or when by reason of the common law rule of incompatibility they are rendered so. An examination of the above sections discloses that there is no statutory inhibition, and therefore it must be considered whether or not there is anything to prevent one person from holding the two positions in question at the same time by reason of the duties thereof being inconsistent or conflicting in any manner. The rule of incompatibility is stated in the case of *State, ex rel. Attorney General* vs. *Frank Gebert,* 12 O. C. C. (N. S.) 274, as follows:

> "Offices are considered incompatible when one is subordinate to or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both."

Applying the above principle, it would therefore seem to me that there is no reason why a rural board of education, if it sees fit to do so, may not employ a person as janitor of the school building who it at the same time under contract with said rural board of education to transport pupils to and from said school. There is nothing incompatible in the duties which said person would have to perform in both capacities, and whether or not it is physically possible for the same person to satisfactorily perform the duties of both positions is a question of fact rather than of law and consequently a matter for the board of education to determine.

I am therefore of the opinion that if it is physically possible to perform the duties of both positions, a person who is under contract with a rural board of education to transport pupils to and from school may also be hired by the same rural board of education as janitor of the school building to which such children are transported and a separate salary may be paid to such person for each position.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3018.

REMONSTRANCE—NOT VALID UNLESS FILED WITHIN THIRTY DAY PERIOD WITH COUNTY BOARD OF EDUCATION IN TRANSFER OF SCHOOL PROPERTY—SEC. 4692, GENERAL CODE.

SYLLABUS:

When a transfer of school territory is made by a county board of education by authority of Section 4692, *General Code, a remonstrance delivered to the president of the board of education at his residence, within the thirty day period spoken of in the statute and retained by him until after the expiration of the said thirty day period before delivering the same to the office of the county superintendent of schools, is not "filing with the county board of education" as required by the statute within the thirty day period so as to defeat the taking effect of the transfer as made.*

COLUMBUS, OHIO, August 10, 1934.

HON. NORMAN L. MCLEAN, *Prosecuting Attorney, Fayette County, Washington C. H., Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

> "The County Board of Education of Fayette County, Ohio, under Section 4692 of the General Code of Ohio transferred a rural school district to an adjoining rural district. The transferred territory was not centralized but the territory to which it was transferred is centralized. A map of the transferred territory and a copy of the resolution was filed with the County Auditors of Madison and Fayette Counties, in which counties the transferred territory was situated. The thirty days period for filing of the remonstrance ended on Sunday. On Saturday, the 29th day, the remonstrance was brought to the office of the County Superintendent, who is Clerk of the County Board. The County Superintendent was not present in his office and the remonstrance was not left there to be filed with him but was taken to the home of the President of the Board of Education and given to him on the same day. Upon receipt of the remonstrance he sealed it in an envelope and on the following Tuesday brought it to the office of the County Superintendent where it remained sealed until the next regular meeting of the Board and was not opened until that time. The first opportunity that the public had to inspect the remonstrance was at the regular meeting of the County Board of Education. The County Board of Education then gave the parties who were in favor of the transfer the period of three weeks to present any objections to the remonstrance. As I understand, the remonstrance contained the names of more than fifty percent of the electors of the territory proposed to be transferred. Under this state of facts was the remonstrance legally filed and considering the fact that it was not open for inspection to the public until sometime after the thirty day period had elapsed, is the remonstrance legal?"

Section 4692, General Code, under which the transfer in question was made, reads in part, as follows:

> "The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer."

The sole question presented by your inquiry is whether or not the remon-

strance was filed with the county board of education within the thirty day period as provided by the statute.

The word "file" meant at common law, a thread, string, or wire on which writs or other exhibits in courts and offices were fastened or filed for safekeeping and for ready turning to them. The modern method of filing papers is to place them in the official custody of the proper officer to be kept as a permanent record. Bouvier's Law Dictionary; American and English Encyclopaedia of Law, 2nd Edition, Volume 13, page 13; Corpus Juris, Volume 25, pages 1123 to 1124.

In some jurisdictions the filing of a paper is not complete until the officer with whom it is filed endorses thereon a notation showing its receipt by him and the time the paper was received. In Ohio, however, this endorsement is not necessary to constitute the filing of the paper. *Lessee of Haines* vs. *Lindsay,* 4 Oh., 90; *Nimmons* vs. *Westfall,* 33 O. S., 221; *King* vs. *Penn,* 43 O. S., 57.

A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file. *King* vs. *Penn, supra; Blanton Co.* vs. *Trust Nat. Bank,* 175 Ark., 1107, 1 S. W., 2nd, 558; *Baily* vs. *Woodrun Truck Lines (Tex.),* 36 S. W., 2nd, 1090-92; *King* vs. *Atlantic Coast Line,* 86 S. C, 510, 68 S. E., 769; *Smith* vs. *Geraty,* 109 N. Y. S., 738, 739; *Meek* vs. *State, ex rel. Lindville,* 172 Ind. 654, 88 N. E., 299.

In the case of *Murphy* vs. *Burlington Overall Co.,* 225 Mo. App., 866, 34 S. W., 2nd, 1035, it is said:

> " 'To file' is defined as meaning to lay away papers for presentation and reference and a paper is said to be 'filed' when delivered to the proper officer.
>
> There can be no 'filing' of a paper in a legal sense except by its delivery to an official whose duty it is to file papers and who is required to keep and maintain an office or other public place for their deposit, and the paper must either be delivered personally to such officer with the intent that the same shall be filed by him, or delivered at the place where the same should be filed."

In re. Sause, 106 N. Y. S., 211, 214; Matter of Norton, 53 N. Y. S., 1093, *People* vs. *Peck,* 22 N. Y. S., 576, 579.

In the case of *O'Brien* vs. *Schneider,* 88 Neb. 479, 129 N. W., 1002, it is said:

> "A paper is 'filed' with an officer when it is placed in his custody and deposited by him in its place where his official records and papers are usually kept."

In the case of *People* vs. *Romirez,* 112 Cal. App., 507, 297 Pac. 51, 52, the court held that the "filing of papers" is accomplished by depositing them with the proper officer at the place for performing duties.

Where the law provides that papers should be filed at a certain office or with a certain public officer, delivery made to anyone in charge of the office or representing the officer at his office for the time being, is no doubt sufficient to constitute a legal filing of the papers. *Oates* vs. *Walls,* 28 Ark., 244; *Cook* vs. *Hall,* 6 Ill., 575; *Dodge* vs. *Potter,* 18 Barb., 193; *Reed* vs. *Acton,* 120 Mass., 130. Delivery to such officer outside his office or to one not authorized to represent the officer or board with whom the filing of the paper is to be made does not constitute a "filing" of it.

In the case of *Loeser Grain Co.* vs. *U. S.,* 250 Fed., 826, 831, it is held:

> "The 'filing' of a paper or claim with a corporation is not complete until the document is delivered to and received by an officer or agent thereof who had authority to receive, file and act upon it."

The principle is stated in an English case, *Garlick* vs. *Sangster,* 9 Bing., 46, 23 E. C. L., 259, as follows:

> "A paper is not filed when it is put into the custody of an officer of the office in which it is to be filed, when he is not at the public office, such officer not being the one in whose custody the paper belongs."

There is authority in this state for saying that even though delivery of a paper had been made to the particular officer who should have had custody of it after it was filed, the delivery of it to him personally, at his home or any place other than his office does not constitute a filing of the paper.

In the case of *Taylor* vs. *Wallace,* the headnotes, as reported in 2 Bull., 115, read as follows:

> "A notice of appeal handed to the clerk at his private residence, is not a filing, and though entered on the appearance docket the next day, this is not conclusive, and does not give the appellate court jurisdiction when the time for filing expired on the previous day."

This case was affirmed by the Supreme Court, in *Taylor* vs. *Wallace,* 31 O. S., 151.

It was also held in the case of *Kiehborth* vs. *Bernard,* 7 Dec. Rep., 359, that a notice of appeal taken to the clerk's office after it had been closed for the day and handed to the janitor, employed by the county commissioners to sweep out the office, is not "entering" with the clerk. Section 4692, General Code, does not, in terms, require that a remonstrance, to be effective, must be filed "in the office" of the county board of education or with the "clerk or secretary" of the board within a specified time. It simply requires that the remonstrance be filed "with the county board of education."

The law provides in Section 4732, General Code, that the county superintendent of schools shall be the secretary of the county board of education, and in Section 4744, General Code, that such county superintendent of schools shall be "in all respects the executive officer of the county board of education". Section 4744-6, General Code, provides that an office shall be provided at the county seat for the county superintendent of schools and that such office shall be the permanent headquarters of the county superintendent of schools and shall be used by the county board of education when in session. Provision is made by Section 4744-1, General Code, for providing the county superintendent of schools with an official stenographer or clerk.

In contemplation of law the office of the county superintendent of schools is open during business hours. As secretary and executive officer of the board, he has custody of the files and documents pertinent to the work of the board and, in my opinion, he is the officer or representative of the county board of education with whom papers and documents to be filed with the board should be filed. It is not necessary that they be handed to the secretary of the board in person.

Delivering them to anyone in charge of his office for the time being, with the intent of their being filed with him is no doubt sufficient.

At any rate, the president of the county board of education is not the board. He is no more than a member of the board except that as president, he presides at the sessions of the board. He is not charged by law with the custody of the records of the board or of the papers and documents belonging to the board. Delivery to the president or any member of the board when he is not in the office of the board or its secretary is not, in my opinion, a "filing" with the board. The authorities seem clear on this point.

Inasmuch as the remonstrance to which you refer in your inquiry, did not reach the office where it should have been filed, until after the expiration of the thirty day period allowed by law for its filing, I am of the opinion that it is of no effect whatever, and that the transfer of territory under Section 4692, General Code, otherwise regular, becomes effective at the end of the thirty day period allowed by law for the filing of the remonstrance, even though a remonstrance with sufficient signatures had been delivered to the president of the board of education at his residence within the thirty day period, if he failed to deliver it to the secretary of the board or to the office of the board before the thirty day period expired.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3019.

JUROR—ENTITLED TO MILEAGE AND FEES IN TRIAL BEFORE JUSTICE OF PEACE WHO HAS FINAL JURISDICTION AND ACCUSED DEMANDS JURY TRIAL.

SYLLABUS:

Where a person is tried before a justice of the peace for an offense of which the justice of peace has final jurisdiction and the accused demands a jury trial under the provisions of section 13443, *General Code, the jurors are entitled to the same mileage and fees as in criminal cases in a Court of Common Pleas, which are payable from the county treasury.*

COLUMBUS, OHIO, August 10, 1934.

HON. JACOB E. DAVIS, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

> "Will you please give us your opinion upon the following facts and questions:
>
> Mr. A. executed and filed an affidavit in a Justice of the Peace Court in and for Scioto Township, Pike County, Ohio, charging Mr. B. with a violation of Section 13,376, General Code of Ohio, which said statute is known as the cruelty to animals statute. Mr. B. was arrested upon a warrant issued by said Justice of the Peace court and entered