Perjury Where a Party Swears Falsely Before a Commission Appointed to Take Testimony in a Divorce Case by an Indiana Court.

record conform to the original instrument in form—interlineations that must often be made in your printed parts to adapt them to the original leave so much greater room for errors that a record so made ought not to carry with it that character for truth which it now has. In my judgment such records ought not to be used.

Very respectfully, etc.,

F. B. POND,
Attorney General

PERJURY WHERE A PARTY SWEARS FALSELY BEFORE A COMMISSION APPOINTED TO TAKE TESTIMONY IN A DIVORCE CASE BY AN INDIANA COURT.

The State of Ohio,
Office of the Attorney General,
Columbus, January 16, 1871.

W. P. Howland, Esq., Prosecuting Attorney, Etc.:

SIR:—Below please find extracts from Indiana statutes. That speaking of "willful absense" is as follows:

"Abandonment for one year."

As to taking depositions under a commission, section 240 of the Indiana code provides as follows:

> "When a deposition is to be taken out of the State the clerk shall, upon the request of the party taking the deposition to the *officer or commissioner* designated to take the deposition."

Section 241 provides:

> "If the commission do not specify the name of the officer before whom the deposition is to be

taken, and he have no official seal, his certificate shall be authenticated," etc.

I am satisfied if the suit was properly pending in Indiana and the commission issued by the clerk authorized, "Thorp," or "any other person having authority" to take the deposition, that the taking it and administering the oath by a notary is sufficient to warrant an asssignment of perjury by the witness whose deposition is taken. I do not think it necessary to aver that the depositions were used.

Very respectfully,

F. B. POND,
Attorney General.

COUNTY COMMISSIONERS' REPORT.

The State of Ohio,
Office of the Attorney General,
Columbus, January 16, 1871.

Geo. W. Gurst, Esq., Auditor of Sandusky County:

SIR:—In reply to yours of 12th inst. I have to say that in my judgment the words "detailed report in writing of their official transactions" * * * "accurate statement of the finanical affairs of the county," require the commissioners to make a statement of the amounts expended for each purpose. For example: Bridges itemized sufficiently to show the amount expended for each bridge; witnesses and expenses of courts, etc., but I do not think that it means that the amount of each order should be set out, nor do I think it necessary that any other receipts for taxes, or otherwise, need be stated than those which are needed to show the financial condition of the county as to those funds which are properly county funds.

Very respectfully,

F. B. POND,
Attorney General.

County Treasurers-Elect Must Qualify on September 1st.

COUNTY TREASURERS-ELECT MUST QUALIFY ON SEPTEMBER 1st.

The State of Ohio,
Office of the Attorney General,
Columbus, January 17, 1871.

James Irvine, Esq.:

SIR:—Yours of yesterday is at hand, and in reply I have to say:

If your county treasurer-elect did not *give bond,* and otherwise qualify as such treasurer, on or before the first Monday of September after his election, then there was a vacancy in the office which the commissioners had the power to fill by appointment, and if they made their appointment less than twenty days before the annual election next thereafter (1869), or if they made no appointment there is still a vacancy that may be filled by the election of a treasurer at the election in 1871.

This is upon the hypothesis that Partello was re-elected in 1870. (You say he was re-elected in 1869. I suppose that a mistake, and that he was re-elected in 1870, as his first election was in 1868, and he had two years to serve from that election.)

If I am right as to the facts, in my judgment at the fall election of 1871 the people have a right to elect a new treasurer, whether the sheriff issues his proclamation or not, so that the people are substantially notified in some other way of such election.

Very respectfully,

F. B. POND,
Attorney General.

Constables' Fees in Serving Subpoenas—Prosecuting Attorney; No Law to Compel County Commissioners to Furnish an Office; Payment of Witness Fees.

CONSTABLE'S FEES IN SERVING SUBPOENAS.

The State of Ohio,
Office of the Attorney General,
Columbus, January 26, 1871.

C. W. Newell, Esq., Prosecuting Attorney, Etc.:

SIR:—Yours of the 24th inst. came to hand this morning, and in reply I have to say:

In my judgment the second section of the act of 1865, S. & S., page 368, gives to the constable serving a subpoena twenty-five cents for service upon one person, twenty-five cents for a copy if he serve by copy, and mileage for the distance necessarily traveled by him to enable him to perform the duty.

Very respectfully,
F. B. POND,
Attorney General.

PROSECUTING ATTORNEY; NO LAW TO COMPEL COUNTY COMMISSIONERS TO FURNISH AN OFFICE FOR; PAYMENT OF WITNESS FEES.

The State of Ohio,
Office of the Attorney General,
Columbus, January 30, 1871.

John J. Robinson, Esq., Prosecuting Attorney, Etc.:

SIR:—Yours of 26th inst. came to hand this morning, and in reply I have to say:

First—I do not find any statute requiring the county commissioners to furnish the prosecuting attorney with an office.

Second—The act of the General Assembly passed

March 4th and took effect May 1, 1864, S. & S., page 369, is, so far as I can discover, still in full force.

The first section makes it imperative upon the auditor to draw his warrant upon the county treasurer for witness fees in prosecutions for penitentiary offenses. The commissioners of the county have no legal power to control him in the matter, and cannot protect him in refusing so to do. He is responsible alone. If he refuses in a given case to draw his warrant, my advice would be to apply for a mandamus in your district court to compel him so to do.

Very respectfully,

F. B. POND,
Attorney General.

JUSTICES OF THE PEACE; VACANCIES IN THE OFFICE OF.

The State of Ohio,
Office of the Attorney General,
Columbus, January 30, 1871.

Hon. Harlow Chapin:

SIR:—Yours of 25th inst. is at hand, and in reply I have to say:

I have examined with such care as I can the statute relative to filling vacancies in the office of justice of the peace, and have come to the following conclusion:

First—The township trustees may legally notify the electors of any township to meet at one place in said township for the purpose of holding an election to fill a vacancy in the office of justice of the peace in that township.

Second—The trustees may also give notice, not less than fifteen days nor more than twenty days before the proposed election, and such election may be held before any vacancy actually occurs. See Sec. 2 and 13, S. & C., 763 and 765.

I do *not* think the statute in some respects is what it

ought to be, but as it stands the above is the only construction of which I think it susceptible.

Very respectfully,
F. B. POND,
Attorney General.

SENTENCES OF CONVICTS IN THE PENITENTIARY.

The State of Ohio,
Office of the Attorney General,
Columbus, January 30, 1871.

Col. R. Burr, Warden Ohio Penitentiary:

SIR:—Yours of 21st inst. covering copies of two sentences of Robert Jones, passed at the September term of the Court of Common Pleas of Washington County, Ohio; one for the term of six years and the other for two years in the Ohio Penitentiary, and in neither of which sentences is it stipulated when the term for which the convict was sentenced shall commence, is received, and has received from me careful consideration.

I am satisfied that you can hold the prisoner legally under these two sentences for *six years* and *no longer.*

It might be well, inasmuch as there are several cases of this sort, that you hold this or some other convict beyond his longest term, so that his friends can apply for a writ of habeas corpus, and thus have the question judicially settled.

I am fully satisfied, however, that my opinion above given is correct.

Very respectfully,
F. B. POND,
Attorney General.

Prosecuting Attorneys Must Collect Penalties From County Officers Who Fail to Report Their Fees for the Year on 1st September.

PROSECUTING ATTORNEYS MUST COLLECT PENALTIES FROM COUNTY OFFICERS WHO FAIL TO REPORT THEIR FEES FOR THE YEAR, ON 1st SEPTEMBER.

The State of Ohio,
Office of the Attorney General,
Columbus, February 1, 1871.

W. M. Ampt, Esq., Prosecuting Attorney, Etc.:

SIR:—Yours of 30th ult. is to hand, and in reply I have to say:

Section 4 of the act of March 9, 1861, O. L., page 29, makes it the duty of the prosecuting attorney "to collect in the name of the State of Ohio from the * * * sheriff * * * etc., *all delinquent penalties* under this act."

If the sheriff did not make the return required by the first section on the first Monday of September, by the fourth section the liability to pay the $200 penalty attached, and since that day has been and is, in my judgment, a *"delinquent penalty."*

I do not see that the prosecuting attorney can escape the duty of collecting it as the statute directs.

Very respectfully,
F. B. POND,
Attorney General.

Claim of Mr. Best for Property Lost During the Morgan Raid—Ursuline Academy of Cleveland Not Exempt From Taxation.

CLAIM OF MR. BEST FOR PROPERTY LOST DURING THE MORGAN RAID.

The State of Ohio,
Office of the Attorney General,
Columbus, February 9, 1871.

General J. H. Godman, Auditor of State:

SIR:—In the matter of the application of Mr. Best, through E. E. Evans, Esq., for payment for two horses taken by the forces of the general government during the Morgan raid, I cannot advise you to draw a warrant for such payment. If as stated the property was sent out by order of the Governor in the first instance, and lost to Mr. Best in consequence thereof, I am inclined to think the Supreme Court would direct a warrant to issue upon the proper application, but until they shall have so decided in some case of a like character, I should decline to draw the warrant.

Very respectfully,
F. B. POND,
Attorney General.

URSULINE ACADEMY OF CLEVELAND NOT EXEMPT FROM TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, February 9, 1871.

General J. H. Godman, Auditor of State:

SIR:—In the matter of the application of the "Trustees of the Ursuline Academy of Cleveland" to be relieved from taxation, it would seem that the academy, as it is called, is

Property of an Insane Person Confined in County Infirmary is Subject to His Maintenance.

used more as a residence for teachers than for the ordinary uses of a "public academy."

Under the decision of our Supreme Court in "Cincinnati College vs. The State," 19th Ohio Reports, pages 110 et seq., and Kendrick vs. Farquahr, 8th Ohio Reports, 189, I do not think the statements of the applicants make a showing to warrant the Auditor of State in granting the relief they seek for. Very respectfully, etc.,

F. B. POND,
Attorney General.

PROPERTY OF AN INSANE PERSON CONFINED IN COUNTY INFIRMARY IS SUBJECT TO HIS MAINTENANCE.

The State of Ohio,
Office of the Attorney General,
Columbus, February 17, 1871.

J. P. Spriggs, Esq., Prosecuting Attorney, Monroe County:

SIR:—Yours of 10th inst., was received this morning, and in reply I have to say that in my judgment the thirty-fifth and thirty-seventh sections of the act of May 1, 1865, S. & S., page 533, contain ample provisions to enable the directors of your county infirmary to subject the property of an insane person maintained at the infirmary, to his maintenance.

It seems to be the spirit of our statutes to consider a person a *pauper* not only when he has no *property* but when he is so *poor in mind* as to be unable to manage his property if he has it—so as to maintain himself. If any further advice is desired please advise me.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Prosecuting Attorneys Not Entitled to Ten Per Cent. Upon Costs Paid by the State Upon the Commitment of a Convict to the Penitentiary.

PROSECUTING ATTORNEYS NOT ENTITLED TO TEN PER CENT. UPON COSTS PAID BY THE STATE UPON THE COMMITMENT OF A CONVICT TO THE PENITENTIARY.

The State of Ohio,
Office of the Attorney General,
Columbus, February 24, 1871.

T. Cherrington, Esq., Prosecuting Attorney, Lawrence County, Ohio:

SIR:—General Enoch handed me a letter from you this morning inquiring whether a prosecuting attorney is entitled to ten per cent. upon costs paid by the State Treasurer upon the commitment of a convict to the penitentiary.

In reply I have to say that in my judgment the prosecuting attorney is not entitled to such percentage.

The State in this case merely anticipates the collection of the costs against the convict, or in other words, advances the money therefor, leaving the judgment therefor still standing against him.

The object of allowing this percentage is to stimulate the prosecutor to a delinquent collection of such judgment against the convict.

Very respectfully,
F. B. POND,
Attorney General.

United States Convicts do Not Lose Citizenship; If They Did, the Governor Could Not Restore.

UNITED STATES CONVICTS DO NOT LOSE CITIZENSHIP; IF THEY DID, THE GOVERNOR COULD NOT RESTORE.

The State of Ohio,
Office of the Attorney General,
Columbus, March 1, 1871.

His Excellency, the Governor:

SIR:—In the matter relating to the citizenship of R. S. Williams, late a convict in the Ohio Penitentiary under sentence of the United States Court, I have to say:

First—I find no act of Congress which make a disability either as to citizenship or otherwise against Williams beyond the term for which he was sentenced. No action on the part of any executive is necessary, therefore, to enable him to occupy the same situation as a citizen which he did before he was sentenced.

Second—If such law existed I do not think the executive of this State could interfere effectually in the matter.

Very respectfully,
F. B. POND,
Attorney General.

County Auditor's Fees for Services in Road and Turnpike Matters; Township Treasurer's Road Fees.

COUNTY AUDITOR'S FEES FOR SERVICES IN ROAD AND TURNPIKE MATTERS; TOWNSHIP TREASURER'S ROAD FEES.

The State of Ohio,
Office of the Attorney General,
Columbus, March 8, 1871.

Asa Jenkins, Esq., Auditor, Etc.:

SIR:—Your letter would have received earlier attention but for press of other business.

Upon examination of the question as to how the fees of county auditors should be fixed for services in road improvements and free turnpikes, I find that section 8 of the act of March 29, 1867, S. & S., 672, provides that he shall receive such compensation for his services as is now, or may be fixed by law for like services in other cases. The only other class of cases where the pay for *like services* is fixed in the way of fees, that I can find, is the first section of the act of April 6, 1866, S. & S., 871, and especially that part of this section relating to services under the act for constructing ditches and drains.

It appears to me that your fees must be fixed by the allowance made in that so far as its provisions are applicable; and where they are not, the only way in which I see you can be paid is by an allowance of the commissioners under the last part of the act of April 17, 1867, S. & S., 371, if your county has no more than 30,000 inhabitants.

If you know of any other subsisting statute please call my attention to it, and oblige me.

Second—Where a township treasurer receives and pays out road funds I think he may retain two per centum as fees, under the twenty-third section of the statute regulating township officers, S. & C., 1570.

Very respectfully,
F. B. POND,
Attorney General.

Election of Justice of Peace in Case of a Tie Vote to be Determined by Lot—Mayors to Pay all Fines, etc., Into City Treasury; Entitled to Fees in Cases Instituted Before Him for Violation of Statutes.

ELECTION OF JUSTICE OF PEACE IN CASE OF A TIE VOTE TO BE DETERMINED BY LOT.

The State of Ohio,
Office of the Attorney General,
Columbus, April 8, 1871.

David Okey, Esq., Clerk Court Common Pleas:

SIR:—Yours of the 4th inst. is to hand. Section 14 of the act of March 11, 1853, provides "that all elections under the provisions of this act shall be conducted in the same manner as is required in the election of members of the General Assembly," etc.

Section 32 of the act regulating elections of representatives, S. & C., 539, provides a mode for determining, as I think, who of the two candidates for justice of the peace is properly elected.

Very respectfully,
F. B. POND,
Attorney General.

MAYORS TO PAY ALL FINES, ETC., INTO CITY TREASURY; ENTITLED TO FEES IN CASES INSTITUTED BEFORE HIM FOR VIOLATION OF STATUTES.

The State of Ohio,
Office of the Attorney General,
Columbus, April 8, 1871.

Ransom Griffin, Esq.:

SIR:—Section 120, Municipal Code, O. L., Vol. 66, page 170, makes it imperative for the mayor to pay all fines, penalties and forfeitures which may come into his hands in his official capacity over to the city treasurer, and no distinction

Probate Judge of Allen County; Temporary Absence of Does Not Vacate His Office.

is drawn between penalties, etc., for violation of ordinances and statutes.

I know of no law making the county liable to pay jail fees in prosecutions before the mayor.

In my judgment when a prosecution is instituted for violation of a statute, before a mayor, he acts as a justice of the peace, and all fees and costs, which by the various statutes attach to justices; in such cases the mayor is entitled to receive from the same sources.

Very respectfully, etc.,

F. B. POND,
Attorney General.

PROBATE JUDGE OF ALLEN COUNTY; TEMPORARY ABSENCE OF DOES NOT VACATE HIS OFFICE.

The State of Ohio,
Office of the Attorney General,
Columbus, 1871.

His Excellency, the Governor:

SIR:—I have received the communication addressed to you and returned herewith, relating to the situation of the office of probate judge of Allen County. I have also looked at the constitution of the State, and the acts of the General Assembly so far as they touch this office.

It is not claimed, as I understand it, that the judge has removed his residence out of the county; nor that in leaving he intended to abandon, resign or vacate his office; but it is claimed that he has left temporarily with the intention of returning in six weeks or two months.

The General Assembly have no where said so far as I can discover, that such a state of facts should operate to vacate the office. Under the sixth section, tenth article of the constitution, the General Assembly has the power, perhaps, to provide for what cause and in what manner this

officer might be removed, but this it has not done except as provided in section 96, S. & C., 428, of Crimes' act. As to some officers it has provided what shall create a vacancy. As for instance, in case of justices, section 2, S. & C., 763, where among other causes, absence for six months creates a vacancy. A vacancy may be created in the office of county auditor by act of commissioners of the county in a certain event (S. & C., 96, Sec. 3). Also county treasurer, S. & C., 1588, Sec. 21.

Such conduct as this might warrant the General Assembly, under the seventeenth section, fourth article of the constitution, in removing the judge and thus create a vacancy, but it is clear to me that it does not operate itself to make such vacancy. And I am almost inclined to think from the absence of legislation of this sort, that the General Assembly has intended to keep this power of removal in its own hands, to be exercised at its own discretion under the section of the constitution last above referred to.

The Governor must, of course, before appointing, decide that a vacancy exists and this appears to be the only question in the case. I have answered it as best as I can.

Very respectfully, etc.,

F. B. POND,
Attorney General.

JUSTICES OF THE PEACE; RESIGNATION OF MUST BE MADE TO COMMON PLEAS JUDGE.

The State of Ohio,
Office of the Attorney General,
Columbus, April 2, 1871.

His Excellency, the Governor:

SIR:—I have examined the communication addressed to you by O. C. McLouth, clerk of Erie County Common Pleas, and have to say:

Common Pleas Judge; Term of Office of, is Five Years.

First—A justice of the peace can only make a valid resignation to the judge of the Court of Common Pleas of the proper county.

There appears then to have been no vacancy in that office in Berlin Township when the election was held and such election was therefore invalid. See section 15 of the act of March 11, 1853, S. & C., p. 765.

Second—It appears to me that the same answer must be given as to the election in Florence Township.

No resignation seems to have been made to the clerk of Common Pleas of Erie County before the election, and that should, in my judgment, have been so done before a vacancy could happen to warrant an election. There must have been a vacancy before a valid election could be held, and as I construe this statute there was none.

Very respectfully, etc.,

F. B. POND,
Attorney General.

COMMON PLEAS JUDGE; TERM OF OFFICE OF, IS FIVE YEARS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 28, 1871.

His Excellency, the Governor:

SIR:—The communication of J. B. Seney, lately elected judge of Common Pleas in the first sub-division of the Fourth Judicial District has been examined by me, and I have come to the following conclusions relating to the question suggested by it:

Section 12 of article 4 of the constitution provides as follows:

> "The judges of the Courts of Common Pleas shall, while in office, reside in the district for which

they were elected, *and their term of office shall be for five years.*"

This seems imperative and I find nothing in the constitution anywhere modifying it.

The act of March 10, 1870, under which Judge Seney was elected, fixes the time or date at which he shall take his office, on the second Monday of May, 1871.

In my judgment the judge is entitled to hold his office for five full years from the day of the month on which the second Monday of May, 1871, falls.

The act of February 3, 1859, S. & C., 890, cannot in my opinion affect it in any way. If the General Assembly intended to do so by that act, in my judgment it had not the power to do it under the constitution.

Very respectfully,

F. B. POND,
Attorney General.

LESSEES OF THE PUBLIC WORKS; BOND OF SHOULD BE RENEWED.

The State of Ohio,
Office of the Attorney General,
Columbus, April 29, 1871.

His Excellency, the Governor:

SIR:—In my judgment the bond of lessees of the Public Works, given May 30, 1869, should be renewed on or before the 30th of May, 1871.

Very respectfully, etc.,

F. B. POND,
Attorney General.

County Treasurer Acting Also as City Treasurer Should Give Bond for City Funds.

COUNTY TREASURER ACTING ALSO AS CITY TREASURER SHOULD GIVE BOND FOR CITY FUNDS.

The State of Ohio,
Office of the Attorney General,
Columbus, May 5, 1871.

H. L. Morey, Solicitor of Hamilton City:

SIR:—Yours of the 3d inst. is to hand, and in reply I have to say:

In my judgment the General Assembly did not intend, under the Municipal Code originally, to impose the duties of corporation treasurer upon county treasurers in such cases as yours, as will be seen by section 156 of the code, and by their repeal of the act of 1868, S. & S., 795; but it has adopted this policy by the act of May 2, 1870, O. L., Vol. 67, p. 32.

It appears to me that the sixty-first section of the code, as amended by the last named act, the General Assembly simply intended to indicate the person who should be corporation treasurer, and nothing more, and that to secure the funds of the corporation it is as necessary to take from the "officer" *so indicated* a bond as provided in section 80 of the code as it would be if he were chosen treasurer of the city at and by an election.

It is doubtful, and more than doubtful, whether the county treasurer's sureties upon his county bond would be liable for this corporation money under this legislation.

Very respectfully, etc.,
F. B. POND,
Attorney General.

RAILROAD COMMISSIONER; TERM OF OFFICE AND SALARY OF.

The State of Ohio,
Office of the Attorney General,
Columbus, May 12, 1871.

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

SIR:—Your communication of 6th inst. has been examined by me, and I have come to the following conclusions touching the question you ask:

By the act of April 6, 1867, (O. L., Vol. 64, page 111), it is provided that the Commissioner of Railroads and Telegraph shall, upon his appointment, hold his office for two years, and *until* his successor is appointed and *qualified,* Under your appointment made in April, 1869, in my judgment, you held your office until your successor was *qualified* in 1871. You were appointed your own successor, and if as such you qualified on the 29th of April, on that day your new term began and the old one ended, and up to that date you are entitled to draw your salary at the rate of four thousand dollars per annum, and after that date at the rate of three thousand dollars per annum.

I believe the above substantially covers the ground of your queries; if not, please advise me.

In the meantime, I remain,

Very respectfully, your obedient servant,

F. B. POND,
Attorney General.

Morgan Raid Claims; Appropriation for Construed.

MORGAN RAID CLAIMS; APPROPRIATION FOR CONSTRUED.

The State of Ohio,
Office of the Attorney General,
Columbus, May 12, 1871.

Hon. Jas. H. Godman, Auditor of State:

SIR:—Your communication of yesterday relating to the Morgan raid claims, has been received and carefully considered, and in reply I have to say:

It is perfectly clear that so far as the appropriation bill of May 2, 1871, seeks to provide for the payment of "claims for damages to property taken, injured or destroyed by the Union forces *under command of the United States officers* in pursuit of General Morgan through Ohio in 1863," it cannot have the force and effect of law; and in my judgment the Auditor of State ought not to draw warrants on the Treasurer of State for the payment of such claims. As I understand it, these Union forces passed through the States of Kentucky, Indiana and Ohio as forces of the United States and under the control of United States authorities in pursuit of an enemy at war with the United States government, and were in no way subject to, or controlled by, the authorities of the State of Ohio. For damages done by such forces, acting under such authority, I find no law of Ohio, passed prior to or in force at the time of the doing of such damage which provided for a contemplated payment of such claims; in other words no law *pre-existed* the sustaining of such damage. This being the case, unless said act was passed by a vote of two-thirds of the members elected to each branch of the General Assembly, it cannot have the force of law. This vote the act of May 3, 1871, did not get. It, therefore, clearly confers no more authority upon the Auditor of State to draw his warrant than the act of 1869 did for the payment of claims for damages done by General Morgan's forces, which was disposed of by the Supreme Court

in the case of John Fordyce vs. The Auditor of State last winter.

As to "claims for damages to property taken, injured or destroyed by militia or State troops or Union forces not under the command of United States officers," provided for in the act of May 2, 1871, and for which $6,257 is appropriated, in my judgment the Auditor of State should, upon the proper application and when the proper affidavits are made, draw his warrants for their payment. These claims rest upon an entirely different basis from those first above referred to. These are for damages done and property taken by forces of the State of Ohio legally acting under State authority and for the public benefit, and are, to use the language of the Supreme Court in Fordyce vs. Godman, etc., "the subject matter of such claims is provided for by pre-existing law, even by the constitution itself, which requires compensation in money to be made in such cases to the owner," and which provides also for incurring liabilities by the State to "repel invasion," etc.

Also in the act of April 26, 1861, O. L., Vol. 58, page 107, and other acts of that year of a like character.

Very respectfully,

F. B. POND,
Attorney General.

CONSTITUTIONALITY OF THE ACT OF APRIL 7, 1863, RELATING TO PUNISHMENT FOR CRIMES.

The State of Ohio,
Office of the Attorney General,
Columbus, May 31, 1871.

T. W. Hampton, Prosecuting Attorney:

SIR:—In my judgment the second section of the act of April 7, 1863, S. & S., 610, is constitutional. So far as col-

Judges of Election Cannot be Punished Under Section 24 of General Election Law of 1868 for Violations Under Act of May 5, 1868.

lecting the fine is concerned, I have no doubt about it whatever; as to the costs I have but little doubt.

Very respectfully, etc.,

F. B. POND,
Attorney General.

JUDGES OF ELECTION CANNOT BE PUNISHED UNDER SECTION 24 OF GENERAL ELECTION LAW OF 1868 FOR VIOLATIONS UNDER ACT OF MAY 5, 1868.

The State of Ohio,
Office of the Attorney General,
Columbus, 1871.

J. Kelly O'Neall, Prosecuting Attorney, Etc.:

SIR:—In my judgment the penalty provided by section 24 of the act of April 17, 1868, S. & S., p. 342, does not apply to nor can it reach judges of election for receiving "ballots * * * written" on other than "plain white paper," or "printed with black ink" on other than "plain white news printing paper." In other words, I do not see that the provisions of said section 24 apply to the act of May 5, 1868, at all.

Very respectfully,

F. B. POND,
Attorney General.

Indictments; Mandatory That They Should Conclude as Provided in Section 20, Article 4, of Constitution.

INDICTMENTS; MANDATORY THAT THEY SHOULD CONCLUDE AS PROVIDED IN SECTION 20, ARTICLE 4, OF CONSTITUTION.

The State of Ohio,
Office of the Attorney General,
Columbus, June 10, 1871.

S. T. Stephen, Esq., Prosecuting Attorney:

SIR:—Necessary absence from the city has prevented an earlier answer to your letter. I regret it because it may embarrass you.

The requirement of the twentieth section, fourth article of the constitution seems to be *mandatory*, and if the conclusion "against the peace and dignity of the State of Ohio" is omitted, in my judgment the paper would be bad as an indictment. But it is a matter of form only, and should be taken advantage of promptly by motion to quash. If that is done, and a plea of the general issue is put in under section III of the code (O. L., 66, p. 304), I thing it is too late to raise the question even in such a case. If the one hundred and ninety-sixth section of the code is good for anything in such a case, the judgment cannot be arrested.

I should not advise, however, you to proceed with the other indictments. It would be much safer to find new ones.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Boards of Education Limited as to Rates of Taxation Upon New Duplicate—Boards of Education Limited as to Rates of Taxation by Act of May 1, 1871.

BOARDS OF EDUCATION LIMITED AS TO RATES OF TAXATION UPON NEW DUPLICATE.

The State of Ohio,
Office of the Attorney General,
Columbus, June 13, 1871.

John T. Moore, Esq.:

SIR:—Section 9 of act of May 1, 1871, does, in my judgment, limit the authority of boards of education to levy taxes for school purposes upon the new duplicate, so that such boards cannot levy as great a percentum by one-fourth as they could have done before the passage of the act.

Very respectfully,
F. B. POND,
Attorney General.

BOARDS OF EDUCATION LIMITED AS TO RATES OF TAXATION BY ACT OF MAY 1, 1871.

The State of Ohio,
Office of the Attorney General,
Columbus, June 13, 1871.

S. W. Cartwright, Esq.:

SIR:—Yours of the 9th inst. is to hand, and in reply I have to say:

In my judgment the fifth section of the act of May 1, 1871, (O. L., 68, p. 119) is in full force and effect. Section 14 of the act of May 1, 1865, is also in full force subject to be limited by said section 5; so that the aggregate amount of tax shall not exceed the amount allowed by said last named section.

Very respectfully,
F. B. POND,
Attorney General.

TAX LAW OF 1868; CONSTRUCTION OF.

The State of Ohio,
Office of the Attorney General,
Columbus, June 23, 1871.

C. D. Caldwell, Esq.:

SIR:—In answer to yours of the 16th inst., I have to say:

First—The intention of section 6 of the tax law of 1868 (O. L., Vol. 65, p. 38) seems to be to tax the property for *the time held* during the year preceding the second Monday of April, and which had previously to that date been converted into bonds, greenbacks, etc. Inclosed please find the opinion of Auditor Godman touching the mode of adjusting the matter which I think clear, and concur in as the proper mode of adjusting the matter: and second, because it has been adopted with great uniformity throughout the State.

Second—I do not see that the matter is affected by changes in the character of the property from credit into money or any other change.

Third—In case a party realizes an amount of money, either as profit in business, salary or otherwise, and converts it immediately into non-taxable securities, it appears to me that for the month in which he held it he must list it according to the rule laid down by the auditor.

The opinion of the Auditor of State should, in my judgment, be regarded in such matters with respect, for the reason that his department is peculiarly the one to deal with this matter, and it is very desirable, and in fact necessary, that there should be uniformity throughout in listing property for taxation and in accordance with his opinion as sent you, the property of the State is generally listed in this respect.

I also feel you don't want my judgment of the constitutionality of the act of 1868.

It is somewhat difficult to determine just what the General Assembly intended, but upon careful consideration I

Trustees of Incorporated Villages Have Complete Control of all Road Work Within Their Special Corporations.

think the above is the proper mode of applying the provisions of the act.

Very respectfully, etc.,
F. B. POND,
Attorney General.

TRUSTEES OF INCORPORATED VILLAGES HAVE COMPLETE CONTROL OF ALL ROAD WORK WITHIN THEIR SPECIAL CORPORATIONS.

The State of Ohio,
Office of the Attorney General;
Columbus, June 26, 1871.

L. C. Herrick, Esq., Trustee, Etc.:

SIR:—Yours of 14th inst. would have been answered sooner but for press of other business. In reply to your inquiries I have to say:

By the fifty-first section of Municipal Code (O. L., 66, p. 158) the trustees of incorporated villages for special purposes "have *exclusive* jurisdiction of all public roads," etc., etc., "constructed or to be constructed within the limits of the corporation."

Section 36 (21) S. & S., 670, provides that "all road taxes collected by the county treasurer shall be paid over to the treasurer of the township or *municipal corporation* from which the same were collected," and shall be expended on the public roads, etc., "in the * * * *municipal corporation* from which said taxes were collected, under direction of the * * * council of such municipal corporation."

Section 484 (O. L., Vol. 66, p. 230) provides that "the council of *any incorporated village* or city shall have power to require," etc.

It appears clear to me from the foregoing that the term "trustees" of a special corporation and "council" of villages

and cities, so far as this road business is concerned, was intended by the General Assembly to mean one and the same thing, and that such trustees through their marshal acting as supervisor, have full and complete power to control the entire road work within the limits of the special corporations. Within this territory the trustees of the township, as to roads and road work, have no jurisdiction whatever; and in my judgment the village marshal acting as supervisor, has as full power to compel the performance of the two days' labor as any other supervisor.

Very respectfully, etc.,

F. B. POND,
Attorney General.

EXEMPTION OF MILITIA FROM JURY SERVICE; DOES NOT APPLY TO UNITED STATES COURTS.

The State of Ohio,
Office of the Attorney General,
Columbus, June 29, 1871.

General W. A. Knapp, Adjutant General, Etc.:

SIR:—In reply to inquiry of Mr. R. H. Flemming as to whether the provisions of our State militia law exempting members of military organizations from jury services, applies to the United States courts, I have to say:

Such exemption cannot apply to jury service required under the laws of the United States, in United States courts, and can only apply to such service in our State courts.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Township Trustees Should Order at Once an Election For Justice Upon Being Notified by Township Clerk of Expiration of Commission.

TOWNSHIP TRUSTEES SHOULD ORDER AT ONCE AN ELECTION FOR JUSTICE UPON BEING NOTIFIED BY TOWNSHIP CLERK OF EXPIRATION OF COMMISSION.

The State of Ohio,
Office of the Attorney General,
Columbus, July 12, 1871.

Geo. A. Rinehard:

SIR:—Unavoidable absence from the city has prevented my answering yours of 7th inst. sooner. In reply I now have to say:

First—In my judgment, upon being legally notified by the clerk of the township as provided in section 13 (S. & C., p. 765) of expiration of commission of a justice, the trustees should *at once* notify the electors to meet and elect another. I think this is the obvious spirit of the statute.

Second—As to the disposition of the dockets, both *civil and criminal* of the justice whose commission has expired, section 206 of the act relating to justices (S. & C., p. 805) contains clear directions. I think this disposition includes all that the justice held in the way of dockets, papers and statutes which may be said to belong to the office.

Very respectfully, etc.,
F. B. POND,
Attorney General.

DITCH LAW; PROCEEDINGS OF COUNTY COMMISSIONERS UNDER.

The State of Ohio,
Office of the Attorney General,
Columbus, July 13, 1871.

J. J. Moore, Esq., Ottawa, Putnam County:

SIR:—Yours of the 10th inst. came duly to hand, and for reply I have to say:

The proceedings of your county commissioners seem to have been regular, under the act of April 25, 1868, and so far as they have gone up to April 1, 1871, are valid under that statute and not to be disturbed or affected by the act of the last date. This gives the commissioners jurisdiction, in my judgment, of the subject matter of widening and deepening that ditch, notwithstanding the repeal of that statute, which jurisdiction the commissioners still have, otherwise those proceedings would be "affected by the repeal."

You will observe that the second section of the act of April 25, 1868, provides that "the county commissioners shall have the same power to cause said ditch * * * to be cleaned out, deepened or widened as they have to order any such ditch, etc., to be located and constructed, *and the same proceedings shall be required in both cases,* except," etc., clearly intending their proceedings for widening, etc., shall be conducted in all respects in accordance with the statute in force for *locating and constructing* ditches, etc.

The twenty-seventh section of the act of April 12, 1871, after providing as above stated that "no proceedings, etc., shall be affected by such repeal," provides further that *"all further proceedings shall be under and in accordance with the provisions of this act."*

First—In my judgment the proceedings commenced under the act of 1868, so far as they were complete at the date of its repeal, are valid and are not disturbed by such repeal.

Second—All further proceedings upon and after such

repeal must be governed by the rules laid down in the act of 1871 for locating and establishing ditches.

It appears to me that upon the report of the surveyor or engineer (which I think valid as part of a proceeding begun before the repeal) being filed with the auditor, the proceedings must go on as indicated in the second and other sections of the act of 1871, after the finding of the report of commissioners as directed in that section.

Very respectfully.

F. B. POND,
Attorney General.

SECRETARY OF STATE; DISPOSITION OF THE FEES RECEIVED BY.

The State of Ohio,
Office of the Attorney General,
Columbus, July 15, 1871.

Hon. Isaac R. Sherwood, Secretary of State:

SIR:—In reply to your communication of the 12th inst. I have to say:

First—In my judgment all moneys received in your office in the shape of fees, whether strictly provided for in the acts of February 26, 1848, and February 10, 1857, or not, including those paid to Mr. Rice, must be considered fees within the meaning of the act of April 16, 1870, and as such were required by that act to be certified into the treasury.

Second—The act of April 16, 1870, (O. L., 67, p. 59) is in my opinion temporary in its character, and the appropriation therein contained for clerks in the office of the Secretary of State, etc., p. 64, is fixed at the sum of $2,900 for the year 1870, and the first quarter of 1871. To make it certain that this should be the whole amount applied to that object *for that period*, the fees received in the office, thereto-

fore applicable to payment of clerks, were directed to be paid into the State treasury.

This appropriation for clerk hire was temporary and it seems to me clear that the clause relating to fees was intended by the General Assembly to limit this *temporary appropriation,* and of necessity must therefore be temporary itself.

I think, therefore, the act of April 16, 1870, will in no way affect such fees beyond the term for which the appropriation was made.

The acts of 1846 and 1847 are not affected by this act of 1870 any further than the term for which that act was operative.

Very respectfully.

F. B. POND,
Attorney General.

CITY AND VILLAGE COUNCILS; SAME CONTROL OVER SALE OF SPIRITOUS AS MALT LIQUORS.

The State of Ohio,
Office of the Attorney General,
Columbus, July 21, 1871.

Thos. King, Esq.:

SIR:—Yours of 15th inst. is to hand, and in reply I have to say that the council of cities and incorporated villages have the same power to regulate and prohibit sales of whisky, brandy, rum, etc., as they have to regulate and prohibit ale, beer, etc.

Very respectfully.

F. B. POND,
Attorney General.

County Auditors; Power of, to Discharge Prisoners Held for Fines—"Town in Act of April 18, 1870, is Synonymous With "Incorporated Village."

COUNTY AUDITORS; POWER OF, TO DISCHARGE PRISONERS HELD FOR FINES.

The State of Ohio,
Office of the Attorney General,
Columbus, July 21, 1871.

James M. Dalzell, Esq., Prosecuting Attorney, Noble County:

SIR:—Yours of 13th inst. came to hand on Monday, and would have received earlier attention but for my necessary absence from the city. In reply I now have to say:

In my judgment the auditor of your county has full authority under the seventh section of the act of April 18, 1870, (O. L., Vol. 67, p. 106) to discharge from imprisonment any person held in jail for fines due the county, whether arrested upon a warrant or imprisoned by order of court under the one hundred and eightieth section of the criminal code.

Very respectfully, etc.,
F. B. POND,
Attorney General.

"TOWN" IN ACT OF APRIL 18, 1870, IS SYNONYMOUS WITH "INCORPORATED VILLAGE."

The State of Ohio,
Office of the Attorney General,
Columbus, July 28, 1871.

J. A. Scarritt, Esq., Assistant Adjutant General of Ohio:

In reply to yours of 25th inst., I have to say:

In my judgment the word "town" in section 1 of act

Act of April 20, 1871, Applies to State and County Roads —Paupers; Duties of Township Trustees as to; Marriage Alone Does Not Cause Loss of Residence of a Woman.

of April 18, 1870, (O. L., Vol. 67, p. 107) is synonymous with and means the same as *incorporated village.*

Very respectfully, etc.,

F. B. POND,
Attorney General.

ACT OF APRIL 20, 1871, APPLIES TO STATE AND COUNTY ROADS.

The State of Ohio,
Office of the Attorney General,
Columbus, July 28, 1871.

O. Merrill, Auditor Fulton County:

SIR:—Under section 20 of the act of April 20, 1871, (O. L., Vol. 68, p. 81) it appears clear that the General Assembly intended its provisions to apply to either "State roads," "county roads," or free turnpikes, alike.

Very respectfully,

F. B. POND,
Attorney General.

PAUPERS; DUTIES OF TOWNSHIP TRUSTEES AS TO; MARRIAGE ALONE DOES NOT CAUSE LOSS OF RESIDENCE OF A WOMAN.

The State of Ohio,
Office of the Attorney General,
Columbus, July 29, 1871.

Wm. Kimmel, Superintendent Infirmary, Van Wert County:

SIR:—In my judgment the opinion presented by the attorney, sent to me, is substantially sound.

Second—It is the duty of no one particular person to make complaint to the trustees of the presence of a pauper. The only meaning the statute is susceptible of is that upon complaint being made the trustees shall act as directed in sections 4, 5, 6, etc., of act of 1865 (S. & S., pp. 526 and 527). It is clearly the duty of the trustees of the township to ascertain the place of residence of the pauper, and to remove him or her to his proper place of residence, collect the expenses off the township of the pauper's residence. Where the pauper resides out of the State the same rule applies, except that the expenses must be borne by the township where the pauper is found, unless the locality to which the removal is properly made can, by the legislature of its State, be legally compelled to pay.

Third—A woman who has always resided in a township, in my judgment, does not lose her residence by reason of marriage alone. If she removes to the residence of her husband, out of the township of her residence and for ever so short a time her residence would become his and be controlled by the second clause of second section of act of 1865 (S. & S., p. 526).

Very respectfully,
F. B. POND,
Attorney General.

ELECTIONS IN TOWNSHIPS.

The State of Ohio,
Office of the Attorney General,
Columbus, August 23, 1871.

E. S. Davis, Esq.:

SIR:—In reply to yours of 2d inst. I have to say: In my judgment for all township elections, under the proviso and the first section of act of April 2, 1868, (S. & S., 904) elections must be held in the township to which the voters

belong, at a place to be designated by the trustees of the township. If a township trustee or clerk reside in the township, he will be judge or clerk of the election in the precinct, and the other judges and clerk must be elected *viva voce*. For all State and county elections the trustees residing in the precinct will be judges of the election, if there are three of them; if not, elect *viva voce* enough to make a full board.

The incorporated village organization, I take it, has nothing to do with the elections whatever.

Very respectfully,

F. B. POND,
Attorney General.

COUNTY AUDITOR; EXTENSION OF TERM OF.

The State of Ohio,
Office of the Attorney General,
Columbus, August 20, 1871.

A. Kraemer, Prosecuting Attorney:

SIR:—In reply to yours of 16th inst., I have to say:

Under the act of April 18, 1870, (O. L., Vol. 67, p. 106) in my judgment, there can be no valid election in your county for auditor until the October election of 1872.

Your present auditor was "in office" when this act took effect, and by the provisions of its first section his term is extended until November, 1872, and the election to fill his place must be held at the October election of that year.

Very respectfully, etc.,

F. B. POND,
Attorney General.

CHILLICOTHE SCHOOL BOARD; VACANCIES IN.

The State of Ohio,
Office of the Attorney General,
Columbus, August 23, 1871.

W. D. Henkle, Esq., Commissioner of Schools:

Since addressing you yesterday the communication of W. C. Patterson has been shown me, from which it appears that after the school election in Chillicothe, Williams, one of the old board, resigned, and Mr. Peabody elected at the election was qualified to fill his place and entered upon the duties of his office. This resignation created a vacancy. It and a vacancy occurring after the election. Yet, notwithstanding this irregularity, I am inclined to think, if the thing was done in good faith for the purpose of giving effect to the will of the people in the choice of Peabody, the court will sustain Peabody as a member of the board. In all such elections, although the statute does not provide for it, in order to avoid trouble and give effect to the intention of the General Assembly, each ballot should show whose place the person voted for is intended to fill. This would have saved all trouble in this case so far at least as the qualifications of Peabody is concerned.

I am still of opinion that if Safford persists in holding his place for another year, there is no way of preventing his continuance.

Very respectfully,
F. B. POND,
Attorney General.

FEES OF MAYORS, JUSTICES, ETC., IN CRIMINAL CASES.

The State of Ohio,
Office of the Attorney General,
Columbus, August 23, 1871.

Chas. Townsend, Esq., Prosecuting Attorney, Athens County:

SIR:—Yours of 17th inst. would have been answered sooner but for absence from the city. In reply I have now to say:

The act of March 29, 1867, (S. & S., 369) must be taken and considered to be part of the act of May 1, 1864, same page, taking the place of the old section 2 of that act. These different parts of the same act must be made to harmonize if possible. Now the first section provides that "costs taxed," etc., except fees of witnesses in felonies shall not be paid out of the county treasury. This seems to have been thought a great hardship for the officers, and the General Assembly passed the second section, which in lieu of "costs taxed," etc., provides that the commissioners shall make an *allowance* to certain officers.

It seems to me this reconciles the two sections and enables them to stand together. I know of no other provision of our statute by which these officers can be paid except as provided in this last act. This the act provides the commissioners *"shall allow,"* etc., a sum equal to fees not exceeding $100.

Very respectfully,
F. B. POND,
Attorney General.

Show Exhibitors Exhibiting on Fair Grounds Within an Incorporated City or Village Must Take Out a Municipal License if the Ordinances Thereof so Require.

SHOW EXHIBITORS EXHIBITING ON FAIR GROUNDS WITHIN AN INCORPORATED CITY OR VILLAGE MUST TAKE OUT A MUNICIPAL LICENSE IF THE ORDINANCES THEREOF SO REQUIRE.

The State of Ohio,
Office of the Attorney General,
Columbus, September 8, 1871.

Joseph Rothrork, Esq., Mayor of Manchester:

SIR:—Yours of 22d August would have been answered sooner but for necessary absence from the city. By the act of April 6, 1861, (S. & S., p. 5) it is made unlawful for any person to exhibit or show natural or artificial curiosities for price or gain, or to use swings, etc., etc., for profit without license from the board of the agricultural society controlling fair grounds, etc.

The written permission of the proper board would make such exhibition lawful as to fair grounds generally.

But when such fair grounds are located within the limits of a city or incorporated village which has ordinances respecting such matters, in my judgment an exhibitor of shows and performances such as are covered by section 447 of the Municipal Code (O. L., Vol. 66. p. 223), in addition to the license of said board may be required to take out an additional license from the corporate authorities of the city or village.

Very respectfully, etc.,
F. B. POND,
Attorney General.

Mayors of Incorporated Villages Cannot Vote on the Passage of an Ordinance; Can Solemnize Marriages.

MAYORS OF INCORPORATED VILLAGES CANNOT VOTE ON THE PASSAGE OF AN ORDINANCE; CAN SOLEMNIZE MARRIAGES.

The State of Ohio,
Columbus, September 8, 1871.

P. B. Miller, Esq., Mayor, Etc.:

SIR:—Yours of 24th August would have been answered sooner but for necessary absence from the city. In reply I have to say:

First—By the eighty-second section of the Municipal Code the *"legislative authority"* of all incorporated villages shall be invested in a council consisting of six members, except where there are wards, then two members from each ward. No part of this authority seems to belong to the mayor notwithstanding the implication contained in the eighty-sixth section. I do not think, therefore, that the mayor can vote upon the passage of *ordinances*. Ordinances are the result of purely *legislative action* and the persons in whom that is vested by law are the only ones authorized to exercise it.

Second—In my judgment mayors have the same authority to solemnize marriages that justices of the peace have within the limits of the corporation. I can construe the comprehensive language of section 114 of the code in no other way.

Very respectfully, etc.,
F. B. POND,
Attorney General.

Central Lunatic Asylum Appropriation; Error of an Officer of the Legislature Does Not Change the Legislative Action Thereof.

CENTRAL LUNATIC ASYLUM APPROPRIATION; ERROR OF AN OFFICER OF THE LEGISLATURE DOES NOT CHANGE THE LEGISLATIVE ACTION THEREOF.

The State of Ohio,
Office of the Attorney General,
Columbus, September 14, 1871.

Hon. James H. Godman, Auditor of State:

SIR:—I have examined the subject matter of your communication of May 11, 1871, with a good deal of care.

First—I find from a careful examination of the original bill and the engrossed bill "making appropriations for the year 1871 and the first quarter of the year 1872," that under the heading "Central Ohio Lunatic Asylum" the second clause making appropriation for that institution reads as follows:

> "For work on the new building for said asylum, in addition to former appropriations, to be expended under and in accordance with the provisions of the laws now in force upon that subject, one hundred and fifty thousand dollars."

This clause does not appear in the enrolled bill, but it is perfectly clear that when each branch of the General Assembly voted upon the passage of the bill this clause was contained in it, and was passed with the bill.

When the General Assembly had so passed the bill, in my judgment, it became the law, and it only remained for the proper committee and officers of the General Assembly to comply with the directory provisions of the constitution and the law providing for perpetuating and making certain the evidence of what the law making power had done. In attempting to do this, the clause above referred to was care-

lessly omitted by the enrolling clerk and the omission overlooked by the joint committee and the officers of the two houses. Can the will of the legislative power be defeated in this way? I think not. The clause above referred to ought therefore, in my judgment, to be treated as part of the act in all respects.

Second—The same facts appear in regard to the words "law librarian," in the first clause providing for the "salaries of State officers and clerks" which has been omitted in the enrolled bill and I am constrained to come to the same conclusion regarding them.

Very respectfully, etc.,

F. B. POND,
Attorney General.

INMATES OF NATIONAL ASYLUM FOR DISABLED VOLUNTEERS CAN VOTE.

The State of Ohio,
Office of the Attorney General,
Columbus, September 27, 1871.

Hon. R. D. Harrison:

In reply to your inquiry as to whether inmates of the "National Asylum for Disabled Volunteer Soldiers," near Dayton, Ohio, who have resided one year in this State and who have no other residence in the State, have a right to vote at the poll in the township in which such asylum is situated, I have to say:

Since the adjudication of this matter by our Supreme Court in the case of Sinks vs. Reese (19th O. S. R., 306), Congress has passed an act which was approved January 21, 1871, and which is in the words following, to-wit:

> "Be it enacted by the Senate and House of Representatives of the United States of America

Inmates of National Asylum for Disabled Volunteers Can Vote.

> in Congress Assembled, That the jurisdiction over the place purchased for the location of the National Asylum for Disabled Volunteer Soldiers under and by virtue of the act of Congress of March 3, 1865, entitled an act to incorporate a National Military and Naval Asylum for the relief of the totally disabled officers and men of the volunteer forces of the United States, and the act of March 21, 1866, amendatory thereto, and upon which said asylum is located, is hereby ceded to the State of Ohio and relinquished by the United States; and the United States shall claim or exercise no jurisdiction over said place after the passage of this act," etc.

In my judgment after the passage of this act such inmates have the legal right to vote.

It may be claimed that this attempted cession and relinquishment of jurisdiction cannot take effect until accepted by the action of the General Assembly of the State of Ohio. In reply to this objection, I say that no action of Congress was had accepting such cession and jurisdiction from the State of Ohio when the Supreme Court rendered the decision above referred to, and no action was had by Congress upon the subject until the passage of the act above recited, so far as I can discover.

Very respectfully,

F. B. POND,
Attorney General.

Tie Vote for Representative Cannot be Determined by Lot or Otherwise—A County Must Pay the Fees of a Sheriff Where the Offender Has Been Discharged By the County Auditor.

TIE VOTE FOR REPRESENTATIVE CANNOT BE DETERMINED BY LOT OR OTHERWISE.

The State of Ohio,
Office of the Attorney General,
Columbus, October 24, 1871.

To the Governor:

In case of a tie vote in an election for representative to the General Assembly, I find no provision of a statute authorizing a determination of the matter by lot or otherwise. I, therefore, am of opinion that in such case there is no election.

Under the constitution there will be no vacancy in Noble County until January 1, 1872, unless from causes now unforeseen, and I do not see how any action can be taken by your excellency toward an election until that time.

In my judgment the clerk of Common Pleas should certify his abstract of votes as in other cases, but cannot declare anybody elected to that office on that vote.

Very respectfully,
F. B. POND,
Attorney General.

A COUNTY MUST PAY THE FEES OF A SHERIFF WHERE THE OFFENDER HAS BEEN DISCHARGED BY THE COUNTY AUDITOR.

The State of Ohio,
Office of the Attorney General,
Columbus, October 24, 1871.

G. W. Knapp, Prosecuting Attorney, Huron County:

SIR:—Yours of the 9th inst. would have received earlier attention but for absence from the city.

Election of Judge of Common Pleas in Darke County.

Under the act of March 16, 1867, (S. & S., 366) it would seem that a county is bound to pay the fees of a sheriff in a case where the offender has been discharged by the auditor under the act of 1871 (O. L., 67, p. 156), as much as in any other case where the fees cannot be collected from the defendant.

Very respectfully, etc.,

F. B. POND,

Attorney General.

ELECTION OF JUDGE OF COMMON PLEAS IN DARKE COUNTY.

The State of Ohio,
Office of the Attorney General,
Columbus, October 30, 1871.

Hon. Wm. Allen:

SIR:—I have examined the question as to the proposed contest in your sub-division of the Second Judicial District.

It is true the judge elected for the place created by the act of May 1, 1871, takes office on the first Monday of November, 1871, and the one elected for the old place on the second Monday of February next, and ordinarily I can see a difficulty in determining upon the vote in Darke County (in Democratic vote) which place each candidate, if elected, was designed to fill. Still taking into consideration the facts in the case; for instance, that Judge Gilmore's present term does not expire until February next, and is voted for to fill a place of the same grade, I think it fair construction that the people intended to elect him his own successor, and the new candidate to fill the special term. In Ohio *ex rel* the Attorney General vs. Cogswell (8 O. S., 630), a manifest determination indicated to give the decision of the people its *intended* effect whenever that can be arrived at, and it

County Commissioners Not Required to Publish Their Annual Reports in Newspapers.

appears to me, if submitted to the court upon the principles enunciated in that case, Mr. Beers must fail in a contest.

Please show this to Mr. Beers, and oblige, etc.

Very respectfully,

F. B. POND,
Attorney General.

COUNTY COMMISSIONERS NOT REQUIRED TO PUBLISH THEIR ANNUAL REPORTS IN NEWSPAPERS.

The State of Ohio,
Office of the Attorney General,
Columbus, October 30, 1871.

Lyman J. Jackson:

Yours of 26th inst. is to hand, and in reply I have to say:

I find no statute *requiring* the commissioners to publish the report required by the act of May 7, 1869, (O. L., 66, 350) nor any penalty imposed for not publishing the same, nor any authority in the commissioners to pay for publishing such report in the papers of the county.

It appears to me the word "publish" in the last line of section 1 of that act must be construed to mean something else than publishing in the newspapers.

Very respectfully, etc.,

F. B. POND,
Attorney General.

School Boards Organized Under the Akron Law Cannot Condemn Property.

SCHOOL BOARDS ORGANIZED UNDER THE AKRON LAW CANNOT CONDEMN PROPERTY.

The State of Ohio,
Office of the Attorney General,
Columbus, November 13, 1871.

Hon. T. W. Harvey, Commissioner of Schools:

SIR:—In reply to questions put in the communication from J. B. Lucky, president of the board of education of Eleanore, Ohio, submitted to me by you, I have to say:

First—I find no act of the General Assembly vesting school boards organized under the *Akron School Law* with power to condemn private property for school house purposes. The act of February 10, 1860, (S. & C., 1378) does not seem to include such boards in its provisions and I have failed to find any other on the subject.

Second—If such authority exists, in my judgment, additional lands may be condemned after the erection of a school house, if such additional lands would be beneficial to the interests of the school.

Very respectfully, etc.,
F. B. POND,
Attorney General.

Forfeited Recognizances; Duty of County Auditors and Prosecuting Attorneys Concerning.—Peddler; What is a.

FORFEITED RECOGNIZANCES; DUTY OF COUNTY AUDITORS AND PROSECUTING ATTORNEYS CONCERNING.

The State of Ohio,
Office of the Attorney General,
Columbus, November 22, 1871.

W. H. Anderson, Esq., Prosecuting Attorney, Hancock County:

SIR:—Under the act of the General Assembly of February 24, 1871, (Vol. 68, O. L., p. 31) the county auditor should, in my judgment, make the memorandum required by section 2 of that act as soon as it is possible for him to do so, and so soon as such memorandum is made, shall deliver such recognizance to the prosecuting attorney immediately for collection.

Very respectfully, etc.,
F. B. POND,
Attorney General.

PEDDLER; WHAT IS A.

The State of Ohio,
Office of the Attorney General,
Columbus, November 24, 1871.

James N. Sands, Esq.:

DEAR SIR:—Yours of 13th inst. would have received earlier attention but for lack of time. In reply I have now to say:

A peddler is "a person who travels about the country with merchandise for the purpose of selling it." This is the legal definition of the word. If then you take goods over the country for the purpose of sale, you are a peddler.

Testimony Must be Sent by Order of the Court to the Grand Jury.

If, however, you simply buy produce and haul it to your store in the wagon you speak of, or even if you deliver goods previously ordered from your store, this would not constitute you a peddler. If, however, without any previous order therefor, you take the goods into the country for the purpose of selling them for cash or trading them for produce, you would, in my judgment, be a peddler, and must take out and pay for a license as such.

Very respectfully,

F. B. POND,

Attorney General.

TESTIMONY MUST BE SENT BY ORDER OF THE COURT TO THE GRAND JURY.

The State of Ohio,
Office of the Attorney General,
Columbus, December 2, 1871.

C. W. Newell, Esq.:

SIR:—Yours of 28th inst. came to hand last evening and in reply I have to say:

I do not see that the omission of the act of January 5, 1871, of the words "by order of the court," which were contained in section 83 of the act of 1869, can make any difference in the effect of the section in this respect. The testimony must be *sent* to the grand jury, not by the prosecuting attorney, but by some other power at his request, and I know of no other power having authority to do this but the court. It would appear then that the court must still make its order as much as before the amendment.

Very respectfully,

F. B. POND,

Attorney General.

County Commissioners Cannot Allow Prosecuting Attorneys Fees for County Business Other Than His Salary—Harrison Branch Railroad Company; Natural Persons Only Can Become Incorporators.

COUNTY COMMISSIONERS CANNOT ALLOW PROSECUTING ATTORNEYS FEES FOR COUNTY BUSINESS OTHER THAN HIS SALARY.

The State of Ohio,
Office of the Attorney General,
Columbus, December 2, 1871.

A. B. Putnam, Esq.:

SIR:—Yours of November 29th is received, and in reply I have to say I know of no statute authorizing county commissioners to pay the prosecuting attorney fees for county business done by him for them as such commissioners outside of and above his regular salary. If you can call my attention to any act of the General Assembly that looks that way I should be glad to see it, for it does seem that power ought to lie with the commissioners to make some such allowance in extraordinary cases.

Very respectfully, etc.,
F. B. POND,
Attorney General.

HARRISON BRANCH RAILROAD COMPANY; NATURAL PERSONS ONLY CAN BECOME INCORPORATORS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 2, 1871.

General I. R. Sherwood, Secretary of State:

SIR:—Yours concerning certificate of Harrison Branch Railroad Company is received and in reply to your questions touching the certificate, I have to say:

Expenses Incurred in Apprehending a Fugitive From Justice Must be Paid Out of County Treasury.

First—The persons who desire to become a body corporate must be *natural* persons and I think a certificate that seeks to incorporate other than natural persons, even although natural persons are included in it, ought not to be filed or recorded.

This certificate is signed by three persons or parties who do not purport to be natural persons, to-wit:

Indianapolis, Cincinnati & Lafayette Railroad Company.

First National Bank of Greensburgh.

Daniel A. Dwight, as trustee.

Second—Chapman does not acknowledge the certificate.

To make a corporation the statute authorizing it must be strictly followed, and I should not record a certificate at any time that does not conform strictly to the statute in every particular.

Very respectfully, etc.,

F. B. POND,
Attorney General.

EXPENSES INCURRED IN APPREHENDING A FUGITIVE FROM JUSTICE MUST BE PAID OUT OF COUNTY TREASURY.

The State of Ohio,
Office of the Attorney General,
Columbus, December 11, 1871.

T. W. Hampton, Prosecuting Attorney, Gallia County:

SIR:—In reply to yours of the 7th inst., I have to say:

It seems clear to me that the two hundred and twenty-third section of the criminal code (O. L. Vol. 66, p. 321) authorizes the commissioners of your county to pay all "necessary expenses, not otherwise provided for by law," in-

County Recorder Cannot Hold the Office of Justice of the Peace.

curred in making the apprehension "of a person charged with felony" out of the county treasury.

I think the necessary expenses in obtaining a requisition from the Governor of Ohio and in obtaining a warrant thereon from the Governor of West Virginia, and in arresting thereon the accused, and bringing him to Ohio, are among the "*necessary expenses*" referred to in said section 223, unless some part of them may be otherwise provided for by law.

Very respectfully,

F. B. POND,
Attorney General.

COUNTY RECORDER CANNOT HOLD THE OFFICE OF JUSTICE OF THE PEACE.

The State of Ohio,
Office of the Attorney General,
Columbus, December 12, 1871.

J. P. Sprigg, Esq., Prosecuting Attorney, Monroe County:

SIR:—Yours of 9th inst. came to hand today and in reply I have to say:

In my judgment when the newly appointed recorder of your county took office under his appointment he ceased to hold the office of justice of the peace. I find some difficulty in coming to this conclusion owing to the phraseology of section 1 of act of March 26, 1859, (S. & C., 889) which says the incumbent of the office of county recorder, etc., shall not be "eligible to hold" the office of justice of the peace during, etc., is, shall be incapable of being elected to the office strictly construed. But it is not the spirit of the act that he shall not hold the office of justice of the peace while he is recorder of the county. It seems to me that this is what the General Assembly intended.

Very respectfully,

F. B. POND,
Attorney General.

Prosecuting Attorney's Bond Must be Approved by the Probate or Common Pleas Court—Fees of County Auditors.

PROSECUTING ATTORNEY'S BOND MUST BE APPROVED BY THE PROBATE OR COMMON PLEAS COURT.

The State of Ohio,
Office of the Attorney General,
Columbus, December 18, 1871.

A. J. Pearson, Esq., Woodsfield, Ohio:

SIR:—Yours of 22d inst. came to hand this morning, and in reply I have to say:

It seems to me clear from the third section of the act of 1852 (S. & C., 1225), that your bond as prosecuting attorney must be approved by the Court of Common Pleas or the probate court. The approval of either court will answer.

Very respectfully,
F. B. POND,
Attorney General.

FEES OF COUNTY AUDITORS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 18, 1871.

E. B. Casserly, Esq., Prosecuting Attorney, Etc.:

SIR:—Yours of no date came to hand this morning, and in reply I have to say:

Under the act of April 17, 1867, (S. & S., p. 370) fixing the fees of county auditors, no provision seems to have been made in terms for paying the county auditor upon any number of male population over twenty-one years of age less than 200, and I am somewhat in doubt as to what to do with it. The law in such cases does not deal with fractions as

fractions but as a whole or not at all. I am inclined to think if I were a county commissioner where the fraction was over half the 200 I should call it 200, and where less than half that number I should call it nothing.

This is more nearly in accordance with the manner in which such provisions are usually treated than any other way I think.

Very respectfully,

F. B. POND,
Attorney General.

ALLOWANCES OF COMPENSATION TO AUDITORS BY COUNTY COMMISSIONERS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 22, 1871.

A. B. Johnson, Prosecuting Attorney, Hardin County:

SIR:—In reply to yours of 20th inst. I have to say:

The county commissioners have no power to make any allowance to county auditors unless expressly authorized so to do by statute. If there is no provision in the statute regulating turnpikes, or other statute authorizing allowance for work done under it, the commissioners cannot legally make such allowance, and any money drawn from the treasury on such account may be recovered. The commissioners may, however, make a *general* allowance each year of course, under the act of April 17, 1867. (S. & S., p. 370). Section 41 of school law is not suspended so the Supreme Court say in the case of Gallup vs. Commissioners of Lorain County, so that an allowance may still be made under it.

Very respectfully, etc.,

F. B. POND,
Attorney General.