
In re Latimer Contract.

Insurance Company should show, that by reason of closer collections or for any cause, its net assets, properly invested, have again reached the figure required by the statute, \$200,000.00, I take it the company might lawfully resume the issue of policies on the stock plan.

Very respectfully,

J. K. RICHARDS,
Attorney General.

IN RE LATIMER CONTRACT.

Office of the Attorney General,
Columbus, Ohio, January 4, 1893.

*Doctor H. C. Eymann, Superintendent, Cleveland Asylum
for Insane, Cleveland, Ohio:*

DEAR SIR:—I promised you after your conversation with me day before yesterday, to write you my views about what the trustees should do with respect to the Latimer contract.

I am satisfied from an examination of the authorities, that no lien can be taken by the sub-contractors or material men on the cottages in process of construction, they being public buildings. I think that the weight of authority also is against the right of the sub-contractors and material men to take a lien on subsequent payments which may be due the head contractor, for the erection of public buildings, such as these, but still there has been no decision upon this particular point in this State since section 3193 was amended so as to read as it does now. If the trustees should follow the letter of the law and refuse to recognize the right of the sub-contractors and material men to detain the amount yet due on Latimer's contract and have it distributed pro rata among themselves and should pay Latimer or his assignee, Reaugh, whatever balance may be due him, it is

In re Latimer Contract.

obvious, that the sub-contractors and material men failing in any other way to get pay for the work and material they have put into these buildings, will come to the Legislature and then the trustees may be subject to criticism because they had paid money to the contractor when the contractor had failed to pay those under him. In view of these facts, it may suggest itself to the trustees, that the prudent thing would be to hold the money that may yet be due on Latimer's contract and not pay it either to Latimer, his assignee, Reaugh, or the sub-contractors and material men, until there is a decision of a court as to who is entitled to it.

As the matter now stands, I am informed that Latimer declines to proceed under his contract, and that the trustees after giving him the requisite notice, will be compelled to go on and complete the work themselves. Until the work has been completed and the cost of what the trustees have to do themselves determined and deducted from the balance yet due on Latimer's contract, it will be impossible to determine what will ultimately be due Latimer; but when that is determined and after the amount which the sub-contractors and material men claim and which are disputed by Latimer, have been fixed by arbitration or by legal proceedings, then the question as to what the trustees shall do is ready for a court to pass upon. If Latimer or his assignee is entitled to such balance, he can bring an action in mandamus against the trustees to compel them to make a requisition on the state auditor for a warrant for such amount. On the other hand, the sub-contractors and material men, after the amounts due them from Latimer have been determined, could bring actions in mandamus to compel the trustees to make requisitions to them individually for the respective amounts which might be due them upon a pro rata distribution of the balance standing in favor of Latimer. Such action should be brought in the Supreme Court where we can secure an immediate and authoritative construction of the lien laws with reference to public buildings. I am perfectly willing, as attorney general, to act as the attorney

As to Whether or Not Town Half in Indiana and Half in Ohio Can Unite to Establish and Conduct a Union School.

and enter the appearance of the trustees and do all in my power to secure a speedy decision.

If you think it wise, you might inform the claimants or their attorneys, of the contents of this letter, and advise me of their views upon the course of procedure which I suggest. I send this letter by Mr. George Gessaman, one of the trustees.

Very respectfully,
J. K. RICHARDS,
Attorney General.

AS TO WHETHER OR NOT TOWN HALF IN INDIANA AND HALF IN OHIO CAN UNITE TO ESTABLISH AND CONDUCT A UNION SCHOOL.

Office of the Attorney General,
Columbus, Ohio, January 24, 1893.

Hon. O. T. Corson, State Commissioner Common Schools:

MY DEAR SIR:—You have referred to me the following question: "College Corner extends from the State line between Ohio and Indiana, about one-half mile east, and West College Corner extends from said line about one-half mile west, and these two towns wish to unite to establish and conduct a union school. Can this be done without infringing upon the laws of Ohio? If so, what is the best method of procedure?"

I think it can be done. College Corner in Ohio can be made into a special district governed by three directors. These three directors can unite with the board of three which controls the school district in College Corner, Indiana, and build the school house on the line, so that part of the house will be in Ohio and part in Indiana. The expenses

*In re Request of Imperial German Minister and German
Consul at Cincinnati to Prosecute Heinrich Carl Ernst
Kahlbohm.*

of the joint school can be apportioned between the two districts on the basis of the school enumeration. Thus each board will not have to pay more than it would if it conducted a separate school. The teachers can be selected by a majority of each board of directors. In all matters relating to the schools, the separate boards of directors may act concurrently but not jointly.

If there are any further details, they can be arranged by consent of the two boards, acting with the approval of the state commissioner of this State and the state commissioner of Indiana.

Very respectfully,
J. K. RICHARDS,
Attorney General.

IN RE REQUEST OF IMPERIAL GERMAN MINISTER AND GERMAN CONSUL AT CINCINNATI TO PROSECUTE HEINRICH CARL ERNST KAHLBOHM.

Office of the Attorney General,
Columbus, Ohio, January 28, 1893.

Hon. William McKinley, Jr., Governor of Ohio:

DEAR SIR:—You recently referred to me, requesting I give my views thereof, a communication to you from the secretary of state of the United States, inclosing a translation of a note to him from the Imperial German Minister at Washington, relative to an application on the part of the German Consul at Cincinnati, supplemented by a request of the Imperial German Minister, for the prosecution of one Heinrich Carl Ernst Kahlbohm, who is alleged to have forged a document purporting to have been signed and sealed by the German Consul at Cincinnati, and to have

*In re Request of Imperial German Minister and German
Consul at Cincinnati to Prosecute Heinrich Carl Ernst
Kahlbohm.*

used such forged documents for the purpose of obtaining money. The secretary of state inquires whether Kahlbohm cannot be prosecuted for violation of the laws of Ohio, and if so, requests that such proceedings may be instituted.

The following is a translation of the document which Kahlbohm is alleged to have forged and used for the purpose of obtaining money:

"Heinrich Carl Ernst Kahlbohm, a teacher by occupation, formerly a lieutenant in the militia, who has received the iron cross of the second class, the Mecklenburg cross of merit with blue ribbon, and the war medals of 1866 and 1870-71, is hereby informed, in reply to his application of the 2d inst., that a duplicate of his honorable discharge from the army, which has been lost, cannot be issued to him, for the reason that he has been naturalized as an American citizen.

"By ministerial command,

"C. POLLIER, *Consul.*

"Cincinnati, June 24, 1890."

("A stamp bearing the legend: 'Imperial German Consulate at Cincinnati,' such as is used for closing official letters, was used as a seal for the original of the foregoing document.")

Hon. John W. Herron, United States District Attorney at Cincinnati, whom the German Consul requested to proceed against Kahlbohm for forgery of a public document, an infraction of the Consular Convention, and trying to obtain money under false pretenses, respectfully declined to do so in a communication dated November 30, 1892, a copy of which has been furnished me by him, for the reason that he could find no statutes of the United States under which the offense complained of could be punished. At the same time, he stated: "The criminal statutes of the State of Ohio are much broader and may cover such a case as you describe, and especially the offense of obtaining money by false repre-

*In re Request of Imperial German Minister and German
Consul at Cincinnati to Prosecute Heinrich Carl Ernst
Kahlbohm.*

sentation as was done in this case; but I presume you would be unwilling to have the matter investigated and prosecuted in other than the courts of the United States."

Coming to the inquiry of the secretary of state, I beg to say:

Kahlbohm is liable clearly, upon the facts stated, to prosecution and punishment under section 7076 of the Revised Statutes of Ohio, for obtaining money by false pretenses, the punishment for this offense being imprisonment in the penitentiary, if the amount obtained is \$35.00 or more, and otherwise, a fine or imprisonment in the county jail.

Kahlbohm is liable probably upon the facts stated, to prosecution under section 7091 of the Revised Statutes of Ohio, for forgery, the forging of "authentic matter of a public nature," if the document in question comes within this description. These words have not received judicial construction in this State, and their precise meaning is, therefore, undetermined. It does not appear, from anything in the papers before me, whether the German Consul had authority to issue such a document as this purports to be, or whether such document, if genuine, would be a matter of record among the consular archives, yet these facts might have an important bearing in determining the legal character of the document.

As to the method of procedure, a suggestion to the authorities at Cincinnati would undoubtedly result either in a complaint against Kahlbohm before a magistrate, or an investigation of the affair by the grand jury, with a view of finding the proper indictment.

I return the papers.

Very respectfully,

J. K. RICHARDS,

Attorney General.

As to Authority of Inspector of Workshops and Factories to Inspect Magazine Containing Dynamite When There is no Manufacturing Concern Manufacturing Such Explosives Connected With Said Magazine.

AS TO AUTHORITY OF INSPECTOR OF WORKSHOPS AND FACTORIES TO INSPECT MAGAZINE CONTAINING DYNAMITE WHEN THERE IS NO MANUFACTURING CONCERN MANUFACTURING SUCH EXPLOSIVES CONNECTED WITH SAID MAGAZINE.

Office of the Attorney General,
Columbus, Ohio, February 25, 1893.

Hon. W. Z. McDonald, Chief Inspector of Workshops and Factories:

MY DEAR SIR:—In reply to your favor of the 6th inst., in connection with a case stated, you request my opinion whether the act of April 15, 1892 (89 O. L. 307), gives you "authority to inspect a magazine for the storage of dynamite when there is no manufacturing concern manufacturing such explosives in connection with said magazine?"

This act authorizes you to appoint an inspector skilled in the manufacture and use of dynamite and other explosives, whose duty it shall be "to inspect all manufacturing establishments in the State of Ohio, wherein the manufacture of powder, dynamite, nitro-glycerine, compounds, fuses or other explosives," is carried on, and personally to inspect "the process of manufacturing, handling and storage of such explosives, and to direct and order any changes or additions deemed necessary" in or about such manufactory for the safety of the employes and the public. Then follows this provision: "And when *on inspection* it is found that any manufactory or place for the storage of explosives mentioned herein is in such close proximity with any residence or dwelling as to cause accident in case of an explosion, the said inspector may cause the said explosives to be removed to a place of safety," etc.

The authority given is to inspect establishments manu-

*In re Restoring to Citizenship a Person Convicted of Bribery
Under Section 6900, R. S.*

process of manufacturing, handling and storage of such explosives. There is no authority given to inspect places for the storage of explosives unconnected with the manufacture thereof. The authority given to regulate the storage of explosives follows and is dependent on the authority to inspect manufactories of explosives and must, therefore, be considered as limited by the latter authority to the storage of explosives in connection with their manufacture, and not otherwise.

Very respectfully,

J. K. RICHARDS,
Attorney General.

IN RE RESTORING TO CITIZENSHIP A PERSON
CONVICTED OF BRIBERY UNDER SECTION
6900 R. S.

Office of the Attorney General,
Columbus, Ohio, February 27, 1893.

Hon. William McKinley, Jr., Governor of Ohio:

DEAR SIR:—In response to your inquiry of the 15th inst., I beg to say, I know of no method except the granting of a pardon in the regular way, to restore to citizenship a person convicted of bribery under section 6900, Revised Statutes, although only a fine was imposed. The section itself imposes as a part of the punishment, disqualification from holding any public office or appointment under this State. To relieve from this consequence of conviction, this continuing punishment, a pardon it seems to me is necessary.

The case is a somewhat peculiar one. In felonies, where the convict has served time in the penitentiary, a ready mode of restoration to citizenship is provided; but these provisions do not apply to this case.

Very respectfully,

J. K. RICHARDS,
Attorney General.

*Construction of Act Creating and Regulating World's Fair
Managers of Ohio.*

CONSTRUCTION OF ACT CREATING AND REGULATING
WORLD'S FAIR MANAGERS OF
OHIO.

Office of the Attorney General,
Columbus, Ohio, March 9, 1893.

Mr. W. T. Alberson, Secretary, World's Fair Managers of
Ohio, Columbus, Ohio:

MY DEAR SIR:—In response to your inquiry of the 6th inst., I beg to say, that while section 5 of the act creating and regulating your board, (88 O. L., p. 235), is susceptible of two constructions, it seems to me the simpler meaning is, that the federal alternates, as well as the federal commissioners, are members of your board. The law says in plain terms, that the federal commissioners and lady managers from Ohio, "and their respective alternates," shall be *ex-officio* members of the Board of World's Fair Managers for the State of Ohio; and shall have the same powers and same compensation as the other members of said commission, etc. The law says, that all these persons *shall be ex-officio members*; it does not say that the federal commissioners and lady managers shall alone be *ex-officio* members and their alternates *ex-officio* alternates on the Ohio board. The word "alternates," as used in the act, is a word of description; it designates the persons who shall be members of the Ohio Board. It does not limit their functions to that of alternates on the Ohio Board.

Why, by construction, ascribe to the Legislature the intention to create alternates on the Ohio Board for the federal commissioners and federal lady managers, when the act does not provide any alternates for the fifteen members of the Ohio Board appointed by the governor? So far as the Ohio Board is concerned, it seems to me there are no alternates; all are members.

Very respectfully,

J. K. RICHARDS,
Attorney General.

State Treasurer Authorized to Honor Auditor's Warrant in Payment for Location of Agricultural Experiment Station.

STATE TREASURER AUTHORIZED TO HONOR
AUDITOR'S WARRANT IN PAYMENT FOR LO-
CATION OF AGRICULTURAL EXPERIMENT
STATION.

Office of the Attorney General,
Columbus, Ohio, March 10, 1893.

Hon. W. T. Cope, Treasurer of State:

MY DEAR SIR:—In response to your favor of the 4th inst., directing my attention to the act of the General Assembly of April 23, 1891 (88 O. L., 353), authorizing counties to raise money to secure the location of the Ohio Agricultural Experiment Station, the act of February 10, 1892, (89 O. L. 24), appropriating funds paid into the state treasury under the former act, the decision of the Supreme Court of Ohio in the case of Wasson et al. vs. The Commissioners of Wayne County, holding that the act of April 23, 1891, was unconstitutional, and inquiring whether you can, without exposing yourself or bondsmen to liability for such action, comply with the joint resolution passed by the Legislature on the 1st inst., which requires the auditor of state to honor requisitions of the board of control of the Ohio Agricultural Experiment Station, and issue warrants for the disbursements of the balance (amounting to \$26,262.66) of the original donation of \$85,000.00 made by Wayne County to secure the location of the Ohio Agricultural Experiment Station, and requests you to pay the same, I beg to say, you may safely, in my opinion, pay the warrants issued by the auditor of state in compliance with such resolution.

It is only in case that you have received and hold these funds by warrant of law, that your bondsmen can be held liable for its safe keeping and proper disbursement; but if you thus received and hold it, in other words, if you hold this money as treasurer of state, you will only be acting in accordance with law by honoring the warrants of the state auditor

State Treasurer Authorized to Honor Auditor's Warrant in Payment for Location of Agricultural Experiment Station.

and paying it out on the order of the State through its representatives—the Legislature—as expressed in the joint resolution.

On the other hand, if you have not received and do not hold the money under any law, you hold it as an individual: to whom, then, shall you account for it, to whom would you be safe in turning it over? You got it from the commissioners of Wayne County, and they from the Ohio Farmers' Insurance Company for certain bonds, which the insurance company still holds as valid obligations. Neither the commissioners nor the insurance company are demanding the return of the money, or object to your disbursement of it in accordance with the purposes of the original donation and the directions of the General Assembly.

The case of *Wasson vs. The Ohio Farmers' Insurance Company et al.*, No. 5,070, in the Court of Common Pleas of Wayne County, a suit brought by Wasson as a pretended owner of policies long since expired for a distribution of the assets of this insurance company (to which you and the persons from whom the State bought the experiment farm in Wayne County are made parties, with a prayer that you be compelled to pay the balance of the donation into the hands of the court for distribution as the property of the insurance company), is scarcely worthy of serious consideration. No service has been made on you; the case is being allowed to drift in that court on a motion to quash the service on the insurance company; and a demurrer to a similar suit brought in Medina County has been sustained in an able opinion by Judge Nye.

The purchase of the Wayne County bonds by the Ohio Farmers' Insurance Company was a voluntary act; the payment of the money given for the bonds into the state treasury by the commissioners of Wayne County (if we treat the act authorizing the issue of the bonds as void) was a voluntary act. Money voluntarily paid into the state treasury,

Further in re Ohio Farmers' Insurance Company.

even under an unconstitutional law, becomes the money of the State subject to disbursement in accordance with its will.

You are an officer of the State; the State has got the money which once belonged to the insurance company and was paid by it for the Wayne County bonds; about two-thirds of this money has been paid for the farm, which the State owns; the State now desires to use the unexpended balance in your hands to pay contractors for work and materials which have gone into the greenhouses and improvements on this farm for the use of the Agricultural Experiment Station, a State institution. I do not believe you will be running any risk in letting the State thus use this money. It will be expended for the benefit of the State. The State will thus get the entire benefit of the \$85,000.00 donated and if for any reason Wayne County shall be prevented from paying its bonds, the State will be bound in honor to see that the insurance company loses nothing, and that the money it loaned Wayne County to donate to the State is repaid; and, assuredly, the State will not fail to stand by you and see that you and your bondsmen do not suffer loss through carrying out its wishes in the disbursement of this money for its own benefit.

Very respectfully,

J. K. RICHARDS,
Attorney General.

FURTHER IN RE OHIO FARMERS' INSURANCE
COMPANY.

Office of the Attorney General,
Columbus, Ohio, March 10, 1893.

Hon. W. H. Kinder, Superintendent of Insurance:

DEAR SIR:—Along with a form of policy which the Ohio Farmers' Insurance Company desires to issue, you have submitted to me the following questions:

1. Can the Ohio Farmers' Insurance Company pro-

Further in re Ohio Farmers' Insurance Company.

ceed to transact business upon the cash payment mutual plan, as provided in the charter of the company; and,

2. Can said company issue the stock form of policy, or is it required to embody the word "mutual" in the policies issued by it as required by section 3653 of the Revised Statutes?

The Ohio Farmers' Insurance Company, under the name of the Farmers' Mutual Fire Insurance Company of Medina County, was incorporated under the special act of February 18, 1848 (46 O. L., 95), enabling it to do business as a mutual insurance company upon the premium note plan. By section 5 of the original act, every person becoming a member by effecting insurance, was required to deposit a premium note, not exceeding six per cent. of which was to be immediately paid, and the remainder when required for the payment of losses.

The original charter was amended by the act of January 3, 1851 (49 O. L., 355), in which the following provision was made for the payment of a cash premium in lieu of a premium note:

"The amount to be paid at the time application is made for insurance in this company, may be determined by the directors, and may include such an amount as will pay the applicant's proportion of losses and expenses during the term of such insurance."

By this amendment, the company was empowered to issue mutual policies on the cash premium plan as well as on the premium note plan. By empowering the company to issue mutual policies on either the premium note or cash premium plan, the Legislature expressly recognized the consistency of the two plans, and that, without conflict, both might be used at the same time by the same company.

Such also was the view taken by the Supreme Court of this State in the case of *The Ohio Mutual Insurance Company vs. Marietta Woolen Factory* (3 O. S. 348), Ranney, J., rendering the opinion.

Further in re Ohio Farmers' Insurance Company.

The act of 1851 changed the name of the company to the Ohio Farmers' Mutual Fire Insurance Company, which name was subsequently changed by the Common Pleas Court of Medina County, in 1862, to the Ohio Farmers' Insurance Company.

After the amendment of 1851, the company had the right to do, and did business upon two plans, the premium note and cash premium plans.

In 1872 (69 O. L., 140), the section was enacted now known as section 3653, reading as follows:

"Every mutual company shall embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt, and every stock company shall express upon the face of every policy and renewal receipt, in some suitable manner, that such policy or receipt is a stock policy or receipt; but neither class of companies doing business in this state shall issue any policy other than that appropriate to its class, except that any mutual company now doing business in this State, having net assets not less than \$200,000.00 invested, as provided in section 3637, may issue policies either upon the mutual or stock plan," etc. After the passage of this section, the Ohio Farmers' Insurance Company, having net assets amounting to \$200,000.00 as required, proceeded to issue policies upon the stock plan and continue to issue such policies until recently, when, on an examination, it was found that its net assets had fallen below the amount required for this privilege. These policies had on their face the words "stock plan."

In May, 1887, the company filed with the secretary of state a certified copy of the acceptance of the provisions of section 3653, mentioned above, and also of sections 3233, 3252, 3636, 3641, 3641a, 3642, 3645.

I should have noted, that by the seventeenth section of the original act, the Legislature reserved the power after the expiration of twenty years from the passage of the act of February 18, 1848, to alter, amend or repeal the act if the public good should require it.

Further in re Ohio Farmers' Insurance Company.

By accepting the provisions of the sections named and operating under them, I have no doubt the company subjected itself to existing laws regulating corporations of its kind, and that so much of its charter as is inconsistent with existing insurance laws was thereby repealed; but I do not understand that by such acceptance it lost all its charter rights and privileges, and became simply and solely a mutual insurance company regulated by the sections of the Revised Statutes applicable to such companies, as if it had been organized thereunder. Section 3233 says, that such acceptance operates as a repeal of so much of the charter of a company created before the adoption of the present constitution, as is inconsistent with the provisions of the title of the Revised Statutes regulating corporations. Then so much of such charter as is not consistent with existing law, remains valid or operative. The point for decision, therefore, under the first question is, whether the provision of the amendment of 1851, authorizing mutual insurance on the cash premium plan, is inconsistent with section 3634 and others providing that mutual insurance companies organized thereunder, shall fix in their policies a contingent liability of not less than three and not more than five annual cash premiums. I do not think it is; it is an additional power but not an inconsistent power. Two powers are inconsistent when both cannot be exercised by the same company at the same time. It will not be contended, however, that a mutual company cannot issue policies on the cash premium plan, and at the same time issue other policies on the premium note or contingent liability plan, and also, while it has the necessary assets (as this company had for so many years), issue policies on the stock plan.

The answer to the first question, therefore, is, that this company may issue mutual policies on the cash premium plan, as provided in its charter. While for lack of assets it has lost the right under section 3653 to issue policies on the stock plan, it retains its original charter power to issue mutual policies on the cash premium plan.

Further in re Ohio Farmers' Insurance Company.

As to the second question: The company accepted and operated under the provisions of section 3653, which requires every mutual company to embody the word "mutual" in its title, which shall appear on the first page of every policy; and requires every stock company to express, in some suitable manner, upon the face of every policy, that it is a stock policy. The provisions with respect to the two classes of companies are distinct; the stock company must express on the face of the policy that it is a stock policy, but the mutual company must embody the word "mutual" in its title, which shall appear upon every policy. Apparently, there is no exception, even when a mutual company having necessary assets issues a stock policy; the word "mutual" must be embodied in the title and appear on the policy; the word "mutual" is not embodied in the title or name of the Ohio Farmers' Insurance Company. It cannot, therefore, properly appear in the title of the company while the title remains as it is. I am not prepared to say, that the company has been operating wrongfully these many years it has done business without the word "mutual" in its title, although it has always been and is a mutual company. It occurs to me it would be better for the company to embody the word "mutual" in its title; but the question of compelling it to change its name is not before me. The company was given its present name long before section 3653 became a law; whether it can or cannot be compelled to change its name, at any rate any change must be made in a legal way, and until the title is changed by embodying the word "mutual" in it, the present title must appear on policies, for any other would be false and misleading. To require the company at the present juncture summarily to change the name it has had for thirty years, or quit doing business, would, it seems to me, be a harsh exaction. Consequently, I do not recommend the rejection of the form of policy submitted.

Very respectfully,

J. K. RICHARDS,
Attorney General.

In re Application to File Articles of Incorporation of Continental Savings and Loan Company and the Buckeye Home and Savings Association.

IN RE APPLICATION TO FILE ARTICLES OF INCORPORATION OF CONTINENTAL SAVINGS AND LOAN COMPANY AND THE BUCKEYE HOME AND SAVINGS ASSOCIATION.

Office of the Attorney General,
Columbus, Ohio, March 13, 1893.

Hon. Samuel M. Taylor, Secretary of State:

MY DEAR SIR:—In your favor of the 11th inst., you state that application has been made to you to file the articles of incorporation of two associations to be organized for the purpose of raising money to be loaned among their members, one incorporation known as The Continental Savings and Loan Company, and the other as The Buckeye Home and Savings Association, and you ask whether building and loan associations organized in this State, have the right to assume such titles, or whether the words "building and loan association" should not appear in the name of the corporation.

While section 3235 of the Revised Statutes provides, that the name of all corporations for profit, shall commence with the word "the" and end with the word "company," this section of the general law does not apply where special provision is elsewhere made in respect to the name of the corporation. Thus, companies organized under section 3797 are known as savings and loan associations. These companies have general banking powers, and in order to obtain the privilege of filing articles of incorporation, there must be paid to the secretary of state a fee of \$1 on every thousand of the capital stock of the proposed incorporation. Such companies are under the supervision, to an extent, of the auditor of state.

On the other hand, building and loan associations are organized and regulated by the act of May 1, 1891, (88 O. L., 469). A special department has been created, connected

*As to Disposition of Money Belonging to Inmates in Hands
of Superintendent of Asylum, Who Have Either Died
or Whose Whereabouts are Unknown.*

with the department of insurance, for the inspection of these companies; and in the first section of the act is provided that a corporation for the purpose of raising money to be loaned among its members shall be known as a building and loan association. The fee for filing articles of incorporation of building and loan associations, whatever be the amount of capital stock, is \$10.

I am of the opinion, therefore, that the names of these proposed associations should be rejected. If they are organized as building and loan associations, they should be named building and loan associations, so the public may not be misled as to their character.

There is a broad distinction between a building and loan association and a savings and loan association. Persons who deal with a building and loan association should be able to tell from its name that it is a building and loan association and not a savings and loan association. On the other hand, persons ought not be liable to be misled into dealing with a building and loan association under the belief, based on its name, that it is a savings and loan association.

Very respectfully,

J. K. RICHARDS,

Attorney General.

AS TO DISPOSITION OF MONEY BELONGING TO
INMATES IN HANDS OF SUPERINTENDENT
OF ASYLUM, WHO HAVE EITHER DIED OR
WHOSE WHEREABOUTS ARE UNKNOWN.

Office of the Attorney General,

Columbus, Ohio, March 15, 1893.

*Mr. A. M. Parrish, Cleveland Asylum for Insane, Cleve-
land, Ohio:*

MY DEAR SIR:—I have your favor of the 13th inst., stating there is a considerable amount of money in your

As to Disposition of Money Belonging to Inmates, In Hands of Superintendent of Asylum, Who Have Either Died or Whose Whereabouts are Unknown.

hands as financial officer of the Cleveland Insane Asylum, which belongs to patients who are either dead or their whereabouts is unknown; and you ask whether the board of trustees of the asylum can legally authorize you to cover this money into some fund of the asylum, and if so, would your liability cease with such order, or could the patients to whom the money belongs or their representatives sustain an action against you and your bondsmen.

I know of no authority for the conversion of such money held by you as trustee for the patients or their representatives, to the use of the State or of your institution, in the way you say is contemplated. If the patient is alive, the money thus deposited belongs to him; if dead and he has representatives, then to his representatives; and I suggest if he left no heirs or representatives, the money would escheat to the State under section 4163, which provides that the prosecuting attorney of the county in which letters of administration are granted, shall collect the same and pay it over to the treasurer of county for the support of the common schools.

I have not made an exhaustive research of the statutes, but if the trustees know of any other section bearing upon the matter, will you kindly advise me?

Very respectfully,

J. K. RICHARDS,
Attorney General.

Whether or Not Orders and Regulations of Boards of Health Which Have Been Adopted by Authority of Council Must Be Re-Adopted to Comply With Provisions of Section 2122, R. S., as Amended.

WHETHER OR NOT ORDERS AND REGULATIONS OF BOARDS OF HEALTH WHICH HAVE BEEN ADOPTED BY AUTHORITY OF COUNCIL MUST BE RE-ADOPTED TO COMPLY WITH PROVISIONS OF SECTION 2122 R. S., AS AMENDED.

Office of the Attorney General,
Columbus, Ohio, March 23, 1893.

Dr. C. O. Probst, Secretary, State Board of Health, Columbus, Ohio:

MY DEAR SIR:—Prior to the act of March 14, 1893, revising the law regulating the state and local boards of health, section 2122 of the Revised Statutes, authorized the council of a city or village to grant the local board of health power "to make such orders and regulations as it may deem necessary for the public health and for the prevention of disease," which should have the force of ordinances. But in the revision mentioned, section 2122 was amended, so as to read as follows: "The board of health of any city, village or township may make such orders and regulations as it may deem necessary for its own government, for the public health, the prevention or restriction of disease, and the abatement or suppression of nuisances. All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded and certified, as are ordinances of cities and villages; and the record thereof shall be given in all courts of the State, the same force and effect as is given such ordinances."

In view of this change, you inquire: "We desire to know whether the orders and regulations of boards of health, which have been adopted by authority of council, must be re-adopted to comply with the provisions of section 2122 R. S., as amended March 14, 1893."

Whether or Not Under Section 3641a, Casualty Insurance Company May Insure Persons Against Loss or Damage Resulting From Burglary or Theft.

It will be observed, that while before the revision of March 14, 1893, the local board of health derived its authority to make orders and regulations from the city or village council, it now derives its authority directly from the State through the Legislature. In view of this changed source of power, it seems to me, that local boards of health should proceed at once to adopt and advertise after the manner provided in section 2122, as amended, such orders and regulations as they may deem proper and necessary. Whether the former regulations shall be re-enacted, or different ones adopted, is for the board to determine; the old orders may serve as a guide, but need not control in making new ones.

Very respectfully,

J. K. RICHARDS,

Attorney General.

WHETHER OR NOT UNDER SECTION 3641a, CASUALTY INSURANCE COMPANY MAY INSURE PERSONS AGAINST LOSS OR DAMAGE RESULTING FROM BURGLARY OR THEFT.

Office of the Attorney General,

Columbus, Ohio, April 6, 1893.

Hon. W. H. Kinder, Superintendent of Insurance:

DEAR SIR:—You have submitted to me the question whether, under the second clause of section 3641, which empowers a company “to make insurance against loss or damage resulting from accidents to property, from causes other than by fire or lightning,” a casualty insurance company may insure persons against loss or damage resulting from burglary or theft.

The New York Insurance act which was in force in

Whether or Not Under Section 3641a, Casualty Insurance Company May Insure Persons Against Loss or Damage Resulting From Burglary or Theft.

1885, when clause second of section 3641 was first enacted, made specific provision for plate glass, steam boiler and burglary insurance, all of which come under the head of what is known as casualty insurance. No specific provision was made in the Ohio law for either plate glass, steam boiler or burglary insurance, but the general provision which I have quoted was inserted, authorizing casualty companies "to make insurance against loss or damage resulting from accidents to property, from causes other than fire or lightning." It is conceded that these general terms cover plate glass and steam boiler insurance. The question is, do they also cover burglary insurance? If the Ohio Legislature, in framing the casualty clause of section 3641 in 1885, intended to include all the provisions of the New York law, then in force (some of whose provisions are included word for word), the inference is apparent that burglary, as well as plate glass and steam boiler insurance, should be deemed to be authorized by the general words empowering insurance against loss or damage resulting from accidents to property, from causes other than fire or lightning.

But it may be, and indeed is, insisted that the loss or damage resulting from burglary or theft does not result from an accident to property; that burglary and theft do not happen by accident but by design, and hence cannot be regarded as accidents to property. It is true a burglary is not an accident looked at from the point of view of the burglar, but it is an accident when looked at from the point of view of the owner of the property. Although designed by the criminal, the event is unforeseen and unexpected by the citizen and owner; and it is the citizen, the owner, who is insured. So far as the owner of the property is concerned, the loss or damage which results from the burglary or theft is wholly accidental, it is unforeseen and unexpected, and is because the loss cannot be foreseen and cannot be prevented, that he takes out insurance against it.

Whether or Not Under Section 3641a, Casualty Insurance Company May Insure Persons Against Loss or Damage Resulting From Burglary or Theft.

In *Supreme Council vs. Carrigus*, 104 Indiana, 133, it is held that "the word 'accident' means an event that takes place without one's foresight or expectation, and includes an injury in an affray without fault on the part of the plaintiff." To the same effect was the decision in *Hutchcraft, Executor, vs. Travelers' Insurance Company*, 87 Ky., 300, holding, that "when the injury is not the result of the misconduct or participation of the injured person, but is unforeseen, it is, as to him, accidental, although inflicted intentionally by the other party." The court proceeds in that case: "We do not regard it as essential, in order to make out a case of injury by 'accidental means,' so far as the injured party is concerned, that the party injuring him should not have meant to do so; for if the injured party had no agency in bringing the injury on himself, and to him it was unforeseen—a casualty—it seems clear, that the fact that the deed was willfully directed against him, would not militate against the proposition that, as to him, the injury was brought on by 'accidental means.'"

Almost every accident may be traced back to an intention on the part of some one to do a certain thing. But if the person affected took no part in bringing about the particular event, if it was unforeseen and unexpected by him, then it was an accident so far as he is concerned.

It follows, that in my opinion, insurance against loss or damage from burglarly or theft is authorized by the general terms of clause second of section 3641 already quoted.

Very respectfully,

J. K. RICHARDS,
Attorney General.

Whether Escaped Prisoner Returned Second Time on Another Sentence Should Serve Out Remainder of First Sentence First or Should Serve Second Sentence First.

WHETHER ESCAPED PRISONER RETURNED SECOND TIME ON ANOTHER SENTENCE SHOULD SERVE OUT REMAINDER OF FIRST SENTENCE FIRST OR SHOULD SERVE SECOND SENTENCE FIRST.

Office of the Attorney General,
Columbus, Ohio, April 13, 1893.

Col. C. C. James, Warden Ohio Penitentiary:

DEAR SIR:—In your favor of the 6th inst., you state that on March 17, 1886, one James Martin was received from Marion County under a seven years' sentence for horse stealing and larceny. On October 12, 1887, he escaped, having five years and five months to serve on his sentence. On September 11, 1892, Martin was again received from Ashland County under the alias of John Taylor, on a two years' sentence for burglary and larceny.

You desire to know upon which sentence shall Martin be first put to serve—whether upon the unexpired term of the old or upon the new sentence.

I infer from your statement of the case, that the Common Pleas Court of Ashland County which sentenced John Taylor to the penitentiary for two years for burglary and larceny, had no knowledge of the fact that Taylor was an escaped convict, having an unexpired term yet to serve, and, consequently, that the sentence passed on Taylor had no reference to the sentence under which Martin still had time to serve, but that Taylor's sentence was to begin at once.

In the case of *Williams vs. State*, 18 O. S. p. 46, confirmed by the decision in *Picket vs. State*, 22 O. S. p. 405, the Supreme Court held that the term of a sentence of imprisonment must be so definite and certain as to advise the prisoner and the officer charged with the execution of the sentence of the time of its commencement and termination. As the sentence of Taylor provided that the term of imprisonment

In re Bill Introduced by Mr. McGrew and Passed by Legislature Repealing Garber Law and Changing Method of Compensation of County Offices, Affecting Salaries of Certain County Officers Under Garber Act.

should begin at once and not upon the expiration of the term of imprisonment to which Martin was sentenced, I see no escape from the conclusion, that Taylor must at once be put to work upon his sentence and serve that out. After Taylor shall have served his sentence, Martin can be arrested and required to serve the balance of his term.

Very respectfully,

J. K. RICHARDS,
Attorney General.

IN RE BILL INTRODUCED BY MR. MCGREW AND PASSED BY LEGISLATURE, REPEALING GARBER LAW AND CHANGING METHOD OF COMPENSATION OF COUNTY OFFICERS, AFFECTING SALARIES OF CERTAIN COUNTY OFFICERS UNDER GARBER ACT.

Office of the Attorney General,
Columbus, Ohio, April 14, 1893.

Hon. J. F. McGrew, Member of the House of Representatives:

MY DEAR SIR:—You have submitted to me the question whether the bill introduced by yourself and passed by the Legislature, repealing the Garber law and changing the method of compensation of county officers, does or does not affect the salaries of county officers under the Garber law, whose terms began prior to March 22, 1893, the date of the passage of your bill.

The Garber law provided for probate judge a "compensation per annum for their services," based on the population of the county (section 546a, 88 O. L., 384); for county

In re Bill Introduced by Mr. McGrew and Passed by Legislature Repealing Garber Law and Changing Method of Compensation of County Officers, Affecting Salaries of Certain County Officers Under Garber Act.

auditors, a "compensation per annum for their services," based on the amount of the tax duplicate of the county (section 1069a, 88 O. L., 576); for county treasurers, a "compensation per annum for their services," based on the amount of the tax duplicate of the county (section 1117, 88 O. L., 577; 89 O. L., 385); for county recorders, a "compensation per annum for their services," based on the population of the county (section 1157a, 88 O. L., 577; 89 O. L., 386); for sheriffs, a "compensation per annum for their services," based on the population of the county (section 1230, 88 O. L., 578); for clerks of the court of common pleas, a "compensation per annum for their services," based on the population of the county (section 1260e, 88 O. L., 386).

This "compensation per annum for services," fixed by the Garber law for these various county officers, constituted in each case "an annual or periodical payment for services—a payment dependent on the time and not the amount of the services rendered;" and, therefore, under the decision of the Supreme Court in *Thompson, rel. vs. Phillips*, 12 O. S., 617, is a "salary" within the meaning of section 20, of article 2 of the constitution.

Section 20 of article 2 of the constitution, provides: "The general assembly, in cases not provided for in this constitution, shall fix the term of office and compensation of all officers: and no change therein shall affect the salary of any officer during his existing term unless the office be abolished."

The change made in the compensation of county officers by the act which bears your name cannot, without violating this provision of the constitution, affect the salary of any officer under the Garber law during his existing term, if that term began before your bill became a law.

This conclusion is forfeited by the language of the Su-

In re Bill Introduced by Mr. McGrew and Passed by Legislature Repealing Garber Law and Changing Method of Compensation of County Offices, Affecting Salaries of Certain County Officers Under Garber Act.

preme Court in the case of *Crickett, et al. vs. State*, 18 O. S., p. 22, in which, speaking of county officers, the court say: "If such officers were paid by salaries, the legislature could not affect them during their term. (*Thompson vs. Phillips*, 12 O. S., p. 617.)"

Very respectfully,

J. K. RICHARDS,

Attorney General.

P. S.—I am aware, that under the Garber law, the salaries of certain county officers are paid from and limited by the amount of special funds, made up of fees collected in the respective offices and paid into the county treasury, to the credit of the particular funds; and that the law contains this provision (close of section 1260b, 89 O. L., 387):

"In case the fund from which the salaries of any of said officers and their respective deputies are payable is not sufficient to pay the whole of said salaries at any time, then the funds shall be prorated between such officer and his deputies in proportion to their salaries, and the balance in each fund shall, as to each office at the end of each fiscal year after the payment of the salaries payable therefrom, be turned over and transferred to the general county funds."

Here is a limitation in certain cases of the fund out of which the compensation is to be paid, but at the same time an explicit recognition of such compensation as a "salary." There is a distinction between the salary and the fund out of which the salary is payable. The salary is fixed, the fund is to an extent contingent. I see no objection to the Legislature changing the fund or changing the fees which make up the fund, but the salaries of incumbents cannot be affected without violating the constitution.

J. K. R.

In re Local Election at St. Marys.

IN RE LOCAL ELECTION AT ST. MARYS.

Office of the Attorney General,
Columbus, Ohio, April 21, 1893.

Hon. S. M. Taylor, Secretary of State:

DEAR SIR:—In your favor of the 18th inst., you state that it appears from a recent communication received in your office from St. Marys, Ohio, that at the last local election in that town, there were five members to be elected to the city council, three for the regular and two for unexpired terms. Nominations were made by the two leading political parties and the candidates were designated on the ballot, three on each party ticket as candidates for the full term and two as candidates for the unexpired term.

The official count showed the following result:

DEMOCRATIC TICKET.		REPUBLICAN TICKET.	
(Long term.)		(Long term.)	
N. T. Noble	368	T. A. Bamberger	241
H. G. McLain	309	Geo. Kuhlman	354
T. Barrington	337	Robert Nelson	216
(Unexpired term.)		(Unexpired term.)	
F. A. Hauss	329	James P. Smith	299
Chas. Hart	253	T. A. Lawler	251

You state, that it appears to be conceded, that Noble, Barrington and Kuhlman, being the three who received the highest number of votes for the long term, are elected, but the question is submitted to you, whether Hauss and Smith, who received the highest number of votes for the unexpired term, are elected members for such term, or whether McLain, who ran for the long term and who received a greater number of votes for the long term than Smith did for the unexpired term, was elected for the unexpired term to the exclusion of Smith; and upon this question you desire my views.

It is obvious there is a distinction between an election

In re Local Election at St. Marys.

for an unexpired term and an election for a full or regular term. The statutes provide, that in certain cases, a vacancy shall be filled by an election for the unexpired term. If a candidate runs for an unexpired term and is voted for for an unexpired term, it certainly cannot be that he was chosen by the electors for a full term, even if he had more votes for the unexpired term than some other candidate had who was running for a full term, and for the same reason, a candidate who runs for the full term and is voted for for the full term, must either be elected for the full term or defeated. He cannot be elected for the unexpired term because he did not run for the unexpired term. Of course, there is a case where several candidates run without designating on the ballot whether they respectively run for the unexpired or full term. Then it becomes a matter of doubt as to whether the voters intended to choose a particular candidate for the full term or for the unexpired term, and the General Assembly has provided in Section 1674 how the term of office shall be ascertained in that case. This section reads:

“When an election is held in a city or village for members of the council, and a portion of the members are to be elected for the full term, and a portion to fill vacancies, and the electors fail to designate on the ballots the length of the terms of the persons elected, the members so elected shall, at the first regular meeting of the council in May, or at such time as the council may designate, determine, by lot, the term of office to be held by each.”

And there is a further provision in this section:

“The result of the determination by lot herein provided shall fix the terms of office of the members of such council as fully as though they had been originally chosen by ballot for such term.”

This is an express recognition of the fact, that the clear and conclusive way in which to determine whether a council-

*Mercantile Credit Insurance Company May be Authorized
to Transact Such Business in Ohio.*

man has been elected for the full term or simply to fill a vacancy, is by designation on the ballot. It is only where there is a lack of such designation, and hence uncertainty as to the choice of the voters, that the determination by lot can be had. But if the electors choose the candidates for certain terms by designating on the ballot the term for which they vote for a candidate, the choice of the voters must be carried out.

My conclusion, therefore, is, that Hauss and Smith were elected for the unexpired terms, and that McLain, who was voted for, for the long term, cannot be properly declared to have been elected to an unexpired term.

Very respectfully,

J. K. RICHARDS,
Attorney General.

MERCANTILE CREDIT INSURANCE COMPANY
MAY BE AUTHORIZED TO TRANSACT SUCH
BUSINESS IN OHIO.

Office of the Attorney General,
Columbus, Ohio, April 21, 1893.

Hon. W. H. Kinder, Superintendent of Insurance:

DEAR SIR:—On November 11, 1892, in response to an inquiry from you, I expressed the opinion, that a company organized for the purpose of insuring merchants against loss by reason of the insolvency of buyers on credit, could not lawfully transact business in this State, there being no authority in the statutes for the making of such insurance.

Since that time, namely, on April 11, 1892, the General Assembly amended section 3641 so as to include in the second paragraph, being the paragraph defining modes of casualty insurance permissible in this State, the following language: "Guarantee the performance of contracts other than insurance policies and execute and guarantee bonds and

Construction of Section 2913 R. S.

undertakings, required or permitted in all actions or proceedings or by law allowed."

You now submit to me the question whether, in view of this amendment, a company can be licensed to transact the mercantile credit insurance business in this State, and thus guarantee merchants against loss through sales on credit to buyers subsequently becoming insolvent. At the same time, you state, that in your opinion, this added language is sufficiently broad to authorize such insurance business.

A sale on credit is a contract, one part of which is unexecuted and yet to be performed. To insure a merchant against loss through sales on credit, is to guarantee the performance of the contracts which debtors have entered into by the purchase of goods. Such contracts are contracts other than insurance policies, and hence, under the plain terms of the language inserted by the amendment, an insurance company may now be organized in Ohio to insure merchants against loss through sales on credit; and if a company may be organized for this purpose, a foreign company may be licensed to do such insurance business.

Very respectfully,

J. K. RICHARDS,

Attorney General.

CONSTRUCTION OF SECTION 2913 R. S.

Office of the Attorney General,

Columbus, Ohio, April 21, 1893.

Mr. John C. Milner, Prosecuting Attorney, Portsmouth, Ohio:

MY DEAR SIR:—I have carefully studied your inquiry of sometime ago, with respect to the proper construction of section 2913 of the Revised Statutes, and have consulted with the auditor of state with regard to the same. The conclusion we both reached from the plain terms of the section is, that the county treasurer is entitled to the two per cent. only on

Eligibility of Prisoner to Parole.

moneys received by him, as provided in that section, that is, on moneys received on actual sales of forfeited lands; and that he is not entitled to the two per cent. upon money paid to redeem lands prior to sale.

Very respectfully,

J. K. RICHARDS,
Attorney General.

ELIGIBILITY OF PRISONER TO PAROLE.

Office of the Attorney General,
Columbus, Ohio, May 5, 1893.

Col. C. C. James, Warden Ohio Penitentiary:

MY DEAR SIR:—In your favor of the 3d inst., you submit to me on behalf of the Board of Managers of the Ohio Penitentiary, the following case and question:

CASE.

“A was convicted of burglary and larceny, never having been charged with crime before, and was sentenced to five years’ imprisonment. At the same term of court, he was also indicted for receiving stolen goods, to which charge he plead guilty and was sentenced to two years’ imprisonment, his term to begin on the expiration of his first sentence.”

QUESTION.

“Is A eligible to parole at all? If so, when does he become so? Is it after the expiration of one year, the minimum term for either offense? Is it after the expiration of the minimum good time of his first sentence? Or is it only after he has served his first sentence and the minimum of his second?”

Eligibility of Prisoner to Parole.

Section 8 of the parole law, as amended April 18, 1892 (89 O. L. 361), provides that a prisoner to be eligible to a parole must "have served a minimum term provided by law for the crime of which he was convicted." This "minimum term provided by law," it occurs to me, means the term defined in the statute fixing the punishment for the crime, when reduced by the good time gained at the prison and allowed by the managers under the law.

Where a convict is imprisoned under a general sentence to the penitentiary, the law provides that the prisoner shall not be released until after he shall have served at least "the minimum term provided by law for the crime of which he was convicted." Undoubtedly, under such general sentence, the managers have the right to allow a deduction for good time and to release the prisoner at the expiration of the "minimum term" deducting good time. If this can be done under a general sentence, it may be done in a case coming under the parole law. In other words, the "minimum term" provided by law, is the minimum term provided by the law defining the crime as modified and reduced by the good time law. This answers one portion of the question.

The same section 8 provides that a convict who has not previously been convicted of felony and served a term in a penal institution, is eligible for parole as soon as he shall have served the "minimum term provided by law for the crime of which he was convicted." While on parole, he remains in the legal custody and under the control of the board of managers, subject at any time during the term of his sentence to be taken back and confined within the penitentiary. This parole is not a pardon, nor is it a commutation of sentence. It does not discharge the prisoner or shorten his term of service. It simply authorizes the board of managers to allow the prisoner to go outside the penitentiary, but he is to remain in their legal custody and under their control. (State ex rel. Attorney-General vs. Peters, 43 O. S. 629, 650.)

In view of the terms of the law and the nature of a

*World's Fair Managers; Payment of Treasurer Who is
Otherwise Employed by State.*

parole, I am disposed to think that the prisoner referred to in the case put, will become eligible to parole at the expiration of one year, less good time earned and allowed, being the minimum term for the crime of burglary of which he has been convicted, and the sentence for which he is now serving. As to the term of his second sentence, that is yet *in futuro*, it does not begin until the expiration of the term of his first sentence. He can be allowed to go on parole on his first sentence. He will yet remain in the custody of the board subject to be retaken and at the expiration of his first sentence, thus served partly while on parole, he may, and indeed must be again imprisoned in the penitentiary under his second sentence, unless pardoned.

Very respectfully,

J. K. RICHARDS,
Attorney General.

WORLD'S FAIR MANAGERS; PAYMENT OF
TREASURER WHO IS OTHERWISE EMPLOY-
ED BY STATE.

Office of the Attorney General,
Columbus, Ohio, May 5, 1893.

*W. T. Alberson, Secretary of Board of World's Fair Man-
agers of Ohio, Chicago, Ill.:*

DEAR SIR:—In your communication of the 3d inst., you submit to me on behalf of the Board of World's Fair Managers the following question, referred to me by the resolution adopted at a recent meeting of the board.

*"Resolved, That the question relating to the
right of L. N. Bonham, present treasurer of the
Ohio Board of World's Fair Managers, to receive
the compensation arranged for between him and*

*World's Fair Managers; Payment of Treasurer Who is
Otherwise Employed by State.*

said board, prior to the law as now amended, be referred to the attorney general of Ohio for his opinion."

This question arises in view of the fact that in an appropriation bill recently passed the following provision was inserted:

"No moneys appropriated to the Board of World's Fair Managers, shall be used for the payment of per cent., salary, per diem or otherwise (except actual traveling expenses), to any officer, member or employe of said board who is drawing salary or compensation for any other service from any other appropriation made by the State."

Mr. Bonham is at present secretary of the Ohio State Board of Agriculture, and as such draws upon the requisition of its president a salary or compensation for his services as such officer, which is paid out of an appropriation made by the State for the encouragement of agriculture.

It is apparent, therefore, that Mr. Bonham comes within the prohibition of the provision already quoted contained in the present appropriation bill, preventing any person "who is drawing salary or compensation for any other service from any other appropriation made by the State," from receiving any money as compensation for services as treasurer of your board out of moneys appropriated for the Board of World's Fair Managers.

Very respectfully.

J. K. RICHARDS,
Attorney General.

Board of Health; Appointment of Members Subject to Confirmation by Senate.

BOARD OF HEALTH; APPOINTMENT OF MEMBERS SUBJECT TO CONFIRMATION BY SENATE.

Office of the Attorney General,
Columbus, Ohio, May 9, 1893.

Hon. William McKinley, Governor of Ohio:

MY DEAR SIR:—In your favor of the 5th inst., you submit to me the following question:

“The records of this office show that Samuel A. Conklin, of Stark County, was on January 27, 1890, appointed (nominated) as member of the State Board of Health for the term ending December 13, 1893, vice W. H. Cretcher, deceased. The records also show that he was commissioned as such member of the Board of Health on January 29, 1890; but the records fail to show that he was confirmed by the Senate as required by law. The Senate Journal for 1890 shows (see page 110 S. J.) that said Samuel A. Conklin was duly nominated by Governor Campbell for member of the board of health as aforesaid on January 27, 1890, but it appears that there is no record in said printed journal of his confirmation by the Senate.”

You inclose a statement from the clerk of the Senate to the effect that the records of that office fail to show that the Senate confirmed the nomination, or consented to the appointment; and ask me to inform you whether under the facts as stated, Samuel A. Conklin is a legal member of the State Board of Health.

Section one of the act of April 14, 1886 (83 O. L. 77), provides “that the governor, with the advice and consent of the Senate, shall appoint seven persons, who (with the attorney general, who shall be *ex-officio* a member of said board) shall constitute the State Board of Health.”

This law does not vest in the governor full, final and ab-

Board of Health; Appointment of Members Subject to Confirmation by Senate.

solite authority to appoint a member of the State Board of Health; the power given the governor is limited, conditional, incomplete. The governor may nominate but the Senate must consent before the appointment becomes legal and effective. A necessary element in the appointment is the approval of the Senate. (State ex rel. Att'y-Gen'l vs. Bryson, 44 O. 466.) This confirmation by the Senate is an affirmative act; silence does not give consent in such a case. Neglect to consent is as fatal as refusal to consent.

The Senate never having advised and consented to the appointment of Mr. Conklin, the governor, in point of fact never appointed him *with the advice and consent of the Senate*, a member of the Board. The commission issued to him by the governor was, therefore, issued under a misapprehension of fact and without authority of law. A commission is not in itself title to an office; it is only evidence of title; high evidence, it is true, but still evidence which may be impeached and overthrown in a proper case such as this, when it clearly appears from the official records that the person holding the commission was not in fact duly and legally appointed as the commission assumes he was.

It is my opinion, therefore, that Samuel A. Conklin is not a legal member of the State Board of Health.

Yours very respectfully,

J. K. RICHARDS,
Attorney General.

*Legislative Committees; Power of Governor to Appoint
Members of General Assembly.*

LEGISLATIVE COMMITTEES; POWER OF GOVERNOR TO APPOINT MEMBERS OF GENERAL ASSEMBLY.

Office of the Attorney General,
Columbus, Ohio, May 9, 1893.

Hon. William McKinley, Jr., Governor of Ohio:

DEAR SIR:—In your favor of the 5th inst., you submit to me the following acts and resolutions passed and adopted by the 70th General Assembly, and request me to advise you officially whether members of the General Assembly named are eligible for appointment on these commissions, or any of them:

House Bill No. 1805, "To pay certain liabilities of the Fish and Game Commission," passed April 27, 1893, which appropriates money to pay certain specified claims, but provides that the governor shall appoint a committee of not less than two disinterested persons, to audit the claims and pass on their validity, the claims being payable only on the written recommendation of such committee. The expenses of the committee are to be paid by the holders of the claims.

House Bill No. 1028, passed April 25, 1893, which authorizes the governor to appoint a commission of three to draft a bill embodying the principle of the Torrens system of land transfers, for submission to the next General Assembly, the commission to have power to employ a stenographer, and incur other expenses, and "to be allowed such compensation as the General Assembly shall determine."

Senate Joint Resolution No. 32, "Relative to the construction of an electric light plant," adopted April 27, 1893, which provides that the governor shall appoint a commission of five, to locate and erect on the grounds of either the Blind or Deaf and Dumb Asylum, an electric light plant to cost not more than \$33,000.00. In such work, the commission is to be governed by the law in force relating to the construction

*Legislative Committees; Power of Governor to Appoint
Members of General Assembly.*

of public buildings, but it is expressly provided that "no contract shall be concluded until the money for the payment of the same shall have been secured," which I construe to mean, appropriated for such purpose by the General Assembly. The commission shall be allowed only their necessary expenses, to be paid out of any appropriation made for the erection of the plant.

House Joint Resolution No. 53, "appointing a committee to investigate the subject of taxation," adopted April 24, 1893, provides that the governor may appoint a commission of four, two from each of the two leading political parties, to investigate the subject of taxation, and the power of the Legislature under the constitution, and to report their findings and recommendations as to the revision of the tax laws to the governor, to be transmitted by him to the General Assembly. The commission may employ a stenographer; its compensation and expenses are to be provided for in the general appropriation bill; it is to meet on the first of June in Columbus; it is authorized to require the attendance of persons and the production of papers (under proceedings for contempt if necessary), and false statements to the commission may be punished for perjury. The report is to be filed with the governor on or before the first of December, 1893.

Section 19, of article 2, of the constitution provides:

"No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected."

The point for decision in order to answer your inquiry, is whether a place on any of the committees or commissions created by the acts and resolutions, "is a civil office under

*Legislative Committees; Power of Governor to Appoint
Members of General Assembly.*

this State," within the meaning of this section of the constitution.

An office has been defined to be "an employment on behalf of the government, in any station or public trust, not merely transient, occasional or incidental," (Platt J., in 20 Johns 492, quoted by Brinkerhoff, J., in *State ex rel. vs. Kennon*, 7 O. S. 556). A distinction is recognized in the authorities between a public office and a public employment, for as Chief Justice Marshall said (*U S. vs. Maurice*, 2 Brock 96), "although an office is an employment, it does not follow that every employment is an office." "The idea of an office clearly embraces the ideas of tenure, duration, fees or emoluments, rights and powers, as well as that of duty." (Burrill quoted in *Peoples vs. Nichols*, 52 N. Y. 478).

In *U. S. vs. Germaine*, 99 U. S. 508, Justice Miller, in deciding that an examining surgeon of the Pension Department is not an officer, on page 511, extends this definition as follows:

"If we look to the nature of defendant's employment, we think it equally clear that he is not an officer. In that case (referring to *U. S. vs. Hartwell*, 6 Wallace 385) the court said, the term embraces the ideas of tenure, duration, emolument, and duties, and that the latter were continuing and permanent, not occasional or temporary. In the case before us, the duties are *not* continuing and permanent, and they *are* occasional and intermittent."

In the opinion of the Judges (3 Maine 481), in which it was held that an agency created for the preservation of timber on the public lands did not constitute an office so as to prevent a member of the Legislature which created such agency being appointed as agent, the Judges used this language:

"There is a manifest difference between an office, and employment under the government. We apprehend that the term "office" implies a delega-

*Legislative Committees; Power of Governor to Appoint
Members of General Assembly.*

tion of a portion of the sovereign power to, and possession of it by the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. An employment merely has none of these distinguishing features. A public agent acts only on behalf of his principal, the public, whose sanction is generally considered as necessary to give the acts performed the authority and power of a public act or law. And if the act be such as not to require such subsequent sanction, still it is only a species of service performed under the public authority for the public good, but not in the execution of any standing laws which are considered as the rules of action and the guardians of rights."

In the Kenyon case, already cited, the Court, while holding that the persons appointed by the Legislature in that instance were officers and hence unconstitutionally appointed, yet exempted from the effect of its decision temporary agencies and commissions by the following reservation, to be found on page 560: "How far the General Assembly may go in constituting temporary agencies and commissions for temporary, incidental, transient, or occasional purposes, and in designating the persons who are to execute them, without thereby creating an office and appointing an officer, are not questions before us."

As to the committees and commissions in question, on none of them are the duties conferred of a continuing and permanent nature; they are simply transient, occasional and incidental. The tax commission is an agency to make inquiries on the subject of taxation and report to the General Assembly. Its reports will have no effect on any one's rights, unless the Legislature should approve of its recommendations and enact laws in accordance therewith. Its duties are simply incidental to the duties of the Legislature. The Legislature might have appointed a commission of its own members to make this investigation, but it chose to provide that the governor should appoint such commission and vested

Prosecuting Attorney; Duty to Bring Suit on Treasurers' Bond.

the commission, or attempted to vest it, with some of its own powers in regard to compelling the appearance of persons and production of papers.

What has been said of the tax commission, applies to the commission to draft and report to the General Assembly a bill embodying the principles of the Torrens system of land transfers.

The committee to audit the claims against the Fish and Game Commission, is a mere agency to perform a single duty which the Legislature had not time to discharge satisfactorily itself.

The commission to erect an electric light plant constitutes also an agency for a single purpose, and in view of the fact that no appropriation for the construction of such plant has been made, an agency virtually without power to act.

The conclusion I have reached, owing to these and other considerations, is that neither of the acts and resolutions mentioned, creates a civil office under this State, and therefore that members of the 70th General Assembly are eligible for appointment on these commissions.

Very respectfully,

J. K. RICHARDS,

Attorney General.

PROSECUTING ATTORNEY; DUTY TO BRING
SUIT ON TREASURERS' BOND.

Office of the Attorney General,
Columbus, Ohio, May 16, 1893.

*Mr. Charles Frayer, Prosecuting Attorney, Putnam Co.,
Ottawa, Ohio:*

MY DEAR SIR:—In your favor of the 10th instant, you state that upon a recent examination of the county treasury of Putnam County, the examiners reported a defalcation

Authority to Assess State for Constructing Levees Along Canal.

amounting to about \$24,000, and you inquire whose duty it is to bring suit on the bond of the treasurer.

I beg to say that in my opinion sections 1133 and 1273 impose on you the duty of instituting suit on the bond of a county treasurer who has proven delinquent. Section 1133 says in plain language that, on the presentation of the report of the examiners of a county treasurer, "if a breach of the bond" of the county treasurer is shown, "the prosecuting attorney shall forthwith commence an action on the bond of the delinquent officer." A suit on the bond of a delinquent treasurer must be commenced and maintained in the name of the State (*Hunter et al. vs. Commissioners of Mercer county*, 10 O. S. 515), and section 1273, defining the general duties of the prosecuting attorney, says "the prosecuting attorney shall prosecute on behalf of the State, all complaints, suits and controversies, in which the State is a party."

Very respectfully,

J. K. RICHARDS,
Attorney General.

AUTHORITY TO ASSESS STATE FOR CON-
STRUCTING LEVEES ALONG CANALS.

Office of the Attorney General,
Columbus, Ohio, May 27, 1893.

To the Board of Public Works, Columbus, Ohio:

In response to your inquiry of the 25th inst., I beg to say, I have examined the laws bearing upon the subject, and I am clear in the opinion there is no authority for assessing on the State, or the Board of Public Works, as the representative of the State, the cost or expense of constructing or repairing levees, notwithstanding such levees may incidentally prove a protection to the canals.

Very respectfully,

J. K. RICHARDS,
Attorney General.

*Power of Attorney General to Provide Armories, When no
Appropriation is Made to Meet Expense of Same.*

POWER OF ATTORNEY GENERAL TO PROVIDE
ARMORIES WHEN NO APPROPRIATION IS
MADE TO MEET EXPENSE OF SAME.

Office of the Attorney General,
Columbus, Ohio, June 2, 1893.

Gen. James C. Howe, Adjutant General of Ohio:

MY DEAR SIR:—In your favor of the 25th ult., you direct my attention to the act of April 27, 1893, amending section 3085 of the Revised Statutes, so as to require the adjutant general to provide "by contract or otherwise," armories for the military companies throughout the State, at the State's expense, and you inquire how far you can act in so providing armories, in view of the fact that no appropriation was made by the General Assembly to meet the expense which the execution of this law will necessarily entail.

The act of March 2, 1889 (86 O. L., 76; R. S. 8035-20, S. & B. Ed.), makes it unlawful for the officer of any department to create a deficiency, incur a liability, or expend a greater sum of money than is appropriated for the use of the department, so you will not be safe in incurring any liability for the expense of providing armories under this act, unless the Emergency Board, upon proper application, shall see fit to authorize you to create a deficiency for that purpose.

Very respectfully,

J. K. RICHARDS,
Attorney General.

Board of Public Works Without Authority to Create Deficiency Without Being First Authorized by Emergency Board—Architect's Estimates on Public Buildings Not Required to Be Open to Public Inspection.

BOARD OF PUBLIC WORKS WITHOUT AUTHORITY TO CREATE DEFICIENCY WITHOUT BEING FIRST AUTHORIZED BY EMERGENCY BOARD.

Office of the Attorney General,
Columbus, Ohio, June 2, 1893.

Hon. Charles E. Perkins, Chief Engineer of the Board of Public Works:

MY DEAR SIR:—In response to your inquiry of the 31st ult., I beg to say that neither the State Board of Public Works, or the individual members, have authority to create any deficiency, or incur any liability, or expend any greater sum of money than is appropriated by the General Assembly for the use of the department and its respective divisions, without being first authorized to do so by the Emergency Board, provided by the act of March 2, 1889 (86 O. L. 76), as amended April 18, 1892 (89 O. L. p. 407).

Very respectfully,

J. K. RICHARDS,
Attorney General.

ARCHITECT'S ESTIMATES ON PUBLIC BUILDINGS NOT REQUIRED TO BE OPEN TO PUBLIC INSPECTION.

Office of the Attorney General,
Columbus, Ohio, June 2, 1893.

Hon. C. C. Waite, President of the Board of Trustees, Ohio Hospital for Epileptics:

MY DEAR SIR:—In reply to your inquiry of this date I beg to say, that the law does not provide that the estimates

Village Boards of Health; Who May Be Members of, Etc.

of the cost of any public building or improvement shall be open to the inspection of bidders, or be furnished to bidders as a basis for proposals. The sections of the Revised Statutes relating to the erection of public buildings and the making of public improvements (section 782 etc.), provide that plans, drawings, representations, bills of material, specifications for work and estimates of the costs thereof, shall be approved by the governor, auditor and secretary of state, and deposited in the office of the auditor of state; but section 784, regulating the making of bids, provides that the plans, descriptions, bills of materials and specifications shall be open to public inspection, while there is no provision that the estimates of the cost shall be open to such inspection. It would as you suggest, be contrary to public policy to put into the hands of bidders the estimates prepared by the architects for the State, and the invariable rule in the auditor of state's office is, to withhold the estimates of cost from public inspection.

Very respectfully,

J. K. RICHARDS,
Attorney General.

VILLAGE BOARDS OF HEALTH; WHO MAY BE
MEMBERS OF; ETC.

Attorney General's Office,
Columbus, Ohio, June 2, 1893.

Dr. C. O. Probst, Secretary of the State Board of Health:

MY DEAR SIR:—You have submitted to me the following questions, which I answer in the order put:

1. "Can a member of a city or village board of health act as its health officer or clerk, and receive compensation for such services?"

Village Boards of Health; Who May Be Members of, Etc.

Answer. He can not. Such members must serve without compensation, yet have power to appoint subordinates, as health officer, clerk, physicians, nurses, etc., whom they control, whose duties they define, whose salaries they fix, and whose terms of service depend on their pleasure. The offices of member of the board without compensation, and of health officer, or clerk, or other appointee under the board with compensation, are obviously incompatible. It would be against public policy to unite in one individual the conflicting and inconsistent duties of these distinct places. To say a man may be a member of the board and at the same time health officer, clerk or physician under the board, is to say a man chosen to serve in an office without compensation, may cast perhaps the deciding vote to appoint himself to a place with compensation, and to fix his own salary and define his own duties; and, finally, that, as member, he shall have, with others, exclusive control over himself as health officer, clerk or physician; and that, as health officer, clerk or physician, he shall be solely accountable to himself, with others, as members. (Ohio ex rel. vs. Taylor, 12 O. S. 130.)

2. "Can members of council serve also as members of the board of health?"

Answer. A member of a city or village board of health is a municipal officer, appointed by the council, clothed with certain powers, to be exercised within the corporate limits. As section 1681 provides that no person shall be eligible as a member of the council who holds any municipal office, it is apparent that no member of the council is eligible to hold any municipal office, and, therefore, a councilman is not eligible to hold the office of member of the board of health.

3. "When a city or village board of health quarantines a pauper family living in such city or village, on account of contagious disease, should the expense of supporting such family be paid by the board of health out of the sanitary fund, or by the township trustees out of the poor fund?"

Village Boards of Health; Who May Be Members of, Etc.

Answer. The ordinary expense for the support and relief of a pauper family, such expense as the township trustees would have been obliged to pay had the family not been quarantined, should be paid by the township trustees out of the poor fund after and during the quarantine, since this expense is not the result of the quarantine. It is only the unusual and extraordinary expense growing out of the quarantine that should be paid out of the sanitary fund by the board of health. Nevertheless, under section 2135, R. S., the board of health has power to afford such medical and other relief to the poor as the protection of the public health may require."

4. "Are members of a township board of health entitled to compensation for services as members of such board?"

Answer. Township trustees are compensated by a per diem for each day's service in the business of the township, up to a maximum sum limiting the year's compensation. The recent health law adds to the duties of the township trustees by constituting them a township board of health. Members of city or village boards of health voluntarily accept an office without compensation. A township trustee, however, is elected to an office with compensation, and is compelled by law to serve. If new duties are added to the office, requiring more days of service in the business of the township, I see no reason why a township trustee is not entitled to his per diem for time thus spent in the public service, providing the limit of compensation for the year is not exceeded. (Section 2822, R. S.)

5. "Is the clerk of the township board of health entitled to compensation for services as clerk of the board of health?"

Answer. What I have said with respect to township trustees, applies to the township clerk, who is compensated by fees for particular services, and an allowance, within a certain limit, by the trustees. (Section 1531 R. S.)

Issuance of Cash Policies by The Ohio Farmers' Insurance Company Under Amendment of January 3, 1851.

6. "Out of what fund must the expenses of township boards of health be paid?"

Answer. Out of the fund provided for township purposes. (Section 2827, R. S.)

7. "If the levy for taxation in a township is not equal to the amount allowed by statute, may an additional levy be made for paying the expenses of the township board of health?"

Answer. If the levy for township purposes is not sufficient, and the maximum has not been reached, the levy may be increased, within the limits allowed by law, so as to provide an amount to cover the expenses of the board of health, as well as other township expenses.

Very respectfully,

J. K. RICHARDS,

Attorney General.

ISSUANCE OF CASH POLICIES BY THE OHIO FARMERS' INSURANCE COMPANY UNDER AMENDMENT OF JANUARY 3, 1851.

Office of the Attorney General,

Columbus, Ohio, June, 16, 1893.

Hon. William M. Hahn, Superintendent of Insurance:

DEAR SIR:—In reply to an inquiry put to me by your predecessor, I beg to say, that The Ohio Farmers' Insurance Company, under its original charter, granted by the act of February 8, 1848, had power to issue but one class of policies, namely, policies on the premium note plan. Of the premium note, six per cent. had to be paid in cash; the balance was subject to assessment at the option of the directors, to pay losses and expenses; and, if the premium notes should prove insufficient, an additional amount might be assessed on all the members, not exceeding fifty cents on each one.

*Bill for Legal Services in Defending Warden of Penitentiary
a Proper Charge to be Paid by Board of Managers.*

hundred dollars by them, respectively, insured. Such was the extent of the liability of policy holders under the original premium note plan.

By the amendment of January 3, 1851, the company acquired the right to issue cash policies under the following provision:

“The amount to be paid at the time application is made for insurance in this company may be determined by the directors, and may include such amount as will pay the applicant’s proportion of losses and expenses during the time of such insurance.”

The cash payment in advance thus provided for, is, in my opinion, in lieu not only of the premium note, but the additional contingent liability of fifty cents on the one hundred dollars insured, under the original charter, and, consequently, the holder of the policy on the cash plan, under the amendment of 1851, is not liable to assessment, for he has already paid the full amount which the directors, by authority of law, have fixed as sufficient to pay his proportion of losses and expenses during the time of insurance.

Very respectfully,

J. K. RICHARDS,
Attorney General.

BILL FOR LEGAL SERVICES IN DEFENDING
WARDEN OF PENITENTIARY A PROPER
CHARGE TO BE PAID BY BOARD OF MANAG-
ERS.

Office of the Attorney General,
Columbus, Ohio, June 16, 1893.

Mr. C. C. James, Warden Ohio Penitentiary:

DEAR SIR:—In response to your inquiry of the 14th inst., I beg to say, that I am of the opinion that the bill of Mr. Peters for legal services in defending Colonel Dyer, ex-

*Power to Nominate Political Candidate by Convention and
by Petition.*

warden, in the Fitzgerald-Ashbaugh damage suits for malicious prosecution, is a proper charge which the managers of your institution will be justified in paying. These suits grew out of certain acts done by Col. Dyer while he was warden, which have in their legal aspect, been justified by the verdicts in his favor.

It would have been impossible for me personally to have defended these suits; and in an opinion given on the 23d of March, 1892, to the Hon. E. W. Poe, auditor of state, I held that a somewhat similar bill for legal services in a suit against the warden and managers was properly payable out of the current expense fund of the institution.

Very respectfully,

J. K. RICHARDS,

Attorney General.

POWER TO NOMINATE POLITICAL CANDIDATE
BY CONVENTION AND BY PETITION.

Office of the Attorney General,
Columbus, Ohio, June 17, 1893.

Hon. S. M. Taylor, Secretary of State, and State Supervisor of Elections:

DEAR SIR:—In reply to the questions submitted in your letter of the 13th inst., with respect to the proper construction of the election law in certain particulars, I beg to say:

1. Persons who do not affiliate with and are admittedly not members of a political party, cannot meet in convention and nominate a ticket for such party which will be entitled to place on the official ticket. A convention which represents a party is the only convention which can make nominations for such party; and a convention composed of those who are not members of a party cannot properly be said to represent that party.

*Traveling Expenses of District Inspector of Workshops and
Factories to be Paid Out of Appropriation for Traveling
Expenses.*

2. Only those parties which at the last preceding general election polled one per cent. of the entire vote cast in the State, are entitled to nominate tickets by convention, caucus, meeting of qualified electors, primary election or committee. If there be a party which did not cast such per cent. of the total vote, it must take its nominations by petition papers.

3. Independent candidates, not representing a party which polled the requisite vote at the last general election, can only be nominated by petition.

Very respectfully,

J. K. RICHARDS,

Attorney General.

TRAVELING EXPENSES OF DISTRICT INSPECTOR OF WORKSHOPS AND FACTORIES TO BE PAID OUT OF APPROPRIATION FOR TRAVELING EXPENSES.

Office of the Attorney General,

Columbus, Ohio, June 22, 1893.

Hon. William McKinley, Governor of Ohio:

SIR:—In reply to your inquiry of the 21st inst., I beg to say, that I have consulted with the auditor of state who must ultimately pass on the accounts in question, and we agree in the view that the traveling expenses of the District Inspectors of Workshops and Factories incurred while attending the investigation of William Z. McDonald, chief of that department, under orders from you, should be paid by the State out of the appropriation for traveling expenses of such district inspectors, for the reason, that while thus engaged, the district inspectors were discharging a public duty connected with and growing out of their official relation to that department.

Very respectfully,

J. K. RICHARDS,

Attorney General.

Appointment of Fish and Game Wardens—Right of Prisoner Serving Cumulative Sentences to Parole.

APPOINTMENT OF FISH AND GAME WARDENS.

Office of the Attorney General,
Columbus, Ohio, June 23, 1893.

*Mr. B. F. Seitner, Secretary Fish and Game Commission,
Dayton, Ohio:*

MY DEAR SIR:—In reply to your inquiries of the 21st inst., I beg to say, that it seems to me, from the wording of section 408 of the Revised Statutes, regulating the appointment of fish and game wardens, that the commissioners must appoint the fish and game wardens after the same manner in which they appoint the chief warden, and cannot delegate the power to appoint in the one instance, any more than in the other.

I am inclined to think further that the warden of a county must be a resident of the county, for the statute says, the commissioners shall "appoint a fish and game warden *in* each county." It does not say *for* each county.

Respectfully,

J. K. RICHARDS,
Attorney General.

RIGHT OF PRISONER SERVING CUMULATIVE SENTENCES TO PAROLE.

Office of the Attorney General,
Columbus, Ohio, June 28, 1893.

Colonel C. C. James, Warden Ohio Penitentiary:

DEAR SIR:—In your favor of the 21st inst. you submit to me the following case and question:

CASE.

A was convicted of burglary and larceny, never having been charged with crime before and was sentenced to five

Right of Prisoner Serving Cumulative Sentences to Parole.

years imprisonment. At the same term of court he was also indicted for receiving stolen goods, to which charge he plead guilty and was sentenced to two years imprisonment, his term to begin at the expiration of his first sentence. He has served his first sentence of five years and is now serving on his two-year sentence.

QUESTION.

Is he eligible to parole, in view of the fact that he has thus already served a term in a penal institution?

ANSWER.

The benefits of the parole law are open to all convicts with very few exceptions. One of the exceptions is, a convict "who has previously been convicted of felony and has served a term in a penal institution." A reasonable interpretation of this exception leads to the conclusion that it is intended to apply to convicts who are not deterred from committing crime by the experience of punishment, who, despite the fact that they have served a term for felony, nevertheless commit other felonies. The law looks at this as proof of a hardened criminality, which in the public interest should exclude such convicts from the benefit of parole.

The parole law having been framed in a humane spirit, should be construed in the same spirit, and cumulative sentences, imposed at the same time on a prisoner, who had not before that time been convicted of felony, or served a term in a penal institution, should be treated as one sentence, and the convict be held eligible to parole after having served the minimum term of the first sentence.

The prisoner to whom you refer, as I pointed out in a former letter, was eligible to parole after he had served the minimum term of his first sentence. He has done nothing since to render him less eligible to parole, unless it is to serve more time, but that should speak in his favor.

Very respectfully,

J. K. RICHARDS,
Attorney General.

*Liability of Counties for Unpaid Accounts for Clothing
Furnished Inmates of Insane Asylum.*

LIABILITY OF COUNTIES FOR UNPAID AC-
COUNTS FOR CLOTHING FURNISHED IN-
MATES OF INSANE ASYLUM.

Office of the Attorney General,
Columbus, Ohio, June 28, 1893.

*Mr. W. T. Watson, Steward, Asylum for the Insane, Co-
lumbus, Ohio:*

DEAR SIR:—You say that there are still unpaid by cer-
tain counties, bills for clothing furnished inmates during the
period from March 25, 1884, to February 15, 1886, which
county auditors refuse to draw warrants for on the ground
that there is no mode now provided for the collection of
such accounts. You desire to know whether counties are
liable for such unpaid accounts.

Section 632 provides a mode of enforcing the liability
created by section 631. Prior to the act of March 25, 1884,
under section 632 as it stood then, a properly certified ac-
count for clothing furnished by the institution, was for-
warded to the county auditor who was required to draw his
warrant for the amount. Section 632 read then as it reads
now. The amendment of March 25, 1884, required those
accounts to be certified to the prosecuting attorneys, who
were to collect the same and the amounts thus collected
were to be paid to the institutions. This mode of collecting
such accounts was in force only from March 25, 1884, to Feb-
ruary 15, 1886, when the former law was re-enacted requir-
ing the auditor to pay the duly certified accounts and then
proceed to collect them as other debts are collected. The
question is whether, because of the failure of prosecuting
attorneys to collect these claims due the State during the
time the act of March 25, 1884 was in force, the State
must lose the same.

The liability on the part of counties to reimburse the
State for clothing furnished inmates of public institutions,

*Liability of Counties for Unpaid Accounts for Clothing
Furnished Inmates of Insane Asylum.*

is created by section 631. Under this section as it has stood since 1881, persons admitted to state institutions are admitted subject to the requirement, "that they shall be neatly and comfortably clothed, and their traveling and incidental expenses paid by themselves, or those having them in charge." This recognizes a liability upon the patients, or those having them in charge, to pay the cost of clothing them. Section 700 expressly prescribes, with what clothing a patient shall be supplied by the county at the time he is sent to an insane asylum. It occurs to me that when a county takes an insane person and sends him to a State institution it thereby assumes charge of such insane person and becomes liable under section 631 for the cost of clothing him. The county may collect sums paid by it for clothing patients from the patients themselves if they have property or from those liable for their maintenance, but subject to this claim for reimbursement, a county sending a patient to a State institution voluntarily, in view of the provisions of the law, agrees to and good for such expenses. Section 632 simply provides mode of collecting accounts due the State. A change in the mode of enforcing a liability does not defeat the liability itself. After the repeal of the amendment of March 25, 1884, prosecuting attorneys had no longer power to collect these claims. Is it reasonable to conclude that because the General Assembly saw fit to change the mode of collecting such claims, that therefore it intended to wipe out the claims themselves? The claims continued to exist, and now exist and ever since February 15, 1886, when section 632 as it stands now went into effect, it has been the duty of county auditors to pay these bills. As decided in the case of *State vs. Kiesewetter*, 37 O. S., 546, compliance with this duty may be compelled by proceedings in mandamus.

Very respectfully,

J. K. RICHARDS,

Attorney General.

Fee for Filing Articles of Incorporation of "The American Agents' Association."—The Right of Inspectors of Workshops and Factories to Have Their Expenses Paid for Attendance Upon National Conventions of Factory Inspectors.

FEE FOR FILING ARTICLES OF INCORPORATION
OF "THE AMERICAN AGENTS' ASSOCIATION."

Office of the Attorney General,
Columbus, Ohio, August 9, 1893.

Hon. S. M. Taylor, Secretary of State:

DEAR SIR:—I think you are correct in holding that the fee to be charged for filing the articles of incorporation of "The American Agents' Association," a corporation to be formed for the mutual benefit and protection of its members, but not composed "exclusively of any class of mechanics, express, telegraph, railroad or other employes," is \$25.00, under paragraph four, section 148a. I return the articles of incorporation submitted.

Very respectfully,
J. K. RICHARDS,
Attorney General.

THE RIGHT OF INSPECTORS OF WORKSHOPS
AND FACTORIES TO HAVE THEIR EXPENSES
PAID FOR ATTENDANCE UPON NATIONAL
CONVENTIONS OF FACTORY INSPECTORS.

Office of the Attorney General,
Columbus, Ohio, August 9, 1893.

*Capt. E. M. Slack, Chief Clerk and Acting Chief Inspector
of Workshops and Factories:*

MY DEAR SIR:—In response to the inquiries in your favors of the 19th ult., and 7th inst., I beg to say:

1. If, as you say, it has been the rule in your department to allow the expenses of inspectors while attending

Form of Bond for Notary Public.

national conventions of factory inspectors, and if you are of the opinion that the good of the service will be promoted and the interests of the State subserved by such attendance, and the experience and instruction thus gained, I see no impropriety in your continuing the practice.

2. If you think it necessary to supply district inspectors with cases in which to carry their supplies while inspecting, I see no objection to your paying for the same out of the appropriation for scientific and mechanical appliances, such cases being virtually tools for the proper work of the department.

3. While you are acting, under orders of the governor, as Chief Inspector of Workshops and Factories, you may properly, it seems to me, draw your expenses incurred in the discharge of the duties of chief inspector, from the traveling expense appropriation for chief inspector.

Very respectfully,

J. K. RICHARDS,

Attorney General.

FORM OF BOND FOR NOTARY PUBLIC.

Office of the Attorney General,
Columbus, Ohio, August 10, 1893.

Hon. William McKinley, Jr., Governor:

DEAR SIR:—I return the letter of Garfield & Garfield, dated July 26th, transmitting a blank form of notary bond prepared by The American Surety Company of New York, for your approval. This bond contains a condition by which The American Surety Company, as surety on the bond reserves the right to cancel the bond, by giving sixty days' notice in writing to the governor. There are provisions in the laws (see sections 5832 et seq.) for the withdrawal of

Duty to Publish Rules and Regulations of State Board of Health.

sureties from the bonds of county and township officials, but I know of no provision of law authorizing the withdrawal of a surety on the bond of a notary public or the cancellation of his obligation. Very respectfully,

J. K. RICHARDS,
Attorney General.

DUTY TO PUBLISH RULES AND REGULATIONS
OF STATE BOARD OF HEALTH.

Office of the Attorney General,
Columbus, Ohio, August 10, 1893.

Dr. C. O. Probst, Secretary State Board of Health, Columbus, Ohio:

DEAR SIR:—In your favor of this date, you say that, by virtue of the authority conferred on the State Board of Health by an act of the Legislature passed March 14, 1892, said board, at its last meeting, adopted certain rules and regulations for the protection of the public health, and you inquire whether it will be necessary to publish such rules and regulations, and if so, how such publication shall be made.

I find nothing in the act mentioned, requiring the rules and regulations of the State Board of Health to be published before taking effect, and there is no mode of publication provided by law, but a spirit of fairness will doubtless lead you to publish the rules and regulations in pamphlet form, and furnish copies of the same to the railroad, steamship and other transportation companies, the local boards of health, physicians, undertakers and others especially affected, that they may be advised what is required of them by the State Board of Health.

Very respectfully,
J. K. RICHARDS,
Attorney General.

*Savings Investment Company of Toledo, Ohio; Right to File
Articles of Incorporation.*

SAVINGS INVESTMENT COMPANY OF TOLEDO,
OHIO; RIGHT TO FILE ARTICLES OF INCOR-
PORATION.

Office of the Attorney General,
Columbus, Ohio, September 5, 1893.

Hon. S. M. Taylor, Secretary of State:

DEAR SIR:—I return to you the application for articles of incorporation of the Savings Investment Company, of Toledo, Ohio. I agree with you in the opinion, expressed verbally to me, that these articles should not be permitted to be filed. Such a company, soliciting and receiving the savings of the people, must be incorporated in Ohio under the laws regulating either building and loan associations, or savings and loan associations, or banking companies, or insurance companies, or it cannot be incorporated at all. It is the policy of this State to require companies which solicit the people's savings to furnish certain guarantees of solvency, and to submit to certain regulations in the conduct of their business, for the protection of the public. Such corporations cannot be organized under general laws, as it is attempted to be done in this case.

I have not deemed it necessary to discuss the question whether the scheme set out in the prospectus of the proposed company does not savor a lottery, and hence is against public policy.

Very respectfully,
J. K. RICHARDS,
Attorney General.

*Right of Board of County Commissioners to Act for Board
of Education in Certain Instances.*

RIGHT OF BOARD OF COUNTY COMMISSIONERS
TO ACT FOR BOARD OF EDUCATION IN CER-
TAIN INSTANCES.

Office of the Attorney General,
Columbus, Ohio, September 7, 1893.

Hon. O. T. Corson, State Commissioner of Common Schools:

DEAR SIR:—On the 16th day of March, 1893, the Legislature passed an act authorizing the board of education of the St. Clair Special School District, of Marion Township, Franklin County, to purchase a site, erect a school house, and furnish the same, at a cost not to exceed \$30,000.00, and for such purposes to issue bonds and levy the necessary tax.

At a meeting of the board, on the 27th of March, 1893, a resolution was unanimously adopted to issue \$30,000.00 of bonds for the purpose stated, but, because of a temporary restraining order, subsequently dissolved, the bonds were not then issued, and the complexion of the board subsequently changing, the board, as it now stands, is three for issuing the bonds and three against issuing bonds, so the authorized improvement is blocked.

In view of the above fact you call my attention to the provisions of section 3969 R. S., and ask, whether the county commissioners of Franklin County have authority to act for the board of education and issue the bonds and build the school house, in case they are satisfied such board has failed to do their duty in the premises and provide a suitable school house for the schools under its control.

While the conclusion I have reached is not free from doubt, yet I take it the school laws of this State are to be liberally construed, so as to place the facilities for an education within the reach of all the youth of the State. Every locality is entitled to be provided with suitable educational advantages. (21. O. S., 339.)

*Restoration by Board of Managers of Penitentiary of "Good
Time" Lost by Convict.*

The Legislature, recognizing the need of additional accommodations in St. Clair district, empowered the board of education, without a vote of the people, to issue bonds, levy a tax and provide the needed school house. If half of the members of the board, without good grounds, and in the face of the needs of the locality, now fail and refuse to provide the required school house, I am disposed to think the commissioners are, by section 3969, clothed with the right to exercise all the powers the board would have to build the school house. The purpose of section 3969 is evidently to put the commissioners in a certain contingency in a position to act as a board of education, when such board fails to do its duty by the children of the locality it represents, and to exercise all the powers such board may have either under general or special laws to take care of the educational interests of the district thus uncared for by its proper officers.

Very respectfully,

J. K. RICHARDS,
Attorney General.

RESTORATION BY BOARD OF MANAGERS OF
PENITENTIARY OF "GOOD TIME" LOST BY
CONVICT.

Office of the Attorney General,
Columbus, Ohio, September 7, 1893.

Col. C. C. James, Warden Ohio Penitentiary:

MY DEAR SIR:—In reply to your inquiry of the 5th inst., I beg to say, that notwithstanding the fact a prisoner may during his term have been guilty of infractions of the rules of the prison, yet, if prior to his discharge, the managers have restored the good time lost by such infractions, and thus released the prisoner at the expiration of what is known as the "short time" of his sentence, such convict is

Schools; Teaching of German in.

upon his release or discharge entitled to receive from you as warden a certificate entitling him to restoration by the governor to the privileges of citizenship.

By restoring the good time lost by infractions of the rules, the managers excused such infractions and placed the convict in the same position and entitled to the same privileges as if he had never been guilty of such violations.

Very respectfully,

J. K. RICHARDS,
Attorney General.

SCHOOLS; TEACHING OF GERMAN IN.

Office of the Attorney General,
Columbus, Ohio, September 7, 1893.

Hon. O. T. Corson, State Commissioner of Common Schools:

DEAR SIR:—In reply to your inquiry of the 4th inst., I beg to say that a careful reading of section 4021 of the Revised Statutes, leads me to the conclusion (not free from doubt, however), that the word district, as used in this section, refers to the township and not to a sub-district. According to this construction, it does not require that the seventy-five freeholders shall all reside in the same sub-district, nor does it require when seventy-five freeholders of the township district petition for the teaching of German, that the board shall provide for German in every school in the township. The board may, I take it, provide for the teaching of German in some one school, leaving it free to parents who desire their children taught German to send them to that school, whatever sub-district they may reside in. If, however, there should be seventy-five freeholders in a sub-district representing not less than forty pupils, who

Epileptics; Transportation of Same to State Hospital.

petition for German to be taught in that sub-district, then it occurs to me the township board ought to cause German to be taught in the school of that sub-district.

Very respectfully,

J. K. RICHARDS,
Attorney General.

EPILEPTICS; TRANSPORTATION OF SAME TO
STATE HOSPITAL.

Office of the Attorney General,
Columbus, Ohio, October 9, 1893.

*Mr C. C. Waite, President of the Board of Trustees, Ohio
Hospital for Epileptics, Columbus:*

DEAR SIR:—In reply to your inquiry of this date, I beg to say, that section six of the act of April 13, 1892 (89 O. L. 267), governing the management of the Ohio Hospital for Epileptics, provides that the trustees "shall conduct the hospital as now provided by law for the other benevolent institutions of the State."

Section 631 of the Revised Statutes, one of the regulations which applies to all benevolent institutions, provides that all persons admitted into any institution shall be maintained at the expense of the State, "subject only to the requirement that they shall be neatly and comfortably clothed, and their traveling and incidental expenses paid by themselves, or those having them in charge." This requirement is, by virtue of the provisions of section six of the act governing your institution, incorporated into and made a part of the law regulating the conduct of the Ohio Hospital for Epileptics. Your board has, therefore, in my opinion, no power to pay for the transportation of inmates out of your current expenses.

In view of the provisions in the act of April 13, 1892,

Building and Loan Associations; Net Earnings to be Distributed as Dividends.

regulating the admission of applicants, and requiring an examination and certificate from the Probate Court, I am disposed to think that the general provisions regulating the transportation of insane persons to the State asylums and the payment of the cost of the same by the counties, may properly be held applicable to the admission of inmates to your institution, especially when it is considered that one object of founding the Ohio Hospital for Epileptics was to relieve the insane asylums of the State from the care and maintenance of epileptic insane persons.

Very respectfully,

J. K. RICHARDS,

Attorney General.

BUILDING AND LOAN ASSOCIATIONS; NET EARNINGS TO BE DISTRIBUTED AS DIVIDENDS.

Office of the Attorney General,

Columbus, Ohio, October 10, 1893.

Hon. William M. Hahn, Inspector Building and Loan Associations, Columbus, Ohio:

MY DEAR SIR:—You desire my opinion whether a company, organized and operating under the Corcoran act, regulating building and loan associations, may legally provide in its conditions and by-laws that no dividends shall be declared until the termination of the association, but that the net earnings shall, at the expiration of each year, or such other times as the directors may deem proper, be placed in a general fund, where they shall remain, to the credit of all members, until the shares shall have reached their matured value, when the fund shall be distributed among the members and the stock thus paid off and canceled.

A careful reading of sections three and six of the act of May 1, 1891, will, I think, satisfy you that the distribution

Building and Loan Associations; Net Earnings to be Distributed as Dividends.

of the net earnings of a building and loan association by a declaration of dividends, can not be postponed until the termination of the association. In section three such association is empowered "to make such annual or semi-annual distribution of the earnings (after paying expenses and setting aside a sum for the reserve fund as hereinafter provided), as the constitution and by-laws may prescribe;" and in the same section, it is provided that any member who withdraws his entire stock, or whose stock is matured, "shall be entitled to receive all dues paid in and dividends declared, less all fines or other assessments, and less a pro rata share of all losses, if any have occurred." These provisions are further enforced by the portion of section six, which directs that the net earnings "shall be transferred as a dividend annually, or semi-annually, in such proportions to the credit of all members, as the corporation by its constitution and by-laws may provide."

It would seem from this language, and I take the view, that a building and loan association is required annually and semi-annually to distribute its earnings and transfer the same as a dividend to the credit of its members which precludes the postponement of the declaration of a dividend until the close of the association, as is provided in the plan of operation which you describe.

Very respectfully,

J. K. RICHARDS,
Attorney General.

*Board of Public Works; Power Relating to Obstruction in
Maumee River.*

BOARD OF PUBLIC WORKS; POWER RELATING
TO OBSTRUCTION IN MAUMEE RIVER.

Office of the Attorney General,
Columbus, Ohio, November 9, 1893.

*Mr. Samuel Bachtell, Assistant Engineer, Board of Public
Works:*

DEAR SIR:—I have carefully examined the papers submitted to me in behalf of the application made last March to the Board of Public Works by W. H. A. Reed, attorney for Hon. Abner L. Backus, for an order to compel the Lake Shore & Michigan Southern Railroad Company to remove from the Maumee river in Toledo the old sheet piling of an abandoned abutment, which Mr. Backus claims is in the way of vessels loading at his elevator, on the river bank adjacent.

I am not satisfied that the law of Ohio vests in the Board of Public Works power to make the order requested in this case, or to compel compliance with such order if made.

It occurs to me that if the navigation of the Maumee river is obstructed by the existence of the piling described, the proper federal authorities if applied to, will take the necessary steps to secure its removal; on the other hand, if any riparian rights of Mr. Backus are violated, his remedy is in the courts.

I do not see in what way the Board of Public Works can legally and effectively take action in this matter.

I return the papers.

Very respectfully,

J. K. RICHARDS,
Attorney General.

*Canal Boat; Rebate of Tolls Paid for Worthless Boat.
State Land at Massillon; Lessees Rights in Same.*

CANAL BOAT; REBATE OF TOLLS PAID FOR
WORTHLESS BOAT.

Office of the Attorney General,
Columbus, Ohio, November 9, 1893.

To the Board of Public Works of Ohio:

GENTLEMEN:—Upon the facts stated in your favor of the 6th inst., with regard to the claim made by the owners of the canal boat "King" for a rebate in tolls of two hundred dollars, under House Joint Resolution No. 21, adopted March 30, 1896, I am of the opinion, since the boat is at present worthless, and is being virtually rebuilt, that the rebate should be granted.

In this opinion, I am following the rule laid down by my predecessor, Attorney General Watson.

Very respectfully,

J. K. RICHARDS,
Attorney General.

STATE LAND AT MASSILLON; LESSEES RIGHTS
IN SAME.

Office of the Attorney General,
Columbus, Ohio, November 14, 1893.

*To the Board of Public Works, the Canal Commission, and
the Chief Engineer of the Board of Public Works:*

DEAR SIR:—I have carefully examined the papers submitted to me by you in the matter of the conflicting claims of J. W. McClymonds and Gilbert N. Porter, for lease or purchase of a strip of State land in Massillon, Ohio, being thirty-two feet front on Erie street and extending back one hundred and forty feet in depth; and with respect to the question

State Land at Massillon; Lessees Rights in Same.

which of these parties is entitled to a lease under the law regulating the action of your joint board, I beg to submit the following:

It appears from the papers transmitted to me that this strip was once the property of the Massillon Rolling Mill Company. The title of record still remains in this company. The State appropriated the slip for use as a canal feeder or slip, and it was used as such for some time, but many years ago was abandoned.

Prior to 1872, a building was erected on the east sixty feet of this slip. This building was occupied and used by the owners of the adjacent lots under a claim of some right or interest in the slip itself. In 1872, Leonard Bammerlin became the owner of the lot at the corner of Erie and Tremont streets, and under a claim of right to do so, occupied and used the building referred to on the canal slip as a malt house. When Bammerlin conveyed his corner lot to Clement Russell in 1884, he made a quit claim deed for the slip itself. Russell quitclaimed this slip to Gates in 1890 and Gates to N. S. Russell the same year. Since N. S. Russell's death McClymonds has had control of his property, including this slip.

In 1879, while Bammerlin was occupying and using the slip, one Estep got a twenty-year lease of it from the Board of Public Works at an annual rental of thirty dollars. Estep assigned his rights under this lease to Umbonhour and he to Bammerlin. Rent was paid the State under this lease until 1884, but none has since been paid. Since 1885, Clement Russell and his grantees have paid taxes on the canal slip and also an assessment for a sewer. Notice has been served upon McClymonds to pay a paving assessment of \$99.30 which he is ready to pay if he can have a lease of the slip.

In 1879 Gilbert N. Porter, by permission of Bammerlin, erected a small building on the northeast corner of the slip, in which he has since been carrying on his business as a dealer in fruit and confectionery. For the use of this, he paid Bammerlin and his grantees rent at the rate of \$2.50 a

State Land at Massillon; Lessees Rights in Same.

month down to November 1, 1891, when, being notified that the slip belonged to the State, he stopped paying rent and has paid none since.

About two years ago, by permission of McClymonds, William S. Brown erected a small building about the size of the Porter building on the southeast part of the slip, in which he has since been carrying on his business as a fish dealer. Brown has been paying rent to McClymonds.

McClymonds claims a right to the lease on the ground that he and his grantors have had possession of the slip for many years under a claim of title.

Porter claims the right to the lease because he is now in actual physical possession of a part of the slip, and has erected a building on it.

If McClymonds were claiming only under the Estep lease, I should say he would not be entitled to the lease now applied for, as the Estep lease was forfeited long ago for non-payment of rent; but I understand that before the Estep lease was made McClymonds' grantors, notably Bammerlin, had been in possession of this slip under some claim of title, and have ever since retained possession and exercised ownership over it, renting it to Porter and Brown and paying taxes and assessments on it. Both Porter and Brown took possession of portions of the slip and erected the small buildings they now occupy, not on the faith of any claim of ownership in themselves or in the State, and not in the expectation of acquiring as squatters any right to land not claimed by anybody, but, on the contrary, believing, and having good reason to believe, that the slip belonged, when Porter went on it, to Bammerlin, and when Brown built his house, to Russell. Thus Porter recognized Bammerlin and his grantees as landlords and paid them rent accordingly, and whatever possession he may have had of any part of the slip was the possession of his landlord. Now Brown still admits that he has been and is but a tenant, that his possession is McClymonds' possession, and that he is not entitled in preference to McClymonds, to a lease from the State of the ground oc-

State Land at Massillon; Lessees Rights in Same.

cupied by his building; but Porter, when notified in 1891, that the State claimed the land, refused to pay rent further to Russell, and now claims to hold possession on his own account.

If Porter had gone into possession as a squatter, or under any claim of right on his own part, I should say, that after having erected a building, he would be entitled to take a lease of the land occupied by it; but he never took or claimed possession on his own account but erected the building he now occupies in the belief and on the faith that the slip was owned by McClymonds' grantors. He can not, therefore, be injured by the State recognizing a possession which he himself recognized, and on the faith of which he expended money in making an improvement on the ground.

In the Schlundt-Lee case, Lee had gone into possession of a building adjacent to the canal, probably erected by the State, virtually as a squatter, that is, nobody else was occupying or claiming any right to the building; subsequently, under threats of dispossession, he paid rent for a time to Schlundt, who had bought up some alleged title to the ground occupied by the building, but had never taken possession of it. Lee was properly given the lease, because he did not take possession of the ground as Schlundt's tenant, and Schlundt himself never had any possession but simply a fictitious claim of title.

In this case, McClymonds and his grantors have had possession of this land for over twenty years and have exercised ownership over it, renting portions of it, and paying taxes and assessments on it, under a claim of title. Now, the object of the statute regulating the action of your joint board, in giving the person in possession of State land who has a building on it, the first chance to take a lease, is, in the first place, that a man who has made an improvement on State land on the faith of a supposed ownership in himself, or no ownership in anybody else, shall have the privilege, by taking a lease, of enjoying the benefits of money thus expended, and, second, that the person in possession of State land under

*Attorney Fees for Board of Public Works; Payment From
Appropriation Therefor.*

a claim of adverse title, may be offered an inducement, in the shape of a lease at a moderate rental of the land claimed by him, to abandon his individual claim and recognize the ownership of the State, and thus spare the State the cost and trouble of litigation to establish its rights.

The conclusion I have reached is, that upon the facts stated, Mr. McClymonds is entitled to the lease.

Very respectfully,
J. K. RICHARDS,
Attorney General.

ATTORNEY FEES FOR BOARD OF PUBLIC
WORKS; PAYMENT FROM APPROPRIATION
THEREFOR.

Office of the Attorney General,
Columbus, Ohio, November 14, 1893.

To the Board of Public Works:

GENTLEMEN:—In response to your inquiry of the 2d inst., asking me for my opinion as to what fund the fees due Mr. J. A. Kohler for legal services on behalf of the State in the case of Snook against Jackson should be paid from, I beg to say, that I am disposed to think this claim should be paid from the money appropriated by the Legislature to the credit of the Board of Public Works for the payment of attorney fees.

Very respectfully,
J. K. RICHARDS,
Attorney General.

State Institution; Local License to Electrician.

STATE INSTITUTION; LOCAL LICENSE TO ELECTRICIAN.

Office of the Attorney General,
Columbus, Ohio, November 14, 1893.

Dr. H. C. Eymann, Superintendent Cleveland Asylum for the Insane, Cleveland, Ohio:

DEAR SIR:—With reference to the matter of Mr. Braman's qualification to take charge of the electric light plant at your institution, I beg to say, it is my opinion that if he has been in Cleveland thirty days he may claim all the privileges of citizenship and is entitled to be examined for a license by the proper municipal authorities; moreover, since the Newberg asylum is a State institution, under the control directly of trustees appointed by the governor, the authorities of Cleveland have no power by an arbitrary refusal to accord an examination to one appointed to take charge of your electric light plant, to interfere with the management of the institution or endeavor to control the selection of its officers and employes.

If Mr. Brayman is qualified to act as electrician, and has offered himself for examination to the Cleveland authorities, which examination has been refused, let him go on and discharge his duties, notwithstanding he has no license from the Cleveland authorities. It is not his fault if he has no license. He has done all he could do to satisfy the officers of Cleveland of his fitness. It is obvious that these officers cannot control or limit the selection of electrician at your institution by refusing an examination to the person you may appoint.

Very respectfully,
J. K. RICHARDS,
Attorney General.

Board of Arbitration; Payment of Secretary.

BOARD OF ARBITRATION; PAYMENT OF SECRETARY.

Office of the Attorney General,
Columbus, Ohio, November 15, 1893.

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

DEAR SIR:—Referring to our conversation as to whether you should honor the vouchers of Judge Owen, chairman of the State Board of Arbitration, in favor of Mr. Joseph Bishop, a member and secretary of the board, for services as secretary in excess of the number of days' service certified to have been rendered by the other members, I beg to say:

The act creating the present State Board of Arbitration requires the board to organize by choosing one of their number chairman and one as secretary. In furtherance of the objects of the act, certain specified duties are imposed upon the secretary. It seems that Mr. Bishop has been chosen secretary, and that it has been necessary for him, in carrying out the purposes of the act, with the approval of the other members of the board, to spend about all his time in the work of the board, while the other members have been needed only while the board was sitting as a board of arbitration. The chairman, Judge Owen, has certified in accordance with law, the amount due Mr. Bishop for days thus spent in actual service. While it is true that Mr. Bishop may have been engaged as secretary much of this time, and not sitting as an arbitrator, still, while acting as secretary, he is acting as a member of the board, for the secretary must be a member, and therefore, work done as secretary should be considered and compensated as the services of a member.

I think, therefore, that you would be justified in drawing your warrant for the amount certified by the chairman of the board in favor of Mr. Bishop for actual services as member and secretary. Very respectfully,

J. K. RICHARDS,
Attorney General.

Articles of Incorporation; Amendment of Where it is Sought to Change Character of Corporation Not Permitted.

ARTICLES OF INCORPORATION; AMENDMENT
OF WHERE IT IS SOUGHT TO CHANGE CHAR-
ACTER OF CORPORATION NOT PERMITTED.

Office of the Attorney General,
Columbus, Ohio, November 16, 1893.

Hon. S. M. Taylor, Secretary of State:

DEAR SIR:—You have submitted to me the following question:

The Central Chandelier Company, of Toledo, Ohio, was originally incorporated "to manufacture, purchase and deal in electric, gas and oil chandeliers, fixtures, appliances and supplies, lamps, gas machines and other articles of metal." It seeks to amend its articles by including among its purposes, "manufacturing and vending electricity for lighting public and private buildings, manufacturing establishments, streets, alleys, lanes, squares and public places, manufacturing and selling steam and other kinds of heat for public and private buildings, constructing, laying and operating wires, poles, piers, pipes and all other appliances necessary for carrying on the business of selling and dispensing electricity and heat." You desire to know whether such proposed amendment will not operate to "change substantially the original purposes of its organization," in contravention of the provisions of section 3238a of the Revised Statutes.

I am inclined to agree with you that the amendment will change substantially the original purposes of the organization of this corporation, and hence should not be permitted to be filed. The company was organized to make and sell gas and electric fixtures; it now proposes also to manufacture, dispense and vend electricity for lighting purposes, and steam and other heat for heating purposes. There is a plain distinction between what is commonly known as a gas company and a company which manufactures gas fixtures;

Convict Labor; Goods Manufactured by to be so Labeled.

between an electric lighting company and a company making electric fixtures; a manufacturing business is one thing, the lighting and heating business is another thing.

Very respectfully,

J. K. RICHARDS,
Attorney General.

CONVICT LABOR; GOODS MANUFACTURED BY
TO BE SO LABELED.

Office of the Attorney General,
Columbus, Ohio, November 27, 1893.

Hon. W. T. Lewis, Commissioner of Labor Statistics:

DEAR SIR:—You have submitted to me the question, whether or not the amendment of April 27, 1893 (90 O. L. 319), to the act of March 15, 1888 (85 O. L. 92), applies to and includes goods, wares and merchandise made by convict labor in the prisons of this state, and requires the branding and labeling of the same in accordance with the provisions of the original act.

The act of March 15, 1888, in its first section provided, "That all goods, wares and merchandise made by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed, *in any state except the State of Ohio*, and imported, brought or introduced into the State of Ohio, shall, before being exposed for sale, be branded, labeled or marked as hereinafter provided, and shall not be exposed for sale in any place within the State without such brand, label or mark."

The succeeding sections provide for the enforcement of these general provisions.

By the act of April 27, 1893, section 1 of the act of March 15, 1888, was amended so as to read: "That all goods, wares and merchandise made by convict labor in any peni-

*Sheriff; His Compensation Under Salary Act Superseded by
Fee Laws.*

tentiary, prison, reformatory or other establishment *in this or any other state*, in which convict labor is employed, and imported, brought or introduced into the State of Ohio, shall, before being exposed for sale, be branded, labeled or marked as hereinafter provided, and shall not be exposed for sale in any place in this State without such brand, label or mark."

It appears, therefore, that by the amendment the words of the original act which limited the branding to goods made by convict labor "in any state except the State of Ohio," was stricken out, and words inserted making the act apply to goods made by convict labor "in this or any other state." While the succeeding words of the original act are retained, I can reach no conclusion but that the Legislature by making the change I have indicated, intended to extend the provisions of this act to goods made by convict labor in the prisons of this State. The amendment may be unskillfully drawn, but the meaning of the change made in the act is apparent, and the intention of the Legislature in making the change is not left in doubt.

Very respectfully,
J. K. RICHARDS,
Attorney General.

SHERIFF; HIS COMPENSATION UNDER SALARY
ACT SUPERSEDED BY FEE LAWS.

Office of the Attorney General,
Columbus, Ohio, November 27, 1893.

W. D. Guilbert, Esq., Chief Clerk Auditor of State's Office:

DEAR SIR:—Prior to the passage of what is commonly known as the "Garber Law," section 1230, Revised Statutes, fixed the fees and compensation of sheriffs in all counties except those in which, at that time, special provisions were

*Sheriff; His Compensation Under Salary Act Superseded by
Fee Laws.*

made by law for their payment. In Hamilton, and perhaps other counties, special provisions at that time were made for the payment of the sheriff.

The act of May 4, 1891 (88 O. L., 578), known as the "Garber Law," put the sheriffs generally upon a salary to be determined after the mode set forth in section 1230*a*, enacted by this act as a supplementary section to section 1230.

The act of April 13, 1892, (89 O. L., 270), repealed supplementary section 1230*a*, enacted by the "Garber Law" and provided as follows:

"In all counties which, at the last preceding federal census, had a population of 22,500 or more, and for which there is no provision made by law for the payment of the sheriff, he shall receive the following fees and compensation," and the section goes on and fixes a schedule of fees lower in amount than that fixed by the original section 1230.

In view of these changes in the law, you have asked me to give you my opinion as to whether section 1230*b* has any validity, seeing, that the original section 1230 has not been repealed and, therefore (as you believe), there is no county "for which there is no provision made by law for the payment of the sheriff," and hence no county to which section 1230*b* will apply.

I am unable to agree with you in the belief you express, that section 1230*b* is not in force. This section must be construed in the light of preceding legislation, and in such a way as to give its provisions force and effect, if possible. Original section 1230 provided for the fees of sheriffs in all counties save those in which special provision was made by law for the payment of the sheriff. This section, while not repealed by the "Garber Law," was superseded by that act, which provided a salary for sheriffs in all counties except those in which special provision was made for their payment. It is apparent, in view of these facts, that section 1230*b*, which repealed the "Garber act," was intended to and does

Canal Commission; Power to Recover Land in Unlawful Possession of Persons or Corporations.

put the sheriffs who were on salary under the "Garber act," back upon the fee system, but provides lower fees that were in force prior to the Garber act.

Very respectfully,

J. K. RICHARDS,

Attorney General.

CANAL COMMISSION; POWER TO RECOVER LAND IN UNLAWFUL POSSESSION OF PERSONS OR CORPORATIONS.

Office of the Attorney General,
Columbus, Ohio, December 7, 1894.

To the Ohio Canal Commission:

DEAR SIRS:—You have submitted to me the question, "whether the berm bank and towing path" of the canal come within the provisions of section 9 of the act establishing the canal commission, as amended April 27, 1893 (90 O. L. 327.)

The section referred to provides, that if the canal commission shall find that "any person or persons, or corporation is unlawfully in possession, use, or occupation of any land belonging to the State of Ohio," * * * * it shall direct the attorney general to bring a civil action or civil actions to recover the possession of such lands. This language is so plain as to need no construction or interpretation. It clearly provides that any part of the canal, the berm bank and towing path as well as any other portion, which is unlawfully in the possession of any person or corporation, comes within the provisions of this section; and the act makes it the duty of the canal commission to take steps to recover such land.

Very respectfully,

J. K. RICHARDS,

Attorney General.