

I am, therefore, of the opinion that any exchange of policies by such company, that would increase its liabilities or would increase the obligation to pay upon the part of the policy holders, at the present time or in the future, is new business, and is forbidden to be transacted by section 288, Revised Statutes.

Very truly yours,

GEO. K. NASH,

Attorney General.

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APPROPRIATION FOR ACTUARY IN INSURANCE  
DEPARTMENT.

Office of the Attorney General,  
Columbus, Ohio, October 20, 1881.

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

DEAR SIR:—Your favor of yesterday has been received. In reply I will say that the moneys appropriated by the act of March 22, 1881, including \$250, for the payment of an

*Reform Farm For Boys; Improvements at.*

actuary in your department, can only be used for the payment of claims created after February 15, 1881, and for services rendered after that date.

Very truly yours,

GEO. K. NASH,  
Attorney General.

## REFORM FARM FOR BOYS; IMPROVEMENTS AT.

Office of the Attorney General,  
Columbus, Ohio, October 29, 1881.

*Mr. Geo. W. Gardner, Cleveland, Ohio:*

DEAR SIR:—Your favor of the 24th inst., relating to the delay in the improvement at the reform farm for boys, was duly received by me.

I could not answer it without first looking at the contract, and that was not filed with the auditor until yesterday.

If any estimates are made upon work completed before the time specified in the contract for completing the whole work, I suppose that they will have to be paid, less the ten per cent. authorized to be retained. I do not think that you could withhold the payment on account of the anticipated delay in completing the work, and the consequent forfeiture under the contract of \$20 per day. If this forfeiture is enforced, it must be out of the payments becoming due subsequent to the time fixed for the completion of the work.

The situation seems to be an embarrassing one, and I hardly know what to advise the trustees to do. Of course, everything should be done to hasten the completion of the work. Yet the trustees ought not in any way to increase the liability of the State.

Mr. Wiseman was here yesterday, and I talked to him fully in regard to the matter.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

*Publication of Legal Advertising—Settlement Between  
County and State Auditors.*

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## PUBLICATION OF LEGAL ADVERTISING.

Office of the Attorney General,  
Columbus, Ohio, October 29, 1881.

*Mr. W. H. Lete, Prosecuting Attorney, Waverly, Ohio:*

DEAR SIR:—A day or two since I received a letter from Joseph Armstrong, auditor of your county, asking for a construction of section 4367 R. S.

Of course the question should have come through you, and I take the liberty of sending my answer to you, so that I may not seem to be advising your clients without your knowledge.

As I read this section, it provides that all notices published by the officers named therein, must be published in two newspapers of opposite politics, if there be such in the county.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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SETTLEMENT BETWEEN COUNTY AND STATE  
AUDITORS.

Office of the Attorney General,  
Columbus, Ohio, October 31, 1881.

*Mr. L. A. Staley, Treasurer of Hamilton County, Ohio:*

DEAR SIR:—You state to me that it sometimes happens that taxes are paid to you more than once, and you ask whether in making your settlement with the auditor you should account to him for these over-payments (or in other words can the auditor charge you with them).

I think not. The auditor can only charge you the sums

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*Election For Imposing Special Tax.*

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of money upon the duplicate which he turns over to you for collection.

If a case arises in which taxes are twice paid, the treasurer should lay the second payment to one side, and as soon as it is ascertained to whom it belongs, return the money to the proper party.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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ELECTION FOR IMPOSING SPECIAL TAX.

Office of the Attorney General,  
Columbus, Ohio, October 31, 1881.

*Mr. J. S. A. I. Clarkson, Dayton, Ohio:*

MY DEAR CLARKSON:—Your favor mailed upon the 29th inst. has been received.

There ought to be no question raised upon the matter referred to therein. The law of April 8, 1881 (Vol. 78, page 116), is very plain. Section 2 reads as follows:

“In case a majority of the voters of any county voting upon said question, shall vote in favor of imposing said proposed tax for said purpose,” etc.

It does not require a majority of those voting at the election, but a majority of those “voting upon said question.”

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Prosecuting Attorney Also Attorney for School Boards.*

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PROSECUTING ATTORNEY ALSO ATTORNEY  
FOR SCHOOL BOARDS.Office of the Attorney General,  
Columbus, Ohio, November 4, 1881.*Mr. John C. Clark, Prosecuting Attorney, Greenville, Ohio:*

DEAR SIR:—Your favor of the 2d inst. has been received and contents noted.

Section 3977 of the Revised Statutes provides that the prosecuting attorney of a county shall be the attorney for the school boards within his county, except in city districts; and sets forth what duties he shall perform in this regard. This service is made one of the duties of the prosecuting attorney, which he is bound to render under his salary, as no express provision is made for the payment of such services.

It frequently happens that the prosecuting attorney, on account of his numerous other duties, is wholly unable to perform the service required by this section, and it sometimes happens that cases arise which require that the prosecuting attorney should have assistance in them. In such cases as these, the question which you ask—"Have boards of education the right to employ and pay counsel, or in short, have such boards the right and authority to pay attorney's fees in defending or prosecuting cases in which they are parties?"—becomes important.

Under such circumstances as I have indicated above, I answer your question in the affirmative, and for this answer I rely upon section 3977 of the Revised Statutes. This section makes boards of education bodies politic and corporate, and vests them with the power of suing and being sued.

I think that the law which authorizes these boards to sue and be sued, by implication confers upon them authority to do all things that are necessary to successfully prosecute or defend a suit.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*A Mayor Not Authorized to Commit to Reform School—  
County Auditor is Secretary of County Commissioners.*

A MAYOR NOT AUTHORIZED TO COMMIT TO  
REFORM SCHOOL.

Office of the Attorney General,  
Columbus, Ohio, November 7, 1881.

*Mr. Frank H. Shaffer, Hamilton, Ohio:*

DEAR SIR:—I have delayed answering your favor of the 1st inst., hoping that a few days' thought might lead me to a different conclusion.

I do not think that section 753 of the Revised Statutes as amended, authorizes a mayor, acting under sections 1817 and those following, to sentence a boy to the reform farm.

If one pleads guilty he may sentence or bind over to the grand jury. In this case would it not be well to bind over, and if the grand jury indicts and the boy is found guilty, there can be no doubt about the power of the court to sentence to the reform farm.

Very truly yours,

GEO. K. NASH,  
Attorney General.

COUNTY AUDITOR IS SECRETARY OF COUNTY  
COMMISSIONERS.

Office of the Attorney General,  
Columbus, Ohio, November 8, 1881.

*Mr. J. E. Freeman, Prosecuting Attorney, Eaton, Ohio:*

DEAR SIR:—Your favor of the 25th ult. would have received an earlier reply but for the fact that my time has been consumed by official duties in court, which could not be delayed.

By section 1021 the county auditor, by virtue of his

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*Children's Home; County Commissioners Can Levy Tax to Support.*

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office, is made the secretary of the county commissioners.

If as such secretary the commissioners request him to prepare the report contemplated in section 917, I suppose that it is his duty to comply.

I suppose that this duty is one of the duties required to be performed by him for the compensation provided in sections 1069 and 1070.

Very truly yours,

GEO. K. NASH,

Attorney General.

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CHILDREN'S HOME; COUNTY COMMISSIONERS  
CAN LEVY TAX TO SUPPORT.

Office of the Attorney General,

Columbus, Ohio, November 9, 1881.

*Mr. M. B. Earhart, Prosecuting Attorney, Troy, Ohio:*

DEAR SIR:—Your favor of the 3d inst. has been received.

I think that you made an error in your letter in referring me to section 923 of the Revised Statutes. That section and the five following sections relate to orphan asylums erected and maintained by bequests, donations and gifts.

I infer that your children's home is an institution created and maintained under section 929 of the Revised Statutes, as amended March 22, 1881.

I think that the following words, "and provide means by taxation for such purchase *and support of the same,*" authorizes the commissioners to make such levy for the support of the home, as in their discretion the wants of the institution demand. Section 946 confirms me in this opinion.



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*State House Improvements.*

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This section authorizes an assessment sufficient to support and defray all necessary expenses of the home.

Of course this section has reference to a joint board of commissioners acting for a home erected for two or more counties, but I think that it is the intent of the law to clothe a single board, acting for a single county, with the same powers as a joint board.

I think that the levy for the children's home may be made without reference to the levies provided for by sections 2822 to 2886, inclusive.

Very truly yours,

GEO. K. NASH,

Attorney General.

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STATE HOUSE IMPROVEMENTS.

Office of the Attorney General,  
Columbus, Ohio, November 11, 1881.

*To the Adjutant General, Treasurer and Secretary of State:*

GENTLEMEN:—I have given careful consideration to the proposed contracts for alterations and improvements in the heating, ventilation, sewerage and paving in basement, and for the better lighting of the rotunda of the State House, recently submitted to me by you.

I regret that I am compelled to inform you that I cannot certify that the provisions of Chapter 1, Title 6, Part 1st, of the Revised Statutes, have been complied with.

Section 782 provides that plans, drawings, representations, bills of material and specifications of work, and estimates of the cost thereof, in detail and in the aggregate, shall be first made by the officers having in charge the erection of any public building, or improvement thereon.

When made, these must be submitted to the governor, auditor and secretary of state, and when approved by

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*State House Improvements.*

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these officers, copies shall be deposited and safely kept in the office of the auditor of state.

These preliminary steps were, in my opinion, properly taken by you with one exception—as to the depositing of copies with the auditor of state for safe keeping.

The plans, specifications and estimates were approved by the proper officers upon the 30th day of September. Immediately a notice was given that bids would be received at the office of the secretary of state upon the 2d day of November, and that the plans and specifications would be open for inspection at the same place until the time for receiving bids had elapsed. The copies of plans, specifications and estimates were not filed with the auditor of state for safe keeping until today.

In my opinion, the provisions of section 783 are not complied with if copies of the papers, approved by the Governor, auditor and secretary of state are not filed with the auditor immediately after they are approved by such officers.

The object of this provision is that the State may have within the keeping of one of her officers, an accurate copy of the plans, specifications and estimates which have been approved by the officers above named, so that if by reason of the originals being open to public inspection, any changes or alterations be made in them, they can be readily detected and corrected. This object is liable to be defeated unless the copy is filed with the auditor of state, before proposed bidders and the public in general have an opportunity to handle and examine the original papers.

Section 787 provides that no contract or contracts shall be made for the labor or material for any public improvement at a price in excess of the entire estimate thereof.

The estimate of the entire cost of the proposed improvement as made by your architect is \$17,390.30. You found that the proposed improvement would consist of eight different classes of work. You decided to receive bids for each class of work, which would make eight contracts. You

School Lands; Can They be Assessed For Improved Road?

rejected the bid for the first class, and have awarded the other seven classes, and present seven contracts to me for approval.

It is impossible for you or for me to determine at this time or until the award of the first class is made, whether the entire cost of the improvements will be in excess of the estimate made thereof by the architects.

I know that you have faithfully sought to follow the law. I therefore dislike to refuse to approve your proceedings. Officers of the State, however, have only such power in regard to the erection and improvement of public buildings as the statute gives them.

The law under consideration was carefully prepared, and jealously guards the interests of the State, for the reason that experience has shown that in all public improvements these interests are sometimes neglected. Its every requirement should be strictly adhered to; for if we neglect it in even a slight particular, the temptation is to make this neglect an excuse for a still greater omission in the future, and in time the safeguards provided will be completely broken down.

Very respectfully yours,  
GEO. K. NASH,  
Attorney General.

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SCHOOL LANDS; CAN THEY BE ASSESSED FOR  
IMPROVED ROADS?

Office of the Attorney General,  
Columbus, Ohio, November 14, 1881.

*Mr. S. S. Dix, Eaton, Ohio:*

DEAR SIR:—Your favor of the 9th inst. has been received.

The question as to whether lands set apart exclusively

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*School Lands; Can They be Assessed for Improved Road?*

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for school purposes can be assessed for an improved road, is one that has never been settled by the courts of Ohio, and is surrounded by so much doubt that I am unable to write with any degree of certainty upon the subject.

Sections 2732 and 2733 certainly exempt these lands from taxation unless they are held under a lease for a term exceeding fourteen years.

It is doubtful whether the general word "taxation" includes assessments made upon property for street improvements. Judge Cooley, in his work on taxation, page 146, paragraph 4, says:

"All exemptions are to be strictly construed. They embrace only what is within their terms. This general rule has many illustrations, one of the most striking of which is found in the case of exemption of church and school property. The general exemption of such property from taxation, it is held, will not exempt them from special assessment for local improvements, such as the paving and repairing of streets on which they stand, and the like."

I am not able to quote Cooley very fully, and I suggest that you read all he has to say on this subject. The question is one that ought to be settled in the courts in Ohio.

Please let the prosecuting attorney see this letter, as I ought not to have written it without his request to do so.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*County Surveyor Can't Insure Public Buildings—Lapsed  
Charters; Revival of.*

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COUNTY SURVEYOR CAN'T INSURE PUBLIC  
BUILDINGS.

Office of the Attorney General,  
Columbus, Ohio, November 14, 1881.

*Mr. O. H. Hoover, New Philadelphia, Ohio:*

DEAR SIR:—Your favor of the 19th inst. has been received.

I am inclined to the opinion that a county surveyor is forbidden by section 6969 from being directly or indirectly interested in any contract for fire insurance upon State, county, township, city, town or village buildings or property.

If I was a county surveyor, I would not, as agent of an insurance company, issue a policy of insurance upon county buildings. It would certainly be very risky to do so in the face of the statute referred to by you.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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LAPSED CHARTERS; REVIVAL OF.

Office of the Attorney General,  
Columbus, Ohio, November 14, 1881.

*Mr. G. H. Holliday, Hanging Rock, Ohio:*

DEAR SIR:—There is so much doubt hanging about the right to revive charters which have lapsed, that it seems to me that in your case the only safe course to take is to have your village incorporated just as you would if there had never been any effort made in that direction. Sections 1553 to 1571, inclusive, of the Revised Statutes, prescribe how

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*Tax Notice; Publication of.*

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this may be done. A careful reading of these sections will give you a better idea as how to proceed than I can do in a letter.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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TAX NOTICE; PUBLICATION OF.

Office of the Attorney General,  
Columbus, Ohio, November 16, 1881.

*Mr. R. Sutton, Wapakoneta, Ohio:*

DEAR SIR:—The tax notice which you sent to me, and which I herewith return to you contains all that is required by section 1087 of the Revised Statutes, and is sufficient. Under section 4367 this notice can only be published in two newspapers of opposite politics. It would be illegal to pay out of the county treasury for more than two publications of the notice—i. e., publications in two papers of opposite politics.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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TAX NOTICE; PUBLICATION OF.

Office of the Attorney General,  
Columbus, Ohio, November 16, 1881.

*Hon. W. Howard, Prosecuting Attorney, Batavia, Ohio:*

DEAR SIR:—I have neglected answering your letter of the 7th inst. because I desired to give the matter contained

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*Tax Notice; Publication of.*

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therein careful consideration. After the receipt of your letter, the auditor of your county wrote to me upon the same subject and enclosed a tax notice, which I herewith return to you, as it will serve to explain the meaning of this letter.

I think that the officers of your county have fallen into an error in supposing that the treasurer is required to give two notices, one styled "rates of taxation," and the other "abstract of the duplicate."

The only notice that the treasurer is required to publish is the one contemplated by section 1087. The notice styled "rates of taxation" contains everything that is required to be published by that section. My impression is that by the awkward wording of section 1087, your treasurer has concluded that by this section he is required to give notice of the whole amount of taxes to be collected in each township for each purpose.

The words commencing in the seventh line of said section, which are as follows, "specifying particularly in said notice the amount on said duplicate for the support of the State government," etc., would lead to this conclusion if unconnected with the four words at the close of the section, to-wit, "on each dollar valuation." To make my meaning more clear, I think these last four words ought to be inserted after the word "levied" in the eighth line, so that the requirement would read as follows, "specifying particularly in said notice the amount of tax levied on each dollar valuation on the duplicate for the support," etc. If the section is read in this way, only the rate of taxation is required to be published by section 1087, and the notice styled "rates of taxation" fully answers this requirement.

Section 4367 requires that this notice shall be published in two newspapers, and it should be published for six successive weeks.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Contracts for the Courthouse at Lima.*

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## CONTRACTS FOR THE COURTHOUSE AT LIMA.

Office of the Attorney General,  
Columbus, Ohio, November 16, 1881.

*Mr. H. S. Prophet, Lima, Ohio:*

DEAR SIR:—In your letter of the 14th inst. you state that the estimates for the cost of the various kinds of labor and materials to be used in the construction of a courthouse in Lima aggregate \$136,000.

That bids have been received which aggregate \$125,000, but that one of the bids is for a sum greater than the estimate made for that class of work.

You ask whether a contract can be made for this class of work, provided that all the contracts do not exceed the aggregate estimate of the architect.

The answer to this question depends entirely upon the construction that is to be given to section 800.

My opinion is that if the entire contract price is not in excess of the total estimates, there is no violation of section 800. This is the construction which we have given to section 787, and section 787 plainly means this. I think that the word "estimates," as used in section 800, should be given the same significance as the words "entire estimate" in section 787.

Very truly yours,  
GEO. K. NASH,  
Attorney General.



*Longview Asylum; Trustees Can Not be Interested in Any Contracts For Furnishing Supplies; Slaughter House at.*

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LONGVIEW ASYLUM; TRUSTEES CAN NOT BE INTERESTED IN ANY CONTRACTS FOR FURNISHING SUPPLIES; SLAUGHTER HOUSE AT.

Office of the Attorney General,  
Columbus, Ohio, November 19, 1881.

*To the Trustees of Longview Asylum, Cincinnati, Ohio:*

GENTLEMEN:—The letters of your Mr. Hurlburt and Mr. Chalfant, making inquiries as to whether it is contrary to law for members of your board to furnish or sell supplies to your institution, have been received and would have received earlier reply but for the reason that I desired to see the opinion of the Supreme Court in the case of Chalfant et. al., vs. The State ex. rel. I did not get the proof sheets of this opinion until yesterday. There may be some little doubt under this decision whether section 628. of the Revised Statutes applies to your institution. There can be no doubt about section 6969. It reaches the trustees of your asylum as well as all other officers holding places of trust or profit.

I conclude that it is contrary to law for the trustees of your institution to have any interest in contracts for supplies furnished to the same.

Sections 624 and 6924 do not forbid the officers of Longview Asylum from conducting a slaughter house for the sole benefit of the institution within one hundred and twenty rods of the same. These sections have reference to private persons and corporations and not to the officers of the asylum.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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*Commissioner of Deeds; Fees of.*

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## COMMISSIONER OF DEEDS; FEES OF.

Office of the Attorney General,  
Columbus, Ohio, November 21, 1881.

*Mr. John E. Beall, Washington, D. C.:*

DEAR SIR:—My opinion is that a commissioner of deeds for Ohio is only permitted to charge two dollars for taking the acknowledgment of a deed, whether the instrument is signed by one or more persons; i. e., two dollars for each certificate whether it names one or more persons. Of course the law does not prohibit the commissioner from charging one dollar for one person if he so desires, but in no case must he charge more than two dollars.

The language of the statute is as follows: "for taking the acknowledgment and proof of each deed or other conveyance \* \* \* two dollars."

Very truly yours,

GEO. K. NASH,  
Attorney General.

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Office of the Attorney General,  
Columbus, Ohio, November 21, 1881.

*Mr. Wm. H. Gavitt, Prosecuting Attorney, Delta, Fulton County, Ohio:*

DEAR SIR:—In the case which you present the crime charged was "assault to commit a rape"—a felony. According to section 7136 of the statutes, the magistrate is only authorized to require security for costs in a case when "the offense charged is a misdemeanor." This takes sections 1311 and 1312 entirely out of this case.

I think that under section 1308 the witness fees may be paid out of the county treasury, as it is a case in which the State has failed. The officers' fees may be considered by

Sheriff; Controls the Prisoners in Regard to Sealed Letters.

the commissioners in considering the allowance to be made in lieu of fees under section 1309.

If my opinion differs from your view, I wish you would give me your opinion and reasons therefor. I recognize that I am liable to make mistakes.

Very truly yours,

GEO. K. NASH,

Attorney General.

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SHERIFF; CONTROLS THE PRISONERS IN REGARD TO SEALED LETTERS.

Office of the Attorney General,  
Columbus, Ohio, November 21, 1881.

*Mr. James F. Cauley, Prosecuting Attorney, New Lexington, Ohio:*

DEAR SIR:—In your favor of the 17th inst. you ask, "Are prisoners that are confined in the county jail permitted to receive and transmit sealed letters?"

Under the eighth paragraph of section 7374 of the statutes, the Court of Common Pleas may regulate this matter by rule. In the absence of a rule made by the court, the sheriff, under section 7368, may regulate this matter in such manner as he thinks is necessary for the safe keeping of the prisoners in the jail.

Very truly yours,

GEO. K. NASH,

Attorney General.

*Justice of the Peace; When Governor Issues Commission to  
—County Auditor Made Secretary of County Commissioners, Etc.*

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JUSTICE OF THE PEACE; WHEN GOVERNOR  
ISSUES COMMISSION TO.

Office of the Attorney General,  
Columbus, Ohio, December 3, 1881.

*Mr. J. H. Mitchell, Prosecuting Attorney, Canal Dover,  
Ohio:*

DEAR SIR:—Section 83 provides when a commission may be issued by the Governor to a justice of the peace. This certificate must be made by the clerk of court. If this officer will send a certificate of the election of Levi Trovis, I think that the commission will be issued. I presume that the clerk has the form usually used for the certificate.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY AUDITOR MADE SECRETARY OF  
COUNTY COMMISSIONERS, ETC.

Office of the Attorney General,  
Columbus, Ohio, December 2, 1881.

*Mr. J. E. Lawhead, Newark, Ohio:*

DEAR SIR:—By section 1021 of the Revised Statutes the county auditor, by virtue of his office, is made the secretary of the county commissioners, and it is made his duty, when required, to aid them in the performance of their duties.

Section 917 makes it the duty of the commissioners to make an annual report. If they request the auditor to aid them in preparing this report, it is certainly his duty to do

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*Sheriff; Can Employ a Janitor in the Jail.*

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so, and it is one of the duties he is required to perform for the compensation provided in sections 1069 and 1070. He can receive no extra compensation therefore.

Under section 1076 the extra allowance of twenty-five per cent. can only be allowed in the years 1880, 1890 and 1900, or every ten years. It cannot be allowed for 1889 because the law requires that some work shall be done in that year. Nor for 1891, because some work must be done in that year to complete the valuation of real estate. My predecessor, Attorney General Pillars, was of this opinion.

I suppose that the "road tax list," about which you write, is service rendered under section 4738. The duty required of the county auditor under this section is one of the duties covered by the compensation provided for by sections 1069 and 1070. He cannot be allowed extra compensation unless the law specifically authorizes it, and I have not been able to discover such authority.

If I have overlooked it, I hope that you will correct me.

Very truly yours,

GEO. K. NASH,

Attorney General.

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SHERIFF; CAN EMPLOY A JANITOR IN THE JAIL.

Office of the Attorney General,  
Columbus, Ohio, December 3, 1881.

*Mr. Chas. W. Pitcairn, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—The sheriff of your county today called my attention to the fact that you wrote me sometime since in regard to whether the county commissioners can pay for a janitor who has been kept about the jail of your county.

I understand that the necessity for this janitor arises from the fact that the jail is so arranged as to stoves and heating apparatus that his services are absolutely necessary

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*Children's Home; Bills Must be Approved by  
Superintendent.*

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in addition to the services of the sheriff, who at all times attends to the jail as provided by section 7368.

Under section 7379, it is the duty of the sheriff to provide the necessary fuel for heating the jail, and under section 7378 it is the duty of the commissioners to provide suitable means for warming the jail. If with the means provided for warming the jail, the services of this janitor are also required for the same purposes, the commissioners have authority, under section 7378, to pay a proper compensation to him.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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CHILDREN'S HOME: BILLS MUST BE APPROVED  
BY SUPERINTENDENT.

Office of the Attorney General,  
Columbus, Ohio, December 5, 1881.

*Mr. J. R. Faulke, McConnelsville, Ohio:*

DEAR SIR:—Your favor of the 1st inst. has been received.

In section 930 of the Revised Statutes of Ohio, as amended March 22, 1881, I find these words:

“And the superintendent shall have the *entire charge and control* of said home and the inmates therein, subject to such rules and regulations as may be prescribed by the trustees.”

These words, it seems to me, place the whole matter of conducting the institution, including the purchase of supplies and approval of bills, in the hands of the superintendent, subject only to such regulations as the board of trus-

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*Postmaster Can't be Member of the Legislature.*

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tees may prescribe. Bills approved by the superintendent in such manner as the trustees have prescribed, must be honored by the county auditor.

I do not think that sections 894 and 1024 affect this question. These sections, in effect, prescribe that the auditor shall not issue a warrant for the payment of any claim against the county, unless the same is allowed by the county commissioners, except in cases where the amount due is fixed by law, or is allowed by some other officer or tribunal authorized by law to allow the same; children's homes come within the exception, I think, because section 930 authorizes the superintendent to allow the bills. The home in this county is conducted in this manner, as well as the homes to which you refer in your letter.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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POSTMASTER CAN'T BE MEMBER OF THE  
LEGISLATURE.

Office of the Attorney General,  
Columbus, Ohio, December 10, 1881.

*Hon. W. S. Cappellar, Auditor, Cincinnati, Ohio:*

DEAR SIR:—Section 4, Article 2 of the constitution of 1851, page 94, R. S., contains such provision, and I think prohibits any postmaster, no matter how small the office, from holding a seat in the General Assembly. Our friend would do well to resign.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Prosecuting Attorney Not Entitled to Costs Paid by the State—Superintendent of Insurance; Powers of.*

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PROSECUTING ATTORNEY NOT ENTITLED TO COSTS PAID BY THE STATE.

Office of the Attorney General,  
Columbus, Ohio, December 10, 1881.

*Mr. Geo. B. Smith, Prosecuting Attorney, Ashland, Ohio:*

DEAR SIR:—Your favor of December 8th received. I do not think that a prosecuting attorney, by section 1298, is entitled to a percentage on costs paid by the State. He is entitled to this percentage only when the costs are collected from the defendants.

The State has simply agreed to reimburse the county for moneys expended in cases of felony where the defendants prove insolvent.

I do not believe that it was the intention of the statute to give the prosecuting attorney one-tenth of the money voluntarily paid by the State to the county. This payment is in no sense of the word a collection.

Section 1274 originated with the code, and took effect on the first day of January, 1880.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SUPERINTENDENT OF INSURANCE;  
POWERS OF.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

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

DEAR SIR:—In my opinion you cannot compel insur-



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*Fidelity Mutual Aid Association of Philadelphia.*

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ance companies to file in your department a copy of the publication required by section 284 of the Revised Statutes.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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FIDELITY MUTUAL AID ASSOCIATION OF  
PHILADELPHIA.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

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

DEAR SIR:—I have examined the blank certificate of membership and policy of insurance, the by-laws and literature of the Fidelity Mutual Aid Association of Philadelphia, submitted to me by you.

After careful consideration of these, I am of the opinion that the business done by this association is not such a business as mutual aid associations are authorized to do by the laws of Ohio. Foreign mutual aid associations can not be admitted to do business in Ohio unless the business done by them is such as like associations organized under the laws of Ohio may do.

Very respectfully yours,

GEO. K. NASH,  
Attorney General.

*Board of Education; Powers of Under Section 413—  
Witness Fees Before Magistrates; Costs Paid by State.*

BOARD OF EDUCATION; POWERS OF UNDER  
SECTION 413.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

*Mr. I. M. McGinnis, Prosecuting Attorney, Caldwell, Ohio:*

DEAR SIR:—Your favor of the 13th inst. has been received.

Under section 413, as amended April 13, 1880, Davidson's children may be admitted to the schools in the district in which the forty acres of his land lie; i. e., the board of education have the power to admit them to said school.

Very truly yours,

GEO. K. NASH,  
Attorney General.

WITNESS FEES BEFORE MAGISTRATES; COSTS  
PAID BY STATE.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

*Mr. Elmer C. Powell, Prosecuting Attorney, Jackson, Ohio:*

DEAR SIR:—You have a perfect right to ask the advice of the attorney general as you have done, and your questions have been neglected by me for the simple reason that I have had so much work to do that I have been compelled to neglect many things.

I do not think that witnesses in cases of misdemeanors before examining magistrates can be paid their fees out of the county treasury.

I have given much attention to the question of the percentage of prosecuting attorneys, and am of the opinion

Mutual Aid Association; Certificate Holder Can Not, Etc.

that they are not entitled to ten per cent. of the costs paid by the State in felonies. I do not look upon this as a collection. The State, by her law, voluntarily reimburses the county for the moneys paid out in these prosecutions. It is a gratuity rather than a collection.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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MUTUAL AID ASSOCIATION; CERTIFICATE  
HOLDER CAN NOT, ETC.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

*Mr. M. Ream, New Philadelphia, Ohio:*

DEAR SIR:—I agree with you in thinking that a certificate holder in one of the mutual beneficial associations of Ohio has no insurable interest which he can transfer—especially no interest which he can transfer to one not a member of his family or heir.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*County Commissioners; Authority to Employ Counsel, Etc.*

COUNTY COMMISSIONERS; AUTHORITY TO  
EMPLOY COUNSEL, ETC.

Office of the Attorney General,  
Columbus, Ohio, December 20, 1881.

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

DEAR SIR:—Your favor of the 13th inst. was received during my absence from the city.

You state that in 1875 the commissioners of your county commenced an action against the Baltimore Shortline Railroad Company, and employed counsel to prosecute the same. I think that they had full power to do this under the act of March 30, 1868—S. and S., page 89. At that time no limit was put upon the amount that commissioners could pay counsel. On the 27th of April, 1877, the law of the State was changed so that the commissioners could not pay more than \$250 to counsel in any one case. If in 1875 the commissioners employed counsel to conduct the case, I do not think that the terms of their contract made at that time could be varied or changed by the act of 1877. If, in 1875, no sum was agreed upon to be paid for the work done, then the commissioners are at liberty to pay a reasonable amount. Under section 845 only \$250 can be paid for attorney's services in any one case, no matter if the case does go to the Supreme Court, is reversed and a new trial is necessitated.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Capital Stock of Accident Insurance Companies—Extradition of Prisoners From Foreign Countries.*

CAPITAL STOCK OF ACCIDENT INSURANCE  
COMPANIES.

Office of the Attorney General,  
Columbus, Ohio, December 12, 1881.

*Mr. I. N. Brodrick, Marysville, Ohio:*

DEAR SIR:—I think that companies organized under section 3670, Revised Statutes, must have the same amount of capital as is required by section 3634.

Very truly yours,

GEO. K. NASH,  
Attorney General.

EXTRADITION OF PRISONERS FROM FOREIGN  
COUNTRIES.

Office of the Attorney General,  
Columbus, Ohio, December 20, 1881.

*Mr. Joseph B. Hugh, Auditor, Hamilton, Ohio:*

DEAR SIR:—Your telegram of the 16th inst. came to hand when I was absent from the city.

Our statute wholly fails to make provision for the payment of an officer's expenses in extraditing a prisoner from a foreign country.

Such bills cannot be paid out of the county treasury until the law makes provision for it.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Ohio Valley Protective Union; Certificate of Membership—  
Justice of the Peace; Election of.*

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OHIO VALLEY PROTECTIVE UNION; CERTIFICATE OF MEMBERSHIP.

Office of the Attorney General,  
Columbus, Ohio, December 28, 1881.

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

DEAR SIR:—I have examined the certificate of membership issued by the Ohio Valley Protective Union to John D. Herr, No. 2,550, and dated March 1, 1881. It is not such a contract as mutual aid or beneficial associations are authorized to make by the laws of Ohio, until they have complied with the laws regulating mutual life insurance companies.

Very truly yours,  
GEO. K. NASH,  
Attorney General.

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JUSTICE OF THE PEACE; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, December 28, 1881.

*Mr. Peter J. Moersch, Akron, Ohio:*

DEAR SIR:—Want of time has prevented me from answering your favor of the 17th inst. before this time. My impression is that, under section 567, Revised Statutes, it is left to the discretion of the township trustees when the election should take place to fill a vacancy in the office of a justice of the peace. The only portion of said section that seems to me to be mandatory is as to the kind of a notice

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*Bond Taken by Examining Magistrate.*

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that must be given. The section does not say that the election shall be called *forthwith* by the trustees. Unless there is some urgent demand for earlier action, I think that the trustees would be justified in postponing the filling of the vacancy until the spring election.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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BOND TAKEN BY EXAMINING MAGISTRATE.

Office of the Attorney General,  
Columbus, Ohio, December 23, 1881.

*Mr. Geo. Strayer, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—I think that the security taken under section 7136 is only responsible in case the complaint is dismissed by the examining magistrate. If the case fails before the grand jury, it is not a dismissal, but a failure to find an indictment. If there is a failure after indictment found, it is a failure to convict. Only the examining magistrate technically dismisses the case.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Mayors Not Authorized to Solemnize Marriages—Justice of the Peace; Holds His Office Until His Successor is Elected.*

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MAYORS NOT AUTHORIZED TO SOLEMNIZE  
MARRIAGES.

Office of the Attorney General,  
Columbus, Ohio, December 28, 1881.

*Mr. Issac Bradfield, Pomeroy, Ohio:*

DEAR SIR:—In answer to your favor of the 27th inst. I will say that I have heretofore given an opinion that mayors are not authorized to solemnize marriages in Ohio. My predecessor, Mr. Pillars, was also of this opinion.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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JUSTICE OF THE PEACE; HOLDS HIS OFFICE  
UNTIL HIS SUCCESSOR IS ELECTED.

Office of the Attorney General,  
Columbus, Ohio, December 28, 1881.

*Mr. I. P. Spriggs, Prosecuting Attorney, Woodsfield, Ohio:*

DEAR SIR:—I have been so engaged in looking after the disagreeable matter connected with the board of public works that I have not before had time to answer your favor of the 20th inst.

Section 567 has no relation to a case wherein the commission of a justice of the peace has expired. Under section 8, I think that a justice of the peace holds his office until his successor is elected and qualified. In the case which you present, under the circumstances, I think that the justice ought to be elected at the spring election in 1882, and that the present justice can hold his office until that time.

Very truly yours,

GEO. K. NASH,  
Attorney General.