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*Power of County Commissioners to Levy Taxes For School  
Purposes.*

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POWER OF COUNTY COMMISSIONERS TO LEVY  
TAXES FOR SCHOOL PURPOSES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 12, 1874.

*Hon. F. W. Harvey, Commissioner of Schools:*

SIR:—In reply to your verbal inquiry of a few days since, I have to say:

When, under the fifty-ninth section of the school act of 1873, upon proper complaint, the county commissioners take *the* action desired of them, that action is in all respects to be considered and treated as the action of the school board, and the power of the commissioners absolutely ceases until a new cause for complaint arises and complaint is made. The power of the board of education still remains as complete over the district as before such action was taken by the board of commissioners, and is in no case interfered with, only in the respect in which such action has been had.

It results, without a shadow of doubt, that when the commissioners have, upon proper evidence, made a levy for the purpose of building a schoolhouse in a sub-district, the board of education of the district in which such sub-district is, has plenary still to rearrange the sub-districts, and even destroy any one by incorporating its territory with others and, in such case, the fund raised by the levy made by the commissioners is subject absolutely to the order and control of the board of education of the township in which the levy was made.

Very respectfully,

F. B. POND,  
Attorney General.

*A Claim Cannot Be Paid to a Widow Unless She is the  
Legal Representative of Her Deceased Husband.*

A CLAIM CANNOT BE PAID TO A WIDOW UN-  
LESS SHE IS THE LEGAL REPRESENTATIVE  
OF HER DECEASED HUSBAND.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 15, 1874.

*Hon. James Williams, Auditor of State:*

DEAR SIR:—Yours of the 14th instant, enclosing a letter to you of George W. Gist, Esq. (herewith returned), and submitting the inquiry whether you would be authorized to pay the widow of one James Rousch, deceased, the amount of a "Morgan Raid Claim" of \$70, the same having been duly allowed and appropriation therefor made since his decease, there being no administrator of his estate, etc., is received.

In answer I have to say, that, in my opinion, you would not be authorized to pay the claim to such widow. It does not alter the law of the matter that Rousch died insolvent. Payment can only be made to his legal representative, and that the widow is not.

In view of the peculiar circumstances of this case it might be that the General Assembly would, by joint resolution, authorize payment to be made her, were the matter brought to its attention by her friends.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Mortgages, Etc., Relating to Ohio Life Ins. Co., of Cleveland, Ohio—The Kind of a Seal That Should be Affixed to Certain Instruments.*

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MORTGAGES, ETC., RELATING TO OHIO LIFE  
INS. CO., OF CLEVELAND, OHIO—THE KIND  
OF A SEAL THAT SHOULD BE AFFIXED TO  
CERTAIN INSTRUMENTS.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 15, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

DEAR SIR:—I have examined the abstracts of titles, mortgages, etc., pertaining to the Ohio Life Insurance Company, of Cleveland, Ohio, submitted to me by you for inspection and examination, and have to say in relation thereto:

That, while some of the abstracts are not as full as might be and are not therefore, altogether satisfactory, yet taking into consideration the documents accompanying them, I am satisfied that the lands mortgaged are "uncumbered" within the meaning of the law. The mortgages appear to have been executed in due form of law with possibly one exception, common to all of them but one, and that relates to the sealing thereof by the grantees.

The *locus sigillum* (L. S.) printed upon the instrument, is the only "seal" used. I am not prepared to say that such a seal would be held insufficient, although our statute would seem, by implication, to exclude the idea of its sufficiency. It provides that where a seal is required to be affixed to an instrument "and the seal so required is not specific" (and it is not in relation to deeds) "a seal either of wax, wafer, or of ink commonly called a scroll seal, shall be alike valid and deemed sufficient" (S. & C. 1385). The seal here used does not fall within the description of any named in the statute, nor is it a good common law seal. The words of which the "L. S." are the initials, mean literally the *place*

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*Official Duty of Prosecuting Attorneys to Prosecute Forfeited Recognizances.*

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*of the seal.* The letters would seem to indicate where the seal should be placed, rather than to stand for the seal itself.

Under the peculiar wording of the statute of Wisconsin which validates any "device" used for a seal the "L. S." was held to be a sufficient seal.

As before stated, I should not care to say that the device used would be held bad, still I am not satisfied of its sufficiency. The scrolls might yet be affixed by the mortgagors and the record made to show them. This done, I should regard them executed in due form.

Very respectfully,

JOHN LITTLE,

Attorney General.

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OFFICIAL DUTY OF PROSECUTING ATTORNEYS  
TO PROSECUTE FORFEITED RECOGNIZANCES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 16, 1874.

SIR:—In your letter of January 6, 1874, you state that your county commissioners before the commencement of your term of office, entered an order upon their journal requiring your predecessor, as prosecuting attorney, to proceed and collect the amount of certain forfeited recognizances and pay the money into the treasury after deducting his commissions, etc., that your predecessor not having collected the recognizances during his term, now claims the right to prosecute the case to final judgment, etc., under the said order of the commissioners; and ask my opinion of his right to so prosecute the cases, and retain the commissions on sums collected.

The statute makes it the duty of the prosecuting attorney of each county in such cases to prosecute the recognizances



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*Power of County Commissioners in Levying Taxes for  
Building Purposes.*

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for the recovery of the penalty thereof. (See Sec. 63, Criminal Code). An order of the county commissioners to the same effect imposes no additional obligation, nor does it confer any rights in that behalf not conferred by law. Such an order is simply *ultra vires* and without effect. The remaining question then is: Does the statute confer such right upon your predecessor? I think not. To prosecute cases of this kind is an *official* duty of the prosecuting attorney, and as to each incumbent of the office, ends with his term. He cannot be continued beyond his term for the discharge of this, any more than for the discharge of any other function of the office. I should say, therefore, that it is your duty to prosecute the cases to which you allude for the penalty, and that the commissions on collections will belong to the prosecuting attorney in office at the time such collections are made.

Very respectfully,

JOHN LITTLE,

Attorney General.

J. W. Albaugh, Esq., Prosecuting Attorney of Tuscarawas County.

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POWER OF COUNTY COMMISSIONERS IN LEVY-  
ING TAXES FOR BUILDING PURPOSES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 16, 1874.

SIR:—By your letter of the 13th instant, you submit the inquiry whether, under the 1st and 3d sections of the act of May 1, 1871 (O. L., Vol. 68, p. 116), the county commissioners of any county, "wherein the taxable property does not exceed \$15,000,000," may levy a tax of one and one-half mills for the purpose of building county buildings

*How Compensation of County Officials for Services Under  
the Ditch Law Shall Be Paid.*

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without first submitting the matter to a vote, etc. I take it that you mean by the clause quoted a county wherein the duplicate exceeds \$11,000,000, and does not exceed the sum you name, and shall frame my answer accordingly.

The third section of the act must be construed or regarded as a qualification of the first; and the authority of the first to levy a rate that would produce in the aggregate more than \$10,000 for such building purposes, cannot be exercised until first directed by a vote of the people, except in the excepted cases provided for in the proviso to section three. A levy of one and a half mills on the lower sum would produce a tax of \$16,500. Such a levy without a vote favoring it, is unauthorized; *unless*, the buildings to be constructed were commenced, or contracted for according to law, or the grounds or materials for which were purchased or acquired in good faith, prior to May 1, 1871, and work proceeded on such buildings, with all convenient dispatch, during the season of 1871. In such case the tax might be levied without submitting the question, as to the policy of such buildings, to a vote.

Very respectfully,

JOHN LITTLE,

Attorney General.

Asa Jenkins, Esq., Auditor of Clinton Co., Ohio.

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HOW COMPENSATION OF COUNTY OFFICIALS  
FOR SERVICES UNDER THE DITCH LAW  
SHALL BE PAID.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 17, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—Yours of the 16th inst., enclosing communication to you from the auditor of Van Wert County (herewith

*Ohio Life Insurance Company of Cleveland.*

returned) and inquiring whether the words "general fund" as used in the 20th section of the act of April 12, 1871 (O. L., Vol. 68, p. 60), relate to the fund raised by taxation as mentioned in the act of April 6, 1866 (S. & S., p. 371), or to the "county fund," is received.

I have to say in answer: That in my opinion, the "general fund" named in said Sec. 20 refers to and means the same as the "general fund" alluded to in Sec. 13 of the same act, out of which the "damages" and "compensation" are required to be paid.

Auditors, with certain other county officers named, are to be paid for their services under the act, from the county treasury out of the county fund, the amount so paid to be assessed upon the lands benefited, etc., as a part of the "costs and expenses" of construction, etc., and when collected such amounts should be returned to the treasury in re-imbusement of such county fund.

The law is not very clear upon this subject, but I think such a construction will best give effect to both laws—that of 1866 and 1871.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

OHIO LIFE INSURANCE COMPANY OF CLEVELAND.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 20, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—I am in receipt of yours of this date, with accompanying papers pertaining to the Ohio Life Insurance Co., of Cleveland, Ohio.

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*Ohio Life Insurance Company of Cleveland.*

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You inquire, in substance, whether the papers submitted (aside from the securities in your possession) are sufficient to warrant you in furnishing the company with a certificate of deposit as contemplated by law prior to their commencing business.

Sec. 10 of Chapter II of the act of April 22, 1872 (O. L., Vol. 69, p. 152) provides: "That whenever the corporators shall have fully organized such company, and shall have deposited with the superintendent the requisite amount of capital, said superintendent shall furnish the company with a certificate of such deposit," etc.

The superintendent should know that the corporators have "*fully organized*" before issuing his certificate. How he is to know this the statute does not provide. It perhaps should be shown by the best evidence—which would be an authenticated transcript from the company's record showing such organization. There is no evidence among the papers you submit that the provisions of Sec. 6 of Chapter II have been complied with, or that directors have been elected, or that the officers named in Sec. 7 of the certificate of incorporation have been chosen. How the facts may be in regard to these things you may have satisfactory knowledge. I only state that proper evidence concerning them is not among the papers submitted for my examination. Were evidence filed, or had the superintendent knowledge otherwise that the company is *fully* organized, the certificate could in my opinion be legally issued.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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*Case of Anna C. Tilton, Indicted for Murder in First Degree.*

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CASE OF ANNA C. TILTON, INDICTED FOR MURDER IN FIRST DEGREE.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 24, 1874.

*J. L. Jones, Esq., Prosecuting Attorney Jackson County,  
Jackson C. H., Ohio:*

DEAR SIR:—Your letter of the 19th inst., enclosing copy of third count of an indictment for murder in the first degree against Anna C. Tilton, and asking my opinion as to its sufficiency, also as to the admissibility of certain testimony detailed, etc., is at hand.

The count, I think, should aver more distinctly an intent to kill. It may be that the concluding averments are sufficient to bring it within the case of *Loeffner vs. The State* (10 O. S. R.); still I should advise by way of abundant caution the interpolation after "malice" where it first occurs, of the words: "and with the intent the said persons to her unknown as aforesaid to kill and murder," and after "malice" wherever it afterwards occurs, insert the words: "and with the intent aforesaid."

You say that in June, 1871, the defendant published a card in your county paper to the effect that she would shoot any thief, boy or girl, found in her blackberry patch, and in November, 1873, she shot the deceased, a boy 10 years old, on her premises on his way from school, and ask whether the card, etc., would be admissible evidence. I think not. Threats made shortly before the homicide, to the effect that she intended to shoot *any* one found passing over her premises might, I think, be admitted; but not such as you relate. Neither do I think that evidence that she had shot at others on her premises would be admissible.

There is a class of crimes where testimony of former commissions or attempts at commission, may be shown by

*Monroe Bank—No Legal Objection to the Governor Exemplifying the Law as Set Down by Supreme Court.*

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way of establishing a *scienter*—such as counterfeiting, passing counterfeit money, etc. But murder does not belong to that class.

Very respectfully,  
 JOHN LITTLE,  
 Attorney General.

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MONROE BANK.  
 The State of Ohio,  
 Office of the Attorney General,  
 Columbus, January 28, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—I have examined the certificate of the "Monroe Bank" enclosed in yours of the 26th instant, and finding it sufficient, etc., I have made the proper endorsement thereon, and herewith return the same.

Very respectfully,  
 JOHN LITTLE,  
 Attorney General.

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NO LEGAL OBJECTION TO THE GOVERNOR EXEMPLIFYING THE LAW AS SET DOWN BY SUPREME COURT.

The State of Ohio,  
 Office of the Attorney General,  
 Columbus, January 29, 1874.

*Hon. William Allen, Governor:*

SIR:—I have considered the contents of the communication of D. H. R. Jobes, Esq., to your excellency, under date of January 26, 1874, handed to me, and have to say in answer thereto and to your inquiry:

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*Superintendents of Lunatic Asylums Must Have the Qualifications of Electors.*

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That it is unquestionably the law of Ohio, as recognized by the Supreme Court of the State, in the case of Rice vs. Lumley (10 O. S., 596) that, "when a man leaves his home or usual place of residence and goes to parts unknown and is not heard of or known to be living for the period of seven years, the legal presumption arises that he is dead." There is no statute of the State authorizing the governor to exemplify any law of the State, as determined by the Supreme Court, by a certificate under his hand and the great seal of the State; and such certificate would be without legal effect in any proceedings in the courts of Ohio. Yet I see no legal objection to the governor's making exemplification of the law as aforesaid, where the same may be required by a foreign State in order to secure a citizen of this State in his property there.

Very respectfully,

JOHN LITTLE,

Attorney General.

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SUPERINTENDENTS OF LUNATIC ASYLUMS,  
MUST HAVE THE QUALIFICATIONS OF  
ELECTORS.

The State of Ohio,  
Office of the Attorney General,  
Columbus, January 30, 1874.

SIR:—You inquire in yours of the 27th instant: "Is the superintendent of a lunatic asylum an officer in the sense that he must have the qualifications of an elector?" No one can be an officer selected or appointed under this State, in any other sense. See Const. Art. XV.

The question then is: Is he an officer? Does he hold an office? Clearly so. His employment embraces all the elements of an office. His is "a particular duty, charge or

*American Insurance Company of Cincinnati is Subject to  
the General Insurance Law.*

trust conferred by public authority and for a public purpose," "an employment on behalf of the government in a station or public trust, not merely transient, occasional or incidental." (See *State ex rel Attorney General vs. Kenyon et al.* 7 O. S., 556-7-8). He is *appointed* for a fixed term, required to take an "oath of office," paid out of the public treasury a fixed salary, charged with the performance of definite public functions, and is by the statute itself expressly made and styled "the chief executive officer," etc. (S. & C., 84).

I, therefore, have no hesitation in answering your question in the affirmative.

Yours, etc.,

JOHN LITTLE,

Attorney General.

Mr. W. H. Price, Pres. Board Trustees N. O. L. A., Cleveland, Ohio.

AMERICAN INSURANCE COMPANY OF CINCINNATI IS SUBJECT TO THE GENERAL INSURANCE LAW.

The State of Ohio.

Office of the Attorney General,

Columbus, January 31, 1874.

SIR:—Yours of the 23d is received. You inclose the "charter of the Clermont Insurance Company," now called under judicial decree, "American Insurance Company, of Cincinnati, and ask whether this, and all other insurance companies, having special charters, shall be governed" by section 14, Chap. 1, of the act of April 27, 1872, as amended in 1873?

How this might be with "all other insurance companies having special charters," would probably depend upon the provisions of their several charters which are not at hand.



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*American Insurance Company of Cincinnati is Subject to  
the General Insurance Law.*

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I shall, therefore, confine my answer to that part of your inquiry pertaining to this company.

The charter of the company consists of a special act of the General Assembly of Ohio, entitled, "An act to incorporate the Clermont insurance company," passed March 19, 1850. The corporation created by the act is authorized to do a general fire insurance business. The 8th section provides that "the president and directors shall declare such dividends of the profits of the business of the company as shall not impair, nor in any wise lessen the capital stock of the same."

The 14th section of the act of 1872, as amended in 1873 (p. 149), provides that "no fire insurance company, organized under any law of this state, shall make any dividend except from the surplus profits arising from its business." The section goes on to provide how the profits shall be estimated, and in doing so, it may be fairly claimed that exactions and requirements are made not contemplated by the original charter; that the company could have made dividends under said section 8, which would be prohibited under said section 14. In other words, the latter section impairs a right existing to the company under the former. Had the Legislature a right to do this? If it had not, it is because of the fact that the company holds every valuable privilege conferred by the charter of 1850, as by contract from the State under the doctrine of the celebrated Dartmouth college case. (4 Wheaton, 518). But that doctrine has no application in this instance, for the reason that the State in said charter expressly reserved to itself the right to alter or repeal the act after ten years from the date of its passage. Section 16 reads: "This act shall continue in force for the space of thirty years; provided this act may be repealed, altered or changed after ten years from and after the passage of this act." Justice McLean, delivering opinion of the court in the case of State Bank of Ohio vs. Knoop (4 Howard U. S. 386) says: "every valuable privil-

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*American Insurance Company of Cincinnati is Subject to  
the General Insurance Law.*

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age given by the charter and which conduced to an acceptance of it, and an organization under it, is a contract which cannot be changed by the Legislature, *where the power to do so is not reserved in the charter.*"

The only remaining question then is, whether this charter as respects its 8th section, has been altered in fact by the Legislature. And as to this I think there is but little room to doubt. It is true it has not been directly and by name altered—the provisions of Sec. 16, Art. II, of the constitution have not been literally complied with. Yet those provisions are directory merely to the General Assembly. Repeals by implication are recognized though not favored. The language of section 14, quoted, is broad and sweeping, and necessarily embraces the company whose charter you inclose, organized as it was under a law of this State, to-wit: the act of March 10, 1850. To the extent, therefore, that said section 14 changes any of the provisions of said charter, the latter is altered by virtue of the reservation in section 16 thereof, and this legislation under it.

It follows that your inquiry as to the American Insurance Company of Cincinnati, is answered in the affirmative.

Very respectfully,

JOHN LITTLE,

Attorney General.

Hon. Wm. F. Church, Superintendent, Etc., Columbus, O.

*Pardoning Power of the Governor Extends to All Crimes and Offenses Except Treason and Cases of Impeachment.*

PARDONING POWER OF THE GOVERNOR EXTENDS TO ALL CRIMES AND OFFENSES EXCEPT TREASON AND CASES OF IMPEACHMENT.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 3, 1874.

*Hon. Wm. Allen, Governor:*

SIR:—You submit the inquiry: "Whether the governor has the power to pardon a person sentenced to a county jail for a misdemeanor, for a specified term and thereafter till fine and costs be paid, under the laws of Ohio."

The constitution provides that the governor "shall have power, after conviction, to grant reprieves, commutations and pardons for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by law." The question involved in the inquiry is: What is the scope to be given the phrase, "all crimes and offenses?"

The language is similar to that used in the constitution of the United States, giving the president the pardoning power. It is certainly no less comprehensive as respects state offenses than is that as to offenses against the United States. The language of that instrument is: "He (the president) shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." Commenting upon the power of the president under this clause, Judge Story says that, subject to the exception named "the power of pardon is general and unqualified, *reaching from the lowest to the highest offenses.*" The power of remission of fines and forfeitures is included in it. (2 Story on Const. Sec.

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*Pardoning Power of the Governor Extends to All Crimes and Offenses Except Treason and Cases of Impeachment.*

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1504). In a recent case (4 Wall. 380) the U. S. Supreme Court alluding to this subject held this language: "The power thus conferred is *unlimited*, with the exception stated" (cases of impeachment). "*It extends to every offense known to the law.*"

The pardoning power of the governor as respects offenses against the State does not differ from that of the president as respects offenses against the United States, except that the former cannot exercise such power *before* conviction, while the latter may; and except also that the governor is bound by the regulations prescribed by law as to the *manner of applying* for pardons. The conditions which the constitution of the State authorizes the governor to impose, are incident to the pardoning power (as has been frequently held) and the authority to impose them would exist under the general grant, if not expressly given.

The law, I think, may be succinctly stated thus: Upon application properly made, after conviction, the power of the governor to grant reprieves, commutations and pardons, extends to all crimes and offenses against the State from the lowest to the highest; except treason and cases of impeachment. It follows that your inquiry is answered in the affirmative.

Such, in fact, was the holding of this department, in an opinion given to your predecessor upon a similar inquiry, July 27, 1870, wherein it was held "that a person convicted in the police court of Cincinnati of a violation of a criminal law of the State and sentenced to the house of correction \* \* is a proper subject for the exercise of that power (of pardon) by the governor, if the circumstances in his judgment warrant it." (Opinions C. p. 513).

Very respectfully,

JOHN LITTLE,

Attorney General.

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*County Auditors Not Entitled to "Tax Omission Fees" on Taxes Paid by Banks That Failed to Make Returns Within the Time Prescribed by Law.*

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COUNTY AUDITORS NOT ENTITLED TO "TAX OMISSION FEES" ON TAXES PAID BY BANKS THAT FAILED TO MAKE RETURNS WITHIN THE TIME PRESCRIBED BY LAW.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 4, 1874.

*W. A. Owesney, Esq., Prosecuting Attorney of Jefferson County:*

DEAR SIR:—In your letter of January 30th, you inquire in substance whether a county auditor is entitled to five per cent. as "tax omission fees," on taxes paid by banks which failed to make their returns "*within the time required by law.*"

I think not. The law intends that reward for diligence in detecting errors and omissions in the *returns of assessors*, which result in correction to increase the duplicate. Banks and certain other companies make their returns directly to the auditor and it is his duty to see that they make their returns as required by law, and in case of their failure to apply the penalty. *As to them he is the assessor.* To hold that he would be entitled to the "omission fee" in case where they failed to make the return within the period fixed by the statute, and for that reason, whether such failure be his or their fault (and it might be that of either) would be to offer a reward to him for *negligence*, instead of for *diligence* in duty. Such is not, in my opinion, the true interpretation of the act of May 6, 1869 (O. L. 66, p. 122-3).

Very respectfully,

JOHN LITTLE,  
Attorney General.

*School Lands Reverted to the State in Trust Should Be  
Continued on the Duplicate.*

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SCHOOL LANDS REVERTED TO THE STATE IN  
TRUST SHOULD BE CONTINUED ON THE  
DUPLICATE.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 4, 1874.

SIR:—In your letter of January 27, you request my opinion upon matters presented in a letter you inclose from the auditor of Paulding County, returned herewith. The questions in substance presented amount to these:

1. Where a county auditor proceeds to sell school lands, under section 15 of the act of April 16, 1852 (S. & C., 1342), and fails to receive a bid for the amount at which they could sell, shall such lands be continued upon the duplicate and charged with the taxes each year, notwithstanding their reversion to the State in trust, etc.?

2. When sold, shall the first money realized be applied to the payment of "ditch tax" due and other taxes?

The former question should, in my opinion, under Sec. 2 of the act of April 8, 1865 (S. & C., p. 757), be answered in the affirmative.

As to what disposition should be made of the proceeds of sale, that might depend upon the state of fact existing at the time of sale. It may be, under certain circumstances, that to give effect to some of the provisions of said section 2 would be to disregard the requirement of of section 1, Art. 6 of the constitution. I would not now undertake to say—which, of course, could not be done. In this particular instance, the question is not yet a practical one. The sale has not yet been made. I think it, therefore, best (with your permission), to defer consideration of the second interrogatory until sale is actually made and the facts then existing given.

This course seems especially advisable in view of the

*Transfers From One State Fund to Another State Fund  
Unconstitutional; Also as to County Funds, Etc.*

fact stated in the auditor's letter that legal proceedings are imminent in that county, in which this question will be involved, whose result it is not well to anticipate.

Very respectfully,

JOHN LITTLE,

Attorney General.

Hon. James Williams, Auditor of State.

TRANSFERS FROM ONE STATE FUND TO  
ANOTHER STATE FUND UNCONSTITUTION-  
AL; ALSO AS TO COUNTY FUNDS, ETC.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 10, 1874.

*Hon. George L. Converse, Speaker of the House of Repre-  
sentatives:*

SIR:—On the 4th instant, I had the honor to receive from the House of Representatives, H. R. No. 61, which reads as follows:

“Whereas, the sinking fund commissioners, in their last report, express a doubt of the legality of transferring any portion of the sinking fund to any of the other State funds, therefore.

“Resolved, That the attorney general be required to report to this house his opinion whether money collected by taxation for the imbursement of any of the State funds, or a specific purpose, can be constitutionally transferred to another fund, or used for any other purpose, than that for which it was collected so long as the purpose or purposes for which it was collected exist.”

Having given the resolution consideration I have to say in response thereto:



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*Transfers From One State Fund to Another State Fund  
Unconstitutional; Also as to County Funds, Etc.*

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The resolution appears to present two questions :

1. Can money collected by taxation for the imbursement of a *State fund* be constitutionally *transferred* to another fund?

2. Can money collected by taxation for a *specific purpose* be constitutionally *used* for another purpose, while such specific purpose shall exist?

The former, of course, relates to the transfer of money from one State fund to another State fund, to be expended for the purpose of the latter. An opinion from this office given in 1869, hereinafter alluded to, discusses, and as I think, answers this inquiry.

The second question is not restricted to money raised by taxation for State purposes, but appertains to that raised for county and municipal as well. It is general in its scope, and, in the view herein taken of the subject, its answer involves an answer likewise to the first interrogatory; for money collected to *imburse a State fund* is money collected for a *specific purpose*. The general question will, therefore, be considered.

The provision of the constitution bearing directly upon the inquiry reads thus: "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied." (Art. 12, Sec. 5).

The last clause of this section, upon the true meaning of which depends the answer to be given to the question presented, does not seem to have been discussed in the convention which framed the constitution, nor to have come under review by the Supreme Court.

Some extrinsic light, however, is shed upon it by the debates in the convention upon cognate provisions, and by judicial opinion respecting them.

The provisions of that instrument which treat of specific funds and the applications to be made thereof, aside from the section quoted, are these :



*Transfers From One State Fund to Another State Fund  
Unconstitutional; Also as to County Funds, Etc.*

Art. 6, Sec. 1. "The principal of all funds arising from the sale, or other disposition of lands or other property, granted or entrusted to this State for educational and religious purposes, *shall forever be preserved inviolate and undiminished*; and the income arising therefrom, *shall be faithfully applied to the specific objects of the original grants or appropriations.*"

Art. 8, Sec. 1. "The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; *and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.*"

Sec. 2. "In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to redeem the present outstanding indebtedness of the State; *but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever*; and all debts incurred to redeem the present outstanding indebtedness of the State shall be so contracted as to be payable by the sinking fund hereinafter provided for, as the same shall accumulate."

Section 9, same article, after treating of the duty of the sinking fund commissioners, adds: "And the General Assembly shall make all necessary provision for raising and disbursing said sinking fund in pursuance of the provisions of this article."

Sec. 10. "It shall be the duty of said commissioners *faithfully to apply said fund*, together with all moneys that may be, by the General Assembly, appropriated to that object, *to the payment of the interest as it becomes due, and*

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Unconstitutional; Also as to County Funds, Etc.*

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*the redemption of the principal of the public debt of the State, excepting only the school and trust funds held by the State."*

Said last clause of section 5, article 12, and the several clauses italicized of the other sections quoted, though varying in phraseology, are substantially identical in meaning, as respects the *application* of the several funds under consideration.

Thus the language: "every law imposing a tax shall state distinctly the object of the same, *to which only it shall be applied,*" means precisely the same as if it were: "every law imposing a tax shall state distinctly the object of the same, *and it shall be faithfully applied to the specific object for which it was raised,*" or as if it were: "every law imposing a tax shall state distinctly the object of the same, *and the money arising from such tax shall be applied to the purpose for which it was obtained and to no other purpose whatever.*"

What the convention *intended* by the restrictive phrase "shall be applied to the purpose for which it was obtained \* \* \* and to no other purpose whatever" may be gathered, aside from the language itself, from the debate when said article 8 was under consideration.

Mr. Nash, at that time said: "Under the provision that the same borrowed shall be applied to the purposes for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever; this money may be obliged to lie unproductive in the treasury for years, until the time arrives when the sums borrowed shall fall due, *and it will not be in the power of the Legislature either by funding or by the application of it to the payment of other portions of the debt of the State, as they fall due, to realize any benefit from its employment.*" He proposed an amendment to obviate the difficulty and the article was re-committed. (See Debates, Vol. 2, p. 362). Again (p. 425) when the article was under consideration, he said that he

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"desired to vote for this bill, but could not vote for the second and third sections as they stand. The committee had made no effort to get the Legislature out of the difficulty he had pointed out in case they have a surplus on hand. If it cannot under the circumstances be applied to the contingency for which it was borrowed, nor to pay the debt created by its loan, it must lie unproductive in the treasury until that debt falls due."

Mr. Hawkins: "If it cannot be applied to the purpose for which it was raised, can it not be appropriated to some other?"

Mr. Nash: "No. If the committee had made the amendment I suggested it might have been so. At present the provision will do no good, but only mischief. *The words are words of restriction, and will inevitably tie up the money from all uses except those that are indicated.*"

Mr. Hawkins said further: "If the words had been omitted it would have permitted the money to be raised by the Legislature *under pretense of one purpose to be applied to another.* To remove the objections of the gentleman would be to increase other objections tenfold. Money might be raised to pay a debt and applied to another purpose *for one time at least; and if for one time, for another.*"

Mr. Stanbery said: "He thought the construction of the gentleman from Gallia (Mr. Nash) was inevitable. Suppose the State, to repel a threatened invasion, borrowed a million of dollars, for ten years. The danger passes away. There is a surplus of \$900,000. What is to be done? It cannot be applied to the payment of the debt, because it is not due. It cannot be applied to repel an invasion, because the invasion has not come. *It cannot be applied for any other purpose.* What then is the objection that this money go into the general fund and be applied to the sinking fund for the payment of our other debt. He would at the proper time move an amendment for the purpose."

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Mr. Hawkins said: "All these things might be avoided with a little prudence. In the first place, he would not borrow the money till the invasion occurred. In the second place, he would borrow it on such terms that he might pay it back if we did not want it."

Mr. Larsh said: (p. 426) "He was opposed to the amendment proposed by the gentleman from Gallia. He did not desire to give the General Assembly the power under the pretence of supplying a deficiency in the revenue, to borrow money, and apply it to another purpose. *He did not want such a power to reside anywhere.* As a member of the committee he would say the section expressed precisely what he wanted it to express."

Mr. Swan said: "He conceived the section to express precisely what it ought to express. \* \* \* He should oppose the amendment."

Mr. Hitchcock, of Geauga, opposed any modification of the proposition. "We cannot foresee all the circumstances," he said, "that may occur in the future." \* \* \* "He would therefore prefer to have the report remain as it is."

The motion to recommit for the purpose of amending as desired by Mr. Nash was lost, and the restrictive words were retained by the emphatic vote of 69 to 25.

This discussion and action of the convention occurred before the 12th article came up for consideration; and we may well conclude that the clause of the 5th section thereof, relative to the application of taxes, was acquiesced in without opposition or debate, for the reason that the principle involved was regarded as already settled and determined upon by the convention. In view of the foregoing facts, it may be safely said that, in the intendment of its framers, the words of this clause, in the language of Judge Nash, are absolutely "words of restriction."

The purpose of the restrictions in the sections quoted, seems to be not only to preserve the public faith and pre-

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vent the raising of money "under the pretence of one purpose to be applied to another," but also, in connection with our financial provisions, to secure a *direct and immediate accountability to the people of the public authorities* having power to raise and disburse public money. The theory is: If public functionaries having such power desire to expend public funds, they must distinctly state the purpose, and tax their constituents for it. If the tax be oppressive or unwise their constituency knows at once where to fix the responsibility. Herein is a strong safeguard against unwarrantable expenditure. If money could, for all purposes, be raised by borrowing, either from a replete public fund, or from private sources, and the tax payers' pay-day thus postponed, this accountability would be frustrated and this safeguard impaired, and thus one important purpose of the restrictions aforesaid would be foiled. Upon this point the Supreme Court, in the case of the State vs. Medbery et al., (7 O. S., 522), commenting upon the financial system of the constitution, and particularly upon the sections quoted, Judge Swan, who had been a member of the constitution, delivering the opinion say:

"There is a wholesome, practical wisdom in the two constitutional provisions, which require appropriations for expenditures and the assessment of taxes to meet them, to be made by the same General Assembly. Each member is thus *compelled*, during his official term, to visit upon his constituents the pecuniary consequences of his sanction of liabilities to be incurred and of appropriations made, and he places himself and his consummated acts in direct and immediate communication with his tax-paying constituents at the right time, and in a manner which servile partisans may heed, and corrupt and mercenary leaders understand. Payment not only goes hand in hand with expenditures, but wasteful expenditures, *instead of being concealed or mitigated by delay of payment*, or the creation of debts, must be immediately made known to the people, through the demands of the tax-gatherer for the money. This system is wholesome

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in its effect upon those who control and can squander the taxes. They are made sensible, that their delinquencies will be known by being immediately felt by the constituents. It is wholesome in its effects upon the people. Their self-interest is provoked to prompt scrutiny into the conduct of their public agents. Aside from its economical effects, it is a wise policy. It tends to protect the State from the corruption which inevitably follows generous expenditures, an evil much greater than unnecessary and burdensome taxation."

But these beneficial results which the court seem to think inevitably flow from the constitution, could not attend its execution always if, on account of transfers or otherwise, taxation is permitted to lay behind expenditures. One of the distinctive features of the constitution is the complete and thoroughly secure manner in which it protects the several funds created or authorized by it, from misapplication, and dedicates them to the use intended. The school fund, the sinking fund, and the several funds raised by taxation for distinct objects, are each and all alike, guarded as fully, as it is the power of language to do, against any application or appropriation other than that for which they are severally designed.

But aside from other kindred provisions of the constitution, the debates of the convention, and the reasoning of the Supreme Court, it is difficult to conceive how said section 5 could have been framed better or more forcibly to express the idea of restricting absolutely the application of taxes to the purpose for which they were levied. "Every law imposing a tax shall state distinctly *the* object of the same, *to which ONLY* it shall be applied."

If a tax were raised for an object and applied even "temporarily," to another object, it could not be truthfully said of it, that it was applied to the former object *only*, if at all, indeed. If transfer can be made from one fund for the uses of another, how long can the transfer remain? In what

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amount? How can money *expended* be re-transferred to the fund from which it was taken? To repay the depleted fund from the replenished one would be to perpetrate a second violation of the constitution to cure the first. In short, the power to transfer from, is the power permanently to divert a fund. There is no logical intermediate stopping point. Money raised from the asylum fund to be expended for the care of the insane and other unfortunates, under a tax which the people cheerfully paid, might be wholly diverted and used to add a fourth story to the state house, with all the elaboration and gorgeousness that a Mullet could devise, while the asylum remained without support; and the asylum fund might be replenished again by a transfer of the sinking fund, leaving the sinking fund commissioners powerless to execute the constitutional behest "*faithfully to apply*" the later fund to the payment of the interest and principal of the public debt.

From the foregoing considerations I have no question that the framers of the constitution intended to restrict the application of taxes absolutely to the purposes for which they were collected, notwithstanding money may sometimes lie idle for a time in the treasury in consequence; and that they succeeded admirably in embodying that intention in said section 5, it is but just to them to admit.

It follows that, in my opinion, the interrogatories contained in said resolution should be answered in the negative.

In coming to this determination I have not been unmindful that the contrary view has, on several occasions, received legislative and departmental recognition. This fact, indeed, is my apology for the length of this communication.

In support, however, of the above conclusion, I respectfully direct the attention of the House of Representatives to an opinion pertaining to the subject by my distinguished predecessor, Hon. William H. West, given to the auditor of



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*Mutual Protection Association of Ohio.*

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state, under date of October 12, 1869, and contained in his bi-ennial report for the years 1868-9.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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MUTUAL PROTECTION ASSOCIATION OF OHIO.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 11, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—You inclose in yours of the 9th instant, the certificate of the incorporation of the "Mutual Protection Association of Ohio," and ask my opinion whether the association, if organized under the act of April 20, 1872, (O. L., Vol. 69, p. 82) can "do a life insurance business," also whether the purpose of the organization is properly stated.

An association, organized under said act, cannot in my opinion "do a life insurance business" as implied by the ordinary use of that phrase. Its operations are confined strictly to the purpose of its organization, namely: "for the purpose of mutual protection and relief of its members and for the payment of stipulated sums of money to the families or heirs of the deceased members of such association." The certificate should disclose the purpose substantially in these, the words of the statute. This not being done in the paper submitted the purpose is insufficiently stated.

Very respectfully,

JOHN LITTLE,  
Attorney General.



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*Election to an Office Invalid When the Sheriff Fails to Give  
Proper Notice.*

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ELECTION TO AN OFFICE INVALID WHEN THE  
SHERIFF FAILS TO GIVE PROPER NOTICE.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 11, 1874.

*Hon. William Allen, Governor:*

SIR:—You submit the paper of John Clark, an elector of Columbiana County, asking that a commission be issued to John Spence as surveyor of said county, it being claimed that he was elected to the office of Surveyor at the October election, 1873. The facts stated are in substance these:

Smith, the surveyor of said county, resigned on the 18th of September, 1873; the County Commissioners did not accept his resignation till a week before the election; the sheriff by direction of the commissioners did not give notice of an election of county surveyor in his proclamation; and about 300 votes were cast for said Spence for said office—no one else receiving any votes. The inquiry is: Should a commission issue to said Spence?

I think clearly not. The sheriff did rightly in not giving notice in his proclamation of the vacancy; for, under the holding in the case of *The State vs. Linn et al*, 12 O. S., 614, there *was no vacancy* in the office till the resignation was accepted.

In *Foster vs. Scorff*, 15 O. S., 532, it was held that, where the sheriff had failed to give notice in his proclamation of a vacancy in the office of the probate judge (when it was his *duty* to have given the notice) and in consequence it was not generally known till 3 o'clock in the afternoon of election day, that such office was to be filled, and a candidate received 913 votes out of 4,339 cast in the county—a much larger proportion than in this case—the election was invalid. The holding was upon the ground that such an election would operate as a *fraud* upon the electoral body.

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*Note Given to a Mutual Fire Insurance Company is Binding and the Makers Liable for Assessments Made Previous to the Issue of a Policy to Them.*

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It would be none the less a fraud because the sheriff from whatever motive, failed to perform his duty, and the election could be none the less invalid.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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NOTE GIVEN TO A MUTUAL FIRE INSURANCE COMPANY IS BINDING AND THE MAKERS LIABLE FOR ASSESSMENTS MADE PREVIOUS TO THE ISSUE OF A POLICY TO THEM.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 12, 1874.

SIR:—In yours of the 6th you inclose insurance note of West & \_\_\_\_\_ to the Mansfield Mutual Fire Ins. Co., for \$500, and ask whether it “is binding upon them to that extent as makes them liable for assessments previous to issuing to them a policy.”

I think it is binding upon them. The fact that they deferred making an application for a policy, and a policy therefore failed to be issued within thirty days after the organization of the company, (as was the case here) will not relieve the makers from liability. They could not plead their own neglect against the right to assess them. The note and accompanying papers are herewith returned.

Very respectfully,

JOHN LITTLE,  
Attorney General.

Hon. Wm. F. Church, Superintendent Insurance.

*Securities on Which Interest Has Been Paid Not to be Reserved in Estimating Profits of Insurance Company—Prosecuting Attorneys Not Allowed Fees on Costs Collected From the State.*

SECURITIES ON WHICH INTEREST HAS BEEN PAID NOT TO BE RESERVED IN ESTIMATING PROFITS OF INSURANCE COMPANY.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 12, 1874.

*Hon. W. F. Church, Superintendent Insurance:*

SIR:—In answer to yours of the 5th inst., I have to say that in my opinion, under the 2d clause of the 14th section of the insurance act chap. 1, (O. L., Vol. 70, p. 149), the securities mentioned on which the interest *has* been paid during the preceding year, are not to be reserved in estimating profits, etc.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

PROSECUTING ATTORNEYS NOT ALLOWED FEES ON COSTS COLLECTED FROM THE STATE.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 21, 1872.

*A. B. Putnam, Prosecuting Attorney, Etc., Fremont, Ohio:*

DEAR SIR:—In answer to yours of the 19th inst., I have to say that prosecuting attorneys are not entitled to a percentage on costs collected from the State in penitentiary

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*Costs for Apprehending Fugitives From Justice Paid Only  
in Cases of Felony and After Conviction.*

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cases. They can only be allowed such percentage on costs collected of defendants.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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COSTS FOR APPREHENDING FUGITIVES FROM  
JUSTICE PAID ONLY IN CASES OF FELONY  
AND AFTER CONVICTION.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 21, 1874.

*S. B. Robinson, Esq., Prosecuting Attorney, Washington  
Co., Marietta, Ohio:*

DEAR SIR:—The State pays the costs and expenses incurred in apprehending fugitives from justice, on requisition of the governor, only in cases of felony, and then only after conviction and sentence to the penitentiary—the same to be taxed and paid as other costs. (See Sec. 2, Act of 1871, p. 75).

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Prosecuting Attorney Should Prosecute a Defaulting  
County Treasurer's Bond.*

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PROSECUTING ATTORNEY SHOULD PROSECUTE  
A DEFAULTING COUNTY TREASURER'S  
BOND.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 21, 1874.

SIR:—Yours of the 20th inst. received. You ask if it is your duty to bring suit upon the bond of your defaulting county treasurer, etc.

When a suit is directed as provided in 25th section of treasurer's act, (S. & C. 1587), the State being a party, it is the duty of the prosecuting attorney to prosecute the action on the State's behalf. So, of course, it is his duty to institute suit when directed by the court, as provided in the 4th section of the act February 8, 1847 (S. & C. 1593).

It is not his *duty* though it may be his *right* as a citizen under the 66th section of the code, to prosecute a suit *on his own motion* on such bond.

Very respectfully,

JOHN LITTLE,

Attorney General.

R. B. McCrory, Esq., Pros. Atty., Mansfield, Ohio.

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*"Purpose" for Which Foreign Insurance Companies Are  
to Compute Capital Stock, Etc.*

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"PURPOSE" FOR WHICH FOREIGN INSURANCE  
COMPANIES ARE TO COMPUTE CAPITAL  
STOCK, ETC.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 26, 1874.

*Hon. W. F. Church, Superintendent of Insurance.*

SIR:—In answer to yours of 24th inst., I have to say that in my opinion the "purpose" for which foreign insurance companies are to compute their capital at the aggregate of their deposits, etc., mentioned in section 21 of the act of April 27, 1872, as amended April 24, 1873 (Laws p. 152), is to enable the insurance commissioner to determine as to the "*solvency and ability of any such company to meet all its engagements at maturity,*" with a view of issuing a renewal certificate, or not, as the case may demand, as provided in Sec. 22.

In determining this matter the commissioner should exercise of course a sound discretion. I discover no fixed rule in the act for his guide.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Foreign Insurance Companies Must Have Their Capital  
Stock Paid Up Before Doing Business in Ohio.*

FOREIGN INSURANCE COMPANIES MUST HAVE  
THEIR CAPITAL STOCK PAID UP BEFORE  
DOING BUSINESS IN OHIO.

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 28, 1874.

*Hon. W. F. Church, Superintendent Insurance:*

Sir:—You ask my opinion whether a life insurance company of another state is required to have its entire capital stock paid up before licensed to do business in this state, under Sec. 8, Chap. 2, of the insurance act.

My attention was directed to this matter yesterday by Mr. Geo. W. Kretzinger, of Chicago, and I then on a glance at the statute was inclined to the view that the capital should be paid up only *as required by the State in which such company is organized*, and so stated to him. But upon a more careful examination of the law I am disposed to the opinion that I was mistaken, and that the capital of such company should be fully paid up, etc.

Very respectfully,

JOHN LITTLE,  
Attorney General.

Springfield Publishing Company and Girard Rolling Mills.SPRINGFIELD PUBLISHING COMPANY AND GIRARD ROLLING MILLS. 

The State of Ohio,  
Office of the Attorney General,  
Columbus, February 28, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—In answer to yours of the 26th inclosing certificate of increase of Springfield Publishing Company, I have to say:

1. This not being a manufacturing company, it is not entitled to the benefits of the act of April 4, 1861.

2. While it would be altogether the better practice to incorporate in the certificate like the one inclosed a statement showing that the increase had been apportioned *pro rata* among the stockholders, I think a certificate would be good without such statement, if it contained the particular matter specifically required by the act of April 12, 1865 (S. & S. 237).

3. You also inclose certificate of Girard Rolling Mills, to extend its business, and ask whether the manufacture of "general hardware" would be in the same line of business, with the manufacture of "pig and other kinds of iron." In the one, iron is manufactured; in the other articles made of iron, etc., are manufactured, I should say they would be two independent and distinct branches of business, and not in the "same" line.

Very respectfully,

JOHN LITTLE.

Attorney General.



*A Person Can Hold the Office of Justice of the Peace, County Commissioner and Notary Public at Same Time—Taxation of Savings Societies Organized Under the Act of 1867.*

A PERSON CAN HOLD THE OFFICE OF JUSTICE OF THE PEACE, COUNTY COMMISSIONER AND NOTARY PUBLIC AT THE SAME TIME.

The State of Ohio,  
Office of the Attorney General,  
Columbus, March 5, 1874.

*W. A. Owsney, Esq., Pros. Atty., Steubenville, Ohio:*

DEAR SIR:—I know nothing in the law to prevent one from holding the office of justice of the peace, county commissioner and notary public at the same time. In the absence of a statutory prohibition there is no legal objection to one's doing so.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

TAXATION OF SAVINGS SOCIETIES ORGANIZED UNDER THE ACT OF 1867.

The State of Ohio,  
Office of the Attorney General,  
Columbus, March 3, 1874.

*Hon. James Williams, Auditor of State:*

DEAR SIR:—You submit papers pertaining to the Miami valley, and the Cincinnati savings societies, together with your letter to the auditor of Hamilton County, written January 1, 1874, respecting their taxation and ask my opinions of the matters embraced, and particularly of the correctness of the view taken in your letter, etc. It seems that these companies were organized under the act of April

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*Taxation of Savings Societies Organized Under the Act of 1867.*

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16, 1867 (S. & S., 181). This act was repealed by the act of February 26, 1873 (O. L., Vol. 70, p. 40); but the rights of companies organized under the former act were preserved intact, and they are permitted to continue as though no repeal had been made.

These companies not having re-organized under the act of 1873, are governed by that of 1867, by virtue of a saving clause in the former. The whole question presented is: In whose name are the deposits and property of the companies taxable?

Undoubtedly you are correct in saying that "such corporations are to return for taxation their taxable assets the same as any individual person." That is only saying what the constitution (Art. 13, Sec. 4) says in other words, namely: "The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals."

But the question remains in these cases: what constitute the "taxable assets" or their "property?"

1. Whatever is reserved under "reasonable expenses" by virtue of Sec. 16 of the act 1867, and is on hand on the day preceding the second Monday of April, and whatever property of every description is then on hand having been purchased and charged to "expenses" are taxable assets and must be returned for taxation by the companies.

2. Whatever is "accumulated" and invested as a "surplus fund" under section 20, and on hand on second Monday is assets, etc., and should be returned for taxation by the companies.

3. Money deposited and subject *in fact* to be withdrawn on demand should be returned for taxation by the depositors as *moneys*; other deposits should be returned by depositors for taxation as *credits*.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Saving Societies Organized Under the Act of 1873 Should Be Treated as "Banking Associations" as to Taxation—Bonte Cordage Co.; Associations to Manufacture Cordage Outside of the State Cannot be Incorporated.*

SAVING SOCIETIES ORGANIZED UNDER THE ACT OF 1873 SHOULD BE TREATED AS "BANKING ASSOCIATIONS" AS TO TAXATION.

The State of Ohio,  
Office of the Attorney General,  
Columbus, March 12, 1874.

*Hon. James Williams, Auditor of State:*

DEAR SIR:—In my opinion corporations created under the provisions of the act "to incorporate savings and loan associations," passed February 26, 1873, should be treated as to taxation, as "banking associations" under the act of April 16, 1867, (S. & S., 763).

Very respectfully,  
JOHN LITTLE,  
Attorney General.

BONTE CORDAGE CO.—ASSOCIATIONS TO MANUFACTURE CORDAGE OUTSIDE OF THE STATE CANNOT BE INCORPORATED.

The State of Ohio,  
Office of the Attorney General,  
Columbus, March 24, 1874.

*Hon. A. F. Wikoff, Secretary of State:*

SIR:—You inclose, in yours of yesterday, the certificate of incorporation of the "Bonte Cordage Company" associated "for the purpose of engaging in and carrying on general business in the manufacture of cordage," the

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*Bonte Cordage Co.—Associations to Manufacture Cordage  
Outside of the State Cannot Be Incorporated.*

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"manufacturing establishment" to be in *Dayton, Campbell County, Kentucky*, and ask my opinion whether such a company can be incorporated under our laws for thus manufacturing such product outside the state.

This certificate is framed and sought to be filed under Sec. 80 of the general corporation act which section provides that "a copy of such certificate duly authenticated by the secretary of state shall be forwarded by him to the recorder of every county in which such manufacturing establishment, or any branch thereof, having a place of doing business, may be situate; and every such certificate shall be recorded by the recorder of deeds, in a book to be provided for that purpose, in every county in which such manufacturing company, or branch thereof, may be located." As the Legislature, of course, would not undertake to impose any duty upon recorders of deeds (or others) of another state, it must be that the requirement to designate in the certificate, "the name of the place where said manufacturing establishment, or any branch thereof \* \* \* shall be located," is not complied with unless such "place" be within this State. In other words, place as here used, means a place within the State of Ohio.

It cannot be supposed that the law would, for illustration, require the secretary of state to forward a copy of this certificate to the recorder of deeds of Campbell County, Ky., (if there be such officer there), for record; much less, that it would undertake to impose upon such recorder the duty to record the same, and that too "in a book to be provided for that purpose."

There are other considerations bearing upon this question that are of sufficient weight to require a negative answer to it; but the one state—the implication of the statute itself—is sufficient. In my opinion, therefore, companies for the manufacture of cordage outside of Ohio cannot be incorporated under our laws. It makes no sort

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*Dayton Insurance Company—Insurance Companies Organized Under Special Charters are Amenable to Any Provision of General Law, Obedience to Which Would Not Impair Their Special Privileges.*

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of difference that those executing the certificate, as in this case, have secured a record to be made thereof in the county outside the State where it is proposed to establish the manufactory.

Very respectfully,

JOHN LITTLE,

Attorney General.

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DAYTON INSURANCE COMPANY—INSURANCE COMPANIES ORGANIZED UNDER SPECIAL CHARTERS ARE AMENABLE TO ANY PROVISION OF GENERAL LAW, OBEDIENCE TO WHICH WOULD NOT IMPAIR THEIR SPECIAL PRIVILEGES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, March 27, 1874.

*Hon. W. F. Church, Superintendent Insurance:*

SIR:—You, in yours of the 24th inst., inquire whether the Dayton Insurance Company, organized under and by the special act passed February 8, 1851 (O. L., Vol. 49, 191), is in any respect amenable to the general laws regulating insurance companies, and if so, what course to pursue, in view of its refusal to report, etc.

This company being organized by special charter under the old constitution has rights which cannot be disturbed by the Legislature. In fact, "every valuable privilege given by its charter and which conduced to an acceptance of it, and an organization under it, is a contract which cannot be changed by the Legislature," is the language of Judge McLean in 4th Howard. This appears to be the settled

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*Taxes Can Be Levied for Benefit of Agricultural Societies.*

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law. But any requirement of the general law which does not impair any such privilege, should, I am inclined to think, be complied with by the company. The holdings have not gone to the extent of placing such corporations as this outside the pale of legislation.

The company, therefore, in my opinion, is subject to any and all requirements of the general law, obedience to which would not impair such privilege.

But as the question involved is an unsettled one in this State at least, I should think it unadvisable for the commissioner to take any steps to enforce obedience by the company to any provision, prior to a judicial determination of the question, except such, of course, as may be necessary to bring the matter before the courts.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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TAXES CAN BE LEVIED FOR BENEFIT OF AGRICULTURAL SOCIETIES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, April 3, 1874.

*Hon. George L. Converse, Speaker of the House of Representatives:*

SIR:—On the 26th ultimo, I had the honor to receive from the House of Representatives, H. R. No. 91, adopted on the 23d ultimo, which reads as follows:

“Whereas many members of the House of Representatives have doubts as to the legality of enactments authorizing commissioners of counties in this State, to levy taxes upon the taxable property of their respective counties to be

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*Taxes Can Be Levied for Benefit of Agricultural Societies.*

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used in paying the debts and improving the grounds of agricultural societies, therefore,

“Resolved, That the attorney general be required to report to this house at an early day his opinion whether such societies come under the restrictions of section (6) Article (8) of the constitution, or not.”

In response I have to say:

The section of the constitution referred to prohibits the General Assembly from authorizing any county, town, or township to raise money for, or in aid of, or to loan its credit to any joint stock company, corporation or association whatever.

The question presented then, is whether “agricultural societies” are joint stock companies, corporations or associations within the meaning of that section.

Under our laws agricultural societies may be organized and become bodies corporate, for private as well as public purposes. (See S. & S., pp. 5 and 166, and S. & C., pp. 61-7.) As to those organized for private ends, for the benefit of the corporators or stockholders, and which are not amenable to the provisions of the “Act for the encouragement of agriculture,” and acts amendatory thereof, I think they clearly fall within the class of societies mentioned in said Sec. 6, and cannot, therefore, receive aid from county treasurers. But as to those organized for public purposes alone under the provisions of the act named, I am disposed to the opinion that they do not fall within that class.

They are corporations it is true, made so by the statute, but that fact is not determinative of the question under consideration. The sub-divisions of the State named in that section and boards of education, all exercise corporate powers and most of them are by express provision of law made bodies corporate; yet no one would contend that public aid and credit are inhibited to them on that account.

Agricultural societies so organized are formed, not for the special benefit of those organizing them, or with view to

*Taxes Can Be Levied for Benefit of Agricultural Societies.*

gain, but for the general improvement and material welfare of their respective counties or districts.

They are a means which the State uses in and through the county sub-divisions "for the improvement of soils, tillage, crops, manures, implements, stock, articles of domestic industry and such other articles, productions and improvements" as the public has an interest in; just as boards of education are a means which it uses to promote general education. Every citizen may have a voice in their management and conduct, as he may have in the management and conduct of his town, township or county affairs. They are required to publish accounts of their doings, receipts, etc., and annually through the state board of agriculture to report to the General Assembly.

In conjunction with that board they perform a distinct part in the economy of the State government—how necessary or desirable that part is, it is not material here to inquire. The law authorizing their existence is the expression in part of the public power of the State which has been said to embrace "all those general laws of internal regulation which are necessary to secure the peace, good order, health, comfort and welfare of society." This act was in existence, as were the societies organized under it, years before the adoption of the present constitution. Public money had been expended for their use. Had it been the intention of the framers of that instrument, to discontinue such aid, or rather to do away with the agency of such societies in the carrying out of the internal policy of the State, the convention would certainly have said so in unmistakable terms. The debates disclose no intimation that such a thing was contemplated or even thought of.

The doings or misdoings of agricultural societies were not among the mischiefs sought to be cured by the section.

"The mischiefs which this section interdicts," says the Supreme Court, in *Walker vs. Cincinnati*, 22., "is a business partnership between a municipality, or sub-division of the State and individuals or private corporations or associa-



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*Taxes Can Be Levied for Benefit of Agricultural Societies.*

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tions." But there is no partnership here. There is but one party and that is the State (or its sub-divisions). The societies are its simple agencies without private interest for the carrying out of its purposes.

I am, therefore, of the opinion, as before intimated, that agricultural societies formed under the act for the encouragement of agriculture, and not for private gain or individual benefit, are not included among those enumerated in said section 6, article 8, of the constitution.

Such, however, as are organized and are carried on in whole, or in part, for private gain, do come within the inhibition of the section.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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## DIRECTIONS TO RESTRAIN CONTRACT.

The State of Ohio,  
Office of the Attorney General,  
Columbus, April 8, 1874.

*Charles E. Brownson, Esq., Prosecuting Attorney Defiance,  
Ohio:*

DEAR SIR:—In my opinion, under the circumstances detailed in your letter of March 28, it is your duty to proceed, under the act of February 20, 1873, to restrain the completion or execution of the contract named.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Election of Justice of the Peace in Case of Tie to Be Decided By Lot.*

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ELECTION OF JUSTICE OF THE PEACE IN CASE  
OF TIE TO BE DECIDED BY LOT.

The State of Ohio,  
Office of the Attorney General,  
Columbus, April 14, 1874.

*D. B. Torpy, Esq., Clerk Common Pleas, Marietta, Ohio:*

DEAR SIR:—In your letter of the 7th instant, which I find on my table on returning from a short absence, you inquire how to determine the election of a justice of the peace where there is a tie vote. You say you have such a case with returns unopened.

The 14th Sec. of the act relating to the election of justices of the peace (S. & C. 765) provides that elections under it shall be "conducted in the same manner as is required in the election of members of the General Assembly," and the 32d section of the act relating to the election of state and county officers, as amended March 6, 1873 (Laws, p. 52) provides that in case there shall be no choice of members of the General Assembly, etc., the clerk, auditor and two justices shall determine by lot, on the 8th day after the election, at 10 A. M., "who shall be elected."

I am disposed to the opinion that the election of a justice, under the circumstances named, should therefore, be determined in the way thus provided in respect to members of the General Assembly, etc.

Of course when this reaches you the 8th day will have passed. I should nevertheless proceed under the statute at the earliest day practicable and decide the election by lot, giving each candidate notice of the day and an opportunity to be present.

The day named in the law would probably be held to be directory merely.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Fee of Sheriffs for Serving Writs of Venire Facias in  
Capital Cases.*

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FEE OF SHERIFFS FOR SERVING WRITS OF VE-  
NIRE FACIAS IN CAPITAL CASES.

The State of Ohio,  
Office of the Attorney General,  
Columbus, April 14, 1874.

*Mr. Henry S. Babbitt, Chief Clerk, Auditor of State's  
Office:*

DEAR SIR:—I have given consideration to the matters contained in yours of the 6th instant, and have to say respecting the same:

I have carefully examined the "three views" presented and find myself unable to concur in any of them. The Legislature has (probably by oversight) failed to make provision for the extraordinary services required of sheriffs in serving writs of *venire facias* in capital cases; and having done so, sheriffs, in my opinion, are limited to the fee allowed by law for serving and returning a *venire* for a petit or special jury, to-wit: \$5.00.

What was not clearly in legislative contemplation when the sheriff fee bill was enacted, cannot be supplied by "construction."

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Election Tickets or Ballots—The Law Concerning.*

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ELECTION TICKETS OR BALLOTS—THE LAW  
CONCERNING.

The State of Ohio,  
Office of the Attorney General,  
Columbus April 14, 1874.

*W. W. Towville, Esq., Pros. Atty., Wauscon, Ohio:*

DEAR SIR:—In yours of the 7th instant, you say that, at the recent election in Wauscon, a ticket was voted headed "Democratic Ticket," which was written upon ruled writing paper, with the names of candidates less than a fifth of an inch apart, and ask my opinion as to whether such ballots should be counted.

The act of March 21, 1874, embraces these requirements as to ballots:

1. *Written* ballots must be on plain white paper.
2. *Printed* ballots must be printed (1) with black ink, (2) with a space of not less than one-fifth of an inch between (below) each name, and (3) on plain white news printing paper.
3. On *printed* ballots with a certain designated heading no printed name must appear not found in the regular ballot with such heading.
4. All tickets (written, or printed, or both) must be without any device or mark to distinguish one from another, except the words as the head of the ticket, (and except also, of course, the names on the ticket).

It is made unlawful for any one to print for distribution at the polls, distribute to an elector, or knowingly vote any ballot not printed or written in conformity to the act and any person so offending is liable to a fine of fifty dollars and ten days imprisonment. But the law does not authorize the rejection of the ballot by the judges of election on account of a disregard of any of these requirements, except the third as I have numbered them, to-wit: when a ballot with a certain designated heading shall contain thereon in

*Person Charged With Selling Intoxicating Liquors Cannot be Tried Before Justice of Peace; Law of 1864.*

the place of another a name not found on the regular ticket with such heading, such *name* shall be rejected and not counted.

In no other case can they reject or refuse to count a ballot, or any name thereon, under this law for any violation of it. If its provisions are disregarded in other respects the remedy is to prosecute the offenders—not to reject their votes.

It follows, of course, that the ticket of which you write must be counted.

Very respectfully,

JOHN LITTLE,

Attorney General.

PERSON CHARGED WITH SELLING INTOXICATING LIQUORS CANNOT BE TRIED BEFORE JUSTICE OF PEACE. LAW OF 1864.

The State of Ohio,  
Office of the Attorney General,  
Columbus, April 16, 1874.

*John L. Jones, Esq., Prosecuting Attorney, Jackson C. H., Ohio:*

DEAR SIR:—In answer to your inquiries of the 14th inst., I have to say:

1. Upon a plea of not guilty a justice of the peace has not authority to try and punish offenders under the act of March 10, 1864, to suppress the sale of spirituous liquors within the State upon days of election. (S. & S. 344).

The statute, as it has stood since the adoption of the criminal code, makes no provision for a trial by jury before a justice of the peace in such cases, and a defendant charged with a criminal offense cannot be denied his consti-

*Coal Companies Can Increase Capital Stock, But Can Do so only by Complying With Each Requirement of the Law.*

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tutional right of a trial by an impartial jury. The most the magistrate can do in the case, under that plea, is to recognize or commit in default of bail.

2. It matters not, under that act, whether the accused be the keeper of a saloon, or engaged in the traffic of liquors, or not.

3. Several may be joined in an indictment under the act, where they all participated in its violation.

Yours, etc.,  
JOHN LITTLE,  
Attorney General.

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COAL COMPANIES CAN INCREASE CAPITAL STOCK, BUT CAN DO SO ONLY BY COMPLYING WITH EACH REQUIREMENT OF THE LAW.

The State of Ohio,  
Attorney General's Office,  
Columbus, April 17, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—First—A company incorporated under the laws of this State for the purpose of mining coal may increase its capital stock under the act of April 20, 1869. (Laws, p. 71.)

Second—Such company can increase its capital stock *only* in the mode prescribed by law. The stockholders can waive no requirement of the law with respect to notice or otherwise.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

*Homeopathic Hospital Company of Cleveland—Juries in Continued Capital Cases Should Be Selected Under Amended Section of 1874.*

HOMEOPATHIC HOSPITAL COMPANY OF CLEVELAND.

The State of Ohio,  
Attorney General's Office,  
Columbus, April 17, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—Yours of today inclosing the certificate of the Homeopathic Hospital Company of Cleveland, together with the accompanying letter of Mr. Saunders, is received.

By his letter it appears that a material alteration was made in the certificate by the consent and wish of the corporators after acknowledgment.

This circumstance renders the certificate of such doubtful validity, that I think you should not file it, especially since it will be an easy matter to prepare and have duly executed a proper certificate.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

JURIES IN CONTINUED CAPITAL CASES SHOULD BE SELECTED UNDER AMENDED SECTION OF 1874.

The State of Ohio,  
Attorney General's Office.  
Columbus, April 22, 1874.

*John L. Porter, Esq.; Prosecuting Attorney, Marysville, Ohio:*

DEAR SIR:—Yours of the 21st inst. received. You state that John Reed was indicted at the October term, 1873, of

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*Juries in Continued Capital Cases Should Be Selected Under Amended Section of 1874.*

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the Union Common Pleas Court, for murder in the first degree; that the case was continued till the February term, 1874, jurors having been duly summoned each term, and that the case was again continued to the May term, 1874; and in view of the amendment of the twenty-fifth section of the Criminal Code, by the act of March 30, 1874 (Vol. 71, p. 59), changing the mode of selecting jurors in capital cases, you ask under which section, the original or amended one, you shall proceed to obtain a jury.

The question is one of difficulty and doubt, but upon careful consideration, I am disposed to the opinion that you should proceed under the amended section. It will hardly be that the act of March 30 would operate to "affect pending prosecutions" within the meaning of the act of February 19, 1866 (S. & S. p. 1).

It seems to me that the utmost that could be claimed for the former act is that it might affect the tribunal before which the prosecution is to be had, and not the prosecution itself. A different holding would involve consequences certainly not contemplated by the legislature.

Very respectfully,

JOHN LITTLE,  
Attorney General.



*Sub-Contractors or Material Men Cannot Obtain a Lien  
Against the Agricultural and Mechanical College Build-  
ings; How to Proceed Against the Contractor.*

SUB-CONTRACTORS OR MATERIAL MEN CAN-  
NOT OBTAIN A LIEN AGAINST THE AGRICUL-  
TURAL AND MECHANICAL COLLEGE  
BUILDINGS; HOW TO PROCEED AGAINST  
THE CONTRACTOR.

The State of Ohio,  
Attorney General's Office,  
Columbus, April 23, 1874.

*Henry S. Babbitt, Esq., Treasurer O. A. and M. College,  
Columbus, Ohio:*

SIR:—In your letter of today you inquire whether it be  
"practicable for a sub-contractor or party furnishing mate-  
rials or labor, to file a lien as against the contractor for the  
erection of the college edifice, or other structure upon the  
college farm that shall have binding effect in law upon the  
trustees of the college."

When a sub-contractor or material man performs labor,  
or furnishes material for the building of any structure on the  
college premises, under the contractor, and such contractor  
fails to pay him therefor, and such sub-contractor or material  
man files an attested account of such labor or material un-  
paid for, with the Board of Trustees or the secretary, clerk,  
or agent thereof, it is the duty of the board to notify the  
contractor of such fact, and to retain the amount due for the  
labor or material out of any payments due or to become due  
the contractor at the time or after the filing of such attested  
account, for the use of the laborer or material man.

But in no event can the person furnishing labor or ma-  
terial as aforesaid obtain a lien upon such structures, be-  
cause they are "public property."

Very respectfully,

JOHN LITTLE,  
Attorney General.

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*How Recognizances in Common Pleas Courts Should be Taken.*

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HOW RECOGNIZANCES IN COMMON PLEAS  
COURTS SHOULD BE TAKEN.

The State of Ohio  
Attorney General's Office,  
Columbus, May 6, 1874.

*J. M. Dumenil, Esq., Prosecuting Attorney, Hillsboro, Ohio:*

DEAR SIR:—In yours of the 26th *ultimo* you inquire whether a recognizance taken in term time of the Common Pleas should “be in writing, signed and sealed by the parties and attested by the clerk, and filed with the papers in the case.”

The forty-seventh section of the Criminal Code as amended, 1872, provides that “when any court having cognizance of a crime, shall take a recognizance, it shall be a sufficient record thereof *on the journal* of such court, to enter upon the journal the title of the cause, the crime charged, the name of the party and his sureties thereto, the amount of such recognizance, and the time therein required for the appearance of the accused, and the same shall be considered as of record in such court.” But it provides for the recording in full of such recognizances in the final record where the prosecuting attorney or the accused require it.

When the recognizance is set out in full in the journal of the court (the section does not prohibit that), I think it need not be signed and sealed by the cognizor and his sureties. (See *State vs. West et al.*, 30 O. S. 509; see also as bearing on the subject 14 St., 140 and 21st, 635.)

But where this is not done and only the memo. designated by the statute entered upon the journal, I think, out of abundant caution, in view of the doctrine in the *State vs. Crippen et al.* 1st, 399, and the provision as to the final record, there should be a recognizance taken and filed as you indicate in your inquiry. In such case the clerk should cer-

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*Value of Railroad Bridges Should Be Distributed for  
Taxation.*

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ify under the seal of the court that the recognizance was taken and approved by the court.

Yours,  
JOHN LITTLE,  
Attorney General.

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VALUE OF RAILROAD BRIDGES SHOULD BE DIS-  
TRIBUTED FOR TAXATION.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 8, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—You request an answer from this department as to the question contained in the letter from the auditor of Lucas County of the 30th *ult.*, referred to you for reply.

The inquiry is "whether bridges (of railroad companies) shall be taxed where located or distributed over the entire line of road in the State."

In my opinion their value should be "distributed," as that of other "property" of railroad companies is required to be apportioned by section 5 of the act of May 1, 1862 (S. & S., 767).

Very respectfully,  
JOHN LITTLE,  
Attorney General.

*Indictments for Selling Liquor to a Minor—Appropriation  
for Geological Reports Constitutional.*

INDICTMENTS FOR SELLING LIQUOR TO A  
MINOR.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 8, 1874.

*R. Daugherty, Prosecuting Attorney, Waverly, Ohio:*

DEAR SIR:—In my opinion there is some doubt as to the sufficiency of the form of indictment for selling intoxicating liquors to a minor found in Warren's Crim. Law, p. 649. There should be inserted after "was" and before "a" at the end, the words "then and there"; or if "to be" were inserted for "was" it would certainly be good. Still I strongly question whether it would be held bad as it is. It is not advisable, however, to risk it.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

APPROPRIATION FOR GEOLOGICAL REPORTS  
CONSTITUTIONAL.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 11, 1874.

*Hons. L. L. Rice, Supervisor of Public Printing, and A. T. Wikoff, Secretary of State:*

SIRS:—In yours of the 9th inst., just received, you inquire whether the act of April 20, 1874 (General Appropriation Bill), insofar as it provides "for preparing for publication, engraving, printing, binding and publishing parts one and two of the second volume of the report of the Geolog-

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*Appropriation for Geological Reports Constitutional.*

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ical survey of the State, to be expended under the direction and supervision of the supervisor of printing and secretary of state," and appropriating \$60,000 for the purpose, be constitutional, *said act not having been passed by a vote of two-thirds of the members elected to each branch of the General Assembly*, and the "act providing for a geological survey of Ohio," passed April 3, 1869, having expired by limitation. You inclose a copy of Senate Joint Resolution, adopted April 18, 1874, "providing for the printing and distribution" of the volume on account of which provision was made in the act aforesaid.

I have given consideration to your inquiry, and say, in answer thereto, that in my opinion the act referred to, as to said provision and appropriation, is not unconstitutional.

The appropriation is not for the payment of any "*claim*" within the meaning of that term, as used in section 29, article 2, of the constitution, and did not require a two-thirds vote of each house to render it valid.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Indigent Blind; Construction of the Term; Not Necessary to Advertise for Bids for furnishing Furniture for New Blind Asylum Building.*

INDIGENT BLIND; CONSTRUCTION OF THE TERM; NOT NECESSARY TO ADVERTISE FOR BIDS FOR FURNISHING FURNITURE FOR NEW BLIND ASYLUM BUILDING.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 15, 1874.

*Henry C. Noble and Thomas Bergin, Esqs., Trustees Blind Asylum, Columbus, Ohio:*

GENTLEMEN:—Yours of the 11th instant is before me, in which you inquire:

First—"What is the interpretation of 'the indigent blind in the State,' in the act of February 19, 1874, page 10, O. L.?"

Second—Does the phrase "any one article," etc., as used in section 9 of the act of April 20, 1874 (O. L., p. 90), include furniture for the new asylum building?

As to the former, in my opinion the phrase quoted refers to the blind citizens of the State, who would be unable to purchase the books, etc., the distribution of which is provided for in the act, without impairing their means of comfortable subsistence. You are correct, in my judgment, in your view that the act should be liberally construed in favor of those intended to be benefited by it.

I have more difficulty with the second inquiry. But upon a careful consideration of the language used, with the context, I am disposed to the opinion that the answer to the question should be in the negative. The language is: "Whenever in the opinion of the Board of Trustees more than five hundred dollars' worth of *any one article* will be needed for the use of the institution *during any one year*, then it shall be the duty of said board to advertise for sealed bids to furnish at the institution *such* articles at such times

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*Indigent Blind; Construction of the Term; Not Necessary to Advertise for Bids for Furnishing Furniture for New Blind Asylum Building.*

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and in such quantities as the steward may from time to time direct," etc.

Furniture generally for the new building could hardly be designated "any one article." If its purchase is embraced at all in the language, it must be as to particular articles of furniture, as tables, chairs, bureaus, etc. But my belief is that the law was not intended to cover such purchase. In the first place furniture is not intended for the use of the institution "*during any one year.*" It is for permanent use during an indefinite number of years. Then it is not something to be purchased and supplied piecemeal, "as the steward may from time to time direct," but at once and at the beginning of the occupancy of the building.

In my judgment the advertisement is required only in the cases of the purchase of fuel, flour, meat, coffee and such like articles of current use used yearly in large quantities, and the delivery of which is only desirable when and as needed. The fact that it is made the duty of the steward, whose special charge it is to look after such supplies, to direct the times and amounts of deliveries, etc., supports the view here taken.

While, therefore, it is my opinion that the trustees are not required to advertise, under this section, for bids for such furniture, of course they would have the right independently of it, to do so.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Perjury Cannot be Predicated Upon an Affidavit Taken by a U. S. Officer in Secret Service—How Suits Are to be Brought Against County Officials for Unlawfully Drawing Money From Treasury.*

PERJURY CANNOT BE PREDICATED UPON AN  
AFFIDAVIT TAKEN BY A U. S. OFFICER IN  
SECRET SERVICE.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 16, 1874.

*J. A. Justice, Esq., Prosecuting Attorney, Youngstown,  
Ohio:*

DEAR SIR:—Yours of the 6th came duly to hand, but opportunity to answer soonèr has not been afforded.

You inquire in substance whether perjury can be predicated upon an affidavit taken by a U. S. officer in the secret service, relating to pensions, under the laws of this State.

I think not. The case does not, in my judgment, come within any of the descriptions of perjury as defined by our statute.

Yours, etc.,  
JOHN LITTLE,  
Attorney General.

HOW SUITS ARE TO BE BROUGHT AGAINST  
COUNTY OFFICIALS FOR UNLAWFULLY  
DRAWING MONEY FROM TREASURY.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 16, 1874.

*David Mukison, Jr., Prosecuting Attorney, Henry County,  
Ohio:*

DEAR SIR:—In answer to yours of the 8th instant, I have to say that where the county auditor or county com-



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*Peddlers' Licenses.*

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missioners have unlawfully drawn or obtained moneys from the county treasury, a suit may be commenced against him, or them, in the name of the State of Ohio for the use of the county, in any court having jurisdiction of the matter.

Yours, etc.,

JOHN LITTLE,  
Attorney General.

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PEDDLERS' LICENSES.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 21, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—The inquiries of the auditor of Wood County, to which you request an opinion, are:

First—Are persons selling goods by traveling in wagons, peddlers under the meaning of chapter 68, S. & S.?

Second—And does it make any difference so far as obtaining license from a county auditor is concerned whether the goods belong to a merchant or company residing in and carrying on business of merchant or manufacturer in the State of Ohio?

Third—Is a license issued by authority of said act sufficient for an incorporated village within the State?

My answer to the first and last questions is in the affirmative, and to the second in the negative.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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*Publishing the New Constitution.*

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## PUBLISHING THE NEW CONSTITUTION.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 22, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

DEAR SIR:—In yours of yesterday you state that the Constitutional Convention made it the duty of the secretary of state, on or before the first day of July next, to cause the proposed Constitution “to be printed in one English and one German weekly newspaper of each political party printed in each county, if such paper be printed therein at a cost for each paper of not more than fifty dollars;” and you ask my opinion as to the duty of the secretary “where there are two or more papers of the same political party in one county” which apply for the printing—whether he should invite competition.

The convention named fifty dollars as the maximum sum to be paid any paper for the printing designated, evidently contemplating that in some counties at least it might be done for less. Where the secretary by inviting competition can secure the publication intended, by July 1, for less than fifty dollars in any instance, it, in my judgment, becomes his duty so to do. Moreover in case of the application of two or more papers of the same party from any county, I see no other fair and practicable mode of determining which should be awarded the work. Of course, it would be out of the question for the secretary to undertake, in the limited period named, to determine the relative circulation of such competing papers and to award the printing on that basis.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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*Public Lands; Location of Under Act of 1872.*

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PUBLIC LANDS; LOCATION OF UNDER ACT OF  
1872.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 28, 1874.

*A. B. Newbury, Esq., Secretary Board of Public Works:*

SIR:—In answer to your verbal inquiries I have to say:

First—The members of the Board of Public Works are not entitled to compensation in addition to their salaries, for services in ascertaining and locating public lands, under the act of April 29, 1872. An allowance to them, as *per diem*, could not be included in "expenses" under the act, for which appropriation was made in the act of April 20, 1874 (p. 152).

Second—Said act of April 29 authorizes the board to employ surveyors to ascertain said lands, etc. I see no legal objection to the employment of the resident engineers of the public works for that service, if such employment will not interfere with their duties as such engineers.

Third—The appropriation for "expenses" incurred, will be drawn by the board in the same manner as other appropriations are drawn by it.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Cancellation of Contracts for Central Lunatic Asylum;  
Hershiser, Adams & Co.'s Contract.*

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CANCELLATION OF CONTRACTS FOR CENTRAL  
LUNATIC ASYLUM; HERSHISER, ADAMS &  
CO'S CONTRACT.

The State of Ohio,  
Attorney General's Office,  
Columbus, May 29, 1874.

*T. R. Tinsley, Esq., Architect, Etc.:*

SIR:—In yours of the 22d instant you inclose copies of contract of Hershiser, Adams & Co., for the doing of the carpenter and joiner and of the plastering and stucco work, to the extension wings of the Central Asylum, together with the letter of Hershiser, Adams & Co., asking that their contract for the carpenter and joiner work be canceled for reasons stated. From these it appears that the contract for the carpenter and joiner work was entered into November 3, 1870, under the act of April 3, 1868, the work to be completed by January 1, 1873, that owing to the fact that the other work was not done by that date, it was impossible for H., A. & Co., to do theirs, and on this ground they ask the cancellation of their said contract. It also appears that *since January 1, 1873*, a small portion of said carpenter work has been done.

You say it is a fact that, had the other work been sufficiently advanced, they "could have proceeded with and perhaps prosecuted their contract" within the time named.

In behalf of the Board of Commissioners you ask my opinion as to the duty of the board in the premises, "also as to the process of cancellation and reletting said contract," and upon what basis a settlement shall be made with H., A. & Co. for work done and material furnished by them to date.

The authority to cancel contracts of this nature is given to the board by the act of March 31, 1874, creating it, and is contained in these words: "And the board shall have

*Cancellation of Contracts for Central Lunatic Asylum;  
Hershiser, Adams & Co.'s Contract.*

power, under the advice of the Governor, in case of failure of any contractor to perform his contract, to cancel the same and to make new contracts for the work and material, or either of them, as required by said contracts so canceled, *not exceeding the price fixed by the contract canceled.*"

I suppose the power to cancel a contract, thus conferred, is limited to cases where the other party assents thereto, or has abandoned and refused to perform the same, which amounts to assent; because the question whether a contractor has failed, in any instance, "to perform his contract" is a judicial one, to determine which this board has no authority.

This is certainly the case, at any rate, as to contracts entered into before the passage of said act of March 31. But no question of this kind arises in this instance, as the contractor asks for the cancellation of the contract.

As to the mode of cancellation—this may be done by a resolution to that effect made and entered upon the minutes of the board, the written advice and consent of the Governor and Attorney General thereto, being first had (Laws, 1874, p. 155).

In case of cancellation, the same works cannot be let at a greater price than that named in the canceled contract *plus* "the arrearages thereon" (I. C.); and the cost of such work, being more than three thousand dollars, in my opinion, the board would be subject to the provisions of the act of April 3, 1873, as to advertising and contracting for the same, as well as to the restrictions aforesaid as to price. And the board in such case would be warranted in settling with H. A. & Co. at the contract price for the work done less arrearages.

But if the contract be not canceled, and the contractors should decline to do the work, the board may proceed in relation thereto, under the twelfth section of the act of April 3, 1873 (Laws, p. 106), for "all the rights and powers in the construction and control of said asylum not incon-

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*Cancellation of Contracts for Central Lunatic Asylum;  
Hershiser, Adams & Co.'s Contract.*

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sistent with this act (March 31, 1874,) as have heretofore been conferred by law upon the trustees thereof," are conferred upon the board.

Considering the fact that it is perhaps doubtful whether the board could obtain in the event of canceling the contract, and of the consequent delay in prosecuting the work of the building, I would suggest that it would be the better plan not to cancel it, but to proceed in the event of failure in its performance, and said section 12; especially, since the duty is imposed upon the board of prosecuting the work on the building with reasonable dispatch "so as to bring the entire building as well as suitable parts of it into use and occupancy at the earliest possible day."

While the board, proceeding under this section, would not be *required* to invite competition for the work, it would in my judgment be proper and advisable to do so. It may be worth while to add, that H., A. & Co., not having accepted the provisions of the act of 1873, their contract having been previously made, would not necessarily be bound by the rule of damages therein contemplated for a breach of the contract on their part.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

*Railroad Companies Can Appeal From County Boards of Appraisers to the Auditor of State.*

RAILROAD COMPANIES CAN APPEAL FROM  
COUNTY BOARD OF APPRAISERS TO THE  
AUDITOR OF STATE.

Xenia, Ohio, June 9, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—Yours of yesterday, inquiring whether the sixth section of the act of May 1, 1862 (S. & S., 767), is not “virtually repealed” by section 3 thereof as amended April 14, 1863 (S. & S., 768), and the act of May 16, 1867 (I. C.), is received.

I think not. By comparing the amended section 3 with the original, it will be seen that the changes made consist in fixing the time of meeting of the Board of Appraisers, where notice is not given, etc., in May instead of June, and in requiring reports to be made to the auditor of State and to the General Assembly. These changes do not conflict with or supersede section 6.

As to the act of May 16, 1867. This provides for a different service altogether. The board constituted by it are required to *equalize* valuations, not to *make* them.

The auditor of state under the appeal authorized by the act of 1862 is empowered to appraise and assess the value of the railroad, etc., of the appellant, to increase or diminish the value placed thereon by the Board of County Auditors. The valuation which he fixes, stands precisely as that of the Board of County Auditors, had there been no appeal, and has no other effect.

To hold that section 6 is repealed, would be to leave companies without remedy for excessive valuations, or at any rate, without other remedy than the poor one of having their unjust burdens shared by others perhaps already sufficiently burdened. For the Board of Equalization under the act of 1867 cannot reduce the aggregate of valuations. It would be to take away a remedy for a wrong which this section

*Railroad Companies Can Appeal From County Boards of Appraisers to the Auditor of State; Papers in Due Form.*

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furnishes. This should not be done unless the statute clearly requires such a construction. Repeals by implication are not favored.

In my opinion, therefore, the acts of 1863 and 1867 are not only not in conflict with said section 6, but are in entire harmony with it, and effect should be given to all.

Very respectfully,

JOHN LITTLE,

Attorney General.

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PAPERS IN DUE FORM.

The State of Ohio,  
Attorney General's Office,  
Columbus, June 4, 1874.

*Hon. Wm. F. Church, Superintendent, Etc.;*

SIR:—I have examined the papers handed me today with yours of this date, and have to say in answer to your inquiry, that in my opinion, such papers are in form and execution sufficient and satisfactory, and that the commissioner would be warranted in making the transfer of bonds (to the proper extent), authorized by the paper marked "M" among the exhibits.

Very respectfully,

JOHN LITTLE,

Attorney General.



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*Persons Obtaining Money on Insurance Policies on Companies Not in Existence Can Be Prosecuted for Obtaining Money Under False Pretenses.*

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PERSONS OBTAINING MONEY ON INSURANCE  
POLICIES ON COMPANIES NOT IN EXIST-  
ENCE CAN BE PROSECUTED FOR OBTAIN-  
ING MONEY UNDER FALSE PRETENSES.

The State of Ohio,  
Attorney General's Office,  
Columbus, June 12, 1874.

*John McCrury, Esq., Prosecuting Attorney, Ashland, Ohio:*

SIR:—Yours of the 8th instant is received, and in answer I have to say:

First—I am informed at the secretary of state's office that there is no record there of the incorporation of the "Canton Lightning Rod Co."

Second—If persons are assuming to act for a corporation not in existence, and issuing policies of insurance, and receiving money thereon, under the pretense that they are authorized to do so, when they are not, they are amenable to the law for obtaining money under false pretenses. (See Laws, 1873, p. 39.)

Very respectfully,  
JOHN LITTLE,  
Attorney General.

*Cost of Publishing the Geological Reports Not to Exceed the Appropriation.*

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~~COST OF PUBLISHING THE GEOLOGICAL RE-~~  
PORTS NOT TO EXCEED THE APPROPRIA-  
TION.

The State of Ohio,  
Attorney General's Office,  
Columbus, June 17, 1874.

*L. L. Rice and A. T. Wikoff, Esq., Supervisor of Printing  
and Secretary of State:*

SIRS:—Yours of this date received. In answer I have to say: That in my opinion the appropriation of \$60,000 for preparing "for publication, engraving, printing, binding and publishing parts one and two of the second volume of the report of the geological survey of the State" is intended to cover the entire expense of said volumes.

You should curtail the matter presented, according to the best judgment and light you may be able to command, to such limit as that the volumes may be completed for the sum named.

Yours, etc.,  
JOHN LITTLE,  
Attorney General.

*Companies Organized Under the Act of April 20, 1872, Cannot Do a Life Insurance Business—“Mutual Protection Association of Ohio.”*

COMPANIES ORGANIZED UNDER THE ACT OF  
APRIL 20, 1872, CANNOT DO A LIFE INSURANCE  
BUSINESS—“MUTUAL PROTECTION  
ASSOCIATION OF OHIO.”

The State of Ohio,  
Attorney General's Office,  
Columbus, June 26, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—In answer to yours of the 24th instant, I have to say:

First—Companies organized under the act of April 20, 1872 (Laws, 1872), are not authorized to do a life insurance business, and such companies are not required to “comply with the laws regulating insurance.”

Second—“The Mutual Protection Association of Ohio,” organized under said act, judging from its advertisement and “rules and regulations” which you enclose, is exceeding the limits of its authority, in that it is attempting to carry on the business of general life insurance.

Very respectfully,

JOHN LITTLE,  
Attorney General.

P. S.—I return your enclosures herewith.

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*Dr. Wm. Treavitt's Case.*

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## DR. WM. TREVITT'S CASE.

The State of Ohio,  
Attorney General's Office,  
Columbus, June 26, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—I have examined with care the affidavit of Dr. Wm. Treavitt and accompanying papers contained in yours of June 1, and am disposed to concur in the view that the case presented is not one calling for the interposition of the auditor of state, if in fact he has any authority in the premises.

If there be errors of the kind claimed upon the duplicate of Franklin County, and the auditor thereof declines to make correction, under the act of January 16, 1873 (L., p. 10), the remedy is by injunction (S. & C., p. 1151). Were it clear that an error exists to the prejudice of Dr. Treavitt, and also clear that the auditor of state had authority to correct it, of course, the doctor should not be subjected to the expense and trouble of a suit to obtain redress. But neither of these things is clear. In fact there is great doubt as to both, and in such a case, in my judgment, parties should be left to their remedies in the courts.

I return the papers inclosed in your letter herewith.

Very truly, etc.,

JOHN LITTLE,  
Attorney General.

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*Appropriation for Ohio River Improvement Commission—  
Recognizances in Common Pleas.*

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APPROPRIATION FOR OHIO RIVER IMPROVE-  
MENT COMMISSION.

The State of Ohio,  
Attorney General's Office,  
Columbus, June 27, 1874.

*Hon. Isaac Welsh, Treasurer of State:*

SIR:—In answer to yours of this date I have to say that in my opinion the appropriation of \$2,000 "for the payment of printing, stationery and necessary expenses incurred by the commissioners appointed by the governor to look after the improvement of the Ohio River," cannot constitutionally be paid out of the "asylum fund." This fund was raised by taxation for a wholly different purpose and cannot, therefore, be applied to this. Neither in my opinion can this appropriation be paid out of the general revenue fund, the legislature not having directed that to be done.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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RECOGNIZANCES IN COMMON PLEAS.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 13, 1874.

*Martin L. Sawyer, Prosecuting Attorney, Wooster, Ohio:*

SIR:—In answer to yours of the 29th ult., I have to say that where a prisoner is duly recognized at one term of court to appear at the next, and at the same term at which recognizance is entered into, a motion is made by his counsel to have the amount of the bond reduced and the same is

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*Villages Can Proceed to Elect Officers Where They Have Failed to do so for a Number of Years.*

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overruled, such action of the court will not vitiate the bond—not even if the court names the amount to be inserted in the recognizance a second time.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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VILLAGES CAN PROCEED TO ELECT OFFICERS  
WHERE THEY HAVE FAILED TO DO SO FOR  
A NUMBER OF YEARS.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 13, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—Where a village has failed to elect its officers for a number of years, as is stated to be the case at Norwich, Muskingum County, it may, notwithstanding, proceed to elect; but such election can only be held upon the first Monday of April.

It would be advisable in such case to give public notice of the intended election, so that all the electors of the village may be fully apprised of it.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Schools Not Conducted With a View to Profit Are Exempt  
From Taxation—Nevins & Myers' Bill for Printing  
for Constitutional Convention.*

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SCHOOLS NOT CONDUCTED WITH A VIEW TO  
PROFIT ARE EXEMPT FROM TAXATION.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 14, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—Under the third section of the tax law as amended March 21, 1864 (S. & S., 761), "all public colleges, public academies, all buildings connected with the same \* \* \* *not used with a view to profit*" are exempt from taxation.

If the "school," of which mention is made in the letter of the Wayne County auditor to you under date of July 9, be conducted "not with a view to profit," by those owning, or having control of the buildings, etc., it comes within the exemption and should not be taxed.

The charging of tuition would not determine its liability to taxation.

Yours, etc.,  
JOHN LITTLE,  
Attorney General.

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NEVINS & MYERS' BILL FOR PRINTING FOR CON-  
STITUTIONAL CONVENTION.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 14, 1874.

*To the Commissioner of Printing:*

SIR:—In answer to yours of this date I have to say, that in my opinion the bill of Messrs. Nevins & Myers for

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*Compensation of County Treasurer Acting as City Treasurer—County Treasurer Must Keep the City Funds in the County Treasury.*

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printing for the Constitutional Convention, which has been allowed, and which you say falls within their contract with the State in that behalf, should be paid—there being an appropriation for that purpose unexpended.

Very respectfully,

JOHN LITTLE,

Attorney General.

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COMPENSATION OF COUNTY TREASURER ACTING AS CITY TREASURER—COUNTY TREASURER MUST KEEP THE CITY FUNDS IN THE COUNTY TREASURY.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 14, 1874.

*J. L. Vallandigham, Esq., Prosecuting Attorney, Butler County:*

SIR:—In yours of the 11th inst. you inquire: First, what I understand to be the "legal compensation" of the county treasurer of Butler County on account of his service as city treasurer of the city of Hamilton—the county treasurer being ex-officio city treasurer, and second, whether he has the right to deposit the city funds elsewhere than in the county treasury.

First—The treasurer's compensation is to be fixed by the city council, *but cannot exceed five hundred dollars per annum.* See sixty-first section of Municipal Code, as amended in 1872 (Laws, p. 64-5).

Second—The city funds are "public money," "and the public money paid into the county treasury, whether it belongs to the county, State or other party, shall be kept by the county treasurer in the treasury of the county." Again, each



*Companies Organized Under the Act of April 20, 1872, Cannot do a Life Insurance Business—"Mutual Protection Association of Ohio."*

county treasurer shall be required to keep safely in his treasury without loaning, using or *depositing in banks or elsewhere* all the public money of whatsoever character paid into such treasury. (S. & C., 1606.)

I think there is no room for mistaking the meaning of this language. Very evidently the legislature intended by it to include all public money then or thereafter coming into the treasurer's hands.

Your treasurer, therefore, is not only not warranted in depositing the city funds elsewhere than in the county treasury; but is prohibited under heavy penalties from so doing. (See section 15 of the act of April 12, 1858 (S. & C., p. 1610).)

The recent act of March 17, 1873 (Laws, p. 66), contemplates that city funds shall be kept in county treasury, in that it provides for their examination at the same time the examinations by commissioners and by order of probate court are had, etc.

Very respectfully,

JOHN LITTLE,  
Attorney General.

COMPANIES ORGANIZED UNDER THE ACT OF  
APRIL 20, 1872, CANNOT DO A LIFE INSURANCE  
BUSINESS—"MUTUAL PROTECTION  
ASSOCIATION OF OHIO."

The State of Ohio,  
Attorney General's Office,  
Columbus, July 14, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—Yours of July 3, inclosing a copy of the constitution and by-laws of the "Mutual Protection Association of

*Companies Organized Under the Act of April 20, 1872, Cannot do a Life Insurance Business—“Mutual Protection Association of Ohio.”*

Ohio,” and inquiring whether said association can do the business contemplated thereby without complying with the insurance laws of the State, was duly received.

I have given the matters submitted careful consideration and have the following to say in reference thereto:

Said association, it appears, was incorporated February 27, 1874, under the act of April 20, 1872 (Laws, p. 82), which provides: “That any number of persons not less than five may associate themselves together as provided in the first section of the act entitled ‘an act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1, 1852, for the purpose of mutual protection and relief of its members and for the payment of stipulated sums of money to the families or heirs of the deceased members of such association.’”

The act provides for the incorporation of the trustees of such association, and defines their powers as follows:

In the name of such association, they “shall have power to receive money either by voluntary donation or contribution or to collect the same by assessment on its members; and to distribute, invest and appropriate the same in such manner as such association shall deem proper, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects of the association; to make and use a common seal and the same to alter at pleasure; and do all needful acts to carry into effect the objects for which it was created in such manner and for such purpose as may be prescribed by the rules and regulations of the association, not inconsistent with the laws of this State, and the purpose of the association as above expressed.” (Sec.3.)

The purpose of this organization is set forth in article two of its constitution to-wit: “The object of this associa-

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*Companies Organized Under the Act of April 20, 1872, Cannot do a Life Insurance Business—"Mutual Protection Association of Ohio."*

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tion shall be to furnish by purely mutual aid, insurance upon life at the lowest possible cost." All necessary provisions are made to carry out this object. The election of officers—president, vice president, secretary, treasurer, medical board and attorney—with duties similar to the duties of such officers in other insurance companies; the appointment of general and special agents to solicit persons to take policies, or become "members," etc., the issuing of policies to the insured on payment of policy fee, namely, of \$7.00 on a \$2,000 policy and \$10.00 on a \$5,000 policy, with the requirement that each policy holder shall pay an amount due of \$2.00 or \$5.00, accordingly as he holds a \$2,000 or \$5,000 policy; the assessments upon each policy holder of a certain sum, varying with the age of the assured, upon the death of a member, the payment by the company of the amount stipulated in the policy to his heirs or personal representatives upon the death of the policy holder; in short, all matters necessary to be done by the company, its officers and insured, in an ordinary life insurance company operating on the mutual plan, are, in all substantial particulars, well provided for.

The plan is similar to that of the "Protection Life Insurance Company of Chicago," and the policy issued is almost identical with that company's as will be seen by the copy herewith inclosed.

The constitution and by-laws contain the very matters required to be set forth in the "charter" of a life insurance company organized under chapter two of the act of April 27, 1872. (See section 4, p. 151); and a company organized on the mutual plan under that chapter, and doing its business in the precise mode contemplated by this constitution and these by-laws, would certainly be acting within the limits of its authority.

I can come to no other conclusion, then, that the "Mutual Protection Association of Ohio" is engaged in a life insurance business and is a *de facto* life insurance company.

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*Companies Organized Under the Act of April 20, 1872, Cannot do a Life Insurance Business—“Mutual Protection Association of Ohio.”*

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The question then is, Does the law authorize such a company to be created and to carry on business under said act of April 20, 1872?

It will be observed that, under it, associations may organize for *three* purposes, namely: First, for mutual protection of its members; second, for mutual relief of its members, and third, for the payment of stipulated sums of money to the families or heirs of deceased members. Authority is not given to organize for any *one* of these purposes, but for all together. In the “charter” of this company there is no provision whatever for either the *protection* or *relief* of any member under any circumstances. And I am not sure that, within the meaning of the act, there is provision made “for the payment of *stipulated* sums of money to the families or heirs of the deceased members”—the question being whether the sum to be paid when its amount is dependent upon contingencies existing at the time of decease, can be said to be “*stipulated*.” But admitting that provision is made for the purpose, the organization still fails to fulfill the purposes of the law in the other respects.

Again it is authorized to do certain specific things named, and in addition “all *needful* acts to carry into effect the objects for which it was created,” in such manner as may be prescribed in its rules and regulations “*not inconsistent with the laws of this State.*”

It has provided for the appointment of general and special agents to solicit insurance. While these may be “*needful*” to conduct the business of life insurance, it seems to me they are not necessary to carry out the purposes contemplated by the act of April 20; and if not, their appointment for such purpose is without warrant of law. But the greatest difficulty in the way of this company’s doing a life insurance business is to be found in the insurance act of April 27, 1872—passed seven days after the one under which this

*Companies Organized Under the Act of April 20, 1872, Cannot do a Life Insurance Business—"Mutual Protection Association of Ohio."*

company was incorporated, and which, therefore, must prevail if there be any conflict in the provisions of the two.

Section 3 of chapter 2 (Laws, 1872, p. 150) provides: "No insurance company organized under the laws of this State shall undertake *any* business or risk, *except as herein provided.*" It is not and cannot be claimed that this company is doing or proposing to do business "as herein provided." The legislature has thought it proper to provide, and has provided, certain safeguards for the public as against possible irresponsible life insurance companies.

Life insurance companies are required to have a certain amount of capital (not less than \$100,000), so invested and secured as to be available to meet the demands of their policies; and their business is to be conducted under the eye of the insurance commissioner, the State's agent, and so conducted as to make the policy holder reasonably secure. And it cannot be, that the General Assembly after providing such safeguards in the matter of life insurance whether upon the mutual or stock plan contemplated that they could be evaded as this company would be enabled to evade them, were it to continue under its present constitution and by-laws. It has no capital. If funds of policy holders accumulate in its hands, there is no provision of law as to their investment—all rests with the honesty and integrity of its officers, which may be security enough in this particular case; but if this company may thus go on, so may any other organization in like manner, and the result would be that the insured would have no other security for the safety of their accumulated funds or of the final payment of their policies, than such as may be derived from the integrity and responsibility of the company's officials. It is clear to my mind that the law does not contemplate such a state of affairs.

Such a construction must therefore be given to the former act as will exclude the idea of its conferring a power

*Sheriffs Must Issue Proclamations of the Election at Which  
the Proposed Constitution Will Be Submitted.*

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to do a general life insurance business upon the mutual plan, with the appliances incident to such general business.

I think it should be confined in its application to persons who *voluntarily* associate themselves together for the purposes—all the purposes—named, and *without the intervention of agencies and other like instrumentalities*, common to general insurance companies, such agencies, etc., as before stated, being in my opinion, unauthorized by the act. And without these there is little danger of a company organized under it trenching upon the domain of general insurance.

I must therefore answer your inquiry, as well as the question above stated, in the negative.

As it is said large interests are involved in the decision of this matter, it might be well to suggest to the company the amicable submission of the questions involved, in proper form to a proper judicial tribunal.

Very respectfully,

JOHN LITTLE,

Attorney General.

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SHERIFFS MUST ISSUE PROCLAMATIONS OF  
THE ELECTION AT WHICH THE PROPOSED  
CONSTITUTION WILL BE SUBMITTED.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 17, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—In answer to yours of this date I have to say: The act providing for the election of members to, and the assembling of the constitutional convention, provides that "the election at which said submission shall be made shall be held

*Sheriffs Must Issue Proclamations of the Election at Which  
the Proposed Constitution Will be Submitted.*

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and conducted at the places, and by the officers, and in the manner provided by law for the election of members of the House of Representatives as far as practicable." Also, that "all the provisions of laws of the State relative to elections shall apply to said election as far as applicable." (O. L., Vol. 70, p. 7.)

The fourth section of "the act to regulate the elections of state and county officers" (S. & C., p. 532) makes it the duty of every sheriff fifteen days before every general election, and ten days before any special election "to give public notice by probation throughout his county of the time of holding such elections and the number of officers at that time to be chosen, one copy of which shall be posted up at each of the places where the elections are appointed to be holden, and inserted in some newspaper published in the county."

Sheriffs should therefore, in my judgment, issue their proclamations of the election, August 18, at which the proposed constitution is to be submitted.

This is to be a "special" election; and ten days' notice thereof would probably fulfill the requirements of the law; but as it is to be "held and conducted *in the manner*" provided by law for the election of members of the House of Representatives whereof fifteen days' notice must be given, it is advisable, out of abundant caution, that the proclamations issue fifteen days at least before the election.

There being no officers to choose at said election, that portion of the law requiring the proclamation to state "the number of officers at that time to be chosen" is, of course, not applicable. In lieu of such requirement it would be proper and advisable to issue in the proclamation all of section II of the schedule of the constitution.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Belmont County Cost Bill—Metropolitan Plate Glass Insurance Company of New York.*

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## BELMONT COUNTY COST BILL.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 17, 1874.

*Hon. James Williams, Auditor State:*

SIR:—Yours of recent date, inclosing communication of prosecuting attorney of Belmont County relative to certain items in cost bill, is received.

You were right in not paying the items "in lump." The item of \$27, for deposition being now itemized, should be paid. The item of \$40, being \$20 each paid to two witnesses to secure their attendance from West Virginia, over the river, should not be paid, as it is unauthorized by law.

Very respectfully,

JOHN LITTLE,

Attorney General.

P. S.—I herewith return inclosures.

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METROPOLITAN PLATE GLASS INSURANCE  
COMPANY OF NEW YORK.

The State of Ohio,  
Attorney General's Office,  
Columbus, July 17, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—In answer to yours of recent date, I have to say, with some doubt, that in my judgment, the "Metropolitan Plate Glass Insurance Company of New York" whose charter you inclose, is not required, in order to do business within this State, "to comply with the laws of this State relative to insurance" in all respects.



*Metropolitan Plate Glass Insurance Company of New York.*

It appears from the first section of its charter that it is only authorized to make "insurance upon plate glass against damage or liability arising from any unknown or contingent event whatever which may be the subject of legal insurance *except* the perils and risks included within the department of fire, marine and legal insurance." That is, as I understand the charter, the company is limited to the insurance of plate glass and to such risks on this, as fire and marine companies are not authorized to take.

Companies organized under chapter 1, section 8 of the act of April 27, 1872, as to insurance on property, are confined to insurance "against loss or damage by fire and lightning," except that "all kinds of insurance" may be made on "merchandise and other property in the course of transportation." (Laws, 1874, p. 65.)

The organization of fire insurance companies for any other purpose than mentioned in said section 8 as aforesaid, is not authorized by the laws of this State. No company, therefore, can be organized under our laws to do, or carry on a business like that of this New York company, its business not falling within the purposes named in said section.

It is provided in section 20 of the general insurance act, as amended April 24, 1873 (Laws, p. 151), as follows:

"It shall not be lawful for any insurance company \* \* incorporated, organized or associated under the laws of any other state \* \* \* for any of the purposes mentioned in this chapter \* \* to transact any business of insurance in this State without," etc.; "nor shall it be lawful for any person \* \* to act as agents in this State for any such company \* \* without," etc., "nor shall it be lawful for any insurance company \* \* \* organized under the laws of any other state \* \* to take risks or transact business of insurance in this State, unless possessed of the amount of actual capital required of similar companies *formed under the provisions of this chapter.*" But this company is not organized "for any of the purposes mentioned in this (said first) chap-

*Metropolitan Plate Glass Insurance Company of New York*  
 —Election of Sheriff in Ashtabula County.

ter," as has been seen; nor, in my opinion, can a company be organized under said chapter "similar" to this one.

The foregoing provisions therefore do not apply to the Metropolitan Plate Glass Insurance Company of New York.

But there follow provisions in said section 20, which seem general in their application to companies of other states, and which, therefore, apply to this company, namely: "Nor shall it be lawful for any insurance company, association or partnership, organized under the laws of any other state \* \* to take risks or transact business of insurance in this state \* \* \* unless the entire capital stock of said company be fully paid up and invested as required by the laws of the state where organized;" and the further provision immediately following, requiring "any company," etc., to file with the superintendent a written instrument duly signed and sealed, authorizing agents to acknowledge service of process, etc., and waiving all claim and right to remove causes to U. S. courts, etc.

This company should therefore, in my judgment, be required to comply with these last above named provisions of the statute before engaging in business in this State, but not with any other. Very respectfully,

JOHN LITTLE,

Attorney General.

P. S.—I return papers herewith.

ELECTION OF SHERIFF IN ASHTABULA  
 COUNTY.

The State of Ohio,  
 Attorney General's Office,  
 Columbus, August 3, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

DEAR SIR:—In answer to yours of August 1, inclosing letter from clerk of Ashtabula County, and asking my opin-

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*Information Should Conclude With the Words "Against the Peace," Etc.*

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ion as to matters therein contained, I have to say, that under the circumstances detailed, there should be an election for sheriff of said county at the October election of which due notice should be given. The person then elected will be elected for full term. Until the election and qualification of such sheriff, the present coroner can continue to discharge the duties of sheriff. Neither the appointment authorized by the act of February 17, 1831 (S. & C., 1402), nor the appointment of a day for the holding of an election, etc., provided for in section 35 of the act of May 3, 1852 (S. & C., 539), is *mandatory*; it is *permissible* only.

Yours, etc.,

JOHN LITTLE,  
Attorney General.

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INFORMATION SHOULD CONCLUDE WITH THE  
WORDS "AGAINST THE PEACE," ETC.

The State of Ohio,  
Attorney General's Office,  
Columbus, August 7, 1874.

*Jasher Pillars, Prosecuting Attorney, Bowling Green, Ohio:*

DEAR SIR:—General Pond has sent me for answer your letter to him dated July 5, in which you inquire whether it be necessary to conclude an *information* in the Probate Court with the words: "against the peace and dignity of the State of Ohio."

I don't know that the question has been passed upon by our Supreme Court. An *information* has been approved by it, however, concluding in that way—*Miller & Gilman vs. The State*. 3 O. S., 477. It seems to be the doctrine of the elementary writers that *informations* should, as to the body of the complaint, contain all that is required in an indict-

*County Treasurers and Sheriffs Not Eligible to Election for the Third Successive Term if the New Constitution Should Be Adopted.*

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ment "omitting nothing which the indictment should contain, even to the conclusion." Lord Hale said: "Every offense against a statute should be laid *contra pacem*," and this at a time when prosecutions for misdemeanors by information were common.

Without, therefore, undertaking to predict what the Supreme Court *might* hold upon the subject, I should advise against the omission of those concluding words in an information.

Very respectfully,

JOHN LITTLE,

Attorney General.

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COUNTY TREASURERS AND SHERIFFS NOT ELIGIBLE TO ELECTION FOR THE THIRD SUCCESSIVE TERM IF THE NEW CONSTITUTION SHOULD BE ADOPTED.

The State of Ohio,  
Attorney General's Office,  
Columbus, August 14, 1874.

*Robert N. Spry, Prosecuting Attorney, Portsmouth, Ohio:*

DEAR SIR:—The inquiry, submitted in yours of the 12th inst., namely: Whether county treasurers and sheriffs, whose second terms expire January, 1875, will be eligible, under the new constitution (if adopted) to an election to the same offices at the ensuing October election, is fraught with difficulty.

The provision of the present constitution restricting them to two terms in succession is continued in the new one.

Now, whether the doctrine that where a statute is amended in some particulars and re-enacted in others—the

Hartford Steam Boiler Company of Hartford, Connecticut.

old being repelled by the new act—the re-enacted portion will be regarded as in *continuous* operation, is applicable in a case like this, and whether the word “laws” as used in the first section of the schedule of the new constitution, which continues in force “all laws,” etc., is to be restricted in its application to statutory law, or given a broader meaning, I will not now undertake to discuss or give an opinion as to.

The question you present is far reaching and should be considered with the utmost care and deliberation; and as you present it not as a practical, but rather as a speculative one, I will content myself by saying it would, in my judgment, be a hazardous experiment to elect a county treasurer or sheriff for the third successive time at the October election ensuing.

Yours truly,

JOHN LITTLE,

Attorney General.

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HARTFORD STEAM BOILER COMPANY OF HARTFORD, CONNECTICUT.

The State of Ohio,  
Attorney General's Office,  
Columbus, August 20, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—In answer to yours of the 14th inst., I have to say that, in my judgment, “the Hartford Steam Boiler Company of Hartford, Conn.,” is to be classed in the same category, as to complying with the provisions of Ohio insurance laws, as the Metropolitan Plate Glass Insurance Company of New York, concerning which I have hitherto advised you.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Hibernia Insurance Company of Cleveland; Reduction of Capital Stock of—Ohio Soldiers' & Sailors' Orphans' Home; Trustees May Employ Suitable Person to Prosecute Charges Against the Superintendent of.*

HIBERNIA INSURANCE COMPANY OF CLEVELAND—REDUCTION OF CAPITAL STOCK OF.

The State of Ohio,  
Attorney General's Office,  
Columbus, September 10, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—In answer to yours of the 8th instant, I have to say, that, in my opinion, the "Hibernia Insurance Company of Cleveland," under the circumstances detailed, may comply with the substantial requirements of the law in the premises, by a reduction of its capital stock (not below \$100,000) if with such reduction it is enabled to make a satisfactory exhibit of its affairs.

As to the mode of reducing the capital stock, your attention is directed to section 74 (91) of the act of May 1, 1852. (S. & C., p. 309.)

Very respectfully,  
JOHN LITTLE,  
Attorney General.

OHIO SOLDIERS' & SAILORS' ORPHANS' HOME—  
TRUSTEES MAY EMPLOY SUITABLE PERSON  
TO PROSECUTE CHARGES AGAINST THE SUPERINTENDENT OF.

Xenia, Ohio, September 19, 1874.

*General J. Warren Keifer, Springfield, Ohio:*

DEAR SIR:—Yours of the 16th inst. awaited my return from Columbus last night.

You submit these inquiries relative to the Board of

*Ohio Soldiers' & Sailors' Orphans' Home—Trustees May Employ Suitable Person to Prosecute Charges Against the Superintendent of.*

Trustees of the Ohio Soldiers' and Sailors' Orphans' Home, etc., to-wit:

First—"Has the board power to employ and pay a reasonable compensation to a competent person to conduct an investigation against the superintendent of the home after formal charges are prepared and filed against him, which involve his qualification and fitness to hold his position?"

Second—"If your answer to the above question is in the negative, is there any officer known to the law whose duty will require him to attend to such an investigation before the board?"

First—The statute invests the board with power to remove any officer or employe of the home "at pleasure," except the superintendent, whom they can remove only for certain specified causes. When charges are duly made against him involving any of these causes, it unquestionably becomes the duty of the board to investigate them; and the authority to use the means reasonably within reach necessary to such investigation may be exercised. If, in the judgment of the board, it be necessary to the investigation, and the charges be of such a nature as to warrant it, they may, in my opinion, employ and reasonably compensate a suitable person for the purpose indicated. But I may be permitted to add, that such investigations should, in my judgment, be conducted by the board and without such employment, when it is at all feasible for them to do so.

Second—Your second interrogatory is answered in the negative.

The Attorney General is by law made the legal adviser of your board, but his duty would not require his attendance at and prosecution of such an investigation.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Central Lunatic Asylum for Brick; Percentage to Be Retained—County Commissioners May Use Reasonable Means to Prevent the Escape of Prisoners Working Out Fines.*

CENTRAL LUNATIC ASYLUM FOR BRICK—PERCENTAGE TO BE RETAINED.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 1, 1874.

*T. R. Tinsley, Esq., Architects, Etc., Columbus, Ohio:*

DEAR SIR:—In answer to the inquiry submitted in yours of this date, I have to say:

In the matter of retaining percentage upon contract for brick, etc., the Board of Commissioners should do precisely as they would have done had Jones & Sons themselves, in fact, furnished the brick. In other words Jones & Sons should be regarded as furnishing the brick and the money paid therefor should be charged to their account under the building contract, and the percentage retained as though Lipsett were unknown in the transaction.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

COUNTY COMMISSIONERS MAY USE REASONABLE MEANS TO PREVENT THE ESCAPE OF PRISONERS WORKING OUT FINES.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 1, 1874.

*J. A. Justice, Esq., Prosecuting Attorney, Mahoning County:*

SIR:—In answer to your inquiry of the 21st ult. I have to say:



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*Recognizances in Common Pleas Courts.*

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The labor contemplated by the act of March 21, 1874 (L., p. 33), must be done "under the direction and supervision" of county commissioners. And their authority to use any reasonable means to prevent the escape of prisoners while at such labor, though not expressly conferred, is, in my opinion, implied. What the means shall be they must judge. If in their judgment a ball and chain be necessary to prevent escape, I see no legal objection to their use.

Very respectfully,

JOHN LITTLE,

Attorney General.

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RECOGNIZANCES IN COMMON PLEAS COURTS.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 1, 1874.

*Martin L. Snyder, Esq., Prosecuting Attorney, Wooster, Ohio:*

SIR:—My letter of July 13, though general in character, was intended to cover the case and answer the inquiry restated in yours of yesterday. But to be more explicit, the Bechtel bond is not, in my opinion, impaired by reason of the court overruling a motion to reduce the amount thereof, or because the court named \$1,500 the amount of the old bond to be given; nor is the surety discharged by reason of such action of the court.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Sandusky City Lodge, No. 158—Special Elections for Members of Congress; Designation of Time for Holding.*

SANDUSKY CITY LODGE, NO. 158.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 1, 1874.

*Hon. A. T. Wikoff, Secretary of State:*

SIR:—The certificate of the "Sandusky City Lodge, No. 158" is herewith returned, with the information that an association cannot, in my opinion, become incorporated under the act of April 20, 1872 (Laws, p. 82), and the act of April 20, 1874 (Laws, p. 110). The certificate should be drawn under the one or the other, and the purpose stated in the language of the statute, and without addition.

Very respectfully,

JOHN LITTLE,  
Attorney General.

SPECIAL ELECTIONS FOR MEMBERS OF CONGRESS—DESIGNATION OF TIME FOR HOLDING.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 2, 1874.

*Hon. William Allen, Governor:*

SIR:—In answer to your inquiry of this date verbally made through your secretary, as to whether sufficient time intervenes between this date and the day of the general election, October 13, to warrant you in ordering a special election, to be held on that day, to fill the vacancy occasioned by the resignation of the Hon. Hugh J. Jewett, Member of Congress from the Twelfth District, I have to say:

That the law leaves the designation of the time of hold-

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*Architects of Any "Improvement" Must Be Paid From the Appropriation Therefor.*

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ing such special elections to the discretion of the governor subject only to the provision that ten days' notice thereof shall be given by proclamations of the several sheriffs within the district. The means of communication are so complete within said district that such notice may yet be given before the day designated; and considering the saving of expense that would be made by holding the election at that time and the fact that the people may be fully notified of the pendency of such election, I think you would be warranted in designating that day for the filling of such vacancy.

Very respectfully,

JOHN LITTLE,

Attorney General.

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ARCHITECTS OF ANY "IMPROVEMENT" MUST  
BE PAID FROM THE APPROPRIATION  
THEREFOR.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 9, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—The expenses of an architect are to be regarded as forming a part of the "aggregate cost" of any "improvement" required to be made in accordance with the provisions of the act of April 3, 1873 (Laws, p. 102); and general appropriations for any such improvement cover such expenses. In the absence of specific provisions to the contrary, architects can be paid out of no other appropriation. The inquiry contained in yours of the 7th inst. is, therefore, answered in the negative.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Railroad Bonds Not Money Within the Meaning of the Tax Law—Fugitives From Justice; the Rendition of Subject to Exclusive Legislation of Congress.*

RAILROAD BONDS NOT MONEY WITHIN THE  
MEANING OF THE TAX LAW.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 9, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—Northern Pacific Railroad bonds, not being in my opinion as comprehended in the definition of money as given in section 2, of the act of April 5, 1859 (S. & C., 1439), are included in that of "credits" as therein set forth from whose value *bona fide* debts may be deducted, etc.

Very respectfully,

JOHN LITTLE,  
Attorney General.

FUGITIVES FROM JUSTICE—THE RENDITION OF  
SUBJECT TO EXCLUSIVE LEGISLATION OF  
CONGRESS.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 9, 1874.

*Hon. J. C. Putnam, Private Secretary of the Governor:*

SIR:—Your communication of August 12th would have received earlier attention but for your verbal statement that an immediate answer was not sought.

You direct my attention to an opinion reported in the Cincinnati Gazette, August 7, of Judge Blair of the Supreme Court of Indiana, rendered in a *habeas corpus* proceeding instituted by one Holman at Indianapolis about that date.

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*Fugitives From Justice—The Rendition of Subject to Exclusive Legislation of Congress.*

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You express the belief that the doctrine promulgated in that case, if good law, will materially affect the Executive Department of this State, and request my opinion in regard to the matter.

It seems that the Governor of Indiana had issued a warrant for said Holman upon a requisition of the Governor of this State founded upon an alleged forgery committed in Hamilton County, Ohio. Upon that warrant Holman had been arrested. The writ of *habeas corpus* was directed to the officer having him in custody under the warrant; and the principal question was as to the legality of the warrant—whether it was properly issued in accordance with the laws of that State. There is a statute of Indiana, passed March 9, 1867 (3 State, 271), which among other things enjoins certain duties upon the Governor with respect to the rendition of fugitives from justice, etc. It is sufficient to say that Judge Blair held that the provisions of that statute, in the matter of issuing the warrant, had not been complied with.

We have no such statute in this State. The opinion, so far as I am informed, has always obtained in Ohio (and it seems to me properly) that Congress has exclusive legislative jurisdiction over the subject of the rendition of fugitives from justice in one state upon the demand of the executive authority of another; it having, as early as February 12, 1793, legislated in respect thereto. The opinion of Judge Blair, therefore, has, at most, only a local application. And however sound his conclusions, they do not affect the Executive Department of this State in its action with respect to the subject.

Very respectfully,

JOHN LITTLE.

Attorney General.

*Mutual Relief Association of Urbana—Union Life Insurance  
Company's Building.*

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## MUTUAL RELIEF ASSOCIATION OF URBANA.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 24, 1874.

*Hon. Wm. F. Church, Superintendent of Insurance:*

SIR:—It would seem from the papers you inclose in yours of the 19th inst., that the Mutual Relief Association of Urbana should be classed with the Mutual Protection Association of Norwalk. The papers are herewith returned.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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## UNION LIFE INSURANCE COMPANY'S BUILDING.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 29, 1874.

*Hon. W. F. Church, Superintendent of Insurance:*

SIR:—You inclose a cut and description of the Union Life Insurance Company building, taken from the Cincinnati Gazette of October 5th, together with the letter of the president of the company explanatory of its purposes, etc., and inquire "whether such a purchase of real estate \* \* \* is admissible"—the company having purchased the building for the transaction of its business.

Such a company may purchase and hold such real estate as shall be requisite for its immediate accommodation in the transaction of its business (Laws, 1872, p. 153). In determining what is "requisite" for such purpose, the law would not restrict a company with nice exactitude to just the

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*Restoration of United States Prisoners to Citizenship—Pardoning Power of the Governor.*

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quantity necessary; but would be reasonably liberal in fixing the limits beyond which ownership could not extend.

It would seem from the president's letter inclosed that this building is necessary for the convenient transaction of the company's business; and I see no reason, therefore, why the purchase is not admissible.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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RESTORATION OF UNITED STATES PRISONERS  
TO CITIZENSHIP—PARDONING POWER OF  
THE GOVERNOR.

The State of Ohio,  
Attorney General's Office,  
Columbus, October 29, 1874.

*Hon. William Allen, Governor:*

SIR:—The questions submitted by you today, arising out of application of William Gorman for pardon in order to his restoration to the rights of citizenship, he having been sentenced to the penitentiary of this State by the authority of the United States for the "crime of desertion," and having served his term therein, have been considered; and in answer thereto I have to say:

First—The pardoning power of the Governor is limited to the cases of persons convicted of violations of the laws of this State.

Second—A citizen of Ohio, who has been sentenced to imprisonment in the penitentiary of the State by the authority and for a violation of the laws of the United States, does not thereby forfeit his civil rights and privileges as such citizen.

*Bank Stock Not Fully Paid Up Subject to Taxation—Refunding of Taxes Paid By Isabella Orange.*

Only those convicted of some crime other than manslaughter and dueling, specified in the crimes act of March 7, 1835 (S. & C., 401), and sentenced to imprisonment in the penitentiary forfeit those rights; and to them the Governor may restore such rights by a general pardon (I. C., p. 417, Sec. 4).

It follows that, in my opinion, the Governor has no power to pardon the person named, and, if the power existed, that a pardon would be unnecessary for the purpose indicated—Gorman not having lost the rights of citizenship.

Very respectfully,

JOHN LITTLE,

Attorney General.

BANK STOCK NOT FULLY PAID UP SUBJECT TO  
TAXATION—REFUNDING OF TAXES PAID BY  
ISABELLA ORANGE.

The State of Ohio,  
Attorney General's Office,  
Columbus, November 20, 1874.

*Hon. James Williams, Auditor of State:*

SIR:—The following in answer to yours of the 14th instant:

First—In my opinion shares in a stock banking company are not exempt from taxation, because not fully paid up. It makes no difference that certificates of stock are not issued prior to full payment.

Second—While it is true that the equitable title may subsist in a patentee of lands and taxes thereon be properly levied prior to the issuing of a patent by the government of the United States; still in the case put by the auditor of Monroe County, I am disposed to the opinion that the taxes



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*How Applications for Pardon May Be Made.*

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paid by Isabella Orange were improperly levied and should be refunded. It seems from his letter that the lands on which she paid taxes prior to the patent had neither been *located* nor *entered*. How those lands ever got upon the duplicate at all, does not appear; it may have been by mistake.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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#### HOW APPLICATIONS FOR PARDON MAY BE MADE.

The State of Ohio,  
Attorney General's Office,  
Columbus, November 20, 1874.

*G. S. Innis, Esq., Warden:*

SIR:—In yours of this date you inquire as to the power of the Governor to pardon convicts upon the application of the warden and directors of the penitentiary; whether in such case it be necessary "that the convict be sick and in immediate danger of death to make such application valid."

Applications for pardon may be made in three ways:

First—By notice to the prosecuting attorney of the proper county and publication as provided in section 218 of the Criminal Code.

Second—By or upon the certificate of the physician of the penitentiary to the effect that there is imminent danger of the death of the convict imprisoned therein whose pardon is sought, which certificate must be addressed to the governor, and may, or may not, be accompanied by the recommendation of the witness; and

Third—By or upon the joint recommendation of the warden and directors, stating specifically the considerations

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*United State Prisoners Entitled to the Same Credit for  
Good Behavior as State Prisoners.*

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and reasons why such application is made. These considerations, etc., may, but are not required to be, that the convict whose pardon is asked, is "sick and in immediate danger of death." The application would be equally valid and give the governor jurisdiction to act were any other considerations assigned.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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UNITED STATES PRISONERS ENTITLED TO THE  
SAME CREDIT FOR GOOD BEHAVIOR AS  
STATE PRISONERS.

The State of Ohio,  
Attorney General's Office,  
Columbus, November 20, 1874.

*G. S. Innis, Esq., Warden:*

DEAR SIR:—In answer to a verbal inquiry of Mr. McCoy, deputy warden, some weeks since, I stated that criminals sentenced to the penitentiary by the authority of the United States, were entitled to a diminution of the period of their sentence as a reward for good behavior, the same as convicts sentenced under state authority.

This view was predicated upon the clause of our statute which provides that such (U. S.) prisoners "shall" be subject *in all respects* to the same discipline and treatment as though committed under the laws of this state. Upon closer examination of the subject, however, I am satisfied I was mistaken in the view then expressed. I find that Congress has made provision, by the act approved March 2, 1867, for a reduction of the terms of such prisoners as a reward for good conduct, and of course its legislation is

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*United States Prisoners Entitled to the Same Credit for  
Good Behavior as State Prisoners.*

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controlling. That act provides: "That all prisoners who have been or shall hereafter be convicted of any offense against the laws of the United States, and confined in any state prison or penitentiary in execution of the judgment or sentence upon such conviction, who so conduct themselves that no charge for misconduct shall be sustained against them shall have a deduction of one month in each year made from the term of their sentences, and shall be entitled to their discharge so much the sooner upon the certificate of the warden or keeper of such prison or penitentiary, with the approval of the secretary of the interior."

In the discharge of United States prisoners, therefore, it is your duty to act in accordance with the provisions of this act.

Very respectfully,

JOHN LITTLE,  
Attorney General.

December 16, 1874.

P. S.—Since writing the above my attention has been directed to the act of Congress approved January 14, 1870, which extends to U. S. prisoners the same system of credits as pertains to other prisoners in the penitentiary. Of course, the latter act prevails and the verbal opinion first given to Mr. McCoy is correct. You will act accordingly. J. L.

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*Partial Payment of Taxes May Be Received When the Subject of Litigation.*

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PARTIAL PAYMENT OF TAXES MAY BE RECEIVED WHEN THE SUBJECT OF LITIGATION.

The State of Ohio,  
Attorney General's Office,  
Columbus, November 27, 1874.

*Hon. James Williams, Auditor:*

SIR:—In answer to yours of the 23d inclosing a letter from the auditor of Guernsey County, I have to say:

Ordinarily there would be no warrant for a county treasurer accepting partial payment on taxes due; but when the amount actually due is in controversy and a suit pending to determine it, I see no objection, pending the litigation, to the tax-debtor paying and the treasurer receiving the amount admitted by the former to be due, upon the agreement that such payment shall in no wise affect the suit.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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*State Lands Not Be Assessed as Abutting Property for Street Improvements. Claims Against the Late Constitutional Convention.*

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STATE LANDS NOT BE ASSESSED AS ABUTTING  
PROPERTY FOR STREET IMPROVEMENTS.  
CLAIMS AGAINST THE LATE CONSTITU-  
TIONAL CONVENTION.

The State of Ohio,  
Attorney General's Office,  
Columbus, December 14, 1874.

*Hon. James Newman, Chairman Senate Finance Committee:*

DEAR SIR:—In answer to yours of the 11th instant, I have to say:

First—The claim of P. W. Huntington for \$331, on account of work on Broad street, Columbus, has no foundation in law as against the State. It is not contemplated by the 486th section of the Municipal Code that the lands of the State should be assessed as abutting property for the improvement of streets.

Second—Where the late Constitutional Convention acting within the scope of its authority contracted and allowed bills which remain unpaid, I think the General Assembly should provide for their payment, although, in the opinion of the legislature, they be excessive. The creditors of the convention would, perhaps, be without remedy were payment refused. Still the convention acted as the agent of the State. Its contracts, therefore, made within the scope of its powers, are the State's contracts, and they cannot be violated or disregarded without a breach of the public faith. But where articles have been furnished and the price therefor not agreed upon (if such cases exist), the legislature may very properly refuse to pay anything in excess of their value at the date of furnishing the same. I return your letter, as it contains the Hamilton account.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*County Commissioners Not Entitled to Traveling Expenses*  
*—Rights of Riparian Proprietors Along the Congress*  
*Lake Feeder.*

COUNTY COMMISSIONERS NOT ENTITLED TO  
 TRAVELING EXPENSES.

The State of Ohio,  
 Attorney General's Office,  
 Columbus, December 16, 1874.

*H. H. Williams, Prosecuting Attorney:*

DEAR SIR:—I know of no authority of law for the allowance to county commissioners in addition to their *per diem*, of such claims as those named in your letter of the 9th instant, to-wit: Two dollars and a half per day for their own horse and buggy (each one), also their toll and horse feed, dinners, etc., as they dine over different portions of the country in the discharge of their official duties.

Very respectfully,

JOHN LITTLE,  
 Attorney General.

RIGHTS OF RIPARIAN PROPRIETORS ALONG  
 THE CONGRESS LAKE FEEDER.

The State of Ohio,  
 Attorney General's Office,  
 Columbus, December 17, 1874.

*A. B. Newburgh, Esq., Secretary, Etc., Columbus, Ohio:*

SIR:—On consideration of the matters verbally submitted to me by you relative to the rights of riparian proprietors along the feeder from Congress Lake in Portage County to the O. & P. Canal, I have come to these conclusions:

First—The rights of such proprietors are the same as they would have been had said feeder been a natural instead

*The Executive Cannot Properly Refuse a Warrant for a Fugitive From Justice Upon a Properly Made Requisition. Ashcroft—George O. & Maria—Requisition for.*

of an artificial channel, the water flowing therein immemorably. That is to say, such proprietors have a property in the water flowing in the feeder of which they cannot be deprived without compensation, etc.

Second—In order to the condemnation of such property by the Board of Public Works, like proceedings must be had as to such proprietors, in all respects, as are required in the condemnation of other property by the board.

In case it be necessary to resort to legal process for condemnation I think that may be done in the Portage Probate Court. But before such proceedings are commenced money should be deposited with the Treasurer of State by the lessees of the public works wherewith to pay the judgments rendered.

Very respectfully,

JOHN LITTLE,

Attorney General.

THE EXECUTIVE CANNOT PROPERLY REFUSE  
A WARRANT FOR A FUGITIVE FROM JUSTICE  
UPON A PROPERLY MADE REQUISITION.  
ASHCROFT—GEORGE O. & MARIA—REQUISITION FOR.

The State of Ohio,  
Attorney General's Office,  
Columbus, Ohio, December 23, 1874.

*Hon. William Allen, Governor:*

SIR:—I have examined the requisition of the Governor of Wisconsin for the rendition of George O. Ashcroft and Maria Ashcroft, charged with the "crime of conspiring to entice a young female from her parents' home for the purpose of prostitution," together with the accompanying pa-

*The Executive Cannot Properly Refuse a Warrant for a Fugitive From Justice Upon a Properly Made Requisition. Ashcroft—George O. & Maria—Requisition for.*

pers. I have also read the affidavits submitted by the Ashcrofts, through their attorney, Mr. DeWolf, and considered the question whether they can be looked into at all for the purposes of determining the action of your excellency in the matter of this application.

The requisition is regular in form, and in all respects in accordance with the act of Congress in that behalf of February 12, 1793.

The offense charged, though unknown to the laws of Ohio, is nevertheless a crime indictable at common law, and cognizable by the laws of Wisconsin. It therefore comes within the category of "other crimes" as that phrase of section 2, article 4, of the U. S. Constitution has been interpreted by the Supreme Court of the United States on several occasions. (See *Commonwealth of Ky. vs. Dennison, Governor, etc.*, 24 Howard, 66.)

These things being true, upon the authority of the case cited, as well as upon that of *Robinson vs. Flanders*, 29th Ind., 10; *Clark's case*, 9th Wendell, 212; and *Greenough's case*, 31st Vermont, 279, I am well satisfied that the executive would not be warranted in going outside of the requisition and accompanying papers, and examining into matters touching the question of the guilt or innocence of the persons charged.

Without quoting at length from the opinion of Chief Justice Tanney, in the case first named, it is sufficient to say, that the doctrine is there clearly stated that the duty of the executive of a state in matters like this is purely a *ministerial* one—in no respect judicial; that said executive has no discretion to refuse a warrant upon a requisition properly made in due form of law.

I think, therefore, you cannot look into the affidavits of the Ashcrofts with a view of predicating any final action in the premises upon them. I see no impropriety in the Governor, in an extreme case, where it is clearly shown by af-



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*Sentence of William R. James From Washington County.*

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fidavits or otherwise, that the executive of the demanding state has been imposed upon, withholding his warrant until such executive be apprised of the proofs of such imposition with a view to a withdrawal of the requisition. For such a purpose, to examine into the *bona fides* of the proceeding extrinsic affidavits may, in my opinion, be properly considered.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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SENTENCE OF WILLIAM R. JAMES FROM WASHINGTON COUNTY.

The State of Ohio,  
Attorney General's Office,  
Columbus, January 7, 1875.

*Colonel G. S. Innis, Warden, Etc.:*

SIR:—I have examined the certificates of sentence of William R. James, made October 30, 1869, where it appears that said James was on that day sentenced to imprisonment in the penitentiary from Washington County, in two cases—in one for two, and in the other for six years—it not being stated in either sentence that the term of imprisonment should begin on the expiration of that named in the other; also my predecessor's opinion of the date of January 30, 1871, referred with the certificates with respect thereto, that his time would expire with the longer term. Although not clear that my predecessor is correct in his conclusion, my conviction is not so strong to the contrary to warrant me in advising you differently.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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*Condemnation for the Public Works.*

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## CONDEMNATIONS FOR THE PUBLIC WORKS.

The State of Ohio,  
Attorney General's Office,  
Columbus, January 9, 1875.

*A. B. Newbury, Esq., Secretary of Board of Public Works,  
Columbus, Ohio:*

SIR:—In reply to the queries propounded by Thomas F. Wildes in his communication of the 4th instant, Drane says:

First—The lessees should deposit before, or during proceedings, money enough to meet the damages assessed. If it should fall short they would only have to make up the deficiency before occupying the land.

Second—Every one who will be injuriously deprived of any water should be notified, etc. Even those along the waterway from the proposed channel to the Cuyahoga River should, out of abundant caution, be notified. To such as clearly are not damaged in any appreciable amount merely nominal damages should be tendered.

Third—No other issue, I think, can be made in such proceedings except as to damages. The proceeding is a statutory one. Nothing can be done in it except the statute authorizes the same.

Fourth—I regard the action of the board as conclusive on the question of the necessity of the appropriation proposed, and no question as to that can be made.

Very respectfully,

JOHN LITTLE,  
Attorney General.