Savings and Loan Associations; Enlarging Powers so as to Become Safe Deposit and Trust Companies.

For these reasons, we affirm the decision of the secretary of state and direct him to proceed to collect the license tax assessed by him against this corporation.

In the matter of the appeal of the Long View Driving Park Land Company from the decision of the secretary of State, under section 148*c*, we sustain the secretary of state in his finding for the reasons set out in our opinion in the matter of the appeal of the Shaker Heights Land Company.

October 16, 1894.

SAVINGS AND LOAN ASSOCIATIONS; ENLARGING POWERS SO AS TO BECOME SAFE DEPOSIT AND TRUST COMPANIES.

Office of the Attorney General,
Columbus, Ohio, January 3, 1895.

Hon. Samuel M. Taylor, Secretary of State:

DEAR SIR:—In your favor of this date, you state that The Dime Savings and Banking Company, of Cleveland, Ohio, was incorporated under section 3797, et seq., of the Revised Statutes relating to savings and loan associations, and now desires to enlarge its purposes by including the powers conferred by law upon safe deposit and trust companies. You desire my opinion whether such an amendment can be permitted.

On the 30th of November, 1894, in reply to a similar inquiry submitted to me by you, and growing out of the attempt on the part of The Broadway Savings and Loan Company, of Cleveland, to amend its articles of incorporation, by adding the powers of a safe deposit and trust company, under section 3821 et seq., I advised you that in my opinion the law of Ohio does not contemplate the union in one corporation of the powers granted by separate sections of the

Savings and Loan Associations; Enlarging Powers so as to Become Safe Deposit and Trust Companies.

statute to savings and loan associations and to safe deposit and trust companies. At the same time I stated that the question was not free from doubt.

Since writing you this communication, my attention has been called to the fact, that, under original articles of incorporation, filed in your department, or under amendments permitted by your department previous to your administration, a number of savings and loan associations doing business in Cleveland, Ohio, are exercising at the same time the powers of savings and loan associations and of safe deposit and trust companies combined. Among these are The Wick Banking and Trust Company (see Vol. 48, page 391, records of incorporations), The Savings and Trust Company (Vol. 26, page 428), The East End Savings Bank Company (Vol. 35, page 631), and The Woodland Avenue Savings and Loan Company (Vol. 36, page 368).

In view of these facts, obviously the State must do one of two things; either by proceedings oust the savings and loan associations mentioned from power of doing the business of safe deposit and trust companies or permit other savings and loan associations to amend their articles so as to do the business of safe deposit and trust companies. Under all the circumtances, it occurs to me that the better way is to permit the filing of the amendments submitted by The Broadway Savings and Loan Association and The Dime Savings and Banking Company, thus placing them on the same footing as the other savings and loan associations referred to.

Very respectfully,
J. K. RICHARDS,
Attorney General.

FISH AND GAME LAWS.

Office of the Attorney General,
Columbus, Ohio, January 10, 1895.

Mr. B. F. Seitner, Secretary, Ohio State Fish and Game Commission, Dayton, Ohio:

DEAR SIR:—There has been referred to me for answer, certain inquiries from you:

As to your first and second questions, whether a warden for a county must be a resident of the county, and whether the power to appoint a warden for a county may be delegated, I beg to refer you to my letter to you of the date of June 23, 1893, in which these questions are answered.

As to the other inquiries you put, I beg to say:

1. I do not understand that the validity of section 6968*c*, passed April 19, 1894, (91 O. L., 153), is affected by the fact that there was at the time of its passage another section of the Revised Statutes, numbered the same way, in existence.

2. I am of the opinion that the prohibition of trot line fishing in section 6968*c*, passed April 19, 1894, extends only to the waters described in said supplementary section 6968*c*, and not to the waters mentioned in the original section, to which it is supplementary.

3. As to the proviso at the end of Section 6968, which reads: "Provided that nothing in this act shall * * be so construed as to prevent persons to gig or spear fish in the backwaters of the Ohio or in its tributary streams," the proper construction of this language is not, in my opinion, free from doubt. I am inclined to the conclusion, however, that the exemption applies only to the backwaters of the Ohio river, whether these backwaters extend over land not usually occupied by the river or any stream, or whether the backwater extends up into tributaries of the river. A tributary of the Ohio River is any stream which contributes to the supply of water in the river, whether the stream does so directly or through the medium of another stream. To

apply the exemption to all tributaries of the Ohio River wit-h out regard to whether there is backwater of the Ohio in the particular tributaries or not, would, it seems to me, destroy the force of the prohibition in the body of the section against the spearing of fish in any of the waters, either natural or artificial, lying within the State of Ohio.

Very resp tfully,
J. K. RICHARDS,
Attorney General.

INCOMPATIBLE OFFICES; MEMBER OF GENERAL ASSEMBLY.

Office of the Attorney General,
Columbus, Ohio, January 21, 1895.

Hon. W. T. Lewis, Commissioner of Labor Statistics:

DEAR SIR:—You submit to me the following question for my opinion:

> "Is a member of the General Assembly of Ohio legally qualified to hold the position of superintendent of the free public employment office in the city of Cleveland, during the term for which he was elected a member of the General Assembly? The said position of superintendent was created prior to his election as a member of the Legislature, and the emoluments of the said office were not increased during his term as a member of the General Assembly."

Section 19, Article 2, of the Constitution provides:

> "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."

From the fact that by this section a member of the General Assembly is disqualified from holding certain offices, the inference may be drawn he is not disqualified from holding other offices not mentioned. The position you mention is not, in view of the facts you state, one which a member of the General Assembly is prohibited from holding by this section.

I know of no other restriction or prohibition applicable to the case you state. Very respectfully,

J. K. RICHARDS,
Attorney General.

DIRECT INHERITANCE TAX LAW.

Office of the Attorney General,
Columbus, Ohio, February 5, 1895.

Hon. E. W. Poe, Auditor of State:

DEAR SIR:—In reply to the questions you submit to me as to the proper construction of the direct inheritance tax law, I beg to say, that in my opinion the value of the property of a decedent upon which the tax is computed, is the value of that part which is left after the debts of the decedent have been paid. The only property which is subject to the tax is the property which passes to the direct heirs, and the property which passes to the direct heirs is what is left of the estate after the debts of the decedent are paid.

As to the form of appraisement, that is a matter of detail which I suggest your department take under consideration, with a view of securing uniformity in the operation of the law throughout the State.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Health Laws; Responsibility of Owner and Tenant.

HEALTH LAWS; RESPONSIBILITY OF OWNER AND TENANT.

Office of the Attorney General,
Columbus, Ohio, February 6, 1895.

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

DEAR SIR:—You ask me to inform you officially, whether a tenant can be held responsible for the payment of expenses incurred by a local board of health, under section 2128, R. S., in placing a water closet in a building and connecting the same with a public sewer.

This section provides that when the plumbing or sewerage of a building rented for living or business purposes is, in the opinion of the board of health, in a condition dangerous to life or health, the board may order the necessary alterations to be made "by the owner, agent, or other person or persons having control of the same, or being responsible for the condition;" and the board is further authorized to make the alterations necessary to abate the nuisance and certify the expense to the county auditor, to be assessed against the property and collected as other taxes.

I can understand how a tenant might properly be held responsible for a condition dangerous to life or health which results from his use or misuse of the premises; but I do not understand how he can be held responsible for such condition when it results from the mode of construction of the building. Nuisances from defective plumbing or sewerage are not chargeable to the tenant, but to the owner of the premises. He is the one benefited in the long run by any betterment to the property, and therefore it is that the law provides that the cost of abating the nuisance by proper sewerage shall be assessed on the property itself.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Member of General Assembly; Oath of Office—Mutual Insurance Companies.

MEMBER OF GENERAL ASSEMBLY; OATH OF OFFICE.

Office of the Attorney General,
Columbus, Ohio, February 6, 1895.

Hon. John R. Malloy, Clerk, House of Representatives, Columbus, Ohio:

DEAR SIR:—You have submitted to me the certificate of election (filed with you as clerk of the House, on January 3, 1895), of James W. Miller, as Representative to the General Assembly from Fairfield County, to fill the vacancy caused by the resignation of James M. Farrell, accepted by the House on April 23, 1894. On the back of the certificate is the certificate of J. B. Allen, clerk of the Supreme Court of Ohio, to the fact that on January 3, 1895, he administered the oath of office to the said J. W. Miller.

I am of the opinion that this qualification is sufficient to warrant the speaker in certifying to the auditor of state, as the same may become due, the amount of salary payable to Mr. Miller, as Representative for the year 1895. I know of no other qualification possible under the circumstances.

I return the certificate.

Very respectfully,
J. K. RICHARDS,
Attorney General.

MUTUAL INSURANCE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, February 26, 1895.

Hon. Wm. M. Hahn, Superintendent of Insurance:

DEAR SIR:—In reply to your favor of December 14, 1894, making certain inquiries with regard to associations organized under Revised Statutes, section 3686, et seq., I beg to say:

Sections 3686 to 3690 inclusive of the Revised Statutes them entered into by which those entering therein shall agree to be assessed specifically for incidental purposes and for the purpose of insuring each other" against loss by fire and lightning, etc.

The sole object of such an association is to "enable its *members to insure each other* against loss by fire and lightning, etc.; and to enforce any contract which may be by them entered into, by which those entering shall agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members." (Section 3687).

These associations are associations *sui generis;* they are neither joint stock insurance companies nor mutual insurance companies; they can be operated neither on the cash premium nor the premium note nor the contingent liability plan; they can be operated legally upon no other than the assessment plan.

"The whole scheme contemplated by the statute seems to be an association of rather a local nature, one in which the members are likely to be more or less acquainted with the standing of each other, and not scattered all over the country or the world. The success and solvency of such an association depends in a large measure upon the standing and responsibility of its members, the promptness with which they pay their assessments, and the confidence which each has that all the others will in the future continue to comply wit the requirements of the association." (Judge Burket in *State ex rel. vs. Fire Association,* 50 O. S., bottom page 149).

"The only assessments which such an association has the lawful power to make, are assessments for specific incidental purposes, and for specific losses sustained by its members. The idea upon which such associations are founded is, that whenever a loss occurs to a member, the amount thereof being first ascertained and adjusted, a specific assessment is made upon all the members to pay such loss. But in practice, the method pursued is not to make and collect an

assessment for each loss as it occurs, but to make and collect assessments at stated periods, for all losses which have occurred up to that time." (Judge Burket Id, 50 O. S., bottom page 150).

It will be observed that under these sections members of such an association, *"insure each other;" they "may make, assess and collect, upon and from each other, such sums of money, from time to time, as may be necessary to pay losses which occur, * * to any member of such association."* Each member is regarded as equally interested with every other member in the success of the association; each member during the term of his membership, is liable to be assessed for a loss occurring to any other member. There is no authority in these sections for a classification of members, for discrimination between members, for saying that a certain set of members shall be assessed more than another set of members; all members stand under the statute on precisely the same footing, liable to be assessed specifically for incidental purposes and for the payment of losses occurring to any of the members of the association.

Under the plan defined in the statute, it is not legal to assess and collect money in advance, whatever name may be given to the sum paid, whether it be called a premium, an annual deposit, or a membership fee—if the money thus collected is to be used to create a fund for incidental purposes or for the payment of losses.

Such association cannot legally require the payment of what it terms "a membership fee," graduated according to the hazard of the risk, or with reference to an adopted tariff of rates, and then base subsequent assessments on such membership fee.

I can understand how a reasonable fee, having no relation to the amount insured, but designed simply to cover the expense attending the entrance into the association of the new member, may properly be exacted; but the collection in advance of considerable sums of money for the purpose of paying losses and expenses, by whatever name the payment may be designated, whether annual deposit or membership

fee, or what not, constitutes in effect in each case a cash premium. To permit the collection in advance of such sums upon policies or certificates of membership in these associations, is to offer the strongest inducement for their operation for the benefit of the officers and agents alone. Too often money thus received is for the most part applied to the expenses "of management"; a few pressing losses are paid and the others accumulate until finally the association winds up hopelessly insolvent.

Very respectfully,
J. K. RICHARDS,
Attorney General.

INSPECTOR OF WORKSHOPS AND FACTORIES; EMPLOYMENT OF CHILDREN.

Office of the Attorney General,
Columbus, Ohio, March 12, 1895.

Mr. J. W. Knaub, Chief Inspector, Workshops and Factories:

DEAR SIR:—In reply to your inquiry of the 4th inst., I beg to say, that the third section of the act of April 8, 1890, (87 O. L., 163), (being an act to prevent the employment of children in occupations dangerous to their lives and limbs or their health, or detrimental to their morals), charging you with the duty of enforcing its provisions, would, it seems to me, render it necessary for you to reach a conclusion as to what constitutes a dangerous or degrading occupation. Otherwise, how shall you determine when to take steps to prosecute persons or corporations violating the law? It occurs to me, that in the discharge of the duty imposed upon you by this law, it is proper and necessary, that, after due investigation, you determine what employments or occupations are dangerous or degrading within the meaning of the

act; and that you give notice to firms and corporations interested of the class of employments which, in your opinion, come under the prohibitions of the law.

Very respectfully,
J. K. RICHARDS,
Attorney General.

HOLDING OFFICE; RESIGNATION NEED NOT BE ACCEPTED TO TAKE EFFECT.

Office of the Attorney General,
Columbus, Ohio, March 12, 1895.

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

DEAR SIR:—With regard to your inquiry of some days ago, I am inclined to think, from a reading of the case of *Reiter vs. State ex rel.* (51 Ohio State, 74), that in this State, a resignation does not have to be accepted in order to take effect, unless there be some special provision of the statutes requiring such acceptance. Judge Burket in that case says, (page 81):

> "These statutes also show that office holding is not regarded as compulsory in this State. It is, therefore, clear that the common law rule as to acceptance of resignations, has been abrogated in Ohio, to the extent at least of authorizing the filling of the vacancy."
>
> "In many of the states it is held that a resignation of an officer takes effect at once without acceptance by any one, and that the holding of office is not compulsory. This is said to be the modern doctrine on this subject (citing many cases)."

Very respectfully,
J. K. RICHARDS,
Attorney General.

Canal Commission; Swamp Lands—Board of Health; Water Supply.

CANAL COMMISSION; SWAMP LANDS.

Office of the Attorney General,
Columbus, Ohio, March 16, 1895.

The Ohio Canal Commissioners:

DEAR SIRS:—In reply to your inquiry of the 5th inst., I beg to say, that I am inclined to the opinion that the act of May 14, 1894 (91 O. L., 229), which provides for the recovery of certain swamp lands belonging to the State, marks out the method for the disposition of such swamp land by the canal commission, which is by public vendue. I do not understand that the provisions of what is known as the Canal Commission Act, authorizing the lease of canal land, applies to this swamp land.

Very respectfully,
J. K. RICHARDS,
Attorney General.

BOARD OF HEALTH; WATER SUPPLY.

Office of the Attorney General,
Columbus, Ohio, March 16, 1895.

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

DEAR SIR:—In reply to your inquiry of the 12th inst., whether the State Board of Health has power to appoint a committee consisting of one or more members, or the secretary, with power to investigate and approve any new or extended water supply or sewerage system, in any municipality, I beg to say, that it seems to me such a committee might properly be appointed, with the provision that its action should be submitted to and confirmed by the board itself. In

case the committee approved of any proposed system of water supply or sewerage, the municipality might proceed, upon the understanding that the board would confirm the action of the committee; but, in case the committee should not see its way clear to approve of the water supply or sewerage system under contemplation, then the matter should be certified, with a statement of the facts, to the state board for final and conclusive action.

Very respectfully,
J. K. RICHARDS,
Attorney General.

BOARD OF PUBLIC WORKS; AUTHORITY TO LEASE BERME BANK OF CANAL FOR RAILROAD PURPOSES.

Office of the Attorney General,
Columbus, Ohio, March 19, 1895.

Mr. W. T. McLean, Secretary, Board of Public Works:

DEAR SIR:—My attention has been again called to a request for my opinion upon the question whether the board of public works and canal commission have power to authorize the occupation and use of a portion of the berme bank of the Miami and Erie Canal for an electric railway.

I am of the impression that some time ago I advised the board of public works and the canal commission that, in view of the decision in *State ex rel. Attorney General vs. Railway Company*, 37 O. S., 157, it seems to me that no power resides in the board of public works or canal commission, or both together, to authorize any railway company, whether operated by steam, electricity or other motor,

to occupy and use the berme bank of the Miami and Erie Canal for railway purposes. Permission and authority to make such use of a portion of the public works of Ohio must come from the State through the Legislature.

Very respectfully,
J. K. RICHARDS,
Attorney General.

CANAL COMMISSION; AUTHORITY TO LEASE STATE PROPERTY.

Office of the Attorney General,
Columbus, Ohio, March 19, 1895.

Mr. W. T. McLean, Secretary, Board of Public Works:

DEAR SIR:—I return to you the papers in the matter of the application of Benjamin Kuhns to the joint board of public works and canal commission, to annul the lease heretofore made by your body to the Pierce and Coleman Company, of certain premises in the city of Dayton.

It is my understanding that some time ago the canal commission, acting under the statute defining their duties, after due investigation, found certain land in Dayton to be the property of the State and recommended its lease. Subsequently by the joint board consisting of the board of public works, the canal commission and the chief engineer of the board of public works, this ground was leased to the Pierce and Coleman Company.

You now desire me, upon an inspection of the application of Mr. Kuhns and the perusal of the brief of his counsel, to review the action of the canal commission. I do not see where the law gives me authority to do this. The canal commission was created for the purpose of ascertaining the boundaries of State land and determining the question of ownership. This it has done in this case. If the canal com-

mission, at the time it was investigating this matter, had requested my opinion upon a legal point I would cheerfully have given it; but how can I take up and review this entire investigation, and review the action of the canal commission, and say whether or not this land found by the canal commission to be the property of the State and now leased under the statute to the Pierce & Coleman Company is or is not the property of the State. Certainly, as a lawyer, I could not do this without carefully investigating all the facts in connection with this matter, and this my other duties leave me no time to do.

If the canal commission was wrong in its finding, I suppose there is a way to review its action in a court. I return the papers.

Very respectfully,
J. K. RICHARDS,
Attorney General.

GOVERNOR OF OHIO; AUTHORITY TO REMOVE POLICE COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, April 5, 1895.

Hon. Wm. McKinley, Governor of Ohio:

SIR:—In the matter of the charges preferred by a committee of the Municipal Reform League, of Cincinnati, against Messrs. Kirchner, Morgan and Henshaw, three of the four police commissioners of that city, which you have referred to me for an expression of opinion upon certain legal questions, I beg to say:

These charges are filed under that provision of Section 1870, R. S., which reads: "For official misconduct the governor may remove any of said commissioners." In the case of

Governor of Ohio; Authority to Remove Police Commissioners.

State ex rel. Attorney General vs. Hawkins, 44 O S., 98, 115, our Supreme Court held, that to authorize the governor to exercise this power of removal, first of all, charges must be filed *embodying facts* that, in judgment of law, constitute official misconduct.

As a matter of law, do the facts upon which these charges are based constitute official misconduct? It appears that on December 15, 1894, the mayor, who is at the head of the police department, with "full power and authority over the police organization, government and discipline," by an order duly promulgated, directed lieutenants in command of districts wherein theatrical performances are given on Sunday, to detail patrolmen in citizens' clothes "to collect evidence and make arrests as soon as the performances should be completed," and relieved other officers and patrolmen from making such arrests. Early in January last, certain representatives of the league called on Lieutenant Heheman, then on duty in the Bremen Street district, and demanded that he proceed forthwith to certain theaters in his district, where Sunday performances were going on and stop the performances and arrest the performers.

The lieutenant did not comply with this demand, but explained the character of the mayor's order, and stated that, in accordance with it, he had detailed officers in citizens' clothes who would make the arrests at the proper time. For this, charges of neglect of duty were filed against Lieutenant Heheman before the police commissioners. After a hearing, the fullness and fairness of which is not questioned three of the commissioners, Messrs Kirchner, Morgan and Henshaw, voted against sustaining the charges and the charges were dismissed.

These are the facts relied on as constituting official misconduct. The position of the league is that the mayor's order was calculated not to enforce but to annul the law prohibiting theatrical performances on Sunday; that the lieutenant should have ignored the mayor's order and in-

dividually enforced the law in compliance with the league's demand; and that, in sustaining the lieutenant, the commissioners were themselves guilty of official misconduct.

Section 1881, R. S., provides, that, when charges are filed against any member or officer of the police force, "the commissioners shall proceed to hear and examine said charges. All charges shall be taken as denied and the hearing shall be summary and without pleading, and the action of the commission thereon shall be *final.*" In hearing and passing upon such charges, the police commissioners exercise a discretion recognized by the law and which will not be interfered with by the courts. The decision dictated by the honest judgment of the commissioners is final. There is no suggestion that the action of the police commissioners in Lieutenant Heheman's case was the result of fraud or improper influence. In the absence of facts impugning the good faith of the commissioners, I am unable to see how the decision of a matter confided to their discretion can constitute in law official misconduct.

There is no appeal to you provided; no power given you to review or reverse; in any event, the utmost scope of your inquiry would be the good faith of the commissioners; and I submit it is apparent from the facts before you that they had good reasons for the conclusion they reached in this case, in other words, grounds for an honest opinion. The mayor is the head of the police department. The law gives him power to order and makes it the duty of the members of the force to obey. The order in question related to the disposition of the force in making certain arrests and was clearly within his province. Emanating from a rightful source and not commanding an unlawful thing, it demanded prompt and exact obedience. With the wisdom or policy of the order, the officers and members had nothing to do. They were responsible for its execution, not for its results.

The superior is responsible for the order, the inferior for its execution. To punish an inferior for carrying out

Governor of Ohio; Authority to Remove Police Commissioners.

the order of his superior, made within the scope of the latter's authority, would be to invite, not unhesitating obedience, but halting insubordination; to substitute for the wholesome warning "disobey at your peril" the dangerous doctrine "obey at your peril."

In view of certain things in the record, it is proper for me to say in conclusion, that of course I do not hold the view that the mayor of Cincinnati can exact obedience to *unlawful* orders. If he could, he would be above the law, and in this country no official, however exalted, occupies that autocratic attitude. The law is supreme, and if any official, unmindful of his oath, breaks the law and abuses his trust, he may be called to account under the law, and impeached or removed from office. I am not prepared to say there might not be such a thing as an *unlawful* order, which could and should be treated as a nullity, but a subordinate would do so at his peril, and must needs be sure of his ground, for every presumption would be on the side of the order. In such an exceptional event, I fancy the question as to the validity of the order—and a serious and delicate question it would be—might ultimately come before the police commissioners on charges for insubordination preferred by the mayor.

Very respectfully,

J. K. RICHARDS,

Attorney General.

OHIO FACTORY MUTUAL INSURANCE COMPANY

Office of the Attorney General,
Columbus, Ohio, April 12, 1895.

Hon. Samuel M. Taylor, Secretary of State:

MY DEAR SIR:—You have submitted to me for approval the articles of incorporation of The Ohio Factory Mutual Insurance Company. I have indicated to you personally some changes which I think ought to be made in the statement of the purpose for which this corporation is formed.

But even were these changes made, I could not approve of the articles of incorporation in the sense of advising or directing you to file them until the provisions of section 3634, as I understand them, are complied with. I am disposed to think that under the provisions of section 3634 you are not authorized to file the articles of incorporation of a mutual fire insurance company, and thus incorporate the company under section 3239, until you are satisfied that not less than $500,000 of insurance, in not less than two hundred separate risks, no one of which shall exceed the sum of $5,000, have been subscribed, and the further provisions relating to the amount to be paid in and the character of the liability to be assumed, and the certificate of the justice of the peace of the pecuniary responsibility of the subscribers, are complied with.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Building and Loan Associations; Increase of Capital Stock—State Oil Inspector; Legal Branding.

BUILDING AND LOAN ASSOCIATIONS; INCREASE OF CAPITAL STOCK.

Office of the Attorney General,
Columbus, Ohio, April 17, 1895.

Hon. A. J. Duncan, Deputy Inspector, Building and Loan Associations:

DEAR SIR:—In your favor of the 12th inst., you state that some forty building and loan associations, now doing business in this State, were originally incorporated with shares of stock of different face values; and that a number of such associations have increased their capital stock and issued the additional shares, under the increase, with a face value different from the face value of the original shares. You desire to know whether the latter thing can be lawfully done.

A careful reading of the statutes upon the subject does not lead me to the conclusion that a building and loan association cannot, under the laws of Ohio, increase its authorized capital stock and issue shares under the increase with a face value different from that of the original stock.

Very respectfully,
J. K. RICHARDS,
Attorney General.

STATE OIL INSPECTOR; LEGAL BRANDING.

Office of the Attorney General,
Columbus, Ohio, April 19, 1895.

Mr. B. L. McElroy, State Oil Inspector, Mt. Vernon, Ohio:

DEAR SIR:—In your favor of the 13th inst., if I read it correctly, you put to me this case:

State Oil Inspector; Legal Branding.

A barrel of oil was inspected and shipped to parties for use, without first having been branded. After the shipment was made, a deputy inspector sent to the consignee a printed card with the inspector's brand on, to be attached to the barrel. Would this constitute a legal branding in accordance with section 395?

I do not think it would. Section 395 provides that, after oil has been inspected and found to meet the requirements of the law, "the inspector or his deputies shall affix by stencil or brand on any package, cask or barrel containing the same, and by a stamp subscribe with his official signature, the word 'approved,' with the date of such inspection; and it will then be lawful for any manufacturer, vendor or dealer to sell the same to be consumed within the State as an illuminator."

The plain inference to be drawn from this language is that the act of branding, like the act of inspection, is a personal one, to be done by the inspector or his deputy. It is the duty of the inspector or deputy to know personally that the oil contained in the barrel which he brands has been inspected and complies with the legal test. How can a deputy know this, if he can, under the law, send a printed card to a consignee of oil, with authority to attach it to a barrel of oil? How could the deputy tell that the card would be attached to the particular barrel inspected by him?

Very respectfully,

J. K. RICHARDS,

Attorney General.

Notary Public; Connected With Bank—Insolvent Offenders; Payment of Costs.

NOTARY PUBLIC; CONNECTED WITH BANK.

Office of the Attorney General,
Columbus, Ohio, April 27, 1895.

Hon. William McKinley, Governor of Ohio:

SIR:—Referring to the matter of a charge against Mr. J. B. Mundhenk, notary public of Arcanum, Ohio, to the effect that he is violating section III, of the Revised Statutes, as amended March 22, 1893 (90 O. L., 119), I beg to say, that from the proof submitted, it does not appear that Mr. Mundhenk occupies any official relation to any bank disqualifying him from acting as notary public.

Very respectfully,
J. K. RICHARDS,
Attorney General.

INSOLVENT OFFENDERS; PAYMENT OF COSTS.

Office of the Attorney General,
Columbus, Ohio, July 11, 1895.

Mr. George L. Garrett, Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—While I question my power to give you official advice upon the questions submitted in your favor of the 28th ult., yet waiving that, I am inclined to the view that when an offender pays his fine, whether by money, or by labor or imprisonment at so much a day, he has satisfied it, and cannot be accounted insolvent, and the county has created it and should pay the costs of the sheriff.

Penitentiary Convicts; Whether Residents of Franklin County.

Somewhat analogous is the case of the State receiving a felon and paying the costs, and putting him to work in the penitentiary.

Very respectfully,
J. K. RICHARDS,
Attorney General.

PENITENTIARY CONVICTS; WHETHER RESIDENTS OF FRANKLIN COUNTY.

Office of the Attorney General,
Columbus, Ohio, July 16, 1895.

Mr. Joseph H. Dyer, Prosecuting Attorney, Columbus, Ohio:

DEAR SIR:—I question my authority to give an official opinion upon the question submitted in your favor of the 8th inst., as to whether or not the auditor of Franklin county should cause an enumeration to be made of the inmates of the Ohio penitentiary, under the provisions of section 1527, R. S. Individually, I am disposed to think that the convicts in the Ohio penitentiary are not "residents" of Franklin County within the meaning of the statute, and that the auditor has no power to take an enumeration of them.

Very respectfully,
J. K. RICHARDS,
Attorney General.

INSOLVENT PRISONER; FEES OF PROSECUTING ATTORNEY.

Office of the Attorney General,
Columbus, Ohio, August 13, 1895.

Mr. W. T. Perry, Prosecuting Attorney, Cadiz, Ohio:

DEAR SIR:—While I doubt my power to give you an official opinion upon the quetsions submitted in your recent favor, I do not mind answering them. You ask:

1. Under section 1298, if the county commissioners remit the fine and costs under section 1028, and the prisoner is thus discharged, is the prosecuting attorney entitled to ten per cent. of the fines and costs therein assessed?

I answer no; because there is no collection at all. The person is confined for non-payment, and only discharged when the auditor is satisfied that the payment of the fine cannot be enforced by imprisonment.

2. When a person is fined by the court, and sentenced to the workhouse until the fine and costs be worked out, at a given sum per day, is the prosecuting attorney entitled to the ten per cent. thereof the same as if collected by him?

No; because no "*money* is collected;" if any collection is made, it is of *labor*. A similar question arose as to the right of the prosecutor to a percentage on the costs collected from the State in the case of convicts received at the penitentiary. It was decided adverse to the prosecutor. The only percentage to which the prosecutor is entitled is on "*moneys* collected on fines, forfeited recognizances and costs," through his individual efforts.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Inspector of Workshops and Factories; Condemnation of Buildings; Authority of Mayor.

INSPECTOR OF WORKSHOPS AND FACTORIES; CONDEMNATION OF BUILDINGS; AUTHORITY OF MAYOR.

Office of the Attorney General,
Columbus, Ohio, September 11, 1895.

Mr. J. W. Knaub, Chief Inspector Workshops and Factories:

DEAR SIR:—In your favor of the 8th inst., you say you have caused an inspection to be made of a school house known as the Bowersville public school, situated within the limits of the town of Bowersville, and such building having been found to be in an unsafe condition, ordered certain changes made therein, and have given proper notice to the owners of such building and the mayor of said town, together with a statement of the changes required to be made. You further say that the owners of such school building, the board of education of Jefferson Township, Greene County, have refused to comply with your order, claiming the mayor has no authority to enforce such order, on the ground that while the building is situated within the town of Bowersville, it is owned by Jefferson Township, and not the town; and you desire the opinion of this department whether the mayor has authority, under the statutes, to enforce your order.

There is no merit in the contention that the mayor has no authority to enforce this order, in accordance with the provisions of section 2572 and 2572a, R. S., because the building is owned and controlled by persons non-residents of the town of Bowersville. It being within the limits of the town, the mayor has the power and it is his duty to enforce your order, and prohibit the use of such building until such order has been complied with, no matter where the owners or the persons having control of the same may reside.

Very respectfully,
JOHN L. LOTT,
Secretary.

Commissioner of Railroads and Telegraphs; Authority to Inspect Electric Roads.

COMMISSIONER OF RAILROADS AND TELEGRAPHS; AUTHORITY TO INSPECT ELECTRIC ROADS.

Office of the Attorney General,
Columbus, Ohio, October 9, 1895.

Hon. William Kirkby, Commissioner of Railroads and Telegraphs:

DEAR SIR:—In your favor of the 17th ult., you state that:

"Complaint has been made to this office by citizens of the State, calling my attention to the condition of bridges, trestles, etc., on a line of road between Sandusky and Norwalk, and asking that an inspection of the same be made. The railroad in question is operated by electricity, but carries passengers, freight and mail.

I have the honor to request that you will give me a decision as to whether, in your opinion, under the statutes creating this office, and defining the duties of the commissioner, this road, and similar ones operating in the State, are under the jurisdiction of this office, and subject to the same regulations as govern steam railroads."

In answer I beg to say, that in my opinion you have authority to inspect the railroads you describe, notwithstanding the fact they are operated by electricity. Such railways cannot properly be classed as street railways but, transporting passengers, freight and express between different parts of the State, they are railroads or railways within the proper acceptance of the term, although operated by electricity. As you are well aware, electrical locomotives are now used on parts of some of the great interstate railway systems, notably in drawing the trains of the Baltimore & Ohio Railroad through its great tunnel in Baltimore. The view I have taken is further confirmed by the act of the General Assembly, passed May 21, 1894, (91 O. L., 397), which en-

acts, "that upon any railroad heretofore or hereafter constructed in this State, electricity may be used as a motive power in the propulsion of cars."

Very respectfully,
J. K. RICHARDS,
Attorney General.

CASUALTY INSURANCE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, November 7, 1895.

Hon. William M. Hahn, Superintendent of Insurance:

DEAR SIR:—I think my opinion of April 6, 1893, holding that a Casualty Company may do burglary insurance in Ohio under section 3641, contains the answer to your inquiry of June 22, and that a company formed for the purpose, may be licensed to insure against loss or damage to the owners of bicycles, resulting from theft of, or accident to the machine.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Mining Laws; Employment of Help in Private Mines—Mining Laws; Injured Person; Coroner's Duty.

MINING LAWS; EMPLOYMENT OF HELP IN PRIVATE MINES.

Office of the Attorney General,
Columbus, Ohio, November 8, 1895.

Hon. R. M. Haseltine, Chief Inspector of Mines:

DEAR SIR:—I question whether the mining laws of the State were intended to, and do reach the case of an owner of a mine who individually and personally digs coal in it for his own use, without the assistance of any other person; but such owner cannot, in my opinion, by any contract or agreement, employ or permit any person other than himself, to dig coal in such mine, without first complying with the mining laws of the State and placing the mine in a safe and properly ventilated condition, as required by statute.

Very respectfully,
J. K. RICHARDS,
Attorney General.

MINING LAWS: INJURED PERSON; CORONER'S DUTY.

Office of the Attorney General,
Columbus, Ohio, November 8, 1895.

Hon. R. M. Haseltine, Chief Inspector of Mines:

DEAR SIR:—In your favor of the 21st ult., you state that "a controversy has arisen between the coroners of Hocking and Athens Counties as to their respective authority in the holding of an inquest on the body of John Dilcher, who was injured in C. L. Poston's mine, in Hocking County, on October 3, and died at his home at Nelsonville, in Athens

County, on October 6, three days later;" and you request my opinion as to which coroner is the proper person to hold the inquest in such case.

While section 1221 R. S., confers upon a coroner the general authority to hold an inquest when information is given him, "that the body of a person whose death is supposed to have been caused by violence, has been found within his county," nevertheless the case you state is one, which, it seems to me, comes under the special provision of section 301, which provides:

> "Every person having charge of any mine, whenever loss of life occurs by accident, connected with the working of such mine, or by explosion, shall give notice thereof forthwith, by mail or otherwise, to the inspector of mines, *and to the coroner of the county in which such mine is situated,* and the coroner shall hold an inquest upon the body of the person or persons whose death has been caused, and inquire carefully into the cause thereof, and shall return a copy of the findings and all the testimony to the chief inspector."

Very respectfully,
J. K. RICHARDS,
Attorney General.

DAIRY AND FOOD COMMISSIONER; COLLECTION OF FINES.

Office of the Attorney General,
Columbus, Ohio, December 2, 1895.

Dr. F. B. McNeal, Dairy and Food Commissioner:

DEAR SIR:—Responding to your inquiry whether a fine collected in a prosecution for a violation of the pure food laws begun by your inspector bringing the matter to the at-

tention of the grand jury, should be paid to you in accordance with the provision of section 8033-275, I beg to say, that I am of the opinion that the language of the section referred to, applies to prosecutions on indictment as well as on complaint. The fine therefore, ought in this case to be paid over to you.

Very respectfully,
J. K. RICHARDS,
Attorney General.

PROSECUTING ATTORNEYS NOT ENTITLED TO PER CENT. OF FINES.

Office of the Attorney General,
Columbus, Ohio, December 17, 1895.

Dr. F. B. McNeal, Dairy and Food Commissioner:

DEAR SIR:—You have requested my opinion upon the question whether a prosecuting attorney, under Section 1298, R. S., is entitled to ten per cent. of a fine collected in his county in a prosecution conducted by your department before a justice of the peace, under the pure food laws.

This section was construed by the Supreme Court in the case of *State ex rel. Pugh vs. Brewster,* 44 O. S., 249, where it was held that "Section 1298, R. S., entitling a prosecuting attorney to a commission of ten per cent. on all costs collected in criminal causes, embraces the costs collected by him of the defendant, in performance of the duty required of him by section 1273."

This holding as to costs applies equally to fines. The fines and costs collected under section 1273 are fines and costs assessed and collected in the Probate Court, Common Pleas and Circuit Courts.

Prosecuting Attorneys Not Entitled to Per cent. of Fines.

With respect to the compensation thus allowed a prosecuting attorney, Judge Minshall, says, (middle page 251):

> "The commission is allowed as a compensation in addition to his salary; compensation is a reward for services; hence, the commissions here allowed should be referred to, and embrace collections made by the prosecuting attorney in the performance of his duty, and not to moneys received or collected by others, the receipt and collection of which is no part of his duties as an officer."

The enforcement of the pure food laws is placed in the hands of a special department. The Dairy and Food Commissioner and his subordinates are charged with the duty of prosecuting offenders. The assessment and collection of fines and costs in pure food prosecutions is the result of services performed by these officers and attorneys employed and paid by them, and not of services performed by the prosecuting attorney.

It is therefore, my opinion, that prosecuting attorneys are not entitled to a commission on fines and costs collected in prosecutions under the pure food laws begun and conducted before justices of the peace, by the officers of your department.

Very respectfully,
J. K. RICHARDS,
Attorney General.

County Commissioners; Annual Report.

COUNTY COMMISSIONERS; ANNUAL REPORT.

Office of the Attorney General,
Columbus, Ohio, December 21, 1895.

Mr. A. M. Crisler, Prosecuting Attorney, Eaton, Ohio:

DEAR SIR:—You have submitted to me a copy of the statement your county commissioners propose to publish under Section 917, R. S., and request my opinion as to whether it is sufficient in law.

I have no authority to give you an official opinion upon this question. You are yourself the final legal adviser of the county commissioners upon such a point.

Speaking unofficially, and as a matter of accommodation to you, I am disposed to doubt the sufficiency of the statement you submit. Section 917 requires the county commissioners annually to make "a detailed report in writing" to the Court of Common Pleas, of their financial transactions during the preceding year. This report the court causes to be examined by the prosecuting attorney and two suitable persons appointed by the court. The examiners, after completing their report, are required to "leave said financial statement, and the report of their examination, with the auditor of the county, for the use of the commissioners, who shall, immediately thereafter, cause said statement, together with the report of the commissioners, to be published in a compact form" in the county papers.

The statement you submit is not the report or financial statement filed with the court, but a new statement which simply contains, under the head of each fund, for instance, the county fund, bridge fund, building fund, children's home fund, etc., the balance on hand at the beginning of the fiscal year, the receipts and expenditures during the fiscal year, and the balance on hand at its close. No information is given as to the source of the revenue under each head, or the purpose for which expended.

Assessment Associations; Distinguish From Life Insurance Companies.

It occurs to me that the statement ought to contain, in a properly classified way, some intelligible information with regard to the nature of expenditures, which would advise the taxpayers of what had been done by the commissioners. No information is furnished by this statement except the condition of each fund. I do not believe that it is necessary to publish in detail the facts respecting each item of expenditure, but I do think that under appropriate headings the character of the disbursements should be shown so as to furnish the people with information as to the purposes for which their money has been used.

These conclusions are fortified by the fact that the law requires the report of the examiners to be published along with the statement of the commissioners. The statement must therefore bear such relation and throw such light upon the report of the examiners, as to render the latter intelligible.

Very respectfully,
J. K. RICHARDS,
Attorney General.

ASSESSMENT ASSOCIATIONS; DISTINGUISH FROM LIFE INSURANCE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, December 27, 1895.

Hon. William M. Hahn, Superintendent of Insurance:

DEAR SIR:—You have submitted to me the question, whether an act relating to life insurance companies doing business in Ohio, as amended April 27, 1893, (90 O. L., 345), applies to assessment associations, doing business under section 3630, R. S., and the sections supplementary thereto, so as to prohibit any discrimination between members in such as-

Assessment Associations; Distinguish From Life Insurance Companies.

sociation, where all the members are required to pay their assessment according to the table of rates bi-monthly, quarterly or annually, agreeing at the same time, in the certificate or contract to pay such further sums as may be required in case of emergency.

The act to which you refer applies in terms to "life insurance companies;" and prohibits any distinction or discrimination between insurants of the same class and equal expectation of life "in the amount or payment of premiums, or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon." These are terms which in insurance business or insurance law apply to what are known as old line companies, that is mutual or stock companies, doing a life and endowment insurance business. They do not apply to mutual protection associations, conducted upon the assessment plan; such associations are not, in insurance parlance, "life insurance companies;" they do not collect "premiums" or issue "policies of life or endowment insurance," or pay "dividends."

I take the view, therefore, that the act referred to does not apply to assessment associations.

Whether this act ought to be so amended as to prohibit discriminations between members in assessment associations is a matter for the consideration of the Legislature.

Very respectfully,

J. K. RICHARDS,

Attorney General.