Qualification of Office Holder—Actions for Trespass Under Canal Laws—Jury, Etc.

QUALIFICATION OF OFFICE HOLDER.

Attorney General's Office,
Columbus, June 8, 1865.

Oscar O. Kelly, Esq., Twinsburg, Ohio.

DEAR SIR:—The qualification of an office holder in this State as fixed by the constitution (Art. 15, Sec. 4), is that of an *elector.* I do not find anywhere any different provision as to *supervisors,* but they, like other officers, must be *electors,* and if electors, are *eligible* to the office, whatever their age may be over twenty-one years. If *eligible* to the office, they must serve, or pay the fine imposed for refusing to serve. The result of the whole matter is, that while a citizen over the age of *fifty-five* years cannot be compelled to work on the roads, he may superintend the work of others.

Very truly,
C. N. OLDS,
Attorney General.

ACTIONS FOR TRESPASS UNDER CANAL LAWS. —JURY, ETC.

Attorney General's Office,
Columbus, July 19, 1865.

R. O. Hammond, Esq., Akron, Ohio.

DEAR SIR:—Your favor of the 8th inst. was received on my return from New York, on the 17th, and I hasten to reply.

In my opinion you are correct in saying that an action for a penalty for trespass under the Ohio canal laws may be brought in the name of the State of Ohio. The act of 1861, authorizing the leasing of the public works, does not repeal the act of 1840, but in section 7, expressly recognizes the

existence of the same, and provides that the officers and agents appointed by the lessees shall have the same powers, and be governed by the same rules, as if appointed by the board of public works.

The "actions" referred to in sections 15 and 16 of the act of 1861, are clearly different from actions under the old canal laws, for fines and penalties.

As to a jury in such cases, I do not now recollect any provision of law that would prevent a defendant from demanding a jury. This constitutional privilege is a very broad one, and covers almost all cases, civil and criminal.

Truly yours,
C. N. OLDS,
Attorney General.

QUALIFICATIONS FOR ADMISSION TO LUNATIC ASYLUM.

Attorney General's Office,
Columbus, July 19, 1865.

S. S. Reynolds, Esq., Chanticleer, Knox Co., Ohio.

DEAR SIR:—On my return from New York, where I have been for two or three weeks on official business, I find your letter of the 11th inst., and hasten to reply.

The qualifications for admission to the lunatic asylum are contained in section 19, page 842, S. & C. Statutes. As to citizenship and residence, the applicant must be a *citizen of Ohio*, and an *inhabitant of the asylum district*, and he must have resided in this State for one year next preceding the date of his application. Section 20, page 843, gives form of the affidavit to be filed with the probate judge, who is to examine into the alleged insanity. That form requires a statement as to the township where the applicant has *a legal settlement*, and asserts it to be in the county where

the examination is sought to be had. It seems, in the case of Jacob Long, (the applicant) that he had a legal settlement in Knox County, that he removed to Delaware County on the 1st of April, 1865, and has resided there since that date. The question then arises: Where has he a legal settlement at the present time? This question is clearly answered by sections 2 and 3 of the act of February 23, 1865, for the relief of the poor (O. L., Vol. 62, page 19). By section 2, a person acquires a legal settlement by residing in one township continuously for one year, and supporting himself without relief. By section 3, the settlement so acquired continues until one has been similarly acquired elsewhere. Under this law, Jacob Long has *now* a legal settlement in Knox County, if he lived there continuously one year prior to April 1, 1865, and supported himself without relief; and he has no legal settlement anywhere else.

It follows, I think, that the examination by the probate court as to the fact of insanity must be had in Knox County. The law does not in terms require that the applicant shall actually be living in the county or township at the time the insanity begins, or the examination is had; but he must have a legal settlement there. He may have such legal settlement for eleven months and twenty-nine days after he has ceased to live there. Both counties are in the same asylum district, and it being a question of legal settlement only, to which of these counties do the three qualifications attach—of citizenship, residence, and legal settlement —the citizenship is for the *State,* the residence is for the *asylum district,* the legal settlement is in *Knox County.* Delaware County is covered by two of these qualifications only, while Knox County is covered by all three.

Very respectfully yours, etc.,

C. N. OLDS,

Attorney General.

Liability of County for Work Done Under "Ditch Law"—Indictment for Stealing U. S. Treasury Notes.

LIABILITY OF COUNTY FOR WORK DONE UNDER "DITCH LAW."

Attorney General's Office,
Columbus, Sept. 18, 1865.

J. W. Sater, Esq., Greenville, Ohio.

DEAR SIR:—The case you present in your favor of September 15th, I had already examined with the auditor of state. It seems quite clear to us that under the "ditch law" the person who does the work under the public letting, is entitled to his pay from the county treasury; and that, too, whether the assessment against the land has been collected or not. It may make a case of great hardship so far as some of the parties are concerned, but I do not see how that can affect the liability of the county to pay for the work actually done under a contract with the officers of the county.

Very respectfully yours,
C. N. OLDS,
Attorney General.

INDICTMENT FOR STEALING U. S. TREASURY NOTES.

Attorney General's Office,
Columbus, Sept. 22, 1865.

Henry Hanly, Esq., Pros. Attorney, Defiance, Ohio.

DEAR SIR:—Your favor of the 19th received. In reply I have to state:

1st. If the notes commonly called "greenbacks" were issued under the acts of February 25, 1862, and of July 11, 1862, (and I think that all, or nearly all, now in circulation

Duty of Trustee in Regard to, and Who is Rightfully Trustee of, a Certain School Fund.

were issued under these two acts) their *legal* name is "United States Notes." They are so called in the acts themselves; while the notes bearing interest are called "United States Treasury Notes." In common parlance, however, they are all called United States treasury notes, and I am inclined to think it will do to call them so in an indictment. Our Common Pleas Court here has so held, and I do not know that it has been held differently elsewhere.

In framing an indictment under the 18th section of the crimes act, as amended March 21, 1863, it would perhaps be well to insert one count for stealing *money*, under the 1st clause of the section, and one county under the 2d clause for stealing "United States notes, being notes issued by lawful authority of the United States, and intended to pass and circulate as money."

2d. Under section 18, as amended, I do not believe a *scienter* is necessary, but if used, the form you suggest I think will do.

3rd. Where *father* and *son*, in the same county, bear the same name, in indicating the son, I should use the term "junior."

Very truly yours,
C. N. OLDS,
Attorney General.

DUTY OF TRUSTEE IN REGARD TO, AND WHO IS RIGHTFULLY TRUSTEE OF, A CERTAIN SCHOOL FUND.

Attorney General's Office,
Columbus, Oct. 6, 1865.

Hon. E. E. White, Commissioner Common Schools.

DEAR SIR:—I have examined the questions submitted to me, relative to the will of Rix Patterson, deceased, and would make the following suggestions in regard thereto:

Duty of Trustee in Regard to, and Who is Rightfully Trustee of, a Certain School Fund.

1st. The fund described in item 5th, of the will, belongs to the township of Mt. Pleasant, for the use of common schools therein.

2d. It is a matter of some doubt whether, during the lifetime of the executor of Mr. Patterson, the *principal* of said fund should have remained in the hands of said executor, or have been paid over to the township board of education, who are a corporate body, authorized to receive gifts, donations, devises, etc., for the use of schools in their jurisdiction. I am inclined to the opinion that when the executor was prepared to settle up the estate, he ought to have handed over this fund, or the bonds in which it was invested, to said board of education. But, whatever doubt there might be on this subject could only be solved by the adjudication of the proper court, by a suit for that purpose.

3d. The administrator of the deceased executor has no right whatever, as such, to hold said fund.

4th. If he were appointed administrator *de bonis non* of said Patterson, the same doubt as to his right to hold the fund would exist as in the case of the executor, and to be solved in the same way.

5th. While the principal of said fund remains in the hands of any *trustee*, by whatever name he may be called, whether executor, administrator, or otherwise, he is *bound* to *account* for *all the interest* received, whatever the rate or amount, and has no right to account for *six per cent.* only, and pocket the balance. If he is entitled to compensation as trustee, the rate and amount should be fixed and allowed by the court.

6th. In its present condition the board of education of the township have the right to demand the principal and interest of the fund from the present holder, and if he refuses to pay, may sue him therefor, and ask the court to decree its payment to them, or to some trustee whom the court

may appoint, if the court should hold that the board cannot themselves act as trustee.

Respectfully, etc.,
C. N. OLDS,
Attorney General.

FORM OF INDICTMENT FOR SEDUCTION.

Attorney General's Office,
Columbus, Nov. 1, 1865.

J. J. Harper, Esq., Pros. Atty., Portsmouth, Ohio.

DEAR SIR:—In reply to your favor of the 28th, I would state that I did not know of any precedent for the form of an indictment for seduction under our statute, and in the pressure of other matters I should not be able to command the time to prepare one that would be reliable. I would suggest, however, that by taking your usual form for other crimes, as to the commencement and conclusion, and adhering closely to the words of the statute for the body of the form, I think you will be able to make a good one The indictment must show affirmatively that the accused was over eighteen years of age, that he had illicit and carnal intercourse with the victim, that it was under promise of marriage, that she was under eighteen years of age, and of good repute for chastity, giving also the time and venue for each material averment, and closing with the charge of seduction, *co nomine.*

If you will prepare a form such as you think will meet the case according to the facts, as you have them, and send me a copy, I shall be glad to revise it, and give you any suggestions that may occur to me, though I presume it will be unnecessary.

Very respectfully yours,
C. N. OLDS,
Attorney General.

FORM OF INDICTMENT UNDER SEDUCTION ACT.

Attorney General's Office,
Columbus, Nov. 8, 1865.

J. J. Harper, Esq., Pros. Atty., Portsmouth, Ohio.

DEAR SIR:—I herewith return to you the form of an indictment for seduction which you sent me in your favor of the 4th, inst. I also send a sketch of the body of such an indictment, hastily drawn by myself. It does not vary materially from yours, and I do not know that it is any better, though a little differently arranged, and perhaps a little more explicit. I only send it as a suggestion, and for comparison with your own draft, which I think is good. Our forms used here make the introduction, describing the organization of the grand jury somewhat more particular than yours, and I have suggested a little change in the conclusion.

Very truly,
C. N. OLDS,
Attorney General.

(SKETCH.)

That S. J. H., late of said county, heretofore, towit, on the twenty-first day of January, in the year of our Lord, eighteen hundred and sixty-five, at the county of Scioto aforesaid, he, the said S. J. H. then and there being a person over the age of eighteen years, had illicit carnal intercourse with one A. S., under promise of marriage with her, the said A. S., she then and there being a female of good repute for chastity, and then and there being under the age of eighteen years.

And so the jurors aforesaid, upon the oaths and affirmations aforesaid, do find and say that the said S. J. H., in the manner and form aforesaid, on the day and year aforesaid, and at the county of Scioto aforesaid, was guilty of seduction, contrary, etc.

Proceedings to Recover Funds From County Treasurers, Where They Fail to Pay Over, Etc.

PROCEEDINGS TO RECOVER FUNDS FROM COUNTY TREASURERS, WHERE THEY FAIL TO PAY OVER, ETC.

Attorney General's Office,
Columbus, December 23, 1865.

Hon. J. H. Godman, Auditor of State.

DEAR SIR:—Section 26 of the "act prescribing the general duties of the auditor of state," etc., (S. & C., 113) provides that if a county treasurer, or other officer concerned in the collection of state revenue, shall fail to collect, etc., or fail to pay over all moneys by him received, and *belonging to the State,* the auditor of state shall transmit to the auditor of the county, a statement of the sum *claimed by the State* from the county treasurer, and direct the county auditor to proceed by suit against the county treasurer and his securities, etc.

The provision in section 25 of the act prescribing the duties of county auditors (S. & C., 1587) as to directing suit against the county treasurer, is to be construed in connection with, and in the light of, section 26 above quoted; and thus construed, it seems quite clear that the auditor of state is only required to direct suit when the treasurer fails to pay money collected *for State revenue,* and *belonging to the State,* and *claimed by the State.* In the matter of county funds, etc., it is the duty of the county commissioners, and *not* of the auditor of state, to direct suit to be brought.

Understanding from the statement of the auditor of Perry County that the defaulting treasurer has paid over all moneys belonging to the State, I do not think *you* are required to direct suit to be brought on his bond, it being a duty which rests upon the county commissioners only.

Very truly yours,
C. N. OLDS,
Attorney General.

Relative to Fines for Benefit of Common Schools—Directors on Part of State in Certain Companies Powers Cease on Sale of State's Interest.

January 8, 1866—Term of Chauncey N. Olds expired, and that of Wm. H. West (elected in October election, 1865) commenced.

RELATIVE TO FINES FOR BENEFIT OF COMMON SCHOOLS.

Attorney General's Office,
Columbus, March 14, 1866.

Hon. John A. Norris, Commr. Common Schools.

SIR:—The duties of justices in regard to fines, and the mode of proceeding for neglect, are prescribed in sections 28 and 29 of the act of March 27, 1837 (S. & C. Stat., Vol. 1, pages 814 and 815); and sections 2 and 4 of the amendatory act (S. & C., 280 and 821.).

You will address the auditor, treasurer, and prosecuting attorney of the proper county, directing them severally to proceed under the statutes, giving them the sections and pages.

Yours truly,
W. H. WEST,
Attorney General.

DIRECTORS ON PART OF STATE IN CERTAIN COMPANIES. POWERS CEASE ON SALE OF STATE'S INTEREST.

Attorney General's Office,
Columbus, June 27, 1866.

His Excellency, J. D. Cox, Governor.

SIR:—I have the honor to acknowledge the receipt of your letter of the 26th, inst., and in reply have to say: That