signed by the county commissioners. In such case the infirmary directors have nothing to do with the matter.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PHARMACY ACT; POWERS OF ASSISTANT PHARMACIST.

Attorney General's Office,
Columbus, Ohio, January 1, 1886.

Mr. P. H. Bruch, Secretary Ohio Board of Pharmacy, Columbus, Ohio:

DEAR SIR:—In answer to the question submitted by you I have to say that, in my opinion, where a registered pharmacist is the owner of several retail drug stores he may place in charge of each or any one of them an assistant pharmacist. Indeed, upon a consideration of the whole statute, I am of the opinion that the terms, "a registered pharmacist within the meaning of this chapter," found in section 4405 of the act of March 20, 1884, must be regarded as including both a "pharmacist" and an "assistant pharmacist" as designated in subsequent sections of the act, and hence that the proprietor of a drug store, who is not himself a registered pharmacist, may carry on business, provided he employes an assistant pharmacist, who has the supervision and management of that part of the business requiring pharmaceutical skill and knowledge.

The provision in section 4407 as to registry is that the board shall keep a book of registration "in which the name and place of business of every person duly qualified under this chapter to conduct or engage in the business mentioned and described in section 4405 shall be

Salaries of Officers; Who Can Draw For Full Two Years, From Second Monday of January to Second Monday.

registered," and the board is also required to report to the secretary of state a list of the names of all pharmacists duly registered. No distinction is here made between a pharmacist and an assistant pharmacist, though both are clearly included. The distinction subsequently made does not relate to the qualifications of the person, but rather to the nature of his interest in the business, whether it be as owner or employe. By an assistant is not meant one who merely assists a pharmacist in the act of compounding prescriptions, but an assistant pharmacist is given full power of himself to compound prescriptions. His authority in this respect is as ample as that of a pharmacist, and he ought to be subjected to the same examination as to his competency.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SALARIES OF OFFICERS; WHO CAN DRAW FOR FULL TWO YEARS; FROM SECOND MONDAY OF JANUARY TO SECOND MONDAY.

Attorney General's Office,
Columbus, Ohio, January 4, 1886.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—In reply to your favor of the 2d inst. I have the honor to say:

First—In my opinion the present state officers who were elected for the term of two years commencing on the second Monday of January, 1884, and ending on the second Monday of January, 1886, are entitled to their respective salaries for the full term of two years, not-

Salaries of Officers; Who Can Draw for Full Two Years; From Second Monday of January to Second Monday.

withstanding the former day fell upon the 14th day of the month and the latter will be the 11th inst.

Second—I am also of the opinion that all officers appointed by the governor, and all clerks and employes in the several executive departments, whose appointment and salary are provided for and fixed by law, and whose terms commence on the second Monday of January, 1884, and end on the second Monday of January, 1886, are entitled to their respective salaries for the full term of two years.

Third—Where a vacancy has occurred in any of the aforesaid offices and a successor has been thereupon appointed and qualified, I think that such successor is entitled to the balance of the salary for the full term of two years.

Fourth—Clerks and employes whose appointment is not provided for by law and who have no fixed term, but who are employed and paid under and by virtue of the annual appropriation for that purpose, are, in my opinion, entitled to draw pay up to and including the day on which they retire, and their successors, coming in on that day, are entitled to the balance of the appropriation heretofore made for the fiscal quarter ending February 15, 1886.

Yours truly,

JAMES LAWRENCE,

Attorney General.

County Surveyor; No Fees For Services Under Section 797, Revised Statutes—Veteran Volunteers; Congressional Act of July 4, 1884.

COUNTY SURVEYOR; NO FEES FOR SERVICES UNDER SECTION 797, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, January 6, 1886.

John B. Driggs, Esq., Prosecuting Attorney, Woodsfield, Ohio:

DEAR SIR:—Your favor of the 2d inst. was duly received. In my opinion the county surveyor is not entitled to any compensation for his services under section 797, Revised Statutes, amended 77 O. L., 72.

Yours truly,
JAMES LAWRENCE,
Attorney General.

VETERAN VOLUNTEERS; CONGRESSIONAL ACT OF JULY 4, 1884.

Attorney General's Office,
Columbus, Ohio, January 6, 1886.

F. Newman, Esq., City Solicitor, Crestline, Ohio:

DEAR SIR:—Your favor of the 5th inst. is received. If a soldier, who deserted from the army after May 1, 1865, comes, in other respects, within the provisions of the act of Congress entitled, "an act to relieve certain soldiers from the charge of desertion," approved July 5, 1884, and if the charge of desertion against him on the rolls and records in the office of the adjutant general of the United States has been in fact removed, then I am of the opinion that such soldier stands in the same position

as if he had never deserted. The act of Congress is not to be regarded as a pardon, which merely removes the disabilities incident to an offense, but it is in effect declared that the act of leaving the army after the date named, without being mustered out or discharged, was not desertion. Hence I do not think that the last clause of section 2 of the act of the General Assembly of Ohio, entitled "an act to authorize and require the payment of bounties to veteran volunteers" (Vol. 3, Williams Statutes, page 612), is applicable to a soldier so relieved from the charge of desertion. If he is otherwise entitled thereto, such soldier, or in case of his death, his widow, etc., has a right to the bounty provided for veteran volunteers under said last mentioned act. I do not think it makes any difference that the soldier died before the removal of the charge of desertion against him.

I have given my answer thus in general terms, because I am not sufficiently acquainted with the details of the particular case presented to say whether, in other respects, it comes within the operation of our statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

BOARD OF PUBLIC WORKS; CLAIM OF STOUTENBOROUGH; REHEARING.

Attorney General's Office,
Columbus, Ohio, January 7, 1886.

Mr. W. L. Baker, Secretary Board of Public Works:

DEAR SIR:—I have delayed answering your favor of November 2, 1885, relative to the claim of J. S. Stoutenborough for damages by reason of the breaking of the

State dam about two and one-half miles above Middletown, Ohio, as I have been waiting the convenience of counsel for said claimant, who desired to be heard in the matter. The commission appointed to consider said claim, in pursuance of section 13 of the act of April 14, 1859 (known as section 7703 of the Revised Statutes), having met and examined the premises and heard such testimony as was offered before them, and having made and signed a decision in writing and delivered the same to the board of public works, I am of the opinion that the powers of said commission have been fully exercised, and that it has no authority to grant to said claimant a rehearing. I return herewith the papers submitted.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SWAMP LANDS; TITLE TO CERTAIN, IN VAN WERT COUNTY.

Attorney General's Office,
Columbus, Ohio, January 7, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—I return herewith the letter of A. L. Sweet, Esq., prosecuting attorney of Van Wert County, which you submitted to me.

First—I assume that the act of March 2, 1853, referred to by Mr. Sweet, entitled "an act to provide for draining and reclaiming the swamp lands granted to the State of Ohio by act of Congress, approved September 28, 1850" (3 Curwen, 2150), as amended and supplemented (4 Curwen, 2587, 2698 and 3221), is still in force, though I have been so occupied as to be unable to make a thorough examination of this point. Said act is not found in

Williams' Supplement to the Revised Statutes, but Mr. Williams says that this is probably an omission, and he thinks that said act has not been repealed.

Second—The contract made in 1856 with John Shaw for the tract of land mentioned must be regarded as abandoned and of no effect whatever, the same not having been complied with in any respect and the time having long since gone by in which it could be complied with. The present status of the land is the same as if said contract had never been made.

Third—Neither do I think that its status is affected by the fact that said land was, by mistake, placed upon the tax duplicate and subsequently sold for taxes. The holder of said tax title has no claim in or to said land. The taxes erroneously paid thereon within the past five years, may be refunded under section 1038, Revised Statutes.

Fourth—In my opinion said land should now be regarded as land remaining undisposed of, and should be sold in accordance with sections 9 (amended April 25, 1854) and 10 of said act of March 2, 1853. I think that the sum assessed thereon for building the ditch referred to by Mr. Sweet, having been paid by the county, should properly be deducted from the proceeds of sale. Such expenditure is at least within the spirit of the provision in said section 10 relative to reimbursing the county for the draining and reclaiming said swamp lands.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Ohio Penitentiary; Parole; Effect on Time Gained.

OHIO PENITENTIARY; PAROLE; EFFECT ON TIME GAINED.

Attorney General's Office,
Columbus, Ohio, January 8, 1886.

Hon. George Hoadly, Governor:

SIR:—Replying to your inquiry as to the rights of a paroled convict in respect to the diminution of the term of his original sentence by reason of good conduct, I have the honor to say:

First—In my opinion a prisoner sentenced to the penitentiary for a definite term of imprisonment who is paroled in pursuance of section 8 of the act of May 4, 1885 (82 O. L., 236), does not lose any time previously gained by him on account of good conduct. Under the rules provided in section 7 of the act of April 14, 1884 (81 O. L., 186) which, so far as the present question is concerned, are substantially the same as the former statute upon the subject, the diminution of the term of his imprisonment is not a mere favor, but a right, which belongs to each prisoner to whom such rules are applicable, and the deduction is to be allowed monthly, commencing on the first day of his arrival at the penitentiary. When time has once been gained, no part thereof can be taken away, except by action of the board of managers in pursuance of sub-division 2 of said section 7, and for the causes therein specified.

Second—I am of the opinion, however, that the rules for diminishing the period of a convict's sentence are applicable only when the convict is confined within the penitentiary, and that one who has been paroled is not entitled to any deduction by reason of good conduct after his release on parole and during the period of such release. In short I think that a convict on parole is entitled to a full release when the period of his sentence, less the time gained previous to the parole, has expired.

Columbiana County Mutual Insurance Company; Under General Legislation.

Third—I think that a prisoner who has been sentenced to the penitentiary because of a breach of the conditions of his parole, is subject to the provisions of sub-division 2 of said section 7 of the act of April 14, 1884.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COLUMBIANA COUNTY MUTUAL INSURANCE COMPANY; UNDER GENERAL LEGISLATION.

Attorney General's Office,
Columbus, Ohio, January 8, 1886.

Hon. Henry Reinmund, Superintendent of Insurance:

DEAR SIR:—Your favor of the 8th inst. is received. The special act of March 2, 1837 (35 O. L., 120), to incorporate the Columbiana County Mutual Insurance Company provides that any future legislature should have power to alter, amend or repeal said act. Accordingly said corporation is affected by all general laws in terms applicable to like corporations. In my opinion it is subject to the provisions of section 3650, Revised Statutes, as amended 79 O. L., 133, and is required to assess its members on the thirtieth day of September of each year, sufficiently to liquidate all liabilities of the company existing at the time of such assessment.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Ohio Penitentiary; Compensation to Physician For Attendance at Executions.

OHIO PENITENTIARY; COMPENSATION TO PHYSICIAN FOR ATTENDANCE AT EXECUTIONS.

Attorney General's Office,
Columbus, Ohio, January 9, 1886.

Hon. Isaac G. Peetrey, Warden Ohio Penitentiary:

DEAR SIR:—I am in receipt of your favor of the 8th inst. enclosing copy of a resolution adopted by the board of managers of the penitentiary, and a bill of Dr. C. R. Montgomery in pursuance thereof.

The resolution directs the physician of the penitentiary to attend officially at all executions of the death penalty in said institution and allows him extra compensation therefor at the rate of $25.00 for each execution. If full force is to be given to the word "officially," that is, if such attendance is by law or can be by order of the board, made a part of the official duties of the physician, then your position is correct, and the bill of Dr. Montgomery cannot be paid. I am of the opinion, however, that such attendance is not part of the official duties of the physician of the penitentiary. He is not one of the persons required by law to be present at an execution, and is furthermore not required to devote his entire time to the duties of his office. In my opinion, the board of managers has power to employ a physician to attend upon executions, who may be either the regular physician of the penitentiary or some other physician, and has also power to allow him a reasonable compensation for such services.

Although I think that the form of the order adopted by the board is not the best, on the whole, I am of the opinion that the bill of Dr. Montgomery, if approved by the board, should be paid. Yours truly,

JAMES LAWRENCE,
Attorney General.

County Treasury; Duty of Probate Judge Regarding Examiantion of.

COUNTY TREASURY; DUTY OF PROBATE JUDGE REGARDING EXAMINATION OF.

Attorney General's Office,
Columbus, Ohio, January 13, 1886.

Hon. W. D. McKemy, Dayton, Ohio:

DEAR SIR:Yours of the 8th inst. duly received. I have examined Sec. 1129 of the R. S. as amended April 29, 1885, O. L., p. 173.

My views of the intent and meaning of the law are that it is the *duty* of the probate judge to have the examination provided for made *at least* once every *six months* and at short intervals, if requested so to do in writing by one or more of the bondsmen of the treasurer, and it is discretionary with the probate judge to have the examination made oftener than once in six months if *he* deemed necessary. The examination *must* also be made *at the time* the treasurer turns over his office and effects to his successor in office.

In regard to your second inquiry, I think the law contemplated an examination by skilled and competent persons to be appointed by the probate judge and it is no part of the judge's duty to make a personal examination.

It is proper for me to say that my predecessor in office, Mr. Lawrence, concurs in this opinion.

Yours very truly,
J. A. KOHLER,
Attorney General.

County Treasurer; Commissions of, in Certain Case—Bill of Exceptions; Cost of Recording.

COUNTY TREASURER; COMMISSIONS OF, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 13, 1886.

John McSweeney, Jr., Prosecuting Attorney of Wayne County:

DEAR SIR:—Your letter of the 9th inst. reached me the 12th, and I have given it such examination as I could, during the noise and excitement attending the inauguration. I think your view of the law is correct. From your statement it appears that Mr. Ohliger commenced the suit to recover the tax and regularly obtained judgment and the Circuit Court confirmed it on proceedings in error. Now it seems to me that the fact that the money was paid to Mr. McClarran as Ohliger's successor does not entitle the former to the commission. I think Mr. Ohliger is entitled to the commission. I know that was the rule as to commissions on costs and fines going to the prosecuting attorney when I held that office.

Truly yours,
J. A. KOHLER,
Attorney General.

BILL OF EXCEPTIONS; COST OF RECORDING.

Attorney General's Office,
Columbus, Ohio, January 14, 1886.

Mr. John McGregor, Clerk of Court:

DEAR SIR:—Yours of the 12th inst. received and in the examination of the questions presented I find that Mr. Lawrence, my predecessor in office, has given an opinion

on this case under the date of November 24, 1885, to the effect that the costs of recording the bill of exceptions could not be taxed to or paid by the State, and in this view of the law I concur in opinion.

Yours verly truly,

J. A. KOHLER,
Attorney General.

CLERK OF TOWNSHIP; NO POWER TO APPOINT DEPUTY.

Attorney General's Office,
Columbus, Ohio, January 15, 1886.

H. E. Munn, Esq., Township Clerk:

DEAR SIR:—Yours of the 13th, 1886, received. The statutes of this state relating to the election and qualification of towsnhip clerk make no provision in regard to the appointment of a deputy clerk, and in the absence of such express form, my opinion is that the clerk cannot appoint a deputy. Yours very truly,

J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; FEES OF IN CRIMINAL CASES.

Attorney General's Office,
Columbus, Ohio, January 19, 1886.

James E. Johnston, Esq., Prosecuting Attorney:

DEAR SIR:—Yours of the 18th inst. received. There is no legal provision for the payment of commissions to

prosecuting attorneys in criminal cases where the costs are paid by the State.

My predecessors in office have decided that such payment of costs by the State is not a "collection" in the sense in which the term is issued in Sec. 1298 R. S., and this is also my view of the law.

Yours truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; EXPENSES OF.

Attorney General's Office,
Columbus, Ohio, January 15, 1886.

John W. Winn, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—I have your letter of the 13th inst. I find on examination that my predecessors in office, Judge Nash and Mr. Lawrence, have given opinions on the identical question submitted in your letter. These opinions, however, are at variance, Judge Nash holding that a commissioner, when traveling on official business outside of his county, is entitled to the mileage provided for, and in addition thereto, his reasonable and necessary expenses actually paid. Subsequently Mr. Lawrence examined the subject and carefully reversed Judge Nash's opinion and his opinion is to the effect that "when traveling on official business outside of his county, a county commissioner is entitled to his three dollars per diem and his reasonable and necessary expenses actually paid, but *no mileage.*"

I have examined the law, Sec. 987, R. S., Am. Vol. 79, p. 139, in the light of these conflicting opinions, and am led to the construction adopted by Mr. Lawrence and that is, that in cases where county commissioners are com-

Board of Education; Member of Acting as Agent and Insuring School Property.

pelled to go outside of the limits of the county on official business, that the compensation is limited to three dollars per diem and in addition thereto reasonable and necessary expenses actually paid; this, of course, excludes the mileage provided for when the traveling is done within the limits of the county.

Your second question, "Are county commissioners entitled to the three dollars per diem while in attendance on the meetings of the Commissioners' Association at Columbus?" I answer in the negative. I consider such conventions important and productive of good results, but unfortunately the law has made no provision for pay in such cases.

Very truly yours,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; MEMBER OF ACTING AS AGENT AND INSURING SCHOOL PROPERTY.

Attorney General's Office,
Columbus, Ohio, January 16, 1886.

Mr. M. W. Johnston, Jackson, Ohio:

DEAR SIR:—I doubt some the propriety of giving advice, except in cases where official opinions are authorized by law.

The prosecuting attorney of your county could and no doubt would advise you fully and accurately. However, I will give you my best judgment.

The language of 696 R. S. is quite comprehensive and there is an evident *impropriety* in a member of a school board acting as agent for an insurance company, and as such, effecting insurance on the school property; still on the

Board of Education; Member of Acting as Agent and Insuring School Property.

state of facts embraced in your inquiry I do not believe he could be legally convicted under that section. My reasons for this conclusion are: First, that the penalty prescribed is so severe that I do not believe the General Assembly which enacted the section intended to embrace a member of a school board, who as one member of a board of education voted to enter into such contract of insurance.

The section clearly does not extend to any and *all officers* in this State, nor to every office of *trust* and *profit*, for some offices are purely private; for example, the president of a bank or a director of a corporation. It must therefore be, that it was intended to apply to public officers, holding an office of *profit* and *trust* in the sense in which that term is usually employed. Bouvier defines the term "office" as "a right to exercise a public function or employment and take the fees and emoluments belonging to it." Shelford Morten 797, Criminal Digest Index 3, Ser., R. R. Penn. 149.

The duties of a member of a school board relate mainly to the making of rules and regulations for the government of schools, employment of teachers and the purchase of supplies, etc., for the use of the schools in the district or township, and the law provides how all this shall be done, namely, at a meeting of the board, the proceedings of which must be duly recorded. It is a *quasi* legislative office and no compensation is provided by law. My conclusion is strengthened by examination of other sections *in pari motima*, for instance section 6976 R. S. If it is true that a member of a school board is to be held and treated as an officer of *trust* and *profit* then with stronger reasons a member of a city council of any municipal corporation is such *an officer* and section 6969 would reach and include a member of a city council, but it was deemed necessary to make *express* mention of members of the city council in order to prohibit such contracts and hence

Sec. 6976 in express terms includes such officers. It is a maxim of law that the express mention of one thing implies its exclusion in things not mentioned. Now if the phrase, "an officer elected or appointed to an office of trust and profit," does not embrace a member of a city council so as to render him liable when as such he enters into contracts in which he has an interest directly or indirectly, then clearly a member of a school board cannot fairly be considered as holding an office of *profit* and *trust* within the meaning of this section.

I have given you my reasons hastily and do not feel entirely clear, but I have never known of a conviction or even prosecution under this section. I would advise you, however, to consult your prosecuting attorney and would be glad to hear from you further as to his views on the case.

Respectfully yours,
J. A. KOHLER,
Attorney General.

TREASURER OF COUNTY; COMMISSIONS OF IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 18, 1886.

Mr. Harry McClarran, Wooster, Ohio:

DEAR SIR:—Your letter of the 16th inst. duly received. I was informed by letter from Mr. McSweeny, the prosecuting attorney of your county, that a suit had been brought by the ex-treasurer against a certain party for non-payment of taxes, and that in due course of law judgment was obtained by the treasurer, Ohliger; that the case was then taken on error to the Circuit Court where the judgment was affirmed and that before the

money was paid, Mr. Ohliger's term of office expired and you succeeded him as county treasurer, so that the money on this judgment was in fact paid into your hands as treasurer. It was stated to me that *the commission* on the money so paid was in dispute. Mr. Ohliger claimed it and you claimed it, and I was requested to give my opinion as to these conflicting claims. No amount of commission was stated or considered by me and it seemerd to me that under the section of the statute relating to commissions, 1117 R. S., the commission in justice belonged to the officer who put the claims in judgment rather than the one to whom the judgment was paid. On the whole this appeared to me to be the most just view and the practice that has obtained in our county for many years in regard to commissions payable to prosecuting attorneys on fines, costs and recognizances.

I am very truly yours,
J. A. KOHLER,
Attorney General.

INCORPORATIONS; LEGALITY OF, FOR CERTAIN PURPOSES.

Attorney General's Office,
Columbus, Ohio, Jan. 19, 1886.

Messrs. Butterworth & Crosley, Attorneys-at-law, Cincinnati, Ohio:

GENTLEMEN:—Your letter of the 15th at hand addressed to James Lawrence, attorney general, has been referred to me for answer. I have no doubt but that articles of incorporation of such a company as you speak of, would be proper under Sec. 3236, R. S., so far as the business of examining real estate titles, making abstracts of title, etc., is concerned.

Agricultural Societies; Members of Board of, Should not Use Proxy.

The laws of this State relating to insurance, other than life, Sec. 3632 et seq., are silent as to insurance such as is proposed in the articles you hold. I am, therefore, of the opinion that that feature in the proposed company would be without legal warrant and could not be incorporated.

Yours very truly,
J. A. KOHLER,
Attorney General.

AGRICULTURAL SOCIETIES; MEMBERS OF BOARD OF, SHOULD NOT USE PROXY.

Attorney General's Office,
Columbus, Ohio, January 20, 1886.

John W. O'Harra, Georgetown, Ohio:

DEAR SIR:—In reply to your inquiry of the 18th, I would reply that it is not advisable to receive the votes of proxies at an election of a board of agriculture; such is not the intent of the law, as I find no provision made for voting in that capacity. If such votes were allowed a majority of the votes might be secured by one or more persons and the real object of the society frustrated. In monied corporations where shares of stock are held, such right of voting by proxies exists in virtue of the ownership of stock, but there is no corresponding provision in relation to agricultural societies.

An agricultural society is in the nature of a public corporation, to promote the interests of agriculture, and the right to vote should be exercised by the members of the association individually. If the right to delegate a vote by proxy exists, then a majority or all of the votes may be so delegated, and this, in my judgment, was not intended and

would be contrary to the reason and spirit of the law creating agricultural societies. I would, however, refer you to the prosecuting attorney of your county for his opinion in the matter.

Very truly yours,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; EXPENSES, ETC., OF WHEN TRAVELING ON OFFICIAL BUSINESS.

Attorney General's Office,
Columbus, Ohio, January 21, 1886.

J. Foster Wilkin, Prosecuting Attorney, New Philadelphia, Ohio:

DEAR SIR:—Your letter of the 20th inst. received. Since I have been in office I have had a number of inquiries as to the meaning of Sec. 897, R. S. as Am. O. L. Vol. 79, p. 139, and I find that the decisions of my predecessors are not harmonious as regards its construction.

Giving the statute its fair meaning, my opinion is, that commissioners are entitled to pay as follows: For each day employed in official duties, $3.00 per day and 5 cents per mile for necessary travel for each regular or called session not exceeding twelve in any one year, but nothing for expenses. When traveling within the county under the direction of the board upon official business $3.00 per day, five cents per mile and reasonable and necessary expenses actually paid. When traveling on official business *outside* the county $3.00 per day, five cents per mile and reasonable and necessary expenses *actually paid.* My opinion is that where *mileage* is given, that covers the *means* of conveyance (railroad fare for instance) so that railroad fare and livery hire

must be excluded where mileage is given. My immediate predecessor, Mr. Lawrence, held that when traveling on official business *outside* his county, a commissioner was entitled to his $3.00 per day and in addition thereto his reasonable and necessary expenses actually paid, but *no mileage.* I have in fact adopted Judge Nash's view of the law and without giving reasons or arguing the case state the conclusion I have arrived at after reading the section and the two opinions referred to. The law is not clear and I agree with you that it ought to be made clear.

I am very truly yours,

J. A. KOHLER,

Attorney General.

COUNTY COMMISSIONERS; EXPENSES, ETC., OF, WHEN TRAVELING, ETC.

Attorney General's Office,
Columbus, Ohio, January 22, 1886.

Mr. Disney Rogers, Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Yours of the 19th inst. received. The section to which you refer, 897 as Am. 82 O. L. p. 246, has given rise to any number of disputed questions and my predecessors in office have not always agreed as to the construction to be given to it, and I find a number of opinions recorded pro and con. I will answer your questions seriatim, according to my best judgment:

First—Commissioners are entitled to receive mileage at the rate of five cents per mile for *necessary* travel for each regular or called session, not exceeding twelve in any one year; this is the limit, and if the session is prolonged two or

Asylum for Insane; Cost of Removing Patient from in Certain Case.

more days, nothing can be charged as mileage for *going* and *coming each day;* only one mileage can be charged.

Second—This question I answer in the negative. When traveling on official business *within* the county by direction of the board they are not allowed to charge for livery or horse hire. The allowance for five cents per mile covers this expense. They are, however, allowed reasonable and necessary expenses actually paid (excluding railroad fare, livery, etc).

Third—When the expense of conveyance exceeds the amount of mileage allowed the excess cannot be charged as *reasonable* and *necessary* expenses.

Fourth—Section 897 as Am. O. L. 82, p. 246, authorizes the payment of $3.00 per day, five cents per mile and reasonable and necessary expenses actually paid, when traveling on official business outside the limits of the county.

Fifth—I think the spirit of the law is as you suggest—to allow commissioners $3.00 per day exclusive of expenses necessary and actually paid, but the letter of the law falls short in many cases of doing it.

Yours very truly,
J. A. KOHLER,
Attorney General.

ASYLUM FOR INSANE; COST OF REMOVING PATIENT FROM IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 23, 1886.

C. W. King, M.D., Superintendent of the Dayton Asylum:

DEAR SIR:—Yours of the 19th inst. at hand and having considered the matter, I am of the opinion that as the law stands, the probate judge of Logan County cannot be re-

Asylum for Insane; Cost of Removing Patient from in Certain Case.

quired to issue his warrant for the removal of these patients. They were retained, as you say, by reason of H. J. R. passed May 4, 1878, and that resolution was rescinded by H. J. R. No. 93, Vol. 62, p. 452, so the case stands upon the law applicable to such cases previous to the passage of the resolution, and I find no provision made whereby the probate judge can be compelled to issue warrants for such removal or to incur any expense or costs. It occurred to me that possibly Sec. 709 might apply and in such cases the superintendent and trustees have full power and its exercise cannot be questioned by the probate judge; in that respect he is merely a ministerial officer; but that relates to the discharge or removal of patients from one asylum to another. This case has no analogy to the case of the Columbus asylum decided by Mr. Lawrence recently, and to which you refer. In short, I think we would have trouble if we should undertake to compel the officers of Logan County to remove these patients, and think it best not to try it. These patients do not belong to your district and if removal is desirable, I think it could be best accomplished under Sec. 701, R. S. I wrote to the probate judge to ascertain what he claimed and have his letter. It seemed to me that as these patients were sent to your asylum from Logan County, out of the district to which they belonged, that Logan County ought in justice to be at the expense of their removal. I cannot, however, make the law to enforce this view.

Yours very truly,

J. A. KOHLER,

Attorney General.

BOUNDARY LINE; BETWEEN PAULDING AND VAN WERT COUNTIES.

Attorney General's Office,
Columbus, Ohio, January 25, 1886.

Hon. J. L. Geyer, Columbus, Ohio:

DEAR SIR:—In answer to your letter of recent date, I will say that the question is one of importance. It seems that the true line of division between the counties of Van Wert and Paulding was in dispute, and thereupon in order to settle the matter, proceedings were had under sections 804 et seq., of the R. S. and a survey made and duly recorded as therein provided.

It seems, however, that the accuracy of this boundary line is in dispute, and that dissatisfaction on that account exists. It seems that the same was hastily made and the question is—can this same provision be invoked to establish the true line (Secs. 804 to 810 R. S.) or has the jurisdiction been exhausted by the survey already made and the record thereof made by the clerks of the respective counties.

In my opinion it is competent for the commissioners of the two counties to make a re-survey of this line under Sec. 804 to 810. I think it would be proper to have the records show that a survey had been made and that doubts existed as to the accuracy of said survey and in order to have the error, if any existed, corrected, a re-survey was ordered to the end that all doubt and uncertainty might be removed; and have the report of the surveyor, appointed to make the survey, recite these facts and have the same recorded by the clerks of the respective counties. I understand that there is no contest between the two counties, and each desires the line to be carefully drawn, surveyed, marked and established, and it seems to me the proceedings provided by the statutes

in sections referred to are simple, inexpensive and meet the case.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCEST; ADMISSIBILITY OF EVIDENCE IN CASE OF.

Attorney General's Office,
Columbus, Ohio, January 26, 1886.

Mr. Theodore Funk, Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—Yours of the 22d duly received. The case is one that if true demands punishment, and your most diligent efforts as an officer to see that the crime is not compounded. Even if the prosecuting witness is to be regarded as a "particeps criminis" the case is not to be distinguished, so far as the rules of evidence are concerned, from other cases of confederates in crime. The voluntary confessions of persons jointly accused of crime are admissible in evidence, and if she goes on the witness stand and states the fact of her uncle's criminal connection with her and her pregnancy in consequence thereof, I know of no rule of law by which her testimony can be excluded.

On the other hand unless she resisted and was overcome she cannot be compelled to testify. Counsel for defendant cannot make the objection, it is the duty of the court to instruct witness as to her right to refuse to give testimony if the evidence would tend to criminate her, and being so instructed and advised by the court, she can refuse to testify as to the criminal connections or she can go on and tell all she knows about it, in which case her testimony, if otherwise credible, would have great weight.

You will probably find if the parties are engaged in an effort to stifle the prosecution, that she is engaged with the matter and will take advantage of her right to refuse to answer on the claim that the answer would tend to criminate her. If the party is guilty, I hope you will succeed in bringing him to justice.

Yours truly,
J. A. KOHLER,
Attorney General.

CHILDREN'S HOME; ERECTION OF IN JEFFERSON COUNTY.

Attorney General's Office,
Columbus, Ohio, January 26, 1886.

Henry Gregg, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—In answer to your letter of the 23rd inst. I am of the opinion that the vote for a childreus' home having been duly and regularly taken pursuant to Sec. 929, R. S., as Am. O. L. 78, p. 81, that the new board of commissioners are authorized to proceed and provide the funds necessary by taxation. The mere fact that the commissioners heretofore in office neglected to proceed, constitutes no objection to the proceeding of the commissioners now in office. I am not prepared to say but that under certain circumstances, owing to the manner of voting, or the length of time that elapsed, or perhaps general complaint, a new vote could be taken; but in your letter no such special circumstances are alleged, and believing the authority clear under the vote taken and recorded, I think the matter had better rest there.

Yours truly,
J. A. KOHLER,
Attorney General.

Sheriff; Fees of For Attending Prisoners in Court—Auditor of County; Annual Compensation of.

SHERIFF; FEES OF FOR ATTENDING PRISONERS IN COURT.

Attorney General's Office,
Columbus, Ohio, January 27, 1886.

Geo. W. St. Clair, Sheriff, Butler County, Ohio:

DEAR SIR:—Yours of the 22d inst. at hand. Under Sec. 1230 R. S. to which you refer, I am of the opinion that your services for "attending" prisoners in court should be taxed in with the costs, and in penitentiary cases by the State, and in cases where the State fails to convict, by the county to the extent with other costs of $300. I think this is the general practice under the section.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; ANNUAL COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, January 26, 1886.

W. L. Hudson, Esq., Prosecuting Attorney, McArthur, Ohio:

DEAR SIR:—Sections 1069 and 1070 R. S. provide the compensation to be paid county auditors per year. The amounts to be paid are made specific, depending upon the population.

In my opinion it was not the intention of the law-makers in the enactment of Sec. 1365 R. S. to confer upon the county commissioners the right to increase or dimnish this stated amount. I think the scope of Sec. 1365 is to give the

commissioners of the county the right to increase or diminish as may be just, the rate of fees prescribed by law for certain duties, and does not relate to the annual salary of the auditor.

Yours truly,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; POWER AS TO TEXT BOOKS.

Attorney General's Office,
Columbus, Ohio, January 27, 1886.

L. K. Rogers, Esq., Flat Rock, Seneca County, Ohio:

DEAR SIR:—The statute makes the prosecuting attorney the legal adviser of the board, and I dislike very much to take his place except in cases where he refuses to or is unable to act for any other cause. I have no hesitancy, however, in saying that, in my judgment, the order of the board as to books of study should be observed. I think such is the holding of the school commissioner. The law ought to be made perfectly clear and I think if you apply to the prosecuting attorney he will take steps to enforce your authority.

Very truly,
J. A. KOHLER,
Attorney General.

Board of Education; Member of, Acting as Agent and Insuring School Property.

BOARD OF EDUCATION; MEMBER OF, ACTING AS AGENT AND INSURING SCHOOL PROPERTY.

Attorney General's Office,
Columbus, Ohio, January 27, 1886.

Noah Thomas, Esq., London, Ohio:

DEAR SIR:—Yours of the 25th inst. received. I am not prepared to say that a member of a school board is such an officer as comes within the prohibition of Sec. 6969. I have never known of a conviction or even of a prosecution under it in such a case.

In a recent case an effort was made to indict a member of a city council under Sec. 6976 R. S. who was engaged in business and from whom the city purchased certain supplies, etc., from time to time. The facts were admitted, but no indictment was found.

I think, however, it is best not to make such contracts and would advise against a member of a school board acting as such, and as an insurance agent and as such effecting insurance upon school property at the same time.

There is no objection to such insurance of school property when a state agent of the company effects the insurance and makes the contract.

The mere fact that a local agent of the company is a member of the board would not bring the case within the prohibition of the section or contrary to law.

Yours very truly,
J. A. KOHLER,
Attorney General.

Infirmary, County; Duty of Directors in Relief of Paupers —Prosecutor is Legal Adviser of County Commissioners.

INFIRMARY, COUNTY; DUTY OF DIRECTORS IN RELIEF OF PAUPERS.

Attorney General's Office,
Columbus, Ohio, January 27, 1886.

F. A. Kauffman, Esq., Delaware, Ohio:

DEAR SIR:—Yours of recent date, calling my attention to, and asking the construction of Sec. 975, R. S. received.

There is no authority that I know of for the payment of the bill rendered by the trustees for their personal services and services of clerk in issuing orders.

I think a liberal construction of the section will permit the directors to issue the orders and furnish the relief themselves in such cases.

It is plain that the trustees can only do what they are directed to do by the infirmary directors—what one can delegate to another he can generally do himself.

I think, however, it is better to follow the express provisions of the statute as nearly as possible.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROSECUTOR IS LEGAL ADVISER OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, Jan. 28, 1886.

W. L. Shaw, Esq., West Union, Ohio:

DEAR SIR:—Yours received. A matter in which a commissioner or board of commissioners are interested, I think I ought not to give advice without consulting the prosecuting attorney of the county. He is, you are aware, the legal adviser of the board, and ought to be consulted. I dislike to refuse advice when it is so courteously requested, but I do

not wish to take the prosecutor's place until he has been consulted. Please see him and see what he says.

Yours very truly,
J. A. KOHLER,
Attorney General.

FRAUDULENT CONVEYANCE; HOW REMEDIED.

Attorney General's Office,
Columbus, Ohio, January 28, 1886.

John K. O'Neall, Esq., Lebanon, Ohio:

DEAR SIR:—Your letter duly received. The case stated has the appearance of a fraudulent conveyance and without conisderation. If you can make it appear so, you can reach the property by a decree of the court upon a petition filed for that purpose.

The State of Ohio stands upon the footing of a judgment creditor. If the writ of execution is returned "no property," file your petition in the name of the State of Ohio and set out the facts as is usual in such cases. (See forms in Nash's Pleading and Form).

If you can prove that the conveyance was made for the fraudulent purpose of hindering, delaying and defrauding the State in the collection of costs, the court will set aside, and order that it be sold to pay the judgment of costs.

Truly yours,
J. A. KOHLER,
Attorney General.

Township Officers; Election of, Under Constitutional Amendment—Penitentiary, Ohio; Parole in Case of Cumulative Sentences.

TOWNSHIP OFFICERS; ELECTION OF, UNDER CONSTITUTIONAL AMENDMENT.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

Mr. W. D. Bennett, Clerk of Olmsted Township, Cuyahoga County, Ohio:

DEAR SIR:—The joint resolution adopted April 9th, 1885, provides that township officers shall be elected for such term, not exceeding three years, as may be provided by law.

The General Assembly will undoubtedly enact laws to meet the case, but what officers will be included remains to be seen.

Very truly,
J. A. KOHLER,
Attorney General.

PENITENTIARY, OHIO; PAROLE IN CASE OF CUMULATIVE SENTENCES.

Attorney General's Office,
Columbus, Ohio, January 29, 1886.

Wm. L. Robinson and Board of Managers Ohio Penitentiary, Columbus, Ohio:

DEAR SIR:—Your letter of the 25th inst. duly received. The questions submitted to me for my opinion are very important and involve a construction of the act of the General Assembly passed May 4, 1885, Vol. 82, O. L., p. 237.

Having carefully considered the matter, I am of the opinion that a prisoner sentenced to several terms of imprisonment at the same time, for instance, having been convicted on several indictments for a series of similar offenses,

and having been sentenced for three terms of one year each, should not be classed as a prisoner who has been convicted of a felony and served a term in a penal institution.

In such cases of cumulative sentences they should be taken together as one sentence. Such seems to me to be the spirit of the law and undoubtedly what was intended. This act gives power to the board of managers to release certain prisoners on parole and makes an important change in the penal system, and if the power given is fairly and judiciously exercised and applied, and due care is taken to extend the right of parole according to the justice of the case and with a view to the reformation of the prisoner as well as the protection of society, a great good can be accomplished.

The word "previously" as used in Sec. 8, was intended, I think, to apply to the case of a prisoner who has once been convicted and served a term in a penal institution, and who after his release from confinement commits a second offense resulting in conviction and imprisonment. In such cases the guilt is aggravated by the repetition of offenses, and indicating that the person belongs to the class of professional criminals whose release would be dangerous to society, and of whose reform there is but little hope. When, however, a prisoner is committed upon a cumulative sentence or series of sentences of like character; or to use the words of Governor Hoadly in his excellent message: "Where the sentence is made up of parcels," a person may, in my judgment, under the rules of the board of managers, be paroled under the provisions of Sec. 8, of the act referred to.

In the case of the act referred to in your communication, I am informed that he was sentenced for the term of one year and at the same time he was sentenced for the term of one year to take effect at the expiration of the first term and also for the term of one year to take effect at the expiration of the second sentence. The prisoner is now serving his second sentence, but has never previously served a term in a penal institution.

If the rules of the board of managers have been fully complied with, it is discretionary with the board to allow the person to be paroled.

Yours very truly,
J. A. KOHLER,
Attorney General.

STANDARD LIFE AND ACCIDENT INSURANCE COMPANY.

Attorney General's Office.

Hon. H. J. Reinmund, Superintendent of Insurance:

In the matter of the protest and objections of John I. Covington, Esq., Secretary of Equitable Accident Insurance Co., of Cincinnati, against your issuing a license to the Standard Life and Accident Insurance Co., of Detroit, Mich., filed with you as Superintendent of Insurance.

The matter having been referred to me for an opinion as to the rule of law applicable to the case, I beg leave respectfully to say:

That pursuant to notice the parties interested, to-wit: Joshua M. Spencer, Esq., representing the Equitable Accident Insurance Co., of Cincinnati, and Hon. Geo. K. Nash, representing the Standard Life and Accident Insurance Co., of Detroit, Mich., met at my office on Friday, January 29th, at 2 o'clock P. M., at which time and place the said parties were fully heard in oral argument upon the questions involved; and the matter having been fully submitted with request for an early decision, my conclusion, based upon a consideration of the laws of Michigan and Ohio is, that there is no valid objection upon the conceded facts of the case to issuing a license to the Standard Life and Accident Insurance Co., of Detroit, to do business in this State. The objections should therefore be overruled and a license duly issued to the last named company, provided you are satisfied that the company has duly complied with the laws of Ohio in all other respects and that its capital and assets are invested according

to the laws of Michigan. I deem it unnecessary in this connection to state at length the grounds upon which this judgment is based further than to say that the question turns upon the proper construction of section 282, R. S. The primary object of these statutory provisions is to protect policy holders by requiring satisfactory securities and to promote comity and equal privileges and opportunities as between the states of this Union; but because the laws of Ohio permit certain securities to be given and deposited which are not recognized as sufficient by the laws of Michigan, it can be said that all Michigan companies must be excluded from doing business in Ohio until the prohibition is removed, is not, in my opinion, the intent of the law.

I have had but little time for the preparation of this opinion upon a matter so important, and trust due allowance will be made. I am, very respectfully yours,

J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; NO COMPENSATION FOR ATTENDING CONVENTION OF.

Attorney General's Office,
Columbus, Ohio, February 3, 1886.

M. G. Evans, Prosecuting Attorney, Chillicothe, Ohio:

DEAR SIR:—I returned to the city today, after an absence of several days and found your letter; hence answer has been delayed.

The annual meetings of the commissioners referred to in your letter are no doubt important and the results beneficial to the people of the State; but such conventions or meetings are not "official business" in the sense used in the law.

Street Commissioner; Election of, to Fill Vacancy.

I must, therefore, answer your inquiry in the negative, no legal provisions having been made to defray such expenses.

Yours very truly,
J. A. KOHLER,
Attorney General.

STREET COMMISSIONER; ELECTION OF, TO FILL VACANCY.

Attorney General's Office,
Columbus, Ohio, January 28, 1886.

Mr. Geo. A. Hay, Coshocton, Ohio:

MY DEAR SIR:—I have examined the matter submitted to me for decision, regarding the term of office of your street commissioner as carefully as I could.

I have no doubt that the person elected street commissioner at the election in April, 1885, could only be elected for the unexpired term ending April, 1886. The fact that the mayor's proclamation called for the election of a street commissioner without designating that it was to fill a vacancy, could not authorize an election for more than the unexpired term, as the statutes expressly provide that an election shall be for the unexpired term. The fact that the commissioner elected in April, 1885, gave a bond for two years cannot control the term for which the statutes authorized his election, any more than could an appointment of the mayor to fill a vacancy till the next election, by giving a bond for two years' time confer the right to hold the office for two years.

This case does not come within the rule in the 8th O. S. R. In that case the election was held at a regular time for holding an election for the full term.

Very truly,
J. A. KOHLER,
Attorney General.

Indictment—Incorporations; for Purpose of Doing Banking Business.

INDICTMENT.

Attorney General's Office,
Columbus, Ohio, February 3, 1886.

Mr. Theodore K. Funk, Prosecuting Attorney, Portsmouth, Ohio:

MY DEAR SIR:—Your letter of the 30th ult. came several days since. Absence from the city until today has delayed the answer.

Indeed I have no forms for indictment under that section; would gladly supply you if I had. I would suggest that you follow the usual form of charge and as nearly as possible in the words of the section. I presume by this time you have indictment prepared.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCORPORATIONS; FOR PURPOSE OF DOING BANKING BUSINESS.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

E. P. Langworthy, Esq., Ashtabula, Ohio:

DEAR SIR:—Yours of the 29th inst. received. I have been absent from the city for several days and hence the delay in answering.

The banks you speak of are organized under Sec. 3793, et seq. R. S., but in all cases there must be a subscribed capital, as you will see. I know of no provision authorizing a banking business on *deposit* alone.

I have submitted the matter to the Secretary of State, who is of the same opinion.

Very truly yours,
J. A. KOHLER,
Attorney General.

County Commissioner; No Compensation for Attending State Convention—Incorporation; Notice to Stockholders of Meeting to Elect Directors.

COUNTY COMMISSIONER; NO COMPENSATION FOR ATTENDING STATE CONVENTION.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

Hon. J. W. Cummings, Toledo, Ohio:

DEAR SIR:—Your letter of the 22d received. In my opinion no provision has been made for payment of expenses of county commissioners in attending the convention of commissioners at Columbus.

I express no opinion as to the justice of such a claim for necessary expenses in attending such meetings, intended to promote public interests, but I think the "official business" provided for in Sec. 897, R. S., does not embrace attendance at such conventions and hence no money can be drawn for that purpose.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCORPORATION; NOTICE TO STOCKHOLDERS OF MEETING TO ELECT DIRECTORS.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

John E. McMarren, Esq.:

DEAR SIR:—The courts have decided that Sec. 3244, R. S., is directory merely and that if the stockholders meet and elect directors without such notice it cannot be collaterally questioned. However, I deem it the better practice to com-

ply literally and give the 30 days' notice required by Sec. 3244.

Yours very truly,
J. A. KOHLER,
Attorney General.

CLERK OF COUNTY; FEES OF, FOR ENTERING ATTENDANCE OF WITNESSES.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

R. M. Donnelly, Esq., Bowling Green, Ohio:

DEAR SIR:—I am not very familiar with the practice or statutes relating to taxation of costs. I am, however, of the opinion that the section of the statutes you refer to will allow for *one day*.

I have consulted with the auditor of state and take his view of it.

Yours verly truly,
J. A. KOHLER,
Attorney General.

PHARMACY LAWS; WHO MAY KEEP DRUG STORE.

Attorney General's Office,
Columbus, Ohio, February 5, 1886.

Mr. John A. Nipgen, President Board of Pharmacy:

DEAR SIR:—Your inquiry of the 16th inst. duly received and considered. I am of the opinion that a person,

not a skilled and regular pharmacist, may open and conduct a retail drug and chemical store as proprietor, provided he has in his employ and placed in charge thereof, a registered pharmacist and not merely a registered assistant pharmacist, and who shall have supervision and management of that part of the business requiring pharmaceutical skill and knowledge. But the employment merely of a registered pharmacist as an assistant is not sufficient, unless he is placed in charge and given the supervision of that part of the business requiring such pharmaceutical skill and knowledge.

Yours very truly
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; ANNUAL COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, February 4, 1886.

A. Robb, Esq., McArthur, Ohio:

DEAR SIR:—Yours of the 29th ult. at hand. First, in my opinion the word "fees" as used in Sec. 1365, R. S., does not apply in general terms to the officer's compensation. It does relate to certain prescribed charges which may be increased or diminished by the county commissioners in their discretion. Under this section there can be no increase or diminution of the auditor's compensation otherwise fixed by law.

Second—Section 1069 and 1070 R. S. provide for an annual compensation to be paid to the auditor. Judge White in Cricket vs. The State, 18 O. S. R., p. 9, held that an act of the General Assembly prescribing the fees of county auditors was not in conflict with Sec. 20, Art. 2, of the constitu-

tion, although it had the effect to change amount of compensations, and my answer to your second question is, that under Sec. 1365 I do not think the commissioners have any authority to increase or diminish your annual compensation as ascertained under sections 106 and 70.

In answer to your third question, my opinion is that the compensation provided for by sections 1069 and 70 determines the rule by which the compensation is ascertained in each county, and that the act of the General Assembly changing this rule and thereby increasing or diminishing the amount due to an officer would not be in conflict with Sec. 20, Art. 2, of the constitution.

I do not see how this question arises under the existing state of the law, unless the question is asked with reference to an amendment or modification of the law now in force.

Very truly yours,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; ACTING AT SAME TIME AS COUNTY SCHOOL EXAMINER.

Attorney General's Office,
Columbus, Ohio, February 6, 1886.

Jonas Cook, Esq., Genoa, Ohio:

DEAR SIR:—Your letter of the 29th inst. received. I have considered and looked up the question therein presented and my conclusion is, that there is nothing in the R. S. forbidding a prosecuting attorney from being a county examiner of teachers. See sections 4085 and 1268.

Yours very truly,
J. A. KOHLER,
Attorney General.

Justice of the Peace; Notice for Election of—Ohio Penitentiary; Parole in Case of Cumulative Sentence.

JUSTICE OF THE PEACE; NOTICE FOR ELECTION OF.

Attorney General's Office,
Columbus, Ohio, February 9, 1886.

Mr. Thomas Johnson, Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Replying to yours of the 2d, from your statement of the case as to the election of a justice of the peace, I am in some doubt, but give it as my best judgment that as the trustees neglected to give the proper notice at the time prescribed by Sec. 581, the election should have been held at the next regular spring or fall election, as prescribed in the above sections, and that a special election, under the circumstances, was not authorized.

Yours truly,
J. A. KOHLER,
Attorney General.

OHIO PENITENTIARY; PAROLE IN CASE OF CUMULATIVE SENTENCE.

Attorney General's Office,
Columbus, Ohio, February 6, 1886.

Hon. Geo. S. Peters, President Board of Managers of Ohio Penitentiary, Columbus, Ohio:

DEAR SIR:—The questions presented in your communication of the 30th ult. were not considered by me in the opinion heretofore given regarding the right to parole prisoners serving cumulative sentences.

In the cases mentioned by you where distinct and independent crimes are committed and convictions follow upon several indictments, and where the prisoner is sen-

tenced upon each cumulatively, for the minimum prescribed by law in such cases, I consider it necessary that the prisoner should serve the minimum term on each sentence and in the particular case referred to, the sentence on each charge, as I understand it, was for one year; that being the minimum term for such an offense. It follows therefore that the prisoner cannot be paroled.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; ANNUAL REPORT OF.

Attorney General's Office,
Columbus, Ohio, February 10, 1886.

Mr. Henry Shipley, County Commissioner of Licking County, Ohio:

DEAR SIR:—Yours at hand. Answering your question, I think that Sec. 917, R. S., provides that you shall publish your report in two weekly newspapers of opposite politics, but you are not required to have it published in a German newspaper.

Yours very truly,
J. A. KOHLER,
Attorney General.

Sheriff; Fees of, for Keeping and Providing for Prisoner —Prosecuting Attorney; Acting at Same Time as County Examiner.

SHERIFF; FEES OF, FOR KEEPING AND PROVIDING FOR PRISONER.

Attorney General's Office,
Columbus, Ohio, February 9, 1886.

Isaac Gates, Ashland, Ohio:

DEAR SIR:—Yours received and contents noted. In regard to the fees of sheriffs in certain cases under sections 1235 and 7379, I will say that at the time of the commissioners' meeting here, Mr. Lawrence held that the sheriff was entitled to, not exceeding 50 cents per day for caring, keeping and providing for prisoners as provided in section 1235, and that Judge White's decision to the contrary was not correct.

In examining the question subsequently I came to the same conclusion, and so stated to the commissioners, believing that 50 cents per day was the maximum that could be allowed for keeping and providing for prisoners.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; ACTING AT SAME TIME AS COUNTY EXAMINER.

Attorney General's Office,
Columbus, Ohio, February 17, 1886.

Mr. Samuel Findley, Akron, Ohio:

DEAR SIR:—The only sections of R. S. relating to the office of prosecutor and school examiner are sections 4085 and 1268. I find nothing in the law to forbid the prosecutor holding the office of school examiner at the same time.

The school commissioner has, however, advised against it for other reasons found in Sec. 3977 and in that respect I concur with him in opinion.

Very truly yours,
J. A. KOHLER,
Attorney General.

CHILDREN'S HOME; APPLICATION OF SECTION 628 TO TRUSTEES OF.

Attorney General's Office,
Columbus, Ohio, February 9, 1886.

Major Shaw, West Union, Ohio:

DEAR SIR:—Yours of the 1st inst. at hand. In my opinion O. L. 1, Title 5 R. S., relates to the state benevolent institutions, such as are under state management and control, and I doubt very much whether Sec. 628 R. S. applies to the trustees of a children's home, which is a local and benevolent institution under the management of the commissioners and board of trustees.

If these trustees are doing what you say—furnishing supplies and making contracts with the institution—they are doing a very reprehensible and improper thing. It is against the policy of the law and I think comes within the provision of Sec. 6969 and is a penitentiary offense.

Yours very truly,
J. A. KOHLER,
Attorney General.

Justice of the Peace; Election of, When Notice is Not Given

JUSTICE OF THE PEACE; ELECTION OF, WHEN NOTICE IS NOT GIVEN.

Attorney General's Office,
Columbus, Ohio, February 16, 1886.

Mr. Thos. C. Tagg, Greasy Ridge, Lawrence County, Ohio:

DEAR SIR:—My letter to Mr. Johnston was based upon his statement that a vacancy had been caused in the office of justice of the peace by reason of the failure of the trustees to give notice at a regular election.

I think you had better see your prosecuting attorney and see about this. My opinion is that when a justice's term expires the usual notice should be given for the election of a successor, and in case of an omission or failure to give such notice, a special election to fill such vacancy cannot be held, but the election should take place at the next regular election.

Yours truly,
J. A. KOHLER,
Attorney General.

Agricultural Societies; Grounds of are Exempt from Taxation; Auditor of County; Power of, to Add Penalty When Sewer Assessment is not Paid; Treasurer of County; Duty of, When Taxes are Paid Under Protest.

AGRICULTURAL SOCIETIES; GROUNDS OF ARE EXEMPT FROM TAXATION; AUDITOR OF COUNTY; POWER OF, TO ADD PENALTY WHEN SEWER ASSESSMENT IS NOT PAID; TREASURER OF COUNTY; DUTY OF, WHEN TAXES ARE PAID UNDER PROTEST.

Attorney General's Office,
Columbus, Ohio, February 9, 1886.

Friend E. G. Johnston, Elyria, Ohio:

DEAR SIR:—Yours of the 5th inst. received and would have been answered before, but for a press of other matters.

In regard to the question of taxation of the grounds of agricultural societies, I have examined the Statutes and concur with you in opinion that such property is exempt from taxation under Sec. 2732. I referred the matter to Mr. Auditor Kiesewetter, who from his long experience as auditor of Franklin, as well as auditor of state, is well qualified to determine the point, and he informs me that the practice is almost uniform through the State, that the "fair grounds" of agricultural societies are not taxed.

Second—Under Sec. 2295, R. S., I think the auditor is authorized to add a penalty of ten per cent. upon an unpaid assessment for a sewer. I am not very familiar with such cases, but it seems to me that this section covers the case.

Your third question is one of more importance and indeed I had a talk with your county auditor about it before receiving your letter. I think Mr. Kiesewetter, the auditor of state, wrote to your auditor about it; at first he thought your treasurer should pay it out as required and that he was fully protected by Sec. 2862, but this section does not reach the case and while I have no idea that the people of Lorain County would allow your treasurer to suffer loss in case

County Infirmary; Legal Adviser of Board in Hamilton County.

the tax was recovered, his best protection is to hold the money paid under protest until the term expires for beginning the protest.

The matter ought to be made definite and certain, and I am glad you have taken the trouble to frame a bill; to that end I will see Mr. Washburne and confer with him and will perhaps confer further with you.

Very truly yours,
J. A. KOHLER,
Attorney General.

COUNTY INFIRMARY; LEGAL ADVISER OF BOARD IN HAMILTON COUNTY.

Attorney General's Office,
Columbus, Ohio, February 9, 1886.

H. Schlotman, Jr., Cincinnati, Ohio:

DEAR SIR:—Referring to yours of the 8th inst., as to the appointment of an attorney by the infirmary directors of your county.

I find that by Sec. 1274, R. S., it is the duty of the prosecuting attorney of your county to act as the legal adviser of the county officers. Under Sec. 1001, R. S., it is the duty of the county solicitor to prosecute and defend all suits and actions for county officers, but it is not made his duty to act as the legal adviser of any except the commissioners and board of control; and by reason of this fact I presume your infirmary directors have thought it necessary to make the appointments referred to. I am of opinion, however, that no such authority exists, though in case they require legal advice which neither of the legal officers of the county would

give, they would doubtless be justified in obtaining such advice elsewhere at the expense of the county.

Yours truly,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; FIRST ELECTION OF MEMBERS OF, AFTER ADVANCED TO CITY.

Attorney General's Office,
Columbus, Ohio, February 17, 1886.

A. B. Johnson, Esq., Kenton, Ohio:

DEAR SIR:—Your letter of the 15th inst. received. Your school district as now organized, is entitled to a board of education consisting of six members; unless the board provide by a vote of a majority of its members, that the board shall consist of as many members as the city has wards.

In my opinion at the next regular election you should elect two members to take the place of those whose terms expire, to serve with the remaining four, in accordance with Sec. 3905, R. S., and next year elect two more, etc. This method occurs to me as the best, and the one you should adopt.

Yours very truly,
J. A. KOHLER,
Attorney General.

Treasurer of County; Percentages, on Fines and Costs—Township Officers; Election of.

TREASURER OF COUNTY; PERCENTAGES, ON FINES AND COSTS.

Attorney General's Office,
Columbus, Ohio, February 19, 1886.

B. F. Dyer, Esq., Georgetown, Ohio:

DEAR SIR:—In reply to your letter of the 17th, I would say, that, in my opinion, under Sec. 1117, R. S,. you are entitled to eight per cent. on all fines and costs, but not on costs paid by the State in criminal cases and miscellaneous costs of county officers.

Very truly yours,
J. A. KOHLER,
Attorney General.

TOWNSHIP OFFICERS; ELECTION OF.

Attorney General's Office,
Columbus, Ohio, February 19, 1886.

M. C. Howard, Esq., Westerville, Ohio:

DEAR SIR:—Your letter of the 18th received and in reply would say, that, in my opinion, the amendment to Sec. IV, Art. 10, of the constitution is not now in operation.

The amendment was adopted at the last election and the General Assembly has now the permission to make a change from the law as it now stands. But as nothing has as yet been "provided by law" you should elect township officers as heretofore, and continue so to do until the General Assembly enacts some law on the subject.

Very truly yours,
J. A. KOHLER,
Attorney General.

Legal Holidays; What Are, in State of Ohio—Auditor of County; Fees of for Entering Descriptions on Duplicates.

LEGAL HOLIDAYS; WHAT ARE, IN STATE OF OHIO.

Attorney General's Office,
Columbus, Ohio, February 19, 1886.

Hubbard Bros., Philadelphia, Pa.:

DEAR SIRS—Your letter of the 17th at hand. The following are regarded as the legal holidays in the State of Ohio: The first day of January, the fourth day of July, the twenty-fifth day of December, the twenty-second day of February, the thirtieth day of May, and any day appointed by the governor of this State or the president of the United States, as a day of fast or thanksgiving.

Very truly yours,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; FEES OF FOR ENTERING DESCRIPTIONS ON DUPLICATE.

Attorney General's Office,
Columbus, Ohio, February 22, 1886.

F. R. McLaughlin, County Auditor, Bellefontaine, Ohio:

MY DEAR SIR:—I have examined the statutes to which you refer. I have never heretofore had occasion to examine a question of that kind and I find no adjudicated cases upon that point.

I have also looked over the written opinion of Judge West, enclosed in your letter and I have come to the same conclusion and think that a fair construction of these

Board of Education; Power of, to Receive Pupils of Another District.

statutes would entitle you to eight cents on each and every description contained in the duplicate and the same for the treasurer's duplicate.

I have not time to set forth my reasons for this, but give you the result as my best judgment.

Very truly yours,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; POWER OF, TO RECEIVE PUPILS OF ANOTHER DISTRICT.

Attorney General's Office,
Columbus, Ohio, February 23, 1886.

S. C. Jones, Esq., Troy, Ohio:

DEAR SIR:—Your letter of the 16th inst. received. I have carefully examined section 4022, R. S., upon which the board of education of Washington Township, Miami County, rely, and do not think the spirit and intent of the section would permit the board to do as they propose. I think the General Assembly which enacted the section, simply intended to accommodate certain scholars so situated that it would be a great inconvenience for them to attend school in their own district, and therefore enacted this law to permit the board to make special arrangements for their convenience.

I therefore, give it as my best judgment that the *intent* of the law does not authorize any such resolution.

Yours very truly,
J. A. KOHLER,
Attorney General.

County Commissioners; Appeal from Decision of—Municipal Corporations; Enforcement of Ordinance .of; Duty of Officers of; Costs Incurred in Prosecutions for Violating Ordinances of.

COUNTY COMMISSIONERS; APPEAL FROM DECISION OF.

Attorney General's Office,
Columbus, Ohio, March 2, 1886.

P. M. Smith, Esq., Wellsville, Ohio:

DEAR SIR:—I think that no appeal can be taken to the Common Pleas Court in the case to which you refer.

The Statutes make it the duty of the commissioners to pay to the person assisting the prosecutor such compensation "as the court approves, and to them seems just and proper."

In the O. S. R. Vol. 13, p. 388, and in the Western Law Magazine, Vol. 2, p. 390, there are cases nearly identical with the one in which you are interested. These decisions, so far as I have been able to ascertain, have not been overruled and therefore the law stands as laid down in those cases.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATIONS; ENFORCEMENT OF; COSTS INCURRED IN PROSECUTIONS

Attorney General's Office,
Columbus, Ohio, March 4, 1886.

Daniel Babst, Esq., Crestline, Ohio:

MY DEAR SIR:—Absence from the city for a week last past, and very much work before that time made it necessary

Municipal Corporations; Enforcement of Ordinances of; Duty of Officers of; Costs Incurred in Prosecutions for Violating Ordinances of.

to defer answer to the question of Mr. McGivern, which I enclose and hope you will excuse the delay.

I felt that the matter was important and have given it early attention and address my answer to you and trust that you will do me the favor to hand the same to Mr. McGivern, Mr. Finucan and others, and thus save me the trouble of writing to each individually.

I will answer the questions in the order stated:

I believe it the duty of policemen to apprehend any person in the act of committing an offense against the ordinance of the corporation, and at all times to diligently and faithfully enforce all such laws, ordinances and regulations for the preservation of good order and public welfare as the council may ordain. (Sec. 2027). The council is to prescribe the duties and define the powers of the police, (Sec. 2026) and they have the right to make it the duty of the police or marshal to file complaints and enforce the ordinances of the corporation. On general principles it is the duty of these officers. It is furthermore the duty of the mayor to see that the ordinances are enforced, (Sec. 1746) and he may suspend a policeman for neglect of duty, (Sections 2029 and 1749) and the council may remove. So that the mayor and the council have the police in their hands and have the power to enforce such ordinances as they may legally make to govern them.

Now in answer to the second question: Generally the proper place to bring suits to enforce an ordinance would be before a mayor, unless imprisonment is prescribed as part of the punishment, (Sec. 1816) the same would apply to Crestline (Sec. 1823) and the answer therefore to the second question is that such a complaint can be made before the mayor, although he may decline to entertain the complaint if, in his opinion, the public interest would thereby be promoted, and recognize the prisoner to the Common Pleas Court, and in such cases the Common Pleas Court

should have jurisdiction (Sec. 1827). The council of the village may, on recommendation of the mayor, turn this business over to a justice. (Sec. 1827).

In regard to the matter of costs, sections 1843 and 1844 seem to govern. There does not seem to be any discrimination between cases for violating ordinances which are tried in any of these three methods. The rule seems to be that in cases of dismissal, the corporation would be the proper debtors for costs. I find nothing in the Statutes on that point, and if there is nothing therein, I see no way of holding an officer when the corporation makes it his duty to enforce the ordinances and file complaints.

It is the duty of the marshal to arrest any person for committing an offense against the ordinances of the corporation. (Sec. 1849).

Yours very truly,
J. A. KOHLER,
Attorney General.

SCHOOLS; CONSTITUTIONALITY OF ACT CREATING SPECIAL DISTRICT.

Attorney General's Office,
Columbus, Ohio, March 9, 1886.

(House Bill No. 313.)

Mr. Williams of Columbiana:

My opinion having been asked as to the constitutionality of the provisions of the above measure, I will say that the question is not free from doubt in my mind.

I have examined the case of the State vs. Powers 38 O. S. R., p. 54, in which a case somewhat analogous was decided to be constitutional by three of the judges; Judges White and Johnston dissenting. A comparison of this bill with the act held unconstitutional in that case, will I think

Insurance; Duty of Superintendent of, in Making Credits on Taxes of Foreign Companies.

show that this case does not come within the reasoning of the court in that case. This bill simply proposes a different division of the district or, in other words, making a different boundary of the territory. It does not provide for a separate organization or for any special rights and privileges, but the whole subject of the organization, government, control and management of the schools comes under the general laws. I believe that if these special features had been omitted in the act passed March 31, 1879, the act would not have been obnoxious to Sec. 26, Art. 2 and Sec. 2, Art. 6, of the constitution.

J. A. KOHLER,
Attorney General.

INSURANCE; DUTY OF SUPERINTENDENT OF, IN MAKING CREDITS ON TAXES OF FOREIGN COMPANIES.

Attorney General's Office,
Columbus, Ohio, March 10, 1886.

Hon. Henry Reinmund, Superintendent of Insurance Department:

DEAR SIR:—Your letter of March 9, 1886, requesting my opinion upon the question of allowing to certain insurance companies a credit for taxes paid in 1884, upon taxes due for current year received.

I find upon examination and inquiry that the point involved has been heretofore submitted to my predecessor in office, Hon. James Lawrence, and who, upon careful consideration, held that such credits could not be made, or, in other words, that you could not go back and credit taxes paid in 1884 on taxes due for the current year.

I see no reason to dissent from this view of the case, on the other hand I fully concur in the opinion given by

him, namely; that you are not warranted in going back and allowing credits for taxes paid in other years and passed into the state treasury.

Were you authorized to do this, you might find it necessary and indeed it would be proper to go back to the time when the order was first made, and adjust the balance from that date.

Respectfully submitted,
J. A. KOHLER,
Attorney General.

REPORTS OF SUPREME COURT; DISTRIBUTION OF; SECRETARY OF STATE'S DUTIES.

Attorney General's Office,
Columbus, Ohio, March 10, 1886.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Yours of March 5, 1886, in reference to the order of the Supreme Court to furnish L. D. Brown, State School Commissioner, Vols. 41 and 42 O. S. reports, received.

Under Sec. 434, R. S., authority is conferred to dispose of any residue of reports by way of exchange for works of law and equity for the use of the State Law Library *or otherwise* as the Supreme Court or the General Assembly by resolution directs.

I think this section is sufficiently broad to warrant this order and that you are authorized in obeying it.

Respectfully yours,
J. A. KOHLER,
Attorney General.

Costs; of Recapturing Person Escaping from Jail—Municipal Corporation; Power of, to Regulate Hours of Labor.

COSTS; OF RECAPTURING PERSON ESCAPING FROM JAIL.

Attorney General's Office,
Columbus, Ohio, March 12, 1886.

Mr. B. F. McKinney, Chief Clerk Auditor of State's Office:

DEAR SIR:—Your letter of March 11, 1886, duly received. When a person charged with a felony escapes from the county jail before his trial and is recaptured, convicted and sent to the penitentiary, in my opinion the costs of such recapture cannot be paid by the State.

The General Assembly has made no provision for the payment of such costs.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATION; POWER OF, TO REGULATE HOURS OF LABOR.

Attorney General's Office,
Columbus, Ohio, March 11, 1886.

Hon. L. McHugh, Columbus, Ohio:

DEAR SIR:—In answer to your inquiry of March 10th, relating to the powers of a municipal corporation to pass an ordinance regulating the hours of labor within its corporate limits for persons other than its own employes, I will say:

First—That the council of a municipal corporation does not possess the power to accomplish that end, and an ordinance regulating the hours of labor for employes generally would be null and void.

Municipal Corporation; Power of, to Regulate Hours of Labor.

Second—An ordinance passed by the city council of a city requiring corporations operating franchises under grants from said city to comply with the provisions of section 4365, Revised Statutes, and limiting the hours of labor to ten; that such corporations should exact from their employes would, in my opinion, be illegal for the reason that a municipal corporation has no power granted to legislate on that subject.

The whole subject belongs to the domain of the General Assembly of Ohio and has not been conferred upon municipal corporations.

It must be remembered that a municipal corporation has only certain specific powers granted to it. It possesses no inherent or general power. The provisions of section 4365, Revised Statutes, are general and are applicable to the case of employes of corporations operating franchises under grants of a city council, and regulate the hours of labor unless in cases of special contract. I am, therefore, obliged to answer your questions in the negative. In giving this opinion I do not wish to be understood as expressing any opinion on the general subject of the number of hours that should constitute a day's work or what the law should be in such cases.

I have given my opinion simply as to what the law is; beyond that it is not my province to act.

Very truly yours,

J. A. KOHLER,
Attorney General.

Incorporations; Fee to be Paid Secretary of State For Filing Articles of Consolidation of Railway Companies.

INCORPORATIONS; FEE TO BE PAID SECRETARY OF STATE FOR FILING ARTICLES OF CONSOLIDATION OF RAILWAY COMPANIES.

Attorney General's Office,
Columbus, Ohio, March 12, 1886.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your letter requesting my opinion upon the matter of the proper fee to be charged for filing articles of consolidation of railway companies under sections 3379-3382 et seq., Revised Statutes, and also if any credit should be allowed for the fees already paid by the constituent companies, received.

I am of opinion that such act of consolidation is in fact the creation of a new company and subjects the companies entering into this organization to the payment of the fees provided by law in cases where new corporations are formed and incorporated; and in such cases no deduction can properly be made for fees already paid by the constituent companies.

Very truly yours,
J. A. KOHLER,
Attorney General.

Institution For the Blind; Employment of Teachers in, in Certain Case; Length of Time Pupil May be Retained in.

INSTITUTION FOR THE BLIND; EMPLOYMENT OF TEACHERS IN, IN CERTAIN CASE; LENGTH OF TIME PUPIL MAY BE RETAINED IN.

Attorney General's Office,
Columbus, Ohio, March 12, 1886.

Dr H. P. Fricker, Superintendent Ohio Institution For the Blind:

DEAR SIR:—Your letter of inquiry requesting my opinion upon the question whether a teacher whose salary is fixed by law, and who is drawing the maximum of such salary, can be employed to take the place and do the work of another teacher whose place has become vacant by resignation, received.

While the question is not free from doubt in my mind, and many reasons can be suggested why it should be desirable to employ a teacher already in the institution, I think such was not the intention of the General Assembly in enacting the amendatory section passed May 2, 1885. O. L., Vol. 82, p. 227.

I therefore answer your questions in the negative.

In regard to the question orally submitted by yourself as to the limit of time a pupil may be retained, I will say that sections 666 and 667, Revised Statutes, fix the limit at the age of twenty-eight years.

Yours truly,
J. A. KOHLER,
Attorney General.

Court of Common Pleas; Appointment by, of Guards For Transportation of Convicts to Ohio Penitentiary.

COURT OF COMMON PLEAS; APPOINTMENT BY, OF GUARDS FOR TRANSPORTATION OF CONVICTS TO OHIO PENITENTIARY.

Attorney General's Office,
Columbus, Ohio, March 12, 1886.

Mr. B. F. McKinney, Chief Clerk Auditor of State's Office:

DEAR SIR:—Your letter of March 11th received. Section 7335, Revised Statutes, provides that in transporting convicts to the penitentiary the sheriff may employ one guard for any two convicts transported, but the court may authorize a large number.

In my judgment a fair construction of this section would authorize the appointment by the court of one or more guards when one prisoner is to be transported to the penitentiary.

I think the court is clothed with a reasonable discretion in such cases. Cases may arise where a very vicious or dangerous man is to be transported and when the circumstances would not only warrant but require one or more guards; in such cases the judge of the court, acting with reasonable prudence, would be duly authorized to appoint guards.

Yours truly,
J. A. KOHLER,
Attorney General.

Surveyor of County; What Office Paraphernalia Entitled to at County's Expense—Boys' Industrial School; Length of Time Inmate May be Retained at.

SURVEYOR OF COUNTY; WHAT OFFICE PARAPHERNALIA ENTITLED TO AT COUNTY'S EXPENSE.

Attorney General's Office,
Columbus, Ohio, March 13, 1886.

John H. Lochery, Esq., Prosecuting Attorney, Pomeroy, Ohio:

DEAR SIR:—In replying to yours of the 9th inst., in my opinion section 1181, Revised Statutes, does not include instruments of the kind you have in mind, but simply as you say "such articles as are necessary to furnish his office."

Therefore, I give it as my best judgment that the commissioners are not authorized and ought not to pay for any such instruments.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOYS' INDUSTRIAL SCHOOL; LENGTH OF TIME INMATE MAY BE RETAINED AT.

Attorney General's Office,
Columbus, Ohio, March 13, 1886.

Mr. Alexander Hadden, Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—Your letter of the 9th inst. at hand. I am unable to find any recorded opinion of any of my predecessors in office construing the section of the Revised Statutes to which you have referred me.

I believe, however, that the word "institutions" contained in it refers to the "Reform Farm" or "School of In-

dustry" as it is now called, whether the term "institutions" in the act is a misprint or not.

I do not believe that, taking the whole section together, it refers to the penitentiary only. While sharing Mr. Lawrence's doubts, to some extent, my judgment is that in the case you have in hand, the youth could be retained after sentence until he becomes of age.

Yours very truly,

J. A. KOHLER,
Attorney General.

COSTS; OF HOTEL BILL OF JURY IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, March 17, 1886.

J. Foster Wilkins, Esq., New Philadelphia, Ohio:

DEAR SIR:—Replying to yours of the 10th inst. I give as my opinion that in a felony case, where the court orders the sheriff to keep the jury together during the process of the trial, the hotel bill should not be paid by the county.

My answer to your second question is that when but one trip is made by the person to whom the warrants are issued for the removal of two or more persons, mileage can be charged for going and returning, but for one trip only.

In regard to the payment of examiners appointed by the probate judge, I would say that the intention of the General Assembly in the enactment of the section was to provide for the payment of $5.00 per day for each examiner.

Yours very truly,

J. A. KOHLER,
Attorney General.

Veteran Volunteer; Who is, Under Act Passed March 7, 1867—Board of Education; No Authority to Offer Reward For the Arrest, Etc., of Person Injuring School Property.

VETERAN VOLUNTEER; WHO IS, UNDER ACT PASSED MARCH 7, 1867.

Attorney General's Office,
Columbus, Ohio, March 26, 1886.

Lewis Miller, Esq., Defiance, Ohio:

DEAR SIR:—Replying to yours of the 15th inst. The law of March, 1867, passed by the General Assembly of Ohio contemplated the payment of $100.00 to veteran volunteers.

The term "veteran volunteers" referred to enlisted men who (under General Order No. 191, War Department, 1863) re-enlisted with their commands in the field, and who had less than one year to serve under the original enlistment.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; NO AUTHORITY TO OFFER REWARD FOR THE ARREST, ETC., OF PERSON INJURING SCHOOL PROPERTY.

Attorney General's Office,
Columbus, Ohio, March 26, 1886.

E. E. Ballenger, Esq., London, Ohio:

DEAR SIR:—Your letter of March 17th at hand. The Revised Statutes give no authority to the board of education of a township to offer rewards for the arrest and conviction of persons guilty of injuring, destroying, etc., of school property.

Fees of Mayor and Marshal; On Conviction of Indigent Violator of the Ordinances of the Municipality.

If property to the value of one hundred dollars or more has been destroyed, the county commissioners are authorized to offer a reward for the detection and apprehension of any person or persons so charged.

Therefore I answer your question in the negative, believing that, in the absence of statutory authority, you had better not offer any such reward.

Yours very truly,

J. A. KOHLER,
Attorney General.

FEES OF MAYOR AND MARSHAL; ON CONVICTION OF INDIGENT VIOLATOR OF THE ORDINANCES OF THE MUNICIPALITY.

Attorney General's Office,
Columbus, Ohio, March 27, 1886.

Warren W. Hole, Esq., Salem, Ohio:

DEAR SIR:—Yours of the 24th received.

First—In case of conviction of violation of ordinances of a city, if the prisoner is entirely worthless and no fines or costs can be collected from him, the claim of the mayor or marshal for fees cannot be collected from the city unless there is some ordinance of the city providing for such payment.

Second—In the absence of an ordinance of the city or village providing for payment of costs in such cases, the city council would not be warranted in allowing such fees.

Yours very truly,

J. A. KOHLER,
Attorney General.

Election of Justice of the Peace; How Conducted—County Commissioners; No Compensation For Using Own Conveyance. Prosecuting Attorney; Office of.

ELECTION OF JUSTICE OF THE PEACE; HOW CONDUCTED.

Attorney General's Office,
Columbus, Ohio, March 27, 1886.

Wm. Cole, Esq., White Eyes Plains, Ohio:

DEAR SIR:—Your letter of the 25th duly received. In my opinion the ballots for the election of justices of the peace should be on the same ballot and placed in the same box with the other candidates. Separate poll books and tally sheets should, however, be kept from those used for the other candidates.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; NO COMPENSATION FOR USING OWN CONVEYANCE. PROSECUTING ATTORNEY; OFFICE OF.

Attorney General's Office,
Columbus, Ohio, March 26, 1886.

Mazzini Slusser, Esq., Prosecuting Attorney, Wauseon, Ohio:

DEAR SIR:—Your letter of March 20th duly received.

In accordance with the opinions expressed by my predecessors, with whom I concur, I will say a bill to allow a county commissioner compensation for using his own conveyance, when traveling on official business, would not be proper and ought not to be allowed.

In regard to your second inquiry, my opinion is that

it is not obligatory upon the county to furnish a room and office paraphernalia for the use of the prosecuting attorney, and therefore the county would not be liable for office rent and expenses.

Yours very truly,
J. A. KOHLER,
Attorney General.

SURVEYOR OF COUNTY; COMPENSATION OF, FOR SURVEYING, ETC., OF COUNTY DITCH.

Attorney General's Office,
Columbus, Ohio, March 26, 1886.

John W. Winn, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—Yours of the 25th received. I have examined the sections of the Revised Statutes to which you refer, 4454, 4456, and also the construction given to the same by my predecessors in office, Messrs. Nash and Lawrence, which I find *cited* in "Guages' Laws of Roads," pp. 591, 592.

The "court being divided" and my judgment being invoked, I have concluded to give the engineer and surveyor the benefit of the doubt that these conflicting opinions suggest. In short, until the Supreme Court holds otherwise, I will advise that a county surveyor or engineer when employed to perform services under sections 4454, 4456, is entitled to receive his expenses in addition to his per diem.

It seems to me that this view of the law is reasonable and just.

Very truly yours,
J. A. KOHLER,
Attorney General.

Elector; When Minor Reaches Majority—County School Examiner; Who Ineligible.

ELECTOR; WHEN MINOR REACHES MAJORITY.

Attorney General's Office,
Columbus, Ohio, March 31, 1886.

Fred. Kinney, Esq., Coshocton, Ohio:

DEAR SIR:—Yours of the 30th inst. received. According to your statement of dates you will reach majority and be legally entitled to vote on the day preceding the anniversary of your birth. You will, therefore, become a legal voter on the 5th of April.

Very truly yours,
J. A. KOHLER,
Attorney General.

COUNTY SCHOOL EXAMINER; WHO INELIGIBLE.

Attorney General's Office,
Columbus, Ohio, March 31, 1886.

James Holder, Esq., Carrollton, Ohio:

DEAR SIR:—Your letter of the 29th received. I have examined the section of the Revised Statutes to which you have referred me, 4069, and also the catalogue of "Harlem Spring College" enclosed in your letter.

I submitted the catalogue to Mr. Brown, state commissioner of schools, and he regards the institution as a regular college and not a normal for the exclusive education of teachers.

As the section to which you have referred me contemplates only those persons connected with an institution

General Assembly; Payment of Compensation, Etc., of Members and Clerks of—Bounty of Veteran Volunteers.

whose object is the preparation of persons for teaching, Mr. Steeves cannot be debarred on that ground.

Very truly yours,
J. A. KOHLER,
Attorney General.

GENERAL ASSEMBLY; PAYMENT OF COMPENSATION, ETC., OF MEMBERS AND CLERKS OF.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—Yours of April 1st to hand. In my opinion one House of the General Assembly does not have the right by resolution to direct the payment of money out of the appropriation for mileage and salaries of members of the General Assembly and per diem of clerks.

In such cases the joint action of the two Houses is necessary.

Very truly yours,
J. A. KOHLER,
Attorney General.

BOUNTY OF VETERAN VOLUNTEERS.

Attorney General's Office,
Columbus, Ohio, March 31, 1886.

Mr. Robert McMaster, Chillicothe, Ohio:

DEAR SIR:—Your letter of March 28th received. Although this is not a matter upon which I am entitled to give an official opinion, yet I feel interested in your matter

and desire to aid you, so I have looked the matter up and give you my opinion as a lawyer.

From papers on file in the office of the adjutant general I find that you are credited to the city of Chillicothe, where you were re-enlisted.

Your claim is against the city and you are entitled to one hundred dollars. I think you ought not to be put to the expense of employing a lawyer and believe the city upon investigation, will pay the amount freely, but if not, you had better speak to an attorney to bring suit for you.

I think you will find the papers on file here in the adjutant general's office to make out your claim. I would see the city solicitor and some of the members of the council and lay your claim before them.

Yours very truly,
J. A. KOHLER,
Attorney General.

SALOONS; CLOSING OF, ON DAY OF ELECTION.

Attorney General's Office,
Columbus, Ohio, April 3, 1886.

John M. Ling, Esq., Mayor of Killbuck, Ohio:

DEAR SIR:—Yours of yesterday received. In the absence of any decision in such case, I give it as my opinion that the intent of section 6948, Revised Statutes, is to have the saloons closed the entire election day and not simply while polls are open.

Yours very truly,
J. A. KOHLER,
Attorney General.

Auditor of County; Fees of, For Making Descriptions of Lands.

AUDITOR OF COUNTY; FEES OF, FOR MAKING DESCRIPTIONS OF LANDS.

Attorney General's Office,
Columbus, Ohio, March 31, 1886.

Sam H. Nicholas, Esq., Prosecuting Attorney, Coshocton, Ohio:

DEAR SIR:—Yours of the 27th inst. duly to hand. I have consulted with Mr. E. Kiesewetter, auditor of State, in regard to the matter presented by you.

Section 4738, Revised Statutes, provides that the auditor shall make the lists of the names of the tax payers but he is not compelled to make the descriptions of lands.

My predecessors in office, Messrs. Isaiah Pillars and James Lawrence, have given opinions to the effect that the county commissioners cannot allow the auditor compensation for making such descriptions.

It would seem to me proper, if the description of land was a necessary thing and no provision for making it by the auditor, that such service would be extra and should be paid for, but I do not feel at liberty to overrule my predecessors in office on that point and prefer that the General Assembly make the necessary correction.

I will, therefore, answer your question in the negative, except the preparation of the lists of tax payers, which the law enjoins as a duty upon the auditor.

Yours very truly,
J. A. KOHLER,
Attorney General.

Assessor; Election of, Where Township is Divided into Precincts—Surveyor of County; What Office Paraphernalia Entitled to.

ASSESSOR; ELECTION OF, WHERE TOWNSHIP IS DIVIDED INTO PRECINCTS.

Attorney General's Office,
Columbus, Ohio, March 31, 1886.

John W. Cranker, Esq., West Toledo, Ohio:

DEAR SIR:—Yours of the 27th instant received. In townships which have been legally divided into election precincts, in accordance with the provisions of the act of March 8th, 1886, each voting precinct is entitled to one assessor.

The provisions of this act do not make any change in regard to the election of assessor, and where a voting precinct is entitled to an assessor, he should be elected by the qualified electors of said precinct, and not by the electors of the township.

The tickets containing the names of the candidates of ward or precinct officers *may* be separate and apart from township and corporation candidates.

Very truly yours,
J. A. KOHLER,
Attorney General.

SURVEYOR OF COUNTY; WHAT OFFICE PARAPHERNALIA ENTITLED TO.

Attorney General's Office,
Columbus, Ohio, April 1, 1886.

Mr. H. Watkins, Esq., Pomeroy, Ohio:

DEAR SIR:—Your letter of March 18th duly received. I think that section 1181 Revised Statutes is very plain, and in my opinion the office of the county surveyor should be furnished, at the expense of the county, with all articles

necessary for office work, such as stationery, blanks, cases, rulers and instruments of like nature.

In answer to your second inquiry, I would reply by referring you to Vol. 82, O. L., p. 255, which is as plain as I could possibly make it.

You are acting in the capacity of county surveyor when you are working in the line of your prescribed duties and not under private contract.

Very truly yours,
J. A. KOHLER,
Attorney General.

SHERIFF; FEES OF, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, April 1, 1886.

W. H. Snook, Esq., Prosecuting Attorney, Antwerp, Ohio:

DEAR SIR:—Your letter of the 18th instant referring to me for an opinion upon the question of the right of the sheriff of your county to recover his fees in the case mentioned, is before me.

The sheriff's claim in this case appears to be a very meritorious one, but as there was no conviction, I am not aware of any provision for the payment of such fees, except section 1231 Revised Statutes. Under this section the court may allow him $300.00 for services in such cases, but not exceeding that sum for any one year.

If, therefore, the sheriff has already received that sum, I see no way by which he can be paid. The fact that the county has received $1,200.00 on the forfeited bond affords no warrant for paying such fees. In this case the law seems to fall short of justice, but I see no way by which I can advise payment. Yours very truly,

J. A. KOHLER,
Attorney General.

Township Trustees; Erection of Soldiers' Monument by

TOWNSHIP TRUSTEES; ERECTION OF SOLDIERS' MONUMENT BY.

Attorney General's Office,
Columbus, Ohio, April 3, 1886.

J. B. Goshorn, Esq., Galion, Ohio:

DEAR SIR:—Your letter received some time since referring to the soldiers' monument in your county, has so far remained unanswered because I have had no time to examine the question and answer.

The inquiry you make, whether the trustees of Polk Township could lay a tax and erect a soldiers' monument in your township involves a constitutional question of much importance, inasmuch as it has been the practice to levy such special taxes in cities and townships, for instance, to erect a town hall, etc., but my judgment is that such special laws are an infringement of section 26, article two of the constitution requiring that all laws shall have a uniform operation throughout the State. The Supreme Court in a number of recent cases have so held and while I would be glad to give an opinion that would aid you in so worthy a project as the building of a soldiers' monument, I feel it my duty to say that I doubt the constitutionality of such a law.

Very truly yours,
J. A. KOHLER,
Attorney General.

County Commissioners; Not Entitled to Per Diem, Etc., at Convention of; Sheriff; Fees of; Fuel for Warming Jail of County.

COUNTY COMMISSIONERS; NOT ENTITLED TO PER DIEM, ETC., AT CONVENTION OF; SHERIFF; FEES OF; FUEL FOR WARMING JAIL OF COUNTY.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

Theodore K. Funk, Esq., Portsmouth, Ohio:

DEAR SIR:—Yours of March 6th to hand. Please excuse delay in answering. I find it almost impossible to keep up with the work of my office and the result is, that important matters are often delayed much longer than I would wish.

1st. The question of the right of county commissioners to charge per diem and expenses for attendance at the convention at Columbus of county commissioners has been the subject of a number of opinions from this office, all concurring in a denial of any such right. Such expenses and per diem have been charged and paid in some counties, but there is no warrant for it in law, and the payments are clearly illegal.

Now in regard to your second question relating to the sheriff's charges for fuel.

In the opinion which I gave and to which you refer, I followed the opinion of my predecessor, Mr. Lawrence. However, I think that that is the law and was aware of the decision of Judge White of the Common Pleas Court at the time.

Since Judge White's decision and subsequent to the letter of advice given by myself, the question has received further consideration by Judge Arrell of the Common Pleas Court in Mahoning County, in which the decision of Judge White was reviewed and his construction of the two sections held erroneous and the view which Mr. Lawrence and myself had expressed, affirmed as correct.

Costs of Prosecution for Violating Laws Passed to Prevent Cruelty to Animals.

The question is not free from doubt and a bill is now pending to amend the statutes in this respect and remove the doubts that have arisen. In short, I have no doubt that in some cases the construction I have given works injustice and hardship, but in answer to your question whether I still adhere to my opinion, I must say that that is still my view of the law.

Now a word as to this particular case: You say the sheriff's claim is for fuel provided for the jail. I do not now remember accurately the language used by me in the opinion referred to, but section 1235 must have a fair and reasonable construction. What I intended to say was that section 1235 did not relate exclusively to the custody of prisoners as Judge White had decided, but I think I did not go into details to define accurately what supplies the sheriff should provide under that section and I do not believe that I have advised that under it the sheriff is bound to furnish fuel to warm the jail. If I have, please advise me.

My strong impression is that it is generally the practice of the county to warm the jail and at the expense of the county. I am,

Very truly yours,
J. A. KOHLER,
Attorney General.

COSTS OF PROSECUTION FOR VIOLATING LAWS PASSED TO PREVENT CRUELTY TO ANIMALS.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

Henry Brown, Esq., Prosecuting Attorney, Findlay, Ohio:

DEAR SIR:—Please excuse delay in answering yours of the 11th ult. I have necessarily been absent much of the

time, and my duties when here are so pressing that I am unable to do justice to my correspondents.

You refer me to section 3714 et seq. and ask, "Who pays the costs in prosecutions when the prosecution fails?"

No provision seems to have been made for this end, except under the section which allows commissioners to make a general allowance for the year.

I do not know how the officers are to be paid for services imposed upon them where there is no conviction and no costs collected from defendant, and the same is also true when the mayor requires bail for appearance to the Common Pleas and no indictment is found.

Very truly yours,
J. A. KOHLER,
Attorney General.

COSTS; OF WITNESS FEES IN CASE OF PEACE WARRANT.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

A. Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:

DEAR SIR:—Yours of March 3d to hand. As I understand you the case of the State of Ohio against John Rowe was a complaint on a peace warrant. In such a case no provision is made for the payment of costs of witness fees out of the treasury. The case is not a criminal cause in that sense.

Yours truly,
J. A. KOHLER,
Attorney General.

Jail of County; Use of by Hamlets and Villages—Military Ordinances; Sale and Exchange of.

JAIL OF COUNTY; USE OF BY HAMLETS AND VILLAGES.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

Samuel R. Gotshall, Esq., Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—I think section 1867 et seq. of the Revised Statutes answers your question. Hamlets and villages have the right to use the county jail, but not at the county's expense. It must be at the expense of the incorporation.

The county commissioners have the right to prohibit the use of the jail by giving notice as provided in section 1868, Revised Statutes.

Please excuse delay in answering.

Yours truly,
J. A. KOHLER,
Attorney General.

MILITARY ORDINANCES; SALE AND EXCHANGE OF.

Attorney General's Office,
Columbus, Ohio, April 2, 1886.

A. H. Axline, Adjutant General of Ohio:

DEAR SIR:—Your letter of inquiry of this date received. I have examined joint resolution No. 72, adopted March 20th, 1885, and in keeping with its obvious purpose and intent I think you would be warranted in using the proceeds of the arms and ordinances sold, in the purchase and distribution of the work referred to. I am inclined to give

Prosecuting Attorney; Not Entitled to Commission on Costs Paid by State Auditor of County; Duty of, as to Fees of Coroner.

the language of the resolution a liberal construction in furtherance of the manifest intent of the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; NOT ENTITLED TO COMMISSION ON COSTS PAID BY STATE AUDITOR OF COUNTY; DUTY OF, AS TO FEES OF CORONER.

Attorney General's Office,
Columbus, Ohio, April 5, 1886.

A. L. McBeth, Esq., Prosecuting Attorney, Urbana, Ohio:

DEAR SIR:—Your letter of the 19th of February last duly received.

In my opinion, prosecuting attorneys are not entitled to ten per cent. on costs paid by the State in criminal cases. This has been the opinion of attorneys general Nash, Hollingsworth, Lawrence and myself.

I herewith enclose you a copy of an opinion rendered by Judge Nash, upon which the subsequent ones are to great extent based.

In my opinion the county auditor is authorized and it is his duty to determine the claims of the coroner under section 1239, and if he approves the same to issue his warrant therefor.

Yours very truly,
J. A. KOHLER,
Attorney General.

Surveyor of County; Compensation of, for Surveying, Etc., County Ditch—County Commissioneers; No Power to Issue Subpoena in Certain Case.

SURVEYOR OF COUNTY; COMPENSATION OF, FOR SURVEYING, ETC., COUNTY DITCH.

Attorney General's Office,
Columbus, Ohio, April 6, 1886.

Geo. Kinney, Esq., Prosecuting Attorney, Fremont, Ohio:

DEAR SIR:—Your letter of the 1st instant received. In my opinion a surveyor or engineer engaged under section 4454, Revised Statutes may be allowed a compensation for necessary livery hire, but in case he uses his own conveyance he cannot be recompensed for the use of same.

Yours very truly,
J. A. KOHLER,
Attorney General.

COUNTY COMMISSIONERS; NO POWER TO ISSUE SUBPOENA IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, April 5, 1886.

A. Leach, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Your letter of the 11th ult. received. I beg your pardon for not answering sooner.

I find nothing in the Revised Statutes to warrant the county commissioners in issuing subpœnas for the purpose of ascertaining to whom a certain amount of money was paid, and while I have but a general knowledge of the case in question, I do not think, in the absence of any proper authority, your commissioners should take any such steps.

Yours very truly,
J. A. KOHLER,
Attorney General.

Elector; Place of Residence of Married Man—Township Trustees; Election of, in Case of a Tie; Township

ELECTOR; PLACE OF RESIDENCE OF MARRIED MAN.

Attorney General's Office,
Columbus, Ohio, April 7, 1886.

John Hopley, Esq., Bucyrus, Ohio:

DEAR SIR:—Your letter of the 5th instant received. The place where the family of a married man resides is considered his home and place of residence, unless he has "separated" from his wife (See Sec. 2946, 4 R. S.).

The fact of his bona fide intention to make Bucyrus his future place of residence is not sufficient to entitle him to vote there until his family arrives and his residence is changed in fact.

The fact of a change of residence combined with intent establishes the residence or domicil.

Yours very truly,
J. A. KOHLER,
Attorney General.

TOWNSHIP TRUSTEES; ELECTION OF, IN CASE OF A TIE; TOWNSHIP CLERK AND TREASURER; ELECTION OF, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, April 7, 1886.

J. B. Schroy, Esq., Greenford, Ohio:

DEAR SIR:—Yours of the 4th to hand.

1st. In the matter of the trustee there being a tie vote it should be determined by lot as provided by section 1448, Revised Statutes.

2d. I think the name of John V. Stahl should be counted for treasurer. If there were two candidates for clerk it might not be clear, but as there was only one, I think the clear intent was to vote for Stahl for treasurer; so that the ticket should be counted, Schroy for clerk and Stahl for treasurer.

Yours truly,
J. A. KOHLER,
Attorney General.

ELECTION; IN MUNICIPALITY; WHEN DUE NOTICE IS NOT GIVEN.

Attorney General's Office,
Columbus, Ohio, April 17, 1886.

W. E. Atkins, Esq., Mayor of Mt. Washington, Ohio:

DEAR SIR:—Yours of April 9th to hand. The question you ask me is whether the fact of a mayor's proclamation in an incorporated village not having been publicly posted for ten days preceding a regular election would invalidate such election.

You do not state whether the notice was given in fact, but not for ten days.

The question has been differently decided, but I think the weight of authority is to the effect that when an election is in all respects regularly and fairly held and candidates elected, that the fact of an omission to give public proclamation or notice will not invalidate it.

Yours truly,
J. A. KOHLER,
Attorney General.

County Commissioners; Expenses of, When Traveling on Official Business.

COUNTY COMMISSIONERS; EXPENSES OF, WHEN TRAVELING ON OFFICIAL BUSINESS.

Attorney General's Office,
Columbus, Ohio, April 17, 1886.

Mazzini Slusser, Esq., Prosecuting Attorney, Wauseon, Ohio:

DEAR SIR:—Your favor of the 14th instant to hand. A number of opinions have been given by my predecessors and myself touching this section and it is somewhat difficult to tell just what the section does include.

I am of the opinion however, that in all cases where mileage is allowed that the expense for conveyance must be paid out of that, and that a commissioner cannot have mileage and also allowance for *traveling* expenses actually paid.

In my letter to Mr. Deyo, you will see that I exclude hotel bills at all regular or called meetings.

Now in respect to other business in or out of the county, when a commissioner is traveling from place to place on public business touching county affairs, under the direction of the board, he must pay for his conveyance out of the mileage, and his actual expenses, other than conveyance, such as meals and hotel bills during this time may be allowed.

There may be some inconsistency in saying that a county commissioner shall not be allowed anything for hotel bills while in attendance at regular meetings, and in allowing such bills at other times while traveling under the board's direction; but it results from the language of the section. At all events, this distinction is in accordance with the opinions of my predecessors, and I prefer to stand by the same opinion until the General Assembly makes the section more intelligible.

Asylum for Insane; Columbus, Receiving Patients from Lucas County.

I think a bill is now pending to accomplish that end.

Very truly yours,
J. A. KOHLER,
Attorney General.

ASYLUM FOR INSANE; COLUMBUS, RECEIVING PATIENTS FROM LUCAS COUNTY.

Attorney General's Office,
Columbus, Ohio, April 8, 1886.

C. M. Finch, M. D., Superintendent Central Asylum for the Insane:

DEAR SIR:—In answer to your inquiry "Is Lucas County entitled to full representation in the Columbus Asylum for the Insane, under the arrangements now existing between the county and the State?" I will say that in my opinion the existing contract to which you refer makes an exception and in my opinion releases you from the necessity which would otherwise exist of receiving the patients sent to your asylum. I think they are bound under that contract to provide for the chronic insane patients which they propose to provide for in the central asylum.

I would, therefore, refuse to take and provide for them until it is decided that provision must be made. I may not be wholly right in this view, but from the case stated in writing and orally, I have come to the conclusion expressed.

Yours truly,
J. A. KOHLER,
Attorney General.

Mayor; Must Be an Elector of Municipality in Which He is Elected—Auditor of County; How Suit Should be Brought in Case of Nonfeasance; Responsibility for Act of Deputy.

MAYOR; MUST BE AN ELECTOR OF MUNICIPALITY IN WHICH HE IS ELECTED.

Attorney General's Office,
Columbus, Ohio, April 10, 1886.

W. F. Sawyer, Esq., Kent, Ohio:

DEAR SIR:—Your letter of March 30th duly received.

If the man you refer to is not a legal voter in the corporation, he cannot be legally elected mayor of said corporation (See Sec. 1737, R. S.).

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; HOW SUIT SHOULD BE BROUGHT IN CASE OF NONFEASANCE; RESPONSIBILITY FOR ACT OF DEPUTY.

Attorney General's Office,
Columbus, Ohio, April 9, 1886.

A. Leach, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Yours to hand. Section 1022 of the Revised Statutes provides that the auditor shall certify money into the treasury.

Under that section it was the duty of the auditor to certify the same into the treasury and I cannot see how the commissioners had any duty to perform in the matter or how they are in default in the case.

The auditor is answerable for the acts of the man whom he had placed in the office to attend to the business, and if

the money was lost, the suit in my opinion should be against the auditor.

If you are wrong the court will set you right on demurrer to your petition.

Yours truly,
J. A. KOHLER,
Attorney General.

ELECTION; HOW VOTES SHOULD BE COUNTED IN CERTAIN.

Attorney General's Office,
Columbus, Ohio, April 16, 1886.

Geo. Hildebrand, Esq., Ashland, Ohio:

DEAR SIR:—Yours of April 9th duly received. Under the law passed March 6th, 1886, provision is made for an assessor for each voting precinct, and if your township is divided into two voting precincts it requires two assessors.

In regard to the township officers other than assessor, I think that the confusion of ballots referred to in your letter, to-wit: the south precinct votes cast in the south precinct box, my opinion is that that fact would not render them illegal and that the judges did right in counting them for the names on the ticket with the exception of assessors.

In respect to the assessors I am not quite so clear, but my best judgment is that as these assessors were candidates, each for his own precinct, that ballots cast for him out of the precinct could not be counted for him.

In these election matters we rarely find precedents in point and we must be guided by sound judgment under the circumstances of each particular case.

Yours very truly,
J. A. KOHLER,
Attorney General.

Auditor of State; Examination of State Treasury by—Auditor of County; Duty of, as to Issuing Warrants in Certain Case.

AUDITOR OF STATE; EXAMINATION OF STATE TREASURY BY.

Attorney General's Office,
Columbus, Ohio, April 9, 1886.

Hon. Emil Kieselwetter, Auditor of State:

DEAR SIR:—In answer to your recent letter of inquiry I will say that an examination of sections 190 and 175 of the Revised Statutes, in my opinion shows that, under the former section, the duty is fully performed by making and publishing a statement showing the amount of money in the state treasury at the close of business on the last business day of each month.

The actual counting of the money under this section is not required.

Under section 175 Revised Statutes, an actual count must be made.

Very truly yours,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; DUTY OF, AS TO ISSUING WARRANTS IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, April 21, 1886.

Homer Harper, Esq., Prosecuting Attorney, Painesville, Ohio:

MY DEAR SIR:—Your letter was received several days ago. I have taken what time I could to look into the matter you have presented, touching the liability of the auditor of

Auditor of County; Duty of, as to Issuing Warrants in Certain Case.

your county in case he draws his warrant for the money due the board of education of the incorporated village of East Menton and the various steps and proceedings leading to and resulting in the incorporation of the above named districts; but I think it is safe to assume that these proceedings were in all respects regular, inasmuch as the Court of Common Pleas of your county has so decided.

It is of course not certain that the Circuit and Supreme Courts will affirm this decision.

The presumption is that the decision is correct. The circumstances are somewhat peculiar and great caution might induce the auditor to withhold his warrant and abide the event of final judgment.

In view of your statement of facts, I am of the opinion that the auditor would be warranted in issuing his warrant to the new incorporation.

I do not understand that the auditor is now under any injunction or restraint in the matter.

I have consulted with the auditor of state and others in regard to it, and their opinion, as well as my own judgment is, that no liability would be incurred if the money was drawn as you propose.

Of course there is always some risk in these matters and some responsibility to assume, and if the auditor desires to have the coast entirely clear, he must wait until the matter is finally settled; but if he wishes to take action, my view is that it would be safe to do so, as I have indicated.

My confidence is based upon the decision of the Common Pleas Court dissolving the injunction and the belief that in the event of a reversal of judgment that no personal liability would be incurred by the auditor or his bondsmen.

Yours very truly,

J. A. KOHLER,

Attorney General.

Board of Education; May Anticipate Levy and Borrow Money—Election of Justice of the Peace; How Conducted.

BOARD OF EDUCATION; MAY ANTICIPATE LEVY AND BORROW MONEY.

Attorney General's Office,
Columbus, Ohio, April 28, 1886.

R. S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Your favor of the 24th received. I find nothing in the Revised Statutes prohibiting the board of education from borrowing money in the manner indicated in your letter.

In case the levy is made by the vote of the people of the township, there can be no question. (See Section 3993, R. S.)

Reasoning from the above: if, in this case, the board was authorized in making such levy without the sanction of the popular vote, I should think that the board could go ahead and borrow money (not exceeding the amount of the levy) before said levy is actually made.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTION OF JUSTICE OF THE PEACE; HOW CONDUCTED.

Attorney General's Office,
Columbus, Ohio, April 17, 1886.

J. W. Scothorn, Esq., Columbus, Ohio:

DEAR SIR:—Yours of the 14th received in which you ask me to answer the following question: "Whether a jus-

tice of the peace who is elected on a *separate ticket,* and in a *separate ballot box* is a legally elected justice?"

I have examined section 2930 of the Revised Statutes and such further authorities as I could find applicable to the case, and my conclusion is that in the absence of any fraud, unfairness or other means preventing a fair expression of the elective franchises, that the justice in this case was legally elected.

In my opinion section 2930 was intended to apply to justices of the peace as well as other officers, although it may not be altogether clear that he is a township officer.

A justice of the peace is a public officer invested with judicial powers. He is elected for the township in which he resides, but in some cases has jurisdiction throughout the county. He is commissioned by the governor of the State, nevertheless he belongs to the class of township officers within the language of the section above referred to. But under the judicial decisions in Ohio and other states, I do not think that the requirement that the name or names should be on one ballot and all the votes cast in one ballot-box is so far a matter of substance as to render the election void when he is elected on a separate ticket and in a separate ballot-box.

In short, my judgment is that, in this respect, the language of the section is directory and not mandatory and that therefore the irregularity of having two separate ballot-boxes and voting upon separate tickets may be overlooked, and unless some act of fraud, bad faith or other thing to cast uncertainty upon the result is shown, the election should be considered valid.

I have not space here for a review of the numerous cases upon the subject of irregularities that will vitiate the polls, but I do think that, in the main, they will bear me out in the conclusion I have reached and stated.

The practice in Ohio under this section is not uniform; in some places only one ballot-box is used and all the names placed on one ticket, and this is by far the better practice, and

Prosecuting Attorney; May be Employed by Commissioners Under 546.

the letter of the statute ought in that respect to be adhered to. In other places the justice is voted for in a separate ballot-box and by a separate ballot. But I am not prepared to say that in this case the departure from the statute was so vital and important as to render the election illegal.

Very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; MAY BE EMPLOYED BY COMMISSIONERS UNDER 546.

Attorney General's Office,
Columbus, Ohio, April 22, 1886.

S. A. Court, Esq., Prosecuting Attorney, Marion, Ohio:

DEAR SIR:—Your favor of April 9th regarding the employment of prosecuting attorney and payment for services in cases other than those in which the State is a party, either as plaintiff or defendant, received.

The general duties of the prosecuting attorney are specific under section 1273, Revised Statutes, for his services under this section he is paid a fixed salary based upon the population and in addition thereto he is entitled to a certain percentage upon fines and costs collected.

In addition to the duties above provided, he is, under section 1274, made the legal adviser of county commissioners and other county officers, and for his services under this section, the county commissioners may pay him such amount as they may think proper and just at their December session.

Section 845 of the Revised Statutes relates to suits by and against county commissioners and authorizes them in cases where the commissioners are a party to employ coun-

sel, not to exceed two, to prosecute or defend and there is no restriction as to the counsel to be employed.

It rests in their discretion and for aught I can see the prosecuting attorney of the county may properly be one of the counsel employed by the commissioners and if so employed, he may be paid for his services precisely as he may be for advice under section 1274.

In my judgment there is a clear distinction between the services to be paid for under 845 and 1274—1274 makes him the counselor and adviser, section 845 relates to suits and actions prosecuted or defended.

Yours very truly,
J. A. KOHLER,
Attorney General.

CLERK OF COUNTY; FEES OF, FOR MAKING INDEX UNDER SECTION 5339*a*.

Attorney General's Office,
Columbus, Ohio, May 7, 1886.

B. M. Clendening, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your letter of yesterday received. I am of the opinion that a county clerk is entitled to twenty-three cents in each case in making the index provided for in section 5339*a*.

This is in accordance with opinions rendered by attorneys general Hollingsworth and Lawrence, and one heretofore given by myself.

Yours very truly,
J. A. KOHLER,
Attorney General.

Justice of the Peace; Should not at Same Time be Township Trustee.

JUSTICE OF THE PEACE; SHOULD NOT AT SAME TIME BE TOWNSHIP TRUSTEE.

Attorney General's Office,
Columbus, Ohio, April 29, 1886.

Hon. J. E. Myers, Goshen, Ohio:

DEAR SIR:—In reply to your letter of the 12th instant I would say that the law provides that a justice must be an elector and the office cannot be held by the following named officers, to-wit: sheriff, auditor, treasurer of the county, clerk of the county, recorder, prosecuting attorney and probate judge.

I find no objection to his holding the office of trustee in law. However, I am of the opinion that the two offices ought not to be held by the same person. Trustees are frequently compelled to pass upon questions in which a justice of the same township would be interested. See sections 567, 579, 580 and 1442.

A majority of township trustees constitute a quorum to do business, but this supposes that all are competent to act. I doubt very much whether the bond in this case has been legally accepted and approved; as a trustee, the justice could not pass upon the sufficiency of his own bond. In short, I think the justice ought to resign one of his offices.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSPECTOR OF OILS; DUTY OF, TO EXAMINE OIL IN TANK WAGONS.

Attorney General's Office,
Columbus, Ohio, April 30, 1886.

Hon. D. C. Ballentine, State Inspector of Oils, Cleveland, Ohio:

DEAR SIR:—Your letter of the 24th instant received. In view of the statement of facts presented, your action and interpretation of section 395 of the Revised Statutes would seem to be quite reasonable and proper from the standpoint of "common sense" but I am not quite certain that that answers the requirements of the law. The section is not directory merely, but it is imperative. You are *required* to approve the oil by inspection and affixing your stamp upon the cask, barrel or package containing the oil *in plain letters.*

We are compelled to take the statute as it is and enforce it.

My judgment is that you had better require all parties to comply with the terms of the law, and I cannot advise you that selling from tank wagons, after you have inspected the oil in the tanks at the refineries, would be such compliance.

I think if the act means that, it would be better to have that meaning expressed by an amendment of the law. It is very likely that the practice of selling from tanks has been introduced since the law was enacted. I do not think that it was contemplated when the law was passed, that it should be inspected in the tanks.

It seems to me that the least you can do as it is now, is to inspect the oil in the "wagon tanks" and mark it before it goes out.

To inspect it in tanks at the refineries would be liable to great abuse and would remove the checks that the law intended to provide.

Yours very truly,
J. A. KOHLER,
Attorney General.

MAYOR; CASTING VOTE IN CASE OF A TIE IN CITY COUNCIL.

Attorney General's Office,
Columbus, Ohio, April 29, 1886.

P. P. Lefever, City Solicitor, Ashland, Ohio:

DEAR SIR:—Yours duly received. In the case you state the mayor would have a casting vote. See section 1676 of the Revised Statutes.

An action for the cause stated would probably be governed as to limitations by section 4985. It could not properly be said to be upon a contract not in writing or upon a liability created by statute within section 4981, nor would section of statutes 4983 apply. The statute in this case does not create the liability. That grows out of the fact that the statute was not observed.

I am not very confident that this view is right, but it is my best judgment.

Yours truly,
J. A. KOHLER,
Attorney General.

Infirmary, County; Duty of Directors of, in Furnishing Relief for Pauper.

INFIRMARY, COUNTY; DUTY OF DIRECTORS OF, IN FURNISHING RELIEF FOR PAUPER.

Attorney General's Office,
Columbus, Ohio, May 1, 1886.

E. P. Middleton, Esq., Prosecuting Attorney, Urbana, Ohio:

DEAR SIR:—Your favor of yesterday received. In my opinion if a pauper has been regularly reported to the township trustees, and by them to the superintendent of the county infirmary and has refused to be transported to said institution, he is not entitled to further relief, *unless,* in the judgment of the directors, such removal would be expedient. If that is the case, it is then the duty of the directors to furnish such temporary relief as the exigencies of the case requires, until removal is advisable or further relief unnecessary.

In case the pauper is *able* but *unwilling* to be removed, I find nothing in the Revised Statutes authorizing the superintendent to use force in order to remove him. Relief, however, may be refused under such circumstances.

Yours very truly,
J. A. KOHLER,
Attorney General.

Board of Education; May Anticipate Levy and Borrow Money; How Pupils Living in Another District May be Received.

BOARD OF EDUCATION; MAY ANTICIPATE LEVY AND BORROW MONEY; HOW PUPILS LIVING IN ANOTHER DISTRICT MAY BE RECEIVED.

Attorney General's Office,
Columbus, Ohio, May 1, 1886.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—I will answer your questions seriatim:

First. In my opinion contracts for the purpose of affording better facilities for higher education under section 4022 of the Revised Statutes are valid, although I hardly think that the General Assembly in enacting this section had this in view.

Second. I think it is within the power of the board of education to make contracts whereby it agrees to pay a higher sum for tuition than such pupil is entitled to in his own district.

Third. In my judgment a contract of this nature may be made before a levy for that purpose is actually made.

Fourth. I think that it is within the power of the board to work the injury of which you speak. If the members of said board are doing as you suggest, the question had better be tested in court.

Yours very truly,
J. A. KOHLER,
Attorney General.

PUBLIC WAYS; STUDENTS AT COLLEGE, ETC., WORKING ON.

Attorney General's Office,
Columbus, Ohio, May 5, 1886.

Mr. Wilson Fritch, Mt. Union, Ohio:

DEAR SIR:—Your letter of May 1st duly received. Although this is a matter upon which I am not authorized to give official opinions, I will nevertheless endeavor to answer your question.

The matter of performing labor upon the highways, as required by the laws of this State, depends entirely upon the *domicil* of the person.

In my judgment students attending a college or university for the *temporary* purpose of acquiring an education, with the intention of removing therefrom when that purpose is accomplished, are not in a legal sense, residents of that place, and therefore not obliged to perform work and labor upon the highways of the locality.

The question has been decided in quite a number of states and notably in the Ohio Senate in the contested case of Mickey vs Loomis in the 66th General Assembly, where the votes of the students at Oberlin were thrown out as not being cast by legal electors in Oberlin.

This would seem to answer your question without going into the further question of the constitutionality of the poll tax.

If this answers your question I shall be very glad, if not, I would be pleased to hear from your further.

Yours very truly,
J. A. KOHLER,
Attorney General.

Clerk of County; Index Under Section 5339a; How Made.

CLERK OF COUNTY; INDEX UNDER SECTION 5339*a*; HOW MADE.

Attorney General's Office,
Columbus, Ohio, May 5, 1886.

J. B. Worley, Esq., Prosecuting Attorney, Hillsboro, Ohio:

DEAR SIR:—Your letter of May 4th received. I have examined the original and supplementary sections to which you have referred me in regard to making an index of the judgments of your court.

I have some doubt as to whether it was intended, in the enactment of the law, to include judgments in criminal cases. The main purpose of the law undoubtedly was to enable persons to ascertain what judgments, if any, were liens upon lands and the extent thereof. But the language of section 5339, as amended, is broad enough to include judgments of all kinds, and indeed the judgments for costs in criminal cases become a lien upon the lands of the defendant as well as in civil actions.

I am, therefore, of the opinion that when your clerk was ordered to make up the general index, direct and reverse, he had the right to include therein all judgments in criminal cases.

In regard to your second question: I think that all the names in any one indictment should be included, to make an index for which twenty-three cents should be paid, as you suggest.

I have not been able to find any case where this matter has been adjudicated, but give you my conclusion and judgment upon the case stated.

Yours very truly,
J. A. KOHLER,
Attorney General.

Asylum for Insane; Mileage of Person Removing Patient to, Etc., Auditor of County; Power of, to Pass Upon Accounts.

ASYLUM FOR INSANE; MILEAGE OF PERSON REMOVING PATIENT TO, ETC., AUDITOR OF COUNTY; POWER OF, TO PASS UPON ACCOUNTS.

Attorney General's Office,
Columbus, Ohio, May 5, 1886.

Anson Wickham, Esq., Prosecuting Attorney, Bucyrus, Ohio:

DEAR SIR:—Your favor of the 26th received. I think that when a person appointed by the probate judge to take an insane person to the asylum, and on returning brings with him a person to the county infirmary, he is entitled to mileage for *one trip* only and an allowance of seventy-five cents for the support of the person so removed and also for the person so returned.

In my opinion a county auditor has the authority to *pass* upon questions of the character to which you refer. In this case I think that if the auditor is satisfied that the certificate issued by the probate judge is for a larger amount than the person in whose favor they are issued is entitled to, the auditor may refuse to issue his warrant therefor.

In my judgment in order to enable the auditor of county to act intelligently upon questions of this nature, an itemized account would be requisite.

Yours very truly,
J. A. KOHLER,
Attorney General.

Intermediate Penitentiary; Contracts for Erection of Building of.

INTERMEDIATE PENITENTIARY; CONTRACTS FOR ERECTION OF BUILDING OF.

Attorney General's Office,
Columbus, Ohio, May 6, 1886.

Hon. John M. Pugh, President of Board of Managers, of Intermediate Penitentiary, Columbus, Ohio:

DEAR SIR:—Your letter of inquiry of this date received. Section 782 of the Revised Statutes provides for making full and complete plans of the building to be erected, as well as full and accurate estimates of expense thereof in detail. This section must be complied with, but when this is done the matter of letting contracts, whether as an entirety or for certain portions of the work, rests in the discretion of the managers.

In my opinion there is no requirement that the entire work must be contracted for at *one time* or as an entirety. The board may exercise a sound discretion in that respect and enter into contracts for certain specific portions of the work, having in view the fact that the aggregate expense shall not exceed the amount of the estimate approved by the governor, auditor and secretary of state.

Yours very truly,
J. A. KOHLER,
Attorney General.

Prosecuting Attorney; Not Entitled to Compensation for Conducting Suits For Board of Education—Incorporations; Who May be Trustee of, in Certain Case.

PROSECUTING ATTORNEY; NOT ENTITLED TO COMPENSATION FOR CONDUCTING SUITS FOR BOARD OF EDUCATION.

Attorney General's Office,
Columbus, Ohio, May 7, 1886.

Edward Jackson, Esq., Mt. Liberty, Ohio:

DEAR SIR:—Your letter of April 21st has been referred to this office.

Attorneys general Nash and Lawrence have given as their opinions that a prosecuting attorney cannot charge for conducting suits for the boards of education within the county of which he is the prosecutor.

In case the prosecutor is unable to attend to the business, the person so employed by him has, in my opinion, no proper claim for services thus rendered.

Yours very truly,
J. A. KOHLER,
Attorney General.

INCORPORATIONS; WHO MAY BE TRUSTEE OF, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, May 7, 1886.

A. L. Wiley, Esq., Superintendent of Agencies, Zanesville, Ohio:

DEAR SIR:—Your letter of the 3d received. I am not authorized by law to give official advice to you, and what I shall write you will be entirely in the nature of private advice.

Auditor of County; Duty of, Regarding Assessment for Township Ditch.

Section 3248, Revised Statutes, provides that a trustee of an association of the character in which you are interested must be a member. As it is unlawful to issue certificates of membership to persons over sixty-five years of age (see section 3630*g*), it follows that such persons cannot be trustees of your association.

In case, however, a person is lawfully taken into the association when under sixty-five years of age and while still a member becomes over that age, I see nothing to prevent him acting as a trustee.

Yours very truly,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; DUTY OF, REGARDING ASSESSMENT FOR TOWNSHIP DITCH.

Attorney General's Office,
Columbus, Ohio, May 7, 1886.

R. C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your letter of May 1st received. Your construction of section 4547 of Revised Statutes is correct in my judgment. The assessments provided for become a specific lien upon the lands. The reason of the law as well as its express terms indicates that the better practice is to describe the land definitely as it should be in a conveyance or notice to quit, where the land must be *pointed* out.

Yours very truly,
J. A. KOHLER,
Attorney General.

Employes; Female, Should be Provided with Seats in Factories, Etc.

EMPLOYES; FEMALE, SHOULD BE PROVIDED WITH SEATS IN FACTORIES, ETC.

Attorney General's Office,
Columbus, Ohio, May 7, 1886.

H. M. Foltz, Esq., Kent, Ohio:

DEAR SIR:—Your letter received and I have taken the first time I have had to answer.

I have examined the section of the statutes relating to providing seats for girls in factories, and it is true, as the inspector states, leaves the act vague and indefinite, and it is not clear what the courts would say. However, it seems to me that the intent is clear, and that is, that it is their duty to provide seats, so that at all the factories the girls employed may use them when the work is such that they can do so.

I think courts would give a reasonable and fair construction of this section, whenever the point is made.

Of course the actual circumstances of the case have much to do with it. Your prosecuting attorney is much better advised than I can be and you should consult with him, as it is his duty and I have no doubt he will gladly assist you in enforcing the law, if it has been violated.

I think the law is a good one, and if it is weak and ineffectual, we ought to know it and have it amended.

Yours very truly,
J. A. KOHLER,
Attorney General.

Ohio Penitentiary; Costs of Returning Prisoner from, in Case of Reversal.

OHIO PENITENTIARY; COSTS OF RETURNING PRISONER FROM, IN CASE OF REVERSAL.

Attorney General's Office,
Columbus, Ohio, May 10, 1886.

Isaac G. Peetry, Esq., Warden of Ohio Penitentiary, Columbus, Ohio:

DEAR SIR:—Yours of May 7th received. It would seem to me on *general* grounds that the cost of returning a prisoner in cases of reversal of judgment of conviction should be paid by the county from which the prisoner was sent, but section 7366 of the Revised Statutes provides that the *warden* shall cause the prisoner to be returned when a new trial is granted, and *no* provision is made as to payment of costs, and without such provision, making it incumbent upon the county to do so, my judgment is that it must be at the cost of the State.

Mr. Lawrence in a similar case has so construed the law.

I think the law ought to be amended in that respect, and would respectfully recommend that the matter be presented to the board of managers and the legislative committee on "prison." In short, I do not see how the guards can collect anything from Butler County as the law stands, and think that payment should be made out of the penitentiary fund. Such was the case in the instance referred to above.

Yours very truly,
J. A. KOHLER,
Attorney General.

General Assembly; Legality of Certain Act Passed; The Sixty-Seventh.

GENERAL ASSEMBLY; LEGALITY OF CERTAIN ACT PASSED; THE SIXTY-SEVENTH.

Attorney General's Office,
Columbus, Ohio, May 15, 1886.

Hon. J. B. Foraker, Governor of Ohio:

SIR:—A certified copy of the act of the General Assembly of Ohio passed on the 13th day of May, A. D., 1886, entitled "An act to authorize the issue of bonds to meet deficiencies of the general revenue fund," has been handed to me and my opinion in writing having been requested as to the validity thereof, I will say that I have carefully examined its provisions and duly considered the circumstances proceeding and attending its enactment.

I find that the proceedings of the Senate and the House of Representatives, in the passage of the bill, were regular and that all the constitutional requirements were duly observed and complied with, as shown by the journal of each house.

I respectfully submit the opinion that the law is in all respects valid, and that the certificates of indebtedness authorized to be issued thereunder would be binding upon the State of Ohio.

Respectfully submitted,
J. A. KOHLER,
Attorney General.

INSURANCE; BY STATE OF BUILDINGS AT BOYS' INDUSTRIAL SCHOOL.

Attorney General's Office,
Columbus, Ohio, May 10, 1886.

John C. Hite, Esq., Superintendent of Ohio Industrial School, Lancaster, Ohio:

DEAR SIR:—Yours of the 7th instant received. As a rule none of our State institutions are insured.

The General Assembly has made no appropriation for such insurance. The claim has always been made in the General Assembly, when such appropriations were asked for, that the State was large enough and rich enough to insure itself.

I see no objection, in a legal point of view, towards effecting such insurance in the name of the trustees for the use of the State. I should regard your institution as a risk of more than usual hazard, but the practice has been not to insure for the reasons above given.

In some cases an insurance has been effected on the steam boilers at the penitentiary and at the asylum, but no further.

I think the matter rests in your discretion and your ability to get the money appropriated or allowed for that purpose.

Yours very truly,
J. A. KOHLER,
Attorney General.

EMPLOYES; CONSTRUCTION OF "THE EIGHT-HOUR LAW."

Attorney General's Office,
Columbus, Ohio, May 13, 1886.

Hon. Amor Smith, Jr., Mayor of Cincinnati, Ohio:

DEAR SIR:—In answer to your inquiry and request for an opinion in regard to the act of the General Assembly, passed April 14th, 1886 (commonly called "the eight-hour law"), and in regard to the duty of mayor and other municipal officers in the enforcement of such law, I will say, that from the number of inquiries made, much misapprehension must exist as to the law in question.

The act of April 14th is an amendment of section 4365 of the Revised Statutes, which was passed March 19th, 1852, and the only change made by the amendment consists in the addition of the business of "mining" and in making eight hours a legal day's work instead of ten, where the contract is silent as to time.

It is sufficient to say that no duty is enjoined upon the mayor of any city or village to enforce the law. No penalty is prescribed and no fine or punishment can be imposed in cases of violation.

The passage of the law is notice to all citizens and any agreement for work and labor as presumed to have been made with reference to it. The mayor has nothing to do with and no power to act in the premises. The matter rests with the employer and employe, and depends upon contract; and when no time is agreed upon, a day's work in any mechanical, manufacturing or mining business, consists of eight hours.

The parties may agree upon ten hours or more as a day's work, and in such cases the agreement is the law of the case.

In all cases of dispute or alleged violation of the law,

the courts will, as heretofore, on the application of any person injured, enforce the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROBATE JUDGE; HOW CERTAIN NOTICES OF, SHOULD BE GIVEN.

Attorney General's Office,
Columbus, Ohio, May 14, 1886.

A. B. Smith, Esq., Wauseon, Ohio:

DEAR SIR:—Yours of May 3d received. The question upon which you ask my opinion is one which I think has been determined in Ohio (see Ohio Reports, Vol. 13, p. 120). In this case the court passed upon a question almost identical with the one in which you are interested, and in accordance with the view of the law there expressed, I think that your probate judge has complied with section 6402 of the Revised Statutes if he has caused *one* publication to be made.

In regard to your second inquiry, I believe that the universal practice of probate judges in Ohio is to advertise two or more hearings, of the character referred to in section 6402, for the same time. The section itself seems to suggest as much and I find nothing in the Revised Statutes to prevent your probate judge from so doing.

Yours very truly,
J. A. KOHLER,
Attorney General.

Municipal Corporations; Council of, Has Power to Borrow Money, Etc.

MUNICIPAL CORPORATIONS; COUNCIL OF, HAS POWER TO BORROW MONEY, ETC.

Attorney General's Office,
Columbus, Ohio, May 14, 1886.

Mr. F. E. Wells, Nelsonville, Ohio:

DEAR SIR:—I presume your inquiry relates to the village of Nelsonville, and without knowing all the facts I will answer the general question presented by saying that municipal corporations *are* authorized to make loans and issue bonds within certain limitations.

The authority to issue bonds you will find in section 2700 and 2701 of the Revised Statutes. I think you will find the questions answered in these sections, but perhaps you had better consult further with your city solicitor.

Yours truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATIONS; USE OF STREETS FOR LAYING PIPE FOR NATURAL GAS.

Attorney General's Office,
Columbus, Ohio, May 13, 1886.

Geo. C. Beis, Esq., City Solicitor, Sandusky, Ohio:

DEAR SIR:—I have examined the various sections of the Revised Statutes to which you have referred me, and it is doubtless true that the provisions of the law on the subject of granting the use of streets to gas companies for the purpose of putting down pipes was intended to apply to companies manufacturing gas.

My best judgment is that a council of a city or village could, under the power given, authorize companies to put down pipe for illuminating purposes where natural gas is used.

The act passed March 25th, 1880, was intended to apply to the laying of pipes for the purpose of supplying heat and power, and not solely for illuminating purposes. I do not think that this last provision adds anything to the authority already conferred, unless the purpose was the supplying of heat and power; but I am not inclined to put a narrow construction upon the authority conferred for furnishing light to the inhabitants of a city or village, and I believe that the word "gas" as used, would apply to natural as well as to gas manufactured and supplied by pipes.

I have no adjudicated cases before me on the subject, and have not given the question careful investigation, but give you my general impression.

Yours very truly,
J. A. KOHLER,
Attorney General.

TAXATION; OF ROLLING STOCK OF THE T. & O. C. R. R. CO.

Attorney General's Office,
Columbus, Ohio, May 17, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—In accordance with your request, I have examined the question submitted in the letter of A. F. Rudolph, auditor of Perry County, dated May 15th, 1886.

The question is governed by the act of the General Assembly passed April 27th, 1885, and amendatory of section 2774 of the Revised Statutes.

Employes, Female; Should be Provided with Seats in Certain Factories, Etc.; Duty of Inspectors of Workshops and Factories.

In my judgment the case stated does not come within the above entitled act, and the rolling stock of the T. & O. C. R. R. cannot be distributed over the twelve miles of the roadbed held by lease from the C. & M. V. R. R.

In my judgment as the act reads, it does not apply to leasehold interests, and as the T. & O. C. R. R. merely uses the twelve miles of road and pays a rental therefor, its rolling stock must be distributed for taxation upon the line of road owned by it.

Yours very truly,
J. A. KOHLER,
Attorney General.

EMPLOYES, FEMALE; SHOULD BE PROVIDED WITH SEATS IN CERTAIN FACTORIES, ETC.; DUTY OF INSPECTORS OF WORKSHOPS AND FACTORIES.

Attorney General's Office,
Columbus, Ohio, May 14, 1886.

Hon. Henry Dorn, Chief Inspector of Workshops and Factories, Columbus, Ohio:

DEAR SIR:—Your letter of May 10th received, and in compliance with your request I have examined the several sections of the Revised Statutes referred to with some care, and will endeavor to answer the questions submitted as clearly and concisely as possible.

First, The act passed at the present session of the General Assembly, entitled an act to amend section 4365 of the Revised Statutes, and known as "the eight-hour law," and section 6986 as amended and supplemented with sectional numbers, 6986, 6986*a*, 6986*b* and 6986*c* are entirely independent sections.

Employes, Female; Should be Provided with Seats in Certain Factories, Etc.; Duty of Inspectors of Workshops and Factories.

The act amendatory of section 4365 of the Revised Statutes, making eight hours a legal day's work instead of ten as heretofore provided, effects no change in the law relating to the employment of minors under eighteen years of age.

Under the act amendatory of section 4365, no penalty is prescribed and no fine is imposed for the violation of the law. In the absence of a contract, eight hours will hereafter constitute a day's work. The parties may stipulate for ten hours or more, and in such cases the agreement becomes the law of the case. In any case of violation of the law, the remedy is by a civil action at the suit of the party injured. There is no fine as may be imposed under section 6986, when complaint is made by affidavit or information.

It is very true that the eight-hour law is as applicable to minors as to adults, but this does not carry with it by implication, the fine or penalty imposed by section 6986, where ten hours is the measure of the time and enforced work beyond that is prohibited; under the eight-hour law employer and employe may contract for ten or even more hours as a day's work. Of course, so long as section 6986 stands, this cannot apply to minors under eighteen years of age. Minors cannot be employed for more than *ten hours*. Your first question I will therefore answer in the negative.

Second, This question I will also answer in the negative.

An employer cannot compel a minor, under the age of eighteen, to work more than ten hours in any *one* day. The provision as to sixty hours was intended to provide for one day of rest in a week, but I think it cannot be construed so as to make some days more and some less than ten hours, and not to exceed in the aggregate sixty hours in any one week.

The purpose of the law is to prevent overwork, and it very wisely forbids more than ten hours labor in one day.

Appropriations; Payment of Money Out of General, in Certain Case.

Your third question: "Has the inspector of workshops and factories any authority, under the 'Act for the preservation of the health of female employes employed in manufacturing, mechanical and mercantile establishments,' to require compliance with the provisions of said act, so far as mercantile establishments are concerned?" I answer in the affirmative.

The act in terms includes mercantile establishments, and while you are not, as inspector of workshops and factories, charged with the duty of prosecuting violations of the act, I nevertheless deem it proper that you should do so and insist upon compliance with the law.

Yours very truly,
J. A. KOHLER,
Attorney General.

APPROPRIATIONS; PAYMENT OF MONEY OUT OF GENERAL, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, May 17, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—Your communication of this date received. You ask for instruction upon the point, whether the balance of the unexpended appropriations, as named in your letter, should be first paid out of the money now in the treasury or which may be received until the existing appropriations are satisfied before entering upon the deficiency and general appropriation bills; or whether you would be authorized to enter up the deficiency and general appropriation bills at once, and pay any appropriation out of the money now in the treasury to the credit of the general revenue fund.

Employes; Female, Should be Provided With Seats in Factories, Etc.

It is true that the deficiency appropriation bill authorized the payment of such claims from any money in the treasury to the credit of the general revenue fund and not otherwise appropriated. Yet, in my judgment, to defer and postpone the payment of all such claims until all prior appropriations had been made, would be practically difficult and would work hardship and injustice. In fact, I see no objection, in a legal point of view, to your entering up the deficiency bills at once and paying the same as you suggest out of any money now in the treasury or that may come in to the credit of the general revenue fund.

Should the amounts in the treasury be expended before all are paid (which I think will not be the case), those "first come, first served" will be a sufficient answer.

Yours very truly,
J. A. KOHLER,
Attorney General.

EMPLOYES; FEMALE, SHOULD BE PROVIDED WITH SEATS IN FACTORIES, ETC.

Attorney General's Office,
Columbus, Ohio, May 18, 1886.

Hon. Henry Dorn, Chief Inspector of Workshops and Factories:

DEAR SIR:—Your letter of the 17th instant supplementary to the questions submitted in your former letter, duly to hand and considered.

The law under which you are acting is in the nature of an experiment in this State, and doubtless many questions have and are daily arising in regard to its proper enforcement that are new and upon which we have no precedents, and we must use that best of guides "sound judgment."

Sheriff; Fees of, for Summoning a Jury; Who Should Pay.

I have read with care the suggestions made in your report, touching that feature of the law compelling employers of manufacturing establishments to provide seats for female employes.

The violation of this law subjects the offender to a fine and penalty, and hence, according to well settled rules, would be strictly construed and applied, and I quite agree with you that the law as it reads furnishes many loopholes of escape, and it would be very difficult to convict any person under it. The claim would doubtless be made in all cases, that employers were in fact necessarily engaged in the active duties, duties for which they were employed, and in prosecutions under the act the State would probably be held strict to prove the negative that they were not necessarily engaged in the active duties of their employment.

I think, therefore, that your views are correct, and the law to be of practical use ought to be amended in accordance with your suggestion, namely, to allow the use of seats at all times when such use would not actually interfere with the proper discharge of the duties by employes.

Yours very truly,
J. A. KOHLER,
Attorney General.

SHERIFF; FEES OF, FOR SUMMONING A JURY; WHO SHOULD PAY.

Attorney General's Office,
Columbus, Ohio, May 18, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—In answer to your letter of March 4th, 1886, relating to fees of sheriff, etc., I will say that section 1230 of the Revised Statutes provides for the compensation

Sheriff; Fees of, for Summoning a Jury; Who Should Pay.

of the sheriff in serving and returning service for petit and grand juries; but there is no obligation upon the State to pay the amount, and when a defendant is convicted and sent to the penitentiary, my judgment is that *no* part of the fees of the officers in serving and returning service should be paid by the State.

Under our system of law the counties provide the jury, and until the court decides otherwise, I would, in paying cost bills in criminal prosecutions, exclude the fees for summoning the jury.

Your second question relates to the sheriff's fees in capital cases under this section when defendant is convicted of a crime for which he is sentenced to be imprisoned in the penitentiary. The fee for serving a jury, provided by law under this section, amounts to four dollars and fifty cents for the jury. This is in substance the view expressed by Hon. John Little, when attorney general, under the former law, when the amount was five dollars; and I see no reason to dissent from this view.

When the State or defendant demands a struck jury, and defendant is convicted and sent to the penitentiary, my judgment is, that the costs of the prosecution should be paid by the State, but this does not include the costs of summoning a jury. I think this duty falls upon the county and comes within the reasons given for answer to your first question.

In regard to section 1330 of the Revised Statutes, providing for a jury fee of six dollars to be taxed in the bill of costs and collected and paid into the treasury of the county, but in case of execution against defendant is returned "No property found whereon to levy," and defendant is responsible, no obligation rests upon the State to pay it.

In a case where a jury may be called, under section 1330, but defendant pleads "guilty," the six dollars, in my opinion, cannot be taxed. The section contemplates the calling of a jury and a conviction resulting, evidently meaning a trial, but when the trial by a jury is rendered wholly un-

necessary by a plea of "guilty," my view is, that the fee of six dollars cannot be properly taxed.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; HOW WHOLESALE DEALER MAY SELL.

Attorney General's Office,
Columbus, Ohio, May 27, 1886.

Henry Gregg, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—If the parties are wholesale dealers, and the sale is made at wholesale to retail dealers for exclusively known pharmaceutical, mechanical or sacramental purposes, I should say that they would not be liable to pay the tax.

Yours very truly,
J. A. KOHLER,
Attorney General.

CATTLE; HERDING OF, ON PREMISES OTHER THAN OWNERS.

Attorney General's Office,
Columbus, Ohio, May 19, 1886.

H. H. Birdley, Esq., Painter-Creek, Ohio:

DEAR SIR:—Your favor of May 14th received. Section 4202 of the Revised Statutes, as amended Vol. 78,

Prosecuting Attorney; Should Prosecute Suits to Condemn Site for School.

page 18 of the Ohio laws, governs the question as to whether cows may be permitted to graze on public highways accompanied by herders.

I think the act plain and under it the animals mentioned in section 4202 cannot be herded on premises other than those occupied or owned by the owner or keeper of such animals, except as provided for in section 4203.

If cows in your village *may* be *so* herded, no person has a right to set dogs on them, shut them up or in any manner interfere with them.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; SHOULD PROSECUTE SUITS TO CONDEMN SITE FOR SCHOOL.

Attorney General's Office,
Columbus, Ohio, May 27, 1886.

R. S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Yours of the 21st received. Under section 3977 of the Revised Statutes, I think it is a part of the duty of the prosecuting attorney to prosecute proceedings to condemn sites for school houses. It becomes his official duty to attend to this, and of course he receives no *extra* compensation, at least no provision is made for *extra* compensation for such services.

Yours very truly,
J. A. KOHLER,
Attorney General.

Probate Judge, Fees of, for Hearing Cases Under Section 546—Asylum for Insane; Dayton, Letting Contracts for Improvements.

PROBATE JUDGE, FEES OF, FOR HEARING CASES UNDER SECTION 546.

Attorney General's Office,
Columbus, Ohio, June 2, 1886.

Hon. S. Mittenberger, Bellefontaine, Ohio:

DEAR SIR:—Yours of June 1st is received. I have examined section 546 of the Revised Statutes, and under it you can charge one dollar and fifty cents for hearing and determining such cases as you referred to.

If I had to make the law I would provide more justly than this section does, but as it stands, I feel constrained to say that one dollar and fifty cents is the limit of fees for one hearing, whether the case takes one day or ten.

Yours very truly,
J. A. KOHLER,
Attorney General.

ASYLUM FOR INSANE; DAYTON, LETTING CONTRACTS FOR IMPROVEMENTS.

Attorney General's Office,
Columbus, Ohio, June 2, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—Your letter of May 29th, enclosing communication of Dr. Kind, superintendent of the Dayton Asylum for the Insane, of the date of May 24th, duly received.

Sections 782, 3 and 4 of the Revised Statutes, in express terms relate to such additional improvements, additional, etc., to State institutions (excepting the penitentiary),

as in the aggregate exceed the amount of three thousand dollars. As the appropriation for the Dayton asylum amounts to five thousand dollars, and the probability that the expense will exceed three thousand dollars (which is the limit), I would advise a compliance with sections 782 et seq. by advertising and as the law directs.

Yours respectfully,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATIONS; DUTIES OF NIGHT POLICE IN.

Attorney General's Office,
Columbus, Ohio, June 11, 1886.

Geo. A. Hay, Esq., Mayor of Coshocton, Ohio:

DEAR SIR:—Your letter of June 9th received. In my opinion the question you have presented rests in the discretion of your city council, as I find nothing in the Revised Statutes preventing the members thereof, from doing as you state they have been doing.

Although, under section 2026 of the Revised Statutes, the law governing the duties of your night policemen ought to be such as to preserve the peace, secure the inhabitants of your corporation from personal violence and their property from fire and unlawful depredations, still I think that if this *extra work does not interfere* with the proper discharge of their duties as policemen, they may attend to it.

Yours very truly,
J. A. KOHLER,
Attorney General.

Public Ways; Number of Hours Constituting Day's Work on—Dow Liquor Law; Tax Under is a Lien and State Has First Claim.

PUBLIC WAYS; NUMBER OF HOURS CONSTITUTING DAY'S WORK ON.

Attorney General's Office,
Columbus, Ohio, June 6, 1886.

J. B. Massey, Esq., Mayor of Osborn, Ohio:

DEAR SIR:—Yours of the 21st ult. received. There is no law that I am aware of, or that I have been able to find, governing the number of hours that constitute a day's work on the public highways.

The "eight-hour law" does not apply to this class of work.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; TAX UNDER, IS A LIEN AND STATE HAS FIRST CLAIM.

Attorney General's Office,
Columbus, Ohio, June 9, 1886.

John H. Saunders, Esq., Benton Ridge, Ohio:

DEAR SIR:—Your letter of May 23d duly received. Under section two of the "Dow Liquor Law," the tax operates as a lien on the premises, and if any execution is made thereon, the State has the first claim by virtue of this tax.

Yours very truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Vote of Majority of Electors of Municipality Not Requisite to Enable to Pass Prohibitory Ordinance—Dow Liquor Law; Temporary Transfer Does Not Exempt Dealers From Paying Proportionate Tax.

DOW LIQUOR LAW; VOTE OF MAJORITY OF ELECTORS OF MUNICIPALITY NOT REQUISITE TO ENABLE TO PASS PROHIBITORY ORDINANCE.

Attorney General's Office,
Columbus, Ohio, June 7, 1886.

James Morledge, Esq., Waynesburgh, Ohio:

DEAR SIR:—Your favor of May 28th received. In my opinion, section 11 of the "Dow Liquor Law" gives to city and village *councils* of municipal corporations the power to prohibit the sale of intoxicating liquors within the corporate limits, and I do not think that the votes of a majority of the electors of said corporation is requisite.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; TEMPORARY TRANSFER DOES NOT EXEMPT DEALERS FROM PAYING PROPORTIONATE TAX.

Attorney General's Office,
Columbus, Ohio, June 7, 1886.

Theo. K. Funk, Esq., Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—Yours of May 31st duly received. I think that if a person engaged in the traffic of intoxicating liquors, and who pays his assessment under the "Dow Liquor Law," wishes to engage in selling intoxicating

Justice of the Peace; Not Entitled to Office at Expense of Township—Militia; Expenditure of Allowance For, Under Section 3082.

liquors at another place, he must pay an assessment proportionate in amount to the part of the year thus engaged, to-wit: twenty-five dollars or more. See sections 1 and 3 of the "Dow Liquor Law."

Yours very truly,
J. A. KOHLER,
Attorney General.

JUSTICE OF THE PEACE; NOT ENTITLED TO OFFICE AT EXPENSE OF TOWNSHIP.

Attorney General's Office,
Columbus, Ohio, June 11, 1886.

J. D. Crist, Esq., Zaleski, Ohio:

DEAR SIR:—Your favor of June 7th duly received. I find nothing in the Revised Statutes of Ohio, compelling the trustees of a township to furnish offices for the use of the justices of the peace of the township, and in the absence of any such law, they cannot be compelled so to do.

Yours very truly,
J. A. KOHLER,
Attorney General.

MILITIA; EXPENDITURE OF ALLOWANCE FOR, UNDER SECTION 3082.

Attorney General's Office,
Columbus, Ohio, June 11, 1886.

H. A. Axline, Adjutant General of Ohio:

DEAR SIR:—Your letter of inquiry of the 11th received. I have examined sections 3082 and 3083 of the Revised

Board of Education; Member of, Cannot be Employed as Teacher.

Statutes of Ohio, and in answer to your request for an opinion touching the construction and meaning of said sections in the premises, I will say that the two sections should be read in connection. The first section fixes the rate of commutation at forty cents per day, while the second section requires that the "necessary commissary's stores should be contracted for by the proper officers."

In my judgment this authorizes the payment, out of the money appropriated, of such sums as *may be necessary* for that purpose; but not exceeding forty cents per day. If the *actual* expense for subsistence is less than forty cents per day, it is your duty, I think, to limit payment to the amount actually expended for necessary commissary stores. I think this would be proper under any circumstances, and in this case it effectuates the intent of the law.

Very respectfully,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; MEMBER OF, CANNOT BE EMPLOYED AS TEACHER.

Attorney General's Office,
Columbus, Ohio, June 11, 1886.

C. G. Williams, Esq., Gustavus, Ohio:

DEAR SIR:—Your letter of the 8th duly received. If the clerk of the township is clerk of the board of education by virtue of his office of township clerk (see section 3915, Revised Statutes), he may be employed by them as teacher. If, however, he is a *member* of the board as well as its clerk, he cannot be employed in the capacity of teacher by said board. See section 3974 Revised Statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

Report; of Committees Appointed to Examine Report of County Commissioners.

REPORT; OF COMMITTEES APPOINTED TO EXAMINE REPORT OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, June 15, 1886.

S. A. Court, Esq., Prosecuting Attorney, Marion, Ohio:

DEAR SIR:—Your letter of the 12th instant received. I have examined section 917 of the Revised Statutes, and will answer your question according to my best judgment, for I cannot find that the "points" have been decided by any court, and must, therefore, interpret the statute according to its true intent. In this we may err, but the object is to obtain reliable information in regard to the business and proceedings of the commissioners. For this purpose they are required to make an "annual report" to the *Court of Common Pleas.* This must be a detailed report in writing, and the Court of Common Pleas shall cause it to be examined and appoints two persons to make the examination, and in my judgment a report of this committee must be made to the court making such appointment, and file the same, or a copy thereof, with the auditor of the county for the use of the commissioners. I think the commissioners have no action to take upon it, except to cause it to be published. If the report is unsatisfactory, or if there should be a majority and minority report, my judgment is that the court would be warranted in making a further examination by the appointment of another committee.

The mere fact of there being a majority and a minority report ought not to be conclusive as to the necessity for further investigation, but such reports might disclose such a condition of affairs as to render a further examination very necessary. In such cases I think the judge of the court would be authorized, in the interest of honesty, to cause further examination. I think the court is given a sound discretion in that matter for the purpose of carrying out the in-

tent of the law, and in case of a violation of the law, misappropriation of funds, etc., the prosecuting attorney is authorized to institute legal proceedings.

Yours very truly,

J. A. KOHLER,

Attorney General.

INSURANCE; ORGANIZATION OF OHIO VALLEY AND PROTECTIVE UNION INSURANCE COMPANY.

Washington, D. C., June 20, 1886.

Hon. Henry J. Reinmund, Superintendent of Insurance, Columbus, Ohio:

DEAR SIR:—The answer to your letter of May 24th has been delayed on account of other engagements, but having a few days' time, and having the papers with me, I will answer before returning home as I presume you will be absent when I return.

As you suggest, the amendment of section 3636 of the Revised Statutes does away with many of the objections heretofore raised, and leaves but one question, viz: the question of electing trustees for the management of the company, whether this duty shall be confined to charter members, or whether *all* the members shall participate in such elections.

This association is organized under the laws of West Virginia and so far as this is concerned, I think the laws of that State must govern; and the company having complied with the requirements of the law, as defined by the Supreme Court of our State, I am of the opinion that the company is entitled to be admitted to do business in our State.

It is true that the election of officers, trustees, etc., is not the same as provided for by our law, and I am free to

say that in those regulations I consider our law the better of the two, but under the recent amendments of the section referred to, the objections heretofore made, and which in fact existed, have been removed.

Very respectfully,
J. A. KOHLER,
Attorney General.

INSURANCE; PAYMENT OF ASSESSMENTS BY FOREIGN COMPANIES UNDER THE RECIPROCAL LAWS OF OHIO.

Attorney General's Office,
Columbus, Ohio, June 12, 1886.

Hon. Henry J. Reinmund, Superintendent of Insurance Department, Columbus, Ohio:

DEAR SIR:—I have had so many other matters to attend to lately, that until now I could not find time to examine the question referred to me by your department, touching the proper construction of section 282 of the Revised Statutes.

The question arising upon the payment of the reciprocal tax therein provided for is important, and I have not been able to find an adjudicated case involving the question. I have, however, been greatly aided by the excellent briefs and arguments furnished by Judge Nash and J. A. McEwen for the insurance companies, and by Governor Hoadly, contra.

It is but just to say that on the 10th of March, last, I addressed to you a letter upon the subject to the effect that you would not be warranted in going back and allowing credits for taxes paid in other years. This opinion was based wholly on the information that my predecessor, Hon.

Insurance; Payment of Assessments by Foreign Companies Under the Reciprocal Laws of Ohio.

James Lawrence, had examined the subject fully, and given an opinion to the same effect. I was, therefore, induced to regard that matter as settled and, if it was erroneous, to allow parties to correct the same by a proper proceeding in court.

Yesterday Mr. McFarland handed me a letter written by Hon. James Lawrence, and addressed to yourself. I append the same hereto, as showing that possibly there was some misunderstanding as to his views; and having given the subject more consideration, after full arguments, I will state my conclusions:

First, Under our system of taxation, personal property generally is listed as of the day preceding the second Monday in April of each year, and any agency of an insurance company, incorporated by the authority of any other State government, shall in the month of May in each year, return to the auditor of each county where such agency exists, the amount of the gross receipts of such agency, which is entered upon the lists and is subject to the same rate of taxation as other personal property. See section 2745, Revised Statutes.

The laws of Ohio permit one-half of the tax assessed to be paid in December, and the remaining half to be paid in June of the following year. Now, I think that in carrying out our retaliatory statute, as it is called, that the semi-annual payment of taxes should be taken into account and that taxes actually paid since the last annual settlement should be allowed as a credit. In other words, receipts for taxes received too late to be included in the list of taxes furnished you at the January settlement in any one year should be credited to the company the next year. It seems to me that this would be just, and the State would lose nothing by it.

In this view of the case, Mr. Lawrence, Governor Hoadly, Messrs. Nash and McEwen concur in opinion, and nothing further need therefore be said on this branch of the case.

Insurance; Payment of Assessments by Foreign Companies Under the Reciprocal Laws of Ohio.

Upon questions, "Whether non-resident insurance companies are required by law to pay under *both* sections 282 and 2745 of the Revised Statutes, and whether a payment under one of these sections can be used as a credit upon the other," I have had more trouble. Very little light is thrown upon it by any former decision in this office or indeed by any adjudicated case, and the conclusion I have adopted is simply what impresses me as right, and a fair construction of the sections above referred to.

In this State, insurance companies of other states are required to make a return of the gross receipt in each county wherein such agency exists. Upon such receipts, the usual rate of taxes are paid in each county. In Pennsylvania, for example, foreign insurance companies are required to pay upon the gross receipts of such company, a sum equal to three per centum upon such receipts. This sum is paid directly to the State, and no taxes are paid in the several counties of the State where the business is done. This seems to be only a difference in the mode of assessing and collecting taxes. Under our laws, Pennsylvania companies doing business in this State, pay the amount assessed in each county, which ordinarily does not exceed two and one-half per cent., and as they compel Ohio companies to pay three per cent. in Pennsylvania as the condition of doing business, we compel them to pay an equal amount here by paying to the insurance superintendent such sum in addition to the amount paid in the counties, as to make the payment three per cent. (the amount paid by the Ohio companies in Pennsylvania), and for a number of years past this course has been pursued by our insurance department.

It is claimed that section 2745 has not been repealed by section 282, and that the Geenral Assembly doubtless *intended* by the enactment of the last section, to simply add to what had already been provided for by section 2745. It

Insurance; Payment of Assessments by Foreign Companies Under the Reciprocal Laws of Ohio.

may well be doubted whether much reliance can be placed upon the subject of legislative intent.

The best that can be done is to take the two sections together and so construe them. For example, if the laws of Pennsylvania permitted Ohio companies to do business in that state without the payment of any tax, fee or license whatever, I do not think that Pennsylvania companies, under our statute, could come into our State and do business, without complying with section 2745, viz: pay the usual tax upon gross receipts in each county, so that full effect may be given to section 2745.

On the other hand, when a sister state subjects Ohio companies to a greater tax or permit than is required by our law in such cases, we may, under section 282, add to the obligations of section 2745, such sum or condition as will place foreign companies in this State on precisely the same footing of Ohio companies in other states. Section 282 expressly provides that "when by the laws of any other state or nation, any *taxes,* fines, license fees, penalties, etc., are imposed on insurance companies of this State, the same obligation shall be imposed here." So that *taxes* are expressly provided for in this section. In short, I am unable to construe this section as if it read: "so long as such laws continue in force, the same taxes, fines, etc., shall be imposed upon all companies of such State doing business *in addition to the taxes* which our statutes already assess upon such companies."

I have not sufficient space or time to refer to all the arguments used or points made. My conclusion is, that in making settlements of taxes with insurance companies of other states, the superintendent of insurance should require such companies to pay a sum in addition to the amount paid as taxes in the counties of this State, to make the total amount equal to the same per cent. of taxes required to be paid by Ohio companies doing business in such states.

If this is not the true view, it will be an easy thing for

the General Assembly, at the next session, to amend the law and remove all doubts upon the subject, and if I may be allowed the suggestion, I would deem it better to have the tax upon companies of other states doing business in our State, paid as it is paid in Pennsylvania to the superintendent of insurance.

Very respectfully,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; LIEN ATTACHES ON PREMISES OF OWNER.

Attorney General's Office,
Columbus, Ohio, June 7, 1886.

J. M. Carr, County Treasurer, Kenton, Ohio:

DEAR SIR:—Your letter of June 1st received. In my opinion you have nothing to do with the *owner* of the property. If he has rented his premises to a person who has engaged, or is about to engage in the traffic of intoxicating liquors, the owner is responsible. He must either get him out or take the consequences.

Yours very truly,
J. A. KOHLER,
Attorney General.

Schools; Meaning of Word "Books" as Used in Section 3995—Dow Liquor Law; Temporary Transfer Does Not Exempt Dealer From Paying Proportionate Tax.

SCHOOLS; MEANING OF WORD "BOOKS" AS USED IN SECTION 3995.

Attorney General's Office,
Columbus, Ohio, August 3, 1886.

D. W. Rawlins, Esq., Springfield, Ohio:

DEAR SIR:—Your letter of inquiry to hand. I have examined sections 3987 and 3995 of the Revised Statutes, taking the two sections together, and have no doubt of the correctness of the construction placed upon the same in your letter, and for the reason therein stated.

In the matter of the purchase of "books" for the use of the schools, it may not in all cases be clear where to draw the line, but in this instance I think it is clear that the phrase "school books" does not include *cyclopedias or books of that* character, as the term is generally employed.

While, therefore, such books are very useful and valuable, and ought, so far as possible, to become a part of the library, I think the purchase thereof must be governed by section 3995, Revised Statutes.

Yours truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; TEMPORARY TRANSFER DOES NOT EMEMPT DEALER FROM PAYING PROPORTIONATE TAX.

Attorney General's Office,
Columbus, Ohio, August 24, 1886.

D. L. Sleeper, Esq., Prosecuting Attorney, Athens, Ohio:

DEAR SIR:—Yours of August 9th to hand. The law makes no provision for such transfer of the business from the room of the saloonkeeper to the fair grounds. In case

of such temporary removal, my judgment is, that the keeper would make himself liable for the tax provided, for not less than twenty-five dollars, for the time he was so occupied.

Yours very truly,
J. A. KOHLER,
Attorney General.

CEMETERY TRUSTEES; VACANCY ON BOARD OF, HOW FILLED.

Attorney General's Office,
Columbus, Ohio, August 3, 1886.

N. F. Overturf, Esq., City Solicitor, Delaware, Ohio:

DEAR SIR:—Your letter of the 29th ult. received. It is true, in one sense, that no vacancy in your board of cemetery trustees has occurred; but the neglect of the electors to elect trustees, after all, leaves the office vacant. I think, therefore, that under section 2520 of the Revised Statutes, trustees should be appointed by the council to serve until the next election.

The case of your cemetery is a matter of public importance, and the office of trustee ought not be vacant, and I can see no substantial reason why the council may not temporarily appoint trustees until an election can be regularly held.

Yours truly,
J. A. KOHLER,
Attorney General.

Dow Liquor Law; Prohibitory Ordinance not Authorized in Unincorporated Villages—Armory; County Commissioners Should Not Sublet For Other Purposes.

DOW LIQUOR LAW; PROHIBITORY ORDINANCE NOT AUTHORIZED IN UNINCORPORATED VILLAGES.

Attorney General's Office,
Columbus, Ohio, August 24, 1886.

C. F. Engle, Esq., Mifflin, Ohio:

DEAR SIR:—Answer to yours of August 5th has been delayed by reason of absence from city.

There is no provision in the "Dow Law" enabling villages not incorporated, to enact and enforce prohibition of the liquor traffic.

The "Dow Law" provides that municipal corporations may do this: so that any village or city incorporated may frame an ordinance regulating or prohibiting the traffic; but until such village is incorporated it does not come within the law.

Yours truly,
J. A. KOHLER,
Attorney General.

ARMORY; COUNTY COMMISSIONERS SHOULD NOT SUBLET FOR OTHER PURPOSES.

Attorney General's Office,
Columbus, Ohio, August 24, 1886.

John M. Brodrick, Esq., Prosecuting Attorney, Marysville, Ohio:

DEAR SIR:—Yours of August 12th to hand. I have examined section 3085 as amended Ohio laws, Vol. 83, p. 101. This section makes it the duty of the commissioners to provide an armory for the purpose of drill, and for the safe-

Armory; County Commissioners Should not Sublet for Other Purposes.

keeping of arms and other military property furnished by the State. In my opinion such armory cannot be sublet by the commissioners for *other purposes.*

The officers of the company are required to give bond for the safekeeping of all military property kept in such room, and there are many reasons, not necessary to state here, why an armory where arms and munition are kept, ought not to be open to the access of any person, persons or corporation renting such property.

The idea of an armory is a place where arms and other military property may be exclusively kept, so as to be at hand upon a sudden emergency or call. Such I think was the idea of the lawmakers in framing the section, and while the language is somewhat general, I think it must be so construed.

My opinion is, therefore, that after your commissioners had provided an armory, according to section 3085 and the military company had taken possession and placed the property of the State in it, that the commissioners could not let the room for other purposes. It may be true that, in your place, the company could get along with a place to drill one or two nights in the week, and others could use the room on other nights in the week; but the law is made for the whole State, and where there are large cities like Cincinnati and Cleveland such joint or general use of the armory, would jeopardize the property and peace of the State.

Very respectfully yours,

J. A. KOHLER,
Attorney General.

Clerk of County; Compensation of, for Reporting to Secretary of State—Bohemian Oats Notes; Prosecution of Maker of; Peddler; What is a, in Contemplation of Law.

CLERK OF COUNTY; COMPENSATION OF, FOR REPORTING TO SECRETARY OF STATE.

Attorney General's Office,
Columbus, Ohio, August 24, 1886.

Chas. A. Vortriede, Esq., County Auditor, Toledo, Ohio:

DEAR SIR:—My view of section 1250, Revised Statutes, is that it relates to a report of *criminal* cases, and that the pay of the clerk is limited to criminal cases. The blank furnished by the secretary of state is no guide, as under section 140 of the statutes, the secretary of state can call for such information without provision for pay. In other words, I think that under section 1250, the clerk is entitled to pay for his annual report, embracing criminal cases, and that no provision is made for pay in reporting civil cases.

Yours very truly,

J. A. KOHLER,

Attorney General.

Dow Liquor Law; Sale by Manufacturers Through Bona Fide Agents.

DOW LIQUOR LAW; SALE BY MANUFACTURERS THROUGH BONA FIDE AGENTS.

Attorney General's Office,
Columbus, Ohio, July 14, 1886.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—In reply to the inquiry referred to me by you I have to say: Section eight of the act passed May 14th, 1886 (O. L., Vol. 83, p. 157), commonly called the "Dow Liquor Law," defines the phrase "trafficking in intoxicating liquors," as used in the act. It does not include the manufacture of intoxicating liquors from the raw material and the sale thereof by the manufacturer in quantities of one gallon or more at any one time. The manufacturer, therefore, has the right to sell beer in quantities of not less than one gallon without being liable for the special tax, and it is obvious that he may do this by his agent or employe. It does not matter at what place it is sold, or at how many different places in the State, so long as it is sold by an agent acting exclusively for his employer and in good faith, but when an agency is established as a regular business for the sale of beer and liquors, and such agent is selling on a salary or commission for a number of different firms or persons, in such cases, in my opinion, the special tax would have to be paid.

Yours truly,
J. A. KOHLER,
Attorney General.

O. S. & S. O. Home; Expenditure of Certain Appropriations for.

O. S. & S. O. HOME; EXPENDITURE OF CERTAIN APPROPRIATIONS FOR.

Attorney General's Office,
Columbus, Ohio, July 23, 1886.

Gen. F. Van Derveer, Hamilton, Ohio:

DEAR SIR:—I received a letter from Major Loyd yesterday, asking my opinion in regard to the appropriations for the Ohio Soldiers' and Sailors' Orphans' Home.

I have examined the law and my conclusion is that the act of April 20th, 1881, is in force and unrepealed, and hence you are limited in your expenditures for the purpose stated, to the sum of ten thousand dollars of the regular appropriations. It is true that in the general and partial appropriations you are given fourteen thousand five hundred dollars; but repeals by implication are not favored. The General Assembly, in its haste, doubtless overlooked the act of 1881. At all events it stands there, and I cannot say that it may be disregarded.

This has nothing to do with the additional act passed May 15th, 1886, appropriating a further sum of fifteen thousand dollars. To this you are entitled and you will receive it.

I think this answers Mr. Loyd's questions.

Yours very truly,
J. A. KOHLER,
Attorney General.

INTERMEDIATE PENITENTIARY; CONTRACTS FOR ERECTION OF BUILDINGS.

Attorney General's Office,
Columbus, Ohio, August 26, 1886.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—Your favor of July 24th to hand. I have examined the several sections of the Revised Statutes specified in your letter, and will say in answer: that, in my opinion, the board of managers are authorized by law to contract for the construction of different parts of the intermediate penitentiary at different times. There is no requirement that the entire work shall be let at one time. This question was submitted to me by the board of managers before the contract for the foundation walls was let, and the same view was then expressed in answer to their request for opinion as to the rights of the managers in that particular.

Section 782 of the Revised Statutes provides that before any contract for the erection of such work shall be entered into, full, complete and accurate plans and specifications of such work, and an estimate of the aggregate cost, so as to be plain and easily understood, shall be filed in the office of the auditor of state; and, in my opinion, this provision should be carefully observed, and full drawings and specifications, and a plain, careful estimate of the expense in detail, so as to be easily understood, should be filed in your office with each contract.

In regard to the payment of the salaries of the managers of the intermediate penitentiary, after personal consultation with you yesterday, and a more careful examination and explanation of the case, I am of the opinion that the mem-

Dow Liquor Law; Person Bottling Beer, Etc., Liable to be Taxed; Show; How License to Exhibit Issued; Lands; Sale of, for Delinquent Taxes.

bers of said board are entitled to payment of amounts due each, out of the money appropriated for an intermediate penitentiary under the act of May 11, 1886.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; PERSON BOTTLING BEER, ETC., LIABLE TO BE TAXED; SHOW; HOW LICENSE TO EXHIBIT ISSUED; LANDS; SALE OF, FOR DELINQUENT TAXES.

Attorney General's Office,
Columbus, Ohio, September 1, 1886.

J. W. Winn, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—I have been absent from Columbus during the summer, hence your letter of June 3d has been greatly delayed; which I trust you will pardon under the circumstances.

First, Under the circumstances stated in your first proposition, under section eight of the Dow Law, B would not be exempted from the payment of the tax. He would be carrying on an independent business, and would be liable for the tax.

Second, In the case of circus exhibition and side show combined, I think that a separate permit is not necessary, and that the usual custom is to obtain one permit for each day the show is exhibited. I am not clear, but that the statute would authorize a permit for each show, but I think

that such has not been the custom, especially when advertised as one show and under one proprietorship.

Third, In regard to the sale of land upon a judgment against the owner for delinquent taxes, I see no exception authorizing a sale except in the ordinary way by due appraisement and advertisement. A sale without such advertisement would probably be illegal, unless you know of some statute authorizing a sale to the highest bidder without appraisement

Very truly,

J. A. KOHLER,

Attorney General.

O. S. & S. O. HOME; DUTY OF TRUSTEES OF, REGARDING CERTAIN ACCOUNTS.

Attorney General's Office,
Columbus, Ohio, August 28, 1886.

N. A. Fulton, Esq., Secretary of Board of Trustees of "Home," Xenia, Ohio:

DEAR SIR:—Your favor of August 26th received. The financial agent of the "Home" was here the other day with accounts of the "Home" duly signed by two members of the board. I decided that two were not sufficient, and that it would require three, under the statutes.

I think, however, it is the duty of the members of the board to examine these accounts and sign them if correct, otherwise the money cannot be drawn. I make this sugges-

tion because the financial officer informed me that one of the trustees refused to take any action or was absent.

Yours very truly,

J. A. KOHLER,

Attorney General.

BONDS; SALE OF CERTAIN, IN MAHONING COUNTY.

Attorney General's Office,
Columbus, Ohio, August 28, 1886.

Disney Rogers, Esq., Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—Agreeably to your request for an opinion regarding the validity of certain bonds issued by the commissioners of Mahoning County, and sold on the 26th day of the present month, I will say that I have examined the special act of the General Assembly, passed May 10th, 1886, Ohio Laws, Vol. 83, p. 335, and am further informed by the prosecuting attorney that the sale of the bonds was advertised, and that on the day of the sale prior to the opening of the biddings, buyers were duly informed that the bonds were made payable, principal and interest, as provided for in said act. That in fact the bonds so issued were of the denominations following and payable as follows:

$2,500 to be paid March 1st, 1889; $2,500 to be paid September 1st, 1889; $2,500 to be paid March 1st, 1890; $2,500 to be paid September 1st, 1890; $5,000 to be paid March 1st, 1891; $5,000 to be paid September 1st, 1891; $5,000 to be paid March 1st, 1892; $5,000 to be paid September 1st, 1892, bearing interest at the rate of 5 per cent. per annum, payable semi-annually on the first days of March and September, except the last bond of $5,000, which was to become due on the first day of September following.

A copy of the advertisement for the sale of the bonds is hereto attached, showing a slight discrepancy in the date of the maturity of the last bond, $5,000, and the bond as issued and as provided for by the act.

There is obviously an error of dates apparent upon the face of the act of May 10th, 1886, but the error, in my judgment, is not of such a character as to affect the validity of the bonds. It was doubtless intended that the date of maturity should not be later than September 1st, 1892, whereas the first day of August, 1892, is the day named in the act, and in issuing, the bond is made payable on the first day of August, 1892, and the interest due on that date becomes payable on the first day of the September following.

I see nothing in this discrepancy of dates, or of the transaction and proceedings under the special act, to affect the validity of the bonds as issued and sold.

Yours very truly,
J. A. KOHLER,
Attorney General.

JAIL; ERECTION OF IN LAWRENCE COUNTY.

Attorney General's Office,
Columbus, Ohio, September 1, 1886.

Thos. Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Yours of August 30th to hand.

The special act to which you refer, found in Ohio laws, Vol. 72, p. 232, confers authority upon the commissioners of your county to build a court house *and* jail. It seems to me, however, that your commissioners used an insurance fund to repair the old court house, and now the question is, can you build the jail under that act? No objection occurs to me why this may not be done. The authority

to build a court house and jail would seem to be broad enough to cover either, and in the absence of any reason given by yourself to prevent the exercise of this power, my conclusion is that your commissioners, acting in good faith may proceed to build a jail.

Very truly,
J. A. KOHLER,
Attorney General.

ARMORY; DUTY OF COUNTY COMMISSIONERS TO PROVIDE.

Attorney General's Office,
Columbus, Ohio, September 1, 1886.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—It is the duty of the commissioners, under section of the statutes quoted, to furnish an armory for the use of the military in your county. Such a room should be suitable for the purpose in the discretion of the commissioners; and I think the commissioners have also something to say about incidental expenses, and to provide a limit or minimum therefor. I also think that in case of damage to the room, the commissioners would be compelled to make it good. I can hardly be more specific under a statute so general and indefinite as this one is.

Very truly yours,
J. A. KOHLER,
Attorney General.

TAXATION; OF FUNDS OF LODGES OF SECRET SOCIETIES.

Attorney General's Office,
Columbus, Ohio, September 2, 1886.

Alexander Hadden, Esq., Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—Yours of the 31st ult. is received. In regard to the inquiry "Whether the funds of lodges paid in by members, and either held by their treasurer or loaned out at interest are *credits* liable to taxation or not," I will say that I have consulted with Mr. Kiesewetter, auditor of state, and he is of the opinion that such funds are liable to taxation, and that such is the general practice in the State.

It is true that such funds are, in some sense, devoted to benevolence; it is rather a private benevolence and not a general one, however, and is generally limited to the members, conditioned upon payment of certain fees for entrance into the order and payment of dues as members; and in some cases insurance features are connected with such orders.

I am inclined to regard the opinion of the auditor of state as the rule upon that subject, viz.: that such funds are liable to taxation as "credits."

Yours truly,
J. A. KOHLER,
Attorney General.

Chief of Engineers on Governor's Staff; Compensation of, in Active Service—Mayor; Jurisdiction of, in Prosecutions Under Dow Liquor Law; Justice; Jurisdiction of, in Prosecutions Under Dow Liquor Law.

CHIEF OF ENGINEERS ON GOVERNOR'S STAFF; COMPENSATION OF, IN ACTIVE SERVICE.

Attorney General's Office,
Columbus, Ohio, September 3, 1886.

H. A. Axline, Adjutant General of Ohio:

DEAR SIR:—Your favor of July 14th duly received. You request me to give you an opinion as to what pay can be allowed the chief of engineers of the governor's staff, with the rank of colonel, when ordered on duty by the governor to assist in suppressing riot, etc.

I am of the opinion that he is entitled to such pay for each day's service performed, as is allowed commissioned officers of the same grade in the army of the United States.

Yours very truly,
J. A. KOHLER,
Attorney General.

MAYOR; JURISDICTION OF, IN PROSECUTIONS UNDER DOW LIQUOR LAW; JUSTICE; JURISDICTION OF, IN PROSECUTIONS UNDER DOW LIQUOR LAW.

Attorney General's Office,
Columbus, Ohio, September 3, 1886.

Robt. C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your favor of Aug. 14th duly received, and question there presented considered.

I am of the opinion that where complaint is made under section 6932, Revised Statutes, or section 11 of the Dow

liquor law, before a mayor or justice of the peace, and on arraignment the defendant pleads guilty, that the jurisdiction of the mayor or justice in such cases is limited to requiring bail for the appearance of the defendant in the Court of Common Pleas of the county.

I think that this is also the practice in such cases.

Yours very truly,

J. A. KOHLER,
Attorney General.

BOHEMIAN OATS NOTES; PROSECUTION OF MAKER OF; PEDDLER; WHAT IS A.

Attorney General's Office,
Columbus, Ohio, September 3, 1886.

W. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Your favor of August 23d received. Your question is, Can A, who is the holder and payee of a Bohemian oats note, be prosecuted under the recent act, Vol. 83, p. 162, O. L., for disposing of said note for value to B, the maker and payor of such note?

I gather from the above statement that A sold Bohemian oats to B and took his note for the price of the oats, and that B subsequently paid his note to A.

If the other circumstances as to the sale of the oats exist, as specified in the act, there can be no doubt that the party would be liable to be prosecuted under the act.

Second, a country retail merchant, who also runs a wagon and gathers up produce through the country, giving in exchange therefor various articles of merchandise, such as he retails at his store, is a peddler within the meaning of section 4398, Revised Statutes.

Third, such merchant can take out a license in his name and carry on his peddling business by his clerk or employe acting bona fide in that behalf.

Fourth, the prosecuting attorney may act as attorney for respondent in case of mandamus against a county official.

Yours very truly,
J. A. KOHLER,
Attorney General.

NOTARY PUBLIC, FEMALE CANNOT BE.

Attorney General's Office,
Columbus, Ohio, September 8, 1886.

Hon. J. B. Foraker, Governor of Ohio:

DEAR SIR:—The application of Norah C. Carpenter, an applicant for appointment to the office of notary public for Defiance County, has been handed to me, and my opinion requested upon the question, whether, under the laws of this State, the applicant (being a woman) is eligible to the office.

Section 110 of the Revised Statutes of Ohio, as amended Vol. 82, O. L., p. 17, in terms confines such appointments to the office of notary public to persons having the qualifications of electors who are citizens of the State, residing in the several counties from which they are appointed.

The original act provided for the appointment of persons, male and female, but this has been changed by the amendment referred to above.

It follows, therefore, that a woman, not being an elector in the State, cannot be appointed to the office of notary public.

Yours respectfully,
J. A. KOHLER,
Attorney General.

Schools; Compensation of Clerks in Subdistrict—Dow Liquor Law; When Increased Assessment Should be Paid.

SCHOOLS; COMPENSATION OF CLERKS IN SUBDISTRICT.

Attorney General's Office,
Columbus, Ohio, September 22, 1886.

R. W. Cahill, Esq., Prosecuting Attorney, Napoleon, Ohio:

DEAR SIR:—Your favor of September 2d duly received. I know of no provision for compensation of school clerks in subdistricts, except the remuneration provided for by virtue of section 4033, Revised Statutes.

As member of township board of education he can receive no pay. See section 6975 of the statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

DOW LIQUOR LAW; WHEN INCREASED ASSESSMENT SHOULD BE PAID.

Attorney General's Office,
Columbus, Ohio, September 8, 1886.

L. D. Sleeper, Esq., Prosecuting Attorney, Athens, Ohio:

DEAR SIR:—Your favor of August 3d received. In my judgment the *increased* assessment is payable as you suggest: one-half in June and the other half in December. As no express provision is made as to *time* of payment, the fair inference is, that it stands on the footing of the regular assessment as to *time*.

The act declares that in such cases, "the assessment" shall "be increased by the sum of two hundred and fifty dollars." Of course the lien holds good. If not paid

when *due*, the penalty must be attached and collected with the assessment.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTION; FOR CONSOLIDATION OF ELECTION PRECINCTS.

Attorney General's Office,
Columbus, Ohio, September 9, 1886.

Thos. Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Yours of the 6th instant received. Perry Township, Lawrence County, having been in 1862 divided into two election precincts by special act of the General Assembly, the question arises, whether a petition, under sections 1398 and 1399 of the Revised Statutes, to the commissioners of the county, for a consolidation of the two precincts can be entertained.

I am not entirely free from doubt, but my conclusion is that the will of a majority of the electors of the two precincts, properly expressed, should prevail; notwithstanding such special act, as well as where it has been divided by special act of the Legislature.

The act of dividing the township by the commissioners was done pursuant to an act of the General Assembly, and in case of a special act, it is simply a direct proceeding to the same end, and I see no reason why greater sanctity should attach to the one than to the other.

It requires a majority of all the ballots cast at each election precinct in order to effect a consolidation; so that it is not in the power of the stronger precinct, to override the weaker precinct, opposed to the change. The majority must be concurrent.

If, therefore, a petition is duly presented, under section 1398, Revised Statutes, and the provisions of the following sections relating to consolidation are fully complied with, I see no good reasons why the commissioners may not rechange the township into a single precinct.

Yours very truly,
J. A. KOHLER,
Attorney General.

OHIO PENITENTIARY; CONTRACT FOR MANUFACTURE OF CIGARS AT.

Attorney General's Office,
Columbus, Ohio, September 1, 1886.

Board of Managers of the Ohio Penitentiary, Columbus, Ohio:

GENTLEMEN:—In the matter of the contract of F. D. Klotts, dated the 16th day of March, 1885, for the manufacture of cigars, my opinion has been requested as to the proper construction of the first article of said contract, in this, to-wit, whether the sum of one dollar and fifty cents per thousand cigars shall be paid for the manufacture of each and every one thousand cigars made, or whether this properly includes the packing of the same in boxes or bundles.

In the statement of the case before me, I was informed that the latter construction has been the one adopted by the board of managers to a recent date, and that since the date of the contract the work has been paid for on that basis, indicating probably what the real intention was in this respect.

I am not entirely clear, but in such cases it is proper to look at what is "customary" and usual in such cases, and I think it will not be doubted that where cigars are sold by

Prosecuting Attorney; May Officially Advise Trustees of Children's Home of County.

the thousand, hundred or smaller number, that the meaning is that they are *in* boxes or packages. In other words, they are not generally sold at wholesale by the box or package, but by number contained *in* the boxes or packages. In other words, in case of an order to a manufacturer for a thousand cigars, I think he would be obliged to furnish them properly packed or gathered in bundles.

Entertaining this view, my opinion is that the contract should be so construed and carried out, viz.: that the cigars should be put in boxes or gathered in bundles.

Very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; MAY OFFICIALLY ADVISE TRUSTEES OF CHILDREN'S HOME OF COUNTY.

Attorney General's Office,
Columbus, Ohio, September 13, 1886.

Walter L. Weaver, Esq., Prosecuting Attorney, Springfield, Ohio:

DEAR SIR:—Yours of the 10th instant received. I am not prepared to say that the trustees of a county children's home are "county officers," in the technical sense of the words; but such trustees may, I think, be fairly included under the provisions of section 1274, Revised Statutes.

The "home" is a benevolent public institution, created by law and supported by the county, and the trustees are proper agents to superintend it under appointment of the commissioners of the county.

I have inquired of the auditor of state, Mr. Kiesewetter, as to the practice in this (Franklin) County. He

informs me that Mr. Outhwaite and other prosecuting attorneys of the county have from time to time rendered professional services to the trustees of the "home," for which compensation was made, but that the amount was allowed and paid on the order of the county commissioners under section 1274, and it seems to me that this is the better way.

In practice there will be no difficulty. The *trustees* of the home may present the account for services for payment to the commissioners and recommend its allowance, and the commissioners, being duly authorized, may make such allowance as may be just. In making this suggestion I do not decide that the money heretofore paid on the order of the trustees has been illegally paid; so far as I have been able to ascertain, I find that the commissioners of the county have allowed such claims when presented or recommended by the trustees, and my conclusion is, that when the prosecuting attorney is called upon to give official advice or render services to the trustees of the children's home in any county, that the claims should be allowed and paid on the order of the commissioners of the county.

Yours very truly,

J. A. KOHLER,

Attorney General.

MUNICIPAL CORPORATIONS; POWER OF COUNCILS OF, IN CONSTRUCTION OF STREET RAILWAYS.

Attorney General's Office,
Columbus, Ohio, September 13, 1886.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Yours of the 10th instant received. In my opinion the commissioners of Erie County have nothing to do with the construction of the street railway.

Sandusky is an incorporated city, and the matter of the

Prosecuting Attorney; Vacancy of Office of, How Filled.

extension of the street railway beyond the limits of the city, rests with the council of the city. See section 3438, as amended April 18th, 1883, O. L., Vol. 80, p. 174, which confers power upon the city council to meet the case.

Yours very truly,
J. A. KOHLER,
Attorney General.

PROSECUTING ATTORNEY; VACANCY OF OFFICE OF, HOW FILLED.

Attorney General's Office,
Columbus, Ohio, September 15, 1886.

Wm. W. Darby, Esq., County Clerk, Bryan, Ohio:

DEAR SIR:—Your favor of the 13th instant received. I would suggest that an application be made to the judge of your court, to fill the vacancy caused by the death of your prosecuting attorney, and have him appoint some proper person, as provided in section 1270, Revised Statutes.

It is true that the provision is, that the appointment shall be made by the *Court* of Common Pleas, and I am not prepared to say that this *clearly* gives the judge in vacation the power of appointment, but I think that was the intent. My opinion is, however, that such an appointment would be sustained; and when your court convenes, the appointment can be formally entered up.

Yours very truly,
J. A. KOHLER,
Attorney General.

Justice of the Peace; Tenure of Office of in Certain Case —Witnesses; Fees of, When Called to Testify Without Being Served With Subpoena.

JUSTICE OF THE PEACE; TENURE OF OFFICE OF IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, September 22, 1886.

Devor and Allread, Attorneys at Law, Greenville, Ohio:

GENTLEMEN:—Your favor of the 18th instant received. In regard to your question as to the time of expiration of the office of justice of the peace, where the commission expires October 16th, 1886, I am not entirely clear, but my judgment is, that the period of time between the 16th of October and the election in November (when the election will be held this year) must be considered as part of the term of office of the justice. In short, I think he will hold until his successor is elected and qualified.

Yours very truly,
J. A. KOHLER,
Attorney General.

WITNESSES; FEES OF, WHEN CALLED TO TESTIFY WITHOUT BEING SERVED WITH SUBPOENA.

Attorney General's Office,
Columbus, Ohio, September 23, 1886.

A. Leach, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Your favor of the 21st instant received. In such a case as you instance, the judgment of the court on conviction or plea of "guilty" is, that defendant pay a fine and the *costs* of prosecution; which includes the fees of witnesses. The defendant satisfied the judgment by paying fine and costs into the treasury of the county.

Sheriff; Vacancy in Office of, How Filled.

In such case, until I am shown some direct authority for not paying witnesses, I will hold that the witnesses are entitled to their fees out of the costs so paid.

Yours truly,
J. A. KOHLER,
Attorney General.

SHERIFF; VACANCY IN OFFICE OF, HOW FILLED.

Attorney General's Office,
Columbus, Ohio, September 24, 1886.

D. F. Reinoehl, Esq., Attorney at Law, Massillon, Ohio:

DEAR SIR:—Your favor of the 17th instant to hand, and it presents an interesting question, which I have considered and will endeavor to answer without regard to the political complexion of the case.

At the regular election in October, 1883, James Lee was elected sheriff of Stark County. His term commenced the 8th of January, 1884, and expired January 8th, 1886. He was re-elected at the October election of 1885, but between the date of his re-election and the expiration of his first term he died. The coroner of the county thereupon became sheriff (see 12th O. S. R., p. 428). The coroner continued to act as sheriff until the taking effect of his resignation about a week ago, and thereupon the commissioners of the county appointed a person to act as sheriff, under the provisions of section 1208 of the Revised Statutes.

Now it seems to me that on the resignation of the coroner, the office became vacant, and as that vacancy occurred more than thirty days before the next annual election, it will be legally in order, in my judgment, to elect a sheriff this fall at the regular election.

It seems to me quite unreasonable to say that the appoint-

Election; For Ascertaining Sentiment of Electors Regarding Local Option May Be Held at Time of a Regular Election.

ment by the commissioners, under section 1208, entitles the person so appointed to hold the office for the full term for which the sheriff was elected, when in fact he died and his office became vacant before the expiration of his first term.

It is unnecessary to discuss the question on my part. I give it as my best judgment, entirely uninfluenced by partisan considerations, that the office became vacant on the resignation of the coroner.

The appointment by the commisioners was proper and until a sheriff can be elected at the election in November of this year, the appointee will hold the office of sheriff.

Yours very truly,

J. A. KOHLER,

Attorney General.

ELECTION; FOR ASCERTAINING SENTIMENT OF ELECTORS REGARDING LOCAL OPTION MAY BE HELD AT TIME OF A REGULAR ELECTION.

Attorney General's Office,
Columbus, Ohio, September 24, 1886.

Roebreck and Brand, Bellefontaine, Ohio:

GENTLEMEN:—Your letter to General Robinson was handed me yesterday with a request to answer.

Such an election as you suggest, is, as you say, a mere expression of opinion, and in that respect it is entirely proper, and if at the annual election facilities are afforded to the people to vote upon this matter, and the judges and clerks simply superintend the taking of this vote, I do not see how it can affect the validity of the regular election.

Of course the matter would be kept entirely distinct and would have no more effect upon the election of State and

Muskingum Improvement; Transfer of, by State to United States.

county officers than if such vote was not taken. The taking of this special vote would be a mere unofficial matter, adopted for the convenience of the people, and I see no reason for objecting to the judges and clerks taking and counting the vote, *unless* their duties as election officers would be thereby interfered with.

Yours very truly,

J. A. KOHLER,
Attorney General.

MUSKINGUM IMPROVEMENT; TRANSFER OF, BY STATE TO UNITED STATES.

Attorney General's Office,
Columbus, Ohio, September 24, 1886.

Hon. J. B. Foraker, Governor of Ohio:

DEAR SIR:—Your communication of the 13th instant, enclosing sundry documents, relating to the transfer to the proper officers of the United States of all rights and franchises of the Muskingum River, as provided by House Joint Resolution, No. 55, O. L., Vol. 83, p. 412, received.

In order to accomplish the formal transfer and rights of the State of Ohio in the premises, I suggest that the board of public works of the State of Ohio, as the proper agent of the State, prepare at once a full statement of all the property in any way pertaining to the Muskingum improvement, and a full and complete transfer of the same on the part of this State to the United States.

The war department at Washington upon being notified that such statement has been prepared will designate the engineer officer to examine the same and receive the transfer. After examining the river and harbor act of August 5th, 1886, the joint resolution of the General

Requisition; Governor Should not Honor Certain, Because Not Complying with Laws of This State.

Assembly of Ohio, passed May 14th, 1886, and the letter of advice of acting secretary of war, I think that this is all that remains to be done and will complete the transfer.

Yours very truly,

J. A. KOHLER,
Attorney General.

REQUISITION; GOVERNOR SHOULD NOT HONOR CERTAIN, BECAUSE NOT COMPLYING WITH LAWS OF THIS STATE.

Attorney General's Office,
Columbus, Ohio, September 24, 1886.

Hon. J. B. Foraker, Governor of Ohio:

DEAR SIR:—Your letter of the 17th instant, enclosing a requisition by the governor of the commonwealth of Virginia with copy of indictment duly certified and attached, duly received.

Having carefully examined the same, as well as the law bearing upon the subject, I have the honor to answer your request for an opinion as to your duty in the premises as follows:

First—It is not accompanied with sworn evidence that the party charged is a fugitive from justice.

Second—That the demand or application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt or pecuniary mulct of removing the alleged fugitive to a foreign jurisdiction with a view there to serve him.

Third—There is no statement in writing from the prosecuting attorney of the proper county, briefly setting forth the facts of the case, the reputation of the party or parties asking such requisition, and whether, in his opinion,

such requisition is sought from improper motives or in good faith.

In each application such evidence should be furnished in order to comply with section 95 of the Revised Statutes of Ohio, as amended Ohio Laws, Vol. 81, p. 28.

This opinion is in accordance with numerous opinions heretofore given upon the same subject by my predecessors in office.

I, therefore, advise the withholding of your warrants in these cases until such evidence is filed with you.

Respectfully submitted,
J. A. KOHLER,
Attorney General.

AUDITOR OF COUNTY; TENURE OF OFFICE, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, October 1, 1886.

Mazzini Slusser, Esq., Prosecuting Attorney, Wauseon, Ohio:

DEAR SIR:—Your favor of the 27th to hand. Under the law passed last winter, the present auditor gains ten months' time.

No appointment need be made, but the present incumbent holds over.

While it is true that the present auditor was elected for the term of three years, the extension of the time is, in my opinion, provided for by section eight of the Revised Statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

Publication; of Names of Persons Appointed to Act as Judges, Etc., of Election in City of Columbus.

PUBLICATION; OF NAMES OF PERSONS APPOINTED TO ACT AS JUDGES, ETC., OF ELECTION IN CITY OF COLUMBUS.

Attorney General's Office,
Columbus, Ohio, October 4, 1886.

Paul Jones, Esq., President of Board of Elections, Columbus, Ohio:

DEAR SIR:—Your letter of the 2d instant requesting an examination and construction of the act of February 23d, 1886 (Vol. 83, p. 13, O. L.) received.

The question "whether by this act, the board of elections shall cause notice of publication of the persons appointed to act as judges and clerks by *one* or *ten* insertions in three daily newspapers before any municipal election," is one that was referred to me prior to the municipal election last spring, and I then had occasion to examine, and upon the request of the then board of elections gave an opinion to the effect that *ten insertions* in three daily newspapers would *certainly* be a compliance with law, while one insertion only, ten days before the election would be doubtful, and in view of the importance of the matter, I advised the board to publish the notice for ten days consecutively prior to the election.

In accordance with your request, and in order to correct any error of judgment on my part in the opinion heretofore given, I have again examined the sections referred to, as well as consulted the authorities noted in your letter.

The law requires that the board "shall give notice *for not less* than *ten* days next preceding every municipal or general election." The giving of this notice is not merely a formal matter. The purpose is to furnish the electors full information, and I think it was intended to give it full ten days' publication in order that all might be advised. The requirement that notice shall be given *for not less than ten*

days is equivalent to saying: for and *during* ten days preceding the election. In other words, I cannot construe this language as if it read: "said board shall give at least ten days' notice next preceding the election." The language employed in this section is so clear, that I do not feel at liberty to disregard it by assuming that something else was in fact intended. If one insertion is sufficient, why the requirement that it should be published in three daily papers? If one insertion was all that was deemed necessary, why not publish it in a weekly paper at least ten days preceding the election? The requirement that the notice shall be published in three "daily papers" for not less than ten days next preceding the election, as well as the great importance attending the holding of elections, satisfy me that one insertion is not sufficient and that notice should be published in three daily papers of large circulation for not less than ten days (consecutively) next preceding the election.

Yours very truly,
J. A. KOHLER,
Attorney General.

TAXATION; OF LANDS BELONGING TO STATE.

Attorney General's Office,
Columbus, Ohio, October 8, 1886.

W. W. Terry, Esq., County Auditor, Van Wert, Ohio:

DEAR SIR:—Your letter of the 24th prox. has been referred to this office by the governor.

In my opinion the lands mentioned in your favor, belonging to the State, are prohibited from being taxed for any purpose by subdivision 3, section 2732, of the Revised Statutes of Ohio.

Board of Education; Township Board Cannot Employ Clerk of Township as Teacher.

The above is also the view taken by the auditor of state, Mr. Kiesewetter.

Yours very truly,
J. A. KOHLER,
Attorney General.

BOARD OF EDUCATION; TOWNSHIP BOARD CANNOT EMPLOY CLERK OF TOWNSHIP AS TEACHER.

Attorney General's Office,
Columbus, Ohio, October 9, 1886.

J. S. McNeal, Esq., Gillespieville, Ohio:

DEAR SIR:—Your favor of September 30th received. In my opinion a township clerk cannot be selected as a teacher by the board of education of said township.

Section 3915 of the Revised Statutes makes him a member of the board of education of the township, and section 3974 explicitly says that: "No member of a board shall * * be employed in any manner for compensation by the board of which he is a member."

The opinion above given is also in harmony with an opinion rendered by Judge Nash while attorney general, and has not since been overruled by any of his successors.

Yours very truly,
J. A. KOHLER,
Attorney General.

Asylum for Insane; Toledo; Contract With U. S. Electric Lighting Co.

ASYLUM FOR INSANE; TOLEDO; CONTRACT WITH U. S. ELECTRIC LIGHTING CO.

Attorney General's Office,
Columbus, Ohio, October 4, 1886.

Trustees of the Toledo Asylum for the Insane, Toledo, Ohio:

GENTLEMEN:—The contract entered into by and between the trustees of the Toledo Asylum for the Insane and the United States Electric Lighting Co., for the lighting of said asylum, dated September 22d, 1886, having been submitted to me for my approval, in accordance with section 785 of the Revised Statutes, I find upon due investigation and hearing of the parties, the following facts connected with the making of said contract:

First—The contract for lighting said asylum was awarded to the United States Electric Lighting Company for the sum of eighteen thousand dollars.

Second—The trustees did not make or cause to be made before entering into said contract, full, complete and accurate plans for the lighting of said asylum, together with drawings and specifications of the work to afford bidders needful information; and also estimate of cost of said work, as provided by section 782 of the Revised Statutes of Ohio.

Third—No such plans, drawings and specifications of work, estimates of the costs thereof in detail and in the aggregate were submitted to the governor, auditor and secretary of state for their approval, as provided by section 783, Revised Statutes, when the aggregate cost of the work exceeds the sum of three thousand dollars.

In my opinion, a substantial compliance with the several sections of the Revised Statutes above referred to is indispensable to the validity of the contract in this and similar cases, where the amount exceeds the sum of three

thousand dollars, and for the reason stated, without in any manner questioning the entire good faith of the parties, I feel constrained to withhold my official approval of this contract, and respectfully suggest that full and complete plans and drawings be prepared as the law requires, and that the law in the particulars above noted be carefully complied with.

Yours very truly,
J. A. KOHLER,
Attorney General.

BAIL; WHEN PERSON INDICTED FOR MURDER MAY BE ADMITTED TO.

Attorney General's Office,
Columbus, Ohio, October 16, 1886.

T. H. Kellogg, Esq., Prosecuting Attorney, Norwalk, Ohio:

DEAR SIR:—Yours of the 7th instant received, but found it impossible, on account of a press of other matters demanding prior attention, to answer your inquiries.

Your first question, "Is a man, indicted for murder in the first degree, entitled to bail before plea, upon a mere motion, unsupported by any affidavit or other evidence?" I answer in the negative.

The question relating to the authority of the probate judge to admit, in cases of that nature, I will also answer in the negative.

Your third inquiry: whether the Court of Common Pleas may admit to bail after indictment in a capital case, I will answer by saying that if there are special circumstances warranting it, and the evidence upon that point is satisfactory to the court, I think he may admit to bail.

Elector; Guard at Ohio Penitentiary; May Vote at Place He Considers His Home Although His Family are Living in Columbus.

The questions rest, however, in the sound judgment of the court, but he should use his authority in the matter with great discretion.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTOR; GUARD AT OHIO PENITENTIARY; MAY VOTE AT PLACE HE CONSIDERS HIS HOME ALTHOUGH HIS FAMILY ARE LIVING IN COLUMBUS.

Attorney General's Office,
Columbus, Ohio, October 20, 1886.

C. H. Elliott, Esq., Guard Ohio Penitentiary:

DEAR SIR:—Yours of the 18th instant received. If you are in Columbus for a temporary purpose only, and fully expect to return to your home in Medina County as soon as you are relieved of your situation here, you should, in my judgment, cast your vote at your place of residence in Medina County.

See section 2946, 1, 2, 3, of the Revised Statutes of Ohio.

Yours very truly,
J. A. KOHLER,
Attorney General.

State Board of Health; Meetings of; Compensations, Etc. of Members of.

STATE BOARD OF HEALTH; MEETINGS OF; COMPENSATIONS, ETC., OF MEMBERS OF.

Attorney General's Office,
Columbus, Ohio, October 20, 1886.

W. H. Cretcher, M. D., President of Ohio State Board of Health:

DEAR SIR:—In answer to your request for an opinion as to the intent and meaning of sections 6 and 7 of the act of the General Assembly passed April 14th, 1886, I will say that the act specifically provides for two regular meetings to be held in January and June of each year. In addition to these two meetings, not exceeding three called meetings are authorized. None of these meetings, however, shall continue longer than three days.

In my opinion this limitation as to the number of meetings and number of days that such meetings shall continue, has reference to the compensation of members of the board. So that each member will be entitled to receive the stipulated sum of five dollars for not exceeding fifteen days in any one year. Other and further meetings may doubtless be held and business lawfully transacted thereat; but as to all such meetings, whether by adjournment or specifically called, there is no provision for compensation of members. Any member, when traveling on official business under the direction of the board, is entitled to receive his traveling and other expenses while so employed; it is a matter of some doubt, as the law reads, whether in addition to traveling and other expenses a member is entitled to five dollars per day for the time so occupied. I am disposed, however, to give the law a fair and even liberal construction in order to promote the beneficial end for which it was enacted, and taking into consideration section two of the act, which indicates the scope of action and in general terms enjoins the duty of the

board, it will occur to any one that emergencies will arise requiring prompt action and investigation at times other than at the regular or called meetings, imperatively demanding the presence of some members of the board, perhaps in a remote part of the State.

In all such cases, the board, exercising a sound discretion, would be warranted in directing a member or members to make such inquiries and take such action as was necessary under the circumstances, and for the time so employed by any member, under the direction of the board, the regular compensation of five dollars per day as well as traveling and other expenses, should be allowed and paid.

Yours very truly,
J. A. KOHLER,
Attorney General.

ELECTIONS; SELECTION OF CLERKS ON TOWNSHIP BOARD OF.

Attorney General's Office,
Columbus, Ohio, October, 21, 1886.

L. A. Parrish, Esq., Wakatomika, Ohio:

DEAR SIR:—Your favor of the 20th instant received. I know of no statute in this State which makes it necessary that the two clerks of a township board of elections should be of opposite political parties.

But while there is no positive requirement that the clerks should be chosen with reference to their party adhesion, yet I think it would be no more than fair that both political parties should be represented in the selection of clerks.

I would also call your attention to section 2935 of the Revised Statutes of Ohio.

Very truly yours,
J. A. KOHLER,
Attorney General.

Fish and Game Law; Authority of Wardens to Arrest for Violations of.

FISH AND GAME LAW; AUTHORITY OF WARDENS TO ARREST FOR VIOLATIONS OF.

Attorney General's Office,
Columbus, Ohio, October 30, 1886.

Hon. C. V. Osborn, Dayton, Ohio:

DEAR SIR:—Yours received and contents noted. Section 409, Ohio Laws, Vol. 83, p. 186, specially authorizes wardens to make arrests of all persons, wherever found in the State, and who have violated the laws of the State enacted for the protection of fish and game.

They may certainly arrest all persons *found* in the act of violating the law, and I think it was intended to make the authority to arrest broader, so as to include the service of a warrant duly issued in such cases.

Until the courts hold otherwise, I think justices should issue writs to the wardens in case of violation of the fish and game laws. The law is not very clearly expressed, but the above was, I think, fairly intended.

Yours very truly,
J. A. KOHLER,
Attorney General.

EXTENSION OF OFFICERS' TERMS UNDER THE LAW ABOLISHING OCTOBER ELECTIONS.

Attorney General's Office,
Columbus, Ohio, November 8, 1886.

Hon. J. B. Foraker, Governor of Ohio:

DEAR SIR:—In answer to the communication from the auditor of Portage County, which you enclose, I have to say:

Extension of Officers' Terms Under the Law Abolishing October Elections.

Under section 1013, Revised Statutes, which went into effect January 1st, 1880, county auditors were elected for three years, their election being on the second Tuesday of October, and their term commencing on the second Monday in November thereafter. This makes the terms of those elected under this law in 1883, 1884 and 1885, expire the second Monday of November, 1886, 1887 and 1888 respectively.

In pursuance of the recent amendments of the constitution with reference to elections, the Legislature, in March of the current year, changing the election of county officers from the second Tuesday in October to the first Tuesday after the first Monday in November (Vol. 83, O. L., p. 35), thus bringing the election and the commencement of the terms of county auditors within six days of each other, and therefore necessitating a change of the time for the commencement of the term of those elected under the law of May 18th, 1886 (83 Vol. O. L., p. 198), by an amendment of said section 1013 which makes it read as follows: "A county auditor shall be chosen, triennially, in each county, who shall hold his office for three years, commencing on the second Monday of September next after his election." This leaves a hiatus of ten months between the termination of the terms of those elected under the old law and the commencement of the term of those elected under the new law.

The Legislature made no provision for this interim. How such provision could have been made I will indicate at the close of this opinion.

The question now is whether those who were elected in 1883, and whose terms expire the second Monday of this month, are to hold over till the second Monday of September next, when their successors, elected this fall, will have qualified, and will enter upon the new terms; or, whether a vacancy will occur next Monday, which will have to be

Extension of Officers' Terms Under the Law Abolishing October Elections.

filled otherwise than by elections, and if so, how and by whom?

Section eight of the Revised Statutes provides that "any person holding any office or public trust, shall continue until his successor is elected or appointed and qualified, unless it is otherwise provided in the constitution or laws."

There is nothing in the laws, that is, the statutes of the State, to prevent the operation of this section to work a continuance of county auditors in their offices after their fixed terms have expired. A mere fixing of the term by statute would not prevent it; something in the nature of prohibition; something express or explicit would be required, because the two statutes would be of equal obligation, and in the absence of express words to prevent, section eight would be construed in pari materia.

The only query there is, is whether there is anything in the constitution to prevent such operation of section eight of the statutes.

Section ten of the schedule to the constitution says: "All officers shall continue in office until their successors shall be chosen and qualified," and this clause, if applicable to the present case, would answer the query very fully and satisfactory. But in State vs. Taylor, 15 Ohio State Reports, the Supreme Court, after able and exhaustive argument, held unanimously that this section was not intended as a permanent provision of the constitution, and as such, applicable to officers chosen or appointed under the present constitution, but was limited in its application to officers chosen or appointed under the old conditions; that is, in other words, it had for its sole object the facilitating the transition of terms from one to the other constitution. Its being placed in the schedule and not in the constitution proper was probably sufficient to justify this construction.

Looking then to the constitution itself, we are at once

struck with the fact that it distinguishes sharply, and sometimes in the same article, between officers, as to whether the incumbents shall or shall not hold over the fixed terms.

Article II, section two, says the term of office of Senators and Representatives "shall commence on the first day of January next thereafter (after elections) and continue two years."

Article III, section two, provides that "governor, lieutenant-governor, secretary of state, treasurer and attorney general shall hold their offices for two years, and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified."

Article IV, section nine, limits justices of the peace to three years; section ten limits the terms of judges not provided for in the constitution to five years; section eleven limits judges of the Supreme Court to five years; section twelve fixes the term of common pleas judges at five years; section twenty-one, providing for judges of the Supreme Court commission, limits those of the first commission to three years, and those of subsequent commissions to two years, but section sixteen of the same statute, providing for the election of a clerk in each county, says he shall hold his office for the term of three years, and until his successor shall be elected and qualified."

Article VII, relating to public institutions, does not fix the term of directors and the trustees of the penitentiary and the benevolent institutions, but in section three, in providing for filling vacancies, it says the governor shall have power to fill them "until the next General Assembly, and until a successor to his appointee shall be confirmed and qualified."

Article X provides for county and township organizations and in section two says: "County officers shall be elected on the second Tuesday of October, until otherwise directed

Extension of Officers' Terms Under the Law Abolishing October Elections.

by law, by the qualified electors of each county, in such manner and for such term, not exceeding three years, as may be provided by law." The amendment of 1885 changed this section so as to read as follows: "County officers shall be elected on the first Tuesday after the first Monday of November, by the electors of each county, in such manner and for such term, not exceeding three years, as may be provided by law. The same article, section four, provides, as to township officers, that they shall hold their offices "for one year * * * and until their successors are qualified." This section also was amended in 1885, providing that these officers shall be elected "for such term, not exceeding three years, as may be provided by law; but shall hold their offices until their successors are elected and qualified."

This difference of language, with reference to different offiers, as to whether they shall or shall not hold over their fixed terms, is very significant and it challenges our closest consideration. The canons of construction would not authorize the same meaning to be given to the two totally different wordings of the several provisions. No one would think of holding that Senators and Representatives and judges could hold over their fixed terms; and yet the language of the constitution, with reference to the terms of office, is not stronger than it is with reference to the terms of county officers. It is in fact not so strong, for it only fixes their term for a definite term, whereas to county officers the expression is "not longer than three years." I have no hesitation, therefore, in holding that county auditors elected in 1883 will go out of office on the second Monday of November, 1886, and that vacancies will then exist in their offices that must be filled by appointment.

The construction thus given is expressly sustained by the Supreme Court in the case already referred to in 15 Ohio State Reports, speaking of the section quoted above from the schedule of the constitution the court says: "It

Extension of Officers' Terms Under the Law Abolishing October Elections.

cannot be said that the subject matter of the section was overlooked by the framers of the constitution, for there are several distinct clauses in different parts of the instrument, in which it is especially provided that certain officers shall hold their offices until their successors are chosen and qualified, and this makes a case for the application of the meaning, 'expressio unius,' etc."

As to filling the vacancies thus created, section 1017 provides the power and clothes the county commissioners with the necessary authority. "When a vacancy happens in the office of county auditors, from any cause, the commissioners shall appoint some suitable person, resident of the county, to fill such vacancy." A vacancy will happen next Monday and must be filled. But I do not wish to be understood as passing on the question as to the power or right of the board of control, in counties having such body, and any power they have in respect of such appointment is a question not before me, and which I have not considered.

One word as to the future: Had the Legislature, in making this change as to the time for the commencement of the term of county auditors, provided that the immediate successors of the auditors elected under the old law should take their offices on the second Monday of November of the year thereafter, but that thereafter the term should be three years, the interim arising under the present Legislature would have been avoided; and it is worthy of consideration whether the law of last winter should not, at the present session, be so amended as to provide that the election of auditors in the years 1887 and 1888 should not be so provided for. It would be inconvenient, because of the closeness of the election to the time named; but this inconvenience is not an insuperable obstacle, and, occurring but once, could be submitted to. This would hereafter remove the difficulty now met with. The office is one in which frequent changes and short incumbencies are not

Schools; Power of Treasurer of Township to Transfer School Funds in Certain Case.

desirable. I do not see any other way of avoiding the recurrence of these vacancies for the next two years, for, under the constitutional provisions on the subject, it is not competent for the legislature to authorize a holding over beyond the three years.

It is proper that I should say that my impression at first was that under section eight of the Revised Statutes, the auditor in office would hold over until his successor is qualified, and I so advised in one or two cases. More careful consideration has induced me to come to the opinion above expressed. The question will, however, be tested in the courts.

Very respectfully,
J. A. KOHLER,
Attorney General.

SCHOOLS; POWER OF TREASURER OF TOWNSHIP TO TRANSFER SCHOOL FUNDS IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, November 11, 1886.

P. M. Smith, Esq., Prosecuting Attorney, Wellsville, Ohio:

DEAR SIR:—Your favor of the 2d instant received. I can find no authority compelling or authorizing the township treasurer to transfer the school funds to the treasurer of the board of education of the special district.

The act creating this special school district makes no provision for the transfer of such school funds, as did the act creating the special district in the New London case. See Ohio Laws, Vol. 76, p. 229.

Yours very truly,
J. A. KOHLER,
Attorney General.

Board of Public Works; Authority of to Allow Certain Constructions Within Ten Feet of Berme Bank of the Canal.

BOARD OF PUBLIC WORKS; AUTHORITY OF TO ALLOW CERTAIN CONSTRUCTIONS WITHIN TEN FEET OF BERME BANK OF THE CANAL.

Attorney General's Office,
Columbus, Ohio, November 10, 1886.

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

GENTLEMEN:—Your letter of November 8, propounding the question: "Does the law passed March 28, 1840, or any other law passed subsequently to then and now in force, admit of any portion of a railway embankment, wall or building being constructed nearer than ten (10) feet from the inner line of the berme bank of any of the State canals when said bank is in excavation?" In answer to this I will say that I know of no law that will admit of any portion of a railway embankment, wall or building being constructed nearer than ten feet from the inner line of the berme bank of any of the State canals when said bank is in excavation.

Query two: "Can a right of way be granted to a railway over any State lands connected with water power used for manufacturing purposes and under lease, either by the board of public works or the lessee of such premises?"

The power to grant a right of way to a railway company over any State lands is not conferred upon the board of public works. It is possible that a permit could be given to use such property, subject to the right of the State to resume possession at any time, and this is also a sufficient answer to your third question: "Can a right of way be granted to construct a railway across or through any State lands lying adjacent to any of the State canals by the board of public works?"

It is doubtless true that State property has in many instances been taken and occupied by private persons

and corporations, without objection or complaint on the part of the board of public works, where such possession and occupancy does not materially interfere with the canals, but such occupancy and possession is entirely distinct from the grant of a right or conveyance to hold the same as against the State.

Yours very truly,

J. A. KOHLER,

Attorney General.

MINES; WORKING OF UNDER SECTION 303; INSPECTOR OF MINES; NOT REQUIRED TO GIVE BOND.

Attorney General's Office,
Columbus, Ohio, November 11, 1886.

Hon. T. B. Bancroft, Chief Inspector of Mines, Columbus, Ohio:

DEAR SIR:—Your favor of the 1st inst. to hand. In regard to your first question, as to the necessity of giving bonds in such cases, under section 303, I am of the opinion that the inspector is not required to give bond in such cases. The action in such a case is brought in the name of the State of Ohio. See section 303, Revised Statutes; and section 213 of the Revised Statutes provides that "No undertaking or security is required on behalf of the State or any officer thereof in the prosecution or defense of any action, writ or proceeding" and I therefore answer your first question in the negative.

Second query: "Does the prohibition, in said section, against 'working or operating such mine, with more than ten men at once, permit the employment of ten men by day and ten by night in such mine?'" The prohibi-

Municipal Corporation; Member of Village Council May Vote When Presiding at Meeting.

tion in this section extends to the number of workmen employed; not more than ten can be worked at once in such mine, but I see nothing in this section that would prohibit the employment of not exceeding ten men during the night as well as during the day.

If, therefore, a force of not exceeding ten men are employed during the day and another force of not exceeding ten men are employed during the night, I cannot say that such employment would be prohibited by the language of this section. The prohibition, as it reads, applies to the number of men and not to the number of hours.

Yours very truly,
J. A. KOHLER,
Attorney General.

MUNICIPAL CORPORATION; MEMBER OF VILLAGE COUNCIL MAY VOTE WHEN PRESIDING AT MEETING.

Attorney General's Office,
Columbus, Ohio, November 12, 1886.

J W. Kilgore Esq., West Cairo, Ohio:

DEAR SIR:—Your favor of the 9th inst. received. In my opinion in a village council, when the mayor is absent and one of the members is chosen as temporary chairman, he is not, on that account, debarred from voting on any question on which, as a member of the council, he has a right to vote.

Yours very truly,
J. A. KOHLER,
Attorney General.

Prosecuting Attorney; Duty of, To Prosecute in Certain Case.

PROSECUTING ATTORNEY; DUTY OF, TO PROSECUTE IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, November 12, 1886.

C. B. Winters Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Yours of October 29th received. It presents an interesting question of practice, and my conclusion is that when a prosecution is instituted before a mayor of a village, such as you describe, in the name of the village, for the violation of an ordinance, and the mayor, under section 1897 of the Revised Statutes, causes the defendant to enter into recognizance to appear in the Court of Common Pleas for trial, that in such a case an indictment by a grand jury is not necessary, but that the Court of Common Pleas has jurisdiction to hear the case upon the complaint made before the mayor. Under section 6454, as amended, Ohio Laws, Vol. 83, p. 135, the Probate Court has doubtless the same jurisdiction.

In regard to the duty of the prosecuting attorney in such cases, I am not prepared to say that the case is to be likened to the ordinary case of peace warrant which is not considered a criminal case. The public interests involved are such that, in my opinion, the prosecuting attorney should see to it, when such complaint is presented to the Court of Common Pleas, that it is duly and effectually prosecuted.

The Court of Common Pleas, by virtue of the section above quoted, acquires jurisdiction.

It is essentially a criminal case and it seems to me that it would be proper for the prosecutor to represent the complaint.

Costs; Payment of When Incurred in Prosecutions. Under 1104.

I am giving you my views without any aid from any decided case, but merely the result of my judgment.

Yours very truly,

J. A. KOHLER,
Attorney General.

COSTS; PAYMENT OF, WHEN INCURRED IN PROSECUTIONS UNDER 1104.

Attorney General's Office,
Columbus, Ohio, November 19, 1886.

J. H. Southard, Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—Your letter of recent date received. I beg pardon for the delay in answering, until today I have had no time to give attention to the question you present, which is as follows: "Is the county liable, in any event, for the payment of any costs of the treasurer which may be made in the prosecution of the 'civil action' provided for in section 1104—in other words, is there any authority for the payment of costs made by the treasurer in any civil action in section mentioned above, out of the county treasury?"

In respect to this question, without arguing the point or stating reasons at length, I have come to the conclusion to advise, at least until the courts hold otherwise, that such costs should be paid out of the county treasury.

The treasurer is certainly authorized to bring the action, and it seems to me that the same should be paid out of the county treasury. I have examined the case stated—26 O. S. R., p. 364—and while it is not precisely

in point in this matter, I think it has a bearing upon it. I therefore answer your question in the affirmative.

Yours very truly,

J. A. KOHLER,
Attorney General.

PROBATE JUDGE; FEES OF, FOR APPROVING ACCOUNTS OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, November 19, 1886.

W. S. Hudson, Esq., Prosecuting Attorney, McArthur, Ohio:

DEAR SIR:—Yours of the 16th inst. relating to the account your probate judge presented to the county commissioners for services in *approving* accounts of commissioners, to hand.

I am unable to find any authority for the payment for such services, and unless your probate judge can refer me to some statutory provision (which possibly I may have overlooked) I will have to advise, when my opinion is asked, that such payment cannot legally be made.

Yours very truly,

J. A. KOHLER,
Attorney General.

Armory; County Commissioners May Anticipate Levy to Provide; Auditor of County; Must Furnish New Bond On Appointment to Vacancy.

ARMORY; COUNTY COMMISSIONERS MAY ANTICIPATE LEVY TO PROVIDE; AUDITOR OF COUNTY; MUST FURNISH NEW BOND ON APPOINTMENT TO VACANCY.

Attorney General's Office,
Columbus, Ohio, November 19, 1886.

John M. Swartz, Esq., Prosecuting Attorney, Newark, Ohio:

DEAR SIR:—Yours of the 17th inst. to hand. In regard to your first inquiry—as to the duty of the county commissioners to provide armories under section 3085, as amended, Ohio Laws, Vol. 83, p. 101, I would say that as no particular fund is indicated in the act, out of which the expense of providing an armory is to be paid, and as no special fund is created, my judgment is that such expense must be paid out of the county fund until otherwise provided by law; and if the fund is insufficient for this purpose at the present time, I can see no objection to the commissioners anticipating such levy as may be necessary for the purpose, by making a lease or otherwise providing suitable armories for your military organizations.

In regard to your second inquiry, involving the construction of the law relating to county auditors, etc., Ohio Laws, Vol. 83, p. 198, I am of the opinion that the officers appointed to fill the interim, until the incoming auditor qualifies, should furnish a bond for such time. I think the bond of the old auditor, if he is appointed to fill the vacancy, would not be sufficient, as his sureties would not be holden. A new bond with sufficient sureties should therefore be required.

Yours very truly,
J. A. KOHLER,
Attorney General.

County Commissioner; Infirmary Director; Vacancy in Office; How Filled—Inspector of Workshops and Factories; No Power to Make Official Inspection Within the Walls of Ohio Penitentiary

COUNTY COMMISSIONER; INFIRMARY DIRECTOR; VACANCY IN OFFICE; HOW FILLED.

Attorney General's Office,
Columbus, Ohio, November 19, 1886.

Walter L. Weaver, Esq., Prosecuting Attorney, Springfield, Ohio:

DEAR SIR:—Your favor of November 16th to hand. In regard to the vacancies in the offices of commissioner and infirmary director in your county, I would say, that, in my judgment, appointments should be made to fill the interim until the new officers qualify, and that when an old incumbent is appointed in such place, a new bond should be given.

Yours very truly,
J. A. KOHLER,
Attorney General.

INSPECTOR OF WORKSHOPS AND FACTORIES; NO POWER TO MAKE OFFICIAL INSPECTION WITHIN THE WALLS OF OHIO PENITENTIARY.

Attorney General's Office,
Columbus, Ohio, November 19, 1886.

Hon. Henry Dorn, Chief Inspector of Workshops and Factories:

DEAR SIR:—Your letter of November 11th received. I have considered the question presented, as well as the official opinion of Hon. James Lawrence upon the same subject, dated April 22d, 1884.

County Commissioner; Vacancy in Office of, How Filled.

I cannot say that Mr. Lawrence is wrong in his view. The Ohio penitentiary is a penal institution designed for the safekeeping and reformation of persons convicted of crime. It is conducted under the direction of a board of managers appointed by the governor and under the eye of the General Assembly and its appropriate committees. These managers are not employers, but are officers of the State, acting under an oath of office as well as the sanction of official duty. I concur, however, in the opinion given by Attorney General Lawrence that it would be entirely proper for the chief inspector of workshops and factories, or his assistants, to make such suggestions as to him may seem judicious and proper for the purpose of protecting convicts and others employed in the penitentiary from disease and accident, and I have no doubt that such suggestions would be duly accepted by the managers and acted upon by them.

The inspectors of workshops and factories, from extensive experience in such matters, would certainly be able to make very many valuable suggestions to the managers, thus preventing many of the accidents and injuries to persons that so often occur within the walls of the institution.

Yours very truly,

J. A. KOHLER,

Attorney General.

COUNTY COMMISSIONER; VACANCY IN OFFICE OF, HOW FILLED.

Attorney General's Office,
Columbus, Ohio, December 3, 1886.

A. L. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Your letter of November 30th as well as the one prior thereto came in my absence.

In my opinion section 842 of the Revised Statutes governs the appointment of a county commissioner in your

county, the vacancy in which office was caused by the amendment to section 839, Ohio Laws, Vol. 83, p. 198.

Yours very truly,

J. A. KOHLER,

Attorney General.

MUNICIPAL CORPORATIONS. MAY EFFECT INSURANCE IN A MUTUAL FIRE INSURANCE COMPANY.

Attorney General's Office,
Columbus, Ohio, December 3, 1886.

J. H. Rhodes, Esq., Attorney-at-Law, Clyde, Ohio:

DEAR SIR:—I have considered the question presented in your letters, and although there are difficulties in the question presented and I am by no means sure that I am right, yet I have concluded to say, that, in my judgment, such insurance in a mutual company may be effected; and where a premium note is given, section 2702, Revised Statutes, should be complied with so far as possible by returning the maximum amount.

If I am wrong in this view the courts will correct me, but in the interest of open and fair competition in insurance rates, I have arrived at this conclusion.

I am informed, moreover, that it is practical in a great many places, and an insurance taken out in this way.

Yours very truly,

J. A. KOHLER,

Attorney General.

COSTS; OF JURY IN CRIMINAL CASES.

Attorney General's Office,
Columbus, Ohio, December 4, 1886.

W. C. Shepherd, Esq., Prosecuting Attorney, Hamilton, Ohio:

DEAR SIR:—Yours of November 24th to hand. In regard to the question of taxing up a jury fee of six dollars to be paid by the State in criminal cases, I will say that this question has been decided adversely to the right to make such a charge. Section 1330, to which you refer, provides for taxing a jury fee as part of the judgment to be collected from the defendant, when he has property to collect from.

The auditor of state has held that it was incumbent upon the county to furnish a jury fee for the term for the trial of criminal cases and that there was no authority by which a jury fee of six dollars could be collected of the State when the defendant was unable to pay. I concurred in this opinion when the question was submitted to me. I may not be right about it, but having so held in a former case, will answer your question in conformity with that opinion.

Yours very truly,
J. A. KOHLER,
Attorney General.

Justice of the Peace; Allowance to, In Cases Where State Fails.

JUSTICE OF THE PEACE; ALLOWANCE TO, IN CASES WHERE STATE FAILS.

Attorney General's Office,
Columbus, Ohio, December 7, 1886.

Thomas Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your favor of November 20th to hand. My construction of section 1309, Revised Statutes, is as follows: In prosecutions for felonies wherein the State fails to convict and in misdemeanors where the defendant proves insolvent (by that I mean where nothing can be collected of the defendant by reason of such insolvency) that, in such cases, the commissioners may, in their discretion, make good to the justice his costs to an amount not exceeding one hundred dollars in any one year; and to further answer your question as to the meaning of "insolvency," it may be taken as the state of a person who is unable, from any cause, to pay his debts, and here the term must relate, as applied to this section, to costs and fees unpaid and where payment cannot be enforced by reason of insolvency. When, therefore, the fees and costs are in fact paid to the county auditor, certainly the person cannot then be said to be insolvent.

Yours very truly,
J. A. KOHLER,
Attorney General.

Clerk of County; Fees of for Making Index Under 5339a —Constable; Mileage and Fees of.

CLERK OF COUNTY; FEES OF FOR MAKING INDEX UNDER 5339*a*.

Attorney General's Office,
Columbus, Ohio, December 7, 1886.

P. M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:

DEAR SIR:—Yours of December 4th received. I have examined section 5339*a*, Vol. 80, Ohio Laws, p. 216, also section 1261 of the Revised Statutes containing the limitation of three hundred dollars in any one year for indices, etc., and my examination has led me to concur in your opinion, which is, that the act of April 19th, 1883, above referred to, provides for the making of such index, and that the payment therefor is not limited by the provisions of section 1261.

I think that in this respect the two sections are distinct and independent.

Yours very truly,
J. A. KOHLER,
Attorney General.

CONSTABLE; MILEAGE AND FEES OF.

Attorney General's Office,
Columbus, Ohio, December 7, 1886.

John Holman, Esq., Bucyrus, Ohio:

DEAR SIR:—Yours of recent date duly received.

First, In my judgment constables are not allowed mileage both ways for serving writs.

Second, Constables may charge one dollar per day for attending before a justice of the peace in jury trials, crim-

inal trials, or forcible detainer without jury. See section 611, Revised Statutes.

Yours very truly,
J. A. KOHLER,
Attorney General.

O. S. AND S. O. HOME; EXPENDITURE OF CERTAIN APPROPRIATIONS FOR.

Attorney General's Office,
Columbus, Ohio, December 7, 1886.

E. H. Gilkey, Esq., Financial Officer of the O. S. and S. O. Home, Xenia, Ohio:

DEAR SIR:—Your letters of November 20th and December 3d duly received.

I have consulted with Mr. Kiesewetter and his chief clerk, Mr. McKinney, in regard to the question presented.

Some time ago my opinion was requested as to the effect of the appropriation of fifteen thousand dollars for the support and care of the children, and was obliged to decide and did decide that the limit of ten thousand dollars provided for by the act of April, 1881, must control as to the limit of ten thousand dollars in any one year, my judgment was and is that the General Assembly, at the time of making the appropriation, overlooked the fact of this limitation in the act of 1881.

It is certainly my wish to give these laws a liberal construction in order to carry out the benign object of the institution, but still I am obliged to go by the written law of our Legislature, and my duty is simply one of construction.

As I understand it, Mr. McKinney objects to paying you for the reason that you have already drawn the full amount for the current year. His construction is that there can only be paid out of the treasury so much during the

current year without regard to the time when the purchases were made; in other words, I understand that you made some purchases previous to February, 1886, but that the money was not drawn from the treasury until the current year. Mr. McKinney claims that if you exclude the sums for which the money was drawn this year, upon purchases made before that, then you overdrew your limit last year, and he claims that in July last, he notified you by letter of this statutory provision of the statute limiting your expenses to ten thousand dollars.

Now my judgment is that the simple fact of the drawing of money from the State treasury ought not to control. In short, I think it is the duty of the trustees, under the law, not to contract or incur liabilities for supplies exceeding the sum of ten thousand dollars in any one year. To illustrate, suppose that for the current year, up to the 15th of January, you pay out the sum of nine thousand dollars for supplies, and just preceding the 15th of February, you pay out for further supplies during the year, the further sum of one thousand dollars, making ten thousand dollars, but suppose that this last item of ten thousand dollars is not in fact drawn from the treasury; now in my opinion this one thousand dollars should be applied upon expenditures for the current year, and not charged over for the year to come upon the ground that it was not drawn from the treasury until that time. This illustration will perhaps answer your question, and I do not think that the law should be so construed. I am not entirely familiar with your mode of paying debts, but I am inclined to think that if you furnish supplies and contract debts therefor, you may do so to the amount of ten thousand dollars.

If you come up here some time, call at my office and I will go with you to see the auditor of state.

Yours very truly,

J. A. KOHLER,
Attorney General.

Auditor of County; No Compensation for Preparing Report of County Commissioners; How Report Should be Published.

AUDITOR OF COUNTY; NO COMPENSATION FOR PREPARING REPORT OF COUNTY COMMISSIONERS; HOW REPORT SHOULD BE PUBLISHED.

Attorney General's Office,
Columbus, Ohio, December 8, 1886.

W. H. Barnhard, Esq., Prosecuting Attorney, Mt. Gilead, Ohio:

DEAR SIR:—Yours of the 26th and 27th ult. received. In answer to your first question, I will say that I am unable to find any authority for paying out of the county treasury fifty dollars or any other sum to the county auditor by the county commissioners for making out the report of the commissioners as required by section 917, Revised Statutes; and to this effect my predecessors, Messrs, Hollingsworth and Lawrence, have given opinions.

2d. In publishing the report it would be well, I think, to make a detailed statement of such report, but so far as I can ascertain, the practice is different and a summary statement is published. The publishing of a detailed statement involves considerable expense and trouble, and perhaps a summary statement will answer all the purposes required by law.

3d. County commissioners are not entitled to be reimbursed for their expenses in attending the State association of county commissioners. This was the opinion of my predecessor, Mr. Lawrence, and I concur in this opinion.

Yours very truly,
J. A. KOHLER,
Attorney General.

Probate Judge; Fees of, For Certifying Accounts of County Commissioners—Witnesses; Fees of, When Called to Testify Without Being Served With Subpoena; Sheriff; Mileage of; Not Entitled to Fee in Certain Case.

PROBATE JUDGE; FEES OF, FOR CERTIFYING ACCOUNTS OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, December 8, 1886.

Hon. A. W. Saltz, Probate Judge, McArthur, Ohio:

DEAR SIR:—Yours of the 22d ult. received. There is no question that but under section 1260 of the Revised Statutes, you are entitled to thirty-five cents for certifying and attaching your seal to each instrument of the accounts of the commissioners that you are required by law to examine.

In my former letter to Mr. Hudson, I had reference merely to payment for *examining* such accounts, and not to payment for certifying.

Yours very truly,
J. A. KOHLER,
Attorney General.

WITNESSES; FEES OF, WHEN CALLED TO TESTIFY WITHOUT BEING SERVED WITH SUBPOENA; SHERIFF; MILEAGE OF; NOT ENTITLED TO FEE IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, December 15, 1886.

Robt. C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Yours of the 10th instant to hand, contents noted. Answer to question 1st, When a witness is

served with a subpœna, who is present in the court at the time, and is called to testify, no mileage can be charged.

2d. When a person is present in court, and is called as a witness without a subpœna, he is entitled to seventy-five cents.

3d. Section 553 of the Revised Statutes applies to a bailiff appointed by the court, and no extra compensation can be given to a sheriff or his deputy by virtue of that section.

Yours very truly,
J. A. KOHLER,
Attorney General.

PUBLICATION; OF TIMES OF HOLDING CIRCUIT COURT IN COUNTY.

Attorney General's Office,
Columbus, Ohio, December 9, 1886.

B. M. Clendening, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your letter of the 22d of November has been duly received. I know of no law making it compulsory for a clerk for a Circuit Court of this State to cause publication to be made in more than one newspaper of the county. I think it rests entirely in the discretion of such clerk. See section 449 as amended in Ohio Laws, Vol. 82, p. 21.

Yours very truly,
J. A. KOHLER,
Attorney General.

Taxation; Auditor of County May Refuse Tax on Real Property When Tendered Minus Dog Tax—Director of County Infirmary; Not Entitled to Compensation in Certain Case.

TAXATION; AUDITOR OF COUNTY MAY REFUSE TAX ON REAL PROPERTY WHEN TENDERED MINUS DOG TAX.

Attorney General's Office,
Columbus, Ohio, December 17, 1886.

Harry McClarran, Esq., County Treasurer, Wooster, Ohio:

DEAR SIR:—Yours of the 14th instant to hand. I have conferred with the auditor of state in regard to the question you propounded, and he is of opinion that the treasurer is not obliged to take part of the tax. In other words, when the tax for real estate was tendered minus the tax for the dog, the treasurer is not bound to accept it unless the whole is tendered. The auditor informs me that this is also the practice, and I will concur in that opinion.

As a matter of law, I think it is *not* optional with the tax-payer as to what tax he will pay and what he will not. The tax stands against him and he must elect whether he will pay it or not, but I think it is not in his power to say what portion the treasurer should receive.

Yours very truly,
J. A. KOHLER,
Attorney General.

DIRECTOR OF COUNTY INFIRMARY; NOT ENTITLED TO COMPENSATION IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, December 16, 1886.

John R. Eyler, Esq., Prosecuting Attorney, Waverly, Ohio:

DEAR SIR:—Your favor of yesterday received. The question you ask was, I think, decided this morning by the

Board of Public Works; Power of, to Permit a Railroad Company to Cross Over State Property.

Supreme Court in the case of the State vs. Brewster. In short, I think a vacancy occurred at the expiration of his term, and he should have been appointed for the interim created by the change in the time of election.

The bond does not control nor does section eight of the Revised Statutes apply. The Circuit and Supreme Courts have so decided in the case of the auditor. Such being the case, and no appointment having been made, I do not see, as a matter of law, how his claim for compensation can be allowed. It was no doubt supposed that he would hold over under section eight of the Revised Statutes and according to his bond. Otherwise, I presume, an appointment would have been made.

The auditor of state takes this view with respect to payment for services when no appointment has been made.

Very truly yours,
J. A. KOHLER,
Attorney General.

BOARD OF PUBLIC WORKS; POWER OF, TO PERMIT A RAILROAD COMPANY TO CROSS OVER STATE PROPERTY.

Attorney General's Office,
Columbus, Ohio, December 14, 1886.

Hon. J. P. Martin, President of Board of Public Works:

DEAR SIR:—I have your letter of December 4th, 1886, in which you refer me to the written application on file in the office of the board of public works, asking the approval and consent of the board to cross over and occupy with their railroad track, as shown by a certain plat accompanying said petition, certain of the canal property at Akron, Ohio, and in answer to your request for an opinion as to

Board of Public Works; Power of, to Permit a Railroad Company to Cross Over State Property.

the authority of the board to act in relation to the matter, I will say that the question has been argued before me by counsel and I have given it such consideration as my time afforded.

It is purely a question of law. The question of expediency is for the board to determine; so far as I am concerned, the only advice I have to give upon the matter is as it concerns the prerogative of the board, under the laws of the State, to take action in the case. It is proper that I should say that my attention was called to this question by a letter of your chief engineer, in which, among other things, the question was asked: "Can a right of way be granted to construct a railway across or through any State lands lying adjacent to the canal by the board of public works?" and to which I made answer as follows, as shown by my letter of November 10th, now on file in the office of the board: "The power to grant a right of way to a railway company is not conferred upon the board of public works. It is possible that a permit could be given to use such property, subject to the right of the State to resume possession at any time." This opinion was not given with reference to any particular application that I was aware of at the time, and so far as it is applicable here, I will affirm it.

To answer your specific inquiry it is not perhaps necessary that I should present the argument for and against the right claimed. It is sufficient to state the facts and my legal conclusion thereon.

The Valley Railway Company, some years ago, obtained a charter to construct a branch from its depot in Akron, southerly along the ravine, parallel with the canal, and finally connecting with its main line in the sixth ward in Akron. It is duly authorized to construct this branch and a considerable portion of it has already been constructed. It is now seeking to cross and get beyond what is known as Ash street in the city of Akron and it is claimed that this branch cannot be constructed on any other line by reason

Board of Public Works; Power of, to Permit a Railroad Company to Cross Over State Property.

of the physical surroundings. In order to do so, it is necessary to cross a wide-water or basin, so to speak, connected with the canal, used for winding boats. To do so and to enable it to cross over this basin, it is necessary to use for its foundations some of the State property, as shown by the petition and plats, and to this end it has made application, in due form, to the board of public works, with maps and plans, showing the mode of crossing, superstructure, etc., as provided in section 3317 of the Revised Statutes, and the board of public works is asked to approve the company's plans of crossing. In my judgment, the board does not grant permision to cross under this section, but simply approves or disapproves of the plans, and upon disapproval or failure to act for twenty days, application may be made to the courts and the law points out what may then be done.

It is urged in opposition that this section has reference solely to a crossing of the canal, in the strict sense of that term: that is, passing from one side to the other, and that it does not apply to the case where a railroad is in process of construction parallel with the canal, and it becomes necessary to cross a basin or reservoir. The berme bank of the canal is very irregular, often widening out into large basins or lakes, and it seems to me that it would be unreasonable to give this section the restricted sense claimed for it.

It is conceded that, in the interest of railroad building, the canal may be crossed, involving the construction of the abutments on the berme bank as well as on the towing path, and if this may be done, I can see no objection to crossing the basin or wide-water of the canal longitudinally, providing, of course, that the mode of crossing provided by law is complied with. In short, I am of the opinion that this section is sufficiently broad to include a crossing of the canal at right angles, as well as the right to cross over any basin or reservoir on either side of it.

My conclusion is, therefore, that it is proper for the

Board of Public Works; Power of, to Permit a Railroad Company to Cross Over State Property.

board to approve or disapprove the plans submitted in this case, the board exercising a sound discretion as to the expediency of such construction, and providing also that the plans are in other respects according to law.

In giving this opinion, I do not decide that the board has the power to contract away the canal property or any part of it, by granting a right of way, as was done in the case reported in 37th Ohio Reports, p. 157. The board there sought to contract the berme bank away. A railroad company then sought by contract to occupy the berme bank, and the court held that the board had no right to contract in such cases. The board in this case is not, I understand it, asked to make a contract or to grant away any State property, except as may be implied by the approval or disapproval of plans of crossing State property under said section 3317.

It is asked to investigate the proposed plan of crossing this portion of the canal and the land adjacent thereto and to approve or disapprove the plans, as the board may determine, having due regard to the property of the State as well as the interests of navigation.

I express no opinion as to the validity of any lease mentioned in the petition. No such lease has been submitted to me and no question has been made in reference thereto.

Very respectfully,

J. A. KOHLER,

Attorney General.

Costs; of Jury in Criminal Case—Asylum for Insane at Toledo; Payment for Certain Improvements.

COSTS; OF JURY IN CRIMINAL CASE.

Attorney General's Office,
Columbus, Ohio, December 16, 1886.

B. F. Price, Esq., Sheriff, Lancaster, Ohio:

DEAR SIR:—Yours of this date received. In answer to an inquiry on the part of the auditor of state in regard to costs of venire for jury, I have given an opinion to that officer that such costs—that is, costs of special venire—should be paid by the county, at least that they are not proper items against the State.

I have not time to write out in full the reasons for this opinion, but after an examination of the matter in connection with the chief clerk of the auditor of state, we came to the conclusion that the State was not liable for costs of that description.

Yours very truly,
J. A. KOHLER,
Attorney General.

ASYLUM FOR INSANE AT TOLEDO; PAYMENT FOR CERTAIN IMPROVEMENTS.

Attorney General's Office,
Columbus, Ohio, December 22, 1886.

Hon E. Kiesewetter, Auditor of State:

DEAR SIR:—Your letter of October 29th duly received. In respect to the question submitted, whether you can legally pay the requisition of the trustees of the Toledo Asylum for the Insane the sum of four thousand nine hundred dollars ($4,900.50) and fifty cents, for the construction of sidewalks, under the circumstances stated, I have to say that I

Dow Liquor Law; Manufacturer May Sell Through Bona Fide Agents; Dow Liquor Law; Sale of Liquor Where a Prohibitory Ordinance Has Been Passed.

have considered the matter, and my opinion is that you are warranted, under the circumstances of this case, in paying said requisition. I do not intend by this to establish a precedent that a board of trustees may, in the erection, alteration, addition to or improvement of any State institution, asylum, or other improvement, contract an indebtedness, except by a substantial compliance with the provisions of section 782 of the Revised Statutes; but in view of the character of this particular work, and believing that the indebtedness has been incurred in good faith, I have concluded, without going at length into the reasons thereof, to advise that, as a matter of law, the claim is valid and as such, entitled to payment.

Yours very truly,

J. A. KOHLER,

Attorney General.

DOW LIQUOR LAW; MANUFACTURER MAY SELL THROUGH BONA FIDE AGENTS; DOW LIQUOR LAW; SALE OF LIQUOR WHERE A PROHIBITORY ORDINANCE HAS BEEN PASSED.

Attorney General's Office,
Columbus, Ohio, January 19, 1887.

A. J. Bradley, Esq., White House, Ohio:

DEAR SIR:—The Supreme Court did not touch upon the question in which you are interested in its recent decision.

In my judgment the sale of liquor by the gallon, under the circumstance stated, would not be protected against your ordinance under the provisions of the Dow liquor law.

A manufacturer can no doubt sell by his agent in the