fine and costs or that portion of the fine and costs remaining unpaid or except upon the order of the Secretary of Agriculture."

In answer to your second inquiry it therefore follows that the deputy township clerk, having done an act which if done by a duly qualified deputy clerk would be criminal, cannot shield himself through his de facto character. He may be subjected to the penalty prescribed for violation of his duty, as provided in Section 1454 supra. As regards the township clerk, the general rule of law applies that he himself is not criminally liable for the criminal acts of his deputy where he did not aid, abet, or procure the deputy to violate the law.

3. In answer to your third question your attention is called to Section 12380, General Code, which provides:

"Whoever aids, abets or procures another to commit an offense may be prosecuted and punished as if he were the principal offender."

"Aid" means to help, assist or strengthen; "abet" means to encourage, counsel, incite, or assist in a criminal act; "procure" means to persuade, to induce, to prevail on, to cause to bring about. See *State* vs. *Snell*, 2 O. N. P. 55; *Berry* vs. *State*, 31 O. S. 219.

You state that James Doe requested said license to be dated prior to the date of issue. What he hoped to accomplish by so doing is readily apparent. Ignorance of law does not excuse, and James Doe is presumed to have known that to issue and falsely date such a license with a date prior to the day and date of its issue was unlawful.

It is my opinion that in requesting the deputy township clerk falsely to date a license he aided and abetted and procured another to commit an offense against the law. Therefore, he may be prosecuted and punished as if he were the principal offender for the crime of issuing and falsely dating such a license with a date prior to the day and date of its issue.

Respectfully,
EDWARD C. TURNER.
Attorney General.

119.

COUNTY COMMISSIONERS OR BOARD OF TRUSTEES FOR A COUNTY MEMORIAL BUILDING—MAY NOT ENGAGE IN SHOW BUSINESS—ANYONE OPERATING A SHOW WHEREIN PAID ADMISSIONS ARE CHARGED MUST PAY U. S. TAX.

SYLLABUS:

1. *Neither the county commissioners nor the board of trustees for a county memorial building appointed under Section* 3068, *General Code, may legally engage in the business of conducting a motion picture or show business.*

2. *When a county memorial building has been constructed and completed as provided in Section* 3059, *et seq., of the General Code, and title thereto has vested in the county, and a board of permanent trustees therefor has been appointed by the common pleas court as provided in Section* 3068, *General Code, any one operating a show or attraction, in and upon said premises, wherein paid admissions are charged*

and collected, is chargeable with the duty of collecting and accounting for the United States tax levied upon paid admissions to the auditorium of such building as provided in Section 502, United States Revenue Act of 1926.

COLUMBUS, OHIO, March 1, 1927.

HON. JAY S. MCDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—Acknowledgement is made of the receipt of your letter of recent date in which you state as follows:

> "In this county we have a public building known as the Knox County Memorial Building, which has been completed a year or more ago. The building was built by the levying of a tax on the tax payers of Knox county and pursuant to the law in such cases the common pleas court appointed three trustees who were made custodians of the property. Shortly after the said trustees were appointed they rented to the Mt. Vernon Amusement Company a portion of this building which is built and equipped as a theatre with a seating capacity of about twelve hundred. At the beginning of the present year this company gave up the lease and the trustees appointed by the common pleas court and who constantly looked to the county commissioners for money for the maintenance of the building, continued to operate the theatre, which shows moving pictures of the better type together with certain vaudeville productions and shows produced by stock companies. The question has been raised now by the trustees as to whether the war tax should be paid by the trustees to the Collector of Internal Revenue, the theatre being operated by the trustees who are really representing the interest of Knox county. These trustees have hired a man who is experienced in the show business to look after the booking of shows and the general management of the theatre itself and he is paid a certain salary for his services. The trustees themselves are merely officials appointed by the court and receive no compensation for their services.
>
> This above question was placed before me two days ago and I have been unable to determine whether or not this war tax should be collected by the federal government when the income from the theatre or profit, if any, is an asset purely and simply in the hand of Knox county, said money being paid over directly to the county commissioners and, as I understand it, becomes as general funds in the hands of the county treasurer. I have instructed the trustees to withhold for the time being any money which might be due as war tax until I can expect an opinion from your office."

You desire to know if the trustees of the Knox County Memorial Building, who are conducting a show business in such building for gain and paying the profits into the county treasury, are required to collect and account to the United States the federal tax imposed upon paid admissions, or whether the fact that the ownership of such building is in a subdivision of the state of Ohio and the profits of such business are paid into the county treasury, relieve the trustees of said building of the duty of collecting and accounting for the tax imposed.

Your attention is called to Title V, United States Revenue Act of 1926—Tax on Admissions and Dues, Section 500 (a), which reads:

> "On and after the date this title takes effect (March 29, 1926), there shall be levied, assessed, collected and paid, in lieu of the taxes imposed by Section 500 of the revenue act of 1924;

(1) A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place on or after such date, including admissions by season ticket or subscription, to be paid by the person paying for such admission; but where the amount paid for admission is 75 cents or less, no tax shall be imposed."

Section 502 (a) of the same act reads:

"Every person receiving any payments for such admissions, dues or fees shall collect the amount of the tax imposed by Section 500 or 501 from the person making such payments. Every club or organization having life members shall collect from such members the amount of the tax imposed by Section 501. Such persons shall make monthly returns under oath in duplicate, and pay the taxes so collected to the collector of the district in which the principal office or place of business is located."

So far as the question expressly asked in your letter is concerned, the answer is found in Regulation 43, Art. 26, made pursuant to the United States Revenue Act, the regulation reading:

"ADMISSIONS BY OR FOR THE BENEFIT OF FEDERAL, STATE OR MUNICIPAL GOVERNMENTS.—The fact that the authority charging admissions or receiving the proceeds thereof is the United States or an agency thereof, or a state or territory or political subdivision thereof, such as a county, city, town, or other municipality, does not make such admissions exempt. The act specifically provides that the taxes or admissions (Ch. 1) shall be paid by the person paying for admission. It is not, therefore, a tax on the person or authority selling the admissions or receiving the proceeds thereof."

A much more serious question is presented by your letter although not specifically asked, and that is: Has the board of trustees of the building in question or the board of county commissioners authority to engage in the business of conducting a moving picture show or the show business generally?

I assume that the trustees referred to in your letter are those provided for in Section 3068, General Code, which reads as follows:

"Upon the completion, equipping and furnishing of the memorial building, the trustees shall transfer the same to the county, and the title of such site and building shall thereupon vest in the county and the tenure of office of said trustees shall terminate and end and said board of trustees shall cease to exist as an official board, and thereupon the court of common pleas shall appoint a board of permanent trustees or if the said memorial building is to be used as a public library, may designate any board of public library trustees within the county as a board of permanent trustees ex-officio who shall have sole control, management and supervision of such memorial building and grounds under such rules and regulations as they may from time to time adopt, subject to the approval of the court. Such board of permanent trustees unless is consists of a board of library trustees shall be composed of three members who shall be appointed by the court of common pleas, one for two years, one for four years, and one for six years, and at the expiration of their terms their successors shall be appointed in the same manner for terms of six years each. Such memorial building shall be for the use of the general public, military organizations to be given the preference."

It has been repeatedly held that public boards such as boards of county commissioners and boards of trustees like those provided for in Section 3068, supra, have such powers, and *only such powers* as are expressly conferred by law and those impliedly necessary to carry the express powers into effect. See Commissioners vs. Rafferty 19 O. N. P. (N. S.) 97; State vs. Mills, 20 O. N. P. (N. S.) 427 and cases cited therein.

In the latter case it was held:

> "County commissioners can exercise no power unless it is conferred upon them by statute and in the exercise of such power they must comply with the provisions of the statute which confers it."

I know of no statute authorizing or permitting a board of county commissioners to engage in the motion picture or show business, nor do I find any authorization in any of the sections of the code contained in Chapter 2, Title X, Division IV entitled "Memorial Buildings," (Sections 3059 to 3069-3 inclusive) or any other section of the General Code, for the board of trustees provided for in Section 3068, supra, to engage in such business. And since such authority has not been conferred by the legislature, it is my opinion that the board of trustees in question cannot legally engage in the motion picture or show business.

Nothing herein, however, should be construed as holding that a proper lease may not be entered into for the use of such building for any lawful purpose. In this connection your attention is invited to the case of State vs. Mills, supra.

Respectfully,
EDWARD C. TURNER.
Attorney General.

120.

SINKING FUND TRUSTEES, HAVING FUNDS IN BONDS ISSUED BY THEIR OWN TAXING SUBDIVISION, NOT AUTHORIZED TO RETIRE SUCH BONDS UNTIL DUE—TAXING SUBDIVISIONS MAY FIX MATURITIES OF BONDS WITHIN LESSER PERIOD THAN MAXIMUM PROVIDED UNDER SECTION 2295-9, GENERAL CODE.

SYLLABUS:

1. *Sinking fund trustees, who have invested funds in their hands in bonds issued by their own taxing subdivision, are not authorized to retire such bonds until the same become due.*

2. *Taxing subdivisions, in issuing bonds, may fix the maturities of said bonds to be within a lesser period than the maximum provided for under Section 2295-9 of the General Code.*

COLUMBUS, OHIO, March 1, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication in which you request my opinion upon the following propositions:

> "May the sinking fund trustees purchase bonds of their own taxing district for investment purposes and then retire such bonds immediately or at any time prior to the date of maturity?