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*Duty of County Commissioners Relative to "Relief Fund."*

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DUTY OF COUNTY COMMISSIONERS RELATIVE  
TO "RELIEF FUND."

Attorney General's Office,  
Columbus, January 7, 1867.

*His Excellency, J. D. Cox, Governor.*

SIR:—The letter of John Blair, under cover of your note of 5th inst., is received.

The 3d section of the act of April 6, 1856, requires the county commissioners, at their June session, to set apart for the relief of necessitous soldiers and marines, and their families, such portion of the relief fund as they may deem necessary for that purpose. It designates three classes of persons entitled.

1st. Indigent and dependent soldiers and marines who are unable to support themselves by reason of *disease* contracted, or *wounds* received, in the service.

2d. The families of *deceased* and *disabled* soldiers and marines who are necessitous.

3d. The necessitous families of soldiers or marines *remaining in the service*.

If there be in the township of Jackson, in Pike County, any of the above three classes of persons, the county commissioners are bound to make adequate provision for them out of the relief fund, and cannot order the same to be re-funded to the county treasury, after distribution, so long as any of these persons remain in the township.

Very respectfully,

W. H. WEST,

Attorney General.

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*Is Reform School Entitled to Portion of Certain School  
Fund?*

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IS REFORM SCHOOL ENTITLED TO PORTION  
OF CERTAIN SCHOOL FUND?

Attorney General's Office,  
Columbus, May 1, 1867.

*Hon. Jno. A. Norris, Commissioner Common Schools.*

SIR:— \* \* \* \* \*  
\* \* \* , \* \* \*

The 22d section of the act organizing the reform school (S. & C., page 1382) seems quite comprehensive and explicit, but I have no doubt it was intended to apply to the general State levy for school purposes only. The 2d section of the act found on page 1335, appropriates the proceeds of section 16 to the original township to which it belonged. The reform farm is made a *special* school district, and as such would not be entitled to said fund, except by positive legislation, and it is doubtful whether the legislature would have power to divert the fund to the uses of any other than the *bona fide* inhabitants of such township. This certainly is the spirit of the original grant by congress. Its appropriation to the education of non-residents and transient culprits seems so manifestly unjust that I have no doubt the court would so hold it.

I think the question of sufficient importance to be tested by mandamus, and would suggest that the auditor, with the consent of the school board having an interest, employ competent counsel and take the proper steps to test it.

Very respectfully,

W. H. WEST,  
Attorney General.

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*Form of Indictment for Procuration of Crime.*

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FORM OF INDICTMENT FOR PROCURATION OF  
CRIME.

Attorney General's Office,  
Columbus, May 1, 1867.

*H. H. Willard, Esq., Prosecuting Attorney*

SIR:—I doubt the sufficiency of the second count of your indictment. The 36th section of the crimes act defines a distinct, substantive offense (See *Nolan vs. State*, 19 O. R. 131). To counsel or procure the commission of crime is a distinct offence, for which the party may be indicted separately. The actual perpetrator of the murder is guilty of a crime distinct from the procurer. They cannot, then, be charged as guilty of the same crime, in one and the same count. The conclusion of your indictment charges them as joint perpetrators of the same crime. Where one is *personally present*, aiding and abetting, he is treated as a joint participant. For this reason the indictment in *Fouts vs. State*, charging both parties as guilty of the crime, in its conclusion, was right. It follows the first form in Vol. 2, page 5, of *Chitty's criminal law*. The joint indictment of the *procurer* concludes differently, as you will observe in the succeeding forms on the same page. It omits all that part of your indictment which I have underscored.

I would suggest, therefore, that at the convening of the next term, you *nolle* this indictment, and draw another just like it, omitting the words which I have underscored. You will thus indict Roof in the first county as principal, without reference to Moore; and in the second count charge Roof as principal and Moore as procurer, as you have done in this, omitting the words aforesaid.

Truly yours,  
W. H. WEST,  
Attorney General.

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*Duty of Constables Under Act to Restrain Animals From  
Running at Large—Labor on Streets and Alleys in  
Certain Cities.*

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DUTY OF CONSTABLES UNDER ACT TO RE-  
STRAIN ANIMALS FROM RUNNING AT LARGE.

Attorney General's Office,  
Columbus, May 8, 1867.

*A. T. Carpenter, Esq., Galena, Ohio.*

SIR:—Your communication of 6th inst., asking my opinion as to the proper construction of section 6 of "An act to restrain from running at large certain animals therein named," is received.

In reply I will say that laws are construed without regard to printed punctuation—the courts punctuating them according to the sense. In the section referred to there should be a comma after the word "constable." The clause in question would then read, "any constable, or marshal of any city," etc.

The office of constable pertains to townships, and not to municipal corporations. Hence it is obligatory upon every constable to exercise the duties enjoined by said act.

Very respectfully,  
W. H. WEST,  
Attorney General.

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LABOR ON STREETS AND ALLEYS IN CERTAIN  
CITIES.

Attorney General's Office,  
Columbus, May 11, 1867.

*J. K. Mower, Esq., City Solicitor, Springfield, Ohio.*

DEAR SIR:—The act of April 5, 1859. (S. & C., page 1555), was repealed by the act of April 5, 1866, (O. L. Vol.

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*Indictments—Nolle, After Disagreement of Jury.*

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63, page 24). This latter act was repealed by the act of April 16, 1867, (O. L., Vol. 64, page 241). Thus the two days labor authorized in cities of the second class, was abrogated; and I can find nothing in the act of February 27, 1867 (O. L., Vol. 64, page 27), restoring that power to such cities. Therefore, labor upon streets, alleys and highways in cities of this class, depends upon the general rule prescribed in the act to provide for the organization of cities and incorporated villages, and is to be derived from assessments and taxation.

Very respectfully,  
W. H. WEST,  
Attorney General.

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INDICTMENTS—NOLLE, AFTER DISAGREEMENT  
OF JURY.

Attorney General's Office,  
Columbus, May 20, 1867.

*Isaiah S. Pillars, Esq., Prosecuting Attorney.*

SIR:—It is entirely competent to *nolle* an indictment after the disagreement of a jury. The case stands as if no trial had taken place. A new indictment may be found and presented, but care should be taken to enter the *nolle* before the grand jury's report of the second finding is entered.

Very respectfully,  
W. H. WEST,  
Attorney General.

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*Gas Meters Unsealed, When Use of Must Cease—Animals;  
Permits to Run at Large.*

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GAS METERS UNSEALED, WHEN USE OF MUST  
CEASE.

Attorney General's Office,  
Columbus, May 20, 1867.

*Lucas Flattery, Esq., Secretary Wooster Gas Works.*

SIR:—The prohibition to set or use an unsealed meter after the 1st day of June, 1867, necessarily implies permission to set and use such unsealed meter before that time. But the use of such meter after that date must suspend until the seal and stamp be placed upon it.

Very respectfully,  
W. H. WEST  
Attorney General.

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ANIMALS—PERMITS TO RUN AT LARGE.

Attorney General's Office,  
Columbus, May 27, 1867.

*H. B. Willis, Esq.*

SIR:—Township trustees have no power to grant general permits, under the act of 1865, to restrain the running at large of domestic animals. They can only grant special permits to individuals, for the running at large of particular animals therein described.

Respectfully,  
W. H. WEST,  
Attorney General.

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*Justice of Peace; Vacancy in Office of—Schoolhouse Tax;  
Liability When Separate Districts Organized.*

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## JUSTICE OF PEACE—VACANCY IN OFFICE OF.

Attorney General's Office,  
Columbus, June 4, 1867.

*O. E. Griffith, Esq., Clerk Court, Allen County.*

SIR:—The trustees can be compelled by mandamus to call an election to fill vacancy in office of justice of the peace, on relation or complaint of any elector of the township. The application must be made in the District Court, by the Prosecuting Attorney of the county.

Very respectfully,  
W. H. WEST,  
Attorney General.

## SCHOOL HOUSE TAX—LIABILITY WHEN SEPARATE DISTRICTS ORGANIZED.

Attorney General's Office,  
Columbus, June 4, 1867.

*Jno. S. Jones, Esq., Pros. Atty., Delaware County.*

SIR:—Your letter of 29th ult., stating that the board of education of Berkshire Township, at the regular April meeting, levied a tax on the township for school house purposes, and that subsequently two sub-districts organized as separate school districts, etc., is received.

In reply to your inquiry whether these separate school districts are liable to pay their portion of the tax, I have to say: That if the action of the board had not been certified to the county auditor before the organization of the separate districts, they are certainly not liable. And even if the levy was certified before such organization, it is a question of much doubt whether the action of the board would be binding upon them.

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*Probate Court; How Prosecutions Must be Brought—Infirmary Buildings; Vote on Contract Not Required in Certain Counties.*

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You do not state, however, whether the levy has been certified to the auditor, or whether it had been previous to the organization referred to, but simply that it is "not yet placed on the duplicate." If the state of the case requires a further examination of the question, please advise me.

Very respectfully,

W. H. WEST,  
Attorney General.

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PROBATE COURT—HOW PROSECUTIONS MUST BE BROUGHT.

Attorney General's Office,  
Columbus, June 11, 1867.

*John C. McKenny, Esq., Probate Judge, Darke County.*

SIR:—All prosecutions brought before your court must be by transcript and recognizance from the justice of the peace.

The power of prisoners to elect in which court they shall be tried, is repealed.

Very respectfully,

W. H. WEST,  
Attorney General.

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INFIRMARY BUILDINGS—VOTE ON CONTRACT NOT REQUIRED IN CERTAIN COUNTIES.

Attorney General's Office,  
Columbus, June 11, 1867.

*Robert Raley, Esq., Pros. Atty., Carroll County.*

SIR:—The act of April 16, 1867, does not require contracts for the erection of new or additional infirmary build-



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*Labor on Highways; Men of Color Not Exempt From—  
Labor (2 Days) on Highways—Remission of by Town-  
ship Trustees.*

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ings, in counties having a population of less than one hundred thousand inhabitants, to be submitted to a vote of the people.

Very respectfully,  
W. H. WEST,  
Attorney General.

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LABOR ON HIGHWAYS—MEN OF COLOR NOT  
EXEMPT FROM.

Attorney General's Office,  
Columbus, June 11, 1867.

*H. F. Hopler, Esq., Bloomfield, Ohio.*

SIR:—Section three of the "act relating to roads and highways," passed February 27, 1867, does not exempt men of color from the performance of two days' labor on the public highway. The act recognizes no distinction on account of color.

Very respectfully,  
W. H. WEST,  
Attorney General.

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LABOR (2 DAYS) ON HIGHWAYS—REMISSION  
OF BY TOWNSHIP TRUSTEES.

Attorney General's Office,  
Columbus, June 11, 1867.

*W. D. Johnson, Esq., Township Clerk, Etc.*

SIR:—Your communication of 7th inst., is received. In reply to your inquiry, I will say that section three of the "act relating to roads and highways," passed February 27,

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*School Tax—Controversy As To, in Sylvania Township,  
Lucas County.*

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1867, authorizes township trustees to remit the two days' labor on the public highway, and also, necessarily, the commutation money to be paid in lieu thereof. The proviso should, probably, have been inserted at the end of section four. It is the result of a compromise—a portion of the legislature desiring to dispense with the labor altogether.

Very respectfully,

W. H. WEST,  
Attorney General.

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SCHOOL TAX—CONTROVERSY AS TO, IN SYLVANIA TOWNSHIP, LUCAS COUNTY.

Attorney General's Office,  
Columbus, June 13, 1867.

*Hon. Jno. A. Norris, Commissioner Common Schools.*

SIR:—I have examined the papers referred to me by you, relative to a controversy between the board of education of Sylvania Township and the school board of the village of Sylvania, Lucas County, in regard to certain school funds, and submit the following:

The act of 1866 limited the levy for school house purposes to two mills on the dollar. Of the levy of five mills, under the resolution of the township board, only two mills can be applied to school house purposes. The residue must be applied to different objects, unless the existing board shall direct otherwise. This two mills, by virtue of being levied for the specific purpose of building a school house in sub-district No. 2, (Sylvania village) is probably a trust fund in the hands of the township board for that purpose. The sub-district never became entitled to any part of the remaining three mills of the levy: nor did the funds on hand April, 1866, become a trust fund by virtue of the order to

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*County Surveyor—Fees Of, Etc.*

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use it for building school house in the sub-district. The board could at any time revoke that order, and apply the money to other uses. All that sub-district No. 2 is entitled to then is two mills of the levy of 1866, and no more.

I am inclined to think that if the township board had revoked the order to build the new school house before repairing the old one, the sub-district would only be entitled to its *pro rata* portion of the five mills, after deducting the amount expended in repairing the old house, and other expenses of the board for the year. But as that order stands, it would seem that the sub-district is entitled to the two mills in full, for school house purposes. I doubted this at first, and was of opinion that it was only entitled to a portion *pro rata*; but on further reflection, I think it correct.

Very respectfully,

W. H. WEST,

Attorney General.

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COUNTY SURVEYOR—FEES OF, ETC.

Attorney General's Office.

Columbus, June 17, 1867.

*Wm. G. B. Hatcher, Esq., County Surveyor, Lawrence County:*

SIR:—County commissioners have power to designate by order whether the surveyor's employment shall be by the day. If they make no order, then the employment is otherwise than by the day. In the first case the compensation would be \$5.00 per day. In the latter, the compensation would be by fees prescribed in the statute. (Vol. 64, O. L., p. 62.) Thus:

Taxation of Government Bonds When Held by State Banks.

Survey, one mile—320 rods, at 1c. ....	\$3 20
Plat, six lines or under. ....	1 00
Report, per 100 words, at 12c., say. ....	50
Mileage, say 10 miles. ....	1 00
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Thus, for surveys of road of one mile, the average fees are, say. ....	\$5 70
For additional mile. ....	2 40
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Total. ....	\$8 10

When employed as specified, you are not acting in your official capacity.

Very respectfully,  
W. H. WEST,  
Attorney General.

TAXATION OF GOVERNMENT BONDS WHEN  
HELD BY STATE BANKS.

Attorney General's Office,  
Columbus, June 18, 1867.

*Hon. James H. Godman, Auditor of State:*

SIR:—I have examined the decision of the Supreme Court in the case of Frazer, et al, ag. Seibern et al., 16 O. S. R., 614, involving the right of the State banks to hold government bonds exempt from taxation. The court use this language:

“Does the act of 1861 allow such deduction (of government bonds) to be made from the capital of the State banks? However we might be disposed to decide this as an original question, we look upon it as having been settled by decisions of the Supreme Court of the United States, and we feel bound by these decisions.”

The court then remark that the law of New York, of 1857,

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*Labor on Highways; Who Exempt From Performance of.*

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under which the United Staets Court held such deduction allowable, is similar in its terms to our act of 1867, and then add:

“Were we to put a different construction upon ours, it would only be necessary to take the case to the Supreme Court of the United States to have it reversed.”

I presume that the Supreme Court, as now constituted, could not be induced to reverse this opinion, although only incidental to the case decided. But in allowing deductions, none but legitimate investments in national bonds should be considered; nor should it be extended back to taxes paid previous to said decision. The deduction of collaterals on deposit for circulating notes is not allowable, nor are the investments of current deposits.

A full answer to the inquiries of your circular to the national banks should be required of the State banks, so that you can judge of the legitimacy of the investment.

Very respectfully,

W. H. WEST,

Attorney General.

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LABOR ON HIGHWAYS; WHO EXEMPT FROM  
PERFORMANCE OF.

Attorney General's Office,  
Columbus, June 25, 1867.

*Joseph Day, Esq., Nottingham, Ohio:*

SIR:—Your communication of 20th instant is received.

By reference to Laws of Ohio, 1867 (pages 28 and 140) you will find that “pensioners of the United States, and those who have been permanently disabled in the military

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*Selection of Jury, When Names Already Drawn Have Been Burned.*

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service of the United States," are the only persons exempt from the performance of labor on the public highway.

Very respectfully,

W. H. WEST,  
Attorney General.

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SELECTION OF JURY, WHEN NAMES ALREADY  
DRAWN HAVE BEEN BURNED.

Attorney General's Office,  
Columbus, June 27, 1867.

*J. Williams, Esq., Clerk Court Monroe County:*

SIR:—In reply to your communication of 25th instant, stating that, by the burning of your court house, the names of jurors drawn for October term were destroyed, and inquiring how you shall proceed in the premises, I have to say: I know of no mode by which you can be relieved of your difficulty, except that provided in the supplementary act of March 22, 1860 (S. & C., p. 761). A special venire should issue on the first day of the term.

I would suggest that you furnish your judge with a sufficient number of names now, from which to select jurors; that he designate the persons whom he will select, and that you notify them in advance, so that they may be present, and summons may be conveniently served.

Very respectfully,

W. H. WEST,  
Attorney General.

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*Registry of Births and Deaths; Fees of Probate Judges for Keeping—Veteran Bounty; What Constitutes "Re-enlistment."*

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REGISTRY OF BIRTHS AND DEATHS; FEES OF  
PROBATE JUDGES FOR KEEPING.

Attorney General's Office,  
Columbus, June 28, 1867.

*John C. McKeny, Esq., Probate Judge Darke County:*

SIR:—Your communication of the 27th instant making inquiry relative to fees of probate judges for registering births and deaths, under the law of 1867, is received. It seems that the General Assembly omitted to provide fees for services under the law, except in general terms, the provision not being specific or definite, as there are no "similar services," and the omission can only be remedied by future legislation.

Very respectfully,  
W. H. WEST,  
Attorney General.

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VETERAN BOUNTY; WHAT CONSTITUTES "RE-ENLISTMENT."

Attorney General's Office,  
Columbus, July 11, 1867.

*Genl. B. R. Cowen, Adjt. Genl. of Ohio:*

SIR:—I have carefully examined the application of John Block, Company "K," 2d Ohio Heavy Artillery, for veteran bounty. It appears that Mr. Block had been an "enlisted volunteer," had served nine months, was honorably discharged, and had again "enlisted" for three years or during the war. In other words, he enlisted a second time, which is a "re-enlistment." He was recognized and

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*School Fund for Colored Youth; Liability of Boards for  
Misappropriation.*

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treated by the United States government as a "veteran." I can, therefore, reach no other conclusion than that he was a re-enlisted veteran volunteer, in the spirit and intentment of the statute.

General order No. 191, by the term "re-enlist," distinguishes the enlistment of volunteers then in the service, from the enlistment of those not in the service, merely for the purpose of designation and classification. But I do not understand that our statute was intended, in its scope, to be limited to that classification. Those who fell under paragraph II of the order were, *in fact*, re-enlisted volunteers, in as complete a sense as those who fell under paragraph VII, although in the loose manner of employing language in the order, they were not so designated. But I do not understand that the limited sense in which the word is used in that order is to, or was intended to give interpretation to the statute. It is certainly neither reasonable nor just that it should, thereby giving a preference to those then in the service who had served less than nine months, over those whose term of nine months had been served with honor, and had expired.

Very respectfully,

W. H. WEST.

Attorney General.

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SCHOOL FUND FOR COLORED YOUTH; LIABILITY  
OF BOARDS FOR MISAPPROPRIATION.

Attorney General's Office,

Columbus, July 24, 1867.

*Hon. Jno. A. Norris, School Commissioner:*

DEAR SIR:—Yours covering letter of Peter H. Clark is received and considered.

Colored youth are entitled to their full share of all school funds raised by State or local taxation, or otherwise,



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*Bank Shares; Listing of Certain for Taxation.*

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which are subject to distribution on the basis of enumeration (Statute 1864, p. 32—amended Sec. 31). The rule was the same under the original section.

Boards of education are clearly liable for any misapplication of the fund set apart for colored youth, and the township or other school district, whose board has misapplied the fund, can be made to respond. The duty of boards is expressly pointed out by the statute.

Very respectfully,

W. H. WEST,  
Attorney General.

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BANK SHARES; LISTING OF CERTAIN FOR TAXATION.

Attorney General's Office,  
Columbus, July 24, 1867.

*Hon. James H. Godman, Auditor of State:*

DEAR SIR:—I have examined the papers referred to me by you relative to the listing of certain bank shares, and am of opinion that if, at the date of listing the shares for taxation, the \$11,000 of the stock of the First National Bank of Logan belonged, *bona fide* and in fact, to the People's Bank, it should, instead of being listed in the name of, or against, Culvers and Norris, have been listed, in the return against the People's Bank. If this had been done, then by the spirit and operation of the ninth sub-division of section three of the general tax law, and the fifty-ninth section of the same, this \$11,000 should be deducted from the amount listed against the People's Bank, in its separate return. I think you can order accordingly.

Very respectfully,

W. H. WEST,  
Attorney General.

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*Embezzlement of Interest Accrued on Compound Interest Notes by County Treasurer—County Surveyor; Compensation of When Employed by County Commissioners.*

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EMBEZZLEMENT OF INTEREST ACCRUED ON  
COMPOUND INTEREST NOTES, BY COUNTY  
TREASURER.

Attorney General's Office,  
Columbus, August 5, 1867.

*Chas. E. Boerstler, Esq., Prosecuting Attorney, Hocking County:*

SIR:—I am in receipt of your communication of 1st instant wherein you inquire "if money belonging to a county should be converted into compound interest notes, and the interest accruing thereon be pocketed by the treasurer at maturity, would this be embezzlement under our statutes." I answer your inquiry in the affirmative.

Very respectfully,

W. H. WEST,  
Attorney General.

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COUNTY SURVEYOR; COMPENSATION OF WHEN  
EMPLOYED BY COUNTY COMMISSIONERS.

Attorney General's Office,  
Columbus, August 19, 1867.

*Thomas A. Watson, Esq., Deputy County Surveyor:*

SIR:—When the county surveyor is employed by the commissioners to survey a road, he does not necessarily act in an official capacity. He is under no official obligation to perform the service. The commissioners, therefore, may, if they see proper, designate the amount of compensation he shall receive; and if he performs the labor under the

*Gas Meters; Unstamped Must Neither Be Set Nor Used  
After June 1, 1867.*

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order, his wages would thereby be fixed by contract. But if their order be silent as to wages, then he would receive such compensation as the statute fixes, it being presumed to govern in the absence of contract.

If the employment be general, without specifying whether it shall be by the day or otherwise, it will not be presumed to be, by the day, but will fall under the second condition of the statute.

Very respectfully,

W. H. WEST,

Attorney General.

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GAS METERS; UNSTAMPED MUST NEITHER BE  
SET NOR USED AFTER JUNE 1, 1867.

Attorney General's Office,  
Columbus, August 21, 1867.

*Dr. T. G. Wormley, State Gas Inspector:*

SIR:—I am in receipt of your letter of 19th instant asking whether the act of last winter limits the inspection and sealing of gas meters to those which may be set after June 1, 1867.

The sixth section of the act provides that

“No meter shall be set, after the 1st day of June, 1867, unless it be sealed, stamped, etc. \* \* \* and any company *authorizing* the *setting* of any *such* meter, or *allowing* the *same* to be used by any consumer of gas without being sealed and stamped, shall forfeit,” etc.

The ambiguity of this language arises from the employment of the word “such.” To what does it refer, and what is its import? Let it be supposed to mean “no meter,

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*Gas Meters; Unstamped Must Neither Be Set Nor Used  
After June 1, 1867.*

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without being stamped and sealed." The clause might then be read thus: Any company authorizing the setting of any unstamped meter, or allowing any unstamped meter to be used, etc., after the first day of June, 1867, shall forfeit, etc. This, I think, is the correct rendering.

I know it is contended by some that it should be read thus: "And any company authorizing the setting of any unstamped meter after the first day of June, or allowing any unstamped meter which may be set after the first day of June to be used," etc.

This would be a plausible rendering if it were not for the term "re-inspection," employed in the ninth section. The two sections must be read together. If the ninth section is limited to the re-inspection of meters which may have been previously inspected, as its terms imply, there would be no law prohibiting the use of uninspected meters set before the first of June, and no means provided for this inspection, so that the evil which the statute intended to remedy, would continue for many years to come.

I think, therefore, the sixth section intended to prohibit the setting of any unstamped meter after June 1st, and also the using of any unstamped meter after that date, no matter when the same should have been set; and that the ninth section provides for their "re-inspection," from time to time, as consumers may think their meters out of order.

Very respectfully,

W. H. WEST,  
Attorney General.

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*Listing of Property in Hands of Agents of Foreign Owners  
On Day Preceding Second Monday, Etc.*

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LISTING OF PROPERTY IN HANDS OF AGENTS  
OF FOREIGN OWNERS ON DAY PRECEDING  
SECOND MONDAY, ETC.

Attorney General's Office,  
Columbus, August 31, 1867.

*J. W. Dietrich, Esq., Auditor Montgomery County:*

DEAR SIR:—Your communication relative to the listing and taxation of tobacco in your county, held by agents for parties in New York on the day preceding the second Monday of April, is received.

The fourth section of the tax law, as amended April 8, 1865, requires that each person "shall list all moneys *invested*, loaned, or otherwise controlled by him, as *agent* or attorney, or on account of any other person or persons, company or corporation whatsoever," etc.

The sixth section of the act, as amended February 25, 1862, is as follows:

"Each person required by this act to list property shall make out and deliver to the assessor, when required, or within ten days thereafter, a statement, verified by his oath or affirmation, of all the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or *otherwise*, in his possession, or under the control of such person, on the day preceding the second Monday of April of that year, and which, by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, *agent or factor*."

The eleventh section of the act (S. & C., 1444) exonerates *consignees* in certain cases, but does not relieve agents or consignors. If it did, producers, in order to re-

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*Prosecuting Attorney; Resignation Of; To Whom Made,  
Etc.*

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lieve themselves from taxation, would have nothing to do but to consign their products to the nearest warehouseman, for storage, sale, or otherwise. It makes no difference then whether the property be listed specifically, or as an investment of money, it is a valuation in the hands of the agent, subject to taxation.

Yours truly,

W. H. WEST,  
Attorney General.

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PROSECUTING ATTORNEY; RESIGNATION OF;  
TO WHOM MADE, ETC.

Attorney General's Office,  
Columbus, August 31, 1867.

*J. B. Burrows, Esq., Prosecuting Attorney, Lake County:*

DEAR SIR:—Your communication of the 29th instant is received.

Your resignation should be made to the Court of Common Pleas. There can be no election or appointment until a vacancy actually exists. I perceive that your term of court commences on the 2d of September. If it should continue until the day before the election, you can resign on that day, and let the court appoint a successor, selecting the person who will probably be elected. The election can then be had, and the appointee will continue to hold until the 1st of January, when his term would regularly commence. If this course be pursued, the sheriff may announce the fact at once that such election will take place. If, on the other hand, you desire to hold the office until the 1st of January, you can do so; but in that event no election can be had this year. Your proper course then will be, if you

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*Covington & Cincinnati Bridge Co.; Taxation of Property  
Of.*

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desire an election to be had, to resign on the last day of the September term of your court.

Very respectfully,

W. H. WEST,

Attorney General.

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COVINGTON & CINCINNATI BRIDGE CO.; TAX-  
ATION OF PROPERTY OF.

Attorney General's Office,

Columbus, August 31, 1867.

*Hon. James H. Godman, Auditor of State:*

SIR:—Yours of 14th instant, covering letter of the auditor of Hamilton County relative to the refusal of the Covington & Cincinnati Bridge Co. to make return of property for taxation for 1866, has been considered.

The company's charter provides that

“One-half the capital stock of the company actually paid in shall, as soon as the company commences taking tolls, be placed upon the duplicate of the treasurer of Hamilton County for taxation for all purposes.”

The third section of the tax law provides that

“No person shall be required to include in his statement as a part of the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its *capital and property* for taxation *in this State*.”

The fifty-ninth section of said law provides that

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*Covington & Cincinnati Bridge Co.; Taxation of Property  
Of.*

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“No person shall be required to list for taxation any certificate of the capital stock of any company, the *capital stock* of which is taxed in the name of said company.”

The third section further provides that taxes upon banks, banking companies, and all other joint stock companies, or corporations, of whatever kind, levied and collected in pursuance of the provisions of this act, shall be in lieu of any taxes which such banks or banking company, or other joint stock company or corporation was, by former laws, required to pay.”

The sixteenth section provides that corporations, except banking companies, or corporations whose taxation is specifically provided for in this act, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation all the personal property, etc., which shall be held to include the necessary realty.

*First.* The charter of the company was and is a contract. The mode of taxation therein provided was and is a contract which the legislature had no power to invalidate, impair, or supersede, without the assent of the company (16 Howard, 369).

*Second.* The third and sixteenth sections of the tax law were obviously intended to supersede the charter mode of taxation, (but they neither did nor could do so without the assent of the company. Has the company ever so assented? If it has, then the charter mode has ceased to be operative, and the statute alone governs. If it has not so assented, the charter mode still governs, and must be followed.

*Third.* If the charter mode has ceased to be operative, does it not follow that the capital and property of the company are not listed or returned for taxation in this State as provided in the third section, and that the capital stock



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*Duty of Election Judges Under Decision as to Meaning of  
Word "White."*

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is not listed or returned, as provided in the fifty-ninth section? If so, which seems to me to be true, then each individual stockholder residing in this State is required to list the certificates of stock by him held, as an investment in stocks, and is not exempted under either the third or fifty-ninth sections.

*Fourth.* If the company has assented to the statutory mode of taxation, it will be required to list the full value of all its property, real and personal, lying within the jurisdiction of the State.

The only question of difficulty then is the extent of that jurisdiction, and the fact of the company's assent. The first to be determined in the proper court having jurisdiction to determine the conflict of boundaries between States, and the second a question of fact to be determined by the parties, or by the proper State court in the case of disagreement.

Respectfully,

W. H. WEST,

Attorney General.

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DUTY OF ELECTION JUDGES UNDER DECISION  
AS TO MEANING OF WORD "WHITE."

Attorney General's Office,  
Columbus, September 19, 1867.

*Messrs. Kirk, Bailey and Bethel, Trustees Flushing Township, Belmont County:*

GENTLEMEN:—Your communication of 9th instant is received.

On page 151 of the statutes of 1867, you will find a severe penalty against refusing to accept a vote, knowing the same to be legal.

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*Appropriation of Land for School House Sites.*

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On page 41, Vol. I, of Swan and Critchfield's Statutes, you will find, in Note 2, the law of the case in regard to who are considered "white." If you desire to examine the decisions of the court at length, you will find them in Vol. 11, p. 372 and 376, and Vol. 12, p. 237, of the Ohio Reports, and in Vol. 9, p. 576, of the Ohio State Reports, in which last case it was decided by the court that the construction of the new constitution is the same as that of the old. These reports you will find at the office of some lawyer in St. Clairsville.

As to the evidence necessary to establish the preponderance, family reputation—that is, what his grandfather or grandmother, or father, or mother, or other member of the family who knew the facts, said or asserted as a matter of family history, about the degree of white blood possessed by the elector—will be sufficient to entitle him to vote, if sworn to by him or others, unless the contrary be proved by witnesses called and sworn.

Respectfully,

W. H. WEST,  
Attorney General.

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APPROPRIATION OF LAND FOR SCHOOL HOUSE  
SITES.

Attorney General's Office,  
Columbus, September 20, 1867.

*Hon. Jno. A. Norris, Commissioner Common Schools:*

SIR:—I am in receipt of the communication of L. P. Bradley, Esq., referred to me by you for opinion as to case stated therein.

The letter states that a certain school house in Troy Township, Geauga County, was built upon a site leased for

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*Naturalization Papers; Service in Army.*

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the purpose; that the site is now deemed insufficient in size; and inquires whether additional ground can be condemned.

The object being to secure additional ground adjoining the present site, the proper course would be for the board of education to make application for the purchase both of the site now held by lease, and whatever additional ground is reasonably necessary; and in case the board shall be unable to procure the requisite amount of ground by purchase (See Ohio Laws, Vol. 57, p. 9), then to institute proceedings to appropriate, in pursuance of the statute referred to, whatever portion of said ground they shall have been unable to purchase, as well that covered by the lease as the additional.

Very respectfully,

W. H. WEST,  
Attorney General.

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NATURALIZATION PAPERS; SERVICE IN ARMY.

ENDORSEMENT.

On letter of Hugh Livingston, Esq., township trustee, Mt. Vernon Furnace, Lawrence County, Ohio. Letter dated September 23, 1867, and returned endorsed as follows, September 30, 1867:

Service in the army one year entitles the soldier, on proof thereof, to receive final papers of naturalization, without any previous declaration of intention. But he cannot vote without such papers.

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*Contractors at Penitentiary; Form of Contract Under Laws of 1867—Liability for Voting, Under Papers Fraudulently Obtained.*

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CONTRACTORS AT PENITENTIARY; FORM OF  
CONTRACT UNDER LAWS OF 1867.

Attorney General's Office,  
Columbus, October 14, 1867.

*Genl. C. C. Walcutt, Warden Penitentiary:*

DEAR SIR:—1st. I am unable to furnish you form of contract as requested, without having one of the old contracts, or without knowing in what particular or respect they are to be changed. (See the language of section 38.)

2d. It will be sufficient if Conger and Campbell assign their contract to the corporation, in the ordinary form, and the board, by its order, acquiesce in said assignment, and take the written stipulation of said corporation, and its bond for the faithful performance of the same, reciting the fact of the assignment therein. The sureties on the original bond should assent, and the order of acquiescence should provide against their discharge from liability thereon.

Very respectfully,

W. H. WEST,  
Attorney General.

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LIABILITY FOR VOTING, UNDER PAPERS  
FRAUDULENTLY OBTAINED.

Attorney General's Office,  
Columbus, October 26, 1867.

*Robert Love, Esq., Steubenville, Ohio:*

DEAR SIR:—I have no doubt that the Dunns are criminally liable for illegal voting. Papers fraudulently procured will not protect them.

Their letters, I have no doubt, may be revoked, upon

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*Penitentiary Contracts; Modification of Form Under Law  
of 1867.*

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application to the Probate Court which issued them, and reasonable notice to the Dunns to show cause why they should not be. Any citizen, but more properly the prosecuting attorney of the county, may make the application, in the nature of an information, suggesting the fraud and improvidence, and upon the hearing the court may order the papers surrendered and cancelled, and may also set aside and cancel the record, etc.

Very respectfully,  
W. H. WEST,  
Attorney General.

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PENITENTIARY CONTRACTS; MODIFICATION  
OF FORM UNDER LAW OF 1867.

Attorney General's Office,  
Columbus, November 6, 1867.

*Genl. C. C. Walcutt, Warden Ohio Penitentiary:*

DEAR SIR:—Your communication, with enclosures, is received.

I have endeavored to prepare a modification of contract as requested. I am not certain that I have been able to gather the correct idea. Paragraph No. 9 in the contract of 1867 may be what you desire, instead of paragraph No. 3 in the form which I have prepared.

If you were personally present, so that I could consult you, I could readily prepare the draft. But I do not know what the board desire in regard to attending school, and hence have prepared the form requiring ten hours' actual labor. If this is not what the board desire, you can readily substitute paragraph No. 9 for such portion as may be proper.

Very respectfully,  
W. H. WEST,  
Attorney General.

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*Term of County Auditor Appointed to Fill Vacancy—Supervisor of Printing; Power of Under Act of 1867.*

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TERM OF COUNTY AUDITOR APPOINTED TO  
FILL VACANCY.

Attorney General's Office,  
Columbus, November 6, 1867.

*J. B. Newton, Esq., Roachton, Wood County, Ohio:*

DEAR SIR:—Your communication relative to the term of office of county auditor appointed to fill vacancy, is received.

I will say in reply that the appointee holds until his successor is elected and qualified, but his successor cannot be qualified until March succeeding his election. The appointee will, therefore, hold until that time.

Very respectfully,

W. H. WEST,  
Attorney General.

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SUPERVISOR OF PRINTING; POWER OF UNDER  
ACT OF 1867.

Attorney General's Office,  
Columbus, November 16, 1867.

*Commissioners of Printing:*

GENTLEMEN:—By the second section of the act of April 11, 1867, the supervisor of public printing is authorized, "*as soon as proper arrangements can be made,*" to secure the services of *one* competent teacher of printing, and *one* competent teacher of binding, and *no more*. I can find in the act no authority for him to employ any others.

Nor can he employ these until the proper *arrangements* can be made. These arrangements include the furnishing of suitable apartments *in the asylum buildings*, and not else-

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*Railroads; Their Right to Charge Certain Rates for Transportation of Freight and Passengers.*

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where. This is very clearly directed in the last clause of the third section. By this section he is to provide necessary tools, materials, machinery, fixtures, etc., *to be used in said department*, subject to the concurrence of the trustees as to the *amount of space* which can be afforded *in the buildings*. It is very obvious then that the space to be employed is within the buildings, and not elsewhere.

If at the expiration of the contract for printing and binding, the asylum does not afford facilities for doing the work, the commissioners of printing must provide for the deficiency in the manner now prescribed by law, but not for a longer period than one year, so that the whole of the work may, as arrangements are perfected, and facilities enlarged, be ultimately performed by the pupils, within the departments of the asylum building.

Truly, etc.,

W. H. WEST,  
Attorney General.

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RAILROADS; THEIR RIGHT TO CHARGE CERTAIN RATES FOR TRANSPORTATION OF FREIGHT AND PASSENGERS.

Attorney General's Office,  
Columbus, November 16, 1867.

*Hon. Geo. B. Wright, Commissioner of Railroads, Etc.:*

SIR:—The correspondence between your department and the Pittsburg, Fort Wayne & Chicago Railway Company, which was referred to this office, has been examined, and the points in controversy considered. I have now the honor to reply as follows:

*First.* Said company has no authority to charge on freight transported a greater distance than thirty miles, any

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*Railroads; Their Right to Charge Certain Rates for Transportation of Freight and Passengers.*

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rate exceeding five cents per ton per mile. 1 S. & C., 273. Sec. 12, Stat. 1848. 1 S. & C., 378, Sec. 13, Stat. 1852.

*Second.* Said company, in my opinion, has no authority to charge for the transportation of passengers any distance exceeding thirty miles, a rate of fare exceeding three cents per mile.

1st. The Ohio & Pennsylvania Railroad Company and the Ohio & Indiana Railroad Company were incorporated prior to the adoption of the existing constitution, and under the general railroad act of 1848. By this latter act, section twelve, these corporations were authorized to charge three and one-half cents per mile for distances exceeding thirty miles. 1 S. & C., 273.

2d. On the 1st day of August, 1856, these corporations were consolidated under the act of 1852, 1 S. & C., 280, and formed a new corporation known as the Pittsburg, Fort Wayne & Chicago Rail Road Company. (See History of Reorganization, p. 8.)

3d. By this act of consolidation the original corporations became and were "merged in the new corporation" (ib. 281, Sec. 22). All the rights, liberties, faculties and franchises of the original corporations became and were vested in the new corporation, and the former ceased to exist, except that all rights of creditors, and all *liens* upon the *property* of the original corporations were preserved, and their existence was continued only so far as was necessary to enforce the same (ib. Sec. 23).

4th. But the corporate franchises of these original corporations were not, at the date of their consolidation, the subject of *liens*, as *property*. These franchises, therefore, passed to and became merged and vested in the new corporation, except the naked franchise of corporate existence. Among the franchises or faculties so transferred and merged, was the right to transport passengers, and to charge and collect fare therefor. This must be so, otherwise the



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new corporation would have been without power or authority to charge and collect such fares.

5th. But the new corporation thus organized by the consolidation of said corporations, under the act of 1852, was made "subject to all the restrictions of said act" (ib., Sec. 21). By section thirteen of said act it is declared that all railroad companies organized under it are "restricted" to charging rates of passenger fare not exceeding three cents per mile, for distances exceeding thirty miles. This consolidated company was organized under said act. It is, therefore, subject to the restriction imposed on the rates of passenger fare, by the said act. Hence at and after the consolidation aforesaid, the Pittsburg, Fort Wayne & Chicago Rail Road Company, which arose out of said consolidation, was restricted to, and had no power to charge more than three cents per mile fare, for the transportation of passengers distances exceeding thirty miles; and the franchise and faculty of the said original corporations to charge three and one-half cents, or any other rate, thereupon became extinguished. This faculty of the original corporations was thus surrendered, in consideration of the liberty and privilege of consolidation.

6th. This, then, was the status of the several corporations at the date of the passage of the act of April 11, 1861, and of the judicial proceedings and sale under the decree of the United States District Court for the northern district of Ohio. The franchise of the said original corporations to charge three and one-half cents, or any other sum, per mile, for the transportation of passengers, had ceased to exist as a faculty or franchise belonging to or possessed by either of them. This franchise was possessed exclusively by the new corporation, the Pittsburg, Fort Wayne & Chicago Rail Road Company, subject, however, to the restrictions of the act of 1862, limiting the rates of fare for thirty miles and upwards to three cents per mile. The original corporations then retained and possessed no faculty

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*Railroads; Their Right to Charge Certain Rates for Transportation of Freight and Passengers.*

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or franchise but naked corporate existence, all and singular their other faculties and franchises having passed to the new corporation, subject to the restrictions aforesaid.

7th. By the judicial sale aforesaid, and the subsequent proceedings thereunder, only the faculties and franchises *then* retained and possessed by the said original corporations and the faculties and franchises *then* possessed by the new corporation, the Pittsburg, Fort Wayne & Chicago Rail Road Company, passed to Lanier and others. But neither the original nor the new corporation *then* possessed the faculty or franchise to charge and collect three and one-half cents, or any other rate greater than three cents per mile, for distances exceeding thirty miles. Therefore, no faculty or franchise to charge and collect greater rates of fare than three cents per mile, for the distances aforesaid, passed to Lanier and others.

8th. Lanier and others conveyed to the Pittsburg, Fort Wayne & Chicago Rail Way Company. But they could not convey any other or greater faculty or franchise than they themselves possessed, or than the said original companies, and the said Pittsburg, Fort Wayne & Chicago Rail Road Company possessed at and after the consolidation aforesaid. Hence the Rail Way Company, the existing corporation, did not acquire, and does not possess, the faculty or franchise to charge rates exceeding three cents per mile, for the distances aforesaid. This is true, unless the franchise to charge a higher rate be given by some recent statute. Has this been done?

9th. The Pittsburg, Fort Wayne and Chicago Rail Way Company is a foreign corporation, created by the legislature of Pennsylvania. It operates that part of its road lying in Ohio, under and by virtue of the seventh section of the act of April 11, 1861. By that statute it is expressly provided that said company shall exercise no power, privilege, faculty or franchise within this State, inconsistent with the laws thereof, and that such part of said railroad

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shall be subject to all regulations of law, in the same manner as railroads of this State in like cases; and the corporation owning the same shall be subject to all duties imposed by law, etc. See Stat. 1861, Sec. 7.

10th. The act of April 4, 1863 (60 Vol. Stat. 54) in no manner whatever affects or impairs this reasoning, or its conclusion, even if said act be constitutional, which is more than questionable. It authorizes the transfer of "the franchise to *be a corporation*, originally vested in the company which held the railroad prior to any judicial sale thereof, etc. In this case the Pittsburg, Fort Wayne & Chicago Rail Road Company held the road prior to its sale. Hence, the existing corporation, the Pittsburg, Fort Wayne & Chicago Rail Way Company, can acquire under the said act no greater faculty or franchise than mere *corporate existence*, "the franchise to be a corporation."

My conclusion then is, that the Pittsburg, Fort Wayne & Chicago Rail Way Company has no corporate power or franchise to charge or collect, for the transportation of passengers distances exceeding thirty miles, fare at a rate greater than three cents per mile.

*Third.* Have railroad companies authority to exact rates greater than those prescribed by law, from passengers destined to stations distant more than thirty miles? I think not.

I understand this authority is assumed, and in some instances exercised, as to passengers who fail to pre-purchase tickets. The claim rests on two grounds: one of personal convenience to the company's agents; the other, and chief, of protection against their dishonesty.

1st. If the exaction of these greater rates be considered in the light of a penalty for the violation of a corporate regulation, it is wholly unauthorized, for the imposition of penalties is not an incident of corporate powers. If it be considered in the light of a burden, imposed on the traveling public to compensate for the crimes of the company's agents,

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*Railroads; Their Right to Charge Certain Rates for Transportation of Freight and Passengers.*

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it is equally unauthorized, for the punishment of the innocent, for the crimes of the guilty and faithless, is still less an incident of corporate powers. On either ground it contravenes the positive and express terms of the statute, which is an answer sufficient and conclusive.

2d. It may be said that the exercise of this power is warranted and justified by public policy. But neither self-protection, public policy, or any other pretext whatever, can override a public statute. Reasons of public policy may be grounds for legislative interference and relief; but I have only to consider the powers of these corporations in the absence of such legislation.

3d. The limitations of the statute are dependent on no conditions; either of public policy, self-protection, pre-purchase of a ticket, or otherwise, except distance alone. No corporate regulation can disregard this positive enactment. If it were otherwise, the creator of these corporate beings would be subject and subordinate to the creature.

Hence, when a passenger enters the cars, with a *bona fide* intention of being transported a continuous journey of thirty miles or more, the exaction from him of fare at a rate greater than that prescribed by the statute, on any pretext whatever, is unauthorized. No breaking of the journey into fragments, and charging for shorter distances between intermediate points, can sanction or legalize excessive rates.

*Fourth.* Are discriminating rates, for distances less than thirty miles, authorized as against passengers failing to pre-purchase tickets?

The statute of 1852 (1 S. & C., p. 278, Sec. 30), to the restrictions of which the Pittsburg, Fort Wayne & Chicago Rail Way Company is subject, provides that for less distances than thirty miles, such "reasonable rates" may be charged "as may, from time to time, be fixed by the company, or prescribed by law."

1st. It is a sufficient answer to the proposition to say

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that no authority exists for fixing a multiplicity of rates between the same points. A reasonable rate may be fixed, and not many rates, for the same class of passengers.

2d. The legislature having prescribed what it regarded as a "reasonable" compensation for thirty miles distance, it is not "reasonable" that the company shall be authorized to fix any rate for a less distance which will exact a greater gross sum. If it be in legislative contemplation unreasonable to exact more than ninety cents for thirty miles, it would certainly seem unreasonable for the company to exact a greater sum for any less distance.

3d. But there being no express statutory limitation of rates for less distances than thirty miles, may not considerations of public policy, and protection against the dishonesty of agents, control, in estimating and determining what are "reasonable rates" for these distances? I think not. Liberal rates, on the basis of honesty and economy, are alone allowable. No considerations of policy or protection can authorize the exaction of a greater sum than ninety cents for thirty miles. These elements are, therefore, excluded from the legislative idea of reasonableness. It is proper then, that they be excluded in determining what are "reasonable rates" for distances over which there is no legislative limitation. They cannot, therefore, furnish any ground for fixing rates which will yield in a less distance, a sum exceeding that yielded by the rates prescribed for any greater distance. Hence, any rate, whether prescribed as a penalty for the non-purchase of tickets, was a protection against the dishonesty of agents, or for any other cause, which will yield more than ninety cents for any distance less than thirty miles, or a sum for any distance exceeding that for any greater distance, is unreasonable. If the sum of ninety cents, prescribed by the statute for thirty miles, be reasonable, and it must be so regarded, one hundred cents for twenty-five miles must be regarded as unreasonable and

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*Railroads; Their Right to Charge Certain Rates for Transportation of Freight and Passengers.*

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unauthorized, no matter upon what pretext it is asked or exacted, whether it be for the non-purchase of a ticket, or other cause.

4th. The time, place, or manner of payment, can have nothing to do with the rate of fare. It may be required either at the beginning or end of the journey, as the company may deem proper, but this does not and cannot determine the reasonableness of the amount charged. Whether a rate be or be not reasonable, depends, therefore, in no sense upon the pre-purchase or the non-purchase of tickets. Hence, a rate which is reasonable, in the case of pre-purchase, must of necessity be reasonable in case of the non-purchase of tickets.

5th. Finally: The rates for all distances must be "fixed," not variable, floating, or uncertain. They must also be "reasonable," in the sense above stated. A rate "fixed" for the pre-purchase of tickets, if within the limits above considered, will be deemed and held a "reasonable rate" of fare for the given distance. Any higher rate "fixed" for the non-purchase of tickets, or otherwise, will of necessity be deemed an "unreasonable rate." There cannot be two standards of rates for the same classes of passengers, and both be reasonable, in the same sense and degree, unless the personal convenience or dishonesty of agents may be considered as elements in determining what is reasonable, which, as shown above, cannot be. A fair and "fixed" rate of reward for the transportation of passengers, is the only reasonable and legal standard. No other or greater rate, either as a penalty for the non-purchase of tickets, or as a premium of insurance against the crimes or delinquency of agents, can, in legal contemplation, be authorized or allowed. What is reasonable in the case of the pre-purchase of tickets, is therefore reasonable in case of their non-purchase. A fair, "fixed" and reasonable reward in the one case, is a fair and reasonable rate of reward

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*Title of Lands for New Lunatic Asylum, at Athens.*

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in the other, which the company has no legal authority or power to transcend, without further legislation.

Respectfully,

W. H. WEST,  
Attorney General.

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TITLE OF LANDS FOR NEW LUNATIC ASYLUM,  
AT ATHENS.

Attorney General's Office,  
Columbus, October 16, 1867.

*To the Governor:*

I have the honor to acknowledge the receipt of your favor of the 15th instant, enclosing abstract of title land proposed to be donated by the citizens of Athens County to the State, for the location of a new asylum for the insane, asking my opinion of its sufficiency.

I am clearly of the opinion that a judicial sale and confirmation will convey a sufficient title to lot No. 61. I am also equally clear that the decree in the case of lot No. 59 confirms and quiets title in Arthur Coats, Jr., as against the heirs of John Coats, he having in his lifetime, by answer in said case, disclaimed title thereto; and that both by said decree and lapse of time, the heirs of Arthur Coats are concluded.

I presume the surrender should be made by, and a reconveyance made to, the said Arthur Coats, Jr., and he convey to the State; so also the same in case of any purchaser of lot 61. The conveyances should be made to the State of Ohio by the lessees to whom the university grants the fee.

I have the honor to be, etc.,

W. H. WEST,  
Attorney General.

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*County Surveyor; Fees of, for Surveying Ditches, Etc.—  
School Teachers; Duty of as to Building Fires, Etc.*

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COUNTY SURVEYOR; FEES OF, FOR SURVEY-  
ING DITCHES, ETC.

Attorney General's Office,  
Columbus, December 2, 1867.

*John Spillane, Esq., Surveyor Fulton County:*

SIR:—Your communication of 25th ult. is received.

The law of 1861 will govern county commissioners in making allowance to county surveyor when employed in surveying ditches.

Very respectfully,

W. H. WEST,  
Attorney General.

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SCHOOL TEACHERS; DUTY OF AS TO BUILDING  
FIRES, ETC.

Attorney General's Office,  
Columbus, December 9, 1867.

*Hon. Jno. A. Norris, School Commissioner:*

SIR:—The letter of the auditor of Meigs County, referred to me by you, makes the following inquiry:

“In the absence of a special contract, who is responsible for building the fires, etc., the teacher or the scholars?”

It is no more the duty of the teacher to build fires, than to prepare the material therefor. He is employed to teach, not to build fires.

The question is also asked: “Can the directors hire it done, paying out of the contingent fund?” I answer yes.

Respectfully,

W. H. WEST,  
Attorney General.



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*Probate Judge; Sufficiency of Certain Account Filed With  
County Auditor.*

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PROBATE JUDGE; SUFFICIENCY OF CERTAIN  
ACCOUNT FILED WITH COUNTY AUDITOR.

Attorney General's Office,  
Columbus, December 10, 1867.

*L. A. Atkinson, Esq., Auditor Jackson County:*

SIR:—Your communication of 9th instant is received.

The account rendered by the probate judge, and the verification thereof, are both insufficient. The fourth section of the act requires the probate judge to make out and certify to the county auditor a written statement of said services, the respective cases or matters in which the same have been rendered, specifically stating each case or matter, the fees to which he may be entitled in each case, that such fees have been paid to his predecessor, naming him, and that he has received no compensation whatever for said services, which written statement shall be verified, etc.

It is insufficient to render an account in the aggregate. It must be rendered by items, and in detail, so that the auditor can judge of its correctness. The items for docket entries must specify the number of words, or whatever other matter, constitutes the basis of charging. The whole must be either positively sworn to, or else the affidavit must state that the records show the fees to have been paid to the predecessor.

Very respectfully,

W. H. WEST,  
Attorney General.

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*Costs in Criminal Cases; Allowance Where "Uncollectable."*

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COSTS IN CRIMINAL CASES; ALLOWANCE  
WHERE "UNCOLLECTABLE."Attorney General's Office,  
Columbus, December 19, 1867.*Geo. C. Clyde, Esq., Auditor Miami County:*

DEAR SIR:—Your communication relative to allowance by county commissioners for costs in criminal proceedings is received.

By the act of 1866, found in volume 63 Laws, 11 and 12, you will observe that no more than \$100 may be allowed in any one year, and this only in case the "uncollectable" fees amount to \$100. The officer asking an allowance should present to the commissioners a list of the cases in which he claims it, with the amount of *his* fees in each case, and accompany it with an affidavit that it is just, uncollectable, and unpaid. The commissioners may then make an allowance for the amount of such fees, to \$100, and no more. If the fees be less than \$100, the allowance will also be less, as it can in no case exceed the uncollectable fees; and in no case can it exceed \$100, though the fees should be more.

Mayors, justices, constables, etc., can in no case draw fees from the county treasury in cases not punishable by imprisonment in the penitentiary. The allowance above mentioned is intended to cover all these fees, no matter whether the prisoner be finally convicted or not.

Security for costs may be required before issuing warrant in any *minor* offence.

Very respectfully,

W. H. WEST,  
Attorney General.