

*Probate Judge Cannot Receive Compensation For Statistical Information Furnished the Secretary of State.*

PROBATE JUDGE CANNOT RECEIVE COMPENSATION FOR STATISTICAL INFORMATION FURNISHED THE SECRETARY OF STATE.

Office of the Attorney General,  
Columbus, Ohio, January 4, 1882.

*Hon. John C. Miller, Probate Judge, Springfield, Ohio:*

DEAR SIR:—In your letter of the 30th of December you state that the secretary of state calls upon probate judges annually for statistical information in regard to marriages, reform school cases, lunacy cases, naturalizations, estates administered upon, executors, administrators and guardians appointed, etc.

You ask whether these officers can be compensated for the labor thus placed upon them.

I have carefully examined the statutes and have failed to find any provision for doing this. Section 140 seems to impose this work as a duty to be performed without compensation. I do not think that section 547 could be construed as giving fees to probate judges for statistical information, except in counties where they have criminal jurisdiction, and then only as to statistics relating to prosecutions for crimes.

Section 1248 requires clerks of court to annually furnish statistics in regard to prosecutions for crimes in their respective counties, and section 1250 only provides compensation for services rendered under section 1248.

If the Secretary of State calls upon the clerk for other information, it is done by virtue of the authority conferred by section 140, and the duty must be performed without other reward than "an approving conscience."

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Tax Notice; Advertisement of; Compensation.*

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## TAX NOTICE; ADVERTISEMENT OF; COMPENSATION.

Office of the Attorney General,  
Columbus, Ohio, January 6, 1882.

*Mr. Chas. R. Truesdale, Prosecuting Attorney, Youngstown, Ohio:*

DEAR SIR:—Your favor of yesterday has been received.

In compliance with section 208 I have considered the matter submitted to me therein, and give the following advice in relation thereto:

You present these facts: "A printer presents his bill for advertisement of tax notice. It is one advertisement. One-half of the advertisement is tabular and rule work. The other half is not.

"Query: Is the printer entitled to fifty per cent. additional pay on account of tabular or ruled work?"

I answer; "Yes."

The latter part of section 4366 says:

"In advertisements containing tabular or ruled work, an additional sum of fifty per cent. may be charged in addition to the foregoing rates."

The rates referred to are one dollar for each square for the first insertion, and fifty cents per square for each additional insertion authorized by law.

It will be observed that the law does not say that an additional sum of fifty per cent. may be charged for the tabular or ruled work in the advertisement, but that it may be charged for the advertisement in which there is tabular or ruled work.

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

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*Prosecuting Attorney Not Entitled to Ten Per Cent. on  
Costs Paid by State.*

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PROSECUTING ATTORNEY NOT ENTITLED TO  
TEN PER CENT. ON COSTS PAID BY STATE.

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

*Mr. Miller Outcalt, Prosecuting Attorney, Cincinnati, Ohio:*

DEAR SIR:—Your favor of the 4th inst. received. The matter therein suggested is a subject to which I have given much thought during the last year and a half.

I do not think that section 1298 gives the prosecuting attorney ten per cent. of costs, in felonies, paid by the State of Ohio. This percentage is only upon costs collected from defendants or other private parties. The payment of these costs by the State cannot be said to be a collection. It is a voluntary contribution upon her part. There are certain costs in felonies which are paid out of the county treasury as the trial progresses, to-wit, witness fees. These are costs paid by the county. It will not be claimed that the prosecutor, under section 1298, is entitled to a percentage of the costs thus paid out of the county treasury.

The State has voluntarily put herself in the place of the county, and has said, "I will pay the witness fees, and the fees of the sheriff, and clerk, and other officers, in case they cannot be collected from the defendant." The prosecuting attorney has no official act to do in receiving this money from the State, as will be seen from an examination of sections 7334 to 7337, inclusive.

I do not think that the moneys paid by the State are costs which he is required to report as collected by him under section 1328.

I regret that I cannot reach the same conclusion that you have in this matter.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Ohio State University; Religious Exercises at.*

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## OHIO STATE UNIVERSITY; RELIGIOUS EXERCISES AT.

Office of the Attorney General,  
Columbus, Ohio, January 10, 1882.

*Hon. T. J. Godfrey and Hon. James B. Jamison, Committee of Trustees of Ohio State University, Columbus, Ohio:*

GENTLEMEN:—I have received and carefully considered your favor of the 4th inst.

You state that on the 15th day of January, 1881, the board of trustees of the Ohio State University adopted the following resolutions:

“First—*Resolved*, That the president and faculty of the Ohio State University are hereby instructed to arrange for holding daily, a general meeting of the students in the university chapel.”

“Second—*Resolved*, That the nature of the exercises and the time of holding the same, shall be matters under the control of the faculty.”

That on the 20th of January, 1881, it suspended its former action, and that afterwards on November 10, 1881, it adopted the following resolution:

“*Resolved*, That the resolutions prepared January 5, 1881, concerning a daily assemblage of the students of the university are hereby reaffirmed; and that in addition thereto, the board hereby recommends the reading of the scriptures (without comment) and prayers, at the discretion of the president of the university as part of said services.”

You ask: “Is there any legal hindrance to the carrying out of the above resolutions, and especially the recommendation contained in the last resolution?”

The legislature has placed the management of the University exclusively under the control of the board of trus-



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*Girls' Industrial Home; Questions Proposed by the Superintendent of*

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tees, and I think that the resolutions adopted and recommendation made by the board, and above recited, are clearly within the scope of its authority. In this opinion, I am sustained by the case of *The Board of Education of Cincinnati vs. Minor, et. al.*, 23d O. S., page 211.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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GIRLS' INDUSTRIAL HOME; QUESTIONS PROPOSED BY THE SUPERINTENDENT OF.

I. "If, after a girl is received at the Industrial Home, it is ascertained that her physical or mental condition would have been just cause for her return, had it been known, may she be ordered back into the custody of the probate judge by the directors or superintendent?"

*Answer.* Sections 769, 770 and 771 of the Revised Statutes lay down in what manner and for what cause a girl may be committed to the Girls' Industrial Home by the probate court. The trustees and officers of the home have no right to review the proceedings of the probate court even if they are erroneous.

II, III. "When it is evident that a girl cannot be controlled, or reformed, may she be discharged by the board and returned to the probate judge, provided she has no parents, guardian or other protector; and if she may not, what shall be done with her?"

*Answer.* The trustees have such powers in discharging inmates as are conferred by section 773. I cannot make these powers any plainer than they are made by the section.

I do not think that a probate judge is in any sense a protector of girls committed to your institution. If the girl

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*County Auditor; Power to Amend Tax Duplicate.*

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has no parents, she should have a guardian, and it is probably the duty of the probate judge to appoint one.

IV. "In case of a girl's return to her parents, guardian, or protector (or probate judge), who shall pay expenses, and from what fund, if by the State?"

*Answer.* Section 773 gives the trustees the right to return the girl to her parents, guardian, or protector. The power to do this implies the means with which to do it, and if the expense of the act cannot be otherwise provided for, it may be paid out of the money appropriated for the general expenses of the institution.

V. "What disposition shall be made of funds accruing from sale of any surplus material, old furniture, etc., etc.?"

*Answer.* If any property, belonging to the State, is sold, it must be faithfully accounted for in the monthly settlements, as provided for in section 650 of the Revised Statutes, as amended April 14, 1880, O. L., Vol. 77, page 203.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COUNTY AUDITOR: POWER TO AMEND TAX  
DUPLICATE.

Office of the Attorney General,  
Columbus, Ohio, January 11, 1882.

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

DEAR SIR:—You present this case: "A owns 107 acres of land. In the decennial appraisement of 1880 it was erroneously returned as 117 acres, and was valued at \$40 per acre, or \$4,680, instead of \$4,280, its true value." How can the error be corrected?

I think that section 2800 points out the way, and I conceive it to be this:

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*County Commissioners; Publication of Report of.*

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The county auditor may correct the error in the number of acres of his own motion. He can then submit the facts in writing to the auditor of state, and if that officer gives him his written order to that effect, the county auditor may reduce the valuation to \$4,280.

I have not forgotten your questions in regard to the stationery of county officers, and have given the subject much thought, but have not reached conclusions satisfactory to myself. As soon as I do I shall inform you.

Very truly yours,

GEO. K. NASH.

Attorney General.

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COUNTY COMMISSIONERS; PUBLICATION OF  
REPORT OF.

Office of the Attorney General,  
Columbus, Ohio, January 17, 1882.

*Mr. H. C. Eckley, Prosecuting Attorney, Carrollton, Ohio:*

DEAR SIR:—I think that section 917 confers upon the commissioners the power to make the contract for printing their annual report, and that this power is not vested in the auditor. Before the revision the power was clearly with the commissioners, and I do not believe that the code commissioners intended to make a change in this respect.

Truly yours,

GEO. K. NASH,

Attorney General.

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*County Recorders; Duties and Fees of.*

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## COUNTY RECORDERS; DUTIES AND FEES OF.

Office of the Attorney General,  
Columbus, Ohio, January 17, 1882.

*Mr. J. Foster Wilkin, Prosecuting Attorney, New Philadelphia, Ohio:*

DEAR SIR:—AS you have the questions contained in your favor of the 10th inst., I will answer by numbers and not state the substance of the questions.

First—Section 1153 does not refer to an index to be made in each volume in the recorder's office, in which deeds, etc., are recorded. But it requires that an index to the record shall be kept in a separate volume in which the names of both parties to all instruments recorded by him, alphabetically arranged, shall be kept.

Second—The ten cents for indexing provided for by section 1157, pays for the index provided for by section 1153.

Third—I have no personal knowledge of a system of indexing known as the Campbell system, and I do not think that the makers of the statutes had any copyrighted system in mind while enacting the sections under consideration. If Campbell's system is proper at all, it must be one that will answer the description of index set forth in section 1153.

Fourth—My answer to your third query answers your fourth question. If Campbell's system is used at all, it must be because it comes within section 1153, and if it comes within said section the ten cents paid by the purchasers of real estate upon having their deeds recorded pays for keeping it up.

Fifth—I think that the general index which section 1154 provides, and which the commissioners, in their discretion, can have made, is more of an abstract of title than an index. For making this record the recorder is entitled to the fees prescribed by section 1155, and the commissioners cannot change them by virtue of section 1158.

Sixth—The index provided for by sections 1153 and

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*Grand Jury; Mileage and Fees of Witness Out of State.*

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1154 must be made by the county recorder. The commissioners have not the power to have these indexes made by other parties.

Seventh—I answer your seventh question in the affirmative.

Very truly yours,

GEO. K. NASH,

Attorney General.

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GRAND JURY; MILEAGE AND FEES OF WITNESS  
OUT OF STATE.

Office of the Attorney General,

Columbus, Ohio, January 20, 1882.

*Mr. Duncan McDonald, Prosecuting Attorney, Urbana,  
Ohio:*

DEAR SIR:—I am of the opinion that a witness before a grand jury is not entitled to the fees and mileage provided in section 1302, unless he appears by virtue of a recognizance or a subpoena.

As subpoenas can only be served within the State, I think that the mileage of a witness living outside of the State can only be allowed from the State line to the place of examination.

I do not know of any power in the county commissioners to pay the expenses of a witness coming from another State.

Very truly yours,

GEO. K. NASH,

Attorney General.

*Tax Duplicate; Property on the—Boards of Municipal Corporations Subject to Taxation.*

TAX DUPLICATE; PROPERTY ON THE.

Office of the Attorney General,  
Columbus, Ohio, January 21, 1882.

*Hon. W. H. West, Bellefontaine, Ohio:*

MY DEAR JUDGE:—Your favor of the 20th inst. has been received. From the statement of facts contained in your letter and the letters of Riddle, Miller & Company, to J. L. McFarland, copies of which I herewith enclose, I am of the opinion that the property therein mentioned should not have been placed on the tax duplicate in the name of Riddle, Miller & Company, but that so much thereof as was in the possession of Jacob Runckle, upon the second Monday of April, 1881, should have been assessed in his name.

The auditor of state concurs in this opinion.

Very truly yours,

GEO. K. NASH,  
Attorney General.

BOARDS OF MUNICIPAL CORPORATIONS SUBJECT TO TAXATION.

Attorney General's Office,  
Columbus, Ohio, January 25, 1882.

*Mr. U. Hoyt, Prosecuting Attorney, Pomeroy, Ohio:*

DEAR SIR:—Your favor of the 24th inst., enclosing certain inquiries made by your county auditor, has been received.

The bonds issued by a municipal corporation in the State of Ohio, when held within this State, must be returned for taxation and be taxed in the same manner and to the same extent as other personal property.

If I was a resident of the city of Pomeroy, and owned

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*Assessors; Must Return the Value on Second Monday  
in April.*

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a horse worth \$100 and a bond issued by the city of the same value, I would have to pay the same amount of taxes upon the bond as upon the horse, and no more.

I have not answered the auditor's questions in detail, but I think that I have said enough to cover them all.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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ASSESSORS; MUST RETURN THE VALUE ON  
SECOND MONDAY IN APRIL.

Office of the Attorney General,  
Columbus, Ohio, January 25, 1882.

*Mr. John M. Stull, Warren, Ohio:*

DEAR SIR:—The auditor of state has not yet received a letter from Mr. Rice, your county auditor. The state auditor, however, informs me that the ruling of his office has been for years that the assessor must return the condition of the property as it was on the day preceding the second Monday in April, and that it must stand for taxation at what it was worth upon that day.

The view taken of section 2801 by the auditor's department is that if buildings formerly attached to and valued with real estate are reported destroyed on the day preceding the second Monday in April, then it is the duty of the auditor to take their value from the former appraisement, but not otherwise.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Peremptory Challenges; the number Allowed.*

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PEREMPTORY CHALLENGES; THE NUMBER  
ALLOWED.

Office of the Attorney General,  
Columbus, Ohio, January 25, 1882.

*Mr. Joseph B. Peaks, County Attorney, Dover, Maine:*

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

The decision in the case of Mahan vs. The State, 10th Ohio Reports, page 233, was simply the construction of our court upon an old statute which provided that "every prosecuting attorney and every defendant, on the trial of an indictment, may challenge peremptorily two of the panel."

It was on account of the peculiar language—"on the trial of an indictment"—that the court said, "There was but *one* indictment, and on the part of the State the right of peremptory challenge should have been confined to two."

Our present statute reads as follows:

"Except as otherwise provided, the prosecuting attorney and every defendant may peremptorily challenge two of the panel."

A construction of this section has not been asked from our Supreme Court, but my impression is that the construction of this language would be to give the prosecuting attorney only two peremptory challenges where two or more defendants are jointly indicted and jointly tried.

There is but one panel where two defendants are to be jointly tried, and therefore I think the prosecuting attorney has but two challenges.

Of course when the defendants demand separate trials, as they have a right to do, there will be more than one panel and the prosecutor has two challenges for each panel.

Very truly yours,

GEO. K. NASH,  
Attorney General.



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*Witness Entitled to Mileage—Clerk; Township; Compensation of.*

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## WITNESS ENTITLED TO MILEAGE.

Office of the Attorney General,  
Columbus, Ohio, January 23, 1882.

*Hon. Chas. B. Russell, Columbus, Ohio:*

DEAR SIR:—At the request of Mr. Barnes I have made a hasty examination of section 1301, and from such examination I think that witnesses are entitled to mileage from their place of residence to the place of examination and back again.

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

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CLERK; TOWNSHIP; COMPENSATION OF.

Office of the Attorney General,  
Columbus, Ohio, January 25, 1882.

*Mr. C. T. Pickett, Union City, Indiana:*

DEAR SIR:—The school commissioner informs me that the general construction put upon sections 1531 and 4056 throughout the State is that the compensation provided for the township clerk by section 4056 is not included in the \$150 mentioned in section 1531. He and I are of this opinion.

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

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*Clerk of Court; When Term of Office Begins—Probate  
Judge; Term of Office Begins.*

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CLERK OF COURT; WHEN TERM OF OFFICE  
BEGINS.

Office of the Attorney General,  
Columbus, Ohio, January 27, 1882.

*Mr. Edward Landfair, Celina, Ohio:*

DEAR SIR:—Your favor of the 23d inst., asking as to when the term of office of the clerk of the Common Pleas Court begins, has been received. Section 1240 fixes the time, to-wit, the 9th day of February after his election.

This is not in conflict with section 4 of the schedule of the constitution, for that simply fixes the time for the commencement of the term of officers first elected after the adoption of the constitution.

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

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PROBATE JUDGE; TERM OF OFFICE BEGINS.

Office of the Attorney General,  
Columbus, Ohio, January 27, 1882.

*Mr. L. W. King, Youngstown, Ohio:*

DEAR SIR:—In reply to your favor of the 3d inst. I will say that the term of office of the probate judge begins upon the 9th day of February. This seems to be settled in the case of *The State ex. rel., vs. Tyler*, 15th O. S., page 142. The court says:

“By section 4 of the schedule of the constitution, all judges were to be elected on the second Tuesday of October, 1851, and their term of office was to commence on the second Monday of Feb-

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*Incorporation of Associations For Mutual Relief and Protection, Etc.*

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ruary, 1852. The second Monday of February, 1852, happened to fall upon the 9th; and hence, in order that all judicial officers may have their full term of office prescribed in the body of the constitution, no more and no less, the regular terms of office of all judges begin and end on the 9th day of February of the proper year."

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

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INCORPORATION OF ASSOCIATIONS FOR  
MUTUAL RELIEF AND PROTECTION, ETC.

Office of the Attorney General,  
Columbus, Ohio, January 26, 1882.

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

DEAR SIR:—I am satisfied after mature consideration that I erred in the opinion which I gave to your department upon February 18, 1881. I was then of the opinion that under section 3630, corporations could be formed for but one purpose, to-wit: "For the mutual protection and relief of its members, and the payment of stipulated sums of money to their families or heirs."

In other words, that if there was promise of relief in the life time of a member, it must be complied with the stipulation that a certain sum should be paid to his family or heirs at death. By section 3630c, the General Assembly has certainly put a different construction upon section 3630, and indicates that an association may be formed for the payment of stipulated sums during the life time of the member, provided such sums are realized from assessments made

Railroad Companies; Action Against by the Commissioner.

upon its members. If this be so, companies may be organized for two purposes under section 3630:

First—For the payment of stipulated sums of money to the families or heirs of the deceased members.

Second—For the mutual protection and relief of its members during life. The last purpose will include the aiding of members who have been disabled by accidents.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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RAILROAD COMPANIES; ACTION AGAINST BY  
THE COMMISSIONER.

Office of the Attorney General,  
Columbus, Ohio, January 31, 1882.

*Hon. H. Sabine, Commissioner Railroads and Telegraphs,  
Columbus, Ohio:*

DEAR SIR:—In order to answer your letter of a recent date intelligently, it is necessary to give sections 260, 261, 262 and 263 in full. They read as follows:

“Section 260. The secretary of each railroad company, and of each telegraph company, now doing business or whose line is in process of construction, or which may be hereafter organized in the State, shall, within thirty days after the election of the directors of such company, make out and forward to the commissioner of railroads and telegraphs, a list of the officers and directors of their respective companies, giving the place of residence and postoffice address of each; and thereafter, if any change occurs in the organization of the officers or board of directors of the company, shall notify the commissioner of railroads and tele-

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*Railroad Companies; Action Against by the Commissioner.*

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graphs of the fact of such change and the residence and postoffice address of each of the officers and directors."

"Section 261. For a failure to comply with the provisions of the preceding section, any company so neglecting for thirty days after the time herein provided, shall be subject to the same penalties as attach for neglecting or refusing to make the required annual report to the commissioner of railroads and telegraphs."

"Section 262. All prosecutions against railroad or telegraph companies, or any officer, agent or employe thereof, for forfeitures, penalties or fines, without imprisonment, provided for in this chapter, shall be by civil action in the name of the State; and all prosecutions for penalties involving imprisonment shall be by indictment."

"Section 263. The civil action provided for in the next preceding section shall be brought by the prosecuting attorney of the proper county, at the instance of the commissioner; and may be brought by him at the instance of any citizen who will become liable for costs, and if so brought, and the action fails, the costs thereof shall be adjudged against such citizen."

To ascertain the penalty prescribed by section 261, it is necessary to read section 253, which is as follows:

"Section 253. A president or other officer in charge of a railroad, whether doing business or in course of construction, who refuses or neglects to make and furnish the report at the time prescribed in section 251, or any report required by the commissioner, shall forfeit and pay a sum not exceeding one thousand dollars; and he shall be subject to a like penalty for every period of thirty days thereafter he so refuses or neglects to furnish the same."

You ask what is the proper county in which to commence the civil action contemplated by section 263. In the case of companies having their principal office in Ohio, the

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*Railroad Companies; Action Against by the Commissioner.*

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county in which the principal office is located is the proper county, and in the case of foreign companies, the proper county is any county in which service of summons may be made upon the corporation in accordance with section 5044.

In answer to your second question I will say that section 263 does not make the commissioner of railroads and telegraphs responsible for costs, nor does it require him to secure their payment.

If in accordance with section 263, the commissioner of railroads and telegraphs files a complaint with the proper prosecuting attorney, it becomes the duty of that officer to commence the civil action provided for in section 262.

Today you ask me the verbal question whether, in a prosecution of a railroad company for a violation of section 3351, the opinion of the commissioner of railroads and telegraphs that the stove is insufficient to guard passengers against the dangers of fire will control, or whether this is a question which a jury must decide, and upon which evidence may be offered. This section, as amended April 14, 1880, reads as follows:

“Section 3351. Each railroad company in this State shall, when necessary to heat any of its cars for carrying passengers, mail, baggage or express matter, do so by a stove or heater so constructed and protected as to most effectually guard the passengers against the danger by fire, in case of accident by collision, or the cars being overturned or thrown from the track; and it shall be unlawful for any such company to permit any other person or corporation to use cars carrying passengers, mail, baggage or express matter over its road unless the heating apparatus thereof shall conform to the requirements of this section.”

In the trial of a complaint under the above section, the question as to whether the stove complained of is one that will “most effectually guard the passengers against the dan-

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*Insurance Companies. Right to Borrow Money.*

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gers by fire," is one which the jury must determine, and upon which evidence may be offered *pro* and *con*.

The section is very indefinite in its terms. The question as to which stove will most effectually protect passengers from fire is one upon which there will probably be as many opinions as there are different kinds of stoves.

Very truly yours,

GEO. K. NASH,

Attorney General.

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INSURANCE COMPANIES; RIGHT TO BORROW  
MONEY.

Office of the Attorney General,  
Columbus, Ohio, February 2, 1882.

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

DEAR SIR:—I have received the following question from you: "Has a mutual fire insurance company organized under the laws of Ohio a right to borrow money to avoid making an assessment on the premium notes of its members to meet losses?"

It is the duty of mutual insurance companies within reasonable periods to make assessments upon their premium notes with which to pay their losses, and it would be unlawful for them to neglect for unreasonable periods to make such assessments and instead of so doing, pay its losses with borrowed money.

By the foregoing paragraph I do not mean to say that mutual insurance companies cannot borrow money for any purpose.

Section 3650 provides that "The directors shall, as often as they deem necessary, after receiving notice of any loss or damage by fire sustained by any member and ascertaining the same or after the rendition of any judgment

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*Insurance Companies; Right to Borrow Money.*

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against the company for loss or damage, settle and determine the same to be paid by the several members thereof as their separate portions of such loss, and publish the sums in such manner as they may choose, or as the by-laws prescribe."

Section 3641, after reciting certain specific things which insurance companies other than life may do, gives them further authority "to do and perform all other matters and things proper to promote these objects."

If on account of the time fixed by the directors, in the exercise of their discretion, it becomes necessary for mutual insurance companies, in order to make prompt payment of their losses, to borrow money for short periods, I think section 3641 confers authority to do it. This rule is laid down in *Green's Brice's Ultra Vires*, page 115:

"Corporations may borrow without express authority in that behalf, provided the nature of their undertakings or concerns be such as to render borrowing, if not actually indispensable, at least very useful for the proper conduct of the same."

The Supreme Court of this State in the case of *Strauss et. al., vs. The Eagle Insurance Company*, 5th O. S. Reps., has said that "every corporation, unless prohibited expressly or impliedly by the nature and character of the business it was created to engage in, may borrow money to carry forward the legitimate objects of its incorporation, is a well settled rule of law."

Many cases may arise wherein, in carrying out the legitimate objects of their organization, it will be necessary for mutual fire insurance companies to borrow money, and in such cases I think that they may do it.

Very truly yours,

GEO. K. NASH,  
Attorney General.



*Clerk of Court; Term of When Appointed Pro Tem. Term Commences.*

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CLERK OF COURT; TERM OF WHEN APPOINTED  
PRO TEM. TERM COMMENCES.

Office of the Attorney General,  
Columbus, Ohio, February 8, 1882.

*Mr. W. S. McCune, Prosecuting Attorney, Ironton, Ohio:*

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

When a person is appointed as a clerk *pro tempore*, under section 1243, I think that he is entitled under said appointment to hold the office for the period of time contemplated by section 11. That, in my opinion, would be until the 9th day of February. In this I think I am sustained by the decision in the case of Ohio ex. rel. vs. the Commissioners of Muskingum County, 7th O. S., page 125. The words of section 11 are very similar to the ones passed upon in the above case.

The term of office of the person elected clerk at the first election after the vacancy occurred, would begin upon the 9th day of February, and continue for the full term of three years.

Section 1240 prescribes that the term of office of the clerk of court shall begin upon the 9th day of February. The legislature, in fixing this time, seems to have followed the construction put upon the constitution by the Supreme Court in the case of the State ex. rel. vs. Taylor, 15th O. S., page 142.

In a case like the above the appointee should qualify and take the oath of office for the short term, and if elected for a full term, he should qualify and take the oath of office for the term commencing on the 9th day of February.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*County Treasurer; Term of Appointee to Fill Vacancy.*

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COUNTY TREASURER; TERM OF APPOINTEE TO  
FILL VACANCY.

Office of the Attorney General,  
Columbus, Ohio, February 14, 1882.

Mr. H. Murlin, Cclina, Ohio:

DEAR SIR:—Your favor of the 13th inst. has been received. From it I am informed that your county treasurer, whose term of office would have expired upon the first Monday of September, 1882, is dead. That in October last he was elected his own successor, and that Mr. Kreusch has been duly appointed to fill the vacancy.

Query: How long is Mr. Kreusch entitled to hold the office?

I think that section 11 governs. An elective office has become vacant and has been filled by appointment. In such case the appointee will hold his office until his successor is elected and qualified, and his successor will be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy. In this case the first proper election will be upon the second Tuesday in October, 1882.

Now the question arises: "When will the term of the treasurer elected in October, 1882, commence?" This is settled in the case of *Ohio ex. rel. vs. Commissioners of Muskingum County*, 7th O. S. Reps., page 125. The words of the statute thus construed are almost identical with section 11. The term of the elected treasurer will commence upon the first Monday of September, 1883, and Mr. Kreusch can, I think, hold the office until that time.

The secretary of state informs me that he has received no certificate of the appointment of Mr. Kreusch, and has not commissioned him. This should be looked after.

I suppose I ought not to have answered your question until it came through your prosecuting attorney, but I thought that it would simply make delay by sending it back.

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*Reform Farm; When Judge May Commit to—Coroner's Fees.*

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Please explain to the prosecutor so that he will not think that I have been discourteous to him.

Very truly yours,

GEO. K. NASH,

Attorney General.

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REFORM FARM; WHEN JUDGE MAY COMMIT TO.

Office of the Attorney General,  
Columbus, Ohio, February 18, 1882.

*Hon. W. H. How, Probate Judge, Hamilton, Ohio:*

DEAR SIR:—My understanding is that whenever a boy over sixteen is convicted of an offense, the judge of the court in which the conviction is made may commit to the reform farm. The judge of a court having no jurisdiction over criminal cases cannot do this.

I suppose that the words "or probate court," are inserted in the section so as to give the power to such probate judges as have jurisdiction over criminal cases.

Very truly yours,

GEO. K. NASH,

Attorney General.

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CORONER'S FEES.

Office of the Attorney General,  
Columbus, Ohio, February 18, 1882.

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

DEAR SIR:—Officers are only allowed such fees as are expressly prescribed by law.

Section 1239 fixes the fees which coroners may charge

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*Treasurer (County); Not Entitled to Percentage When Remitter is Issued.*

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and receive. I know of no other statute allowing fees to coroners. If there is none, he can only receive such fees as are provided for in section 1239, and cannot charge for swearing witnesses. If he issues a subpoena, is not that a necessary writing which he must draw? If so, he may charge ten cents per hundred words for this service. I regret that I cannot give the statutes a more liberal construction.

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

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TREASURER (COUNTY); NOT ENTITLED TO  
PERCENTAGE WHEN REMITTER IS ISSUED.

Office of the Attorney General,  
Columbus, Ohio, February 18, 1882.

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

DEAR SIR:—If the money was actually paid into the county treasury, I think the treasurer is entitled to the fees provided by section 2856. If a remitter is issued before the money is actually paid, then the treasurer is not entitled to a percentage.

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

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*Jury Fee; Allowance by the Warden—President of Trustees of Hamlet; Powers as to Arrests.*

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JURY FEE; ALLOWANCE BY THE WARDEN.

Office of the Attorney General,  
Columbus, Ohio, February 20, 1882.

*Mr. Martin Knapp, Prosecuting Attorney, Napoleon, Ohio:*

DEAR SIR:—The warden, in refusing to allow more than \$6.00 as a jury fee in the case of *The State vs. Cole*, simply followed the precedent that has been established for years. I think that the precedent is also sustained by law. In section 1330 it is provided that "A jury fee of six dollars shall be taxed in the bill of costs in *all* criminal cases." That word "all" covers cases wherein defendants are charged with murder in the first degree as well as other cases.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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PRESIDENT OF TRUSTEES OF HAMLETS;  
POWERS AS TO ARRESTS.

Office of the Attorney General,  
Columbus, Ohio, February 21, 1882.

*Mr. R. H. Gillmer, Newton Falls, Ohio:*

DEAR SIR:—Section 7131 of the Revised Statutes, by referring to section 7106, designates what magistrates may issue a warrant for the arrest of any person charged with crime. The president of a board of trustees of a hamlet is not named in these sections. Section 1700 as amended and section 1744 confer upon the president of the board of trustees of a hamlet the same powers in civil cases as justices

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*Justice of the Peace; Record of Conclusive.*

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of the peace have, and gives the mayor jurisdiction in criminal cases. I therefore think that the president of a board of trustees has jurisdiction in criminal cases.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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JUSTICE OF THE PEACE; RECORD OF CON-  
CLUSIVE.

Office of the Attorney General,  
Columbus, Ohio, February 22, 1882.

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

DEAR SIR:—The case which you present is this: "A was convicted for assault and battery and pleads *autrefois convict*."

I understand that the record of the justice of the peace shows that this plea is true. This record is conclusive, unless it can be changed so as to correspond with the facts as you claim them to be.

The justice of the peace has control of his records, and upon motion made by you, if satisfied that the truth requires it, may cause the record to be changed. If he refuses, I doubt about your being able to take it up on appeal or error proceedings.

It seems to me to be a *duty* for a justice of the peace to make his record correspond with the facts, and if such be the case, would not the proper remedy be by mandamus? This proceeding can be commenced in the Court of Common Pleas.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Clerk of Court; Fees of.*

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## CLERK OF COURT; FEES OF.

Office of the Attorney General,  
Columbus, Ohio, February 23, 1882.

*Hon. J. S. Conklin, Prosecuting Attorney, Sidney, Ohio:*

DEAR SIR:—If your clerk of court went into office while the act of April 8, 1876, was in force, he is entitled to the fees prescribed by that act, provided he has not entered upon a new term since the act was repealed.

By this act—See 73, O. L., page 129—he is entitled, “For entering attendance, each witness, five cents.”

I understand that this clause gives the clerk five cents for entering the attendance of a witness, during any period that a cause may be on trial, whether it be for one or ten days. The statute does not give five cents for entering each day’s attendance of the witness, but for the attendance as a whole.

I suppose the report referred to in section 1261 is the one provided for by section 882. It is the duty of the commissioners, when this report is made, to make a settlement with the clerk. Of course, in making this settlement, the commissioners have a discretion, and they cannot make settlement until they are satisfied that the report is correct. When satisfied that the report of the clerk is correct in all respects, it is their duty to pay over what they find to be due him, but not until so satisfied.

In answer to your letter of February 15th, I will say that from what thought I have given the question therein suggested, I am of the opinion that the proper parties to an action for damages for violation of a contract for the construction of a turnpike, under the two-mile assessment law, are the county commissioners, plaintiff, and the contractor and his bondsmen, defendants. The bonds of the county are issued to raise money with which to make the improvement. The county, it seems to me, is the real party in interest. If I am right in this conclusion, the commissioners possess

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*Costs; Execution For—Private Detective; No Such Officer  
in Ohio.*

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the power in regard to this class of claims, conferred by section 855. Of course that power ought only to be exercised in very meritorious cases.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COSTS; EXECUTION FOR.

Office of the Attorney General,  
Columbus, Ohio, February 27, 1882.

*Mr. William J. Affleck, Clerk of Court, Sandusky, Ohio:*

DEAR SIR:—When judgment is rendered in a Court of Common Pleas, which includes the costs, and proper steps have been taken in accordance with section 6718 to stay execution, I suppose that execution cannot be issued for the costs any more than for any other part of the judgment.

Very truly yours,

GEO. K. NASH,

Attorney General.

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PRIVATE DETECTIVE; NO SUCH OFFICER IN  
OHIO.

Office of the Attorney General,  
Columbus, Ohio, February 28, 1882.

*Mr. E. W. Porter, Marysville, Ohio:*

DEAR SIR:—In your letter of the 27th inst. you say that Mr. Isaac Bowersmith is desirous of becoming a private detective, and wishes you to ask me what proceedings are necessary to be taken for him to gain his object. I am sure



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*County Surveyor; Duty of.*

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I don't know. I suppose that a private detective is a man who holds himself out as a detective, and does the business of a detective, if any one employs him to do it.

I know of no such officer under the laws of Ohio.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COUNTY SURVEYOR; DUTY OF.

Office of the Attorney General,  
Columbus, Ohio, February 28, 1882.

*Mr. C. R. Truesdale, Prosecuting Attorney, Youngstown, Ohio:*

DEAR SIR:—I do not think that it is any part of the official duty of the county surveyor to do the work of engineering for the construction of a county bridge.

Section 1183 does not fix his compensation. Even if it did, it does not allow both a per diem and mileage.

There are two classes of pay given by section 1183:

First—When employed by the day. Second—When not so employed. When employed by the day he gets \$4.00 for each day, and no more. When not so employed, he receives certain fees, including mileage.

The commissioners get their authority to employ an engineer in the construction of bridges from sections 796 and 801 of the Revised Statutes. The law nowhere limits or fixes the compensation to be paid to the engineer. It may, therefore, be such compensation as is reasonable and just, and may be agreed upon between the commissioner and their engineer.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*State Institutions; Clothing Furnished by Stewards.*

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STATE INSTITUTIONS; CLOTHING FURNISHED  
BY STEWARDS.

Office of the Attorney General,  
Columbus, Ohio, February 28, 1882.

*To the Superintendents of the Benevolent Institutions of  
Ohio:*

GENTLEMEN:—For some time there has been a difference of opinion as to the construction that should be put upon section 631 and 632 of the Revised Statutes of Ohio. By some it has been claimed that these sections provide that all the clothing furnished to the inmates of the benevolent institutions of the State by the stewards, during the time they are such inmates, must be paid for out of the treasuries of the counties from which the inmates come. By others it has been claimed that these sections only have reference to such clothing as might be necessary to furnish the inmates upon their admission to the institution.

In order that this question might be authoritatively settled, an action was brought in the Supreme Court a few weeks ago, by the steward of the Columbus Asylum for the Insane, against the auditor of Franklin County and was decided today.

The court held that the auditor of Franklin County must pay for all clothing furnished to the inmates for the Columbus Asylum for the Insane from Franklin County after the 18th of March, 1881.

The provisions of sections 631 and 632 apply to the Institutions for the Deaf and Dumb, for the Blind, and for Feeble Minded Youth and to the Cleveland, Columbus, Dayton and Athens Asylums for the Insane, the Reform School, and the Girls' Industrial Home.

The steward, or other financial officer of each of these institutions will, therefore, in the future, or until there is a change in the law, keep an accurate account of the clothing furnished by him to the inmates of his institution, and pre-

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

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sent bills for the cost thereof to the auditor of the proper counties, as prescribed in section 632.

The Supreme Court held that, prior to the amendment made to section 700 of the Revised Statutes upon the 18th of March, 1881, the asylums for the insane did not come within the provisions of sections 631 and 632. If, therefore, any county has paid for the clothing furnished to its inmates of such asylums between the 1st day of January, 1880, and March 18, 1881, such sums should be credited upon bills presented to it for clothing furnished since that time.

This last paragraph does not apply to the other institutions named in this circular letter.

Very respectfully,

GEO. K. NASH,  
Attorney General.

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

Office of the Attorney General,  
Columbus, Ohio, March 1, 1882.

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

DEAR SIR:—Your telegram received.

I do not think that the opinion rendered by the Supreme Court on yesterday in regard to clothing for the inmates of certain benevolent institutions affects your home.

Section 700, before it was amended on March 18, 1881, provided that the inmates of the insane asylums should be maintained therein at the expense of the State. On account of these words, the court held that, before the amendment, the State must pay for the clothing for these asylums.

Section 676 requires that the children admitted to your

*Notary Public; A Minor Cannot be Appointed.*

institution shall be supported and educated until they are sixteen years of age. I think that the clothing for the child is just as much a part of its support as is its food.

These words are just as strong as those used in section 700 before its amendment. Very truly yours,

GEO. K. NASH,  
Attorney General.

NOTARY PUBLIC; A MINOR CANNOT BE AP-  
POINTED.

Office of the Attorney General,  
Columbus, Ohio, March 2, 1882.

*Mr. H. C. Smith, West Union, Ohio:*

DEAR SIR:—Your postal card has been received.

I do not think that, under the constitution of Ohio, a minor can be appointed a notary public.

Section 4, Article 15 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 clearly an officer within the meaning of this section. The Revised Statutes, in the sections relating to notaries (110 to 123) invariably speak of them as "officers," and call the position of a notary an "office."

Other reasons can be given why a minor cannot be appointed a notary. Being a minor, he could not execute a bond that would be binding upon him, nor could he be held responsible for his official acts.

I regret very much that in your case I am forced to this conclusion, for I feel that, so far as ability and knowledge are concerned, you are entirely qualified to perform the duties of a notary.

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

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*County Auditors; Fees of—Elections Provided by Section 2504.*

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## COUNTY AUDITORS; FEES OF.

Office of the Attorney General,  
Columbus, Ohio, March 8, 1882.

*Mr. E. S. Dodd, Prosecuting Attorney, Toledo, Ohio:*

DEAR SIR:—By your favor of the 7th inst., and the paper accompanying the same, you inform me that the audit of your county, in 1880, placed upon the tax duplicate for taxation in the year 1880, certain structures which were not erected until after June of that year.

You also state that taxes have been collected for a portion of the additions thus made, and ask whether the auditor is entitled to a fee of five per cent. on money thus collected.

Replying upon the statement of facts presented by you, I will say that no taxes should have been collected upon such structures for the year 1880, and that the auditor is only entitled to this percentage upon moneys that are legally collected for the county.

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

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ELECTIONS PROVIDED BY SECTION 2564.

Office of the Attorney General,  
March 10, 1882.

*Mr. J. W. Scotham, Township Clerk Hamden Junction, Ohio:*

DEAR SIR:—Upon the question, for which an election is provided by section 2564, it is my opinion that the electors at the village vote at the village polls, and only the electors of the township, residing outside of the village, vote at the

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*Publication of Pike Notices.*

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township polls. Any other construction would give the electors of the village an unfair advantage—that is, the right to vote twice on the same object.

The object of the law was to prevent the property of the township from being taxed to erect a hall in the village without the consent of the electors living outside of the village.

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

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PUBLICATION OF PIKE NOTICES.

Office of the Attorney General,  
Columbus, Ohio, March 13, 1882.

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

DEAR SIR:—I have not given your questions very careful study for the reason that I have been unwell for two or three days. I am of the opinion, however, that the notice spoken of in section 4774 is one of the "pike notices" spoken of in section 4367, and as such must be published in two newspapers of opposite politics. I also think that the requirement that the notice shall be published "for at least four consecutive weeks next preceding such regular meetings, is not complied with unless the first notice appears at least twenty-eight days before the meeting of the commissioners.

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

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*Surveyors and Engineers; Allowance When Engaged on  
County Ditch—Judges of Election; Who Are Entitled to  
Be.*

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SURVEYORS AND ENGINEERS; ALLOWANCE  
WHEN ENGAGED ON COUNTY DITCH.

Office of the Attorney General,  
Columbus, Ohio, March 13, 1882.

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

DEAR SIR:—Through your county auditor I have received your request for my opinion as to the proper allowance to be made the surveyor or engineer upon a county ditch.

Under section 4506 he is certainly entitled to a per diem of \$4.00 for all his services. In addition to this, I think his proper expenses should be paid while performing the services required by section 4454-4456.

He has other services to perform afterwards, but I do not find any express provisions in the statutes authorizing the payment of the expenses while rendering these services. I therefore conclude that the expenses of the engineer after the proposed improvement is ready for the ditches to go to work, cannot be paid.

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

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JUDGES OF ELECTION; WHO ARE ENTITLED  
TO BE.

Office of the Attorney General,  
Columbus, Ohio, March 18, 1882.

*Mr. Z. S. Paulean, Thorwille, Ohio:*

DEAR SIR:—The law, which will be found on page 51 of Vol. 77, O. L., answers the question contained in your favor of the 10th inst. It provides that the judges of an

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*Costs in Cases Brought in Name of State.*

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election in a township not divided into precincts shall be:

First—The two trustees who received the highest number of votes at the preceding spring election, together with

Second—The person who was a member of a political party to which one or both of such trustees did not belong, and who received the highest number of votes for trustee at such election of those voted for, and not elected.

In other words, if the two trustees who received the highest votes are Democrats, the third judge will be the Republican who received the highest vote for trustee of the Republican candidates who were defeated. If the two trustees are one Democrat and one Republican, then the third judge will be the defeated candidate who received the highest vote.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COSTS IN CASES BROUGHT IN NAME OF STATE.

Office of the Attorney General,  
Columbus, Ohio, March 18, 1882.

*Mr. J. C. Lawhead, Prosecuting Attorney, Newark, Ohio:*

DEAR SIR:—I know of no provision of law for the payment of costs in cases brought in the name of the State under sections 4201 and 4202 of the Revised Statutes wherein there has been a failure on the part of the plaintiff. The commissioners cannot pay unless the statutes authorize them to do so. They have no inherent power, and I know of no express authority. It has been held that a statute providing that "costs shall follow the event of every action or petition" does not apply to a party prevailing against the State even in a civil cause.

*State vs. Kinne*, 41 N. H., 238.

This cause is cited in 36th O. S. R., page 409.

Very truly yours,

GEO. K. NASH,  
Attorney General.



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*County Commissioners; Commissioners' Convention.*

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COUNTY COMMISSIONERS; COMMISSIONERS'  
CONVENTION.

Office of the Attorney General,  
Columbus, Ohio, March 18, 1882.

*Mr. G. W. Emerson, Bellefontaine, Ohio:*

DEAR SIR:—I do not believe that a county commissioner while in attendance upon the commissioner's convention in this city last week can have his *per diem* and expenses paid out of the county treasury. If it can be paid at all, it must be by virtue of that part of section 897, which begins as follows:

“And when necessary to travel on official business out of his county,” etc.

While at these conventions the commissioners may get information that will be useful to them and to their counties, yet I do not believe that it was the intention of the law to pay the expenses of all the commissioners of the State while they are attending a State convention. I do not think they had such official business in Columbus as the law contemplates.

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

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PURCHASE OF LAND; LOST PAPERS.

Office of the Attorney General,  
Columbus, Ohio, March 18, 1882.

*Mr. L. D. Heller, Grand Rapids, Ohio:*

DEAR SIR:—In the case you wrote about on the 13th inst., if the original certificate of purchase of the land and receipts for the payment of the same are produced, I presume a deed will be made in the name of the original

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*Township Elections; Trustees Must Issue Warrant For;  
Twenty Days Before.*

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purchaser in accordance with section 4115 of the Revised Statutes. If they have been lost, the case must be made out under sections 4118 and 4119.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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TOWNSHIP ELECTIONS; TRUSTEES MUST ISSUE  
WARRANT FOR; TWENTY DAYS BEFORE.

Office of the Attorney General,  
Columbus, Ohio, March 28, 1882.

*Mr. Daniel Francis, Arcanum, Ohio:*

DEAR SIR:—Your letter of March 23d has been received. Section 1445 of the Revised Statutes provides that the township trustees shall issue their warrant for the annual township election at least twenty days before it takes place.

The bill dividing your township into precincts did not become a law until the 22d of March. It was the duty of the trustees before that time to issue their warrant for the township meeting, and this was done. I therefore think that the election in the precincts cannot take place this spring, but that the election must be held as heretofore upon the 3d day of April.

I have talked with Mr. Hall about this matter. He was misled by a statement that was made by another senator upon the floor of the Senate, and therefore wrote you as he did. He desires that I should explain how the mistake occurred.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*School Boards; Election of Members.*

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## SCHOOL BOARDS; ELECTION OF MEMBERS.

Office of the Attorney General,  
Columbus, Ohio, March 28, 1882.

*Mr. F. C. Culley, Defiance, Ohio:*

DEAR SIR:—You must excuse me for not answering your favor mailed March 1st before this time. Two reasons have delayed me. I could not give such an answer as I would like to give, and I have been at work trying to figure out another result, but have not succeeded. I also wanted to see the school commissioner and have a talk with him, but have not even now had an opportunity to do so.

Section 3904 seems to provide that the school board of a city district as well as of a village district shall, under certain circumstances, consist of six members. This being so, the raising of the town from a village to a city of the second class does not change the membership of its board of education. In your city my impression is that two members will be elected on the first Monday in April to serve for three years, and that two will be elected each year thereafter, until the board makes provision that the board shall in the future consist of as many members as the city has wards. If this change should be made, then the members would be elected as provided in section 3907.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Election for Cemetery—Additional Judge; Election of.*

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## ELECTION FOR CEMETERY.

Office of the Attorney General,  
Columbus, Ohio, March 28, 1882.

*Mr. Agnew Welch, Ada, Ohio:*

DEAR SIR:—Section 1465 provides that electors, who favor the proposition, shall put upon their ballots the word "cemetery." Any ballot with the word "cemetery" written or printed thereon, must be counted in favor of the proposition. A majority of all ballots cast must have the word "cemetery" upon them in order to carry the proposition.

All that is necessary to vote against the proposition is to cast a ballot upon which the word "cemetery" does not appear. If the word has once been printed upon a ballot and has been scratched out, it must be counted against the proposition. It is not necessary to use the word "yes" or "no" at all.

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

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ADDITIONAL JUDGE; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, March 29, 1882.

*Mr. J. M. Garven, Prosecuting Attorney, Cadiz, Ohio:*

DEAR SIR:—I have delayed, somewhat, the answering of your letter of March 23 for the reason that I wanted to give the subject careful consideration.

Sections 1 and 2 of the act creating an additional judge in your sub-division, provides that the election of said judge shall take place at the township election on the first Monday of April, A. D., 1882.

Under these provisions, I think that the same men must

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*Sheriff; Costs Paid to by State.*

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act as judges of the election for common pleas judge, as act as judges for the election of township officers. I see no difficulty in doing this. If a justice of the peace is to be elected, there must be three ballot boxes, and the clerk must keep three sets of poll books, so that the proper returns can be made. The three boxes can be placed upon a table before the three judges, so marked as to indicate which one is to be used for the election of township officers, which one for justice of the peace, and which one for judge. When an elector comes to the polls, if he desires to vote for all the officers, he can inform the judges which ballot is for township officers, which one for justice of the peace, and which one for judge, and the judges can deposit ballots in the proper boxes. Of course the clerks at the same time must write the elector's name in each of the three poll books, provided he wishes to cast the three ballots. If the judges of election are careful, I do not see how any confusion can arise.

The law seems to provide that these three elections shall be conducted by the same judges, and I fear that, if they divide up, and attempt to elect additional judges, as is suggested in your letter, the election may possibly be illegal.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SHERIFF; COSTS PAID TO BY STATE.

Office of the Attorney General,  
Columbus, Ohio, March 30, 1882.

*Mr. C. R. Truesdale, Prosecuting Attorney, Youngstown, Ohio:*

DEAR SIR:—Your two favors of March 22d and 28th have been received.

I have not been able to find any statutory provision as

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*Sheriff; Costs Paid to by State.*

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to what disposition the sheriff shall make of moneys paid to them from the state treasury in cases of felony where the convict has been received at the penitentiary. These costs are made up of the sheriff's fees and the expenses of transportation, of clerk's fees, of witness fees which have been paid out of the county treasury, and of the costs before the examining court where a preliminary examination took place.

I suppose that no harm would be done if the sheriff should retain his fees, pay to the clerk the fees coming to that officer, and pay the balance into the county treasury.

I think that the better practice would be, however, to certify the whole amount into the county treasury, and then let the officers be paid on the warrant of the auditor. If this is done, no question could arise as to the proper disbursement of this money. I suppose that the main object of a coroner's inquest is to ascertain the cause of death where the cause is unknown and where it has resulted from violence; so as to bring the criminal or criminals to justice, in case a crime has been committed.

This ought to be done in any case where there is any probability of there having been a crime. In such matters the coroner must have great discretion, and I think that his fees should be allowed in any case where he has not abused that discretion, even if it should turn out that the violence was not committed by any person or persons.

Very truly yours,

GEORGE K. NASH,  
Attorney General.

*Assessors; Must Return Condition of Property as it Was on  
Second Monday of April—Concealed Weapons; Carrying.*

ASSESSORS; MUST RETURN CONDITION OF  
PROPERTY AS IT WAS ON SECOND MONDAY  
OF APRIL.

Office of the Attorney General,  
Columbus, Ohio, April 4, 1882.

*Mr. Geo. B. Bitzer, Prosecuting Attorney, Chillicothe, Ohio:*

DEAR SIR:—Taxes attach and become a lien upon all real property on the day preceding the second Monday of April of each year. I think it is the duty of assessors under section 2753 to return the condition of real property upon that day. In the case which you put, the mill having been burned upon April 17, 1881, and after the day preceding the second Monday of said year, I think that the value of the structure should not be taken from the property until this spring. This, I believe, is the construction of the law that has been placed upon it by the auditor of state's office for many years.

I have been so engaged that I have been compelled to neglect some of my letters. I hope, therefore, that you will excuse my delay.

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

CONCEALED WEAPONS; CARRYING.

Office of the Attorney General,  
Columbus, Ohio, April 4, 1882.

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

DEAR SIR:—I owe you an apology for not answering your favor of March 7th before this time. I have been so

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*Pond Law; Duty of Assessors Under.*

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overwhelmed with work that I have been unable to keep my correspondence up.

Section 6892 provides the punishment for carrying concealed weapons. I have been unable to find any statute that authorizes the sale or distribution of such weapons when carried on or about the person.

I suppose that they are property which it is lawful for persons to own, if used for lawful purposes. I do not think that a conviction for carrying a concealed weapon forfeits the ownership in it or confiscates the property.

I hardly understand what is desired from your question, "Can the court include in the costs in a larceny case, the value of the property stolen, when the defendant has been convicted?"

Section 6858 provides that a person who has been convicted of petit larceny may be fined not more than \$200, or imprisoned not more than thirty days, or both. Formerly the statute provided that on conviction the defendant should make restitution to the party injured in two-fold the value of the property stolen or destroyed. In the revision, unless I have overlooked something, this provision has been dropped.

Very truly yours,

GEO. K. NASH,

Attorney General.

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POND LAW; DUTY OF ASSESSORS UNDER.

Office of the Attorney General,  
Columbus, Ohio, April 7, 1882.

*Mr. C. F. Baldwin, Mt. Vernon, Ohio:*

DEAR SIR:—The circular of the auditor of state "does not practically suspend operations under the Pond law for a year." The Pond law does not take effect until the first day of May. Section 1528 of the Revised Statutes requires



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*Pond Law; Duty of Assessors Under.*

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the county auditor to furnish to all assessors such blanks as are needed by them for the listing of property, gathering and returning statistics and other official duties. Section 166 in effect requires the state auditor to furnish to county auditors forms of returns and instructions upon any subject affecting the State finances. By virtue of these two sections the state auditor has for years prepared and furnished the county auditors with assessors' blanks. It is the duty of county auditors, under section 2749, Revised Statutes, to call the assessors together for instructions before the 20th of April. Immediately thereafter the assessors must commence their work.

The auditor of state prepared the assessors' blanks and sent them out before the passage of the Pond bill. There was not then, is not now, and there will not be, until the first of May, any authority of law for including in said blanks any of the forms required by the Pond law.

Section 7 of the Pond law requires that the assessors shall return the names of such persons as have been engaged in the traffic in intoxicating liquors during the year preceding the time of making the assessment.

We therefore concluded that the assessors have no duty to perform under the Pond law until the assessment of 1883. This does not suspend the operations of the other sections of the act. Section 1 provides that every person engaged in the traffic in intoxicating liquors, shall, within thirty days after the act takes effect, May 1, 1882, pay into the treasury of the proper county a tax. Section 2 provides that at the same time he shall give a bond. The mere fact that the assessor has no duty to perform this year does not affect this obligation upon the part of those dealing in intoxicating liquors.

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

*Pond Law; Time When it Takes Effect; Pond Law; Bond Under, Conditioned Upon What.*

POND LAW; TIME WHEN IT TAKES EFFECT.

Office of the Attorney General,  
Columbus, Ohio, April 12, 1882.

*Mr. John M. Sprigg, Prosecuting Attorney, Dayton, Ohio:*

DEAR SIR:—Your favor of the 10th inst. has been received.

In the enrolled copy of the Pond law on file in the secretary of state's office, section 1 provides that "within thirty days after taking effect of the act," certain parties shall pay certain taxes.

I have a printed copy in my possession which provides that "in thirty days after the passage of this act," this shall be done. You have undoubtedly seen this erroneous copy.

Very truly yours,

GEO. K. NASH,  
Attorney General.

POND LAW; BOND UNDER, CONDITIONED UPON WHAT.

Office of the Attorney General,  
Columbus, Ohio, April 14, 1882.

*Hon. E. A. Pealer, Probate Judge, Mt. Vernon, Ohio:*

DEAR SIR:—My understanding of the bond to be given under the Pond law is that it is conditioned upon the principal's complying with all the requirements of the act of April 5, 1882. That is in effect that he pays his tax.

The Senate has adopted a resolution instructing me to prepare a blank bond to be used under this law. If the House concurs in this resolution, I shall do so.

The property of each of the sureties must be worth, free from incumbrances, at least double the amount of the bond.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Board of Education; Election of Members.*

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BOARD OF EDUCATION; ELECTION OF  
MEMBERS.Office of the Attorney General,  
Columbus, Ohio, April 15, 1882.*Mr. L. C. Laylin, Prosecuting Attorney, Norwalk, Ohio:*

DEAR SIR:—If I understand the statement made by you correctly, you wish my opinion upon the following state of facts:

In the village district of \_\_\_\_\_ the board of education consists of three members. At the recent election one director was to be elected for the full term of three years and one for the short term of two years. The voting resulted as follows:

A has twenty-three votes for the full term, B sixteen, C two, D four, and E one. A had twenty votes for the short term, E had four, C nine, D eleven, E one, F one. For each office A received the highest number of votes.

I do not see how the election officers can avoid giving to A the certificate of election to each office. But A cannot fill both offices. He must qualify for one of the places. As soon as he has qualified for that place, the other is vacant and must remain vacant. In other words A may qualify for the long term, and the other place is vacant on account of the failure of the person thereto elected to qualify within ten days after the annual organization.

This vacancy A and the other member of the board may fill in accordance with section 3981 of the Revised Statutes.

This opinion, I think, comes out of the opinion of the court to be found in the 20th Ohio State Report, page 336. I know that this case does not seem to be exactly applicable, yet I think it is the only way in which a disregard of the designation upon the ballots can be avoided.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Judges and Clerks of Elections; Compensation of.*

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JUDGES AND CLERKS OF ELECTIONS; COM-  
PENSATION OF.

Office of the Attorney General,  
Columbus, Ohio, April 15, 1882.

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

DEAR SIR:—I have all along been of the opinion that section 2963 of the Revised Statutes covers the compensation of the judges and clerks at all elections. The language of the section, it seems to me, is certainly broad enough to do this.

Another reason why I have thought this to be the case is that I have not found any authority of law authorizing township trustees or city councils or other city officers to pay judges and clerks of township and municipal elections for their services.

I do not think that section 1530 provides this compensation, for upon that day they are acting as judges of election and not as township trustees. It frequently happens that trustees are absent from the election and the vacancy is filled in accordance with section 1442. For such a case as this section 1530 would not provide any compensation, for it could not be claimed that this man is acting as a township trustee.

Section 569 simply provides a mileage for a judge of election who delivers the returns upon an election for a justice at the county seat, and this is in addition to the compensation provided by section 2963.

I think that this bill should be allowed by the county commissioners and paid upon the warrant of the county auditor.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Incorporation of the General Protective Association.*

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## INCORPORATION OF THE GENERAL PROTECTIVE ASSOCIATION.

Office of the Attorney General,  
Columbus, Ohio, April 22, 1882.

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

DEAR SIR:—I have received your favor of yesterday enclosing the articles of incorporation of the General Protective Association.

You ask whether the purpose set forth in said articles is one for which a corporation may be created under the laws of Ohio.

It is stated in the articles that "this is an association of persons engaged in the sale of malt and spirituous liquors organized for the purpose of protecting the rights and interests of the members against unjust and unconstitutional legislation."

"Legislation" is the act of legislating or making laws.

Persons associated together for the purpose of resisting legislation that they conceive to be unjust and unconstitutional, can do it in but one way, and that is by bringing influences to bear upon the General Assembly, to prevent the enactment of proposed laws.

While it is the right and privilege of a private citizen when he thinks any proposed law to be unjust and unconstitutional, to make his views known in a proper way to the legislature, yet it is almost beyond conception that the laws of Ohio provide for the incorporation of associations having for their sole object the control of legislative action. Under such laws we would have incorporated "lobbies," created and having an existence by authority of the State. The effect of such incorporations would be that legislative action would not be the free act of the people's representatives. It would be controlled by these organized bodies, and innumerable evils would follow.

I have no hesitation in saying that the laws of Ohio do not authorize such incorporations.

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*Pond Law; Liability of Bond.*

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It may be said that I have confined the objects of this association within too narrow limits, and that the intention of the persons who now propose to become incorporated, is to protect themselves against such laws which are the result of legislation, and which they believe to be unjust and unconstitutional.

The courts of the State are the only tribunals in which protection can be given against such laws, and in our courts there is ample protection for all persons. The laws of Ohio certainly do not authorize the formation of corporations for the purpose of promoting or carrying on law suits. Such laws would be against all correct views of public policy.

I advise you to refuse to file the articles of incorporation of "The General Protective Association."

Very respectfully,

GEO. K. NASH,  
Attorney General.

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POND LAW; LIABILITY OF BOND.

Office of the Attorney General,  
Columbus, Ohio, May 29, 1882.

*Mr. M. McDonough, Corning, Ohio:*

DEAR SIR:—The statement of Theobald & Son is not entirely correct. It is true that I think the only obligation imposed by the bond is to secure the payment of the tax.

The bond is liable for the tax so long as the party who gives it continues in business.

If he pays the tax at all times when it becomes due, there will be no forfeiture under the bond.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Pond Law; When it Takes Effect—Pond Law; Steamboats  
Must Pay Tax, Etc.*

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POND LAW; WHEN IT TAKES EFFECT.

Office of the Attorney General,  
Columbus, Ohio, April 29, 1882.

*Mr. C. F. Van Anda, Prosecuting Attorney, Wapakoneta,  
Ohio:*

DEAR SIR:—The Pond law takes effect from and after the first day of May, 1882. The tax must be paid and the bond filed within thirty days thereafter. In each succeeding year, however, the tax must be paid in the first week in May.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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POND LAW; STEAMBOATS MUST PAY TAX, ETC.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Hon. A. E. Merrill, Probate Judge, Sandusky, Ohio:*

DEAR SIR:—Your favor of April 18th was duly received, but I have been so engaged since that time that it has been impossible for me to investigate and answer the questions that have come to me under the Pond law.

If the starting point of a steamboat is Sandusky, that is, Sandusky is the place where she starts and where she stops when the trip is completed, and a saloon is carried on upon the boat, I am inclined to think that Sandusky is the town in which the tax should be paid, and that the amount of the tax is the amount fixed for a saloon in Sandusky.

I have not given this opinion without a mental reservation, as I do not feel entirely clear upon the subject.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Pond Law; Tax Under.*

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POND LAW; TAX UNDER.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Hon. Martin Perky, Bryan, Ohio:*

DEAR SIR:—When a dealer in intoxicating liquors commences business at any time during the year, say September 1, 1882, I think that he would be required to pay the same tax in order to do business until the first of May, 1883, as would be required of him to do business from the first of May, 1882, to the first of May, 1883.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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POND LAW; TAX UNDER.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Mr. Jesse Dunn, Lithopolis, Ohio:*

DEAR SIR:—My understanding is that a person trafficking in intoxicating liquors has until the first day of June in which to give bond and pay the tax required by the Pond law.

Very truly yours,

GEO. K. NASH,  
Attorney General.



*Pond Law; Bond Under—Pond Law; Tax Under.*

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POND LAW; BOND UNDER.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Hon. W. H. Martin, Steubenville, Ohio:*

DEAR SIR:—Under the Pond law I do not think that the probate judge can accept a \$1,000 United States government bond instead of the bond required by the law. If a party possesses such property, he can indemnify his sureties with it.

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

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POND LAW; TAX UNDER.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Hon. W. C. Johnson, Troy, Ohio:*

DEAR SIR:—In your favor of the 26th ult., you ask whether the payment of the tax of \$200 will enable a person trafficking in intoxicating liquors to carry on two separate places of business in Troy. My answer is "No."

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

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*Pond Law; Payment of Tax Under Protest—Pond Law;  
Tax Under.*

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POND LAW; PAYMENT OF TAX UNDER  
PROTEST.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Mr. C. C. Brooks, Sunbury, Ohio:*

DEAR SIR:—I am of opinion that, if a person trafficking in intoxicating liquors pays the tax required by the Pond law, *under protest*, and the law is afterwards declared unconstitutional, it can be recovered back. I think that I am sustained in this by the case of Baker against the State, 11th O. S., page 534. Good lawyers differ with me upon this question, and before paying the tax, persons intending to do so, had better take the advice of some attorney in whom they have confidence.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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POND LAW; TAX UNDER.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Mr. J. Foster Wilkin, Prosecuting Attorney, New Philadelphia, Ohio:*

DEAR SIR:—Referring to your favor of the 17th ult., I will say that a person dealing in intoxicating liquors in Lockport, if incorporated, has complied with the law if he has paid a tax of \$150.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Pond Law.*

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## POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Hon. Frank A. Kelly, New Lexington, Ohio:*

DEAR SIR:—If the tax required by the Pond law is paid from year to year, I think that the conditions of the bond, required under that act, are fully complied with.

I do not understand that this law alters in any way the provisions of the old laws.

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

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POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

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

DEAR SIR:—When a man has been engaged in the traffic in intoxicating liquors, and continues to engage in it until May 31st, and then ceases, bona fide, to engage in the traffic, I do not think that he has incurred a penalty under the Pond law.

I am not so certain as to whether the tax could be recovered from him.

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

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*Pond Law.*

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## POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

*Mr. Warren F. Noble, Attorney-at-Law, Tiffin, Ohio:*

DEAR SIR:—You state that Mr. C. K. Bowman operates a distillery in your city, and that he places all the whisky he manufactures in bond for another firm, who takes it out of bond as they see fit, and do all the selling. You ask whether Mr. Bowman is required to pay a tax under the Pond law.

If Mr. Bowman owns the whisky after it is manufactured, and sells it to the firm, he certainly is required to pay a tax under the Pond law, no matter if he does sell it all to one person or firm.

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

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POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 1, 1882.

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

DEAR SIR:—I think that a wholesale dealer in malt or distilled liquors is required to pay a tax under the Pond law. He should pay it in the county in which his place of business is located.

You state that a wholesale firm in Cleveland has a local agent in Lorain County, and you ask whether on account of this agent a tax is required to be paid in Lorain County.

My answer depends somewhat upon the facts.

If the agent is simply a traveling man without any local

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*Pond Law.*

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place of doing business, the payment of the tax by the firm in Cleveland is sufficient. If, however, there is a separate place of business opened in Lorain County, where liquors are kept and sold by wholesale or retail, then a tax must also be paid in Lorain County.

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

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POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 2, 1882.

*Hon. T. J. Culter, Marietta, Ohio:*

DEAR SIR:—In answer to your favor of the 25th ult., I will say that in my opinion the word "village" in section 1 of the Pond law only has reference to villages that have been incorporated.

Second—I think that Marietta and Harmer each stands upon its own bottom; that is, a saloon keeper in Marietta must pay a tax of \$200, and a saloon keeper in Harmer must pay \$150.

Third—I think that the bond having once been given, the party may change his place of business within the year, without giving a new bond, in this manner: The change must be endorsed upon the bond together with a pertinent description of the premises, and the sureties must consent to the change in writing.

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

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*Pond Law.*

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## POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 2, 1882.

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

DEAR SIR:—Manufacturers of wine who sell their productions in various amounts from one gallon to several thousand gallons, must, I think, pay the tax imposed by the Pond law.

It is also my opinion that manufacturers of champagne, who sell their products in packages of twelve quart bottles, or one case, to hundreds of cases, must pay the tax.

If the starting point of a steamboat is Sandusky, i. e., the place where she starts and where she stops when the trip is completed, and a saloon is carried on upon the boat, I am inclined to think that Sandusky is the town in which the tax should be paid, and that the amount of the tax is the amount fixed for a saloon in Sandusky. I think that the tax paid in Erie County is all that can be required.

In answer to your fourth question I will say that saloons on steamboats must observe the same law on Sunday as do saloons on land.

In answer to your fifth question, I will say that it is my opinion that a person selling intoxicating liquors upon a steamboat upon the waters of this State, must pay the tax, even if the boat is owned at and hailing from a port outside of the State. It is probable that this tax must be paid into the state treasury as provided by section 13 of the act of which I send you a copy.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Pond Law.*

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## POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 2, 1882.

*Mr. John C. Clark, Prosecuting Attorney, Greenville, Ohio:*

DEAR SIR:—I have been exceedingly busy for the last month and have had so little time to devote to the matter, that I have not ventured to give an opinion upon the Pond law until yesterday. I have answered all sorts of questions yesterday and today, but I hardly think it wise to publish my opinions, as, in the absence of decisions from the courts, they are of no more force than those of any other lawyer, and may possibly lead people into trouble.

I will answer the questions specifically put in your letter of April 22d, and if you desire my advice on any question, I will gladly aid you upon application.

I think that if a person now engaged in the traffic in intoxicating liquors, and continues therein until the 31st day of May, and then quits *bona fide*, he has incurred no penalty under the Pond law.

I am not clear as to whether, under a civil action, the amount of the tax could be recovered from him.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 2, 1882.

*Hon. J. E. Lowery, Probate Judge, Kenton, Ohio:*

DEAR SIR:—I think that if the tax and bond required by the Pond law are paid and given before the first day of June, that it will be a sufficient compliance with the Pond

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*Board of Examiners; Who Can be Members.*

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law, and that parties so doing will not incur a penalty by the delay.

I have heard of something today that leads me to believe that the constitutionality of the law will be passed upon by the Supreme Court before the first day of June. If the tax is declared unconstitutional, I am of the opinion that it may be recovered back. Good lawyers differ with me, however, on this question.

My mind is in such a state of confusion as to how far a married woman may bind her own separate property by going upon a bond as surety for her husband, that I cannot give a satisfactory answer to your third question. One of the Common Pleas judges of this county held last week that a married woman could not be accepted as one of the sureties on a recognizance of her husband in a criminal case.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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BOARD OF EXAMINERS; WHO CAN BE  
MEMBERS.

Office of the Attorney General,  
Columbus, Ohio, May 4, 1882.

*Hon. B. F. Stone, Probate Judge, Chillicothe, Ohio:*

DEAR SIR:—I beg your pardon for the delay in answering your favor of April 26th. I have been so pressed for the last few days with business in the Supreme Court that I have been compelled to neglect my letters.

I understand that the superintendent of public schools at Chillicothe is a member of the Ross County board of examiners. You now wish to appoint the principal of the



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*City Solicitor and Street Commissioner; Offices of.*

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high school in Chillicothe a member of the same board of examiners.

I think that section 4085 of the Revised Statutes provides that this cannot be done.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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CITY SOLICITOR AND STREET COMMISSIONER;  
OFFICES OF.

Office of the Attorney General,  
Columbus, Ohio, May 5, 1882.

*Hon. H. W. Curtis, Chagrin Falls, Ohio:*

DEAR FRIEND:—When your favor of April 27th arrived I was head-over-heels in the trial of some grave-yard insurance companies in the Supreme Court, which lasted several days. This compelled me to neglect my correspondence.

The act of March 3, 1882, leaves it discretionary with the council to provide for the offices of solicitor and street commissioner. It is also discretionary with the council as to whether they shall direct the marshal to perform the duties of street commissioner. Unless the council has exercised its discretion, and directed the marshal to perform the duties, they may certainly provide the offices provided by section 2660.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Councilmen; Election of.*

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## COUNCILMEN; ELECTION OF.

Office of the Attorney General,  
Columbus, Ohio, May 6, 1882.

*Mr. Thos. Lilly, Addison, Ohio:*

DEAR SIR:—In reply to your favor of April 11th, I will say that in my opinion, if there are three councilmen to be elected, and the name of one man is written on the same ballot three times without any other name being on it, the ballot cannot be counted for any one.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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PROSECUTING ATTORNEY.

Office of the Attorney General,  
Columbus, Ohio, May 6, 1882.

*Mr. W. H. Hart, Akron, Ohio:*

DEAR SIR:—In reply to your favor of April 22d I will say that I think that section 288 provides the penalty for the offense spoken of in your letter. As the money to be collected goes into the county treasury, I think that it would be well to ask the prosecuting attorney to look after the matter.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Pond Law—Commissioners of Hamilton County; Compensation of.*

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## POND LAW.

Office of the Attorney General,  
Columbus, Ohio, May 6, 1882.

*Mr. John H. Saunders, Benton Ridge, Ohio:*

DEAR SIR:—In my opinion when the village or hamlet is *unincorporated* the tax would be \$100. If incorporated and having a population of less than two thousand at the next preceding federal census, the assessment is \$150; and if less than 10,000, \$200.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COMMISSIONERS OF HAMILTON COUNTY; COMPENSATION OF.

Office of the Attorney General,  
Columbus, Ohio, May 8, 1882.

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

DEAR SIR:—I suppose that the old compensation provided for the commissioners of Hamilton County was \$4.00 per day for each day actually employed. This does not seem to me to have been an annual or periodical payment for services, but a payment dependent upon the amount of service rendered. If this be so, following the reasoning in the case of *Thompson, relator, vs. Phillips*, 12 O. S. Repts., 617, your county commissioners are entitled to \$2,500 per year under the recent statute.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Treasurer of County Acting as Treasurer of City—Longview Asylum; Power of Trustees to Employ Legal Counsel.*

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TREASURER OF COUNTY ACTING AS TREASURER OF CITY.

Office of the Attorney General,  
Columbus, Ohio, May 8, 1882.

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

DEAR SIR:—I have been very neglectful of your letters, but the truth has been that for the last six weeks I have been swamped in work, and neglect has been forced upon me by the necessities of the case.

My impression is that the treasurer of Trumbull County when acting as treasurer of the city of Warren for such services, should be paid by the city. His work is done for the city and not for the county, and the mere fact that the General Assembly has provided that the county commissioners shall fix the amount of his compensation does not, I think, change the obligation of the city to pay for the services rendered for her.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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LONGVIEW ASYLUM; POWER OF TRUSTEES TO EMPLOY LEGAL COUNSEL.

Office of the Attorney General,  
Columbus, Ohio, May 9, 1882.

*Mr. W. P. Hurlburt, Cincinnati, Ohio:*

DEAR SIR:—I find that I wrote my letter to you a few days since without giving the subject sufficient thought, and I now write for the purpose of reversing myself.

A more thorough examination of the statutes shows

*Incorporation of "Ohio Mutual Protective Liquor Dealers' Association," "General Protective Association."*

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that the only cases in which the directors of Longview are provided with counsel, are cases instituted in the name of the county for the purpose of making collections.

Suits may be maintained against the directors and unless they have the power to employ counsel, they are left without means of defense. I do not believe that the General Assembly intended to leave them in this condition.

Again, in the performance of their numerous duties it is frequently very important that they should have advice to keep them out of trouble.

I have concluded that there is an inherent power in the board to employ counsel for these purposes, and for any other purpose except in cases where it is by law the duty of the prosecuting attorney to act.

I regret that I made a mistake in my former letter, but I always think that it is best to correct a mistake as soon as I find that I have made one.

Very truly yours,

GEO. K. NASH,

Attorney General.

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INCORPORATION OF "OHIO MUTUAL PROTECTIVE LIQUOR DEALERS' ASSOCIATION,"  
"GENERAL PROTECTIVE ASSOCIATION."

Attorney General's Office,  
Columbus, Ohio, May 10, 1882.

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

DEAR SIR:—Your favor of April 25th, transmitting articles of incorporation of the "Ohio State Mutual Protective Liquor Dealers' Association," and of May 2d enclosing articles of incorporation of "The General Protective Association," have been received. You ask whether these papers can be "legally filed" in your office.

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*Incorporation of "Ohio Mutual Protective Liquor Dealers' Association," "General Protective Association."*

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The objects to be accomplished by the first association are:

First—To improve the manner of distilling and manufacturing spirituous, vinous and malt liquors.

Second—To prevent the manufacture and sale of impure and adulterated liquors.

Third—To secure harmonious action among those engaged in the traffic in spirituous, vinous and malt liquors.

Fourth—To secure mutual protection and aid among those engaged in the traffic in such liquors.

The formation of a corporation for the two purposes first named in said articles is authorized. I do not think that corporations for the accomplishment of the two last purposes are authorized by law.

It is stated that the purpose of "The General Protective Association" is to protect the rights and interests of the members inherent to their business, viz.: the sale of malt and spirituous liquors, and other lawful business.

It is the duty of the government to protect the rights of all persons engaged in lawful business and the government has not attempted to put upon private corporations the responsibility of performing its duties. If this attempt should be made, it is very doubtful whether the government could thus shift its responsibility upon private corporations.

I think that these articles should not be filed.

Very respectfully yours,

GEO. K. NASH,  
Attorney General.

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*Prosecuting Attorney; Legal Adviser of Boards of  
Education.*

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PROSECUTING ATTORNEY; LEGAL ADVISER OF  
BOARDS OF EDUCATION.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

*Mr. J. F. Couley, Prosecuting Attorney, New Lexington,  
Ohio:*

DEAR SIR:—I have carefully examined your official opinion given to the board of education of Clayton Township, Perry County, Ohio, upon April 18, 1882, as requested by you in your letter and in person.

In regard to your own official duties as to boards of education, I desire to call your careful attention to section 3977, as I think that your assertion that you are "under no official obligation to attend to your litigation" is too broad.

The statute says: "And shall act in his official capacity as the legal counsel of such boards or officers in all civil actions brought by or against them in their corporate or official capacity."

It occurs to me that these words place obligations upon the prosecuting attorney to act as the attorney for boards of education in civil actions brought by them or against them.

In regard to the main part of your opinion, I will say that on account of these proceedings having altered a joint sub-district already established, I am of the opinion that they are invalid and for this reason alone, without expressing any opinion in regard to other questions raised by you, I concur in your conclusion.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Publication of Legal Advertising.*

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## PUBLICATION OF LEGAL ADVERTISING.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

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

DEAR SIR:—Your favor of the 9th inst. has been received. In answer thereto I will say that my construction of section 4367 is this:

That every proclamation for an election, every order fixing a time of holding court, every notice of rates of taxation, every bridge notice, every pike notice, and every notice to contractors must be published in two newspapers of opposite politics. In regard to these notices the commissioners have no discretion.

Other advertisements of general interest to the tax payers, may, in the discretion of the commissioners, probate judge, treasurer or auditor, be published in two newspapers.

Pike notices include all notices required by Chapters 6, 7 and 8, of Title 7, Part Second, of the Revised Statutes.

Notices to contractors include all notices wherein parties are asked to do work or furnish materials for the county, or for any improvement made under the discretion of the commissioners.

The notice required by section 4843 of the Revised Statutes should only state the fact that the report of the committee appointed to report the estimated expense of a two-mile assessment pike has been returned to and filed with the county auditor, and state the time when the commissioners will meet at the county auditor's office to hear the same.

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



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*Pond Law.*

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## POND LAW.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

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

DEAR SIR:—I am inclined to the opinion that brewers of ale, beer and other malt liquors, and manufacturers of wine, cider, etc., where the same are intoxicating, who sell such liquors by wholesale only, and to other dealers engaged in the retail traffic, must pay the tax and give the bond required by the Pond law, in the city or town where their place of business is located.

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

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POND LAW.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

*Hon. A. E. Melvill, Probate Judge, Sandusky, Ohio:*

DEAR SIR:—I suppose that a person who retails cider after fermentation, or after it has become an intoxicating liquor, comes within the provisions of the Pond law.

Please bear in mind that this is only my opinion, and that what I think is of no more value than the ideas of any other lawyer.

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

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*Pond Law.*

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## POND LAW.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

*Dr. W. W. Monroe, Logan, Ohio:*

DEAR SIR:—In reply to your favor of the 10th inst., I send a correct copy of the Pond law.

By section 13 you will see that druggists are authorized to sell alcohol for *mechanical* purposes without a prescription from a physician.

I hope that this letter and the law itself will convey the information you desire.

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

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POND LAW.

Attorney General's Office,  
Columbus, Ohio, May 12, 1882.

*Hon. Jas. E. Lowery, Probate Judge, Kenton, Ohio:*

DEAR SIR—I suppose that a druggist may sell medicines consisting partially of intoxicating liquors, when the same are sold *in good faith* for medicine.

If, however, this is used as a mere *subterfuge* to cover the sale of intoxicating liquors, the druggist would come within the provisions of the Pond law.

I do not understand that a physician's certificate is required for the sale of alcohol for mechanical purposes.

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

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*Pond Law; Liability of Druggists Under.*

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## POND LAW; LIABILITY OF DRUGGISTS UNDER.

Attorney General's Office,  
Columbus, Ohio, May 13, 1882.

*Mr. Robert C. Spohn, Secretary "Toledo Pharmaceutical Association," Toledo, Ohio:*

DEAR SIR:—It is with extreme reluctance that I write anything in regard to the Pond law, for the following reasons:

First—As attorney general it is not my duty to do so in answer to any persons except to prosecuting attorneys.

Second—If I should do so my opinions would have no more weight than those of other attorneys.

Third—If parties relying upon what I might say, should be misled and get into trouble thereby, the fact that they had followed my advice would be no protection to them.

Fourth—I am as much at sea in regard to the questions arising under this law as other attorneys.

With this preface, I have no objection to giving you, in a general way, some of the ideas that I have concerning the rights of druggists.

I think that druggists cannot, without paying the tax and giving a bond, sell *intoxicating* liquors in any case unless it be alcohol for mechanical purposes, and intoxicating liquors, including alcohol, upon prescription of a physician. Medicines compounded with intoxicating liquors may, I think, be sold, if sold *in good faith* for medicine, but if they are sold as a cloak to cover up the sale of intoxicants and avoid the law, the parties selling them would become liable under the law.

This last remark would also, I believe, apply to prescriptions. They must not be used to evade the law.

You will excuse me, I trust, for being less definite, for you see the difficulties under which I labor.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Railroad Policemen; Appointment by Governor.*

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RAILROAD POLICEMEN; APPOINTMENT BY  
GOVERNOR.

Attorney General's Office,  
Columbus, Ohio, May 13, 1882.

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

DEAR SIR:—At your request I have made a careful examination of the section of the Revised Statutes relating to the appointment of railroad police in Ohio, their removal from office and their duties.

Section 3427 provides that "the governor, upon the application of a company owning or using any railroad in this State, shall appoint and commission such person as the company may designate, or as many thereof as he may deem proper, to act as policemen for such company."

It seems to me to be plain that under this section the governor has very little discretion. The only discretion he has is this: If a company makes application to have several policemen for such company appointed, the governor may determine how many are needed. If he appoints any policemen they must be the persons designated by the company, and if a company which has had no policeman appointed under this section makes application to have one appointed, designating who he shall be, the governor is in duty bound to make the appointment as requested. Of course the person named must have the constitutional qualifications of an officer.

At this point the powers of the governor, in regard to railroad police are at an end. The law has given him no power to remove a railroad policeman when once appointed and commissioned.

The governor of Ohio, like all other executive officers, can only do such things as he is expressly authorized to do by law.

The only power conferred upon any one to put an end to the office of a railroad policeman is to be found in section 3432 of the Revised Statutes, which reads as follows:

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*Publication of Lottery Advertising.*

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“When a company no longer requires the services of a policeman, so appointed, it may file a notice to that effect under its corporate seal, attested by its secretary, in the several offices where the commission of such policeman is recorded, which shall be noted by the clerk upon the margin of the record where the commission is recorded, and thereupon the powers of such policeman shall cease and determine.”

In other words the General Assembly of Ohio has placed it within the power of a railroad company to say who their policeman shall be, and imposed upon the governor the duty of commissioning the officer named by it, and has given the power of removal to the railroad company alone.

Persons appointed and commissioned as railroad policemen possess and can exercise all the powers of policemen of cities of the first class, and may enforce and compel obedience to such needful regulations as may be made by their respective companies in accordance with section 3429.

In the exercise of their powers they are confined to the railroad or premises of their company.

Very truly yours,

GEO. K. NASH,

Attorney General.

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PUBLICATION OF LOTTERY ADVERTISING.

Attorney General's Office,  
Columbus, Ohio, May 15, 1882.

*Herald Publishing Company, Cleveland, Ohio:*

GENTLEMEN:—I have received your favor of May 8th, enclosing the circular of J. H. Bates, and also two advertisements, one of the Louisiana Lottery Company and one of the Royal Havana Lottery, all of which I return to you.

I cannot tell what a court would say in regard to these

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*Insane Asylums; Power of Superintendent to Discharge  
Patients From.*

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advertisements being forbidden by section 6929 of the Revised Statutes.

I can only say that if I was a court, I would hold that these advertisements are unsuccessful attempts to evade the law, so plain that every one can see that the purpose is to give notice to the public that these lottery companies have monthly drawings, and that the publication of these advertisements is a violation of section 6929.

I wish you would treat this letter as confidential, as I am not authorized to give opinions to private parties.

If there has been a violation of the law, it is the duty of prosecuting attorneys and grand juries to take notice of it, and thus raise the question in the courts, and in this matter I have no official duty to perform.

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

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INSANE ASYLUMS; POWER OF SUPERINTEN-  
DENT TO DISCHARGE PATIENTS FROM.

Attorney General's Office,  
Columbus, Ohio, May 16, 1882.

DEAR SIR:—Since the receipt of your letter of yesterday I have given careful consideration to section 709 of the Revised Statutes.

Before the superintendent can discharge under that section, I think that he must find affirmatively that the patient is both incurable and harmless. In other cases the discharge must be made upon the application of the superintendent to one of the trustees, and upon the order of such trustee.

The case which you present is one of peculiar hardship, and if, in the performance of your duty, you can avoid discharging him, I hope that you will do so.

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

To Dr. H. C. Rutter, Columbus, Ohio.

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*County Infirmary; Allowance of Superintendent For Keeping Idiots and Insane Persons.*

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COUNTY INFIRMARY; ALLOWANCE OF SUPERINTENDENT FOR KEEPING IDIOTS AND INSANE PERSONS.

Attorney General's Office,  
Columbus, Ohio, May 17, 1882.

*Mr. J. W. McCormick, Prosecuting Attorney, Marietta, Ohio:*

DEAR SIR:—In answer to your letters of May 9th and May 14th, I will say that my attention was never called to the matter before, and I do not see any good reason why the superintendent of the infirmary should be allowed thirty-five cents a day for keeping an idiot or an insane person, especially when all of the food and attendants necessary for the care of such person is paid for by the county.

It is true, however, that we cannot always find good reasons for what the General Assembly does, and it does seem to me that section 719 of the Revised Statutes gives to the superintendent of an infirmary thirty-five cents per day for keeping such a person.

I think that the words "all things needful," in section 707, has reference to such things as are necessary to put the party in proper condition to be received at the infirmary, and not to things that are to be furnished after he gets there.

Permit me to suggest that the record of your appointment by the Court of Common Pleas as prosecuting attorney should be sent to the secretary of state so that a commission may be issued to you by the governor.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Ohio Penitentiary; Removal of Refuse by Contractors.*

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OHIO PENITENTIARY; REMOVAL OF REFUSE BY  
CONTRACTORS.

Attorney General's Office,  
Columbus, Ohio, May 31, 1882.

*Col. N. Thomas, Warden, Columbus, Ohio:*

DEAR SIR:—I have received your inquiry as to whether the board of directors of the Ohio Penitentiary have power to cause the contractors in said institution to remove ashes, cinders and other refuse matter caused by their manufacturing enterprises.

In the form of contracts submitted to me by you, the State agrees to furnish within the prison walls, sufficient shop room to work the convicts to advantage, and also reasonable space for raw materials to be worked by them.

This is the only provision that I can find in regard to the space to be furnished by the State.

It does not seem to me that this can be construed to mean that the State shall furnish space upon which to store ashes, cinders, etc.

You also inform me that "rule 14" has been in force since 1868, and it reads as follows:

"Old trash and other material not necessary to carry on the business of the contract must not be permitted to accumulate within the yard or shops."

This rule would also require the contractors to remove ashes, cinders, etc.

I think the courts would hold as a matter of law that persons entering into a contract with the State must take notice of the provision in the contract, and also of this rule, and that under them the directors have the power to require contractors to remove ashes, cinders, etc., even if these provisions have not been enforced in the past.

Very truly yours,

GEO. K. NASH,  
Attorney General.



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*Imbecile Asylum; Contracts, Etc., For Rebuilding.*

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IMBECILE ASYLUM. CONTRACTS, ETC., FOR  
REBUILDING.

Attorney General's Office,  
Columbus, Ohio, June 2, 1882.

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

GENTLEMEN:—I have received your favor of June 1st, calling attention to the act of the General Assembly of Ohio, passed April 13, 1882, entitled an act making appropriations for rebuilding the Imbecile Asylum, recently destroyed by fire.

If I understand your first inquiry, it is as to how nearly ready for occupancy the rebuilt asylum must be when the money appropriated by said act is expended.

In section 1 the purpose of the appropriation is stated to be for "rebuilding the asylum known as the Asylum for Imbecile Youth, recently destroyed by fire."

In section 2 it is provided that "the trustees shall in all respects be governed by the provisions of the Revised Statutes regulating the construction of buildings of the State.

Section 782 of the Revised Statutes provides that plans and estimates shall be made for a "completed building" when one is to be erected for the State.

Section 787 also plainly conveys the idea that the expenses of a completed building shall not exceed the sum appropriated:

In view of these provisions of the law, I think that it was plainly the intention of the legislature that there should be provided a building complete with all necessary fittings and appointments in the way of heating, lighting, ventilation, water supply, drainage, etc., for its proper use where such fittings and appointments are in the nature of fixtures.

I think that gas pipes, but not chandeliers, for lighting, and boilers and steam pipes, but not radiators, for heating, must be included in the estimate for the building.

You also ask in regard to the extent of the discretion

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*Legal Holidays; What Days Are.*

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possessed by you in considering plans and specifications for public buildings presented for your approval.

I think that your discretion is of the broadest character except that you cannot approve plans and estimates in excess of the sum appropriated for the completion of the public building.

In the case in hand the discretion is also limited by the words of section 2 of the act of April 13, 1882, which provides that said "asylum shall be built of brick, plain, substantial and fire-proof, the size and architecture to be as near as practicable to the building burned, and to correspond to the present wings."

Very respectfully,

GEO. K. NASH,

Attorney General.

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LEGAL HOLIDAYS; WHAT DAYS ARE.

Attorney General's Office,  
Columbus, Ohio, June 2, 1882.

*Mr. C. C. Fraser, Duncans Falls, Ohio:*

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

Section 4015 of the Revised Statutes provides that teachers may dismiss their schools without forfeiture of pay on New Year's Day, the Fourth of July, Christmas and Thanksgiving Day.

An act passed April 13, 1882, provides that all the public schools of the State shall be closed on the 30th of May, in each year, and no deduction shall be made from the wages of teachers for such time.

Very truly yours,

GEO. K. NASH,

Attorney General.

*Levy of Road Tax by Commissioners— Mine Inspection;  
Opinion to.*

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LEVY OF ROAD TAX BY COMMISSIONERS.

Attorney General's Office,  
Columbus, Ohio, June 9, 1882.

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

DEAR SIR:—In answer to your favor I will say that my understanding is that the three acts of the legislature passed in 1881 relate to separate roads in Scioto County. That is that the same road is not described in more than one act. It is upon that understanding that this opinion is based.

I think that under the act of February 15, 1881, to be found upon page 318, the commissioners have no discretion, and I also think that the General Assembly did not exceed its power in *directing* the commissioners to complete the construction of the unfinished portions, etc.

Under the act of March 21, 1881, page 335, and the act of April 19, 1881, page 412, the commissioners are authorized to levy a tax. They are left to exercise their discretion as to whether it is wise to make the levy. If they once make the levy, their discretion is gone, for then the money must be applied as provided in these acts.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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MINE INSPECTOR; OPINION TO.

Attorney General's Office,  
Columbus, Ohio, June 17, 1882.

*Hon. Andrew Ray, Mine Inspector:*

DEAR SIR:—Under section 305, Revised Statutes, as amended April 13, 1881, the miners collectively and the land

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*Insane Asylum; Change of Specifications For Buildings.*

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owners or owner interested in the rental or royalty may each appoint a competent person to act for them in determining the quality of the coal mined. In other words two persons may be appointed for this purpose, one to act for the miners and one for the land owners interested in the rental.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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INSANE ASYLUM: CHANGE OF SPECIFICATIONS  
FOR BUILDINGS.

Attorney General's Office,  
Columbus, Ohio, June 20, 1882.

*Dr. H. A. Tobey, Superintendent, Dayton, Ohio:*

DEAR SIR:—I herewith return to you the rejected bids for your new building.

I have approved the contracts and placed them on file with the auditor of state.

In regard to the boiler matter I am somewhat troubled. It seems to me that the only way to manage properly is, after getting the consent of the governor, auditor and secretary of state, to change the specifications so as to read "metal equal in quality to Otis steel," and then readvertise.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Logan Mutual Aid and Life Association, and the Standard Voluntary Contribution Association; Bonds Required of Treasurers.*

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LOGAN MUTUAL AID AND LIFE ASSOCIATION,  
AND THE STANDARD VOLUNTARY CONTRI-  
BUTION ASSOCIATION; BONDS REQUIRED  
OF TREASURERS.

Attorney General's Office,  
Columbus, Ohio, June 22, 1882.

*Col. Chas. H. Moore, Superintendent of Insurance, Colum-  
bus, Ohio:*

DEAR SIR:—By your letter of the 21st inst. I am in-  
formed that "The Logan Mutual Aid and Life Association,"  
of West Middleburgh, Ohio, and "The Standard Voluntary  
Contribution Association of America," of Mansfield, Ohio,  
have made application to you under section 3631 of the Re-  
vised Statutes as amended April 12, 1880, to fix the amounts  
of the bonds required of their treasurers.

In answer to your questions I will say that before fixing  
the amounts of these bonds, you must ascertain whether  
these associations are duly organized and incorporated under  
the laws of Ohio, and whether the business which they pro-  
pose to do is such a business as is authorized by the laws of  
the State, and the decisions of the Supreme Court.

For this purpose, before fixing the amounts of the  
bonds, you may require each association to submit to you a  
copy of its articles of incorporation, the records of its meet-  
ings at which its officers were elected, a copy of its by-laws,  
rules and regulations and of all advertising literature which  
it proposes to distribute to the public.

Very respectfully yours,

GEO. K. NASH,  
Attorney General.

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*Recorder; Not Bound to Take Books Into Court to Use as Evidence—Auditor and Recorder of Hamilton County; Fees of.*

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RECORDER; NOT BOUND TO TAKE BOOKS INTO COURT TO USE AS EVIDENCE.

Attorney General's Office,  
Columbus, Ohio, June 28, 1882.

*Mr. Jas. Flynn, Recorder, Sandusky, Ohio:*

DEAR SIR:—Your two letters to Judge Okey have been referred by him to me.

In reply to your questions I will say that clearly copies of deeds, mortgages, etc., are admissible in evidence, and the recorder is not bound to take the books to any court in ordinary cases.

Of course, if a question as to the form in which the record had been made, in questions of forgery or any other case where a copy would not serve the purpose, should arise in court, then the production of the records might be compelled. But the public are interested in having the records retained at the office, and except in the cases forming such exceptions, the books should not be taken out.

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

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AUDITOR AND RECORDER OF HAMILTON COUNTY; FEES OF.

Attorney General's Office,  
Columbus, Ohio, June 30, 1882.

*Mr. Miller Outcalt, Prosecuting Attorney, Cincinnati, Ohio:*

DEAR SIR:—Your favor of June 3d, relating to certain matters pertaining to the offices of auditor and recorder of Hamilton County, was received in due time.

I have delayed answering until this time because I de-

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*Auditor and Recorder of Hamilton County; Fees of.*

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sired to give the questions presented careful consideration.

All of the parties interested have favored me with arguments by able counsel in support of the position taken by them. All of these I have carefully read and considered.

Your first question is this: "Is the compensation received by the county auditor as a member of the county and city decennial boards of equalization his individual property, or is it a part of the earnings of his office as auditor, and required by law to be paid into the fee fund?"

My opinion is that this compensation is not the individual property of the auditor, but that it should be by him paid into the fee fund.

Your second question relates to certain services rendered by the county recorder under articles of agreement made with the commissioners of the county, and you ask "whether or not the compensation received by Mr. Dechebach for work done under said contract is to be considered as his individual property, or as a part of the earnings of his office as recorder, required by law to be paid into the fee fund?"

I think that the work performed by Mr. Dechebach is such work as is covered by section 1154 of the Revised Statutes.

When the county commissioners require the recorder to do this work, it is his official duty to do it. If this be so, the compensation received by the recorder is not his individual property, but is a part of the earnings of his office, and should be paid into the fee fund.

I refrain from giving the reasons which lead me to this conclusion, for I do not think that they can be of any great value to any one.

Doubtless the officers who have retained this compensation have done so with the sincere belief that it belongs to them, and I doubt whether anything short of a judicial determination of the matter will settle it.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Judge Common Pleas Court; Power of Successor Same  
as—County Commissioner; Report of.*

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JUDGE COMMON PLEAS COURT; POWERS OF  
SUCCESSOR SAME AS.

Attorney General's Office,  
Columbus, Ohio, October 13, 1882.

*Mr. Geo. B. Smith, Prosecuting Attorney, Ashland, Ohio:*

DEAR SIR:—In some manner your letter of September 15th has been overlooked until this time, and I regret this all the more from the fact that I fear any advice which I may give now will not be of any benefit to you.

I think that Judge Kinney's successor has as much authority to act in the case as Judge Kinney himself would have if living. The court does not die, even if the judge does, and whoever succeeds to the office after the death of one judge may do in any case what the other judge could have done if alive.

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

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COUNTY COMMISSIONERS; REPORT OF.

Attorney General's Office,  
Columbus, Ohio, October 13, 1882.

*Mr. F. R. McLaughlin, Auditor, Bellefontaine, Ohio:*

DEAR SIR:—I have not given an opinion since I was attorney general in regard to what extent the annual report of the county commissioners should be itemized, but did give this matter some attention when I was prosecuting attorney of this county. It all turns upon what is meant by "itemized." It does not seem to me that when they say expended for stationery \$1,600, that is giving an itemized bill. My



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*County Treasurer; Fees on Collections.*

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understanding of an itemized account is that it is one which gives every article purchased and the price paid for it. Webster's definition of the word "itemized" is this: "To state in items or by particulars."

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

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COUNTY TREASURER; FEES ON COLLECTIONS.

Attorney General's Office,  
Columbus, Ohio, October 13, 1882.

*Mr. Chas. R. Truesdale, Prosecuting Attorney, Youngstown, Ohio:*

DEAR SIR:—In looking over some old papers today I observed that I had neglected answering your favor of September 7th. By referring to section 1117, I came to the conclusion that the county treasurer is allowed compensation upon all moneys in the collection of which he has some duty to perform; that he is allowed no compensation on moneys received from the state treasurer or from his predecessor in office, or on any moneys received from the proceeds of the bonds of the county or of any municipal corporation, for the reason that he has no duty to perform in the collection of those moneys. It may also be said that when the commissioners borrow money upon a note and turn the money over to the treasurer, the treasurer performed no duty in collecting it, and I do not think that he is entitled to a commission upon such money.

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

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*Probate Judges, Fees of; Sheriff, Fees, Etc.*

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PROBATE JUDGES, FEES OF; SHERIFF,  
FEES, ETC.Attorney General's Office,  
Columbus, Ohio, October 13, 1882.*Mr. C. L. Spencer, Prosecuting Attorney, Xenia, Ohio:*

DEAR SIR:—Referring to your favor of September 27th, I will say that section 771, so far as it relates to the fees of probate judges, does not refer back to section 759, but refers to the fee bill provided for that officer, and that he is entitled to the same pay for services as the fee bill grants him for like services in other cases, and he is paid in the same manner.

Probably in so far as the expenses of the sheriff is concerned in delivering the party to the Girls' Industrial Home, it refers to section 759, and the expenses must be paid upon the presentation of the sheriff's sworn statement and the certificate of the proper officer of the institution. The proper officer is probably the superintendent.

If the sheriff performs other services, you must go to his fee bill to ascertain how he shall be compensated, and he shall be paid for these services, as this fee bill provides that he shall be paid for any like services in similar cases.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*County Commissioners; Fees of; Allowance to—County Surveyors; Duties, Etc.; Compensation.*

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COUNTY COMMISSIONER; FEES OF; ALLOWANCE OF.

Attorney General's Office,  
Columbus, Ohio, July 1, 1882.

*Mr. J. B. Pumphrey, Kenton, Ohio:*

DEAR SIR:—In answer to your favor of May 31st, I will say that under section 897, as amended last winter, each county commissioner is entitled to the following allowances:

First—When attending regular or called sessions, not exceeding one each month, \$3.00 per day, and five cents per mile for necessary travel.

Second—When traveling within his county under the direction of the board, \$3.00 per day, five cents per mile, and his reasonable and necessary expenses.

Third—When necessary to travel on official business outside of his county, \$3.00 per diem, five cents mileage and expenses.

I think that only the bill for per diem, mileage and expenses, when traveling outside of the county, are to be certified to by the prosecuting attorney and approved by the probate judge.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY SURVEYORS; DUTIES, ETC.; COMPENSATION.

Attorney General's Office,  
Columbus, Ohio, July 1, 1882.

*Mr. Geo. Strayer, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—In some way, I hardly know how, your letter of May 22d has been overlooked.

An appropriation was made last winter to enable the

*Smith Sunday Law; Construction of.*

secretary of state to prepare a code of rules for county surveyors. It is now in course of preparation, and I suggest that you write to Mr. Townsend in regard to it.

I think that it is the duty of the surveyor to make up the records or indices contemplated in section 1180. I cannot think that it was the intention of the General Assembly to require him to do this without pay, and as it is for the benefit of the public, think that the commissioners are authorized to pay him. I do not see how any other measure than the \$4.00 per day could be used in this kind of work. I think that the commissioners are authorized to pay him \$4.00 per day for the time actually employed.

Very truly yours,

GEO. K. NASH,

Attorney General.

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SMITH SUNDAY LAW; CONSTRUCTION OF.

Attorney General's Office,  
Columbus, Ohio, July 1, 1882.

*Mr. R. G. Mossgrove, Canton, Ohio:*

DEAR SIR:—The question which you ask is one that is not easily answered. It seems to me that two offenses are defined in the Sunday law:

First—The sale of intoxicating liquors on Sunday.

Second—The keeping open of a place on Sunday where intoxicating liquors are sold on other days of the week.

In order to convict of the first offense, the jury must be convinced beyond a reasonable doubt, that the sale was made. To convict of the second offense, the jury must be satisfied beyond a reasonable doubt that the place was kept open on Sunday, and that upon other days of the week, intoxicating liquors are sold there.

Now just how much evidence it will take to satisfy the jury, it is difficult to tell. If it could be shown that intoxi-

*Public Buildings; Architects For, County Commissioners  
Can Not Employ One of Their Number as.*

cating liquors are sold upon week days, and that the place is kept open on Sunday, it seems to me that the offense which I have numbered "two" is made out.

Very truly yours,

GEO. K. NASH,

Attorney General.

PUBLIC BUILDINGS; ARCHITECTS FOR, COUNTY  
COMMISSIONERS CAN NOT EMPLOY ONE OF  
THEIR NUMBER AS.

Attorney General's Office,  
Columbus, Ohio, July 15, 1882.

*Hon. Jas. S. Graham, New Philadelphia, Ohio:*

MY DEAR SIR:—The statutes in regard to public buildings authorizes the officers having them in charge to employ an architect to make plans, etc., and to supervise the carrying out of the same.

If an architect is unnecessary, I suppose that the officers having the improvement in charge may superintend the same. If they do so, their only compensation will be such as they receive as officers.

Commissioners having such an improvement in charge cannot employ one of their own members *as architect or superintendent*, and pay him as such. Having employed an architect, that architect cannot sublet his job to a commissioner. This is forbidden by section 6969.

If the services of an architect or superintendent are dispensed with, and a commissioner, as commissioner necessarily superintends the work, I think that he would be entitled to the commissioners *per diem* for each day actually so employed on the business of the county.

Very truly yours,

GEO. K. NASH,

Attorney General.

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*Reinsurance Fund; Taxation of—County Commissioners;  
Power to Release Judgments (Section 855.)*

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REINSURANCE FUND; TAXATION OF.

Attorney General's Office,  
Columbus, Ohio, July 21, 1882.

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

DEAR SIR:—In reply to your question as to whether the "reinsurance fund" held by insurance companies, as required by the laws of Ohio, is a *bona fide* debt, which may be deducted from their assets for the purposes of taxation, I will say that in my opinion it is not.

I have delayed answering your letter for considerable time so as to give this question careful study and consideration.

I know that the Common Pleas Court of Hamilton County in the case *The Union Central Life Insurance Company vs. R. H. Fenton*, and that county auditors have generally been controlled by that decision, yet I cannot, although I have great respect for that court, escape the conviction that its decision upon this matter is erroneous.

As you suggest, a case should be made and not permitted to come to an end until the Supreme Court has settled it.

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

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COUNTY COMMISSIONERS; POWER TO RELEASE  
JUDGMENTS (SECTION 855).

Attorney General's Office,  
Columbus, Ohio, July 26, 1882.

*Mr. C. A. Reider, Prosecuting Attorney, Wooster, Ohio:*

DEAR SIR:—I have delayed answering your favor of

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*Hartford Life and Annuity Insurance Company; Questions  
Concerning.*

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the 3d inst., because I have not had time to consider the question until today.

I do not think that it is important to determine whether prior to April 15, 1880, the commissioners of your county under section 855 had power to compromise or lease the judgment against the sureties of Jacob B. Kock. If they had such power, it was certainly restricted and limited by the act of April 15, 1880, and so long as this act stands, your commissioners can only settle and discharge the judgment in accordance with its provisions.

Very truly yours,

GEO. K. NASH,

Attorney General.

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HARTFORD LIFE AND ANNUITY INSURANCE  
COMPANY: QUESTIONS CONCERNING.

Attorney General's Office,  
Columbus, Ohio, August 21, 1882.

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

DEAR SIR:—Your letter of June 14th, asking certain questions in regard to the Hartford Life and Annuity Insurance Company, was duly received.

It contains a statement of facts, followed by certain questions. Those questions I have attempted to answer as follows:

First—"Whether the capital of the Hartford Life and Annuity Insurance Company so conforms to the law as to be available for the benefit of the certificate holders in Ohio?"

*Answer*—If there should be any breach of the contract between the company and the certificate holder, the com-

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*Hartford Life and Annuity Insurance Company; Questions Concerning.*

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pany would be liable to the certificate holder for such damages as might be caused on account of the violation of the contract, and its capital would be liable for such claim.

Second—"Whether this fund can be reached by any claimant before amounts to the sum of \$300,000, and if reached after that amount has accumulated, does that not affect the distribution of the safety fund, and the collapse of the whole scheme?"

*Answer*—By "this fund" I suppose that you mean what is called the "security fund" in the certificate of membership. The certificate of membership or contract with members contains this provision:

"Said company further agrees that if at any time, after said fund shall have amounted to three hundred thousand dollars, or after five years from July 1, 1881, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any certificate issued in said division, and such certificate shall be presented for payment to said trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said trustee to at once convert said security fund into money and distribute the same (less the reasonable charges and expenses for the management and control of said fund) among all the holders of certificates then in force in said division, or their legal representatives, in the proportion which the amount of each of their certificates shall bear to the amount of the whole number of such certificates in force; and that in such event it shall file with said trustee a correct list, under oath, of the names, residences and amounts of the certificates of all members entitled to participate in such distribution of said security fund."



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*Hartford Life and Annuity Insurance Company; Questions  
Concerning.*

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This upon the happening of the events therein named, seems to contemplate the distribution of the security fund among the certificate holders.

Third—"Whether this is not practically a lease of supposed privileges under the charter of the insurance company, by virtue of which a scheme of insurance is operated upon the credit of the assets of the Hartford Life and Annuity Company, when in fact such assets are not available for the protection of the assured?"

*Answer*—In your letter I find the following language used by you:

"In 1877 it effected the organization of what is denominated the 'Safety Fund Department of the Hartford Life and Annuity Insurance Company,' with Stephen Ball, secretary of the insurance company, as president of the Safety Fund Department; and leased the supposed privilege of issuing certificates in the Safety Fund Department to H. P. Duclose for a stipulated portion of the receipts, he guaranteeing that the profits of the operation of said department should net the insurance company not less than \$6,000 annually."

I suppose that the word "this" in your question refers to the above statement of facts. If you were correctly informed when you made this statement, I shall have to answer so much of your question as reads "whether this is not practically a lease of supposed privileges under the charter of the insurance company," in the affirmative. It is but fair for me to state, however, that the company claims that you are misinformed upon this matter, and that Messrs. Duclose and Smith simply have a contract authorizing them to act as the company's agents. I have seen the contract and it seems to me that they sustain the relation of agents to the company.

Your letter also contains the following paragraph:

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*Hartford Life and Annuity Insurance Company; Questions  
Concerning.*

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"I herewith submit a copy of the charter of the Hartford Life and Annuity Company, as amended, and a copy of the certificate issued in the Safety Fund Department, and desire your opinion as to whether such business can be conducted under the insurance laws of Ohio?"

The question thus asked is an old one. To yourself and your predecessor in office I have said that in my opinion regular life insurance companies are not authorized to do in connection with their other business, a kind of business done by what are known as "mutual aid associations." In this I may be wrong. The Court of Common Pleas of Franklin County has held otherwise, and the Supreme Court has virtually said that a company doing business upon the cooperative or assessment plan is doing a life insurance business.

Section 3596 of the Revised Statutes seems to authorize life insurance companies to take risks connected with or appertaining to make insurance on life and granting, purchasing and disposing of annuities.

Probably this language is broad enough to permit a life insurance company to adopt any plan of life insurance that it desires to.

Unless it be such a company as is contemplated by section 3630 of the Revised Statutes, it must comply with all of the requirements of the Revised Statutes of Ohio relating to insurance companies.

In answer to your last question I will say that in my opinion the case of the Fidelity Mutual Aid Association of Philadelphia, vs. Chas. H. Moore, Superintendent, etc., recently decided by the Supreme Court, does not affect this company. It only has relation to such companies as are organized under section 3630 of the Revised Statutes, and foreign companies organized under similar statutes and for similar purposes.

Respectfully yours,

GEORGE K. NASH,  
Attorney General.

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*County Auditor; Commissioners Must Fill Vacancy—Fees  
of County Officers.*

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COUNTY AUDITOR; COMMISSIONERS MUST  
FILL VACANCY.

Attorney General's Office,  
Columbus, Ohio, August 26, 1882.

*Mr. Joseph B. Hughes, Auditor, Hamilton, Ohio:*

DEAR SIR:—There will be a vacancy on the 4th of September. Then the commissioners must fill the vacancy. As it occurs thirty days before a general election, the successor must be elected next October. The commissioners' appointee will hold his office until the first Monday of September, 1883, at which time the elected treasurer will take the office, and hold it for fall term.

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

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FEES OF COUNTY OFFICERS.

Attorney General's Office,  
Columbus, Ohio, August 30, 1882.

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

DEAR SIR:—My understanding of section 1311 is that in cases contemplated by that section, all fees shall be paid except those of the officer whose duty it was to take security for costs.

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

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*Prosecuting Attorney; Appointment to Fill Vacancy in  
Office of.*

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COUNTY RECORDER.

Attorney General's Office,  
Columbus, Ohio, October 14, 1882.

*Mr. Geo. Strayer, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—Your favor of August 26th was delayed on account of other work which overwhelmed me.

My construction of the words "for every search of the records without copy, fifteen cents," in section 1157 of the Revised Statutes, is that it means fifteen cents for each instrument sought for.

I do not think that the county recorder has a right to prohibit a person from examining the records for himself. They are public records, and the recorder must give the public such opportunity to examine them as is consistent with their proper preservation.

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

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PROSECUTING ATTORNEY; APPOINTMENT TO  
FILL VACANCY IN OFFICE OF.

Attorney General's Office,  
Columbus, Ohio, October 16, 1882.

*Mr. D. T. Clover, Lancaster, Ohio:*

DEAR SIR:—Your telegram has been received. Your letter of September 29th was mislaid.

I infer from your telegram that a vacancy occurred more than thirty days prior to the October election in the office of prosecuting attorney of Fairfield County, and that an appointment was duly made to fill the vacancy. If this be so, the appointee will hold the office until the first Mon-

*Judge Common Pleas; Appointment to Fill Vacancy;  
Term of.*

day of January next, when the prosecuting attorney elected will enter upon the duties of the office.

This view is sustained by 7th Ohio State Rept., page 125. The language of the Statute passed upon in that case is almost identical with the language of section 11 of the Revised Statutes of Ohio.

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

JUDGE COMMON PLEAS; APPOINTMENT TO  
FILL VACANCY; TERM OF.

Attorney General's Office,  
Columbus, Ohio, October 21, 1882.

*Mr. J. W. Janner, Mansfield, Ohio:*

MY DEAR SIR:—I am in receipt of your favor of the 20th inst.

As you were appointed to fill an elective office, I suppose that the tenure of your office is governed by section 11 of the Revised Statutes of Ohio. Upon page 125, Vol. 7, O. S. R., the Supreme Court has interpreted the language of a statute very similar to section 11. If I read that decision right, you are entitled to your office until February, 1883, and your successor will serve for five years from that time.

If you desire him to hold the term of court commencing in December next, I think that it is necessary for you to resign, and for the governor to appoint him to fill the vacancy.

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

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*County Treasurer; Power to Bring Action to Collect Taxes.*

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COUNTY TREASURER; POWER TO BRING  
ACTION TO COLLECT TAXES.

Attorney General's Office,  
Columbus, Ohio, October 24, 1882.

*Mr. E. S. Dodd, Prosecuting Attorney, Toledo, Ohio:*

DEAR SIR:—I have taken time to carefully consider the opinion which you addressed to the commissioners of your county in regard to their promise to pay fees to attorneys for services in certain cases wherein the county is interested. After some examination I am compelled to dissent from a portion of your opinion.

Section 1104 Revised Statutes, as amended, O. L., Vol. 77, page 11, authorizes the county treasurer, under certain circumstances, to begin a civil action in his own name to enforce the lien for taxes. In case the law has not provided an attorney for him in such case, I am of the opinion that this section by implication at least authorizes him to provide himself with one. The power to begin an action in his own name and to prosecute it to a termination certainly carries with it the power to do all things that are necessary to the successful prosecution of the case, and one of the necessary incidents is an attorney to prepare pleadings and watch over the proceedings in court, something which could not be done by the treasurer, who is generally a person unskilled in such matters.

Does the law provide an attorney for him? If it does, it is done by sections 1273 and 1274, Revised Statutes. In my opinion section 1274 does not impose upon the prosecuting attorney the duty of acting as the attorney of record for any county officer in any action which may be instituted by him or brought against him in the discharge of official duty. This section simply makes him the legal adviser of the county officers, and not his attorney for all purposes, i. e., the officer may advise with the prosecuting attorney verbally and he may require written opinions from him.

The duty required of the prosecutor by this section is,

*County Treasurer; Power to Bring Action to Collect Taxes.*

I think, similar to that required of the attorney general by sections 206, 207 and 208.

I have more difficulty with section 1273, yet I have concluded that this section does not impose any duty upon the prosecuting attorney in regard to cases brought under section 1104. It provides that he shall prosecute on behalf of the State all complaints, etc., in which the State is a party, and such other suits, etc., as he may be by law directed to prosecute. This is not a case which the prosecutor is directed by law to prosecute, neither is it a case in which the State is a party. The General Assembly in prescribing the duties of the attorney general, makes him appear in the Supreme Court in all cases in which the State may be directly interested, and when required by the governor or General Assembly in any court in any case to which the State is a party, or in which the State is directly interested. If by section 1273 the prosecutor has a duty to perform in a case in which the State is not a party, but in which the State or government is directly interested, there has been an extravagant use of good English words in section 202. If this duty is imposed by section 1273, it is one which the prosecutor must render without compensation other than his salary.

Can the attorney employed by the treasurer be paid by the county commissioners? I answer, yes. It is the duty of the county government to collect the taxes under our system. The attorney has a claim against the county for his services in assisting the county government in the performance of this duty. The claim is such a one as must be allowed before payment by the commissioners under section 894.

Remembering that I am as liable as yourself to be mistaken in construing statutes, I remain,

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Auditor of County; Secretary of Board of County Commissioners—Prosecuting Attorney; Duty of.*

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AUDITOR OF COUNTY; SECRETARY OF BOARD  
OF COUNTY COMMISSIONERS.

Attorney General's Office,  
Columbus, Ohio, October 26, 1882.

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

DEAR SIR:—Considering section 1365, Revised Statutes, as an entirety, I am inclined to the opinion that the ten per cent. spoken of has relation to the entire compensation provided by statute.

Your second question I answer in the negative. By section 1021, 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 requested, 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 so, and it is one of the duties he is required to perform for the compensation provided in section 1069 and 1070. He can receive no extra compensation therefore.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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PROSECUTING ATTORNEY; DUTY OF.

Attorney General's Office,  
Columbus, Ohio, November 4, 1882.

*Mr. Geo. Strayer, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—Your favor of the 2d inst. received. I think that section 1274, Revised Statutes, makes the prosecuting



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*Girls' Industrial Home; Employment of Inmates of.*

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attorney the legal adviser of the county commissioners, and other county officers. That is, they may require of him verbal and written opinions, or instructions, in any matters connected with their official duties. I do not believe that this section requires that a prosecuting attorney should appear in court as the attorney of any one of these officers in any case that may be brought in his name or against him.

Section 845, as amended April 8, 1881, authorizes a board of county commissioners to sue and be sued, and also authorizes them to employ counsel to prosecute or defend in cases brought by or against them in their official capacity.

Section 1104, as amended February 26, 1880, authorizes the county treasurer in certain cases to bring an action in his own name. I think that the conferring of this power upon this officer by implication, authorizes him to do all things necessary and proper for the successful prosecution of the case.

It is the duty of the county to collect all taxes, and the attorney acting for the treasurer would have a claim against the county for his services which should be allowed by the commissioners under section 894.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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GIRLS' INDUSTRIAL HOME; EMPLOYMENT OF  
INMATES OF.

Attorney General's Office,  
Columbus, Ohio, November 6, 1882.

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

DEAR SIR:—In reply to your favor I will say that I do not think that the employment of the inmates of your institution upon such work as that proposed by J. H. Robinson

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*Reform School for Boys; Must Receive Boys Committed to.*

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& Company, of Bellefontaine, is such employment as you are authorized to give them by section 779. I think that section contemplates their instruction in some trade or employment which they can follow after they leave the institution.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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REFORM SCHOOL FOR BOYS; MUST RECEIVE  
BOYS COMMITTED TO.

Attorney General's Office,  
Columbus, Ohio, November 10, 1882.

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

DEAR SIR—I am in receipt of your favor of the 7th inst. The subject which has been brought up by our correspondence is one that deserves careful thought.

Section 753, as amended April 18, 1881, provides that male youth not over sixteen nor under ten years of age, may be committed to the reform school by any judge of a police court, Court of Common Pleas, or probate court, on conviction of any offense against the laws of the State. I suppose that the court which has jurisdiction to do this must be a court having the right to try the offense, and commits to the reform school instead of inflicting the penalty attached by law thereto. In this manner the commitment becomes a judgment of a court, just as much as the sentence of a prisoner to confinement in the penitentiary is the judgment of a court.

The superintendent and trustees of your institution certainly cannot practically set this judgment aside unless there be specific authority of law for so doing. I have read the chapter of our statutes for the government of your institution, and also the general provisions applying to all the

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*County Commissioners; Power to Employ Attorneys.*

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benevolent institutions of the State, and I must confess that I have not been able to find any statute conferring such authority.

Upon what theory, or for what reason is a boy who is lame or who has lost a leg excluded from your school?

Section 752 states the object of your institution to be "the reformation of those committed to its charge." Does not the State desire to reform the youth who has been so unfortunate as to lose a leg, or to have some other bodily infirmity, as well as the vicious youth who is of sound body?

I have examined the joint resolution adopted by the General Assembly April 13, 1880. The mere adoption of that resolution does not authorize the exclusion from the reform school of a boy who has lost a leg. If before the adoption of that resolution the trustees had authority of law to exclude Mr. Cray from the school, the resolution did not take away from them the right. A statute cannot be altered or repealed by a joint resolution. After the adoption of that resolution, the trustees had the same authority, no more and no less, and the same reasons for excluding Mr. Cray that they had before.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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COUNTY COMMISSIONERS; POWER TO EMPLOY  
ATTORNEYS.

Attorney General's Office,  
Columbus, Ohio, November 10, 1882.

*Mr. Geo. Strayer, Prosecuting Attorney, Bryan, Ohio:*

DEAR SIR:—Your favor of the 7th inst. received. In my former letter of recent date I attempted to give you my views in regard to the payment of attorney's fees by the

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*County Commissioners; Allowance, Fees, Etc.*

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commissioners in cases actually pending in which the county is interested.

When the commissioners need legal advice in matters not actually in suit, they are provided with an adviser by section 274, and the statute has provided how that adviser shall be paid. Of course they may advise with other attorneys if they wish to, but I know of no statute which authorizes them to pay for such advice out of the public funds. County Commissioners can only do such things as they are specially authorized by law to do.

Very truly yours,

GEO. K. NASH,

Attorney General.

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COUNTY COMMISSIONERS; ALLOWANCE,  
FEES, ETC.

Attorney General's Office,  
Columbus, Ohio, November 10, 1882.

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

DEAR SIR:—The following is my construction of section 897, Revised Statutes, as amended April 15, 1882:

A county commissioner, in a county with less than one hundred thousand inhabitants is entitled to the following compensation:

First—When attending regular or called sessions, not exceeding one each month, \$3.00 per day and five cents per mile for necessary travel, but nothing for expenses.

Second—When traveling within his county under the direction of the board upon official business, \$3.00 per day, five cents per mile, and his reasonable and necessary expenses actually paid. When the commissioner uses his own conveyance, he cannot charge anything therefor, because it is not an expense "actually paid."

Third—When necessary to travel on official business

*Prosecuting Attorney; Allowance to by Commissioners  
Under Section 1274.*

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outside of his county, \$3.00 per day, five cents mileage, and expense actually paid.

I think that the bills for per diem, mileage and expenses when traveling in or outside of the county, are to be certified by the prosecuting attorney, and approved by the probate judge.

Very truly yours,

GEO. K. NASH,  
Attorney General.

PROSECUTING ATTORNEY; ALLOWANCE TO BY  
COMMISSIONERS UNDER SECTION 1274.

Attorney General's Office,  
Columbus, Ohio, November 16, 1882.

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

DEAR SIR:—Section 1274, Revised Statutes, authorizes county commissioners to make such an allowance to the prosecuting attorney as they think proper for services that he may render in accordance with such section.

I know of no provision of law that forbids the commissioners from making an allowance in case an itemized bill is not filed with them. Before the commissioners can determine how much the services are worth, they must be informed as to what services have been rendered. It seems to me that the best way to do this is for the prosecuting attorney to present a bill of the services rendered him. There ought to be no difficulty in doing this. If written opinions have been given, there would be no difficulty in producing them and determining the amount of work required in preparing them.

Such a course ought to be pursued as would give the commissioners accurate knowledge in regard to the services rendered.

Very truly yours,

GEO. K. NASH,  
Attorney General.

*Probate Judge; Allowance by Commissioners Under Sections, 7165, et al.*

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PROBATE JUDGE; ALLOWANCE BY COMMISSIONERS UNDER SECTIONS 7165, ET AL.

Attorney General's Office,  
Columbus, Ohio, November 21, 1882.

*Mr. Chas. Baird, Prosecuting Attorney, Akron, Ohio:*

DEAR SIR:—I do not understand that county commissioners have power to pay any claim for services out of the county treasury unless such claim is against the county.

I do not believe that services rendered by a probate judge under sections 7165, 7169 and 7178 are a claim against the county unless some statute has specifically made it such.

I have not been able to find such a statute. In certain cases it is provided by statute that justices of the peace and constables may have certain costs paid out of the county treasury.

In the absence of statute, even in such cases, I do not understand that they could be paid out of the county treasury.

As you suggest, I fear that our friends will have to console themselves with the idea that they have done the State some service, unless they can manage to persuade parties making these applications to pay as they go along for services rendered.

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

*Fidelity Insurance Trust and Safe Deposit Company of Philadelphia; Certificate of—O. S. and S. O. Home; Steward of.*

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FIDELITY INSURANCE TRUST AND SAFE DEPOSIT COMPANY OF PHILADELPHIA; CERTIFICATES OF.

Attorney General's Office,  
Columbus, Ohio, December 2, 1882.

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

DEAR SIR:—At your request I have examined a copy of the certificates issued by the Fidelity Insurance Trust and Safe Deposit Company, of Philadelphia, upon the first day of August, 1882, showing that the holder is the owner of an interest in a contract made and entered into upon the 13th day of April, 1882, by Post, Martin & Company and the Columbus, Hocking Valley & Toledo Railway Company, by which the first party leased to the second party a certain number of railroad cars, with an agreement to purchase at a future date. In answer to your question as to whether Ohio insurance companies may invest in such certificates, I answer that in my opinion they cannot. They are not evidences of indebtedness, and do not belong to any of the various classes of securities described by sections 3637 and 3638, Revised Statutes. Very truly yours,

GEO. K. NASH,  
Attorney General.

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O. S. AND S. O. HOME; STEWARD OF.

Attorney General's Office,  
Columbus, Ohio, December 9, 1882.

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

DEAR SIR:—I suppose that section 653 means just what

Requisitions; Expenses of Agent Pursuing Fugitive Under.

it says: "Stewards shall reside in the jurisdiction." If a steward does not do this, he may be removed by the proper officers of the institution, or I think by proceedings in *quo warranto*.

How about an officer who performs the duties of a steward, but has been called a cow instead of a horse? I think the nature and duties of the office must be looked at, and if the officer performs in fact the duties of a steward, section 655 will apply.

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

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REQUISITIONS; EXPENSES OF AGENT PUR-  
SUING FUGITIVE UNDER.

Attorney General's Office,  
Columbus, Ohio, December 15, 1882.

*Mr. W. T. Exline, Auditor, Van Wert, Ohio*

DEAR SIR:—In reply to your letters of November 23d and 28th, I will say that under section 920, as amended, the commissioners should pay the necessary expenses of the officer who brought Collins back to Van Wert under a requisition by the governor.

It would seem to be proper that the sureties for Collins upon his bail bond should be required to reimburse the county for this expense even if the court should determine that it was proper to remit the balance of the forfeiture.

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



*Congress; Member of; Election to Fill Vacancy; Tickets  
and Proclamation.*

CONGRESS; MEMBER OF; ELECTION TO FILL  
VACANCY; TICKETS AND PROCLAMATION.

Attorney General's Office,  
Columbus, Ohio, December 16, 1882.

*Mr. M. R. Patterson, Prosecuting Attorney, Cambridge,  
Ohio:*

DEAR SIR:—I am in receipt of your favor of the 14th inst., containing a copy of the sheriff's proclamation for a special election for member of congress for the vacancy from the sixteenth district, and for the full term of the seventeenth district of Ohio, to be held Tuesday, January 2, 1883; and asking certain questions as to how the election should be conducted.

I think that the proclamation of Sheriff McGill is sufficient, and is all that can be required by law. I am also of the opinion that one set of judges, one set of clerks, one ballot box, one poll book and one tally sheet is all that is required at each voting precinct. The tickets to be used should be in the following form:

"..... Ticket."  
"For Representative of Ohio in the 47th."  
"Congress from the 16th District (short  
term)."  
"....."  
"For Representative of Ohio in the 48th."  
"Congress from the 17th District (long  
term)."  
"....."

I think that I am fully justified in reaching this conclusion by sections 2930 and 2960, Revised Statutes.

It may be said that representatives in congress are neither State, county nor township officers, yet in the form

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*Central Trust Company of New York; Certificate of.*

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of tally sheet given by the General Assembly in section 2960, Revised Statutes, the representative in congress is included.

The intent of our statutes evidently is to have as little machinery about our elections as possible.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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CENTRAL TRUST COMPANY OF NEW YORK;  
CERTIFICATE OF.

Attorney General's Office,  
Columbus, Ohio, December 20, 1882.

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

DEAR SIR:—At your request I have examined the certificate issued by the Central Trust Company, of New York, showing that the bearer is the owner of one individual four hundred and twentieth part of one thousand cars leased to the Columbus, Hocking Valley and Toledo Railroad Company, by Post, Martin and Company, with an agreement to purchase at a future date.

You desire to know whether the laws of Ohio authorize insurance companies other than life to invest in property of this character.

I can find no authority for these companies to make an investment of this kind, unless it be paragraph three of section 3638, Revised Statutes.

I am of the opinion that this paragraph does not authorize this investment, for the paper before me is not an evidence of indebtedness, but a certificate of ownership.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*Compensation of Sheriff for Keeping Convicts.*

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COMPENSATION OF SHERIFF FOR KEEPING  
CONVICTS.

Attorney General's Office,  
Columbus, Ohio, December 28, 1882.

*Mr. P. M. Adams, Prosecuting Attorney, Tiffin, Ohio:*

DEAR SIR:—Your favor of the 30th ult. was duly received.

The letter suggested that possibly the warden of the Ohio Penitentiary would ask my advice in regard to the matter mentioned therein. I have delayed answering for this reason. As I have not heard from him, I have decided to give you my conclusions.

The sheriff is paid out of the county treasury for the board or support of every prisoner from the time he is received by the sheriff, until he is convicted and sent to the penitentiary.

It has never been claimed that the cost of supporting the prisoner in the county jail should be included in the bill of costs contemplated in section 7332.

Madders was sick and required more care and attention from the sheriff than would a well prisoner.

I can see no more reason or obligation for the State to pay the expense of supporting Madders in the jail than for her to pay the expense of supporting a well prisoner.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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*County Auditor; Duty of Under Section 1108—Sheriff,  
Fees of.*

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COUNTY AUDITOR; DUTY OF UNDER SEC-  
TION 1108.

Attorney General's Office,  
Columbus, Ohio, December 29, 1882.

*Mr. J. M. Bradrick, Prosecuting Attorney, Marysville, Ohio:*

DEAR SIR:—After consultation with the auditor of state, I reply to your letter of the 20th as follows:

If all the steps prior to section 4547 have been properly taken, I think that the county auditor has no discretion in drawing his order therein spoken of, payable out of the county fund. If there is no money in that fund, of course the treasurer cannot pay it, but he must treat the want as is provided by section 1108.

Your question in regard to the commissioners borrowing money, I answer in the negative.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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SHERIFF; FEES OF.

Attorney General's Office,  
Columbus, Ohio, December 29, 1882.

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

DEAR SIR:—The language contained in section 1230, and referred to by you in your letter of the 20th, is so uncertain that I do not feel at all sure of my footing in trying to interpret it.

"Committing to prison or discharging therefrom, sixty cents," entitled the sheriff, I think, to sixty cents when a

*War Claims; Allowance of by United States.*

person is first committed to the jail, and sixty cents when he is discharged therefrom.

"Attending a person before judge or court, sixty cents," I am inclined to think entitles the sheriff to sixty cents for each day's attendance.

The judge of your Court of Common Pleas is called upon to interpret these words at each term of your court, when a person is convicted of a penitentiary offense. In such case it becomes his duty to certify to the correctness of the sheriff's cost bill. I suggest that upon the first opportunity you call his attention to these words of the statute and follow the construction which he may give.

Very truly yours,

GEO. K. NASH,  
Attorney General.

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WAR CLAIMS; ALLOWANCE OF BY UNITED STATES.

Attorney General's Office,  
Columbus, Ohio, January 6, 1883.

*Hon. B. H. Brewster, Attorney General of the United States, Washington, D. C.:*

SIR:—This letter will be presented by Mr. W. O. Talford, of Columbus, Ohio, who is acting as the agent of the State of Ohio under the direction of the attorney general, auditor of state and adjutant general in settling Ohio's war claims against the United States.

These claims are made under an act of Congress approved July 27, 1861.

Ohio has been indemnified to a very great extent for the costs, charges and expenses properly incurred by her for enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting her troops employed in

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*War Claims; Allowance of by United States.*

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aiding to suppress the insurrection against the United States.

One claim known as the "twenty-second installment," has not yet been acted upon, and I understand that it has been referred to you by the present secretary of the treasury for your determination as to whether it is a proper charge against the United States under the act of July 27, 1861.

In order to do the things contemplated by that act, to-wit, to enroll, subsist, clothe, supply, arm, equip, pay and transport her troops, it was absolutely necessary for the State to borrow large sums of money, and to pay interest thereon.

The "twenty-second installment" is made up of the sums thus paid out by the State for interest only. It was just as necessary for the State to pay this money in order to accomplish the end desired, to-wit, to give immediate and effective aid to the general government, as it was to pay for subsistence, clothing, arms, etc.

I take the liberty of enclosing herewith a copy of a letter written by the auditor of the State of Ohio to the secretary of the treasury, dated July 25, 1861, and a copy of the reply of the then secretary, Hon. S. P. Chase, bearing date of July 29, 1861. From this correspondence you will see that the State of Ohio was given to understand that the general government would refund all money expended in organizing, clothing, subsisting and equipping troops for the general government, principal and interest.

I ask that you give this subject careful consideration, and that you show Mr. Talford such courtesies as may be proper.

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