> protest, absolve or relieve me personally and my bondsmen from personal liability to railroad companies?"

I have given the above questions as careful a consideration as was possible under the circumstances, and am of the opinion that the safer and better plan for you to pursue would be not to pay the money into the state treasury until the question of the right of the State to collect such fees is judicially determined.

I have recently brought an action against the Pittsburg, Cincinnati and St. Louis Railway Company in the Court of Common Pleas of Franklin County to recover the fees and penalty due, under the act to which you refer in your communication, the determination of which will fully settle the question whether or not the railroad companies are bound to pay the fee and penalty imposed on them by the section to which you refer. I suggest that until the determination of this question you retain the money in your possession which has been paid to you under protest.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## INTOXICATING LIQUORS; DOW LAW; REFUNDER UPON DISCONTINUING BUSINESS.

Attorney General's Office,
Columbus, Ohio, January 3, 1890.

*Oscar C. Buckler, Esq., Bryan, Ohio:*

DEAR SIR:—Replying to yours of the 1st inst. will say I think the language of section 3, page 117, laws of 1888, very ambiguous, but I have heretofore decided that, "Where a person pays, or is charged, with the full amount of said

assessment, and afterwards discontinues the business, he is entitled to a refunder, but there must remain in the treasury of the county, out of the amount of the assessment, at least fifty dollars." The expression "fifty dollars" refers to the assessment, as I interpret it.

In giving this opinion I am perhaps doing what I ought not to, but under the circumstances mentioned in your letter I think it proper.

Respectfully yours,
DAVID K. WATSON,
Attorney General.

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## EXPERT WITNESSES; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, January 3, 1890.

*Hon. E. W. Poe, Auditor of State:*

DEAR SIR:—You recently submitted to me the following communication, and asked my official opinion thereon: "In the cost bill, in the case of the State of Ohio vs. Chas. Shultsman, coming up from Coshocton County, there is taxed the following items: Dr. Reed, two days, $100.00; Dr. Hamilton, one day and a half, $60.00. These witnesses that I have mentioned testified, as I am informed, as experts. Are these items such as the State is required to pay as part of said costs?"

The question presented by you, as I understand it, is whether experts are entitled to extra compensation above that allowed by statute to other witnesses, when testifying as expert witnesses in the trial of a cause. I have carefully examined the question and find it is one of great uncertainty, and while I have come to a conclusion upon it, will frankly say that I have done so very reluctantly, inasmuch as the decisions of the Supreme Courts by which the question has

been considered are directly contradictory. Taking into consideration, however, our constitutional and statutory provisions relating to the subject, I am not able to see that there is any authority in this State for the allowance of such extra compensation; and while it may work great hardship and at times injustice to a witness, who is skilled in some particular science, to be compelled to testify for the ordinary compensation, I think that under a fair construction of our statutes he can nevertheless be compelled to do so. It follows that you should not allow the fees of the experts in this case as a proper charge against the State.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## CHIEF INSPECTOR WORKSHOPS, ETC.; DUTIES OF.

Columbus, Ohio, February 8, 1890.

*Hon. W. Z. McDonald, Chief Inspector, Etc., Columbus, Ohio:*

MY DEAR SIR:—You recently asked my official opinion whether under section 3 and sections 2573*a* and 2573*b* of the act of April 29, 1885, Ohio Laws, Vol. 82, page 178, it was the duty of "the inspectors to examine other buildings than those used for factory purposes alone." Section 3 of said act, provides as follows:

> "That it shall be the duty of the chief inspector and district inspectors to visit all shops and factories in their respective districts as often as possible to see that all the provisions and requirements of this act are strictly observed and carried out; to carefully inspect the sanitary condition of the same; to examine the system of sewerage in connection with said shops and factories, the situations and condi-

tions of water closets or urinals in and about such shops and factories, and also the system of heating, lighting and ventilating all rooms in such shops and factories where persons are employed at daily labor; also, as to the means of exit from all such places in case of fire or other disaster; and also all belting, shafting, gearing, elevators, drums and machinery of every kind and description in and about such shops and factories, and see that the same are not located so as to be dangerous to employes when engaged in their ordinary duties, and that the same, so far as practicable, are securely guarded, and that every vat, pan or structure filled with molten metal or hot liquid shall be surrounded with proper safeguards for preventing accident or injury to those employed at or near them."

Section 2573*b* provides as follows:

"That said inspectors shall have entry into all such shops and factories at all reasonable times, and it shall be unlawful for the owner, proprietors, agents or servants in such factories or shops to prevent at all reasonable hours, their entry into such shops or factories for the purpose of such inspection."

Section 2573*c* provides as follows:

"That said inspectors if they find upon such inspection that the heating, lighting, ventilating or sanitary arrangement of any such shop or factory is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster, is not sufficient, or that the belting, shafting, gearing, elevators, drums and machinery in such shops and factories are located so as to be dangerous to employes and not sufficiently guarded or that the vats, pans or structures filled with molten metal or hot liquid, are not surrounded with proper safeguards for preventing accident or injury to those employed at or near them, shall notify the owners, proprietors or agents," etc.

*Chief Inspector Workshops, Etc.; Duties of.*

One of the definitions that Webster gives to the word "shop" is, "a building in which mechanics work. Also, one of his definitions for the word "factory" is, "a building or collection of buildings apropriated for the manufacture of goods; a place where workmen are employed in fabricating goods, wares or utensils; a manufactory; as a cotton factory."

These, I think, are the common and accepted definitions of these terms. I think that an examination of the different sections of the act above referred to will show that it was the intention of the General Assembly to give you and your district inspectors jurisdiction over such buildings as were used for the purpose of manufacturing, such as is ordinarily understood as a manufacturing shop or factory, and that both the language of the statute, as well as the definition given to the terms "shop" and "factory," which I have cited, preclude the idea that you were to have jurisdiction over buildings "other than those used for factory purposes."

It is my opinion, therefore, that your authority to inspect buildings is limited to such buildings as are used for factory purposes, as above indicated.

Very respestfully yours,

DAVID K. WATSON,

Attorney General.

*Section 247 R. S. Relating to the authority of R. R. Commissioner, etc.; Cable, Electric and Street Railroads.*

## SECTION 247 R. S., RELATING TO THE AUTHORITY OF R. R. COMMISSIONER, ETC.; CABLE, ELECTRIC AND STREET RAILROADS.

Office of the Attorney General,
Columbus, Ohio, February 10, 1890.

*Hon. W. S. Cappeller, Commissioner of Railroads, Etc., Columbus, Ohio:*

MY DEAR SIR:—You recently submitted to me the following question and asked my official opinion thereon: "Is section 247 of the Revised Statutes of Ohio intended to include cable, electric and street railroads?"

The section to which you refer provides, among other things, as follows:

> "When the commissioner has reasonable grounds to believe, either on complaint or otherwise, that any of the tracks, bridges or other structures of any railroad in this State are in a condition which renders them, or any of them, dangerous or unfit for the transportation of passengers, he shall forthwith inspect and examine the same; and if, on such examination, " etc.

Further on in the same section is the following:

> "And he may also prescribe the *rate* of *speed* for trains passing over such dangerous or defective track, bridge or other structure, until the repairs or reconstructions required are made and the time within such repairs or reconstructions must be made; or, if, in his opinion, it is needful and proper, he may forbid the running of passenger trains over such defective track, bridge or other structure," etc.

The act creating your office was passed by the General Assembly in 1867, and prior, as I am informed, before cable or electric cars were in use in this State.

*Section 247 R. S. Relating to the authority of R. R. Commissioner, etc.; Cable, Electric and Street Railroads.*

A careful reading of section 247 shows, I think, that the General Assembly did not have in view what is ordinarily understood as a "street railroad," whether propelled by horse power, or whether a cable or electric road, when it passed the act creating the office of commissioner of railroads and telegraphs.

In addition to the provisions of that section already cited, it contains the following:

> "And, if, on such examination by himself or his agent, he is of the opinion that any of such tracks, bridges or other structures are unfit for the transportation of passengers," etc.

And,

> "If, in his opinion it is needful and proper he may forbid the *running* of *passenger trains* over such defective track, bridge or other structure."

It seems plain to me from these provisions that the "tracks, bridges or other structures," which the General Assembly intended to give you jurisdiction over, were those belonging to railroads which carry both passengers and freight. As street railroads do not carry freight, and are not constructed for that purpose, the above language would seem to exclude the idea that they were contemplated by the General Assembly when the act creating your office was passed. A street railroad, whether known as horse, cable or electric, is a road laid in a street of a municipality under authority granted it by the council of such municipality. It does not ordinarily have bridges, culverts, tunnels or other structures like a general railroad.

In the case of Clement against the city of Cincinnati reported in sixteenth Weekly Law Bulletin, page 355, Harmon, judge of the Superior Court, upon this subject held:

> "When a road is laid in a street, on the surface of the street, because it is a street, and to facilitate the use of the street by the public, it is a

*Section 1038; Refunding of Taxes by Board County Commissioners.*

street railroad, whatever the means used to propel cars over it."

Upon a careful examination of the statute creating your office and especially the language of section 247, I am of the opinion that that section was not intended to include cable, electric and street railroads, and, consequently, that you would not have control over the same.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 1038; REFUNDING OF TAXES BY BOARD COUNTY COMMISSIONERS.

Office of the Attorney General,
Columbus, Ohio, February 13, 1890.

*A. Leach, Prosecuting Attorney, Jackson, Ohio:*

DEAR SIR:—Yours of the 3d inst. in which you ask for a construction of section 1038 reative to the power of the board of county commissioners to refund certain taxes paid by certain banks in your county, was duly received and contents noted.

I am of the opinion that the decision of the Supreme Court in the case of the State vs. Commissioners, 31st O. S., page 271, settled the question which, to my mind, it appears was this: "What kind of an error did the auditor make?" If it was a clerical error, then the commissioners have the power to correct it; but from your letter, I do not understand it to have been that kind of an error. The banks return their property for taxation. The county auditor, as authorized by statute, added to these returns. That can hardly be called a clerical error. It was, if anything, an

error of judgment, or what the court in its opinion in the case referred to, calls a "fundamental" error.

In reading the decision in that case you will notice this language: "The errors named in the statute are *clerical* merely, but the error complained of by the relator is fundamental." It seems to me that this is your case exactly. If the auditor's mistake was a clerical one, the commissioners would have the power to refund; otherwise they would not; and I am of the opinion after a somewhat careful examination of the question, that the commissioners have no power to refund.

It is true that section 1038 provides, "That when the auditor is satisfied * * * that no tax or assessment thereon or any part thereof has been erroneously charged, he may give to the person charged therewith a certificate to that effect," etc. But I assume that the auditor in this case would hardly certify that the taxes had been erroneously charged, as he increased the returns of the bank after due deliberation upon the subject. The Supreme Court has decided that the error must be a *clerical* error, and I do not think such an error was committed.

I am, therefore, of the opinion that the commissioners have no power to refund these taxes.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 647; SUPERINTENDENTS; DUTIES OF; ETC.

Office of the Attorney General,
Columbus, Ohio, February 13, 1890.

*C. W. Diehl, Esq., Steward, Etc., Newburg, Ohio:*

MY DEAR SIR:—You recently submitted to me the following questions and asked my official opinion thereon under the provisions of section 649 of the Revised Statutes:

(a) "Can the superintendent make purchases independent of, or without consulting with the financial officer?"

(b) "Can the superintendent authorize any person, whatsoever, to make purchases?"

(c) "Can the board of trustees order or authorize any other person than the financial officer to make purchases?"

(d) "Can the superintendent order the financial officer to make purchases of any particular person or firm?"

These in their order:

First—Section 647 of the Revised Statutes defines the duties of the superintendents. It provides "they shall have control of the affairs of their respective institutions in all their departments, and shall be responsible to the trustees for the official management thereof and for the faithful service of all persons employed therein."

This section, perhaps, confers upon the superintendent the right, if he chooses arbitrarily to exercise it, to make purchases independent of the financial officer. It is difficult to say just where the line is to be drawn, defining the boundary of the superintendent and the financial officer, but I do not think the superintendent can make purchases independent of the financial officer without intruding upon that officer's duties under section 649; but I hardly feel warranted in saying that the superintendent would be wholly precluded from making purchases if he insisted upon so doing.

Second—I do not think the superintendent can authorize "any person whatsoever to make purchases" unless the financial officer should be absent or disabled, or for some reason not prepared to perform his duties. But, here again, we are met with the same difficulty as arises under your first question. You put them categorically and ask, "Can such a thing be done?" It is always difficult and almost impossible to lay down any principle which is absolutely to govern in such cases, and almost impossible to determine the exact limitation which is to be placed upon the power

of the respective officers. Unquestionably, under section 649, it is the right, as well as the duty of the financial officer, to purchase all supplies, and this provision ought to put the matter at rest; but, where a superior officer who, under the statute, " has *control* of the *affairs* of his respective institution in all its departments," chooses to step in (if such is the case) and make purchases, or direct some other person than the financial officer to do so, it becomes a delicate matter to say that he is exceeding his power in doing this. And yet I am inclined to think that that is the true meaning of the statute.

Answering your third question I would be inclined to think that the board of trustees might authorize some person other than the financial officer to make the purchases, or they might make them themselves under the provisions of section 643. The trustees are really the supreme power, and I suppose a fair interpretation of the statute would give them the right to control in such a case as you put.

Answering your fourth question, I do not believe that the superintendent can order the financial officer to make purchases of any particular person or firm. The expression "under the direction of the superintendent" does not, I think, go so far as to authorize the superintendent to direct of whom the purchases shall be made. The statute confers upon the financial officer the right to make purchases "upon the best possible terms and lowest cash value." This necescarily carries with it the right of such purchasing agent to examine and inquire of various dealers concerning such articles as he desires to purchase. The evident object of the statute is to give him a broad field for his market. No limitation is to be placed upon him. It is strongly suggested by the statute that he should seek competition, and this is inconsistent with the idea that the superintendent could name the *person* and *place* where he should buy.

It is exceedingly difficult to give definite answers to your questions. I do not know that I have made myself

*Ditches Located in More Than One County, Etc.; Commissioners Viewing Premises.*

understood, or that I have been of any aid to you, but such are my views upon the questions submitted.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## DITCHES LOCATED IN MORE THAN ONE COUNTY, ETC.; COMMISSIONERS VIEWING PREMISES.

Office of the Attorney General,
Columbus, Ohio, February 15, 1890.

*C. B. Heisserman, Esq., Prosecuting Attorney, Etc., Urbana, Ohio:*

DEAR SIR:—Yours of the 13th inst. received in which you ask my opinion upon the following:

> "Under section 4488 of the Revised Statutes of Ohio, when a ditch is proposed which will require location in more than one county, it is provided that the location and establishing of the ditch shall be made by the commissioners of the several counties in joint session. The question has come up whether it is necessary for the two boards to organize at one of the county seats before going to view the ditch. To make the matter plain, I will illustrate by giving the facts. A ditch is proposed which will be located in Logan and Champaign counties. The just thing to do is for the commissioners of the two counties to view the place for the proposed ditch. Now, is it necessary for the two boards to meet at Urbana or Bellefontaine and organize in joint session before repairing to the place to view the premises, through which the proposed ditch will run, or will it be regular for the two boards to go to the place from their respective counties, make

their observations, as required by law, and then go to Urbana or Bellefontaine, organize in joint session, and locate the ditch in accordance with the view previously made?"

You will observe that in the language of section 4488 of the Revised Statutes, and also in the amendment to that section in Vol. 80, O. L., page 18, there is no requirement that the commissioners of the two counties *should view the premises,* whereas, the preceding sections in reference to the location of a ditch *solely within* a county, does require the commissioners to make a view.

I simply call your attention to this matter without dwelling especially upon the subject because you state in your communication to me "the first thing for the commissioners to do is to view the place for the proposed ditch." But, if the commissioners should determine to make a view of the premises, I am inclined to think it would be better practice for them to make the view before locating or establishing the ditch. Very respectfully yours,

DAVID K. WATSON,
Attorney General.

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## SURVEYOR'S RECORDS; COUNTY SHOULD PAY, ETC.

Office of the Attorney General,
Columbus, Ohio, February 15, 1890.

*W. S. Plum, Esq., Prosecuting Attorney, Bellefontaine, Ohio:*

MY DEAR SIR:—Yours of the 30th ult. was duly received, but owing to the press of official business it has been impossible for me to answer sooner.

After an examination of section 1178 of the Revised Statutes and the amendments thereto found in Ohio Laws,

Vol. 78, page 286, and Vol. 82, page 255, I am of the opinion that the county ought to pay for the records made by the surveyor.

It will be seen from the amendments in Vol. 82, the surveyor is required to keep an "accurate record of all surveys made by himself or his deputies for the purpose," etc.; and "also, any other surveys made in the county by competent surveyors, duly certified by such surveyors to be correct and deemed worthy of preservation by the county commissioners, to whom the same shall be submitted for approval before being recorded." * * * "which book shall be kept as a *public* record by the county surveyor at his office, and shall be at all proper times, open to inspection and examination by all persons interested therein."

It will be seen that the surveyor is not required to keep a record in addition to his own, except such as are duly certified by other competent surveyors to be correct, and "deemed worthy of preservation by the county commissioners," and after they have approved it. It is, therefore, my opinion that the county should pay the surveyor for his work.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## COUNTY COMMISSIONERS; AS TO PAYMENT OF MILEAGE, ETC.

Office of the Attorney General,
Columbus, Ohio, February 15, 1890.

*Convin Locke, Esq., London, Ohio:*

MY DEAR SIR:—Yours of the 13th inst. duly received. You submit therein the following questions upon which you ask my official opinion:

*County Commissioners; As to Payment of Mileage, Etc.*

First—"Is a commissioner entitled to mileage on attending meetings of the board called for the purpose of hearing reports of engineers on county ditches, of apportioning committees on road improvements, and similar meetings on matters of local interest, when no general county business is transacted, such meetings not being at regular sessions of the board and there having been one called meeting of the board during that month for which mileage was charged?"

Second—"Is a commissioner entitled to mileage when traveling outside his county on official business, or only to be repaid his actual expenses, or is he entitled to both mileage and expenses?"

Third—"Is a commissioner entitled to be repaid necessary livery hire for traveling in his county on official business; if so, can he charge for his own conveyance?"

I have heretofore given an opinion upon all these questions and to the following effect:

First—County commissioners when attending a meeting other than the regular monthly meeting—for example, one called for the purpose of considering ditch and road matters—are not entitled to mileage.

Second—I am of the opinion that if your county does not come within the exceptions mentioned in the act, the commissioners are entited to mileage while traveling on official business outside of the county in addition to their expenses—that is, they are entitled to both mileage and expenses.

Third—A commissioner when traveling about the counnty on official business, can not charge for livery hire. That is covered by his mileage.

Very respectfully yours,

DAVID K. WATSON,

Attorney General.

*Railroads Maintaining Gates at Crossing; Penalty; How Enforced; Who to Conduct Suit.*

## RAILROADS MAINTAINING GATES AT CROSSING; PENALTY; HOW ENFORCED; WHO TO CONDUCT SUIT.

Office of the Attorney General,
Columbus, Ohio, February 25, 1890.

*Hon. W. S. Cappeller, Commissioner of Railroads and Telegraphs, Columbus, Ohio:*

SIR:—On the 17th inst. you submitted to me the following communication: "I desire your opinion upon the penalty clause of sections 247*a* and 247*b*, Ohio Laws, Vol. 86, page 367, namely, should suits for the enforcement of such orders or penalty be instituted by the attorney general or by the prosecuting attorney of the county in which such portion of the railroad is located, where there has been neglect or refusal to obey the order issued by this department."

Section 247 of the Revised Statutes was supplemented by the act of April 15, 1889, Ohio Laws, Vol. 86, page 367, in that the commissioner of railroads is vested with the authority to require railroads to erect and maintain gates, or that a flagman be stationed and maintained at points where any railroad crosses public roads.

It is further provided by said supplementary section that "any corporation neglecting or refusing to erect or maintain such gate or gates, or to maintain such flagmen when required, shall forfeit and pay to the State the sum of one hundred dollars for every such neglect or refusal," etc.

Under the act creating the office of commissioner of railroads and telegraphs, it was provided that in certain events the railroad companies should pay certain penalties. Section 262 of the Revised Statutes provides that the action

*Railroads Maintaining Gates at Crossing; Penalty; How Enforced; Who to Conduct Suit.*

for the recovery of such forfeitures, penalties or fines "shall be brought by civil action in the name of the State."

Section 263 of the Revised Statutes provides as follows:

> "The civil action provided for in the next preceding section, shall be brought by the prosecuting attorney of the proper county at the instance of the commissioner," etc.

It is true that section 206 of the Revised Statutes in enumerating some of the duties of the attorney general, says:

> "He shall give legal advice to the commissioners of railroads and telegraphs."

But it was evidently apparent to the General Assembly, when they passed the act creating your office, that it would be highly impracticable for the attorney general, whose office is required to be at the seat of government, to bring an action in the various counties of the State for the collection of the forfeitures, penalties and fines prescribed, in the event of the railroad companies failing to comply with the statute. I think it possible and indeed probable, that if you should request the attorney general to bring an action to collect the penalties provided for in section 247*a* and 247*b*, that such action would be maintained by the courts, notwithstanding the provisions of section 263; but it would certainly be more convenient that such a suit as is contemplated by your communication should be brought by the prosecuting attorney rather than the attorney general, and as the statute expressly provides for the bringing of such an action by the prosecuting attorney, I am of the opinion that the safer and better plan would be for such officer to bring such action, although, as above stated, I do not think it necessarily follows that such an action brought by the attorney general would not be maintained.

I suggest, therefore, as a matter of expediency in the

administration of justice and the practical enforcement of the law, such actions as you refer to in your communication be brought by the prosecuting attorney of the respective counties. Very respectfully yours,

DAVID K. WATSON,
Attorney General.

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## GOVERNOR; AS TO POWER OF PARDONING, ETC.

Office of the Attorney General,
Columbus, Ohio, March 11, 1890.

*Hon. James E. Campbell, Governor of Ohio, Columbus, Ohio:*

DEAR SIR:—You recently sent me the following communication:

> "I am asked to pardon a young girl who was sentenced to the penitentiary and afterwards transferred to the Girls' Industrial Home by my predecessor in office. It is a question in my mind if such a case ought not to go to the board of pardons, just as though the girl was in the Penitentiary. I assume that the mere fact, that the girl has been transferred to the Industrial Home, does not, and ought not to affect the statute which places such cases under the jurisdiction of the board.
>
> "I would be very much obliged also, if you would inform me just what power I have in regard to pardoning inmates of either the Girls' or Boys' Industrial Homes. A cursory view of the statutes does not disclose any power of that kind."

After a careful consideration of the act creating the board of pardons, I am of the opinion that it was not the design of the General Assembly that such board should recommend for pardon, persons who had been sent to the industrial schools.

Concerning your power to pardon "inmates of the Girls' or Boys' Industrial Homes," I do not think there is any

question but you have the power to do so. Your authority to pardon is derived from the constitution, article 3, section 11, which provides as follows:

> "He (meaning the governor) shall have power, after conviction, to grant reprieves, commutations and pardons for all crimes and *offenses,* except treason and cases of impeachment, upon such conditions as he may think proper," etc.

The manner or mode, however, of applying for pardons, is a matter of regulation by the General Assembly. Section 773 of the Revised Statutes, as amended, Ohio Laws, Vol. 79, page 84, undertakes to provide how an inmate of the Girls' Industrial School shall be discharged from such institution. It is probable that the General Assembly, when it passed this act, had reference solely to the releasing of an inmate of the school before the expiration of her term, as distinguished from discharging her at the expiration of her sentence.

Be that as it may, the General Assembly has no power to provide for the discharge or release of an inmate of the school, which would limit your authority under the constitution. Girls are not sent to the school without having committed an offense or crime against the law. The constitution confers upon you the authority to pardon one who has committed an offense.

It was held by Okey, judge, in the case of the State vs. Schlatterbeck, 39 Ohio State, page 270, that "an offense against the law of the State is an act punishable as a crime under the statute."

I am of the opinion, therefore, that you can, under the exercise of your constitutional power, pardon an inmate either of the Boys' or Girls' Industrial School, independent of any provisions there may be upon this subject.

Very truly yours,

DAVID K. WATSON,

Attorney General.

*Appraising Real Estate; Maps; Duty of Commissioners and County Auditor.*

## APPRAISING REAL ESTATE; MAPS; DUTY OF COMMISSIONERS AND COUNTY AUDITOR.

Office of the Attorney General,
Columbus, Ohio, March 17, 1890.

*J. W. Seymour, Esq., Prosecuting Attorney, Etc., Medina, Ohio:*

My Dear Sir:—Yours of the 11th ult. duly received. Since its receipt I have been absent from the city on official business for a week, and in addition to that, have been confined to my house by illness for several days. These things, together with an unusual amount of work in the office, has delayed my answer until today.

Let me say in the first place that it is not very easy to answer your questions.

Section 2789 of the Revised Statutes seems to be contradictory in two or three respects, and it is difficult to give any consistent or logical construction to it.

It is quite evident, from your letter, that the commissioners have failed to do their duty under this section. They should have expressed their opinion on or before their June session, 1879, whether or not it was necessary to have maps in order that the several district assessors might correctly appraise the real estate of the county, and their judgment in this matter should have been of record. Had this been done, there probably would not have been any difficulty in the case. Not having done this, I presume the auditor considered it necessary to have the maps in order that the real estate of the county might be assessed correctly, and simply undertook to make them himself. I am not prepared to say, at this time, that *he had authority to do this, if the strict letter of the statute is followed;* but the commissioners

*Appraising Real Estate; Maps; Duty of Commissioners and County Auditor.*

having stood by and allowed him to do it, without objection on their part, I seriously question if they can now refuse to pay him a reasonable compensation for what he did in that respect—at least such a course would not be equitable, and the commissioners should allow him a fair compensation for his labor.

Your second question is as follows:

> "As the commissioners did not advertise for bids, as provided in section 2789, is it not the duty of the auditor to furnishh such maps without further remuneration than is allowed him under section 1076?"

I do not think it is, and the failure of the commissioners to act as they should have acted, under section 2789, ought not to impose additional labor upon the auditor.

In other words the auditor should not be required to make the maps for the compensation allowed him under section 1076, *because the commissioners failed to comply with the provisions of section* 2789. The compensation allowed the auditor under section 1076 does not, in my opinion, embrace the making of the maps contemplated in the last named section. The time of payment for the extra compensation allowed by the commissioners under section 1076 is largely, I think, in the discretion of the commissioners. An itemized bill should be made out and presented to the board under the provisions of section 1077, and properly passed upon and allowed by the board; but I am of the opinion that the auditor is entitled to the twenty-five per cent. allowed under section 1076, whether he actually expends that much for clerk hire or not. The statute does not make the amount to be paid for extra clerk hire to depend upon the number of clerks employed or the amount of labor actually performed in the auditor's office.

It absolutely fixes the amount to be allowed him at not

*Taxation; Lien of State on Personal Property; Effect of Chattel Mortgage.*

to exceed twenty-five per cent. of the annual allowances made in the preceding sections, and the auditor is entitled to that amount.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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TAXATION; LIEN OF STATE ON PERSONAL PROPERTY; EFFECT OF CHATTEL MORTGAGE.

Office of the Attorney General,
Columbus, Ohio, April 12, 1890.

*W. H. Barnhard, Esq., Mt. Gilead, Ohio:*

DEAR SIR:—Yours of the 8th inst. duly received in which you submit to me the following questions:

> First—"In a case where a lawyer having a law library worth—say $500,000—fails to pay taxes on the same does the State acquire a lien for taxes on the library?"
>
> Second—"If so, after the acquiring of such lien and before the treasurer attempts, in any way to collect the taxes, will a bona fide chattel mortgage given by the delinquent on such library, defeat the sale of such library by the treasurer for taxes?"

In reply to the above I will say:

First—When *any person* owns personal property in excess of the amount exempted by the statute for taxes, the State acquires a lien for taxes on the excess over the exemption.

*Dairy and Food Commissioner; Authority to Prosecute for Violation of Drug Laws.*

Second—After such lien is attached, a chattel mortgage executed by the delinquent tax payer does not cut off the lien of the State for taxes.

In support of this last proposition, see Jones on Chattel Mortgages, section 474, and especially the last clause of the same.

Yours respectfully,
DAVID K. WATSON,
Attorney General.

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## DAIRY AND FOOD COMMISSIONER; AUTHORITY TO PROSECUTE FOR VIOLATION OF DRUG LAWS.

Office of the Attorney General,
Columbus, Ohio, April 12, 1890.

*Hon. F. A. Derthick, Dairy and Food Commissioner, Columbus, Ohio:*

My Dear Sir:—You recently submitted to me a question concerning the duty of the officers of the Ohio Dairy and Food Commission relative to "adulterated drugs," and desired to know (as I interpret your communication) whether or not the statute is sufficiently broad to authorize your department to begin prosecutions against persons or firms for selling adulterated drugs; and to give your department control over the general subject of drugs or medicines, as it now has over articles of food or drink. I have carefully examined the various sections of the statute upon this subject, and while section 4 of the act of March 21, 1887, Vol. 84, O. L., p. 205, seems to imply that it was the intention of the General Assembly to give you such control, section 2 of said act which *specifically enumerates your duties,* fails

*Pauper; Definition; Prosecuting Attorney; Duty of Commissioners to Furnish Office.*

to mention either "drugs" or "medicines." I am, therefore, of the opinion that there is no special authority conferred upon you to act in such cases, and that your rights to prosecute are simply those of any individual in the State. The chemists, however, appointed by you and with the approval of the governor under section 4, are under obligations to analyze drugs or medicines submitted to them by you, or your assistants, but the statute fails to confer upon you special power to prosecute in such cases. I suggest that it would be an easy thing, perhaps, to have the law amended so as to give you more authority in such cases.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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PAUPER; DEFINITION; PROSECUTING ATTORNEY; DUTY OF COMMISSIONERS TO FURNISH OFFICE.

Office of the Attorney General,
Columbus, Ohio, April 15, 1890.

*D. V. Pearson, Esq., Prosecuting Attorney, Georgetown, Ohio:*

DEAR SIR:—You recently submitted to me the following questions and asked my official opinion thereon:

> First—"Under section 1500*a*, who is a pauper, and what is meant by the words 'has been found in such township?' "
>
> Second—"Does the word 'pauper' mean, one who has been receiving aid from the trustees, or one who has not, but entitled to, or both?"
>
> Third—"If there is no office in the court house for the prosecuting attorney of any county

*Pauper; Definition; Prosecuting Attorney; Duty of Commissioners to Furnish Office.*

> in Ohio, can the county commissioners under section 859, Revised Statutes, pay the rent of, or rent an office for him outside of the court house?"

Replying to the above, I will say:

The word "pauper" has been frequently judicially defined, "as a poor person, particularly one so indigent as to defend upon the parish or town for support." (30th Ark. 768.)

"A pauper is one so poor as to be unable to provide for him or herself, and having no one of sufficient pecuniary ability to care for them, is a charge upon the bounty and generosity of the public. In a word, an eater of the public bread, having no relative, or friend able, or by law, liable to pay for it." (3 Pitts. 133.)

"A poor person who is a burden and charge upon a parish or town." (46 Vt.)

"Every person unbale to provide for and maintain himself is, prima facie, a pauper, entitled to relief." (3 Halst N. J., 67.)

The words "has been found in such township" seems to me answer themselves.

Judge Okey held in one case that "it was not permissible to define that which defines itself." The word "pauper" is not limited in its meaning to one who has been receiving aid from the trustees, but may also mean one who has been deserving of aid from such source.

Relative to the matter of the county commissioners furnishing the prosecuting attorney an office when there is none in the court house for him, under section 859, Revised Statutes, the whole matter, I think, rests in the judgment of the commissioners. That section says that "a court house, jail, offices for the county officers, and an infirmary shall be provided by the commissioners when in their judgment the same, or any of them, are needed," etc.

If in the judgment of the commissioners an office is not needed for the prosecuting attorney, there being none

in the court house, I am of the opinion that they can not be compelled to furnish one outside. Their discretion in the matter will not be controlled.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## ELECTIONS MAY BE HELD WHEN.

Office of the Attorney General,
Columbus, Ohio, April 19, 1890.

*A. Leach, Esq., Prosecuting Attorney, Jackson, Ohio:*

MY DEAR SIR:—My opinion is that under section 3 of the act of March 3, 1888, O. L., Vol. 85, page 55, an election may be held at any time after two years from the date of any election held under the provisions of section 1 of said act.

That is to say, it was the intention of the General Assembly that when the question of township local option had been voted upon, in a given township, that at any time after two years from the date of such election, another election might be held, provided the township trustees were petitioned, etc., according to the provisions of section 1 of said act.

Very truly yours,
DAVID K. WATSON,
Attorney General.

## VACANCY BY DEATH OF A MEMBER; GENERAL ASSEMBLY; ETC.

Office of the Attorney General,
Columbus, Ohio, April 28, 1890.

*Hon. William V. Marquis, Lieutenant Governor, Columbus, Ohio:*

MY DEAR SIR:—On last Saturday you submitted to me the following questions and facts and asked my official opinion thereon, to-wit:

> "When a vacancy has been occasioned by the death of a member of the General Assembly, and a successor has been elected for the unexpired term of such decedent, is such successor entitled to pay for the full term of service? If not, at what rate per month is such new member to be paid, the General Assembly having by special act voted to give the deceased member a year's salary, he having drawn nothing during the time he served?"

Section 40 of the Revised Statutes (Smith and Benedict's Edition) provides as follows:

> "Each member of the General Assembly shall receive the sum of six hundred dollars for each year of the term of his office, to be paid in monthly installments not exceeding one hundred and fifty dollars; provided that there shall be paid at the close of each session, the amount due for that year, and also twelve cents per mile each way for traveling to and from his place of residence by the most direct route of public travel, to and from the seat of government, but if a member is absent without leave, or is not excused on his return, there shall be deducted from his compensation, the sum of five dollars for each day's absence."

The *term of office* of the member of the General Assembly is fixed by article 2, section 2 of the constitution, at

two years. Each member of the General Assembly, therefore, receives for his term of two years' service the sum of twelve hundred dollars, payable at the rate of six hundred dollars per annum, and this annual amount, the statute says, is "to be paid in monthly installments not exceeding one hundred and fifty dollars." It seems to me, that in order to answer your questions correctly, it is first necessary to decide what compensation the deceased member would have been entitled to for the time he served. Suppose he had served one month before his decease, and drawn his compensation therefor, will it be claimed that his successor could also be paid for that month?

The fact that the General Assembly voted to allow the decedent's representatives a full year's salary, makes no difference as to the *principle involved,* for the Assembly, by reason of its generosity, only allowed the excess beyond what the member would have been entitled to if he had drawn nothing.

Again, suppose a member serves two months and then resigns, would he not be entitled to be paid for the time he served, and if so, could his successor draw pay for the same period? I think not. I am, therefore, of the opinion that when there has been an election to fill the *unexpired term* of a member of the General Assembly, the person elected should draw his compensation from the time his service began.

The other question, however, is much more troublesome, owing to the peculiar phraseology of the statutes, and I confess it is difficult to arrive at an opinion which is entirely satisfactory, yet I believe that the most reasonable construction which can be given to the statute will sustain the conclusion I have reached, which is that members of the General Assembly are entitled to draw their compensation at the rate of one hundred and fifty dollars per month until the annual allowance of six hundred dollars is exhausted, and not in equal monthly installments during the calendar year.

It consequently follows that, in the case you put, the member elected to fill the unexpired term, should be paid at the rate of one hundred and fifty dollars per month from the time his service began until the yearly sum of six hundred dollars is exhausted, first deducting from said yearly sum, at the same rate per month, the amount which his predecessor would have been entitled to receive.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## DEATH OF MEMBER, GENERAL ASSEMBLY, VACANCY, HOW FILLED.

Office of the Attorney General,
Columbus, Ohio, April 30, 1890.

*Hon. J. L. Geyer, Columbus, Ohio:*

MY DEAR SIR:—Yesterday you submitted to me the following communication, and desired my official opinion thereon:

> "When a vacancy has been occasioned by 'the death of a member elect of the General Assembly,' who did *not qualify* and a successor has been elected, is the newly elected member entitled to pay for the full term?"

In my opinion he is not. There are many authorities to the effect that an officer is not entitled to draw compensation until after he has taken the oath of office. Otherwise, the compensation would be retroactive. In Schroeder's case it was held by Lawrence, first controller of the treasury, as follows:

> "If no statute specifically fixed a time when the right to salary should begin, the necessary effect of a statute giving salary to an officer would be,

> that it would commence when the person appointed took the oath of office, and entered on duty."

Again retroactive compensation can not be given by a regulation. Justice does not require that a person shall be regarded as having earned a right to salary without having rendered any service, and before he has consented to become an officer by taking the requisite oath of office. (5th Lawrence, 379-380.)

In Tenth Opinions of Attorneys General, pages 251-2, United States Attorney General Bates said:

> "I know no better rule than that referred to by Mr. Cushing (also U. S. Att'y General) which fixes the commencement of his salary at the time when he begins to devote himself to the public service. This time is, I presume, usually when he takes the oath of office, and gives bond for faithful performance of duty required by law, then, and not before, he may be said to be in office, and certainly before these essential formalities are complied with, his salary does not begin."

Other authorities might be cited to the same effect, but it seems to be wholly unnecessary.

Very respectfully,

DAVID K. WATSON,

Attorney General.

*Concerning Fees Retained by the Railroad Commissioner Under Act of April 15, 1889, O. L., Vol. 86, p. 351, Section 251a.*

## CONCERNING FEES RETAINED BY THE RAILROAD COMMISSIONER UNDER ACT OF APRIL 15, 1889, O. L., VOL. 86, P. 351, SECTION 251*a*.

Office of the Attorney General,
Columbus, Ohio, April 30, 1890.

*Hon. W. S. Cappeller, Commissioner of Railroads and Telegraphs, Columbus, Ohio:*

My Dear Sir:—I this day received from you the following communication:

> "Under an opinion rendered by you December 31, 1889, I retained in my hands, as commissioner of railroads and telegraphs of the State of Ohio, the sum of eight thousand, two hundred and thirty-three and ninety-seven one-hundredths dollars ($8,233.97) paid to me under protest, by various railroads in this State by virtue of an act passed April 15, 1889, Ohio Laws, Vol. 86, page 351, section 251*a*."
>
> "You therein advised me, that it would be safer, and better, for me, to retain said sum pending the decision of the suit against the Pennsylvania Railroad Company, in which the constitutionality of the said act is raised. In view of the fact, that my successor has been appointed and will assume the duties of the office tomorrow, I desire an opinion from you, as the law officer of this department as to the disposition I should make now of the money herein referred to. Your early reply will oblige," etc.

At the time I rendered you the opinion above referred to, I thought, and still think, that it was safer and better for you to retain the money paid by the railroads pending the decision of the suit in question.

I had hoped to have a decision upon the matter before this, and had it not been for the death of Hon. C. M. Olds,

*Concerning Fees Retained by the Railroad Commissioner Under Act of April 15, 1889, O. L., Vol. 86, p. 351, Section 251a.*

who was the attorney for the railroad company against which the suit was brought, the decision would doubtless have been rendered by this time, but that unfortunate occurrence has caused the delay. I appreciate the position in which you are placed, by reason of the fact that your term of office expires today, and in view of that fact, and the further fact that you do not, as a private individual and citizen, desire to have the responsibility of the care of the money, which has been paid you by the railroad companies under protest, until the question can be finally determined by the Supreme Court (for the question will be carried to that court) I suggest and advise you to pay the money referred to to the state treasury. In the event that a decision should finally be rendered, adverse to the right of the State to recover this money, and in the further event that you should ever be called upon to return the same to the respective railroad companies, I can hardly consider it possible that the General Assembly would allow you, individually, or your bondsmen, to suffer for having paid the money into the state treasury upon the advice of the law officer of the State; the General Assembly would certainly be bound by every moral obligation, at least, to hold you and your bondsmen harmless.

Very truly yours,
DAVID K. WATSON,
Attorney General.

## BASTARDY PROCEEDINGS; WHEN PROBATE COURT ALLOWED FEE.

Office of the Attorney General,
Columbus, Ohio, May 2, 1890.

*J. B. Worley, Esq., Prosecuting Attorney, Etc., Hillsboro, Ohio:*

DEAR SIR:—Yours of the 21st ult. duly received in which you submit to me the following facts, and asked my opinion thereon:

> "Some time ago, a person was arrested in this county on a charge of bastardy, failed to give bond before the justice and was committed to jail to await trial. The Common Pleas Court was not in session, and said party was brought before the probate judge and gave recognizance for his appearance at the next term of the Common Pleas Court. Our Probate Court has criminal jurisdiction in misdemeanors. I desire to know if the probate judge can be paid an allowance out of the county treasury by the county commissioners for taking the bond in the above case, the same as he is paid in misdemeanor cases. Is this a criminal proceeding in bail within the meaning of the statute?"

I have examined the various sections of the statute relative to this subject and am of the opinion that the county commissioners can allow the probate judge a fee out of the county treasury in this case.

While proceedings in bastardy are not, necessarily, criminal proceedings in this State, yet they are of such a criminal character that I do not think it would be a misconstruction of the statute for the commissioners to make the allowance. The probate judge is required by the statute to take the recognizance, and I am of the opinion that he may be allowed a fee for so doing.

Yours very truly,
DAVID K. WATSON,
Attorney General.

*Section 2572 Passed April 24, 1890, and Sections 2569 and 70, Etc., Etc.*

## SECTION 2572 PASSED APRIL 24, 1890, AND SECTIONS 2569 AND 70, ETC., ETC.

Office of the Attorney General,
Columbus, Ohio, May 8, 1890.

*Hon. William Z. McDonald, Chief Inspector Workshops and Factories, Columbus, Ohio:*

DEAR SIR:—You recently asked me to give you a construction of section 2572 of the Revised Statutes, passed April 24, 1890, in connection with sections 2569 and 70 of the statutes, and section 3 of the act passed April 15, 1889, Ohio Laws, Vol. 86, p. 381.

Sections 2568, 69, 70 provide for the examination of certain public buildings by certain persons and the issuance of a certificate which shall continue in force for one year, if said buildings are found to be in proper condition.

Section 2572 was amended last winter so as to make it your duty, or the duty of your assistants, to make an inspection of such buildings as is provided for in sections 2568 and 69, as often as you may deem necessary, or upon a written demand of the agent or owner of said structure, or upon a written request of five or more citizens of a municipal corporation where such structure is erected. The act of April 15, 1889, O. L., Vol 86, pages 381 to 383, is entitled, "An act to prevent the erection of dangerous buildings for public use." It undertakes to regulate the capacity of the stairways, approaches, doorways, exits, floors, roofs, walls, pillars, arches, fire escapes, ventilations, etc. The third section of this act reads as follows:

> "This act shall not apply to cities of the first class where the construction of buildings is regulated by statute under the direction of a building inspector; *nor shall it be construed so as to interfere with existing laws relating to the inspection of buildings, but no certificate as now provided for by*

> *law, shall be issued for buildings hereafter erected, or alterations hereafter made (except in such cities of the first class) unless they conform to the requirements of this act."*

The language of this section, to my mind, is far from being clear, and it is by no means an easy matter to determine what the legislature meant to say or what they actually did say. I am of the opinion, however, after a careful examination of the matter, that the language of section 3 construed, means this:

First—The provisions of the act of April 15, 1889, do not apply to cities of the first class where the construction of buildings is already regulated by statute.

Second—Nor shall the act be construed so as to interfere with existing laws relating to the inspection of buildings which are already constructed; but buildings constructed or alterations made after the passage of the act, must conform to its requirements.

In your communication to me you say: "If I find on inspecting buildings that are, and have been, before the passage of this law properly constructed so far as exit is concerned, does this law in any way control the issuing of a certificate on this particular building beyond the exit?"

Again you say: "Where I inspect such buildings as referred to above and find they do not conform to the law in relation to exit, and I compel alterations to secure sufficient exit, does this building then come under the provisions of this law, as to the *other* construction as specified in this law including ventilation," etc.

It is very difficult to determine what meaning the General Assembly meant to give to the word "alterations." Did it mean that if alterations were made in one part of a building you should, therefore, have jurisdiction over the whole building for the purpose of making other alterations?

For instance, if you discovered that it was necessary to make alterations in the exit of a building, would this fact

*Section 2572 Passed April 24, 1890, and Sections 2569 and 70, Etc., Etc.*

warrant you in making other alterations in the same building which, in your judgment were needed, but which had not been asked to make? I think not. That is to say, when an alteration is made in a building it must conform to the act of April 15, 1889, but you do not, in my opinion, acquire to the right to do more than have such alterations comply with the requirements of the new act.

There is another question submitted to me in your letter which should properly have been submitted as a separate and independent question, and I will accordingly treat it as such. You ask: "When I have inspected buildings for public use that have been erected, or altered, since the passage of this act (referring as I understand it, to the act of April 15, 1889), it is my duty to see that the construction of said buildings conform to section 2 of the law to prevent the erection of dangerous buildings for public use before I can issue a certificate, as mentioned in section 2572 of the Revised Statutes."

After an examination of the act of April 15, 1889, I do not think you would be justified in issuing a certificate under section 3 of that act, either for alterations made or for new buildings erected since the passage of that act, unless such alterations and such new buildings, in your opinion, conform to section 2 of this act. So far as the *enforcement* of the act is concerned, section 5 makes it the duty of the prosecuting attorney to enforce it.

I have found, however, that the various statutes upon this question, seem to be almost irreconcilable with each other, and it is exceedingly difficult to give them a construction which is entirely consistent with other various provisions.

Very truly yours,

DAVID K. WATSON,

Attorney General.

*Ohio Soldiers' and Sailors' Orphans' Home; Erection Cottages; Power of Trustees Under Appropriation.*

## OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME; ERECTION COTTAGES; POWER OF TRUSTEES UNDER APPROPRIATION.

Office of the Attorney General,
Columbus, Ohio, May 10, 1890.

*M. J. Hartley, Esq., Secretary, Etc., Xenia, Ohio:*

MY DEAR SIR:—A few days since I received from you a communication as secretary of the board of trustees of the Ohio Soldiers' and Sailors' Orphans' Home, in which you state the following facts, and ask my official opinion thereon:

> "In 1888, the board of trustees of this institution, procured to be made a full, complete and accurate plan for the erection of ten double cottages, for said home, bills showing the amount of different kinds of material necessary in the erection thereof, and full and complete specifications of the work to be done and a full and accurate estimate of each item of expense, and the aggregate cost as required by section 782 of the Revised Statutes, and the same were submitted to the governor, auditor and secretary of state for their approval, and were approved under section 783.
>
> "When the appropriation was made, and a contract entered into, it was found that the amount appropriated was only sufficient to build, and complete, four double cottages, which were, thereafter, built and completed from said appropriation.
>
> "The present Legislature had appropriated $5,000.00 for the building of a double cottage. Has there been such a compliance with the statute as will enable the board of trustees to proceed at once to advertise for proposals, etc., for building said cottage under section 784, etc., the double cottage to be built being exactly the same as the four already constructed?"

*Ohio Soldiers' and Sailors' Orphans' Home; Erection Cottages; Power of Trustees Under Appropriation.*

I infer from the foregoing that you desire an opinion from me upon the question whether or not the board of trustees should proceed to adopt a complete and accurate plan, or plans, for such cottage, and advertise for bids thereon under the provisions of section 782, before proceeding to erect the same, or whether or not the old plans will do. I think under the provisions of section 782 the board will have to adopt new plans and readvertise. This may put the State to some extra expense and the authorities to some annoyance, but such matters can not be allowed to control the construction of the statute. All I have to govern me is the fact that the appropriation of $5,000.00 has been made for the erection of a double cottage, and the statute provides that "when an expenditure of over $3,000.00 is to be made, it shall be advertised," etc., etc.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

*State Institutions; Can Managers Be Employed to Oversee Improvements?*

## STATE INSTITUTIONS; CAN MANAGERS BE EMPLOYED TO OVERSEE IMPROVEMENTS?

Office of the Attorney General,
Columbus, Ohio, May 15, 1890.

*Hon. I. F. Mack, Sandusky, Ohio:*

DEAR SIR:—Yours of the 14th inst. received this morning. I have given the matter which you therein submit as careful an examination as possible under the circumstances, and during the time which I have to consider it, being compelled to leave the city this afternoon.

Section 629 of the Revised Statutes, Vol. 86, O. L., p. 148, provides: "No trustee, commissioner, manager or director of any benevolent reformatory or penal institution of the State, or of any county therein, is eligible to the office of superintendent, or steward, as an employe of such institution during the term for which he was appointed, nor within one year after his term expires."

You state in your communication that the board has "employed you to oversee the *improvements* at the Home, that is, to see that the contracts of this year are properly carried out, and the appropriation properly expended, and that this does not connect you in any way with the management of the Home," and desire to know if you can be employed in that capacity. I think you can; but you could not, in my opinion, be employed as *superintendent or steward* of the institution. The act limits the employment of one, who has formerly sustained your official relations to the institution, to superintendent or steward.

I am, therefore, of the opinion that the trustees could properly compensate you for acting as superintendent of these buildings, but there certainly can be no question about your right to act without compensation.

Very truly yours,
DAVID K. WATSON,
Attorney General.

*Board of Elections; Appointment of Secretary, Etc.*

## BOARD OF ELECTIONS; APPOINTMENT OF SECRETARY, ETC.

Office of the Attorney General,
Columbus, Ohio, May 29, 1890.

*Hon. James E. Campbell, Governor of Ohio, Columbus, Ohio:*

My Dear Sir:—I am informed that the term of office of two members of the board of elections in the city of Cincinnati has expired, and you desire my official opinion on the question of your right to appoint their successors, and also your right to appoint a secretary of said board, in view of the acts of the last General Assembly, passed April 28, 1890, taken in connection with section 2926*b* of the Revised Statutes. The last named section requires you to appoint "a board of election for each city of the first and second class," etc. It was sought to take this power from you and confer it upon the mayor of such cities by the act of April 28, 1890, entitled, "An act to amend section 2926*b* of the Revised Statutes, as amended April 13, 1889." (Vol. 86, 281-2.)

While the act of April 28, 1890, above cited provides that "section 2926*b* is hereby repealed," it also provides that "this act shall take effect from and after July 1, A. D., 1890," so that section 2926*b* of the Revised Statutes is *not* now repealed, and will not be until July 1st next, when the act of April 28, 1890, goes into effect, and, therefore, your power to appoint the members of the board under section 2926*b* *still exists.*

As to your right to appoint a secretary of the board, I have had more trouble in arriving at a satisfactory conclusion. The same section of the statute which requires you to appoint the board of elections in certain cities, to-wit: section 2926*b*, also requires you to appoint a "secretary of such board." The last General Assembly on the 28th day of April last, repealed certain sections of the Revised Stat-

utes, among them section 2926*c*. Said original section 2926*c* required the members of the board of elections appointed by the governor, to "meet within ten days after their appointment and * * * organize by electing one of them president, by ballot." The amendment of last April also required them to do this, and further provides as follows: "And they" (meaning the board) "shall also, at that time, elect a secretary, as provided in section 2926*b* of the Revised Statutes."

Inasmuch as the last named section required you to appoint the secretary of the board, the question now arises: Does not the act of April 28th, requiring the *board to elect* a secretary, repeal by implication, at least, that portion of section 2926*b* which authorizes you to appoint the secretary?

I think it does. I am aware that repeals by implication are not favored by the law, yet courts do not hesitate to enforce the provisions of a repealing clause when they are plain. The act of April 28, 1890, says, the board "shall elect a secretary," and I am of the opinion this repeals that portion of the old section which confers the right of appointment upon the governor.

In conclusion, therefore, I am of the opinion that you should fill the vacancies in the board of elections, but the board should elect the secretary.

Very respectfully yours,

DAVID K. WATSON,

Attorney General.

*Section 308 as Amended April 28, 1890, Regarding Free Public Employment Offices.*

## SECTION 308 AS AMENDED APRIL 28, 1890, REGARDING FREE PUBLIC EMPLOYMENT OFFICES.

Office of the Attorney General,
Columbus, Ohio, June 6, 1890.

*Hon. Jno. McBride, Commissioner of Labor Statistics, Etc., Columbus, Ohio:*

My Dear Sir:—You recently submitted to me the following question, and desired my official opinion thereon:

> "I desire to call your attention to section 308 of the Revised Statutes, as amended April 28, 1890, and to ask if, in your opinion, the State must pay all expenses connected with free public employment offices other than that of the salaries of superintendents and clerks."

I have examined the act to which you refer, and while its provisions are not as plain and positive as they should have been, yet, I am, nevertheless, of the opinion, that the spirit of the act requires the State to pay the necessary expenses connected with the establishment of "free public employment offices," except the salaries of superintendents of such offices and clerks in the same.

Very truly yours,
DAVID K. WATSON,
Attorney General.

## CONVICT NOT ELIGIBLE TO PAROLE WHEN.

Office of the Attorney General,
Columbus, Ohio, June 11, 1890.

*Hon. B. F. Dyer, Warden Ohio Penitentiary, Columbus, Ohio:*

MY DEAR SIR:—You recently submitted to me the following communication, and desired my official opinion thereon:

> "B. F. Sheridan was received in this institution February 8, 1885, on a committment from the Common Pleas Court of Scioto County, on sentences three years, one year, one year, and one year, making six years in all, which time has been served, and which, by reason of good time gained, expired January 14, 1890. Sheridan was taken out of the prison and taken to Pike County in May, 1885, and tried on indictments pending against him there, and on conviction, was sentenced on May 23, 1885, to two years confinement on each of the two counts, or four years in all. Since January 14, 1890, he has been serving his time on the sentence received in Pike County. Having served all of the time for which he was sentenced from Scioto County, the board of managers desire to know if he is now a 'second termer,' and is he eligible to parole?"

After a careful examination of the question, I am of the opinion, that the board cannot parole the prisoner under the provisions of the parole act. That act, among other things, says: "Who has not previously been convicted of a felony, and served a term in a penal institution."

There is no question from your statement of facts, but the prisoner had previously been convicted, and he had served a term in a penal institution previous to the *beginning* of the term he is now serving. The fact, that the sentence he is now serving, was put upon him shortly after the beginning of his original term, does not, in my

opinion, take the case out of the operation of the statute, and he is not eligible to parole.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 7436 AS TO CONTRACTS FOR CONVICT LABOR.

Office of the Attorney General,
Columbus, Ohio, June 13, 1890.

*Hon. B. F. Dyer, Warden Ohio Penitentiary, Columbus, Ohio:*

SIR:—A few days since you sent me a contract between the authorities of the Ohio Penitentiary and the Patton Manufacturing Company, dated March 25, 1886 (which I herewith return), and ask my opinion "whether, or not the same was in conformity with section 7436 of the Revised Statutes of Ohio."

I have examined the contract and compared it with the provisions and requirements of section 7436 (5), which I take to be the section to which you refer, Giauques Edition of the Revised Statutes, pages 1812-13. It is impossible for me to give you an answer to your question. The section referred to provides, among other things, as follows:

> "But no arrangement shall be made or entered into by the board for a longer period than one year, that will produce less than *seventy cents per day*, for the labor of able-bodied convicts."

All that I can say is that it is the duty of the board to see that no contract is made extending beyond the period of one year which will not produce seventy cents

*Section 283 and 3630e, Regarding Certificates of Authority to Agents of Co-operative and Assessment Insurance Companies.*

per day to the State for the labor of able-bodied convicts, but whether the particular contract, that you submitted to me for examination, will produce this effect, is a matter which it is practically impossible for me to determine, for the reason, that I have no means of knowing how much work these men will do, or may be able to do. I have no means to make a computation. You will, I presume, at once appreciate and understand the position in which I am placed. Should you desire further information relative to this matter, I should be pleased to meet you at any time and confer with you upon the subject. With respect I am,

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 283 AND 3630e, REGARDING CERTIFICATES OF AUTHORITY TO AGENTS OF CO-OPERATIVE AND ASSESSMENT INSURANCE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, June 18, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

My Dear Sir:—You recently submitted to me a communication, calling my attention to certain sections of the Revised Statutes of this State, and asking my opinion upon them as follows:

> "I desire to call your attention to sections 283 and 3630e, of the Revised Statutes, and ask whether the agents of co-operative or assessment life asso-

> ciations located in other states, and admitted to transact business in Ohio, under said section 3630*e*, are required by law, to have certificates of authority issued to them by me, empowering them to act for such associations, and if such certificates are required to be issued, whether certified copies of the same, together with the financial statement of such associations, should be filed with the recorder of the county in which the agent is located."

I have examined the sections of the statutes to which you have referred and am of the opinion, that the policy of our insurance laws requires you to issue certificates of authority to agents of co-operative or assessment life associations chartered in other States, but admitted to transact business in this State, which certificates shall empower such agents to represent such foreign associations, and that such certificates should be recorded in the office of the county recorder, where such agent resides.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 4020 REGARDING SCHOOL BOOKS, ETC.

Office of the Attorney General,
Columbus, Ohio, June 24, 1890.

*Hon. John Hancock, Secretary of School Board, Columbus, Ohio:*

MY DEAR SIR:—You recently submitted to me a communication, in which you stated that the school book board desired my opinion upon that portion of section 4020 of the Revised Statutes, as amended last winter, and which reads as follows:

> "But the price so fixed on any book shall not exceed eighty per cent. of the present lowest price thereof, at which such book is now sold by the publisher thereof to dealers."

As I understand your communication, the board desires to have my opinion concerning the price which it is authorized to pay for school books under the above language. That is to say, suppose the publishers have a list price which they furnish to dealers, but that they sell books to dealers at a certain discount from this price, the board desires to know whether they should pay eighty per cent. of the list price, or eighty per cent. of the price *at which the publisher actually sells to the dealer.* The language of the statute is this: "But the price so fixed on any book shall not exceed eighty per cent. of the present lowest price thereof, at which such book is now sold by the publisher to dealers." To my mind, this language certainly precludes the idea, that the board is to allow eighty per cent. of the present lowest price at which such books are now *listed* to the dealer. There is a recognized difference between the *list* price and the *selling* price. The fact, that the Legislature uses the word "sold" instead of the word "listed," excludes the idea that the list price should govern.

I am, therefore, of the opinion, that it is the duty of the board to pay for books, a price not to exceed eighty per cent. of the present lowest price, at which such books are sold by publishers to dealers. By the expression "sold," I mean the amount actually paid by the dealers in good faith to the publisher. It may be that in employing the language it has, the General Assembly did not actually express what it intended. From what I hear of the history surrounding this legislation, I am somewhat inclined to believe that it is true, but I cannot allow it to control me in construing the statute.

Hon. J. S. Black, when attorney general of the United

States, in the claim of the State of Maryland (Ninth Opinions of Attorney Generals, page 57), said:

> "Congress has the whole English language to express its meaning in, and it is so easy to use definite terms, that when they are not used, we will presume them not to be meant."

And in the same case, the learned attorney general held:

> "The intent of the Legislature must be ascertained from the *words of the law* without reference to the reports of committees or the speeches of members of congress."

So it seems to me in this case. The intention of the Legislature cannot be inferred from what members of either branch of that body may have said at the time, or after the time, of the passage of the act, but it must be determined from the language and words of the act itself. There does not seem to be any ambiguity in the language. The board is authorized by the act to contract for school books at eighty per cent. of the lowest price at which the book is *sold* to dealers by the publishers, and not eighty per cent. of the lowest price at which the book is *listed* to the dealers by the publishers. Very truly yours,

DAVID K. WATSON,
Attorney General.

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## SECTION 3630 AND 3630e.

Office of the Attorney General,
Columbus, Ohio, July 10, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

MY DEAR SIR:—You recently submitted to me a written communication in which you stated that the Frank-

lin Life Association of Springfield, Illinois, an insurance company organized under the statutes of that State, and doing business upon the assessment plan, had made application to you for authority to transact business in this State, and at the same time you submitted to me copies of the by-laws of said association and such other matters as were necessary for the proper consideration of the question involved, and asked my official opinion, whether or not it was your duty under the provisions of our statute, to admit such association, and allow it to transact business on its plan in this State.

Section 3630*e* of our Revised Statutes provides as follows:

> "Any corporation, company or association organized under the law of any other state to insure lives of members on the assessment plan, and authorized to transact the business contemplated in section 3630, shall be permitted to do such business, to wit: The business contemplated in section 3630, in this State, by first complying with the laws of the State of Ohio, regulating corporations, companies or associations organized for the mutual protection of its members within this State upon obtaining from the superintendent of insurance of this State, a certificate of compliance, etc."

Before admitting any foreign insurance corporation, company or association to do business in this State, we must look to see whether it proposes to transact business as provided by section 3630 of our statutes.

That section reads as follows: "A company or association may be organized to transact the business of life or accident insurance on the assessment plan for the purpose of mutual protection and *relief of its members,* and for the payment of stipulated sums of money to the *families or heirs* of deceased members of such company or association," etc.

By an examination of the amended by-laws of the Franklin Life Association, I find it stated in article 2,

section 11, that, "The object of this association is to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs or relatives by consanguinity or affinity, devisees or legatees of deceased members."

The whole question of admitting this association to transact business in this State, in my opinion, comes to this: Does it bring itself within the provisions of section 3630 of our statutes, when it proposes to furnish indemnity or pecuniary benefits to the "widows, orphans, heirs or relatives by consanguinity or affinity, devisees or legatees of deceased members?" If it does, it is entitled to admission, and to a certificate from you to carry on its business in this State. If it does not, it is your duty to exclude it, and in my opinion, it does not. The section of our statutes last above referred to, limits the object for which a mutual company or association may be organized to transact the business of life or accident insurance upon the assessment plan for the mutual protection and relief of its members, and for the payment of insurance to the *families or heirs* of deceased members of such company or association. In other words, those who may be beneficiaries under our statute is a more limited number than those who may be beneficiaries under the Ilinois statute, and, therefore, this association cannot adopt itself to the provisions of our law, and at the same time comply with the provisions of its by-laws.

In the case of the State of Ohio ex. rel. Attorney General against the Central Ohio Mutual Relief Association, 29 O. S., p. 399, a similar question was under consideration and the court held, that, "Mutual Relief Associations incorporated and organized under the act of April 20, 1872, as amended February 3, 1875, are *not* authorized to provide for the payment of stipulated sums of money to persons, *other than the families or heirs of a deceased member.*"

A simliar question came before our court in the case of the State against Moore, 38 O. S., p. 7. That was an

application for a writ of mandamus by the Fidelity Mutual Aid Association, a corporation organized under the laws of Pennsylvania which had been refused admission into this State by the superintendent of insurance, and an action was brought in mandamus by the company to compel the commissioner to admit the company to transact its business here. It was shown by the by-laws of the company, that the object of the association was "to secure to those having an interest in the lives of deceased members, a specified sum of money, by assessment on surviving members." The court held that a company in another State organized for insuring lives on the plan of assessment upon surviving members, without limitation, does not come within the class of companies provided for in section 3630 of the Revised Statutes. That section does not embrace companies insuring the lives of members for the benefit of others than their families and heirs.

To the same effect is a decision in the case of the State against the Standard Life Association, 38 O. S., 281. In the last branch of the syllabus of this case the court says: "A contract of insurance to pay in case of a member's death," "to himself or assignee," "to his estate," "to his executors or administrators," "or to any person whether a relation or not, who is not of his family or heirs, is against public policy and void." (See also State ex. rel. Attorney General vs. People's Mutual Benefit Association, 42 O. S., p. 579.)

The most recent consideration of this question by our Supreme Court was given in the case of the State of Ohio, on relation of the Attorney General against the Western Mutual Life and Accident Society of the United States, found in 23d Vol., No. 18, of the Weekly Law Bulletin and Ohio Law Journal, page 320, in which the former decisions of our court are reviewed and their doctrine firmly applied, and the court in the syllabus of that case says: "The business which corporations of other States organized to insure lives of members on the as-

sessment plan," shall be permitted to do in this State, "under the provisions of section 3630*e*, Revised Statutes, is that contemplated by section 3630, which does not include the business of insuring the lives of members for the benefit of others than their families and heirs." A corporation of another State organized for insuring lives upon the plan of assessments upon its members, without other limitation than that the policyholder shall have an insurable interest in the life of the member, is not embraced with either of said sections."

I am aware, that it is claimed on behalf of this association, that a certain limitation has been placed upon the language employed in its by-laws by the insurance department of the State of Illinois, and also by the legal department of that State, and it is further claimed, that such construction limits the language employed in article 2, section 1, of the association's by-laws, to a meaning equivalent to the language of our statute. Now, admitting all this to be true, the question still arises, whether or not you would be justified in issuing to this association, a certificate of authority to transact its business in this State; and, again, I am of the opinion you would not be. We are not cited to any decision by the Supreme Court of Illinois, in which the language used in the company's by-laws has been limited to the meaning given it by the insurance commissioner and attorney general of that State, and while this department entertains the highest respect, both personally and professionally, for the legal department of Illinois, yet I cannot feel that you would be warranted in admitting this company upon the interpretation which has been given the language referred to, unless such interpretation has been sanctioned by a decision of the Supreme Court of that State, and even then, I entertain the gravest doubts, whether you could do so with propriety. The Illinois association may be, and doubtless is, financially responsible, and conducted upon sound business principles, and its officers men of

*Section 2573c as to Power of Inspector of Workshops, Etc.*

integrity, and from what I know of them personally, and from the recommendations sent to this department concerning them, I believe they are, and the company a good one, but at the same time, it is apparent to my mind, that the company does not bring itself within the limitations of section 3630 of our statutes, as construed by our Supreme Court in the various cases which I have cited and there is nothing left for this department to do, but advise you to decline to issue a certificate of authority to transact business in this State, and you are advised accordingly.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 2573c AS TO POWER OF INSPECTOR OF WORKSHOPS, ETC.

Office of the Attorney General,
Columbus, Ohio, July 25, 1890.

*Hon. W. Z. McDonald, Chief Inspector, Workshops, Etc., Columbus, Ohio:*

MY DEAR SIR:—You recently asked my for my official opinion concerning the extent of your authority to order the erection of fire escapes on shops and factories. Section 2573c of the Revised Statutes (Smith and Benedict's Edition) provides, among other things, in substance, as follows:

> "That said inspectors if they find upon such inspection * * * that the means of egress in case of fire or other disaster, is not sufficient * * * they shall notify the owners, proprietors or agents of such shops or factories, to make the alterations or additions necessary, within thirty days, etc."

Under this language, you have the authority to examine a shop or factory, and if in your opinion the means of egress in case of fire or other disaster are insufficient, you can direct the owner, proprietor or agent of such shop or factory, to make such alterations or additions to such means of egress, as in your judgment the circumstances of the case require.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## FRATERNAL ASSOCIATIONS; AUTHORITY TO DO INSURANCE BUSINESS.

Office of the Attorney General,
Columbus, Ohio, July 31, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

My Dear Sir:—You some time since referred to me for my official examination, and opinion thereon, the question of your granting permission to the "Scottish Rite, Knights Templar and Master Masons' Aid Association," of Dayton, Ohio, to carry on insurance business in this State, such as is provided by its by-laws.

You were present in person when the questions raised were considered, in the presence of the attorney for the association, and I do not, therefore, deem it necessary to go into any lengthy discussion of the matter. Upon suggestions being made, the association has amended its original charter or by-laws, so as to comply with the present provisions of the present statutes, and I am, there-

for, of the opinion, that you can now with propriety grant them permission to do insurance business in this State.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## FRATERNAL ASSOCIATIONS; AUTHORITY TO DO INSURANCE BUSINESS.

Office of the Attorney General,
Columbus, Ohio, August 4, 1890.

*Hon, W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

MY DEAR SIR:—You have referred to me for my official examination and opinion thereon, the question of your granting permission to the "Scottish Rite, Knights Templar and Master Masons' Aid Association," of Dayton, Ohio, to carry on the business of insurance in this State.

Upon examining the charter and by-laws of the association, I suggested that the company make certain amendments thereto, so as to more fully comply with the provisions of our statutes, which the company has accordingly done. I am, therefore, of the opinion, that you can now with propriety, grant the company so far as these matters are concerned, permission to do insurance business in this State.

The question which you suggest in your letter, namely, "whether under section 3630 of the Revised Statutes, this association may accumulate a fund, place it in the hands of a trustee to manage and invest for the benefit of the members and pay them dividends thereon, and distribute that portion of the fund itself which may exceed

a certain amount," is one, concerning which, I am not free from doubt. Section 3630 of the Revised Statutes, provides, among other things, as follows: "A company or association may be organized to transact the business of life or accident insurance on the assessment plan * * * * and may receive money, either by voluntary donation or contribution, or collect the same by assessment on its members and *may accumulate, invest, distribute and appropriate the same* in such manner as it may deem proper," etc. I do not wish to be understood as saying that I have no doubt as to the meaning of this language, for I have. What the rights of an insurance company are, and what it may, or may not do, under this provision, and what kind of accumulations, investments, distributions and appropriations it may make is not easy to determine, but it is evident, that when the General Assembly used the above language it meant to allow companies, organized under section 3630 of our Revised Statutes, to make an accumulation and to "invest, distribute and appropriate the same" according to the discretion and judgment of the company, and I do not feel like saying, that this company does not bring itself within these provisions, but on the other hand, I have reached the conclusion, that what it proposes to do is both within the spirit and letter of the law, and that you can properly grant it permission to carry on its business in this State.

Very truly yours,

DAVID K. WATSON,

Attorney General.

## SECTION 968 REGARDING COMPENSATION OF INFIRMARY DIRECTORS.

Office of the Attorney General,
Columbus, Ohio, August 14, 1890.

*John P. Stein, Esq., Prosecuting Attorney, Sandusky, Ohio:*

MY DEAR SIR:—In yours of the 5th inst. you submit to me the following question and ask my official opinion thereon:

> "Are infirmary directors entitled to any compensation other than their per diem while in the performance of their official duties?"

Under the provisions of section 968 Revised Statutes, the compensation of infirmary directors is fixed at not to exceed $2.50 per day. This may be allowed by the county commissioners, but the statute does not authorize the commissioners, in my opinion, to allow the directors any additional compensation or anything by way of expenses. This may be a hardship upon the directors, but it is the law, as I understand it. Since I came to this conclusion, I have examined the records of the office and find that several of my predecessors have furnished opinions to the same effect.

Very truly yours,
DAVID K. WATSON,
Attorney General.

## SECTION 3055 REGARDING MILITARY COMPANIES.

Office of the Attorney General,
Columbus, Ohio, August 18, 1890.

*Hon. Morton L. Hawkins, Adjutant General, Etc., Columbus, Ohio:*

DEAR SIR:—You recently submitted to me the following questions and asked my official opinion thereon:

First—"Whether or not the law intends to give military companies the right to go outside the county in which they are located, to get contributing members, and if so, how shall such names be certified to the clerk of the court of the county in which the organization is located?"

Second—"Will a contributing certificate exempt a man over forty-five from jury duty?"

I have examined the various sections of the statute bearing upon the first question, and while they are not entirely harmonious, am of the opinion that there is nothing to prevent residents of different counties belonging to the same military organization or company. In such case, under the provisions of section 3055 of the Revised Statutes, it will be the duty of the commanding officer of such company, troop or battery, to file a certified list of the enlisted and contributing members of such company with the clerk of the court of the county in which they reside.

Regarding your second question, there is a decision on file in this office, to the effect that a contributing member of a military organization is exempt from jury duty. I am rather disposed to agree with this opinion, but it occurs to me that the question is very properly, if not

exclusively, one that should be determined by the courts, as it is their place to determine the qualifications of jurors.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 3589 REGARDING FILING OF ARTICLES OF INCORPORATION WHERE SIMILARITY OF NAMES EXIST.

Office of the Attorney General,
Columbus, Ohio, August 19, 1890.

*Hon. Daniel J. Ryan, Secretary of State, Columbus, Ohio:*

My Dear Sir:—Yours of this date has just been submitted to me, in which you say: "A proposed organization has presented to me articles of incorporation for the purpose of carrying on accident insurance, as provided by section 3630. They propose to incorporate under the name of 'The Mutual Accident Insurance Company.' Articles of incorporation have been filed heretofore by a company under the name of 'The Mutual Accident Insurance Company of Cleveland, Ohio.' The question I desire to refer to you is this:

"Have I a right under section 3589, to decline to file the articles of the Mutual Accident Insurance Company on account of any similarity of name with any existing corporation? Awaiting your reply I am, etc."

Replying to your communication, will say, that I am of the opinion, that the provisions of section 3589 do not apply to companies organized under section 3630.

Very truly yours,
DAVID K. WATSON,
Attorney General.

*Section 63 Regarding Maps to be Printed by the Railroad Commissioner.*

## SECTION 63 REGARDING MAPS TO BE PRINTED BY THE RAILROAD COMMISSIONER.

Office of the Attorney General,
Columbus, Ohio, August 17, 1890.

*Hon. J. A. Norton, Commissioner of Railroads and Telegraphs, Columbus, Ohio:*

DEAR SIR:—You recently submitted to me a communication in which you state that, "by section 63, Revised Statutes of Ohio, there is required to be printed one thousand railroad maps of Ohio for insertion in the report of the commissioner of railroads and telegraphs for distribution by him, five copies of said map for each member of the General Assembly, to be inserted in said commissioner's report for said members, and an additional number of said maps mounted on pasteboard, numbering twenty-five for each member of the General Assembly."

You further state, that under the provisions of this section, you are required to print 5,530 maps.

You also call my attention to House Joint Resolution No. 14 adopted January 30, 1890, O. L., Vol. 87, which provides as follows:

> "Be it resolved by the General Assembly of the State of Ohio, that in addition to the three thousand railroad maps of Ohio, authorized by section 63, Revised Statutes, to be printed, the commissioner of railroads and telegraphs be and he is hereby authorized to have ten thousand (10,000) additional maps printed, four thousand (4,000) of which shall be mounted on pasteboard, and one thousand (1,000) in pocket edition, etc."

It is evident from your statement that the House joint resolution above referred to does not correctly construe that portion of section 63, Revised Statutes, which relates to the publication of railroad maps. It is prob-

*Section 63 Regarding Maps to be Printed by the Railroad Commissioner.*

able that the author of the joint resolution in referring to the number of maps which section 63 requires to be printed, inadvertently construed that section to require three thousand (3,000) maps instead of 5,530, as you claim that section authorizes.

It was held in the case of Pond vs. Maddox, 38 Cal., p. 572, that: "A clause inserted from inadvertence will be disregarded." It is true, the general rule is, that where two statutes contain repugnant provisions, the one last signed by the governor is a repeal of one previously signed; but this is so, merely because it is *presumed to be so intended* by the law-making power. *Where the intention is otherwise* and that intention is manifest upon the face of either enactment, the plain meaning of the legislative power thus manifested is the paramount rule of construction. (See Sedgwick on Statutory and Constitutional Construction, 2 Edition, p. 354.)

I am of the opinion, after an examination of the joint resolution and section referred to by you, that the construction which the resolution seeks to give to the statute is the result of inadvertence or mistake, and that the real intention of the General Assembly was, that you should have printed 10,000 maps in addition to the correct number authorized by section 63, and in my judgment you would be justified in having that done. That is to say, ascertain definitely the number which section 63 requires you to have published; then, in addition to that, print ten thousand (10,000) additional maps.

Very truly yours,

DAVID K. WATSON,

Attorney General.

*Power of Chief Inspector to Direct Certain Changes in Workshops and Factories.*

## POWER OF CHIEF INSPECTOR TO DIRECT CERTAIN CHANGES IN WORKSHOPS AND FACTORIES.

Office of the Attorney General,
Columbus, Ohio, August 19, 1890.

*Hon. William Z. McDonald, Chief Inspector Workshops, Etc., Columbus, Ohio:*

My Dear Sir:—On the 16th inst. you addressed me a communication stating that you had inspected the workshops and factories of the Patton Manufacturing Company, located on the inside of the Ohio Penitentiary under section 2573*b* of the Revised Statutes of Ohio, as amended March 19, 1889, and found upon said inspection that it is necessary to issue certain orders for removing the dust caused by the process of their manufacturing.

You further stated that you wished my official opinion as to who is responsible for complying with orders issued from your department for such changes.

Replying to your communication, will say, that I have examined the section of the statute bearing upon the question with their amendments with such care as the limited time since receiving your communication will permit, and will further state, that I have experienced great difficulty in arriving at a conclusion.

In construing section 2573 as it was amended April 19, 1883, the Supreme Court in the case of Lee against Smith, 42 O. S., page 458, defined the word "owner" as used in that section. On page 462, McElvain in delivering the opinion said: "Hence it is more reasonable to infer that the Legislature intended to impose the duty required by this statute upon the owner of the factory, *who assumes the relation of master to those employed therein, and for whose safety the duty imposed by the statute is enjoined,* than to hold that it was intended to impose the duty upon the owner in fee of the factory building, who may

*Trustees; Managers, Directors, Etc., Not Eligible to the Office of Superintendent or Steward of State Institutions.*

not sustain any relation to the employes in the factory from which the duty to provide for their safety could be implied and who may not even know that his building is being used as a factory or a workshop."

In other words, the court held that the word "owner" as used in the section above referred to, did not mean the owner of the fee, but rather the person owning, governing and controlling the building. The General Assembly in amending this section, chose to insert after the word "owners," the word "proprietors," and it is this amendment which makes it so difficult to ascertain the true meaning of the section. (See section 2573*c*, Revised Statutes of Ohio.)

Applying, however, the provisions of this last amended section, to the case which you put in your communication, I am inclined to the opinion, that you would be justified in directing the Patton Manufacturing Company to make such improvements as I understand you contemplate having made. Very truly yours,

DAVID K. WATSON,
Attorney General.

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## TRUSTEES; MANAGERS, DIRECTORS, ETC., NOT ELIGIBLE TO THE OFFICE OF SUPERINTENDENT OR STEWARD OF STATE INSTITUTIONS.

Office of the Attorney General,
Columbus, Ohio, August 26, 1890.

*Walter L. Campbell, Esq., President Board of Trustees, Youngstown, Ohio:*

My Dear Sir:—Your communication of the 17th inst. reached me in due time, but since then I have been

*Trustees; Managers, Directors, Etc., Not Eligible to the Office of Superintendent or Steward of State Institutions.*

unusually occupied with official business, and also have been out of the city for a few days, so that I was unable to answer you until today.

I recognize the difficulty and practical embarrassment under which your board is placed concerning the matter you write about. Section 629, of the Revised Statutes, provides, "no trustee, commissioner, manager or director of any benevolent, reformatory or penal institution of the State of any county therein is eligible to the office of superintendent or steward, as an employe of such institution, during the term for which he was appointed," etc. It would seem from this section, by implication at least, that a director of an institution might be employed in behalf of the institution in a position other than that of superintendent or steward, and if this was the only section bearing upon the question, I would be inclined to hold, that you may safely employ Doctor Bennett as physician for your institution notwithstanding he is one of the directors thereof, but section 628, I am inclined to think, controls the matter. It is as follows:

> "No trustee or other officer of any benevolent institution may be either directly or indirectly, interested in any purchase for, or contract on behalf of such institution, and in addition to the liability of any trustee or officer, violating this inhibition to respond in damages for any injury sustained by the institution by his act, he shall be forthwith removed from office."

If the directors should employ one of their own number—Doctor Bennett for example—to act as physician for the institution, I am inclined to think that it would be a violation of this section, because it would be a contract for his *personal services and skill* as a physician on behalf of such institution. The question is not free from doubt in my mind. Take the two sections together, I am

*Employers' Liability Insurance, As to "Employers' Liability Insurance" Being Allowed in this State.*

ree to say, that there are two sides to it, but I am in-clined to think the policy and reason of the statute is against the employment of one of the directors of a benev-olent institution of the State, to act in the capacity of physician for such institution.

Trusting that this is satisfactory, I am,

Very respectfully yours,

DAVID K. WATSON,

Attorney General.

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## EMPLOYERS' LIABILITY INSURANCE, AS TO "EMPLOYERS' LIABILITY INSURANCE" BEING ALLOWED IN THIS STATE.

Office of the Attorney General,
Columbus, Ohio, August 4, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

DEAR SIR:—You recently notified me that the American Casualty Insurance and Security Company, a corporation organized under the laws of Maryland, had made application to you for a license to transact the business of insurance in this State, and at the same time, you submitted to me its certificate of incorporation for my examination.

You further stated, that "employers' liability insurance is a feature in this organization, and I desire your opinion, whether under the laws of this State, that kind of insurance is provided for, and the transaction thereof in this State, may be lawfully authorized by me."

You further stated that "this company claims to do other kinds of insurance business, and I desire your opinion, whether the superintendent of insurance may place

*Employers' Liability Insurance, As to "Employers' Liability Insurance" Being Allowed in this State.*

a limitation upon the business of a company which he authorizes to transact business in this State, or does the company, if admitted at all, come in with all the privileges conferred by its charter, and the right to do all kinds of business provided for in the same?"

I have carefully examined all of the sections of the statutes bearing upon the questions raised by you and have come to the conclusion that a company chartered under the laws of a foreign State for a purpose of carrying on the business of insurance may be admitted to carry on the same business in this State, although we have no statute authorizing a domestic company to be incorporated to do the same kind of insurance business. I am fully satisfied that this position is sustained by numerous authorities, but it does not follow, that where a foreign company is admitted to this State to carry on the business of insurance, that it may also, at the same time, engage in other business contrary to the provisions of our statutes, although authorized by its charter so to do. The principal business which the company mentioned in your communication desires to transact in this State is that of employers' liability insurance. Its certificate of incorporation, however, contains the following provision:

> "In addition to such insurance business, to guarantee the payment, performance, and collections of promissory notes, bills of exchange, contracts, bonds, accounts, claims, rents, annuities, mortgages, choses in action, evidences of debt, and certificates of property or values, etc., etc."

Under the provisions of section 3656 of our Revised Statutes, this company would not be permitted to carry on the business of insurance in this State, and in addition, to carry on the business above described, to-wit: "Guarantee the payment, performance, collections of promissory notes, bills of exchange, contracts," etc., for the sec-

*Employers' Liability Insurance, As to "Employers' Liability Insurance" Being Allowed in this State.*

tion above mentioned prohibits "a company, association or partnership, incorporated, organized, or associated under the laws of any other State of the United States, or of any foreign government, for any of the purposes mentioned in this chapter from transacting *any insurance in this State which does any other kind of business in connection with its insurance.*"

I am informed, however, by the agent who represents the American Casualty Insurance and Security Company, that the company is a new one, having but recently been incorporated, that as yet it has transacted no business, and that it does not propose or desire to transact any business in this State, but strictly insurance business, that is to say, it waives its right under its charter, in addition to its insurance business, "to guarantee the payment, performance and collections of promissory notes, bills of exchange," etc.

A corporation is not bound to exercise all the power and carry on all the different kinds of business which its charter may authorize it to do. It may exercise some of its powers and permit others to lie dormant.

I am clearly of the opinion that this company would not have the right to do both kinds of business above mentioned, that is, to carry on its insurance business and the collection of notes, etc., but as it expressly declares its intention not to do the latter business, it seems unnecessary for me now to determine the question which you put, namely, "whether you may place a limitation on the business of a foreign company which you authorize to transact business in this State," for the company does not propose to do any but the insurance business.

I am, therefore, of the opinion, after examining a number of authorities bearing upon the various questions submitted by you, and which it is necessary to determine, and relying upon the statement of the agent of the company, that it desires and expects to do in this State, only

*Corporations Organized for the Purpose of Selling or Dealing in Real Estate, Etc., Can Not be Incorporated.*

an insurance business, that you can admit this company to carry on such business in this State. I am,

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## CORPORATIONS ORGANIZED FOR THE PURPOSE OF SELLING OR DEALING IN REAL ESTATE, ETC., CANNOT BE INCORPORATED.

Office of the Attorney General,
Columbus, Ohio, August 29, 1890.

*Hon. James E. Campbell, Governor of Ohio, Columbus, Ohio:*

MY DEAR SIR:—You recently submitted to me for my examination and official opinion thereon, certain articles of a proposed incorporation to be known as "The Hamilton Improvement Company," and asked if the secretary of state would be justified in allowing them to be filed. The object of incorporating said company as disclosed by your communication, is as follows:

> "The purposes for which said corporation is formed, shall be to purchase a tract of land adjoining said city of Hamilton, containing about two hundred and sixty-six (266) acres, and known as the 'Hancock Farm' and two other tracts, adjacent thereto, containing about twelve (12) acres of land and known as the 'Shock and Dodsworth' tracts, respectively, to erect houses thereon, to secure the location of factories and other business enterprises thereon; to build up a thriving and industrious suburb to said City of Hamilton, and generally to improve and develop said land, and to *sell and convey the same.*"

*State Land as to Title Being Good; Known as the "Inglehart Land."*

Section 3235 of the Revised Statutes, provides as follows:

> "Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, *except for dealing in real estate*, or carrying on professional business."

Dealing in real estate certainly includes selling and conveying the same, and to sell and convey real estate certainly means to deal in it. I do not, therefore, see how a company organized for the purposes which it seems this company is to be organized for, can be incorporated under the provisions of the above section, and it is my opinion, that the secretary of state would be justified in declining to file the proposed articles of incorporation.

Very respectfully yours,

DAVID K. WATSON,

Attorney General.

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## STATE LAND AS TO TITLE BEING GOOD; KNOWN AS THE "INGLEHART LAND."

Office of the Attorney General,
Columbus, Ohio, September 8, 1890.

*I. J. C. Shumaker, Esq., Secretary, Etc., Columbus, Ohio:*

DEAR SIR:—On the 2d inst. you submitted to me a communication asking for my opinion upon the following state of facts:

> "On December 3, 1840, J. S. and N. P. Inglehart deeded certain real estate to the State of Ohio. On the 23d day of June, 1840, said Ingleharts had executed and delivered a mortgage on the same property, but the mortgage was not left for record

*State Land as to Title Being Good; Known as the "Inglehart Land."*

> until July 8, 1841. When the State received its deed, it had no knowledge of the existence of the mortgage. About eight or nine years after the execution of the deed to the State, the said Ingleharts failed financially, and the mortgage which had been given on the property was foreclosed without the State being made a party to the suit, and the property was sold at master commissioner's sale. Upon the day that the State received its deed from the said Ingleharts, it executed a lease back to the Ingleharts, on the same property for the period of thirty years."

The question on which you desire my opinion is: Who owns the property in question? It is hardly worth while to go into a lengthy discussion of this matter, or examine and cite authorities in relation to it. If the facts, as above stated, are correct, and there are no additional facts which would throw light upon the matter, I am of the opinion that the State's title is good. The lease, although for a longer period than is usually made, has expired, and the property of course, taken out of its operation. The mortgage cannot deprive the State of its title, because it was not recorded until after the deed of the State.

The State was therefore an innocent purchaser. I suggest, however, that you have made as thorough an examination of all the facts in the case as possible. There should really be prepared a careful abstract of title, and, as above stated, if there are no additional circumstances or facts which would throw light upon this question, it is my opinion that the State has a good title to the property conveyed to it by the said Ingleharts.

Herewith I return you the papers sent me.

Very truly yours,

DAVID K. WATSON,

Attorney General.

*Section 299; As to the Placing of Boilers Not Nearer Than Sixty Feet to any Shaft, Etc.*

## SECTION 299; AS TO THE PLACING OF BOILERS NOT NEARER THAN SIXTY FEET TO ANY SHAFT, ETC.

Office of the Attorney General,
Columbus, Ohio, September 11, 1890.

*Hon. R. H. Haseltine, Chief Inspector of Mines, Columbus, Ohio:*

DEAR SIR:—You recently sent me the following communication:

> "Prior to the passage by the General Assembly, of section 299*a* (see O. L., Vol. 82, p. 206) the Huron Coal Company in Jackson County, erected a set of boilers nearer than one hundred feet to the mouth of the shaft. On or about the ——— day of ——————— and subsequent to the amendment of section 299*a* (see O. L., Vol. 83, p. 183) the works so erected, were destroyed by fire. The proprietors of said works were notified not to rebuild them in their old position, but remove them beyond the limit of sixty feet, as mentioned in said amended section, which they refuse to do, but did rebuild, as I am reliably informed, upon the old foundation, which is nearer than sixty feet to the mouth of the shaft. I desire your opinion as to whether or not they have a lawful right to rebuild and operate their boilers within the sixty foot limit."

Section 299*a*, O. L., Vol. 8, page 206, provides as follows:

> "From and after May 1, 1885, no boiler used for generating steam and no hopper, or other inflammable structure for the preparation or dumpage of coal shall be erected nearer than one hundred feet to the mouth of any shaft or slope," etc.

This act took effect May 1, 1885. The following year the General Assembly repealed the above section and

passed section 299 (See O.L., Vol. 86, p. 182). Among other provisions contained in section 299, appears the following:

> "The boilers used for generating steam, and the buildings containing the boilers, shall not be nearer than sixty feet to any shaft or slope, or to any building or inflammable structure connected with or surrounding said shaft or slope," etc.

The General Assembly, in my opinion, had full power to pass both the above acts, and the company mentioned by you violated the statutes when it rebuilt its works nearer to the mouth of the shaft than sixty feet.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 4020c AS TO THE SCHOOL BOOK LAW.

Office of the Attorney General,
Columbus, Ohio, October 8, 1890.

*Hon. John Hancock, State Commissioner Common Schools, Columbus, Ohio:*

MY DEAR SIR:—You recently solicited my official opinion upon the following questions growing out of the act of the General Assembly of last winter, commonly known as the "School Book Law:"

First—Under section 4020c first, do the words "in the manner provided in this act" restrict publishers who may bid to furnish the schools with text books, to the same limitations as to price, as is done in section 4020 of the same act, to-wit, to a maximum of eighty per cent. of the lowest price at which any book bid on by such publishers has been sold to any dealer?

Second—Under the provisions of the third division of the same section 4020c, would the school book board, if it

*Section 4020c as to the School Book Law.*

should receive acceptable bids from publishers, be legally empowered to contract with said publishers? If so, for what length of time?

I think I can safely answer your first question in the affirmative. By this I mean that the board would not be justified in giving over eighty per cent. of the lowest price at which books are sold to dealers. You will remember that this is the same construction which I put upon the statute in an opinion to you some time ago.

Your second question is one of far more difficulty, and I have not found it an easy matter to arrive at a satfactory conclusion upon it. However, after repeated and careful examinations of the third division of section 4020*c*, I am led to conclude, that it was not the purpose of the General Assembly to authorize the board to enter into a contract with publishers and that your board has no legal power to do so. Among other things, said section provides: "And all such bids shall remain in force and continue until the close of the adjourned session in the year A. D. 1891 of this General Assembly, and shall be subject to such supplementary legislation on the subject hereof as may be enacted at such adjourned session," etc.

If your board is empowered to enter into a contract, which means, of course, the acceptance of some bid in preference to others, I do not understand how such bids could "remain in force and continue until the close of the adjourned session in the year A. D. 1891;" but it seems to me, that entering into a contract on the part of your board would be entirely inconsistent with the language of the act above quoted. Said act further provides in the same section, "and said board shall make full report of all the foregoing, with such suggestions and recommendations, and further information as they may be able and deem necessary, to the adjourned session of this General Assembly; all subject to such further action and legislation as may be deemed necessary, and not inconsistent with the provisions of this act."

Again, I think, that for your board to enter into a contract would be inconsistent with the foregoing language of the act, and that the board is limited in its power to making the report provided for in said act.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## COMPENSATION OF MEMBERS OF GENERAL ASSEMBLY.

Office of the Attorney General,
Columbus, Ohio, October 13, 1890.

*Hon. E. W. Poe, Auditor of State, Columbus, Ohio:*

SIR:—You recently submitted to me for my official opinion, the question whether or not members of the General Assembly would be entitled to mileage for their attendance upon the extra session of that body recently called by the governor.

The compensation and mileage of members of the General Assembly was fixed by an act passed by that body on March 3, 1852, as follows:

> "Each member of the General Assembly of this State shall be entitled *during the present or any succeeding session,* to receive for each day's attendance during the session of the General Assembly, the sum of four dollars, and also four dollars for every twenty-five miles distance by the most direct route of public travel from his place of residence in traveling to and returning from the seat of the General Assembly, provided," etc. Swan and Critchfield, 1331.

This act remained in force until May 1, 1862, when it was repealed and the following passed:

*Compensation of Members of General Assembly.*

> "That each member of the General Assembly of this State shall be entitled to receive for each day's attendance *during the session of the General Assembly,* the sum of three dollars, and also the sum of three dollars for every twenty-five miles distance by the most direct route of travel from his place of residence in traveling to and from the seat of government." O. L. Vol. 59, page 114.

You will observe that this language is entirely different from that of the act of 1852. That act fixes the compensation of members at four dollars per day and also allowed them mileage at the rate of four dollars for every twenty-five miles distance traveled, by the most direct route, "during the present or any succeeding session" of the General Assembly, while the act of 1862 omits the words "during the present or any succeeding session," and in their places provides, "that each member of the General Assembly of this State be entitled to receive for each day's attendance *during the session of the General Assembly.*"

The act last above cited remained in force until the 31st of December, 1867, when the General Assembly passed another act, fixing the compensation of members and officers thereof, the first section of which is as follows:

> "And each member of the General Assembly of this State shall be entitled to receive for each day's actual attendance during the session of the General Assembly, the sum of five dollars and also the sum of three dollars for every twenty-five miles distance by the most direct route of public travel, from his place of residence, in traveling to and from the seat of government." O. L., Vol. 63, page 65.

This provision in turn remained in force until March 26, 1880, when the General Assembly made a radical change in the compensation and mileage of members, providing:

> "Each member of the General Assembly shall receive for his term of office the sum of $1,200.00 one-half thereof to be paid each year in monthly installments, not exceeding $150.00, provided, that there shall be paid at the *close of each session* the amount due for each year, and also twelve cents per mile each way for traveling from and to his place of residence, by the most direct route of public travel, to and from the seat of government," etc. Revised Statutes of Ohio, 1880, page 191, section 40.

The $1,200.00 provided in this section, was, of course, intended to be the full compensation which members of the General Assembly could receive for the full term of their office for two years, and the mileage therein provided was intended to cover all that could be received during the same time *as mileage.*

On the 15th of April, 1889, the General Assembly again repealed the statute on this subject, and enacted the following, which is the present legislation:

> "Each member of the General Assembly shall receive the sum of $600.00 for each year of the term of his office, to be paid in monthly installments not exceeding $150.00, provided, that there shall be paid at the close of each session *the amount due for that year*, and also twelve cents per mile each way for traveling from and to his place of residence," etc. Revised Statutes of Ohio, Smith and Benedict's Ed., section 40.

This, you will observe, fixes the compensation of members at $600.00 per year for each year of the term of his office; and also fixes the mileage which each member is entitled to receive at twelve cents per mile for each way of travel from his residence to the seat of government. I cannot interpret the words, "the close of each session," to mean other than the regular biennial or annual session of the General Assembly. I am aware that section 44 of the

act governing the organization of the General Assembly, provides: "The President of the Senate and Speaker of the House shall ascertain the number of days attendance of each member and officer of their respective branches during *the session,* and the number of miles traveled of each member to and from the seat of government, and certify the same, and the amount due therefor to the auditor of state." But I give the same construction to the words "during the session" in this section, that I do to the words "at the close of each session" in section 40. They refer to the regular biennial or annual sessions, and not to extra sessions, such as is contemplated by your inquiry. Had the act of 1852 remained unchanged, your question would have been much more difficult to answer, but the fact that the Legislature repealed that act and passed subsequent acts containing entirely different provisions upon the subject, shows what its intention was.

I am, therefore, of the opinion, that there is no statute authorizing you to allow mileage to members of the present General Assembly for attending the extra session of that body called by his excellency, the governor, to convene tomorrow, and if application is made for the same, you should refuse it. I am,

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## AS TO CORPORATIONS FILING ARTICLES IN CERTAIN CASES.

Office of the Attorney General,
Columbus, Ohio, October 13, 1890.

*Hon. Daniel J. Ryan, Secretary of State, Columbus, Ohio:*

DEAR SIR:—I have read the correspondence between yourself and Mr. C. E. Warner, of Detroit, relative to in-

corporating the "Buckeye Fuel & Light Company," which you recently submitted to me, at the same time asking my official opinion whether or not you should file the articles of a proposed corporation when said articles state one of the objects of the corporation to be "to acquire by contract, lease, or purchase, the franchise and equipments of other similar corporations."

My opinion is, that you ought not to file these articles unless the above clause is striken out. Corporations may acquire property as an incident to their general object, but I do not believe our statute permits you to charter a corporation whose purpose is to acquire by contract the franchises and equipments of other like corporations, therefore, you should decline to file these articles with the above clause in them.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## SECTION 1117 AS TO COUNTY TREASURER, ETC.

Office of the Attorney General,
Columbus, Ohio, October 15, 1890.

*A. Leach, Esq., Prosecuting Attorney, Jackson, Ohio:*

DEAR SIR:—Replying to your letter of the 7th inst. will say, in answer to your first question that I do not think the county treasurer gets "any part of the fifteen per cent. added to delinquent land," except as allowed by section 1117.

Your second question, "Does the county treasurer get five per cent. of the amount collected on the delinquent chattel duplicate?" I think your answer to this question is correct. He does get five per cent. I think

you are also correct, when you say, that he should not pay out any of it to the collectors.

Your third question, I must ask you to cite me to the sections which you desire me to construe.

Your fourth question: "When the safe in the county treasurer's office is pronounced insecure by competent persons and the commissioners refuse to furnish any better security, would the treasurer and his bondsmen be liable in case the safe was burglarized?" I can only say, that this is not a question for me to answer, therefore, I cannot express my opinion upon the subject.

Your fifth question: "Does the word 'forfeitures' in the tenth line of section 1117 refer to collections of taxes on land forfeited to the State?" I am somewhat in doubt as to this, but think perhaps the statute should be liberally construed and will answer it in the affrmative.

Respectfully yours,
DAVID K. WATSON,
Attorney General.

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## SECTIONS 283, 284 AND 289, R.S., RELATING TO CO-OPERATIVE OR ASSESSMENT LIFE INSURANCE COMPANIES.

Office of the Attorney General,
Columbus, Ohio, October 13, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

SIR:—You some time since requested my official opinion, whether sections 283, 284 and 289, of the Revised Statutes, require agents of co-operative or assessment life insurance companies of other States to be authorized by you, in order to transact business for their companies

*Sections 283, 284 and 289, R. S., Relating to Co-Operative or Assessment Life Insurance Companies.*

or associations, and whether certified copies of the certificates of such authority, together with the statement of the financial condition of the companies, should be filed with the recorder of the respective counties in which the agency is located. In response to your inquiry, I submitted to you the following opinion:

The policy of our insurance laws requires you to issue certificates of authority to agents of co-operative or assessment life associations chartered in other States, but admitted to transact business in this State, which certificates shall empower such agents to represent such foreign associations, and that such certificates should be recorded in the office of the county recorder where such agents reside.

Some time after this opinion had been given you, certain co-operative or assessment associations located in the East requested that I grant them the privilege of being heard in person and by counsel upon the reconsideration of the subject. To this request I very readily consented, and at the same time asked you to appear and represent your department. You will, of course, remember that the associations appeared by their officers and also by counsel, and that the entire subject was argued and discussed at length. Counsel for the associations subsequently reduced his argument to writing and submitted it for my examination. You did the same with your argument. The official business of this department has been such that I have not been able to give these arguments that examination of which I deemed them worthy, until very recently. I have now, however, carefully examined them. The argument of counsel representing the companies or association was exceedingly able and instructive, yet I do not think that I should change my former holding. I respectfully suggest, that as the matter is one of great importance to your department, it would be eminently proper for you to call the

*As to the Paroling of Prisoners Who Have Other Indictments Pending; Legal for the Board of Managers to Parole Same.*

attention of the General Assembly to it at the adjourned session, and let such action be taken by that body as it deems prudent under the circumstances.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## AS TO THE PAROLING OF PRISONERS WHO HAVE OTHER INDICTMENTS PENDING; LEGAL FOR THE BOARD OF MANAGERS TO PAROLE SAME.

Office of the Attorney General,
Columbus, Ohio, November 6, 1890.

*W. S. Holmes, Esq., Secretary Board of Managers, Columbus, Ohio:*

DEAR SIR:—Your communication of this date, in which you submit to me for my official opinion the following question: "Is it lawful to parole prisoners who have other indictments pending?" duly received. Replying thereto, will say, I have examined the statutes relating to the paroling of prisoners and do not find anything therein, which, in my opinion, would make it unlawful for your board to parole a prisoner *because other indictments are pending against him.*

Very respecfully yours,
DAVID K. WATSON,
Attorney General.

*State Institution; Purchase of Native Live Stock; Awarding Contract Several Months in Advance.*

## STATE INSTITUTION; PURCHASE OF NATIVE LIVE STOCK; AWARDING CONTRACT SEVERAL MONTHS IN ADVANCE.

Office of the Attorney General,
Columbus, Ohio, November 8, 1890.

*Doctor H. A. Tobey, Secretary Toledo Asylum, Etc., Toledo, Ohio:*

MY DEAR SIR:—Yours of the 17th ult. was duly received and contents noted, since which time I have been absent so much on official and other business, that it has been impossible for me to answer until today. Your letter is as follows:

> "The trustees of this institution have been in the habit of contracting their supply of meats for a fixed time. The law as to native cattle has been rigidly provided for in the contracts. We are now confounded with an interpretation of the law to the effect that would prohibit time contracts. Will you be kind enough to inform the board if they are authorized under the law to award a contract for a fixed time, say six to twelve months in advance?"

I do not quite understand from the above letter whether you wish me to interpret the law passed April 26, 1890, O. L., Vol. 87, page 334, ordinarily known as the "native live stock" act, or the General Statutes relating to the government of your institution. When you use the expression in your letter, "the law," which do you refer to? The act of last winter is silent upon the question which you raise. The only provision of that act which could possibly relate to it, is the one requiring stewards or purchasing officers of the State institutions not to exceed the *current* price for the article purchased. Should

*State Institution; Purchase of Native Live Stock; Awarding Contract Several Months in Advance.*

you enter into a contract for a long period—say six to twelve months in advance—it might be argued that current prices could not control. On the other hand section 643, Revised Statutes, provides that "whenever in the opinion of any board of trustees, the interest of the State and of the institutions under their charge, will be subserved thereby, said board shall advertise for sealed bids to furnish at the institution any article or articles needed for its use, *at such times and in such quantities as the superintendent may from time to time direct," etc.*

This would seem to leave the whole matter in the discretion of the superintendent. As above stated, I do not find anything in the act of last winter preventing this, except the mere intimation in reference to *current* prices. I am inclined to the opinion, that acting under section 643, you could enter into a contract for a definite time, the length of time resting in the sound and reasonable discretion of the superintendent, but I am still in doubt as to whether you desire an interpretation of the act of last winter, or the general law relating to the supplies of your institution.

Trusting that the above is satisfactory in so far as it goes, and that you will not hesitate to write me upon this or any other subject, I am,

Very truly yours,
DAVID K. WATSON,
Attorney General.

*Treasurer of a County May Not Receive Anything But Money for Taxes.*

## TREASURER OF A COUNTY MAY NOT RECEIVE ANYTHING BUT MONEY FOR TAXES.

Office of the Attorney General,
Columbus, Ohio, November 15, 1890.

*W. H. Snook, Esq., Prosecuting Attorney, Paulding, Ohio:*

DEAR SIR:—Yours of the 14th inst. duly received and contents noted. You therein submit the following statement and question: "The expense fund of Paulding County is overdrawn a number of thousands of dollars. None of the funds in the county treasury have a surplus. The poor fund of the county is overdrawn. Question: Can the county treasury be compelled to receive *county orders* on the said overdrawn funds, in payment of any taxes? If in payment of any taxes, whatever, then what taxes, county and municipal, or either of them?"

I suppose that by the expression, "county orders," you mean that the auditor has drawn his warrant on the treasurer payable out of a special fund, and that there is no money to the credit of that fund to pay, and you desire my opinion, as to whether or not, the treasurer can be compelled to receive such a warrant in payment of taxes, and if so, what taxes, etc. I do not think that the treasurer can be *compelled* to receive anything for taxes but money, therefore, cannot be compelled to receive "county orders" for taxes. This, of course, makes it unnecessary for me to notice your other questions.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

*Inspector of Workshops and Factories; Duty as to Fire Escapes.*

## INSPECTOR OF WORKSHOPS AND FACTORIES; DUTY AS TO FIRE ESCAPES.

Office of the Attorney General,
Columbus, Ohio, November 15, 1890.

*Hon. W. Z. McDonald, Chief Inspector of Workshops, Etc., Columbus, Ohio:*

My Dear Sir:—You recently submitted a communication to me, in which, after citing a number of sections of the Revised Statutes, you asked:

> "Would you kindly render me your official written opinion of section 2572*a* of the Revised Statutes of Ohio, what the meaning of the Legislature was when it passed the said section, in case the inspector, after making such examination, finds that the building is not according to law, provided with the proper means of escape, etc., refuses to issue a certificate as is mentioned in the foregoing section, or in other words, when the inspector has examined such buildings and finds that they are not properly arranged for the safety of the public as per the law, and has refused a certificate, does that inspection dispense with all other inspections and certificates under the above sections, the same as when he has issued a certificate?"

By examining section 2572*a*, Vol. 86, O. L., pages 46-47, you will find that the General Assembly *amended* section 2572 by adding two *supplementary* sections. These supplementary sections are 2572*a* and 2572*b*. Section 2572*a* provides, "That, whenever any structure referred to in section 2572 shall have been inspected by the State inspector of workshops and factories, and such inspector shall have issued to the owner thereof or his agent, a certificate that such structure is properly arranged for

*Inspector of Workshops and Factories; Duty as to Fire Escapes.*

the safe and speedy egress of persons who may be assembled therein, and also properly provided for the extinguishment of fire at or in such structure, as now provided by law, then such certificate shall dispense with all other inspections and certificates required by law in regard to the safety of such structures for public assemblages."

Section 2572*b* provides, that, "it shall be the duty of the State inspector of shops and factories to make such inspection whenever called upon by written demand of the agent or owner of such structure, or upon the written request of five or more citizens of the municipal corporation where such structure is located and not otherwise."

The logical order would have been to have reversed these sections, for you will observe, that it is the last section, to-wit, 2572*b*, which makes it your duty whenever called upon, to make the examination, and it is section 2572*a* which says what you shall do when the examination is made, so that if the General Assembly had reversed the order of these two sections, the whole subject would have been easier comprehended. As I understand your communication, you desire my official opinion upon this; when you have been called upon, according to section 2572*b*, to make an inspection of a building or structure, and you have accordingly done so, but find that your inspection of the building does not warrant you in issuing a certificate as provided in section 2572*a* (to-wit, a certificate certifying that such structure is properly arranged, etc.) what is the effect of your refusing to issue such certificate. The language of section 2572*a* is peculiar, and it is by no means clear what the General Assembly meant by it. It provides in substance, that when the *state inspector* of workshops and factories has examined any structure referred to in section 2572, and shall have issued to the proper person a (his) certificate that such structure is properly arranged and proper provisions have

been made for the extinguishment of fire at or in such structure, *"then such certificate shall dispense with all other inspections and certificates required by law* in regard to the safety of such structures for public assemblages."

That is, after you have given such a certificate, no other is required because yours dispenses with all other. But, supposing you decline to issue such a certificate, what is the situation then?

This, I understand to be your real inquiry. I am clear in the opinion, that after you have made an examination of a building or structure according to the provisions of section 2572*a* and do *not* give a certificate of approval, your department would be relieved from any responsibility, should an accident afterwards occur in such building by reason of improper construction, etc.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

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## COUNTY AUDITOR; ALLOWANCE FOR CLERK HIRE UNDER.

Office of the Attorney General,
Columbus, Ohio, December 2, 1890.

*Hon. E. W. Poe, Auditor of State, Columbus, Ohio:*

DEAR SIR:—I recently received from you the following communication:

> "During the late session of the county auditors' association of the State, I was requested by said association to secure from you your construction of section 1076 of the Revised Statutes. The question in brief is: In applying the per cent. spoken of in said section to what must it be applied in order to ascertain the allowance required to be made by the

> county commissioners? Also, what period of time is covered by this allowance as provided in the section above quoted?"

Section 1076, Revised Statutes, provides as follows:

> "The county commissioners of the several counties have authority and are required to make an additional allowance to the county auditor for clerk hire, not exceeding twenty-five per cent. of the annual allowance made in the preceding sections in the years when the real property is required by law to be reappraised."

The compensation which a county auditor is ordinarily entitled to receive is determined, as I understand it, by sections 1069 and 1075, inclusive, and they, I think, are the "preceding sections referred to in section 1076.

After a careful examination of the question submitted by you, I am of the opinion that the allowance which the county commissioners "have authority" and "are required" to make to the county auditor for additional clerk hire under section 1076 should be based upon the *total amount* annually paid the auditor under the provisions of the "preceding sections" and not upon the amount which may be allowed him as an annual salary.

The second question embraced in your communication, to-wit, "What period of time is covered by this allowance as provided in the section above quoted?" I have, heretofore, answered it is in my opinion, the year in which the decennial appraisement takes place; in other words every tenth year.

Very truly yours,
DAVID K. WATSON,
Attorney General.

*Superintendent of Insurance; Deposit of Security by Fire Insurance Companies; Withdrawal.*

## SUPERINTENDENT OF INSURANCE; DEPOSIT OF SECURITY BY FIRE INSURANCE COMPANIES; WITHDRAWAL.

Office of the Attorney General,
Columbus, Ohio, December 23, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

DEAR SIR:—On the 17th inst. you addressed me a written communication stating that the Hamburg-Bremen Fire Insurance Company, a foreign corporation which had been engaged in the insurance business in this State, and had deposited in pursuance to the statutes, in your office, the sum of $100,000, in government bonds, and had given notice that it intended to withdraw from the State, and that it had filed an application with you for the release of said deposit of $100,000, and further that it had filed affidavits in your office to the effect, that on the 1st inst. it had risks in force in the State amounting to $3,025,476, and that the unearned premiums were $21,980.39, and that all of its risks had been reinsured in the Commercial Union Assurance Company, and that said last named company had been duly licensed to transact business in this State. You then asked my official opinion upon this question, namely, "May I lawfully release the deposit of a foreign fire insurance company, or any part thereof, in any event, especially while, and so long as, said company has risks in force in this State?"

Section 3660 of our Revised Statutes, provides, among other things, that "a company incorporated by, or organized under, the laws of a foreign government, shall deposit with the superintendent of insurance, for the benefit and security of the policy holders residing in this State, a sum not less than one hundred thousand dollars in stocks of the United States, or the State of Ohio," etc.

*Superintendent of Insurance; Deposit of Security by Fire Insurance Companies; Withdrawal.*

There is no provision in our statute authorizing you to release said money, or any portion thereof, in the event that said company withdraws its business from the State. It seems to be a singular omission on the part of the General Assembly not to have made provision for such cases, especially as such a provision has been made by section 286 of our Revised Statutes, in case of *life* insurance companies going out of business.

That section authorizes the superintendent of insurance on certain conditions, to deliver up to any *life* insurance company the securities held by him, which belong to said company when it has withdrawn its business from the State, but no such provision exists in case of *fire* insurance companies. It, of course, could be argued with some degree of plausibility, that as the statute authorizes you to deliver to *life* insurance companies their deposits when they go out of business in this State, therefore, you will be justified in treating *fire* insurance companies in the same manner. But, could it not be argued with equal plausibility, that inasmuch as the Legislature has made such a provision for the benefit of *life* insurance companies and has failed to make any such provision for the benefit of *fire* insurance companies, therefore, the Legislature either never had the matter brought to its attention at all or declined to act upon it?

I have no doubt that the General Assembly, upon its attention being properly called to the subject, would make suitable provisions for the refunding in such cases as you put, of the amount of money deposited by the company, in your office, but until the Legislature has done so, I can only advise you, that in my opinion, if you should deliver up to this company the money or securities heretofore deposited by it in your office, it would be at your own risk.

Very respectfully yours,
DAVID K. WATSON,
Attorney General.

*Superintendent of Insurance; Collection of Taxes Under Sections 2745 and 2843.*

## SUPERINTENDENT OF INSURANCE; COLLECTION OF TAXES UNDER SECTIONS 2745 AND 2843.

Office of the Attorney General,
Columbus, Ohio, December 30, 1890.

*Hon. W. H. Kinder, Superintendent of Insurance, Columbus, Ohio:*

DEAR SIR:—In a recent communication, you called my attention to the provisions of sections 2745 and 2843 of the Revised Statutes of this State. You also stated in your communication, that it had been, and now is, the practice of your office, under said sections, to charge the various insurance companies two and one-half per cent. on their gross premium receipts, as returned to your department, under oath, and credit them with such vouchers for taxes paid in the various counties of this State in compliance with said section, as they may forward, collecting from the companies the balance as required by said section 2745.

You then said: "I desire to ask you officially, first, whether said practice is authorized by, and in compliance with the requirement of said section 2745; second, whether said section requires that the collection, as well as the charge, against the companies must be completed during the month of December, and third, whether the superintendent of insurance would have the right to give credit in making said charge and collection for tax vouchers forwarded to him after the thirty-first day of December, of any year."

Replying to your communication, will say, that I have given the questions submitted for my consideration, as much attention as possible under the circumstances, and my conclusions are as follows:

First—I think the practice of your department, is, and has been, in compliance with the provisions of section 2745, and I cannot see how any better way could have

*Member of State Board of Equalization Not Entitled to Compensation During a Recess or a Journey.*

been adopted than what you say has been the practice of your department.

Second—Concerning your second question: I am of the opinion that both the charge and collection against insurance companies provided for in section 2745, should be completed during the month of December.

Third—I do not think you would have the right to credit companies with tax vouchers forwarded to you after the 31st day of December of any year, unless the circumstances of the case were such as to satisfy you that the delay was unavoidable.

Very truly yours,
DAVID K. WATSON,
Attorney General.

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## MEMBER OF STATE BOARD OF EQUALIZATION NOT ENTITLED TO COMPENSATION DURING A RECESS OR A JOURNEY.

Office of the Attorney General,
Columbus, Ohio, January 12, 1891.

*Hon. E. C. Cherry, President State Decennial Board of Equalization, Columbus, Ohio:*

My Dear Sir:—Last Friday you called up my office and had a short conference with me concerning the passage of a resolution by the State board of equalization, under which the members of said board would be entitled to receive pay during the time the board was not in session. I told you it was my opinion that the members were not entitled to receive pay, and that *I had previously advised the auditor of state to the same effect.* You said, that as the statute required you to certify the amount