

same power with reference to such street as with reference to other parts of an inter-county highway, especially when it is borne in mind that by sections 6949 et seq. express authority is given commissioners to carry a *county* highway improvement into, within or through a village.

However, it would seem that the negative answer first above given to your question as stated forecloses the drawing of the inference suggested. To begin with, it is only by virtue of the express power conferred by such sections as 1193-1 that village streets may be improved by public authority other than the village itself. The authority given by section 1193-1 for entry upon the streets of a village for improvement purposes may be exercised, so far as the express terms of the statute are concerned, by the state highway commissioner alone. How, then, is there ground for inference or implication that the same authority may be exercised by county commissioners, when in fact the section of village street is not essentially a part of an inter-county highway, but is treated by section 1193-1 as being part of such highway for a limited purpose only? Upon the whole, since the proposition involves the expenditure of public funds, and since, primarily, the burden of caring for village streets is by statute placed upon the village, there would seem to be no justification for going beyond the letter of the statute, with the result that it must be concluded that county commissioners are without authority to improve a village street lying on the line of an inter-county highway through the medium of expending the accruals of levies under section 6926 G. C.

Your third question, it is believed has been answered by what has been said in connection with your first inquiry.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1183.

PHYSICIANS AND SURGEONS—PERSON EMPLOYED TO DISTRIBUTE
ADVERTISING CIRCULARS—SUCH EMPLOYMENT NOT A “CAP-
PER, SOLICITOR OR DRUMMER” WITHIN PURVIEW OF SECTION
1275 G. C.

The employment of a person to distribute advertising circulars prepared by a physician, such circulars to be distributed from house to house and to men working in the shops in industrial plants, does not of itself alone constitute the employment of a “capper, solicitor or drummer,” within the purview of section 1275 G. C.

COLUMBUS, OHIO, April 27, 1920.

The State Medical Board, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“An interpretation is requested from your department of the meaning of Section 1275, Paragraph “First,” General Code, which reads as follows:
‘First: The employing of any capper, solicitor or drummer for the purpose of securing patients, or subsidizing any hotel or boarding house with like purpose, or the obtaining of any fee on the assurance that an incurable disease can be cured.’

For your information, I should state that the department recently prepared a citation in revocation against Dr. K. of Cleveland, whose practice it is to hire a man or men to distribute advertising circulars prepared by him, from house to house and to men working in the shops in industrial plants. The department believed that the words 'capper, solicitor or drummer' used in the statute prohibited such procedure on Dr. K's part, believing that there was no difference between an individual so employed to distribute circulars and an individual employed to solicit business for a practitioner by word of mouth. To this position the attorney for Dr. K.—Mr. C.—takes exception, and should the board proceed in revocation of the certificate of Dr. K., he announces his intention to appeal.

Mr. C. has agreed to the above statement of facts."

Your question involves the interpretation of that part of section 1275 G. C. quoted by you, and finally results in determining the meaning to be given to the words "capper, solicitor or drummer," as used in that section. This department is not aware of any former ruling of the attorney-general or of any judicial interpretation of these terms in this state, and the question is one largely of first impression. In the beginning it may be well for us to consider the correct rule of construction in such cases.

In the case of *State ex rel. vs. Bish*, 12 O. N. P. (n. s.) 369; 22 O. D. (n. p.) 480, the rule in Ohio is stated to be that in the construction of statutes words and phrases are to be taken in their plain, ordinary or usual sense, unless they are technical words and phrases, in which case they are to be construed according to their technical meaning.

In the case of *Cleveland vs. Cleveland*, 15 O. C. C. (n. s.) 129, affirmed without report in 83 O. S. 482, it is held that a word may be used in a meaning other than its popular or ordinary meaning, and that if a statute would be absurd if the ordinary meaning of the word is taken, and sensible if a correct though unusual meaning of the word is taken, preference will be given to the latter meaning.

Webster defines a "capper" to be:

"(from cap) One whose business is to make and sell caps."

This is one sense in which the word "capper" is used and the use of this sense, as said in the *Cleveland* case, would make the statute absurd and will not be adopted.

Century dictionary gives another meaning to the word "capper":

" * * * a stool-pigeon in a gambling house, or a person employed at auctions to raise bids deceptively."

Bouvier's Law Dictionary and other works on legal words and phrases, which have been examined, do not contain the word "capper."

From its use in a section, the purpose of which is to prevent unethical or unprofessional advertisement, it must be apparent that the latter sense is the one in which this word was used by the legislature.

Webster defines a solicitor to be:

"1. One who solicits or asks with earnestness; one who asks for another";

By the same authority solicit as a verb is defined in this language:

"To ask for with earnestness; to make petition to; to apply to for obtaining something."

The same authority defines a "drummer" to be:

"One who solicits custom." (For reasons above noted in considering the term "capper" the meaning of the word "drummer" as to one who beats a drum in a band or orchestra is disregarded in this opinion).

Bouvier's Law Dictionary defines a drummer to be "a traveling salesman; one who solicits custom."

After this search for the meaning of these terms, which is to be attributed to the general assembly, we have to decide whether the employment of a man to distribute advertising circulars prepared by a physician, such circulars to be distributed from house to house and to men working in the shops in industrial plants, of itself constitutes the employment of a capper, solicitor or drummer, as prohibited by section 1275.

It is believed these words mean more than the mere mechanical act of passing a circular; some persuasion exerted or alleged information imparted. Some personal appeal or solicitation on the part of the person employed is necessary before such employe would be regarded as coming within the terms used in this statute. It should be noted that this question is considered on the fact of there being no further acts on the part of the employe other than the distribution of the circulars. It may be conceivable that under some special conditions the employment stated in your letter might come within the meaning of these terms, but the general rule would be to the contrary.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1184.

DOG REGISTRATION LAW—DOG TAKEN FROM ONE COUNTY TO ANOTHER FOR TRAINING PURPOSES REQUIRED TO BE REGISTERED—KENNEL LICENSE NOT REQUIRED UNLESS PARTY PROFESSIONALLY ENGAGED IN BUSINESS OF BREEDING DOGS FOR HUNTING OR FOR SALE.

1. *Where a dog is taken from one county to another to remain for a time for training purposes, the law requires that it should be properly registered in the county where it is being kept or harbored, notwithstanding it has been properly registered in the county where the owner resides.*

2. *One is not a kennel owner within the meaning of the statutes and required to pay the kennel license who keeps a number of hunting dogs, unless professionally engaged in the business of breeding dogs for hunting or for sale.*

COLUMBUS, OHIO, April 27, 1920.

HON. HUGO N. SCHLESINGER, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—In your communication of recent date you submit for opinion the following questions: