Court of Defiance County may allow mothers' pensions, if the applicant for the pension has resided in any county in the State of Ohio for a period of two years, providing, however, that the applicant is a resident of Defiance County at the time the award is made by the Juvenile Court.

Respectfully,
GILBERT BETTMAN,
Attorney General.

811.

COUNTY COMMISSIONER—DEEMED TO HAVE RESIGNED WHEN ABSENT FROM COUNTY CONTINUOUSLY FOR SIX MONTHS.

SYLLABUS:

In order that a county commissioner shall be deemed to have resigned from office under the provisions of Section 2398, General Code, the absence from the county must be for a continuous period of six months and, accordingly, absences aggregating six months, but interrupted by a period when he is present in the county and performs duties as such commissioner, will not affect his official status in so far as the provisions of such section are concerned.

COLUMBUS, OHIO, August 29, 1929.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "Section 2398 of the General Code provides:
>
> 'The absence of a commissioner from the county for a period of six months, shall be deemed to be a resignation of the office.'
>
> One of our commissioners, on account of illness, went to Hot Springs, Ark., on February 9th, 1929. He was partially cured, and returned to his home in Trumbull County, where he remained from April 5th to April 24th, 1929. On April 24th he went to Cleveland, and has remained in Cleveland, Ohio, ever since. While he was at his home in April he transacted some county business, signed some county papers, and some notes and bonds. He has also signed some papers, including notes and bonds since he has been in Cleveland.
>
> In computing the six months of his absence from the county, the question arises whether the six months must be continuous, or whether the time spent in Hot Springs should be added to the time which he is spending in Cleveland.
>
> Will you kindly apprise me your ruling on this point?"

The provision of law to the effect that the absence of a county commissioner from a county for a period of six months is deemed equivalent to his resignation was first enacted as a part of Section 5 of "An Act establishing boards of county commissioners and prescribing their duties" March 12, 1853, and published in Vol. 51 of Ohio Laws, page 422. Said Section 5 as then enacted read as follows:

> "That whenever there shall be a vacancy in the office of county commis-

sioner from death, resignation, removal, or any cause other than the expiration of the term for which he was elected, and the interest of the county shall require such vacancy to be filled before the next annual election, the probate judge, auditor, and county recorder of such county, or a majority of them, shall meet at the seat of justice of the county, and appoint one or more commissioners, as the case may require, who shall continue in office until the next annual election, and until the commissioner or commissioners then elected shall be qualified, and no longer; and the absence of any commissioner from the county for six months in succession, shall be deemed a resignation of the office." Swan & Critchfield Statutes, page 244.

The provisions of said Section 5 were not changed until 1880. The codifying commission of 1880 divided the said section and with some change of phraseology the terms of said section appeared in the commission's report as adopted by the Legislature, as Sections 842 and 843 of the Revised Statutes of Ohio. Said Section 843 of the Revised Statutes of 1880 read as follows:

"The absence of a commissioner from the county for a period of six months shall be deemed to be a resignation of the office."

It has never been amended since 1880, and was codified in 1910 as Section 2398, General Code.

There can be no question as to the meaning of the statute with reference to the absence of a commissioner as it was first enacted in 1853. The only question is as to the effect, if any, of the change of phraseology made in 1880. That change, it will be observed, consisted in changing the expression "six months in succession" to "a period of six months."

Notwithstanding that the change in the wording of the statute may have been the act primarily of the commission appointed to make the revision, yet, the subsequent enactment into a law, must be regarded as the deliberate act of the General Assembly.

It is a cardinal principle of statutory construction that where changes are made in the wording of a statute, it must be presumed that some object was to be attained in changing this wording; either a mere change of phraseology in the interests of clarity or simplicity of language, or a deliberate attempt to change the meaning of the statute. To determine which of these objects is sought, in order to give effect to the real intention of the Legislature, is the object of all construction. The doctrine has long been established that in the absence of a clear legislative intention to the contrary, a mere change of phraseology in the revision of a statute should not change the construction already placed on the statute, or, the construction it should receive if the language had not been thus changed. *Ash* vs. *Ash,* 9 Ohio St., 387; *Stannard* vs. *Case,* 40 Ohio St., 211.

The distinction, however, between a mere change of phraseology and the introduction of an entire clause into a statute, the apparent effect of which is to clearly qualify the former statute, is wide and clear.

One of the objects sought through a codification or entire revision of statutes is no doubt clarity and simplicity of language, but when the language of a statute is plain before revision and the clear and unambiguous words and phrases are left out and other qualifying words are inserted upon revision, the words inserted should not be treated as mere surplusage or the leaving out of other qualifying words as the result of mere inadvertence or carelessness, whatever the rule may be as to a mere change of phraseology thus accomplished.

The statute of 1875, (72 Ohio Laws, 87) providing for a revision of the statutes

of this state, expressly authorized the commissioners among other things, "to bring together all the statutes and parts of statutes relating to the same matter, * * * making alterations to reconcile contradictions, supply ommissions, and amend imperfections in the original acts, so as to reduce the general statutes into as concise and comprehensive a form as is consistent with a clear expression of the will of the general assembly, rejecting all equivocal and ambiguous words and circuitous and tautological phraseology."

With reference to this statute, Judge Bradbury in *Collins, Executor,* vs. *Millen et al.,* 57 O. S. 289 at page 296, said:

> "This authority was broad enough to warrant changes of phraseology, and fact, expressly authorized it, but the power to alter the meaning of statutes by the insertion of qualifying clauses does not appear. The statutes as revised by the commission appointed for that purpose, were, when reported to the General Assembly, passed by that body with such amendments as it chose to make. It is quite reasonable to infer, as we have before shown that this court has done, that mere changes of phraseology made by the commission and adopted by the General Assembly, do not change the meaning previously borne by old statutes, unless the difference between the language of the two statutes evinces an intent to do so."

The question before us is whether or not the change noted indicates a deliberate attempt on the part of the General Assembly to change the meaning of the statute, or whether or not the change of phraseology results in saying the same thing in another way.

It is said in the case of In Re Becker, et al., 80 N. Y. S. 1115, that the ordinary meaning of the word "period" when applied to the lapse of time, means a continuous and uninterrupted length of time, although in that case under the particular facts, the court held that it meant something else. The case involved the construction of a will and it was held that the word "period" as used in the will apparently did not mean a continuous and uninterrupted length of time as was plainly shown by the context. The word "period" as applied to time is defined by Webster thus:

> "A period of time is limited and determined by some recurring phenomena, as by the completion of a revolution of a heavenly body; a division of time as a series of years, months or days in which something is completed and ready to recommence and go on in the same order."

The word is derived from the Latin word, "periodus" meaning, a going around, a way around, a circumference.

In my opinion the word "period" when used in its ordinary sense as applied to the lapse of time, imports continuity of time unless the context shows otherwise, and that the two expressions "six months in succession" and "a period of six months" as used in the statute here under consideration, before and after its revision in 1880, mean the same thing. It seems to me that inasmuch as the statute here under consideration was so clear and unambiguous as it was first enacted in 1853, had there been any intention on the part of the Legislature to change that meaning upon its revision in 1880, the object of the change would have been stated in language equally clear; whereas the language used upon revision when considered in its ordinary sense, imports the same meaning as before.

I am therefore of the opinion, in specific answer to your question, that in computing the six months' absence of a county commissioner from a county so as to make it amount to a resignation of the office as provided by Section 2398, General Code, the

said six months' period should be continuous and the absence must be for six months in succession.

Respectfully,
GILBERT BETTMAN,
Attorney General.

812.

JOINT CEMETERY—MAINTAINED BY TRUSTEES OF TOWNSHIPS PROPORTIONATELY THROUGH TAXATION—DUTIES ENFORCED BY MANDAMUS.

SYLLABUS:

1. *In the event two or more townships are operating a joint cemetery under the provisions of Section* 3456, *General Code, proceeds held by any one of such townships arising from the sale of cemetery lots therein, shall be used by such township for the purpose of paying its proportionate share of improving and embellishing such grounds.*

2. *The trustees of each of such townships shall contribute their proportionate share of the cost of maintaining and keeping in good repair such grounds by taxation.*

3. *The above duties may be enjoined by a proceeding in mandamus brought by any one or more of such townships against the township trustees of any such township failing to perform such duties.*

COLUMBUS, OHIO, August 29, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "We beg to submit the following for your opinion:
>
> For some years past, Marion, Cessna and Washington Townships, Hardin County, Ohio, have maintained, under Section 3456, G. C. of Ohio, and by virtue of a contract entered into by and between the trustees of said townships, a joint, or union cemetery, which cemetery is located in Cessna Township on or near the line between Marion and Cessna Townships.
>
> The trustees of each of said townships have paid a proportionate part of the expenses of keeping up and maintaining said cemetery. All lots in said cemetery have been sold, and the money arising from said sales has been turned over in equal portions to the trustees of said townships.
>
> In June of this year the trustees of Marion Township refused to pay anything, or do anything, further towards keeping up or maintaining said cemetery in the future, though the trustees of said Marion Township still hold said money so turned over to them, and the people of Marion Township still use said cemetery for burial purposes.
>
> QUESTION: Can the trustees of Cessna Township compel the trustees of Marion Township to contribute anything towards keeping up and maintaining said cemetery?
>
> What are the rights and remedies of the trustees of Cessna Township in the above matter?"

Section 3456, General Code, to which you refer, is as follows:

> "Where a public burial ground located on or near a township line, is used