2. A prosecution of involuntary manslaughter cannot be predicated upon a violation of Sections 6310-40 or 6310-42, because a violation of these sections cannot be the proximate cause of death.

3. A pilot of an aircraft, who in the operation of his aircraft wilfully disturbs a lawful assemblage of persons, may be prosecuted for a violation of Section 12814 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2046.

ELECTION LAW—MEMBERS OF COUNTY BOARDS OF ELECTIONS ENTITLED TO MILEAGE FROM COUNTY TREASURER FOR EXPENSES IN ATTENDING, VIA AUTOMOBILE, MEETING AT COLUMBUS CALLED BY SECRETARY OF STATE.

SYLLABUS:

1. *The actual expenses of members of county boards of elections incurred in attendance upon a meeting of the members of said boards held at Columbus, Ohio, on May 22nd, 1930, upon the call of the Secretary of State, may be paid from the treasury of the county which they represent upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor.*

2. *Mileage may be allowed to those members of county boards of elections who attended the meeting of those boards held at Columbus, Ohio, on May 22nd, 1930, upon call of the Secretary of State, for the use of their automobiles in attending such meeting as part of their legitimate expense in attending the said meeting. The mileage rate should be fixed in good faith and at such an amount as will be commensurate with the actual cost of operating the automobile.*

COLUMBUS, OHIO, June 30, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "We respectfully request you to render this department your written opinion upon the following:
>
> Sometime during the past month, the Secretary of State issued a call to all members of county boards of elections to meet in Columbus for instruction in connection with their duties under the new election laws.
>
> Question 1. May the expenses of such boards be legally paid out of the county treasury of the county which they represent?
>
> Question 2. May such members be allowed mileage for the use of their automobiles in attending such meeting?"

The 88th General Assembly enacted Amended Substitute Senate Bill No. 2, entitled:

> "An Act to revise, recodify and supplement the election laws, by repealing Sections 4785 to 4828, inclusive; 4826-2, 4830 to 5175-29r, inclusive; 13250 to

13360, inclusive; and substituting therefor the following new and amended sections, to be known as the 'Election Laws of Ohio'."

The aforesaid act repealed the existing statutory provisions relating to the nomination and election of public officers, together with those pertaining to other public elections and set up in their place an entirely new set of election machinery throughout the state.

For the purpose of local administration of the act, including the defining of precinct boundaries, fixing the place for registration of voters, the purchase and providing of the necessary election supplies, the appointment of precinct officers, receiving and canvassing returns of elections, and the performance of other duties as prescribed in Section 13 of the act (General Code Section 4785-13), a board of elections for each county was provided for. Said Section 13, in enumerating the several duties of the county board of elections, provided in paragraph "p":

> "To perform such other duties as may be prescribed by law or the rules of the chief election officer."

Said county board of elections is to consist of four members to be appointed by the Secretary of State upon the recommendation of local party committees for terms of four years; two to be appointed in each even numbered year.

By the terms of Section 6 of the act (Section 4785-6, General Code), the Secretary of State is constituted the chief election officer of the state. His duties are set forth in a general way in Section 4785-7, General Code, which reads in part as follows:

> "It shall be the duty of the Secretary of State to appoint, in the manner provided by law, all members of boards of elections, to advise with members of such boards as to the proper methods of conducting elections; * * * . In the performance of his duties as the chief election officer, the Secretary of State shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records and other evidence; and to fix the time and place for hearing any matters relating to the administration and enforcement of the election laws."

In view of the fact that many of the members of the several county boards of elections throughout the state had been but recently appointed, and that an entire new set of election machinery had been provided for by the act in question, the Secretary of State, as chief election officer of the state, apparently for the purpose of advising with the members of such boards as to the proper method of conducting the state-wide primaries and elections to be held in the fall of 1930, issued a call to these several members and their clerks to attend a meeting in Columbus, Ohio, on May 22, 1930 ,a copy of which call is as follows:

> "Pursuant to the power and authority vested in me as Secretary of State and Chief Election Officer for the State of Ohio, I hereby order and instruct all of the members of the above named Board of Elections, together with the clerk thereof, to appear before me as Secretary of State and Chief Election Officer of Ohio, for an official hearing at my office in Columbus, Ohio, at twelve o'clock noon on Thursday, May 22, 1930, and for such period of time as said hearing may continue.
>
> Given under my hand and seal as Secretary of State and Chief Election Officer of the State of Ohio, this 13th day of May, 1930.
>
> (SEAL) CLARENCE J. BROWN,
> Secretary of State and Chief Election Officer for the State of Ohio."

Pursuant to this call, a meeting was held in Columbus, Ohio, on May 22nd, 1930, which was attended by a large percentage of the members of the several county boards of elections and the clerks of those boards. The question now arises whether or not the expenses incurred by the several members and clerks in attending the meeting may lawfully be paid as a part of the legitimate expenses of such boards.

Questions relating to the payment of traveling and other expenses incurred by public officers in connection with their official duties have frequently been under consideration by this office. Without reviewing the former opinions on this subject, it is sufficient to say for present purposes that it is generally held that where expenses are incurred by a public official in the performance of his duties for which no provision is made by statute, the officer may lawfully be reimbursed, providing the incurring of the expenses was reasonably necessary in the performance of public duties.

This principle, in its application to municipal officers, is stated by *McQuillin* in his recent revision of his work on municipal corporations, Section 541, as follows:

> "This subject is controlled by legal provisions and, to a limited extent, by custom and usage. Usually the municipal corporation is liable to officers for legitimate expenses made in connection with their official duties and such sums may be recovered of the city. That is, when the officer is required, in the performance of his official duties, to incur expenses without fault or neglect on his part, he may be reimbursed. The true test in all such cases is, did the act done by the officer relate to a matter in which the local corporation had an interest, or affect municipal rights or property, or the rights or property of the citizens which the officer has an official obligation to protect and defend."

In a recent opinion rendered by me, No. 1747, issued under date of April 8, 1930, it was held, as disclosed by the syllabus:

> "A board of education may legally pay personal traveling expenses of its clerk when under the direction of said board he travels to Columbus to confer with the Department of Education with reference to the state equalization fund, when such mission is reasonably necessary in view of the facts and circumstances."

In a later opinion, No. 1916, rendered under date of May 28, 1930, it is held as stated in the syllabus:

> "Whether or not the expenses of county commissioners, their clerks and the county auditor, made on a trip outside of the state for the purpose of signing a large issue of bonds by the use of a signature machine, and the rental of such machine, may properly be paid from the county treasury is a question of fact to be determined from all of the circumstances."

The principle running through the authorities with respect to municipal, county and school officials, is in my opinion applicable to boards of elections and whether or not members of the board of elections may be paid the necessary expenses in attending a meeting at Columbus, Ohio, upon the call of the chief election official depends upon whether or not the attendance upon that meeting was in furtherance of the duties of said officials and reasonably necessary under the circumstances.

From the fact that the Secretary of State as the chief election official of the state, charged with the duty of advising with members of county boards of elections as to the proper method of conducting elections, is authorized to fix the time and place for

hearing any matters relating to the administration and enforcement of the election law, as stated in Section 4785-7, supra, it appears to be within the discretion of the Secretary of State to call a meeting of said local officials at Columbus, or any other point in the state, when in his opinion said meeting is necessary. It is, of course, possible that that discretion may be abused, just as any discretion reposed in a public officer may be abused. In the absence of any showing to the contrary, however, it will be presumed that a public officer in whom discretion is reposed will not and does not abuse that discretion. In the instant case, no facts are presented from which it may be concluded that the Secretary of State acted otherwise than in good faith and within his sound discretion.

Questions relating to the discretion of public officers are more fully discussed in my opinion No. 1532, rendered to your bureau under date of February 17, 1930.

It is provided in Section 4785-20, General Code, as follows:

> "The expenses of the board in each county shall be paid from the county treasury in pursuance of appropriations by the county commissioners, in the same manner as other expenses are paid. * * * Payments shall be made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor. * * * and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section, shall be paid in the same manner as other county expenses are paid." * * * ."

I am therefore of the opinion, in answer to your first question, that the actual expenses of members of county boards of elections incurred in attendance upon a meeting of the members of said boards held at Columbus, Ohio, on May 22nd, 1930, upon the call of the Secretary of State, may be paid from the treasury of the county which they represent upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor.

Coming now to your second question, to wit: whether or not in the payment of the expenses of the members of county boards of elections in attendance upon a meeting at Columbus, Ohio, upon call of the Secretary of State, mileage may be allowed to such members for the use of their automobiles in attending said meeting.

In an opinion of my predecessor, where there was under consideration the question of allowances to a sheriff for necessary expenses in the use of his private automobile, it was held:

> "County commissioners are authorized to make allowances to a sheriff for necessary expenses incurred in the use of his private automobile, based on the mileage covered while such automobile is being used by the sheriff in the performance of his official duties."
>
> (Opinions of the Attorney General, 1927; page 438.)

In the course of the foregoing opinion, it was said by the Attorney General:

> "I think that the cost per mile for the operation of the various makes of automobiles can now be readily ascertained. Therefore, I am of the opinion that the county commissioners are authorized to make an allowance to the sheriff in reimbursement for his necessary expenses incurred in the use of his private automobile based on a flat rate per mile for the mileage covered while such automobile is being used by the sheriff in the performance of his official duties. This will authorize nothing but reimbursement and good faith must be used in fixing the mileage rate."

It has become the practice and without question so far as I am informed, to allow mileage to state officials and state employes for the use of their private automobiles in the prosecution of their public duties.

I am, therefore, of the opinion, in answer to your second question, that mileage may be allowed to those members of county boards of elections who attended the meeting of those boards held at Columbus, Ohio, on May 22nd, 1930, upon call of the Secretary of State, for the use of their automobiles in attending such meeting as part of their legitimate expense in attending the said meeting. The mileage rate should be fixed in good faith and at such an amount as will be commensurate with the actual cost of operating the automobile.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2047.

BANK CONSOLIDATION—STATE TREASURER MUST WITHDRAW STATE DEPOSITS IN EXCESS OF $300,000.00.

SYLLABUS:

In the event two or more banks are consolidated by authority of Section 710-86, et seq., General Code, and by reason of such consolidation the consolidated bank has on deposit State funds in excess of the maximum permitted by Section 330-1, General Code, it becomes the duty of the State Treasurer to readjust the deposits of State funds in such a manner that no one bank will have on deposit at any one time, funds in excess of the maximum permitted by law. The same rule would apply in case of the merger of banks and when national banks are consolidated or when a State bank or trust company is consolidated into a National Banking Association by authority of the National Banking Act.

COLUMBUS, OHIO, July 1, 1930.

HON. H. ROSS AKE, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The practice of some of the banks of the State of Ohio in merging and consolidating raises the following question with reference to deposits by the State of Ohio in such banks prior to their merger or consolidation.
>
> Under Section 330-1, General Code, the maximum amount which may be deposited in any one bank is fixed at $300,000. In case of a merger or consolidation of two or more banks whose combined deposits exceed the maximum of $500,000 as fixed in Section 330-1, General Code, is the authority to hold the apparent excessive deposit retained by the merged or consolidated institution, or must the Treasurer of State, under the Section above referred to, withdraw such amount of State deposits as may be in excess of the statutory maximum of $300,000?"

The law with reference to State depositories, fixes the maximum amount of deposits which may be on deposit at any time in one depository. Section 330-1, General Code, provides with reference thereto: