
Mutual Fire Associations.

MUTUAL FIRE ASSOCIATIONS.

Office of the Attorney General,
Columbus, Ohio, February 19, 1897.

Hon. W. S. Matthews, Superintendent of Insurance:

DEAR SIR:—I have the honor to receive a communication from your department under date of February 18, 1897, asking for a written opinion upon the question whether mutual fire associations organized under the provisions of sections 3686-3690, Revised Statutes of Ohio, may insure a hall belonging to the Patrons of Husbandry, and the right of such associations to make insurance on buildings commonly known as grange halls, schoolhouses and other structures of like character.

Section 3686 provides "That any number of *persons* of lawful age, residents of this State, not less than ten in number may associate themselves together for the purpose of insuring each other against loss, etc., and that such assessments and collections shall be regulated by the constitution and by-laws of the association."

Section 3687 in providing for the objects of such association states that each member agrees to be assessed specifically for incidental purposes and for the payment of losses which occur to its members.

Section 3689 puts in the proviso that in no instance shall the power to insure against loss by fire be exercised to others than members of the association.

Section 3690 provides how the constitution and by-laws shall be adopted.

Carefully examining the context of these sections to more clearly enable me to answer the question, I am obliged to construe and define the term "person or persons" as used and referred to in said act. The word "person," it is true, is a generic term and when used in the statute to determine whether it means not only a natural person but an artificial person, such as private corporations or associations, the

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context must be consulted to see in which sense it is used. There are many cases in which the legislature does not mean that the word person shall include corporations or associations or artificial persons. It has been the practice of our Legislature, unless the context clearly implied to extend the generic term "person" by adding "partnerships," "corporations," "associations," etc. The court in the case of *Pharmaceutical Society vs. London S. and P. Association*, L. R., 5 App. Cas., 857, said:

"Statutes, like other documents, are constantly conceived according to the popular use of language, and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent occurrence in some statutes, in interpretation clauses, of an express declaration that it shall extend to a body politic or corporate."

Endlich on Interpretation of Statutes, article 89, says:

"It is evident that the word 'person' may or may not include corporations, according to the intention of the Legislature in the use of the term, * * * *. If any general rule can be drawn from the decisions, it would seem to be this, that where the act imposes a duty towards, or for the protection of, the public or individuals, or grants a right properly common to all, and from participation in which the limited character of corporate franchises and the absence of any natural rights in corporations do not, by any policy of the law, debar them, the term 'persons' will in general include them, whether the act be a penal or a remedial one. But in cases of enactments having a different object in view, and especially of the class pre-eminently requiring a construction in accordance with common and popular usages of the language, it would seem that corporations would not, in general, be included."

In the case of *School Director vs. Carlisle Bank*, 8 Watts (Penna.), 291, Judge Kennedy said:

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“In the construction of statutes, the terms or language thereof are to be taken and understood according to their ordinary and usual signification, as they are generally understood among mankind, unless it should appear from the context, and other parts of the statute, to have been intended otherwise; and if so, the intention of the Legislature, whatever it might be, ought to prevail. Therefore, in the case before us, the term ‘person’ being generally understood as denoting a natural person, is to be taken in that sense, unless from the context, or other parts of the act, it appear that artificial persons, such as corporations, were also intended to be embraced. * * * Here, however, nothing of the kind appears, nor is there anything in any part of the act which goes to show that a bank was intended to be comprehended within the meaning intended by the Legislature to be affixed to the term ‘person.’”

The court said in 4 Alabama, 568:

“The true rule to apply in construing the term ‘person’ is to consider the connection and remember that a natural person may do anything which he is not prohibited by law from doing. An artificial person can do none which the charter giving it existence does not expressly or by fair inference authorize.”

In 37 La., 233, in discussing one proposition, the court said:

“For instance, where a statute provides that a certain number of persons may organize themselves into a corporation it cannot be understood as including corporations; that is, it does not authorize corporations to the prescribed number to organize themselves into a new corporation distinct from themselves. The word ‘persons’ here obviously meant only natural persons, individuals capable of contract and association.”

Referring these rules of construction to the sections of the Revised Statutes of Ohio referred to in your request,

Power of Certain Fire Insurance Companies to Issue Endowment Policies.

I am clearly of the opinion that the term "persons" as used in these statutes being qualified by such expressions as "lawful age, residence, associate themselves together," etc., treat the term "person" as a natural person and does not include a corporation, lodge or an association that in itself is composed of an organization inconsistent with these terms.

It is, therefore, my opinion that a corporation such as the Patrons of Industry, or township trustees owning a schoolhouse, or board of trustees owning or controlling a church structure, or corporation or association owning a grange hall being artificial persons, cannot associate themselves together with natural persons in this class of mutual assessment associations.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

POWER OF CERTAIN FIRE INSURANCE COMPANIES TO ISSUE ENDOWMENT POLICIES.

Office of the Attorney General,
Columbus, Ohio, February 20, 1897.

Hon. W. S. Matthews, Superintendent of Insurance:

DEAR SIR:—This department has the honor to receive a communication from you under date of February 19, 1897, asking for an opinion in writing as to whether, under the provisions of section 3630 and the supplementary sections thereto, providing for the organization and regulation of associations to do the business of life insurance on the assessment plan, such associations can issue certificates of insurance promising to pay in money at some fixed time during the life of the insured, the amount stipulated in the face of

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the policy or certificate. In other words, can such associations legally issue endowment policies?

Section 3630 as amended March 31, 1891, provides that a company or association may be organized to transact the business of life or accident, or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such company or association as the members may direct, in such manner as may be provided by the by-laws; and may receive money either by voluntary donation or contribution, or collect the same by assessment of its members; and may accumulate, invest, distribute and appropriate the same in such manner as it may deem proper. But all accumulations and accretions thereof shall be held and used as the property of the members and in the interest of the members.

This is an amendment of the act passed February 3, 1875, which amended the act of April 20, 1872. And the act of 1872 was a supplementary act to the general statute authorizing the incorporations of companies in the State of Ohio.

Section 3630a, passed 77 O. L., 178, provides a list of questions to be answered in the annual statements to be furnished your department, of which Nos. 17 to 25, inclusive, recognize that there were in existence and may yet be in existence, life insurance companies organized under the general statutes 3236 and 3238, that include clearly the power to do endowment insurance. Section 3630b and 3630c refer to such corporations, companies or associations that were in existence, and may have been organized under 3236, 3238 or any other law of the State, for the purpose of doing business under 3630; which section also refers to a class of companies already existing, capable of issuing endowment policies expressly providing for the payment to members of any sum of money during life, under such certificate; or

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guaranteeing a fixed amount at death. But in the amendment again of 3630e in 1891 the Legislature, referring to companies and associations doing a combination life and accident business on assessment plans, uses this language:

“Such corporation, company or association *shall* be authorized to transact in this State the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such corporation.”

Using the same language as is used in the amendment of the parent section 3630 in 1891. Section 3630, and that portion of 3630e just referred to, refer to the organization of companies to do the insurance in those sections described, from and after the date of such passage. Section 3630e and section 3630c are remedial and regulative of companies, not only to be organized but already in existence under repeated laws and in existence under the general statutes for the purpose of incorporation. Bearing in mind these distinctions and reading into the words of 3630 their natural meaning with proper limitations, I find:

That inasmuch as the double business of life and accident, and life or accident is provided for in one section, the subsequent qualifying words should be applied to the respective class of insurance that they would most naturally define. When the expression “for the purpose of mutual protection and relief of its members” is used following the term “accident insurance,” it is most natural to apply the term “protection and relief” to that class of insurance. No relief or protection can be afforded a dead man. A deceased person is no longer a member. Death cancels the contract so far as the mutuality of the contract exists. The act does not speak of the dead man as any longer being a member. Therefore, the term “protection and relief of its member,” must

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refer to the living members. This clause is immediately followed by the life provision, by adding "and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such company." There will be no families, heirs, executors, administrators or assigns of a deceased member until the death of such member. So that there is nothing in this clause that authorizes investment or endowment policies to pay "a stipulated sum of money" to the member or to anyone on the happening of any other event than death. And the subsequent authority providing by-laws cannot rise higher than its source, namely, the powers granted to the associations.

Thus we may see that the term "life insurance" not being modified by any qualifying words, such as "*investment* life insurance" or "*endowment* life insurance," and the subsequent limiting words not indicating they are to be taken in any other than their natural sense, I do not see how the subsequent clauses referring to accumulations, distributions and investments can be construed to mean endowment or investment insurance. But such accumulations, investments and distributions and appropriations must come within the original powers, namely, for the mutual protection and relief of its members.

I do not understand that the term "protection and relief" are terms to be applied to purely financial distress. But in all the text books they seem to be used in connection with sick benefits or accidents or physical infirmities coming upon the member.

Associated words limit and explain each other. The term "protection" in its ordinary definition, would mean the act of protecting from injury or annoyance, or protection from loss. The ordinary definition of "relief" is the removal of any evil, or of anything oppressive or burdensome. These terms being associated in this section with accident insurance, can consistently be applied and limited

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to that class of insurance. The connection would not warrant reading into the two words "protection and relief," the broader definition of "investment or endowment insurance."

The subsequent language in the section "distribute and appropriate," must be construed in harmony with the limitations of "protection and relief." Section 3630i provides for companies that may issue sick benefit policies, with limitations that seem to exclude their being included under section 3630.

The term "appropriate" as used in section 3630 should be confined to the use of such accumulations in the payment of expenses. And, perhaps, actual losses occurring under either set of policies. The term "distribute" must be taken in connection with contingent assessments. And the company would have no power under section 3630 to guarantee to distribute an absolute sum to a living member. The court held in 47 O. S. 167:

"Corporations organized under section 3630, which *do not comply* with the laws regulating '*mutual life insurance companies*,' have no power to issue policies guaranteeing any fixed sum to be paid at the death of a member, except such fixed amount shall be conditioned upon the same being realized from the assessments made on members to meet it. But such corporations have to comply with the mutual life insurance laws before they are authorized to issue endowment policies."

So that it seems to me clear that the term "distribute" cannot so far nullify all the preceding language of this section as to open the door for endowment or investment policies.

So far as this interpretation would conflict with sections 3630a, b and c, by assuming that these sections by implication when speaking of endowment policies refer to policies issued under 3630, and not to companies incorpo-

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rated under the general articles of incorporation as they were prior to 1872, I would then apply the rule that where two statutes on the same subject or on related subjects, are apparently in conflict with each other, are to be reconciled by construction so far as it may be possible on any fair hypothesis. Validity and effect should be given to both without destroying the limitations and meaning of the latest act. Again, of two constructions, the words of the latest law must control.

It is my conclusion, therefore, that section 3630 as now amended, does not authorize an assessment association organized thereunder, and not complying with the laws regulating mutual life insurance companies, to issue investment or endowment certificates.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

INCOMPATIBLE OFFICES.

Office of the Attorney General,

Columbus, Ohio, January 4, 1897.

Hon. C. W. Snider, 197 Superior Street, Cleveland, Ohio:

DEAR SIR:—This department is in receipt of a communication from you as present member of the General Assembly of the State of Ohio, asking for an opinion in writing as to whether your appointment to the position of second assistant prosecutor of the county of Cuyahoga, to begin duty on January 11, 1897, will conflict or be incompatible with the holding of your present office of member of the General Assembly of the State of Ohio; and that you wish to have this determined before you are qualified as such assistant prosecutor.

Section 19 of article 2 of the constitution provides

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that no senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, which shall be created or the emoluments of which shall have been increased during the term for which he shall have been elected.

The Legislature of which you are a member, on February 26, 1896, repealed section 1271 as amended March 8, 1893, and re-enacted section 1271, which act provides among other things, that "in Cuyahoga County the judges of the Court of Common Pleas may appoint two assistant prosecuting attorneys, who shall also be assistant court solicitors. * * * Such assistant prosecuting attorneys shall be appointed as aforesaid, only upon the nomination of the prosecuting attorney of such county, and shall receive such salary as shall be fixed by the judges appointing them * * * and not exceeding, in Cuyahoga County, \$2,500, nor less than \$2,000 per annum."

Section 1268, Revised Statutes, further provides that no prosecuting attorney shall be a member of the General Assembly of this State. Section 10, Revised Statutes, provides, "A deputy, when duly qualified, shall have power to perform, all and singular, the duties of his principal."

Independent of the statutes, all works on public officers hold substantially the same as our statutes have enacted into laws, as to the powers, duties and responsibilities of a deputy. While it is a question of grave doubt, when the Legislature repealed section 1271 and re-enacted it February 26, 1896, that for the purposes of the constitutional inhibition, it was not creating a civil office for the same Legislature of which you are a member, and are subsequently accepting an appointment under, which, if it should be held that the original repeal was an abolition of the office, and that the re-enacting of 1271 was creating the office anew, then under section 19 of article 2, you would not be eligible for the position of second assistant.

Viewing it from the statutory prohibition, if the office of prosecuting attorney, and member of the General As-

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sembly are incompatible, for the many reasons that might be suggested, independent of statute, by a parity of reasoning, an assistant prosecutor having all the duties of a prosecutor, would be ineligible as a member of the Legislature. The spirit of the statute, at least, is against your holding the two offices, and is a subject of at least a query, as to whether you would be entitled to the position of second assistant prosecuting attorney under the constitution, by reason of the re-enactment of section 1271, February 26, 1896, while you were a member of the Legislature.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

INCOMPATIBLE OFFICES.

Office of the Attorney General,
Columbus, Ohio, January 4, 1897.

Hon. J. C. Bloch, Cleveland, Ohio:

DEAR SIR:—This department is in receipt of your communication under date of January 2, 1897, as a member of the Ohio Legislature, asking for a written opinion upon the right of holding the position of judge of insolvency court, beginning on the 9th prox., under the recent act of the Legislature, while a member of such Legislature. Expressing your desire to have an early opinion to enable you to resign as a member of the Legislature in due time, and not to have any question of your disqualification as to holding the office of judge.

Section 14 of article 4 provides that judges of the Supreme Court and the Court of Common Pleas, shall, at stated times, receive for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office. But they shall re-

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ceive no fees nor perquisites, nor hold any other office of profit or trust under the authority of this State or of the United States. Section 17 provides how judges may be removed from office, namely, by a concurrent resolution of both houses of the General Assembly.

At the time the constitution was adopted there was not in existence a judgeship under the title of insolvency judge, as now held by your honor. The question then resolves itself independent of the constitution, into a question as to the compatibility of the two offices. If the two are incompatible, the general principle recognized by the courts, accepting the second one operates to vacate the first office.

Mechem, on Public Officers, says :

“Two offices are incompatible where the nature and duties of the two offices are such as to render it improper in consideration of public policy, for one person to retain both.” 15 Ia., 538; 58 N. Y., 295.

A further definition has been given by Bacon :

Judge Badgley held that two offices are incompatible

“Offices are said to be incompatible and inconsistent so as to be executed by the same person, when from the multiplicity of business in them they cannot be executed with care and ability, or when their being subordinate and interfering with each other, it induces a presumption that they cannot be executed with impartiality.”

where the holder cannot in every instance discharge the duties of each.

The courts have held that a state solicitor could not at the same time be a member of Congress; that a councilman could not be a city marshal; that a justice of a district court could not be a deputy sheriff; that a postmaster could not be judge of the county court.

Contract Prison Labor.

Throop, on Public Officers, section 36, holds that a judge cannot be a member of the Legislature, citing *Woodside vs. Wagg*, 71 Me., 207.

It is therefore my conclusion and opinion that to hold a position in the legislative department of the government of the constitution, as a member of the General Assembly, would be incompatible with holding a position under the judiciary which interprets such laws; that to establish such a precedent would be clearly against public policy and would not ultimately be sustained by the courts if the matter was tested by *quo warranto*.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

CONTRACT PRISON LABOR.

Office of the Attorney General,
Columbus, Ohio, January 12, 1897

Hon. L. F. Limbert, President Board of Managers Ohio State Reformatory, Greenville, Ohio:

DEAR SIR:—YOUR esteemed favor of the 11th inst. asking for a construction of section 8 of the act of April 24, 1891, duly received.

The section provides that the labor imposed upon the inmates, or industrial pursuits prescribed for the employment of their time, shall be at the discretion of the board of managers, except that which is known as the contract system of prison labor shall not be employed.

There was a system of prison contracts in existence in 1875 that has been repeatedly amended since said date, for the Ohio Penitentiary. There is a general contract system still in existence. I know of no way of determining what definition the Legislature may have had in mind at the time

Appointment of Fruit Commissioners.

they enacted this law, for "the contract system of prison labor." Inasmuch as there is a movement on foot to revise the plan of prison labor, and there is much needed legislation to harmonize the laws governing the two institutions, I do not believe it advisable to enter into five year term contracts as is done under the old system at the penitentiary, but exercise your honest discretion until you have your powers more clearly defined, and avoid the obnoxious contract system, and use such employment as will best accomplish the purposes of reformation, and improve the inmates of your institution within the meaning of that act.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

APPOINTMENT OF FRUIT COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, January 28, 1897.

Mr. Charles E. Thorne, Director Ohio Agricultural Experiment Station, Wooster, Ohio:

DEAR SIR:—In your letter of the 22d inst. you ask:

"In case township trustees refuse to appoint Fruit Commissioners as provided by the act of April 18, 1896 (92 O. L., 200) being 'An act to prevent the spread of peach yellows, black knot, and San Jose scale,' or neglect to do so after petition of five or more freeholders, what is the proper course to pursue in securing the appointment of such a fruit commission composed of competent men."

Section 2 of the act referred to provides:

"Wherever the disease known as peach-yellows, also black knot of the plum, cherry and prune are found to exist, not less than five freeholders in any township in Ohio may petition the township

Appointment of Fruit Commissioners.

trustees to appoint a township board of fruit commissioners, recommending in said petition three or more of the most competent and best qualified persons known in said township for the position.

“It shall be the duty of the trustees to speedily appoint for the township fruit commission, two of whom they consider the most capable freeholders in the township, who are growers of fruits liable to be diseased, one of whom must be familiar with the symptoms and nature of the diseases aforesaid mentioned, and shall be the foreman of the commission.”

“The township fruit commission shall be kept up as long as destructive diseases prevail and there is need of its existence, and the township trustees shall annually appoint the commissioners comprising it at their regular April meeting.”

The provisions above quoted clearly define the duties of the trustees. Upon a petition by five or more freeholders of any township in which any of the diseases named are known to exist, it becomes the imperative duty of the trustees to at once appoint fruit commissioners, persons possessing the qualifications required by the act. This duty is not a discretionary one, but is mandatory upon them.

If the trustees fail or refuse to perform any duty enjoined upon them by this act, the proper method to compel the performance of such duty, is by a proceeding in mandamus instituted in the Common Pleas, Circuit or Supreme Court.

Recognizing the necessity for a vigorous enforcement of this law, to the end that the fruit growers of our State may not suffer the loss of their property, and be deprived of the product of their industry through the carelessness of others, this department will cheerfully render your board such assistance as will secure the strict enforcement of this wise measure.

Very respectfully,

JOHN L. LOTT,
Assistant Attorney General.

Section 975-1, 975-2, 975-3—Mutual Fire Associations.

SECTIONS 975-1, 975-2, 975-3.

Office of the Attorney General,
Columbus, Ohio, February 16, 1897.

*Hon. Joseph P. Byers, Secretary State Board of Charities,
Columbus, Ohio:*

DEAR SIR:—This department has the honor to receive a communication dated February 13, enclosing an opinion of Hon. J. H. Dyer, prosecuting attorney of Franklin County, which is herewith returned in reference to the repeal of section 975, Revised Statutes.

It is my opinion that sections 975-1, 975-2, 975-3 are still operative notwithstanding the repeal of section 975, for the purposes of carrying out the provisions of 974. And that they were not so dependent upon 975 as to fall with its repeal.

Respectfully submitted,
F. S. MONNETT,
Attorney General.

MUTUAL FIRE ASSOCIATIONS.

Office of the Attorney General,
Columbus, Ohio, February 19, 1897.

Hon. W. S. Matthews, Superintendent of Insurance:

DEAR SIR:—I have the honor to receive a communication from your department under date of February 19, 1897, asking for a written opinion upon the question whether mutual fire associations organized under the provisions of sections 3686-3690, Revised Statutes of Ohio, may insure a hall belonging to the patrons of husbandry, and the right of such associations to make insurance on buildings com-

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monly known as grange halls, schoolhouses and other structures of like character.

Section 3686 provides that any number of persons of lawful age, residents of this State, not less than ten in number, may associate themselves together for the purpose of insuring each other against loss, etc., and that such assessments and collections shall be regulated by the constitution and by-laws of the association.

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Section 3689 puts in the proviso that in no instance shall the power to insure against loss by fire be exercised to others than members of the association.

Section 3690 provides how the constitution and by-laws shall be adopted.

Carefully examining the context of these sections to more clearly enable us to answer the question, I am obliged to construe and define the term "person or persons" as used and referred to in said act. The word "person," it is true, is a generic term and when used in the statute to determine whether it means not only a natural person, but an artificial person, such as private corporations or associations, the context must be consulted to see in which sense it is used. There are many cases in which the legislature does not mean that the word "person" shall include corporations or associations or artificial persons.

It has been the practice of our legislature, unless the context clearly implied to extend the generic term "person" by adding "partnerships," "corporations," "associations," etc. The court in the case of *Pharmaceutical Society vs. London S. and P. Association*, L. R., 5 App. Cas., 857, said:

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Endlich, on Interpretation of Statutes, Article 89, says:

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"In the construction of statutes, the terms or language thereof are to be taken and understood according to their ordinary and usual signification, as they are generally understood among mankind, unless it should appear from the context, and other parts of the statute, to have been intended otherwise; and if so, the intention of the Legislature, whatever it might be, ought to prevail. Therefore, in the case before us, the term 'person' being generally understood as denoting a natural person, is to be taken in that sense, unless from the context, or other parts of the act, it appear that artificial persons, such as corporations, were also intended to be embraced. * * * * Here, however,

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"For instance, where a statute provides that a certain number of persons may organize themselves into a corporation, it cannot be understood as including corporations; that is, it does not authorize corporations to the prescribed number to organize themselves into a new corporation distinct from themselves. The word 'persons' here obviously meant only natural persons, individuals capable of contract and association."

Referring these rules of construction to the sections of the Revised Statutes of Ohio referred to in your request, I am clearly of the opinion that the term "persons" as used in these statutes, being qualified by such expressions as "lawful age, residence, associate themselves together," etc., treat the term "person" as a natural person, and does not include a corporation, lodge, or an association that in itself is composed of an organization inconsistent with these terms.

It is, therefore, my opinion that a coporation such as the Patrons of Husbandry, or township trustees owning a schoolhouse, or board of trustees owning or controlling a church structure, or corporation or association owning a

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grange hall, being artificial persons, cannot associate themselves together with natural persons in this class of mutual assessment associations.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

POWER OF LIFE INSURANCE COMPANIES TO
ISSUE ENDOWMENT POLICIES.

Office of the Attorney General,
Columbus, Ohio, February 20, 1897.

Hon. W. S. Matthews, Superintendent of Insurance:

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In other words, can such associations legally issue endowment policies?

Section 3630, as amended March 31, 1891, provides that a company or association may be organized to transact the business of life or accident, or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such company or association, as the members may direct, in such

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manner as may be provided in the by-laws; and may receive money either by voluntary donation or contribution, or collect the same by assessment on its members, and may accumulate, invest, distribute and appropriate the same in such manner as it may deem proper; but all accumulations and accretions thereof, shall be held and used as the property of the members and in the interest of the members.

This is an amendment of the act passed February 3, 1875, which amended the act of April 20, 1872, and the act of 1872 was a supplementary act to the general statute authorizing the incorporation of companies in the State of Ohio.

Section 3630a, passed 77 O. L., page 178, provides a list of questions to be answered in the annual statements to be furnished your department, from 17 to 25, inclusive, that recognizes that there were in existence and may yet be in existence, life insurance companies organized under the general statutes, sections 3236, 3238, that included clearly the power to do endowment insurance.

Section 3630b and 3630c refer to such corporations, companies or associations that were in existence, and may have been organized under 3236, 3238 or any other law of the State, for the purpose of doing business under 3630. Which section also refers to a class of companies already existing capable of issuing endowment policies, expressly providing for the payment to members of any sum of money during life under such certificate, or guaranteeing a fixed amount at death. But in the amendment again of 3630e, in 1891, the legislature referring to companies and associations doing a combination life and accident business on assessment plan, uses this language:

“Such corporation, company or associations shall be authorized to transact in this State the business of life or accident, or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the

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families, heirs, executors, administrators or assigns of the deceased members of such corporations.”

Using the same language as is used in the amendment of 1891, of the parent section 3630. Section 3630, and that portion of 3630e just referred to, refers to the organizing of companies to do the insurance in those sections described, from and after the date of such passage. Sections 3630a and 3630c are remedial and regulative of companies not only to be organized but already in existence under repealed laws, and in existence under general statutes for the purpose of incorporation. Bearing in mind these distinctions, and reading into the words in 3630, their natural meaning with proper limitations, I find:

That inasmuch as the double business of life and accident, and life or accident is provided for in one section, that the subsequent qualifying words should be applied to the respective class of insurance that they would most naturally define. When the expression is used “for the purpose of mutual protection and relief of its members,” following the term “accident insurance,” it is most natural to apply the term “protection and relief” to that class of insurance. No relief or protection can be accorded a dead man. A deceased person is no longer a member. Death cancels the contract so far as the mutuality of the contract exists. The act does not speak of the dead man as any longer being a member. Therefore the terms “protection and relief of its members” must refer to the living members. This clause is immediately followed up by the life provision, by adding “and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such company.”

There will be no families, heirs, executors, administrators or assigns of a deceased member until the death of the member. So that there is nothing in this clause that authorizes investment policies or endowment policies to pay

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a "stipulated sum of money" to the member, or to anyone on the happening of any other event than death. And the subsequent authority providing by-laws cannot rise higher than its source, namely, the powers granted to the association.

Thus we may see that the term "life insurance" not being modified by any qualifying words such as "investment life insurance" or "endowment life insurance," and the subsequent limiting words not indicating they are to be taken in any other than their natural sense, I do not see how the subsequent clauses referring to accumulations, distributions and investments can be construed to mean endowment or investment insurance. But such accumulations, investments and distributions and appropriation must come within the original powers, namely, for the mutual protection and relief of its members.

I do not understand that the term "protection and relief" are terms to be applied to purely financial distress. But in all the text books they seem to be used in connection with sick benefits or accidents or physical infirmities coming upon the member.

Associated words explain and limit each other. The term "protection" in its ordinary definition would mean the act of protecting from injury or annoyance, or protection from loss. The ordinary definition of "relief" is the removal of any evil, or of anything oppressive or burdensome. These terms being associated in this section with accident insurance can consistently be applied and limited to that class of insurance. The connection would not warrant reading into the two words "protection and relief" the broader definition of "investment or endowment insurance."

The subsequent language in the section "distribute and appropriate," must be construed in harmony with the limitations of "protection and relief." Section 3630i provides for companies that may issue sick benefit policies, with limita-

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tions that seem to exclude their being included under section 3630.

The term "appropriate" as used in section 3630 should be confined to the use of such accumulations in the payment of expenses, and perhaps actual losses occurring under either set of policies. The term "distribute" must be taken in connection with contingent assessments. And the company would have no power under section 3630 to guarantee to distribute an absolute sum to a living member. The court held in 47 O. S., 167, that "Corporations organized under section 3630, which *do not comply* with the laws regulating *mutual life insurance companies*, have no power to issue policies guaranteeing any fixed amount to be paid at the death of a member, except such fixed amount shall be conditioned upon the same being realized from the assessments made on members to meet it. But such corporations have to comply with the mutual life insurance laws before they are authorized to issue endowment policies."

So that it seems to me clear that the term "distribute" cannot so far nullify all the preceding language of this section as to open the door for endowment or investment policies.

So far as this interpretation would conflict with sections 3630a, b and c by assuming that these sections by implication when speaking of endowment policies refer to policies issued under 3630, and not to companies incorporated under the general articles of incorporation as they were prior to 1872, I would then apply the rule that where two statutes on the same subject or on related subjects, are apparently in conflict with each other, they are to be reconciled by construction so far as it may be possible on any fair hypothesis. Validity and effect should be given to both without destroying the limitations and meaning of the latest act. Again, of two constructions, the words of the latest law must control.

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It is my conclusion, therefore, that section 3630, as now amended, does not authorize an assessment association organized thereunder and not complying with the laws regulating mutual life insurance companies, to issue investment or endowment certificates.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

WORKSHOP AND FACTORY LAWS.

Office of the Attorney General,

Columbus, Ohio, February 25, 1897.

Hon. John W. Knaub, Chief Inspector of Workshops and Factories:

DEAR SIR:—This department has the honor to receive a communication from your office asking for an official opinion upon the following state of facts:

On November 20, 1896, after receiving the findings of the inspector, an order was issued from your department to Robert G. Corwin, known as Factory Building Order No. 222, asking him to provide water closet on second floor for exclusive use of female employes, as per the law for preservation of the health of female employes, in this State; and provide substantial hand railings on all stairways not so provided.

That on January 22, 1897, your inspector again called at such building, located in Dayton, and found that your order had not been complied with. You further state that the building in question is occupied by one James McIntire, as lessee or tenant, who manufactures confections and has in his employ four females.

Your inquiry is especially directed to know whether

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the owner or the lessee is the proper party upon whom to serve notice and inflict penalty.

The owner of the building seeks to escape the duty, and excuses his disobedience on the ground that it is the duty of the employer of such females to comply with such regulations.

The act of March 6, 1891, provides that every person or corporation employing female employes in any manufactory, or mercantile establishment in this State, shall provide suitable seats for the use of the female employes so employed, and shall permit the use of such by them when they are not necessarily engaged in the active duties in which they are employed; and shall permit the use of such seats at all times when such use would not actually and necessarily interfere with the proper discharge of the duties of such employes; and shall also provide on the same floor or floors of the building wherein any female persons are employed, suitable and separate toilet and dressing rooms and water closets for the exclusive use of such female employes. The state inspector of workshops and factories is hereby charged with the duty of seeing that the provisions of this section are observed and enforced.

The only section treating of the same subject matter subsequently enacted, was passed April 18, 1903, 90 O. L., 190, section 2573*d*. This defines what shops and factories are understood under section 2573*b* and 2573*c* to be, which includes all kind of manufacturing, mercantile, tenant and apartment houses, and provides that when it is found under inspection, under section 2573*c*, that it is necessary * * * to provide additional stairways as exit on the inside or outside of such shops and factories, or where it is necessary for changes or additions for ventilation, sewerage or water closets, or plumbing in connection with closets, or any other improvements necessary for the health or safety of the employes' persons, occupying such shops and factories, such changes or additions being of a permanent and fixed character, and which after provided become a permanent fixture, and

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the property of the owner or owners of the building or buildings of such shops and factories, the owner or agent for the owner of such building or buildings, shall be required by the state inspector, on the notice and under the penalties of section 2573, to provide such necessary changes and additions as are mentioned in this section.

Applying the well known rule of statutory construction that statutes in *pari materia* are to be construed together, and that each legislative act is to be interpreted with reference to other acts relating to the same matter or subjects, and applying the rule that later statutes are considered as supplementary or complimentary to the earlier enactments, then these two statutes must be construed together. We must deal with the entire legislative act upon this subject to discover the progressive developments of the uniform and consistent design, and to observe the continued modifications and adaptations of the original design, and apply the same to the changed conditions and circumstances.

In the passage of the act of 1893 the Legislature must be supposed to have had in mind and in contemplation, the existing legislation on the same subject, and to have made its new enactment with reference thereto. The same principle requires us to study the context for the meaning of a particular phrase or provision, so likewise we are to compare the several parts of one statute with another *in pari materia* to see if the words have a broader or narrower scope than if read separately. Whatever is ambiguous or obscure in the given statute, must be read and explained by similar provisions in other acts relating to the same subject, or by a study of the general policy which pervades the whole system of legislation. It is necessary then to consider all previous acts relating to the same subjects, and to construe the act at hand so as to avoid as far as may be possible any conflict with earlier or later statutes thereon. And when they cannot be construed harmoniously, full force and effect must be given to the latest act, and that provision which was last adopted must prevail. And in case of a conflict be-

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tween the two parts or provisions which is not so radical as to require that one or the other must be absolutely disregarded, the court will endeavor to so modify the earlier provision as to bring it into harmony and consistency with the latter.

Assuming from the facts submitted that the building inspected and referred to in your inquiry, is a manufacturing establishment, within the definition of section 2573 *d*, and such section referring back to sections 2573*b* and *c*, and these original sections within the definition of workshops and factories define all shops and factories at least in broad enough terms include the factory inquired about in your letter. The law of 1891 enlarges the reasons and is an additional guide to the inspector under section 2573*d* and enables him to act under the words "when found necessary" more clearly than he would perhaps be authorized to act always under section 2573*d* without these statutory definitions.

Whatever additional duty may be imposed upon the employer, tenant or lessee of the building under the act of 1891, for providing seats, and other conveniences that are not fixtures for his employes, I am clearly of the opinion that the proprietor of the building is compelled to make the permanent improvements, or such improvements as are not "fixtures" under 2573*d* as amended in 1893, and he cannot be heard to excuse himself or escape the liability when it has been determined by an inspector to be necessary to have improved sewerage or water closets, or plumbing in connection with closets, or any other improvements or repairs for the stairways, etc.

But as to the furnishing stools or seats for behind counters, or any other furniture that would not be fixtures, the employer is held directly responsible and liable for that, and may possibly be liable for conducting a business without the other fixtures attached to his shop, factory or store, although he may not have the power to make the improvements. His remedy would perhaps be to cease employing

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females, cancel his contract on the ground of illegality, and lodge a complaint against the landlord for not furnishing, at his request, a legal place to do business.

It is my conclusion that if the inspector determines that it is necessary to furnish a water closet for this factory, whether the same is made necessary by the employment of male or female employes, whether under a special statute minutely defining the requirements or leaving it to his judgment as a sanitary measure, the owner can be compelled to do so.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

PROCEEDINGS TO COMMIT TO BOYS' INDUSTRIAL SCHOOL.

Office of the Attorney General,
Columbus, Ohio, March 4, 1897.

Mr. George H. Withey, Prosecuting Attorney, Fremont, Ohio:

DEAR SIR:—In your letter of a recent date you state that it has been the practice in your county, upon proceedings being instituted in the probate court to commit a child to the Boys' Industrial School or the Girls' Industrial Home, for the probate judge to issue a notice in the form of a summons to be served upon each member of the county board of visitors by the sheriff, he charging mileage for the six notices, and the members attending, and each receiving \$1.00 per day as witness fee and mileage for such attendance. You desire to know whether it is necessary and proper for the sheriff to serve such notice upon each member of the board; whether the members are entitled to such compensation, and whether such practice is not an abuse of a good law.

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Section 7916-600, Revised Statutes, as amended (89 O. L., 161), provides for the appointment by the judge of the Court of Common Pleas in each county of a board of county visitors composed of six persons, whose duty it shall be to inspect all charitable and correctional institutions of the county, and to serve without compensation.

Section 7916-60a makes it the duty of the probate judge whenever proceedings are instituted before him to commit a child to the industrial institutions above named, to have notice of such proceeding given to the board of county visitors of such county, "whose duty it shall be to attend such proceedings, either as a body or by committee, and protect the interests of such child."

This latter section provides that notice shall be given the board, and imposes upon it a certain duty; but I do not understand that before the board can perform that duty, the members shall have been compelled to attend the proceedings by notice given each member in the form of a summons served by the sheriff of the county. Upon receiving notice, it is the duty of the board, or the committee of the board appointed for that purpose to attend the hearing and protect the interests of the child. Any notice which advises the board, or its committee, of the time and purpose of the hearing, is sufficient, no matter in what form or manner it is given. To require such notice to be served upon each member by the sheriff, in the manner you state would, in my opinion, be a gross abuse of the law. It being the duty of the board to attend such hearings, its members are not entitled to witness fees and mileage for such attendance; if they are entitled to receive anything, it is only to be reimbursed for expenses actually incurred by them by reason of such attendance.

I think, therefore, you were right in refusing to allow the fees and mileage of the board of visitors, and the sheriff's fees for serving the notices.

Very respectfully,

JOHN L. LOTT,
Assistant Attorney General.

Use of Fire Extinguishers on Railroad Trains.

USE OF FIRE EXTINGUISHERS ON RAILROAD
TRAINS.

Office of the Attorney General,
Columbus, Ohio, April 27, 1897.

Hon. R. S. Kaylor, Railroad Commissioner, Columbus, Ohio:

DEAR SIR:—This department has the honor to receive a communication from you under date of April 27, asking for a construction of section one (1), of an act to compel the introduction of fire extinguishers on passenger trains operated within and throughout the State of Ohio, especially desiring to know whether it should be so construed as to make it necessary to equip baggage, mail, express and sleeping cars with the extinguishers.

Section 1, or so much thereof as involves this question, reads as follows:

“Every company or corporation operating a railroad in whole or in part in this State shall be required within one year from the passage of this act, to carry on every passenger train operated within or throughout this State, as part of the equipment of such train, at least one portable chemical fire extinguisher, for the purpose of protecting the lives of the passengers and employes, from fire, and that one portable chemical fire extinguisher shall be added each year thereafter to every train operated until every passenger coach comprising the train of passenger cars run on any of the railroads of this State, shall be supplied with a portable fire extinguisher as a part of the equipment of said cars.”

The purpose of the act is expressly stated as being for protection to the lives of the passengers and employes from fire. It does not aim to protect the property, mail or baggage. It speaks of “every passenger coach comprising the train of cars.” The Century dictionary defines a passenger coach as one carrying passengers on a railroad. The term “coach” is used exclusively in connection with

Authority of Board of Public Works to Consent to Construction of Street Railway on Street on Which State Lands Abut.

vehicles for the purpose of carrying passengers. It is true that employes occupy baggage and mail cars, but they also, likewise, occupy freight cabooses, and the peculiar wording of this statute has not yet gone so far as to require an extinguisher for any other than coaches actually occupied by passengers.

The federal statute provides for and enforces the carrying of fire extinguishers in mail cars independent of your department.

Without further express legislation, which would include baggage, express and mail cars, I would not advise you to attempt to enforce providing extinguishers therefor.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

AUTHORITY OF BOARD OF PUBLIC WORKS TO
CONSENT TO CONSTRUCTION OF STREET
RAILWAY ON STREET ON WHICH STATE
LANDS ABUT.

Office of the Attorney General,
Columbus, Ohio, April 27, 1897.

Board of Public Works of the State of Ohio, Columbus, Ohio:

GENTLEMEN:—I have the honor to receive a communication from your department asking whether your board has the power to consent in writing to the construction and operation of a street railway on a public highway, on which State lands, namely, canal property, abutts.

Having examined your statutory and constitutional powers, I do not think you have the authority without further acts of the legislature authorizing it, to so consent.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

Building and Loan Associations.

BUILDING AND LOAN ASSOCIATIONS.

Office of the Attorney General,
Columbus, Ohio, May 28, 1897.

Hon. W. D. Guilbert, Auditor of State:

DEAR SIR:—In your favor of the 21st inst. you direct my attention to the fact that under section 5, of the act of May 25, 1891 (88 O. L., 471), regulating building and loan associations in Ohio, such companies are required to accumulate a fund for contingent losses; and that, by section 7, of the same act, provision is made for the return by non-borrowing members, of their shares as individual credits at their true value in money. You propound the question:

“Does the value of the shares held by the members, include the surplus or fund for contingent losses, or should the corporation make return of the amount of such fund for taxation?”

While, by section 7, special provision is made for the taxation, or exemption from taxation, of all the individual shares and stocks in a building and loan association, no special provision in this act or elsewhere is made for a return by the association itself, of its money and credits. A building and loan association, by section 1 of this act, is defined as “a corporation for the purpose of raising money to be loaned among its members.” The theory of taxation embodied in section 7 appears to be that the non-borrowing members shall return his stock as a credit, at its true value in money, and pay taxes thereon; while the borrowing member is exempted from returning or paying taxes upon his stock or loan. The borrowing member is treated as being indebted to the non-borrowing member. The one owes a debt, the other owns a credit; the former is not required to pay taxes, the latter is. The value of the stock of the latter is dependent, of course, on the value of the net assets of the association, which may consist

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of money as well as credits. The association is not required to return its mortgage securities or loans. These are supposed to be listed through the stock of the non-borrowing members, to which they give value. I see no more reason for requiring the association to return its contingent fund than to return its credits. In fact, in many instances the contingent fund is not held as money, but invested in loans. In any event, the contingent fund contributes to the value of the shares of paying members, which are required to be returned for taxation, and taxes paid thereon.

I therefore answer your question in the negative.

Very respectfully,

JOHN L. LOTT,
Assistant Attorney General.

FISH AND GAME LAWS.

Office of the Attorney General,
Columbus, Ohio, June 3, 1897.

*Mr. L. H. Reutinger, Chief Warden Fish and Game,
Athens, Ohio:*

DEAR SIR:—In your letter of the 26th ult. you call attention to the following language contained in the fourth exception to section 6968-4, Revised Statutes:

“And nothing in this act shall apply * *
to the catching or taking of German carp in any
of the bays, marshes, estuaries or inlets bordering
upon, flowing into, or in any way connected with
Lake Erie, which may be caught or taken at any
time or in any manner.”

You desire to know whether the word “inlet” as used in this provision would include the rivers which empty into Lake Erie, at any point in the streams, or what meaning should be given the word.

Webster defines the word “inlet” as “a bay or recess

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in the shore of the sea, or of a lake or large river, or between isles."

The Century dictionary defines it as "a waterway leading into a sea or lake, and forming part of it; a strip of water running from a larger body into the land; a creek; a channel."

The courts of New York have defined it thus: "The word 'inlet' seems to denote the indentation in the shore, at the mouth or outlet of a navigable stream."

The word "estuary" is defined to be "that part of the mouth or lower course of a river where it broadens out into a bay, an enlargement at the mouth of a river."

Under the definitions above given, the fourth exception to section 6968-4 would not permit the taking of German carp at any time or in any manner, from the rivers emptying into Lake Erie, but they can only be lawfully so taken below the point where such streams cease to be and broaden out into estuaries or inlets.

Very respectfully,

JOHN L. LOTT,
Assistant Attorney General.

SAFETY INTERLOCKING DEVICES.

Office of the Attorney General,
Columbus, Ohio, June 25, 1897.

Mr. R. S. Kaylor, Commissioner of Railroads and Telegraphs:

DEAR SIR:—This department has the honor to receive a communication from you asking for a written opinion upon certain propositions, and a construction of the act of April 27, 1896, known as "An act to protect persons and property from danger at grade crossings of one railroad over another, and at junction points, by providing for safety devices thereat." (92 O. L., 315.)

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Your first inquiry is as to whether under sections 2, 3 and 4, it would be proper for the commissioner of railroads and telegraphs to approve any safety device that would not interlock both lines.

Your second inquiry is:

“Where a new road is seeking to cross one already built, under section 3, could other than a regular interlocking device be considered?”

Third—“Would the findings of the commissioner be final, providing the device recommended can be proven an interlocking device?”

Fourth—“Where it reads ‘safety device,’ has this any bearing on section 3?”

Fifth—“Would it be proper to approve any device that would not permit the cars on either line to cross the other without stopping? For instance, should an interlocking machine be put in to be worked by the conductor of the street railway, that would give the steam railroad a clear track except when street cars were crossing? Said interlocking made operative by a conductor of a street car stopping his car and passing ahead of his car and operating the lever or gate, and throwing signals to the steam railroad. This arrangement allowing the steam road to cross without stopping, and the street road being compelled to stop.”

The purpose of the act as expressed in the title, is to protect persons and property from danger at grade crossings of one railroad over another, or over a swing or drawbridge and at junction points, by providing for safety devices thereat.

In examining the various sections of the act, and keeping in mind the distinctions attempted to be shown between grade crossings already established and those to be established, it becomes of first importance to define the terms used in the act, whether the generic term “safety device” includes all others, or whether “interlocking” is something different from the general term “safety device.”

In section 2 it speaks of protecting such crossings “with

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interlocking or other safety devices." In other words, every interlocking device is supposed to be a safety device, but is the contrary proposition true that every safety device is an interlocking device? For in section 3, referring to future crossings, the expression is used, "shall be compelled to interlock such crossings to the satisfaction of said commissioner, and to pay all costs *of such appliances.*" Is the word "interlock" synonymous in this section with "safety device?" Section 4, in speaking of sections 2 and 3, again uses the term as follows: "Whenever interlocking or other safety devices are constructed and maintained in compliance with sections 2 or 3 of this act, then in that case, it shall be lawful," etc.

The inquiry may be made whether the term "interlock" being used in the form of a verb in section 3, was intended to be generic and include all safety devices, and there being no corresponding verb to express the general term "safety device" was the reason for the term being thus used. The purpose of the act, whether a new or old road, being to protect persons and property from danger at grade crossings—and to provide for safety devices for that purpose.

The first question is, what is an interlocking device or system? To answer this question in the light of the way in which the legislature uses the term, we must apply such a definition of the term as was in use by standard works at the time of the passage of the act. The standard published authority existing in April, 1896, as recognized in this office and by the courts, was the Century dictionary. It defines the interlocking system of signals in railroading as being "Any system of devices whereby signals denoting the position of switches at stations, junctions and bridges, are, by means of blocking mechanism, connected with and controlled by a switch mechanism in such manner that any movement of the switches operates the proper signal to indicate to engine drivers and others, the position in which said switch is set."

There may be other or technical definitions given by

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the craft that may not be generally known to the public, and it cannot be assumed that the legislature used the term in any narrow or technical sense, at least any more refined than the existing definition by standard authorities.

Applying the above broad definition to "interlocking" as used in this act, and answering your first proposition, I would say that it is proper for the commissioner to approve of any safety device whereby signals denoting the position of switches that would be mutual, and notify each road of the respective position of the movement of the switches or trains. If such movement of the switches operates the proper signal to indicate to the engineman or motor-man of the respective roads the position in which the switch is set.

Your second proposition is answered by saying that an interlocking device can be legally authorized by you, that will come within the foregoing definition.

My answer to section 3, is that your recommendations will be final when you have fairly exercised your discretion within the above definition of interlocking signals.

My answer to question 4 would be: Perhaps the term "safety device" applied primarily to section 2. And so far as it applies to section 3 in throwing light upon the verbal form of the word used "interlock," unless the safety device provided for under section 3 does not come within the broad definition above given; that is, that there would be a mutuality in the signalling by means of a locking mechanism connected with and controlled by a switch mechanism in such manner that any movement of the switches of one or the other of the roads would operate the proper signal to the corresponding road, would not perhaps come within the meaning of the act. There should be some mutuality in the control of the switch mechanism that would throw some proper signal to the opposite road.

In answer to your fifth proposition, I would call your attention to that clause of section 4 which provides that whenever interlocking or other safety devices are con-

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structed and maintained in compliance with sections 2 or 3, of this act, then and in that case it shall be lawful for the engines and trains of such railroad, and the cars of such electric railroad, to pass over such crossing without stopping."

Of course one or the other of the roads must be blocked at the particular time the opposite road is using such crossing. It would be an impossibility to have a clear track at all times for either road. The true purpose and meaning of the act is that you shall keep in mind primarily the protection of persons and property endangered at grade crossings, and so far as possible consistent therewith, not to impede commerce and traffic on the respective roads.

If you carry out the spirit of the act, it is required to so construct your device that one or the other of the roads should be constantly blocked, and you have that right and power.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

DOW LIQUOR LAW.

Office of the Attorney General,
Columbus, Ohio, June 28, 1897.

Hon. W. D. Guilbert, Auditor of State, Columbus, Ohio:

DEAR SIR:—I am in receipt of a communication from your department asking for a written opinion upon section 8 of the Dow law, upon the following proposition:

"Can wholesale druggists be required to pay the Dow tax when selling to the trade, or retail druggists?"

You state further that the auditor of Cuyahoga County states that a part of the wholesale druggists are selling to retail druggists who, the latter, are paying the Dow tax.

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Should such wholesale dealers be placed upon the tax duplicate under the Dow law?

Section 8 provides that trafficking in intoxicating liquors means the buying or procuring and selling of intoxicating liquors otherwise than upon prescriptions issued in good faith by a reputable physician in active practice or for exclusively known mechanical, pharmaceutical or sacramental purposes.

It is my construction of that statute and my opinion that the term "exclusively known" in defining the purposes for which the exception exists, applies equally to wholesale druggists who are selling intoxicating liquors, to retail druggists any one of whose customers retail it for drinking or beverage purposes; that is, it is not enough that the retail purchaser of such wholesale firm shall buy it for mechanical, pharmaceutical or sacramental purposes, if in addition to those purposes such customer is retailing the same as a dealer in intoxicating liquors, and paying the Dow tax. If such wholesale firm would have a hundred customers, ninety-nine of said customers would be handling such intoxicating liquors, and the hundredth customer would be paying the Dow tax and buying intoxicating liquors for the purpose of trafficking in intoxicating liquors within the meaning of the Dow law, then such wholesale dealer would not be selling the same to retail dealers exclusively for pharmaceutical purposes.

Any other solution of this proposition would permit wholesale liquor dealers to change their title and become wholesale druggists and escape paying the Dow tax.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

*Authority of University Board to Pay Unpaid Labor Bills.*AUTHORITY OF UNIVERSITY BOARD TO PAY
UNPAID LABOR BILLS.

Office of the Attorney General,
Columbus, Ohio, July 7, 1897.

*Hon. Alexis Cope, Secretary Board of Trustees Ohio State
University:*

DEAR SIR:—This department has the honor to receive a communication from you asking whether under the contract of the State with the Columbus Construction Company, the board may authorize the payment and pay the unpaid labor bills amounting in the aggregate to about \$900.00, which said company refused to pay, but sent the laborers to the board of trustees to get their money.

Part of section 9 of the contract with said company, as referred to in your communication, provides:

“If at any time there shall be evidence of any lien or claim for which, if established, the owner of the said premises might become liable and which is chargeable to the contractor, the owner shall have the right to retain out of any payments then due, or thereafter to become due, an amount sufficient to completely indemnify him against such lien or claim. Should there prove to be any such claim after all payments are made, contractor shall refund to the owner all money that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor's default.”

These unpaid labor bills were left unpaid clearly by reason of the default of said contracts. The claims have been fully established by a judgment against said contractors. The contractors have ordered the same paid by the trustees. It is my opinion that the trustees representing the State, will be justified in paying all of such claims that are established and retain the same out of any payments

*Authority of Governor to Require Attorney General to
Prosecute Persons Indicted.*

then due or thereafter to become due. And when so paid and discharged, in case there is a deficiency of the amount yet due the contractors on said contract, I hold that the same would be a valid charge against the said bondsmen.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

AUTHORITY OF GOVERNOR TO REQUIRE ATTORNEY GENERAL TO PROSECUTE PERSONS INDICTED.

Office of the Attorney General,
Columbus, Ohio, July 7, 1897.

Hon. Asa S. Bushnell, Governor of Ohio:

DEAR SIR:—I have the honor to receive a communication from you, stating you have been called upon by a delegation of colored citizens asking you, as governor, to instruct the attorney general of the State, to inquire into the official misconduct of the mayor of the city of Urbana, Ohio, and of the sheriff of Champaign County, and to take such necessary steps in the matter as the facts warrant; and you have filed therewith a petition and set of resolutions signed by a large number of citizens.

You have asked for an official opinion as to what your powers in the premises may be.

Section 202, Revised Statutes, provides that the attorney general shall appear for the State in the trial and argument of all causes, civil and criminal, in the Supreme Court wherein the State may be directly interested; and when required by the governor or General Assembly, he shall also appear for the State in any court or tribunal, in any cause in which the State is a party, or in which the State is directly interested; and upon the written request of the governor, he shall also prosecute any person indicted for any crime.

Authority of Governor to Require Attorney General to Prosecute Persons Indicted.

Section 204 provides that the attorney general shall prosecute any proceedings in quo warranto in the Supreme Court of the State, the Circuit Court of Franklin County, or the Circuit Court of any county where the officer or officers, person or persons, made defendants, reside or may be found.

Section 6760 provides that a civil action may be brought in quo warranto in the Supreme Court of the State or the Circuit Court upon the relation of the attorney general, against a public officer, civil or military, who does, or suffers an act, which, by the provisions of law, works the forfeiture of his office.

Section 6762 provides that the attorney general, when directed by the governor, Supreme Court or General Assembly, shall commence any such action and when, upon complaint or otherwise, he has good reason to believe that any case specified above can be established by proof, he shall commence an action.

From the foregoing sections it would appear that as to the criminal feature of the action of the mob, mayor or sheriff, the governor may require the attorney general to prosecute any person indicted by a grand jury for any crime.

If proof is furnished your honor that either of the public officers inquired about in the petition to you have done or suffered an act, which by the provisions of law, worked a forfeiture of their respective offices, your honor would have the authority to furnish this department with the proof, and a written request to me to begin such action in the Supreme Court of the State in quo warranto, asking that the officers be ousted from their respective offices.

I do not understand that you have any original powers to institute criminal proceedings against any of the alleged violators of law, but this must be begun in the regular manner before the magistrates of the county where the crime is alleged to have been committed. Respectfully submitted,

F. S. MONNETT,
Attorney General.

Agreement of a Candidate to Give Part of His Salary to the County.

AGREEMENT OF A CANDIDATE TO GIVE PART
OF HIS SALARY TO THE COUNTY.

Office of the Attorney General,
Columbus, July 9, 1897.

H. C. Tuttle, Esq., Burton, Ohio:

DEAR SIR:—I have the honor to receive a communication from you stating that certain electors are making an effort to elect a citizens' ticket in Geauga County, this fall, making the reduction of salaries of county officers an issue.

That they propose to put up a man who will agree to do the work for a certain amount, about fifty per cent. of the present salary.

You inquire whether a candidate can make such a contract and whether such election upon the promise and agreement of the candidate to do the work for a specified sum, would be a legal election.

This is a proposition that has been before the court so frequently in various forms, that it is no longer an open question. The courts have held that a contract by which a candidate agrees in consideration of his appointment or election, to surrender to the public the fees or salaries of the office in whole or in part, or to receive something else in compensation than that which the law provides, is void. (Harvey vs, Tama Co., 53 Iowa, 228.)

Mechem, on Public Officers, answers your second inquiry, as follows:

“A contract to surrender to the public the fees and salary of an office in whole or in part, by the candidate in consideration of his election, is in legal effect, a bribery in its largest sense, and invalidates the officer's election. And if such an officer be elected by such agreement or promise, he may be removed from such office upon quo warranto proceedings.”

Credit Given Prisoners for Good Behavior.

The following are a few of the courts that have passed upon the latter proposition, and removed officers for such offenses:

State vs. Collier, 72 Mo., 13; 37 Am. Rep., 417; Carrothers vs. Russell, 53 Iowa, 346; 86 Am. Rep., 222; State vs. Purdy, 36 Wis., 213; 17 Am. Rep., 485; See also Tucker vs. Aiken, 7 N. H., 113; Alvord vs. Collin, 20 Pick. (Mass.), 428.

Not to be misunderstood, any party has a right to advocate a proposition or platform in favor of reduction of county officials' salaries, but such reduction must be brought about through the regular channels of legislation and a revision of the statutes controlling those matters.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

CREDIT GIVEN PRISONERS FOR GOOD BEHAVIOR.

Office of the Attorney General,
Columbus, Ohio, July 27, 1897.

*Hon. W. F. Sefton, Superintendent Ohio State Reformatory,
Mansfield, Ohio:*

DEAR SIR:—I have the honor to receive a communication from your board in reference to "good time" allowed prisoners. Your first inquiry is, "Under what authority do the prisoners in the Ohio Penitentiary receive a credit of five days for each month, and whether your board may make a similar rule giving a system of credits in the way of time for each month?" You further state that "your rules provide that an inmate coming here must remain six months in the second grade and six months in the first grade, before he can be released on parole;" and you say "if this

Credit Given Prisoners for Good Behavior.

rule which is in vogue is not the result of authority given by law, could our board change such rule so as to give the prisoners the benefit of five days credit for each month, for good behavior, the same as given in the Ohio Penitentiary?"

The system of credits known as the diminution of period of sentences for good behavior is a matter regulated by statute for the Ohio Penitentiary, as provided in section 7388-8, giving five days for each month for a years' sentence, six days per month for a two years' sentence, eight for three, nine for four, ten for five, eleven for six, etc.

In your institution, section 12 of the act of 88 O. L., 382, provides how your institution may parole prisoners. Section 7388-33 being section 16 of the act of 88 O. L., 382, provides how the board of managers shall provide a system of credit marks, the result of those credit marks being a basis upon which the prisoner may leave and remain at liberty as provided in the latter part of said section. After such record of credits is made, when it appears to said managers that there is a strong or reasonable probability that any prisoner may leave and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, they shall certify such fact of such release and the grounds thereof to the governor, and the governor may thereupon in his discretion restore such prisoner to citizenship.

In reference to your established rule of requiring them to be six months in the second grade and six months in the first grade, I find no statute regulating the rule, but it seems to be a discretionary matter with the board to establish rules, and perhaps is one they might make; but it certainly is not unalterable, and could be changed at any time the board saw fit, so that a period shorter than six months in each grade would entitle the prisoner to recommendation to the governor under section 7388-33. Otherwise, a one year man could get no benefit of his good behavior, but in any event would have to serve the full twelve months according to that rule, before he even could be recommended

Taxation; Telephone Companies.

to the governor under said section for restoration to citizenship. But there is nothing in the statute governing your board that warrants you in giving an arbitrary deduction per month or per year for marks, but a rule could be enacted that would determine when a man was entitled to be recommended to the governor for restoration to citizenship, that would be much less than remaining his whole sentence. You should be governed by section 10 of said act so that the term of such imprisonment of any person so convicted and sentenced shall not be less than the minimum term provided by law for the crime of which the person was convicted. And where a statute makes the minimum sentence one year, I suppose you have no discretion to reduce it below that time, even by a system of good marks.

Respectfully submitted,

F. S. MONNETT,
Attorney General.

TAXATION; TELEPHONE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, August 23, 1897.

Hon. W. D. Guilbert, Auditor of State:

DEAR SIR:—Your favor of this date, requesting an official opinion as to what your advice shall be to county auditors and taxing officers in reference to the assessment of a tax against the property of the American Bell Telephone Company, with a report upon the value of the property owned by the company within the State, as near as can be ascertained, has been received.

Section 166, Revised Statutes, among other statutory duties imposed upon you, makes it incumbent upon you to give instructions upon any subject affecting the State's finances, the execution of which devolves in part upon county officers and which affects the interest of the State,

Taxation; Telephone Companies.

as you may deem conducive to the best interest of the State; and county auditors and all local officers acting under such laws, shall observe and obey such instructions. The Supreme Court has held under this section that you may require county auditors to correct any clerical errors or mistakes or omissions they may have made. Assuming this to be your power, I think you have the statutory right and it is your duty to advise the respective county auditors in the eighty-eight counties of the State of their duties in reference to listing omitted personal or real property at any time.

Applying this rule to the specific inquiry you have made, and reporting the facts as I am able to furnish you, and which will be accurately ascertained in each respective county when your orders are obeyed, I find that the American Bell Telephone Company, a foreign corporation, owns what are known as the instruments that are placed in each place of business, and that the Central Union Telephone Company, the City and Suburban Telegraph Association of Cincinnati, and other telephone companies are lessees from the American Bell Telephone Company of these instruments. That they do not, as such lessees, return any of the property of the American Bell Telephone Company for taxation. The American Bell Telephone Company charges for each instrument used in the State, an annual rental, as much as \$14.00, of such lessees, and requires, in addition to such rental, a block of stock (the amount of which I cannot ascertain) from the respective telephone companies. That such lessees are required to pay freight charges and repairs, leaving substantially a net income for the instruments of \$14.00 annually. There were in use on August 1, 1897, in Columbus, 1,884 of these instruments; in Cincinnati, I am unofficially informed, there are about 4,500; in Toledo, 1,926. Figuring from data we have at hand, the American Bell Telephone Company leases not less than from 22,000 to 25,000 instruments to the different telephone companies of the State.

In ascertaining the market value of almost all other

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taxable property in the State, we have assumed to fix the values at the earning capacity of the property on a six per cent. basis. If each of these instruments earns \$14.00 over and above repairs, to the Bell Telephone Company, that represents a value of \$233.00 to each instrument. On 25,000 instruments, it represents an earning value in the State of Ohio that is being protected by our laws and receiving all the benefit of police regulation of \$5,833,000. Under the principle laid down in the Nichols law (which does not specifically refer to the Bell Telephone Company), we take the entire value of their plant at \$97,000,000, which is its market value, and take Ohio's proportion of it as a part of the unit. To put the Bell Telephone Company upon the same basis as the Western Union Telegraph Company, or the express companies, and counting the average rate in the State as we do on those companies at 25 mills, the Bell Telephone Company would owe to the State of Ohio taxes to the amount of \$80,000 annually. Or, taking one-third of the value off of the original earning amount of \$233.00 per instrument, would leave them about \$160.00 per instrument, as the taxable value.

The Central Union Telephone Company and other telephone companies refuse to pay the tax upon this property, because they do not and can not own the instruments. We have taxed all other corporations this year in addition to the regular tax upon their property, \$466,000 under the excise law. In simple justice to the other corporations that have had to bear their fair share of the burdens, I think it is your duty to at once send out notices to the county auditors of the State, requiring them to place upon their respective duplicates in their taxing districts, all of the property of the American Bell Telephone Company within their districts, at a reasonable valuation. If they have not already done so, they should be placed on the tax duplicate as delinquent for the five years last past. It may be the company can make a showing why the penalty should not be added. This should be left for future consideration. Inasmuch as

Dow Liquor Tax.

the policy of the State of Ohio is no longer to take the valuation of the property of the telegraph companies upon the actual cost on the vitriol and keys, but upon its earning capacity, and so of the express companies, you will be justified in promptly sending out your instructions based upon this construction.

Respectfully submitted,
F. S. MONNETT,
Attorney General.

DOW LIQUOR LAW.

Office of the Attorney General,
Columbus, Oho, September 17, 1897.

Hon. W. D. Guilbert, Auditor of State, Columbus, Ohio:

DEAR SIR:—I have the honor to receive a communication from you, under date of September 15, asking for an opinion in writing upon certain propositions in reference to the imposing of taxes upon keepers of houses of ill-fame under the Dow law; filing therewith a list of complaints and affidavits and charges against various keepers of such places in the State of Ohio; also a certificate showing that some of these same keepers are paying the United State Internal Revenue tax for the purpose of selling intoxicating liquors as retail liquor dealers; and the further testimony of customers who swear they have purchased beer of these defendants and paid therefor the sum of \$1.00 per bottle.

You also accompany your inquiry with a letter from Hon. W. H. Halliday, auditor of Franklin County, asking for instructions from your department as to what powers he may have in the premises when it is made unlawful for liquor to be sold in places of prostitution.

Section 166, Revised Statutes, empowers you, as auditor of state, to furnish and issue from time to time, instruc-

Dow Liquor Tax.

tions upon any subject affecting the State's finances, or the construction of any statute, the execution of which devolves in part upon county auditors, and which affects the interests of the State, and which you may deem conducive to the best interests of the State. And the statute further requires county auditors and all local officers, acting under such laws, to obey such instructions so promulgated from your office.

Section 4364-1 defines a house of ill-fame to be: "A building or place generally reputed in the neighborhood where the same is located, to be a building or place where persons of opposite sex meet for the purpose of prostitution."

Section 4364-2, making it unlawful to sell or give away intoxicating liquors in houses of ill-fame, is as follows:

"It shall be unlawful for any person to sell or give away, in any house of ill-fame, as defined in section 1 of this act, any spirituous, malt, vinous or other intoxicating liquor or liquors, and the selling or giving away in any part of such building or place, or in any shed or addition thereto, or in any other buildings or structure standing on the lot of land upon which such house of ill-fame is situated, or upon premises adjacent thereto, and which is in the control of the person or persons having control of such house of ill-fame, shall be deemed to be unlawful within the meaning of the provisions of this act."

For this violation there is a penalty of \$350.00, that may be recovered in a civil action.

Section 6942 further provides that a keeper of a place where intoxicating liquors are sold in violation of law, shall be fined not more than \$100.00, nor less than \$50.00, or imprisoned not less than 10 days, nor more than 30 days, or both. And upon conviction of such keeper, the place where such liquor is sold shall be deemed to be a common nuisance, and the courts shall order him to shut up and abate the same.

Dow Liquor Tax.

Section 6943-5 makes it unlawful for the sale, exchange or giving away of intoxicating liquors in brothels, and adds as a penalty therefor a minimum fine of \$100.00, and imprisonment for not less than one month nor more than six months.

Notwithstanding all these State laws in full force, the constitutionality of which has been passed upon in each case by the lower courts, complainants allege that there are over three hundred houses of ill-fame, and other places in the State, where intoxicating liquors are sold contrary to law.

Section 8 of the Dow law defines the phrase "trafficking in intoxicating liquors" to mean the buying or procuring and selling of intoxicating liquors, otherwise than upon prescription issued in good faith by a reputable physician in active practice, etc.

Section 1 of said act provides that upon the business of trafficking in spirituous, vinous, malt or any other intoxicating liquors, there shall be assessed yearly and shall be paid into the county treasury by every person, corporation or partnership engaged therein, and for each place where such business is carried on by or for such persons, corporations or partnerships, the sum of \$350.00.

The court under this section in the case of *Stevens vs. Hunter*, 2 N. P., 300, has already held that the person who sells liquor in violation of a local option act can be compelled to pay the Dow tax.

In conclusion, I therefore hold that notwithstanding the criminal penalty above referred to, attaching wherein parties make the sales in brothels and houses of prostitution, that when the sales have already been made or liquor has been given away, they will not be heard in law or justice to defend against the Dow tax, to say that they are selling liquor illegally.

If that would be a defense and a mode of escape from paying the Dow tax, every saloon that wished to be dishonorable enough to become a law violator and refuse to pay the Dow tax and say they sold to minors and drunkards

Dow Liquor Tax.

and were thereby doing an illegal business, or go as far as these defendants claim and become still worse violators of the law and start a brothel at each place where intoxicating liquors are sold, and plead that in justification of their refusal to pay the Dow tax.

You should instruct each county auditor, as I gave you a written opinion on a similar subject before, to forthwith place every such person so selling, upon the duplicate, file the proof with the prosecuting attorney, and if prosecuting attorneys, sheriffs or police officers refuse to act, and wink at the plain violations of the criminal laws of the State, county or city, they should be removed from office either by impeachment or quo warranto.

Last year the State of Ohio collected off of dealers in intoxicating liquors, under what is known as the Dow law tax, \$1,002,478.00. As long as it is the policy of the State to charge each dealer \$350.00 for each place where such sales are conducted, the State owes it to them to see that the law is enforced against all alike, and not place a premium upon criminal evasions.

I think it advisable to again call attention to the fact that under section 2 of said Dow law said assessment, together with any increase thereof and penalty thereon, attaches and operates as a lien upon the real property on and in which such business is conducted; that if such lien is properly placed thereon by the auditor of the county, the owners of such real estate will be obliged to pay such taxes at the same time their other State taxes are paid, and in default thereof the property will be sold at delinquent tax sale. This lien would attach and operate for the liquor that *had been sold* on the premises and should not be evaded because the tenants or lessees were evicted or imprisoned under the other statute, at some future time. If the estimate made is correct that there are 300 places as above described, now evading the paying of the Dow tax, the State and county treasuries are being defrauded of \$100,000.00.

Respectfully submitted,

F. S. MONNETT,
Attorney General

Ditch Notices.

DITCH NOTICES.

Office of the Attorney General,
Columbus, Ohio, September 17, 1897.

*Hon. W. T. Hoopes, Prosecuting Attorney, Marysville,
Ohio:*

DEAR SIR:—I have the honor to receive a communication under date of September 17, 1897, asking for a construction of section 4451a, Revised Statutes, in regard to the duties of a county auditor in preparing ditch notices under said section. Asking first, should the county auditor prepare a notice directed only to the petitioners, or should he prepare all the notices to the land owners or the corporation along said improvement, setting forth the substance as required by said section?

Second, if the auditor should prepare said notices, should the whole number of names affected by said improvement be repeated in each notice, or should the name appear but once in each notice?

Section 4451a is an amendment or re-enactment of section 4457 which is now repealed. Section 4457 provided that the auditor should prepare and deliver to the petitioners or any one of them, a notice in writing directed to the resident lot or land owners, * * * also a copy directed to each of said lot or land owners; * * * and the auditor shall at the same time give the like notice to each non-resident lot or land owner, or by publication in a newspaper * * * for at least two consecutive weeks before the day set for hearing. * * *

Section 4451a, as amended, 91 O. L., 159, provides among other things, in somewhat different language, substantially the same procedure, but omits the word "also" before the words "a copy." Which reads, "He shall prepare and deliver to said petitioners, a notice in writing, * * * a copy of which notice shall be served upon each lot or land owner, etc.

Ditch Notices.

Said auditor shall at the same time give a like notice to each non-resident lot or land owner * * * at least two weeks before the day set for hearing.

Section 4515, covering the same subject matter in reference to township ditches, provides, "Upon the filing of such petition and bond the clerk shall prepare the necessary number of notices for the petitioners, who shall cause one such notice to be given to the owner of such tract of land affected by the proceedings; the notice shall state substantially the prayer of the petition," etc.

Under section 4515 there is no ambiguity, and the clerk of the township corresponds to the county auditor in powers and duties, in reference to the subject matter of these statutes. And he there undoubtedly prepares the original and all copies. The earlier part of 4451a standing alone is not free from ambiguity; but construing said section with the latter part thereof, and in connection with 4515, it would appear that said auditor being required at the same time to give a like notice, or to likewise give a notice, would mean that he should give to non-resident land owners by publication the same kind of a notice he had prepared for resident land owners. And in the absence of a judicial construction of said act, I would hold that the auditor as the clerk of the commissioners can properly prepare the copies of such notices, and it would be part of his legal duties to do so. Section 4506 expressly provides for compensation to the county auditor for copies and for notices, as many other sections and duties seem to contemplate that he should do such clerical work in connection with his office, and he is limited in his charges for such work by statute.

Your second proposition I would answer by stating that such notices should not contain more than the one name to which said notice was directed. It would be a vain thing to fill the notice with duplicate names; it would incur an illegal and useless bill of expense; it could not avail anyone anything in such proceedings.

Respectfully submitted,
F. S. MONNETT,
Attorney General.

*Fire Insurance Companies Doing Joint Fire and Life
Business.*

FIRE INSURANCE COMPANIES DOING JOINT
FIRE AND LIFE BUSINESS.

Office of the Attorney General,
Columbus, Ohio, October 1, 1897.

Hon. W. S. Matthews, Superintendent of Insurance:

DEAR SIR:—I have the honor to receive an inquiry and request for a written opinion upon the construction of section 3596, Revised Statutes of Ohio. You file therewith exhibits showing the nature of the business of insurance taken by the English company, which exhibits show that the company is existing under life insurance acts of 1870 (33 and 34 Vict., chapter 61; 35 and 36 Vict., chapter 41).

It is true the company seeking to do fire insurance business has the power under the English law to do a life business. But examining the English statutes under which said company has its life, it both exists by its charter rights and continues to do business under its charter rights by virtue of an absolute separation of its respective assets, so that there is no joint liability covering the assets of fire and life, but each by virtue of the English law must be kept separated and each fund responsible for its own respective losses.

For the purposes of the Ohio statute, section 3596, or so much as pertains to this inquiry—I would construe that portion of said section reading as follows: "No company shall undertake any business or risk organized under the laws of any other government * * * which in this State or any other State or country makes insurance on marine, fire, inland or any other risk, or does a banking or any other kind of business in connection with insurance that conducts at the same time a life insurance business,"—to mean that there is a prohibition by our statute against a foreign company doing a joint life and fire insurance business, either in this State or any other State, commingling its assets and rendering the funds of the respective depart-

Fish and Game Laws.

ments jointly liable for risks of fire and life. But by virtue of the English statute, they being independent departments, the purpose for which this statute was enacted is accomplished by requiring each department to remain separate and distinct in its insurance business.

It is my conclusion, therefore, that from the exhibits shown, that the company is not doing a joint life and fire within the meaning of this act; and until a court decree otherwise, I would advise you to admit them to do a fire insurance business, on their complying with all other statutes.

Respectfully submitted,
F. S. MONNETT,
Attorney General.

FISH AND GAME LAWS.

Office of the Attorney General,
Columbus, Ohio, October 28, 1897.

Mr. L. H. Reutinger, Chief Warden Fish and Game, Athens, Ohio:

DEAR SIR:—In your letter of a recent date you desire to know whether a person who has served the thirty days' imprisonment for failure to pay a fine imposed for a violation of section 6968, Revised Statutes, is thereby released from the payment of the fine.

I answer, I think he is. In effect, two forms of punishment are provided. The offender must either pay the fine imposed or serve the thirty days' imprisonment required by the statute.

You further ask whether the county commissioners have any authority to accept the note of a person so imprisoned in payment of such fine, and release him from imprisonment under such a sentence.

*State Board of Health; Power to Proceed Against Persons
for Violation of Order of Board.*

Sections 7349-4 and 7349-5, Revised Statutes, authorize the commissioners of any county to parole an indigent prisoner confined in a jail for non-payment of fine and costs, and prescribe the conditions upon which the parole may be granted. Under the sections just mentioned, the commissioners would have a right to parole a person so convicted and imprisoned, unless such right is taken away by some special provision.

By section 6968, Revised Statutes, it is expressly provided, that in case a person neglects or refuses to pay a fine imposed under that section, the offender shall be imprisoned in the county jail or workhouse, "*and shall there remain for the full period of thirty days.*"

From this language, the meaning is plain; it is that the legislature by this provision intended to, and did, take these offenses from the operation of the general law, and deprived the commissioners and all other officers of the power to parole or release any person convicted of a violation of the fish and game laws, the punishment for which is provided in that section, before the expiration of the thirty days' imprisonment, unless the fine be paid.

Very respectfully,

JOHN L. LOTT,
Assistant Attorney General.

STATE BOARD OF HEALTH; POWER TO PROCEED AGAINST PERSONS FOR VIOLATION OF ORDER OF BOARD.

Office of the Attorney General,
Columbus, Ohio, November 26, 1897.

Dr. C. O. Probst, Secretary State Board of Health, Columbus, Ohio:

DEAR SIR:—This department has the honor to receive a communication from your office under date of November

*State Board of Health; Power to Proceed Against Persons
for Violation of Order of Board.*

23, 1897, asking for an official opinion to guide the State Board of Health as to its procedure against the village of Hyde Park, or the citizens thereof, for a violation of a certain order of said board.

You give me a copy of your permit to said municipal corporation to construct a sewer on Erie avenue, of said village, with an outlet into Crawfish Creek. One of the conditions imposed by your board upon said village being that no house connection be made with said sewer, and that "it shall not be connected with any sewer having house connections, without permission of the State Board of Health." That notwithstanding said conditions, there is now a drainage from one or more privy vaults or water closets, by the citizens, into said sewer and from thence into Crawfish Creek.

You further state that Crawfish Creek empties into the Ohio River not far above the point at which the city of Cincinnati obtains its water supply from said river.

You wish to know how the State Board of Health can proceed to compel the village of Hyde Park to comply with its regulations relative to the use of this sewer; also, what measures are necessary to prevent the present and future pollution of Crawfish Creek by the sewerage of said village.

Section 2 of the act of 90 O. L., 94, provides that, "The State Board of Health shall have supervision of all matters relating to the preservation of the life and health of the people of the State. * * * It may also make and enforce orders in local matters when an emergency exists, and the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when such board has not been established as provided in this chapter; and all necessary expenses so incurred shall be paid by the city, village or township in which such services are rendered."

Under this section I take it that this is a local matter, and as I am informed aside from your inquiry that no local board has yet been established in such village, you would

*State Board of Health; Power to Proceed Against Persons
for Violation of Order of Board.*

have jurisdiction to make a special order or regulation at once for the suppression of this pollution of the stream, and serve said village with a copy thereof, upon the proper officers. And if the same is not promptly suppressed in accordance with your order and direction, and your orders are not carried out by the officers and employes of said municipal corporation, your board or the officer designated thereby, should make affidavit before a magistrate of Hamilton County having jurisdiction, charging such officers with the failure or refusal to act, and if convicted, the magistrate should assess a fine of not less than \$50 for the first conviction, and upon conviction of a second offense, not less than \$100.

What has been said herein of the officers of said village, is equally true of any citizen of said village. Notice should be served upon them of their offense; the same should be followed by arrest and prosecution. If said nuisance is still not abated by the officers or employes of such village, under section 2, you may designate, by a resolution of your board, suitable persons to abate such nuisance in the way that will be the most effective, and reasonable in expense, and present a bill for all such expenses so incurred to such village for which services are rendered. Should the village then refuse to pay for such services, a civil suit in Common Pleas Court of such county should be instituted by the State Board of Health to recover the same, in addition to the fines and penalties above set forth for such refusal.

Under section 5 there are still other modes of procedure that the State Board of Health can adopt, following the modes of procedure adopted by local boards.

Respectfully submitted,

F. S. MONNETT,

Attorney General.

Indigent Imbecile; Residence.

INDIGENT IMBECILE; RESIDENCE.

Office of the Attorney General,
Columbus, Ohio, January 7, 1897.

*Dr. G. A. Doren, Superintendent Ohio Institution for
Feeble-Minded Youth, Columbus, Ohio:*

DEAR SIR:—This department is in receipt of your communication dated January 5, requesting a written opinion in the following case: "A child was admitted from Warren County, Ohio, October 7, 1886. February 24, 1887, a statement was received that the parents of the child were not able to furnish the clothing, and we were directed to send bills for the same to the county, which was done under section 632. These bills have been sent regularly since, and have been paid by Warren County. The girl is not a proper subject for this institution on account of insanity and epilepsy, and the county authorities were requested to remove her. This the authorities declined to do, basing their refusal on the fact that the father, now dead, had before his death removed to Hamilton County, and they claim that she was a resident and properly a charge upon Hamilton County. The child has been in this institution continuously since her admission from Warren County. Where does the child belong, and which probate judge would have jurisdiction in such a case?"

Section 632, or so much thereof, provides that an indigent imbecile may have the incidental expenses and necessary clothing paid for by the institution, and the institution in turn, by properly executing a voucher, may be reimbursed from the county "from which the person came." The peculiarity of the wording of this statute, by taking the language of it in its natural sense, would indicate, for the purpose of the incidental expenses and clothing of such patient, that the original county is charged therewith for that purpose only. Under chapter 9, relating especially to the asylum for the insane, when the courts or officers are deal-

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ing with the patient for the purpose of determining the county and district, the term "resident or inhabitant of the district," should be taken in its ordinary sense or definition. Section 700 not clearly defining the question of residence, but section 702 in prescribing the form of affidavit uses the term "legal settlement in ——— township, ——— county."

It is my opinion that the patient, having no mind of her own, and being a minor, the removal of the parents to Hamilton County would be the removal of the child, and that such child, in law, has its legal settlement in Hamilton County, and the probate judge of Hamilton County would have jurisdiction over its person for the purpose of inquest and determining its eligibility for the proper asylum of that district.

Respectfully submitted,
F. S. MONNETT,
Attorney General.

STATE BOARD OF DENTAL EXAMINERS; POWER
TO REVOKE CERTIFICATE.

Office of the Attorney General,
Columbus, Ohio, January 25, 1898.

Dr. F. H. Lyder, Secretary State Board of Dental Examiners, Akron, Ohio:

DEAR SIR:—I have the honor to receive a communication from your board, asking for a written opinion upon the proposition, or rather, defining the powers of your board under the statute, where an applicant for a certificate to practice dentistry had obtained the same from your board by perjury and fraud. You further state that had the holder of such certificate made known all the facts at the time of his application, that you have since learned, he would not