

With said abstract of title there has been submitted to me two warranty deeds fully executed. The first deed is one executed by James M. Butler and Mae R. Butler, his wife, conveying the above described property by fee simple title to said Samuel N. Summer, which deed contains a recital that the property conveyed is free and clear of all encumbrances except said ninety-nine year lease and the obligations thereunder and the liens created by the lessee under said lease, and except also current taxes and assessments.

Said deed has been properly executed and acknowledged by said James M. Butler and by Mae R. Butler, his wife, and the same as to form is sufficient to convey to said Samuel N. Summer a fee simple title to the above described property free and clear of the dower interest of said Mae R. Butler and free and clear of all encumbrances except as above stated.

The second of said warranty deeds above referred to is one executed by Samuel N. Summer and by Irene S. Summer, his wife, conveying the above described property to the State of Ohio. This deed has been properly executed and acknowledged by said Samuel N. Summer and by Irene S. Summer, his wife, and the same as to form conveys to the State of Ohio a fee simple title to the above described property free and clear of the dower interest of said Irene S. Summer and free and clear of all encumbrances whatsoever except the taxes and assessments due and payable on and after June, 1930.

Encumbrance estimate No. 628, which has been submitted to me with the above mentioned files, has been properly acknowledged and executed and the same shows that there are sufficient balances in the proper appropriation account to pay the purchase price of the above described property.

I am herewith returning to you said abstract of title, the warranty deeds above mentioned, and said encumbrance estimate No. 628.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2044.

APPROVAL, BONDS OF VILLAGE OF FREDERICKTOWN, KNOX COUNTY, OHIO—\$6,593.56.

COLUMBUS, OHIO, June 28, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2045.

AERONAUTICS LAWS—VIOLATIONS ARE MISDEMEANORS—COURTS FOR PROSECUTION—DEATH CAUSED BY UNLICENSED PILOT OR AIRPLANE NOT BASIS FOR MANSLAUGHTER CHARGE—PUNISHMENT FOR PILOT WILFULLY DISTURBING ASSEMBLAGE.

SYLLABUS:

1. *Violations of Sections 6310-40 to 6310-43, inclusive, of the General Code, are*

misdeemeanors and may be prosecuted before a mayor, justice of the peace, common pleas, probate or municipal courts.

2. *A prosecution of involuntary manslaughter cannot be predicated upon a violation of Sections 6310-40 or 6310-42, because a violation of these sections cannot be the proximate cause of death.*

3. *A pilot of an aircraft, who in the operation of his aircraft wilfully disturbs a lawful assemblage of persons, may be prosecuted for a violation of Section 12814 of the General Code.*

COLUMBUS, OHIO, June 30, 1930.

HON. JOHN M. VORYS, *Director, Bureau of Aeronautics, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, in which you request certain information with reference to the enforcement of the statutes relating to aeronautics. The specific questions which you submit are as follows:

“1. What form of warrant should be used in making arrests under this law?

2. In what courts should such cases be prosecuted?

3. Would an airplane accident causing death and resulting from commercial flying by an unlicensed pilot or in an unlicensed airplane present a case of manslaughter?

4. The Ohio law does not specifically include any air traffic regulations. Would low flying, stunting, or other dangerous forms of flying such as are prohibited under the U. S. Department of Commerce Air Traffic Rules be punishable as a breach of the peace, or under any other Ohio statute as a misdemeanor; and if so, under what sections of the General Code?”

The statutes relating to aeronautics, Sections 6310-38, to 6310-44, inclusive, were passed by the 88th General Assembly and became effective on the 25th day of June, 1929. The legislature of the State of Ohio enacted this legislation to regulate intra-state aviation. The provisions of these sections, relating to aeronautics, do not interfere with interstate aviation which is covered by the statutes and regulations of the federal government, for Section 6310-43 specifically provides “that acts or omissions made unlawful by this act shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States.”

Sections 6310-40 to 6310-43, inclusive, are directly pertinent to your inquiries. Section 6310-40 of the General Code reads:

“The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that a person engaging within this state in operating aircraft, in any form of aviation for which a license to operate aircraft issued by the United States government would then be required if such aviation were interstate, should have the qualifications necessary for obtaining and holding such license, it shall be unlawful for any person to engage in operating aircraft within the state, in any such form of aviation, unless he have such a license.”

You will observe from a reading of this section that only persons engaged in certain forms of aviation are required to have a license. Section 6310-40 provides “that a person engaging within this state in operating aircraft, in any form of aviation for which a license to operate aircraft issued by the United States government would then be required if such aviation were interstate,” should obtain a license. It becomes necessary to examine the federal statutes in order to determine what form of aviation the United States government requires to be licensed, for Section 6310-40 requires that the same form of aviation as licensed by the United States government be licensed by the State of Ohio.

The statutes relating to the regulation of aeronautics by the United States government are known as the Air Commerce Act of 1926, and may be found in U. S. C. A. Chapter 171, et seq., The United States government requires that persons engaged in interstate or foreign air commerce be licensed. Air commerce, as used in the Air Commerce Act of 1926, is defined in this act as follows:

“The term ‘air commerce’ means transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another in the operation of the conduct of a business.”

It will thus be seen from a reading of Section 6310-40, together with the federal statutes relating to aeronautics, that persons engaged in Ohio in intrastate aviation by transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business or navigation of aircraft from one place to another for operation in the conduct of a business, must obtain a license. The license referred to in Section 6310-40 is to be obtained under the rules and regulations promulgated by the Secretary of Commerce of the United States. While the statutes of the United States do not require aircraft engaged in intrastate air commerce to operate under a license, provision has been made to grant registration of aircraft eligible for registration if the owner requires such registration. Those persons engaged solely in intrastate air commerce may obtain a license from the Secretary of Commerce and Section 6310-40 provides that they shall obtain such license to operate aircraft in the State of Ohio.

Sections 13432-18 and 13432-19 of the General Code set forth the formal parts of a criminal affidavit and warrant. To charge a violation of Section 6310-40, the following form, omitting the formal parts, is suggested:

-----, on the ----- day of
(Name)
 -----, 19-----, did unlawfully engage in the operation
 of a certain aircraft, to-wit, -----
(Here specify kind of aircraft)
 in the State of Ohio, ----- County (or ----- City),
 in transporting persons or property for hire (or in furtherance of business)
 (or from one place to another for operation in the conduct of a business)
 without having obtained a license so to do from the Secretary of Commerce
 of the United States.

Section 6310-41, General Code, provides as follows:

“The certificate of the license, herein required, shall be kept in the personal possession of the licensee when he is operating aircraft within this state and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state upon which he shall land.”

You will note that this section defines two offenses: First, failure to keep a license in personal possession when operating aircraft within this state, and, second, not presenting a license for inspection upon demand by persons enumerated in the section when one operates an aircraft within this state. It is sufficient to charge a violation of this section by following the language of the statute.

Section 6310-42, General Code, provides as follows:

“The public safety requiring, and the advantages of uniform regula-

tion making it desirable, in the interest of aeronautical progress, that aircraft to be avigated within this state should conform, with respect to design, construction and airworthiness, to standards then prescribed by the United States government with respect to avigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to avigate an aircraft within this state unless it is registered pursuant to the lawful rules and regulations of the United States government, then in force, if the circumstances of such avigation are of a character that such registration would be required in the case of interstate avigation."

To charge a violation of Section 6310-42, the following form, omitting the formal parts, is suggested:

-----, on the ----- day of
 -----, 19-----, did unlawfully avigate a certain aircraft,
 to-wit, ----- in the
 State of Ohio, ----- County (or -----
 City), in transporting persons or property for hire (or in furtherance of
 business) (or from one place to another for operation in the conduct of a
 business) without having said -----
 ----- registered in accordance with the rules and regulations
 of the United States government.
 (Name)
 (Here specify kind of aircraft)
 (Specify kind of aircraft)

Section 6310-43 provides the penalty for violation of Sections 6310-40, et seq., and provides as follows:

"A person who violates any provision of this article shall be guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than ninety days, or both; provided, however, that acts or omissions made unlawful by this act shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States; but it shall not be necessary to allege or prove, as part of the case for the state, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be matter of defense, unless it affirmatively appear from the evidence adduced by the state."

Violations of Sections 6310-40, 6310-41 and 6310-42 are misdemeanors and the statutes relating generally to criminal procedure and jurisdiction of courts in misdemeanor cases are applicable. A mayor, justice of the peace, probate court, common pleas court and municipal court generally have jurisdiction of misdemeanors.

Addressing myself to your third question, Section 12404 of the General Code defines manslaughter as follows:

"Whoever unlawfully kills another, except in the manner described in the next four preceding sections, is guilty of manslaughter, and shall be imprisoned in the penitentiary not less than one year nor more than twenty years."

The courts of Ohio have defined manslaughter as the unlawful killing of another without malice either upon sudden quarreling or unintentionally while the slayer is in the commission of an act made unlawful by a valid statute. *State vs.*

Schaeffer, 96 O. S. 243; *Black vs. State of Ohio*, 103 O. S. 434; *Johnson vs. State*, 66 O. S. 59.

The unlawful act relied upon as predicate for manslaughter must be the proximate cause of death. *Jackson vs. State*, 101 O. S. 152; *Black vs. State*, 105 O. S. 434. This presents the question as to whether or not a charge of manslaughter may be predicated upon a violation of Sections 6310-40 or 6310-42, since it is essential that the violation of the statute be the proximate cause of death.

The license of a pilot and the registration of an aircraft are primarily required for the purpose of promoting safety to persons and property. Licenses are issued to those who have the qualifications prescribed by the United States government and an aircraft is registered when it complies with the standards required by the United States government with respect to design, construction and airworthiness. Ordinarily a violation of a statute which requires registration for the purpose of identification cannot possibly be the proximate cause of death and therefore a charge of manslaughter cannot be predicated upon a violation of such a statute. Whether or not a violation of a statute which requires registration for the purpose of promoting safety may be the proximate cause of death and, therefore, the basis of a manslaughter charge, presents a more difficult question. In a prosecution for manslaughter, wherein the state relies for conviction upon the ground that the deceased was killed unintentionally, while the slayer was in the commission of an unlawful act, it must be shown that the alleged unlawful act is prohibited by statute, and it is not sufficient to establish that the act so engaged in was one of gross and culpable negligence. *Johnson vs. State*, 66 O. S. 59. Since the unlawful act upon which the manslaughter charge must be predicated must be prohibited by statute, and Sections 6310-40 and 6310-42 of the General Code make unlawful only the failure to register an aircraft and the failure to obtain a license, these violations cannot be the proximate cause of death.

While the question presented by you is not without doubt, I am inclined to the view that a case of manslaughter cannot be predicated upon a violation of Sections 6310-40 or 6310-42.

Referring to your fourth inquiry, the statutes of Ohio do not provide rules and regulations with reference to air traffic. The only statute which I am able to find which may be violated by low flying, stunting, etc., is Section 12814 of the General Code, which provides as follows:

“Whoever wilfully interrupts or disturbs a lawful assemblage of persons or a person while he is at or about the place where such assemblage is to be held, or is or has been held, shall be fined not more than fifty dollars or imprisoned not more than ten days, or both.”

This section was enacted a number of years ago (Revised Statutes 6896) and the legislature did not at the time of its enactment have under consideration the regulation of aircraft. However, the terms of the statute are broad and contemplate any wilful disturbance or interruption by a person or persons at or about a place where a lawful assemblage is gathered, regardless of the manner in which such disturbance or interruption is caused. So I am inclined to the view that until the legislature sees fit to pass legislation directly regulating the operation of aircraft, prosecutions might be had under this section against the pilot who, in the operation of an aircraft, wilfully disturbs a lawful assemblage of persons.

In view of the foregoing discussion, I am of the opinion:

1. Violations of Sections 6310-40 to 6310-43, inclusive, of the General Code, are misdemeanors and may be prosecuted before a mayor, justice of the peace, common pleas, probate or municipal courts.

2. A prosecution of involuntary manslaughter cannot be predicated upon a violation of Sections 6310-40 or 6310-42, because a violation of these sections cannot be the proximate cause of death.

3. A pilot of an aircraft, who in the operation of his aircraft wilfully disturbs a lawful assemblage of persons, may be prosecuted for a violation of Section 12814 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2046.

ELECTION LAW—MEMBERS OF COUNTY BOARDS OF ELECTIONS ENTITLED TO MILEAGE FROM COUNTY TREASURER FOR EXPENSES IN ATTENDING, VIA AUTOMOBILE, MEETING AT COLUMBUS CALLED BY SECRETARY OF STATE.

SYLLABUS:

1. *The actual expenses of members of county boards of elections incurred in attendance upon a meeting of the members of said boards held at Columbus, Ohio, on May 22nd, 1930, upon the call of the Secretary of State, may be paid from the treasury of the county which they represent upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor.*

2. *Mileage may be allowed to those members of county boards of elections who attended the meeting of those boards held at Columbus, Ohio, on May 22nd, 1930, upon call of the Secretary of State, for the use of their automobiles in attending such meeting as part of their legitimate expense in attending the said meeting. The mileage rate should be fixed in good faith and at such an amount as will be commensurate with the actual cost of operating the automobile.*

COLUMBUS, OHIO, June 30, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

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

“We respectfully request you to render this department your written opinion upon the following:

Sometime during the past month, the Secretary of State issued a call to all members of county boards of elections to meet in Columbus for instruction in connection with their duties under the new election laws.

Question 1. May the expenses of such boards be legally paid out of the county treasury of the county which they represent?

Question 2. May such members be allowed mileage for the use of their automobiles in attending such meeting?”

The 88th General Assembly enacted Amended Substitute Senate Bill No. 2, entitled:

“An Act to revise, recodify and supplement the election laws, by repealing Sections 4785 to 4828, inclusive; 4826-2, 4830 to 5175-29r, inclusive; 13250 to