

Municipal Corporation; Term of Officers Elected at Special Election—County Commissioners; Proceedings for Annexation to Municipal Corporation; Costs.

MUNICIPAL CORPORATION; TERM OF OFFICERS ELECTED AT SPECIAL ELECTION.

Attorney General's Office,
Columbus, Ohio, December 30, 1885.

C. C. Layman, Esq., Attorney at Law, Luckey, Wood County, Ohio:

DEAR SIR:—In reply to your favor of the 29th instant I have to say that, where the first election of officers for a village is a special election held in pursuance of the latter part of section 1565 Revised Statutes, the officers elected at such special election will hold their respective offices only until the election and qualification of their successors, which successors are, in my opinion, to be elected at the next regular annual municipal election.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY COMMISSIONERS; PROCEEDINGS FOR ANNEXATION TO MUNICIPAL CORPORATION; COSTS.

Attorney General's Office,
Columbus, Ohio, January 5, 1885.

C. R. Truesdale, Esq., Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—I have before me your favor of the 29th ult. in which you state that, under the provisions of chapter 5, division 2, title 12, Revised Statutes, your board of county commissioners heard and determined a proceeding brought

Costs; Allowance of, to Justice of the Peace in Case of Misdemeanor.

before them by the city of Youngstown to extend the corporate limits of said city by the annexation of contiguous territory, that the petition was dismissed and the extension refused, and that the commissioners thereupon presented to the city council a bill of costs made in said hearing, including a charge of \$3.00 per diem for each commissioner during the hearing, also a charge by the county auditor as clerk of the board. You ask, is the city chargeable with these items of costs?

A liability on the part of the city for the payment of said costs could only arise by express provision of the statutes, and, in the absence of such provision, I am of opinion that the city is not required to pay the same. The per diem of the commissioners is to be paid out of the county treasury, while the auditor is not entitled to any additional compensation for his services in the matter. See section 1078 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COSTS; ALLOWANCE OF, TO JUSTICE OF THE
PEACE IN CASE OF MISDEMEANOR.

Attorney General's Office,
Columbus, Ohio, January 5, 1885.

*S. R. Gotshall, Esq., Prosecuting Attorney, Mt. Vernon,
Ohio:*

DEAR SIR:—From your favor of the 29th ult. it appears that certain persons were bound to the Court of Common Pleas by a justice of the peace on a charge of felony, that they were indicted for a misdemeanor and plead guilty, and that the court thereupon rendered judgment against them

Veteran Volunteer; Indefinite Credit.

for the costs made after indictment found, thus leaving out the justice's fees.

In my opinion the costs of the justice of the peace made in said proceeding before him, cannot be paid out of the county treasury. Section 1306 Revised Statutes authorizes such payment only where the defendant is convicted of a felony on trial in the Common Pleas Court. Here the defendants were not even indicted for the felony for which they were bound over.

I think, however, that the case is one wherein the county commissioners, under section 1309 Revised Statutes, may make to the justice an allowance in lieu of his fees, subject to the limitation therein named.

Yours truly,

JAMES LAWRENCE,
Attorney General.

VETERAN VOLUNTEER; INDEFINITE CREDIT.

Attorney General's Office,
Columbus, Ohio, January 6, 1885.

Col. Thos. T. Dill, Assistant Adjutant General:

DEAR SIR:—I return herewith the papers submitted to me in the matter of the application of John McDermot, from which it appears that the said McDermot, upon his re-enlistment as a veteran volunteer, was credited to Urbana Township, Seneca County, Ohio, there being in fact no such township in said county. Upon these facts I am of opinion that said veteran volunteer was so indefinitely credited as that the credit could only pass to the State, and I think that you may properly give him a certificate to that effect.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Board of Education; Defalcation of Treasurer; no Power to Compromise.

BOARD OF EDUCATION; DEFALCATION OF
TREASURER; NO POWER TO COMPROMISE.

Attorney General's Office,
Columbus, Ohio, January 6, 1885.

Robert S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—From your favor of the 2d instant it appears that “in the spring of 1883 the term of office of Jacob Mayer as treasurer of Troy Township, Wood County, expired, and he quit the office with a deficiency of \$800.00 in the school fund. * * * Afterwards (February, 1884) the board of education of Troy Township, by way of compromise with said Mayer in settlement of this claim, took his three promissory notes of \$200.00 each, payable June 1st, 1884, June 1st, 1885 and June 1st, 1886, respectively, and undertook to release Mayer from the payment of \$200.00 of the debt. The note is due and unpaid * * *.”

In my opinion the board of education have no authority to enter into the arrangement or compromise above set forth, and I, therefore, advise that an action to recover the full amount of said deficiency be brought against Mayer and the sureties on his official bond, without reference to the notes.

The statutes confer no express power upon a board of education to make a compromise or settlement. Whatever power it has in that behalf arises solely by implication from the power to sue and to contract conferred by section 3971 Revised Statutes. In the case you present it seems clear that the power to make the compromise is not an incident to the power to contract, for the liability of the township treasurer to account for and deliver to his successor in office all money in his hands belonging to the district does not depend upon any contract by or with the board, but is

Board of Education; Residence of Members of; Vacancy in.

expressly imposed by law. The case is very different from a compromise of a claim growing out of a contract lawfully entered into by the board. Neither do I think that the power in question is an incident to the power to sue. The duty of supervising and settling the accounts of the township treasurer, in respect to the school funds, is entrusted to the county auditor and not to the board of education, and, in case of default by the treasurer, suit against him and his bond is to be prosecuted in the name of the State of Ohio and not by the board of education in its corporate capacity. See *State, etc., vs Williams et al*, 13 O., 495.

Furthermore, the "compromise" here attempted to be made was not in reality a compromise at all. The transaction amounted merely to a release of a portion of the liability and an extension of the time for payment of the remainder, without any consideration paid or security obtained.

Yours truly,

JAMES LAWRENCE,

Attorney General.

BOARD OF EDUCATION; RESIDENCE OF MEMBERS OF; VACANCY IN.

Attorney General's Office,
Columbus, Ohio, January 7, 1885.

*Messrs. F. L. Felch, E. W. DeWitt and Samuel W. Miller,
Committee, Sandusky, Ohio:*

DEAR SIR:—Your favor of the 5th instant was duly received. By section 3897 Revised Statutes each member of the board of education in city districts of the first class is required to be an elector of the ward for which he is elected or appointed. The question whether or not Mr. Layman is now an elector of the ward for which he was

*Medical College of Ohio; Not a State Institution; Power
of Governor in Appointment of Trustees for.*

elected depends mainly upon his own intention. The mere fact of his removal from that ward to another for temporary purposes with the intention of returning and without the intention to acquire a new residence, does not cause him to lose his residence in the former ward. Upon the facts stated by you, I am of opinion that he is still an elector of the fourth ward, and consequently is entitled to act as a member of the board of education from that ward.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MEDICAL COLLEGE OF OHIO; NOT A STATE IN-
STITUTION; POWER OF GOVERNOR IN AP-
POINTMENT OF TRUSTEES FOR.

Attorney General's Office,
Columbus, Ohio, January 8, 1885.

Hon. George Hoadly, Governor:

SIR:—I have the honor to acknowledge the receipt of your letter of the 7th instant, requesting my opinion whether section two of the act of March 21st, 1851 (48 O. L., 295) amending an act entitled "an act to incorporate and establish the Medical College of Ohio and for other purposes, passed December 31st, 1825 (24 O. L., 4)," which provides that vacancies in the board of trustees thereby constituted shall be filled by the board itself, is or is not superseded by article seven, section two of the present constitution of Ohio.

The constitutional provision referred to is as follows:

"Art. 7, Sec. 2: The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trus-

Medical College of Ohio; Not a State Institution; Power of Governor in Appointment of Trustees for.

tees of the benevolent, and other State institutions, now elected by the General Assembly, and of such other State institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate."

Although the present constitution of Ohio, by its own terms, took effect on the 1st day of September, 1851, the instrument speaks from the 10th day of March, 1851, when it was adopted by the convention, and things as they existed on that day must control in its construction. *State vs Dudley*, 1 O. St., 437. Prior to the passage of the act of March 21st, 1851, in accordance with the act of December 31st, 1825, the trustees of said village were appointed triennially by joint resolution of the General Assembly, so that, in determining whether section two, article seven, of the constitution is applicable to the appointment of such trustees, the question resolves itself into whether or not the "Medical College of Ohio" is a State institution.

Having examined the original act for the establishment of said college, passed January 19th, 1819 (17 O. L., 37), and the subsequent statutes relating thereto, I am of opinion that it is not a State institution within the meaning of the foregoing constitutional provision, and consequently that the appointment of its trustees is not governed thereby. It is true that the college was established for purposes, which, by the preambles to the acts of January 19th, 1819, and December 31st, 1825, are in effect declared to be public purposes; but all its property was vested in trustees, who, in perpetual succession, were created a body politic and corporate, and charged with the management and government of the institution, with full power to acquire, hold, possess, use, occupy and enjoy all such real and personal property as from time to time may be owned by or sold and conveyed to the said college by gift, grant or otherwise. In the case of *Chalfant vs the State*, 37 O. St., 60, the court held that section two, article seven, of the constitution refers to institutions belong-

*Railroad Policemen; Power of Governor Over Appointment
and Removals of.*

ing to and owned by the State, and has no reference to institutions for public purposes founded by individuals or particular localities under authority granted therefor, nor do such institutions become State institutions from the fact that they are subject to legislative government and control.

In respect to the act of March 21st, 1851, to which you call attention, I have to say that it only undertook to appoint trustees for the period of ten years from the 1st day of January, 1851, or until their successors should be appointed, and section two of said act, in reference to the filling of vacancies, is limited to vacancies occurring by death, resignation or removal of the trustees named in the preceding section.

The General Assembly undoubtedly has power to direct by law the manner in which the trustees of said college shall be appointed and the terms for which they shall serve. In the absence of any special provision upon the subject, I think that such trustees are to be appointed by the governor in pursuance of section 3733 Revised Statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

RAILROAD POLICEMEN; POWER OF GOVERNOR
OVER APPOINTMENT AND REMOVALS OF.

Attorney General's Office,
Columbus, Ohio, January 9, 1885.

Hon. George Hoadly, Governor:

SIR:—As requested in your favor of the 8th instant, I have examined the statutes relative to the appointment of railroad policemen by the governor, and am of opinion that the same person may be appointed a policeman of two or

State House Policemen; Power of Adjutant General Over Removals.

more railroad companies. This is not prohibited by the statute and the several offices do not seem to be incompatible.

2. I am also of opinion that a person appointed to act as policeman for a railroad company is removable at any time at the pleasure of the governor. In the absence of any constitutional or statutory provision, the power of removal is incident to the power of appointment.

Yours truly,

JAMES LAWRENCE,
Attorney General.

STATE HOUSE POLICEMEN; POWER OF ADJUTANT GENERAL OVER REMOVALS.

Attorney General's Office,
Columbus, Ohio, January 9, 1885.

Hon. E. B. Finley, Adjutant General:

SIR:—In reply to your favor of this date, I have to say that, in my opinion, a policeman for the state house appointed in pursuance of the act of February 5th, 1884 (81 O. L., 13), may be removed at any time at the pleasure of the adjutant general, without charges being preferred against him.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Liquor Law; Return of Ratable Proportion of Assessment Paid.

LIQUOR LAW; RETURN OF RATABLE PROPORTION OF ASSESSMENT PAID.

Attorney General's Office,
Columbus, Ohio, January 10, 1885.

Robt. A. Scott, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—From your favor of the 8th instant, it appears that one Stevenson, a person engaged in the general traffic in intoxicating liquors at the village of Pioneer, Williams County, on the second day of July, 1883, paid to the treasurer of said county \$200.00 for his assessment under the act of April 17th, 1883, known as the "Scott law," for one year from the 4th Monday of April, 1883. Afterwards the council of said village passed an ordinance which took effect on November 6th, 1883, making it unlawful to keep in said village "a shop, house, room, booth, arbor, cellar or place of habitual resort for tippling and intemperance or place where ale, beer or porter is habitually sold or furnished to be drank in, upon or about the house, shop, room, booth, cellar, or arbor or place where sold or furnished," and providing a fine for the violation of said ordinance. Stevenson now presents his claim to the county auditor and commissioners for the return of the ratable proportion of the tax for the unexpired portion of the year.

In my opinion, according to the terms of said act, he is not entitled to have any portion of said sum returned to him for the following reasons:

(1) Said act provides for the return of a ratable proportion of the tax paid by the proprietors of ale, beer and porter houses alone. The provision was not made applicable to a person engaged in the general traffic in intoxicating liquors, because municipal corporations were not given power to prohibit the entire traffic.

(2) The ordinance does not undertake to *prohibit* ale, beer and porter houses, but is rather an ordinance regulating

Prosecuting Attorney; Fees of, on Forfeited Recognizances.

such places. It does not prohibit the keeping of a place where liquors are sold by the quantity and not to be drank on the premises.

In the foregoing, of course, I speak of said act without reference to the recent decision of the Supreme Court. The assessment portion of said act having been declared unconstitutional, undoubtedly all payments made within a year under protest must be refunded, but the question whether or not payments made more than a year ago can be recovered, cannot be regarded as free from doubt until the Supreme Court has passed upon it. However, the only safe course to pursue in respect to such payments is to refuse to refund until compelled to do so.

Yours truly,

JAMES LAWRENCE,
Attorney General.

PROSECUTING ATTORNEY; FEES OF, ON FORFEITED RECOGNIZANCES.

Attorney General's Office,
Columbus, Ohio, January 13, 1885.

R. S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—I am in receipt of your favor of the 10th instant in which you submit certain questions relative to the rights and duties of the prosecuting attorney. By section 1273 and section 1183 Revised Statutes it is made the duty of the prosecuting attorney in his official character as such officer, to prosecute all forfeited recognizances by him received. I am of opinion that the duty of the prosecuting attorney, in respect to such forfeited recognizances, continues only during his term of office and that after the expiration of his term he is not required to commence any new suits

County Recorder; No Power to Alter Old Records.

thereon, or to further prosecute suits which are pending when his term expires. That duty devolves upon his successor. The commission allowed the prosecuting attorney by section 1298 Revised Statutes is upon moneys collected on fines, forfeited recognizances, etc., and, in my opinion, is payable to the prosecuting attorney in office when such collection is made.

I do not think that the prosecuting attorney is required to prosecute suits brought by the county treasurer in pursuance of section 1104 Revised Statutes (amended 77 O. L., 11) nor is the treasurer compelled to employ the prosecuting attorney in such suits. Judge Nash, when attorney general, examined this question with great care and I herewith enclose a copy of an opinion by him, in which I concur.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY RECORDER; NO POWER TO ALTER
OLD RECORDS.

Attorney General's Office,
Columbus, Ohio, January 15, 1885.

P. M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:

DEAR SIR:—Your favor of the 12th instant enclosing certain questions submitted to you by the county recorder, was duly received.

In my opinion a county recorder is not authorized to correct, alter or change in any manner the record of a deed or other instrument made by his predecessor. He is merely the custodian of such record, with authority to do those acts only in respect thereto which the law specially enjoins. He is authorized to make a record only of such instruments required by law to be recorded as are presented to

*Longview Asylum; No Power of Directors to Employ Legal
Adviser.*

him for that purpose. Moreover how can he tell that a seal, which now appears upon a deed, was there when it was first presented for record.

Yours truly,

JAMES LAWRENCE,

Attorney General.

LONGVIEW ASYLUM; NO POWER OF DIRECTORS TO EMPLOY LEGAL ADVISER.

Attorney General's Office,
Columbus, Ohio, January 17, 1885.

Hon. Samuel F. Hunt, Cincinnati, Ohio:

DEAR SIR:—Having further examined the question heretofore submitted to me by Mr. Fechheimer, I am still of opinion that the directors of Longview Asylum have no authority to employ, and pay from the asylum fund, an attorney, either as legal adviser or to defend suits against them for damages.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Ohio Soldiers' and Sailors' Orphan Home; No Compensation to any Trustee as Secretary of Board County Commissioners; Allowance to Magistrates, Under Statute 1308 R. S.

OHIO SOLDIERS' AND SAILORS' ORPHAN HOME;
NO COMPENSATION TO ANY TRUSTEE AS
SECRETARY OF BOARD.

Attorney General's Office,
Columbus, Ohio, January 17, 1885.

W. H. H. McIllyar, Esq., Cambridge, Ohio:

DEAR SIR:—In reply to your favor of the 16th instant I have to say that, in my opinion, a trustee of the Ohio Soldiers' and Sailors' Orphan Home cannot receive any compensation for his services as secretary of the board of trustees.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY COMMISSIONERS; ALLOWANCE TO
MAGISTRATES, UNDER STATUTE 1308 R. S.

Attorney General's Office,
Columbus, Ohio, January 17, 1885.

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

DEAR SIR:—Your favor of the 15th instant is received. I agree with you that, under section 1308 Revised Statutes, the county commissioners can make to the officers named an allowance in lieu of fees only in felonies wherein the State fails, and in misdemeanors wherein the defendant, having been convicted, proves insolvent.

The aggregate amount allowed to an officer in any year cannot exceed \$100.00. This refers to any period of

*Ditches; No Penalty Added to Assessment for County, for
Collection.*

twelve months and not specially to the fiscal year or to a year commencing on the 1st day of January. Counting from any date the allowance cannot exceed \$100.00 for such period.

Yours truly,
JAMES LAWRENCE,
Attorney General.

DITCHES; NO PENALTY ADDED TO ASSESS-
MENT FOR COUNTY, FOR COLLECTION.

Attorney General's Office,
Columbus, Ohio, January 18, 1885.

John W. Winn, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—Your favor of the 13th instant was duly received.

1. The assessment for a county ditch referred to in section 4480 Revised Statutes (amended 78 O. L., 208) is to be made by the county commissioners, and is to be placed upon the special duplicate as thus made. In my opinion the county auditor has no authority to add thereto an amount sufficient to cover the percentage allowed to the county treasurer for its collection. I also think that the treasurer can only collect the amount assessed by the commissioners, from which is to be deducted his commission.

2. By section 4480 it is provided that, "in cases where the assessments remain unpaid for one year after the same is placed upon the special duplicate, then, and in that case, the same shall be placed upon the special duplicate for collection as delinquent taxes." This makes no provision for placing a penalty upon the general duplicate, but merely

Sheriff; Fees of, Upon Subpoena from Another County.

directs that the assessments shall be placed thereon. In my opinion a penalty can be enforced only where it is expressly allowed, and I take it that the clause "for collection as delinquent taxes," does not add to the thing to be collected, but refers to the means and manner of such collection. Taxes and assessments are separate and distinct things, though they may be collected on the same duplicate and in the same manner. Section 2844 Revised Statutes applies to taxes charged against real estate and not to assessments.

I am, therefore, of opinion that the penalty allowed by said section 2844 does not attach to assessments for a county ditch when the same are placed upon the general duplicate as directed in section 4480.

Yours truly,

JAMES LAWRENCE,

Attorney General.

SHERIFF; FEES OF, UPON SUBPOENA FROM
ANOTHER COUNTY.

Attorney General's Office,
Columbus, Ohio, January 22, 1885.

*Walter L. Weaver, Esq., Prosecuting Attorney, Springfield,
Ohio:*

DEAR SIR:—Your letter of the 17th instant which is received contains the following statement of fact: a person, under indictment for a felony in Clark County, filed a precipe with the clerk for the issuing of certain subpoenas to be directed to the sheriff of Ross County. The subpoenas are issued, served and returned by that officer and upon the trial the person indicted was acquitted. The sheriff of Ross County has sent his bill for service, mileage, copies, etc., to the county commissioners of Clark County.

*Premiums and Prizes; not Gambling, Within Sections 6929,
6930 and 6931 R. S.*

I cannot find that the legislature has made any provision for the payment of such costs by the county from which the subpoenas were issued, and therefore, am of opinion that the county commissioners of Clark County have no authority to pay the bill of the sheriff of Ross County.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PREMIUMS AND PRIZES; NOT GAMBLING,
WITHIN SECTIONS 6929, 6930 AND 6931 R. S.

Attorney General's Office,
Columbus, Ohio, January 22, 1885.

A. L. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Your favor of the 21st instant is received. An editor of a newspaper who gives a premium to each subscriber or a merchant who allows each of his customers to share in a distribution of prizes, without charge, cannot, in my opinion, be convicted of violating sections 6929, 6930 and 6931 of the Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Municipal Corporation; Issue of Bonds by in Certain Case—
Waterworks Trustees; Control of Waterworks Funds.*

MUNICIPAL CORPORATION; ISSUE OF BONDS
BY, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, January 23, 1885.

Hon. N. H. Smith, Mayor, Ravenna, Ohio:

DEAR SIR:—Your favor of the 21st instant is received. If the proceedings preliminary to the issue of bonds have been taken in accordance with sections 2835-2837 Revised Statutes it is not necessary to obtain a special act of the legislature authorizing the issue of such bonds. The general statute confers sufficient authority.

Yours truly,

JAMES LAWRENCE,
Attorney General.

WATERWORKS TRUSTEES; CONTROL OF
WATERWORKS FUNDS.

Attorney General's Office,
Columbus, Ohio, February 2, 1885.

R. E. Knight, Esq., City Solicitor, Youngstown, Ohio:

DEAR SIR:—Your letter of January 31st addressed to L. D. Brown seems to have been intended for me, and has accordingly been referred to me for answer. I see no way to compel the trustees of waterworks in your city to expend the surplus of water rents in payment of the interest on the debt incurred for the construction of the waterworks, rather than in the extension of the waterworks. The trustees have control of such fund, which may be expended for either or all of the purposes named in section

*Board of Education; Employment of Teacher; Majority
of Members Required.*

2412 Revised Statutes. There is no provision that the same shall be first expended in the payment of interest.

Yours truly,

JAMES LAWRENCE,

Attorney General.

BOARD OF EDUCATION; EMPLOYMENT OF
TEACHER; MAJORITY OF MEMBERS RE-
QUIRED.

Attorney General's Office,
Columbus, Ohio, February 3, 1885.

Mr. W. A. Benevit, Congress, Ohio:

DEAR SIR:—Your favor of the 2d instant is received. It requires a majority of all the members composing a board of education to employ a teacher. Upon a resolution for such purpose, it is the duty of the president of the board to vote, and he must be counted as one of the members of the board. It is not sufficient that the resolution receive a majority of those voting upon it. See section 3982 Revised Statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Children's Home; Manner of Establishing; Power of
County Commissioners.*

CHILDREN'S HOME; MANNER OF ESTABLISH-
ING; POWER OF COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, February 3, 1885.

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

DEAR SIR:—I am in receipt of your favor of the 2d instant in which you state that Highland County has no children's home, and inquire, if "the charitably disposed persons of the county should select a site for a home and make arrangements to purchase the same by giving the notes or notes and mortgage of the society for the same, could the county commissioners then take the same off their hands and pay the indebtedness, provided it be less than \$10,000.00, without a vote of the people."

In my opinion the county commissioners cannot in any manner erect or purchase a site for a children's home, without first submitting the question of establishing such home to a vote of the people as provided in section 929 Revised Statutes (amended 78 O. L., 81), and I consider it immaterial whether or not the cost exceeds \$10,000.00. The power to establish children's homes is specially granted to the commissioners, and the particular mode provided for the exercise of such power must be followed. Taking the statutes upon the subject altogether, I think that where, in pursuance of the first clause of section 945 Revised Statutes, the commissioners purchase a children's home which has been established by private charity, the question of such purchase must be submitted to a vote of the people. In the case stated by you, however, this statute can have no application, for there has been in fact no children's home established by private charity. The transaction would amount simply to a purchase of a site for such home.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Prosecuting Attorney; Fees of, and Expenses Under Section 623 R. S.—Roads; Payment of Compensation and Damages on Establishment of Township.

PROSECUTING ATTORNEY; FEES OF, AND EXPENSES UNDER SECTION 632 R. S.

Attorney General's Office,
Columbus, Ohio, February 3, 1885.

Mr. W. H. Williams, Steward Deaf and Dumb Asylum:

DEAR SIR:—I return herewith the letter of Theo. K. Funk, Esq., prosecuting attorney of Scioto County, submitted to me. The prosecuting attorney is not allowed any commission or other compensation for the services rendered or collections made by him in pursuance of section 632 Revised Statutes (amended 81 O. L., 79). I think, however, that where in the performance of the duty required of him by said section expenses are necessarily incurred, he may deduct from the moneys collected the amount actually paid by him for such expenses. Considerable discretion must be given to the prosecuting attorney as to the propriety of incurring an expense in any given case.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ROADS; PAYMENT OF COMPENSATION AND DAMAGES ON ESTABLISHMENT OF TOWNSHIP.

Attorney General's Office,
Columbus, Ohio, February 3, 1885.

J. B. Goshorn, Esq.; Attorney at Law, Galion, Ohio:

DEAR SIR:—Your favor of January 31st is at hand. In my opinion section 4678 Revised Statutes (amended 79

Municipal Corporations; Obligation to Provide Voting Places.

O. L., 73) does not authorize the payment out of the township treasury of any part of the compensation and damages awarded to land owners by reason of the establishment of the township road of the description therein mentioned. Such compensation and damages must in all cases be paid by the petitioner, and the payment is made a condition precedent to the order establishing the road. It is after the road has been thus established that the order issues to the supervisor to open the road in the case provided for in section 4678. This section applies only to the payment of the costs of the view and survey and the opening and keeping in repair by the supervisor.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MUNICIPAL CORPORATIONS; OBLIGATION TO PROVIDE VOTING PLACES.

Attorney General's Office,
Columbus, Ohio, February 4, 1885.

J. B. Townsend, Esq., Prosecuting Attorney, Lima, Ohio:

DEAR SIR:—Your favor of the 2d instant enclosing letter from Mr. Ostendorf, clerk of Delphos, was duly received. Section 2923 Revised Statutes (amended 77 O. L., 40) provides that, for each ward precinct, elections shall be held at such place as the council of the corporation shall designate. In the absence of any statute specially providing for the payment of the rent for such voting places, I am of opinion that the same is to be paid by the municipal corporation, whether any municipal officers are to be voted for or not. The word "designate" must be held to include the obligation to provide the voting place. This

*County Recorder; Indexes Required to be Made by, and
Fees for.*

view is strengthened by the fact that the same word is used in section 1725 Revised Statutes in respect to the regular election of municipal officers, where unquestionably the voting place is to be provided by the council.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY RECORDER; INDEXES REQUIRED TO
BE MADE BY, AND FEES FOR.

Attorney General's Office,
Columbus, Ohio, February 4, 1885.

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

DEAR SIR:—Your favor of the 3d instant is received. Section 1155 Revised Statutes (amended 77 O. L., 240) has no application to the alphabetical indexes which the recorder is required to keep by section 1153 Revised Statutes. Where additional indexes are made by the direction of the county commissioners in pursuance of section 1154, the recorder is entitled to the fees specified in section 1155 for keeping up such indexes, to be paid out of the county treasury. The fees for the alphabetical indexes are to be paid by the persons presenting instruments for record.

In addition to the indexes described in section 1154, section 1155 also speaks of any other indexes authorized by the county commissioners. This certainly does not refer to the alphabetical indexes, for they are not indexes authorized by the commissioners, but are specifically required to be made by the law. I think that practically the clause quoted can have no operation. At least I do not know of

*County Commissioners; Allowance to Magistrates by, Under.
Section 1309 R. S.*

any other indexes to be authorized by the commissioners and thereafter to be kept up by the recorder.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY COMMISSIONERS; ALLOWANCE TO
MAGISTRATES BY, UNDER SECTION
1309 R. S.

Attorney General's Office,
Columbus, Ohio, February 5, 1885.

*Robert C. Miller, Esq., Prosecuting Attorney, Washington
C. H., Ohio:*

DEAR SIR:—Your favor of the 3d instant is received. In my opinion the allowance authorized by section 1309 Revised Statutes may be made in causes of felonies wherein the State fails at any stage of the prosecution, whether before the examining magistrate or afterwards. In misdemeanors the allowance can be made only in cases where the defendant has been convicted and proves to be insolvent.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Peace Proceedings; Jurisdiction of the Probate Court.

PEACE PROCEEDINGS; JURISDICTION OF THE
PROBATE COURT:

Attorney General's Office,
Columbus, Ohio, February 6, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—Your favor of the 4th instant was duly received. Since the decision in the case of Ohio vs Brazier (37 O. St., 78), section 6454 Revised Statutes, has been amended, and, as it now reads, the Probate Court in the counties named is given jurisdiction concurrent with the Court of Common Pleas, in all misdemeanors *and in all proceedings to prevent crime*. See 80 O. L., 48 and 81 O. L., 25. I am of opinion that the defendant in a peace proceeding may now be recognized to appear before the Probate Court in said counties.

If, however, your view be correct, and the Probate Court is without jurisdiction to entertain a complaint in a peace proceeding commenced before a justice of the peace, I do not think that section 6467 Revised Statutes authorizes you to proceed in the Common Pleas Court with the prosecution against a defendant so improperly recognized to appear in the Probate Court, nor do I think that the defendant thus bound over to the Probate Court is, by his recognizance, required to appear in the Common Pleas Court. In my opinion, section 6467 is applicable only where the defendant has been properly and legally recognized to appear in one or the other of said courts.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Liquor Law; Refunding of Assessments; County Auditor; Compensation for Indexing County Commissioners' Proceedings; County Auditor; Compensation for Special Duplicate for Ditches Under Section 4480 R. S.

LIQUOR LAW; REFUNDING OF ASSESSMENTS;
COUNTY AUDITOR; COMPENSATION FOR
INDEXING COUNTY COMMISSIONERS' PRO-
CEEDINGS; COUNTY AUDITOR; COMPENSA-
TION FOR SPECIAL DUPLICATE FOR DITCH-
ES UNDER SECTION 4480 R. S.

Attorney General's Office,
Columbus, Ohio, February 6, 1885.

William T. Platt, Esq., County Auditor, Findlay, Ohio:

DEAR SIR:—Your favor of the 4th instant was duly received.

1. In my opinion all assessments under the "Scott law" which were paid within a year under protest must be refunded. The money refunded should be apportioned to the several funds to which the same has been credited, and deducted from the shares or portions of revenue at any time belonging thereto.

2. The keeping of the general index of the proceedings of the county commissioners as required by section 850 Revised Statutes (amended 80 O. L., 114) is part of the duties of the auditor as clerk of said board, and he is entitled to no additional compensation therefor. In reference to his compensation for making the index of past records, I herewith enclose a copy of an opinion by my predecessor Mr. Hollingsworth.

3. I am unable to find in the statutes any provision allowing the auditor compensation for making the special ditch duplicate required by section 4480 Revised Statutes (amended 80 O. L., 114). The allowance for recording, in section 4506, evidently applies only to such matters as are included in the record of the ditch proceeding. As the auditor is entitled only to such fees as are expressly al-

*Recognizances; Power of Probate Judge and of Sheriff
Over.*

lowed him, I am compelled to say that, in my opinion, he
can make no charge for said special duplicate.

Yours truly,

JAMES LAWRENCE,

Attorney General.

RECOGNIZANCES; POWER OF PROBATE JUDGE
AND OF SHERIFF OVER.

Attorney General's Office,
Columbus, Ohio, February 9, 1885.

Hon. A. W. Salts, Probate Judge, McArthur, Ohio:

DEAR SIR:—Your favor of the 6th instant was duly
received. The probate judge is authorized to take a recog-
nizance of a prisoner confined in jail charged with a mis-
demeanor. See sections 7168 and 7169 Revised Statutes.
In the case provided for in section 7172 the sheriff is au-
thorized to take a recognizance only while the warrant is in
his hands and before its return. By section 7173 the recog-
nizance so taken by him must be returned with the warrant.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Park Rink Company; Articles of Incorporation of—Children's Home; Powers of Trustees of, in Regard to Admission to.

PARK RINK COMPANY; ARTICLES OF INCORPORATION OF:

Attorney General's Office,
Columbus, Ohio, February 12, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your favor of this date is received. Although the certificate of incorporation of "the Park Rink Company," which I herewith return, contains some matters not necessary to be stated therein, I am of opinion that you may properly permit the same to be filed in your office. The corporation is formed for a lawful purpose, which does not include dealing in real estate within the prohibition of section 3235 Revised Statutes. The declaration in respect to the purpose of acquiring and conveying real estate, is, in my opinion, no broader than the power which such corporation has by virtue of section 3239 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

CHILDREN'S HOME; POWERS OF TRUSTEES OF,
IN REGARD TO ADMISSION TO.

Attorney General's Office,
Columbus, Ohio, February 10, 1885.

Hon. James Turner, House of Representatives:

DEAR SIR:—In reply to the letter of Mr. Fred. Brodbeck, which you have referred to me, I have to say that, while the trustees of a children's home have some discre-

Sheriff; Fees of, on Special Venire.

tion in determining whether sufficient reasons exist to render a child a suitable person to be admitted to the home (as, for instance, whether its parents are unable to provide for it, etc.), they have no discretion in respect to the age which entitles a child to admission. I am of opinion, therefore, that the trustees have no authority under the age of three years, and that, upon the facts stated, it is the duty of the trustees of the Scioto County children's home to provide for a child mentioned by Mr. Brodbeck.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SHERIFF; FEES OF, ON SPECIAL VENIRE.

Attorney General's Office,
Columbus, Ohio, February 13, 1885.

Mr. Isaac Gates, Ashland, Ohio:

DEAR SIR:—In reply to your favor of the 11th instant I have to say that the sheriff can only charge \$4.50 for serving each special venire in the case stated by you. Officers can charge only such fees as are expressly allowed by law.

Yours truly,

JAMES LAWRENCE,
Attorney General.

County Commissioners; Power to Correct Treasurer's Books.

COUNTY COMMISSIONERS; POWER TO CORRECT TREASURER'S BOOKS.

Attorney General's Office,
Columbus, Ohio, February 11, 1885.

Louis Hicks, Esq., Prosecuting Attorney, Batavia, Ohio:

DEAR SIR:—Your favor of the 9th instant is received. I have not been able to examine the settlement sheets of the auditor of State for 1878, the same having been sent to Toledo for use in a law suit. The last settlement with the treasurer of your county shows no funds on hand belonging to the State not accounted for. The auditor of state thinks that, if all taxes due to the State have been paid, no action on his part is required. It seems to me that at the time your present treasurer came into office he should have been charged only with the amount of money on hand belonging to the several funds, and that the bond of the former treasurer should have been made a separate item, noting therein the funds in which the deficiency occurred. Also at each annual settlement with the county commissioners, since the defalcation happened, the true condition of the treasury should have been ascertained. In my opinion the board of county commissioners is the only authority authorized to order a correction of the books, and I think that it is so authorized by implication from the authority under section 1116 Revised Statutes to make a full settlement with the treasurer, together with the power of inspection and examination which it has under sections 1106 and 1129 Revised Statutes. I would suggest that the board make an order reciting the facts and directing that the books of the treasurer be corrected to correspond therewith. In such case I think that the auditor might also properly correct his books in the same manner, charging the amount of the deficiency to the bond of the default-

Taxation; Collection of Penalties for Delinquent Taxes.

ing treasurer and carrying the uncollected balance of such bond on the books as a distinct item.

Yours truly,

JAMES LAWRENCE,
Attorney General.

TAXATION; COLLECTION OF PENALTIES FOR
DELINQUENT TAXES.

Attorney General's Office,
Columbus, Ohio, February 13, 1885.

Mr. E. E. Blanchard, County Surveyor, Warren, Ohio:

DEAR SIR:—Your favor of the 11th instant is received. Under section 2891 Revised Statutes the penalty on the redemption of land sold for delinquent taxes is fifteen per cent. within one year after the sale, and twenty-five per cent. after one year. The twenty-five per cent. is not in addition to the fifteen per cent. However, the question is not of much practical interest, for I never heard of a tax title in this State which was good enough to enforce payment of any penalty where the owner of the land did not volunteer to pay the same. The penalty can only be enforced where the title is perfect and would enable the purchaser to take the land, if not redeemed within the time limited.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Schools; Appeal to Common Pleas Court by Sub-District
Recognizances; What Are; Prosecuting Attorney;
Powers Under Section 6457 R. S.*

SCHOOLS; APPEAL TO COMMON PLEAS COURT
BY SUB-DISTRICT.

Attorney General's Office,
Columbus, Ohio, February 17, 1885.

W. H. Gavitt, Esq., Prosecuting Attorney, Delta, Ohio:

DEAR SIR:—Your favor of the 13th instant was duly received. In my opinion there is nothing in section 4019 Revised Statutes which prevents a sub-district from appealing to the Common Pleas Court from a judgment obtained against it before a justice of the peace by a teacher who has been dismissed. The judgment referred to in that section is clearly the judgment finally rendered, after the defendant has exhausted all lawful means to contest the case of which it desires to avail itself.

Yours truly,

JAMES LAWRENCE,
Attorney General.

RECOGNIZANCES; WHAT ARE; PROSECUTING
ATTORNEY; POWERS UNDER SECTION 6457
R. S.

Attorney General's Office,
Columbus, Ohio, February 18, 1885.

*Clarence Curtain, Esq., Prosecuting Attorney, Circleville,
Ohio:*

DEAR SIR:—In reply to your favor of the 12th instant I have to say:

1. In my opinion the recognizance taken for the appearance of a person charged with the commission of a bailable offense should be a separate instrument, acknowl-

County Treasurer; Fees of, in Certain Case.

edged before the officer taking the same, and substantially in the form given in section 7187 Revised Statutes.

2. In counties where the Probate Court has jurisdiction in misdemeanors, prosecutions may be originally commenced in such court by the prosecuting attorney as authorized in section 6457 Revised Statutes, but a private individual cannot commence a prosecution in said court by filing an affidavit therein. The affidavits referred to in section 6457 are evidently affidavits in support of an information filed by the prosecuting attorney, the same being required by section 14, article one of the constitution.

See *Eichenlaub vs State*, 36 O. St., 140.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY TREASURER; FEES OF, IN CERTAIN
CASE.

Attorney General's Office,
Columbus, Ohio, February 18, 1885.

*Clarence Curtain, Esq., Prosecuting Attorney, Circleville,
Ohio:*

DEAR SIR:—Your favor of the 16th instant was duly received. By the 5th section of the act to authorize the purchase of toll roads in Pickaway and Greene Counties, passed April 12th, 1880 (77 O. L., 385), the county treasurer, for his services under said act, is entitled to one-half of the lowest rate of fees allowed to him by law for like services. The only service performed or required to be performed by the treasurer under said act, which is like any service for which he is allowed fees by law, is the collection of the tax levied for the payment of the bonds heretofore issued. I am, therefore, of the opinion that the

Board of Education; Issue of Notes by—Board of Education; Power to Establish Library.

county commissioners cannot make him any allowance in addition to his fees on the amount collected.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

BOARDS OF EDUCATION; ISSUE OF NOTES BY.

Attorney General's Office,
 Columbus, Ohio, February 19, 1885.

Mr. John McSweeney, Jr., Prosecuting Attorney, Wooster, Ohio:

DEAR SIR:—I concur in the opinion that a board of education has no authority to issue notes payable at a future time for maps, charts, etc., purchased by it. Such board cannot lawfully issue its note for any purpose other than those for which bonds are authorized to be issued by law, nor in any other manner than as thus authorized.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

BOARD OF EDUCATION; POWER TO ESTABLISH LIBRARY.

Attorney General's Office,
 Columbus, Ohio, February 19, 1885.

Mr. John F. Oliver, Member Board of Education, Steubenville, Ohio:

DEAR SIR:—Your favor of the 17th instant was duly received. By section 3995 Revised Statutes a board of education is authorized to appropriate money from the con-

County Auditor; Fees of, Under Section 4738 R. S.

tingent fund to purchase books for a school library, the control and management of which is vested in such board. By other sections the board is required to regularly organize and to transact its business at meetings held and conducted in accordance with law. By section 3984 a record is to be kept of the proceedings of the board which shall be a public record. By section 3958 the board is authorized to determine the amount necessary to be levied as a contingent fund, for the continuance of the schools after the State funds are exhausted, and for other school expenses. Taking these provisions in connection with the power conferred upon it by section 3971 Revised Statutes, I am of opinion that a board of education, if it deems it necessary and proper so to do, may rent rooms, outside of and separate from any school building, to be used exclusively for the school library and for the office of the board where its meetings may be held and its records kept, and that it may lawfully pay for the same out of the contingent fund as a proper school expense within the meaning of section 3958. In other words I think that such board has authority to provide suitable means to carry out the express powers conferred upon it, provided the same be not forbidden by law.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY AUDITOR; FEES OF, UNDER SECTION
4738 R. S.

Attorney General's Office,
Columbus, Ohio, February 20, 1885.

T. H. Gillmer, Esq., Prosecuting Attorney, Warren, Ohio:

DEAR SIR:—Your favor of the 16th instant was handed to me by Mr. Wallace. The statutes provide no compen-

Marshal; Salary of, Increased During Term of Office.

sation to the county auditor for making the list of the names of tax payers and the amount of road tax with which each is charged, and transmitting the same to the clerk of the proper township, as required by section 4738 Revised Statutes. I am compelled to say, therefore, that the auditor can make no charge for such service, being entitled only to such fees and compensation as are expressly allowed him.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MARSHAL; SALARY OF, INCREASED DURING
TERM OF OFFICE.

Attorney General's Office,
Columbus, Ohio, February 20, 1885.

*Edward J. West, Esq., Prosecuting Attorney, Wilmington,
Ohio:*

DEAR SIR:—Your favor of the 18th instant was duly received, from which it appears that subsequently to the election and qualification of the present marshal of Wilmington in the spring of 1884, the council of said village passed an ordinance fixing the salary of the marshal at \$600.00 per year, the salary having been theretofore \$400.00 per year. Section 1717 Revised Statutes, which provides that "the emoluments of an officer, whose election or appointment is provided for in this title, shall in no case be increased or diminished during the term for which he may be elected or appointed," is clearly applicable to the marshal and I am, therefore, of opinion that he is not entitled to the additional compensation prescribed in the ordinance adopted after his election and qualification. The promise of the individual members of the council, before his election that,

*Boards of Education; Sales to and Contracts With, by
Members of.*

if he should become a candidate for marshal and be elected, he should receive a salary of \$600.00, and that the council would pass an ordinance for that purpose, is of no effect whatever, for the council can only act as a body and in the modes prescribed by law. Neither does the provision in section 1850 Revised Statutes that the marshal receive the same fees as sheriffs and constables in similar cases and such additional compensation as the council may prescribe, have any bearing upon the question, for this is subject to the provisions in section 1717 above quoted. The payments heretofore made to the marshal are clearly illegal for the excess over the salary to which he is entitled.

Yours truly,

JAMES LAWRENCE,
Attorney General.

BOARDS OF EDUCATION; SALES TO AND CON-
TRACTS WITH, BY MEMBERS OF.

Attorney General's Office,
Columbus, Ohio, February 24, 1885.

*Mr. W. R. Comings, Clerk, Board of Education, Norwalk,
Ohio:*

DEAR SIR:—Your favor of the 20th instant is at hand.

I. Section 3974 Revised Statutes provides that no member of a board of education shall have any pecuniary interest in any contract of the board. This, in my opinion, forbids a member of the board from selling any supplies for the use of such board or the schools under its charge, although such sales be made through the janitor, superintendent or the committee on supplies, and not upon a special contract with the board.

Every sale implies a contract on the part of a purchaser to buy and of the seller to sell, and it is immaterial whether

*Mutual Protection Associations; Fees for Filing Articles
of Incorporation of.*

such contract be made directly by the board or by an agent under its authorization.

2. In my opinion, section 6929 Revised Statutes is not applicable to members of a board of education, and I do not think that a member who has made sales of the character suggested, could be convicted of any offense. Neither is there any statute which prescribes a punishment for the other members of the board by reason of such illegal sales. Each member, however, is required to take an oath of office, and may be expelled for gross neglect of duty.

3. A purchase made by a board of education from one of its members is wholly illegal and, in my opinion, the board has no authority to pay for articles so purchased.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MUTUAL PROTECTION ASSOCIATIONS; FEES
FOR FILING ARTICLES OF INCORPORATION
OF.

Attorney General's Office,
Columbus, Ohio, February 25, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I am in receipt of your favor of the 23d instant submitting certain questions relative to the proper fee to be charged upon the filing of certain articles of incorporation.

1. In my opinion, a corporation organized under section 3630 Revised Statutes, and the sections supplementary thereto, for the purpose of mutual protection and relief of its members and for the payment of stipulated sums of money to the families or heirs of deceased members, is not a society or company organized for benevolent purposes, within the meaning of section 148a Revised Statutes (81

Mutual Protection Associations; Fees for Filing Articles of Incorporation of.

O. L., 52), but is, on the contrary, a mutual company not organized strictly for benevolent or charitable purposes. The term benevolent as applied to an organization implies, as it seems to me, that such organization affords aid or relief to its members or others through kindness or benevolence. The aid or relief thus furnished is based upon charity rather than upon contract, and the amount thereof has reference to the needs of the recipients rather than to the sum stipulated in advance to be paid upon the happening of a certain contingency.

It has been suggested, however, that the purpose for which corporations may be formed, under the statute referred to, includes the mutual protection and relief of its members, and that moneys may be received by voluntary donations or contributions as well as by assessments or fixed payments. This, it is claimed, would constitute a strictly benevolent society. In respect to this it seems sufficient to say that, even if a corporation can be formed under section 3630 for the single purpose of the mutual protection and relief of its members, it is certain that such corporation cannot be so formed with powers limited to receiving and distributing voluntary donations or contributions. By virtue of the statute and whether expressed in the articles of incorporation or not, every such corporation possesses the power not only to receive voluntary donations and contributions, but to make and collect assessments and fixed payments, and to distribute and appropriate the same otherwise than for the benevolent relief of its members. In ascertaining the character of a corporation, for the purpose of determining the amount of the fee to be charged for filing its articles of incorporation, the powers conferred upon it by the statute are to be considered as well as the statements contained in the articles of incorporation. A declaration by the incorporators that the corporation is formed for benevolent purposes is of no importance when the contrary appears.

*Mutual Protection Associations; Fees for Filing Articles
of Incorporation of.*

I am of opinion, therefore, that a fee of twenty-five dollars (\$25.00) must be paid upon the filing of the articles of incorporation of every corporation organized for the purposes specified in section 3630 Revised Statutes.

2. Section 3235 Revised Statutes provides that corporations may be formed for any purpose for which individuals may lawfully associate themselves, except for dealing in real estate or carrying on professional business, but it is provided in section 3269 of the same chapter that the provisions of said chapter do not apply when special provision is made in the subsequent chapters of that title, but the special provision shall govern, unless it clearly appears that the provisions are cumulative. In my opinion all corporations formed for the purposes specified in section 3630 Revised Statutes must be organized under and in pursuance thereof, and are governed by that section and the sections supplementary thereto, except that said supplementary sections do not apply to any association of religious or secret societies, or to any class of mechanics, express, telegraph or railroad employes formed for the mutual benefit of the members thereof and their families exclusively. This exception in respect to the class of associations last named, it will be seen, extends only to the provisions relating to their conduct and management. Corporations of the excepted class must nevertheless be organized and created under the authority of section 3630, and possess all the powers thereby conferred. In this view it is evident that such a corporation is not organized strictly for benevolent or charitable purposes, and consequently must pay a fee of twenty-five dollars (\$25.00) upon filing its articles of incorporation. This is, perhaps, in some cases, a hardship, but if so, relief must be sought of the legislature.

Yours truly,

JAMES LAWRENCE,

Attorney General.

American Tontine Society; Articles of Incorporation of.

AMERICAN TONTINE SOCIETY; ARTICLES OF
INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, February 25, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I herewith return the articles of incorporation of the "American Tontine Society," which, I think, should not be permitted to be filed in your office, for the following reasons:

1. Corporations formed for the purposes named in section 3630 Revised Statutes must be formed for such purposes alone. The articles of this society, after specifying all the purposes authorized by said section, add, "and for the purpose of doing and performing all things and in the manner provided in the act of the General Assembly of the State of Ohio, entitled an act to revise and consolidate the general statutes of Ohio, passed June 20th, 1879," etc. To this extent the purposes for which the corporation is formed are unauthorized.

2. The name assumed by this company indicates a character of business which it would not be authorized to do, to-wit, insurance on the tontine plan, and is inconsistent with the lawful purposes for which the corporation is organized. In my opinion you have power to refuse to file articles of incorporation when the name will thus tend to deceive and mislead the public and I think you would be justified in so doing in the present case.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Franconia Club; Articles of Incorporation of.

FRANCONIA CLUB; ARTICLES OF INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, February 26, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I herewith return the articles of incorporation of "the Franconia Club of Cincinnati, Ohio," and respectfully advise that you refuse to file the same in your office for the following reasons:

1. The place where said proposed corporation is to be located or where its principal business is to be transacted is not sufficiently stated therein.

2. The purpose of said proposed incorporation, to-wit: the payment of sick benefits to its members, is included in one of the purposes for which corporations may be formed under section 3630 Revised Statutes, to-wit: "the mutual protection and relief of its members," and hence it must be considered as formed under that section. See section 3269 Revised Statutes. But, in my opinion, a corporation cannot be created for an object which is but a part of one of the general purposes authorized by section 3630. A corporation to transact the business here contemplated must be organized generally for the mutual protection and relief of its members.

I also return herewith the articles of incorporation of the Duetsche Gemeinschaftliche Unterstuetzungs Verein No. 3 of Cincinnati, Ohio, which I respectfully advise you to refuse to file in your office, for reasons similar to those stated above, and for the further reason that, in connection with purposes which are included in those for which a corporation can be formed under section 3630, the articles state the object of the proposed corporation to be "to encourage mutual relations between its members and to better provide for their enjoyment." This is unauthorized. A

*Governor and Secretary of State; Duties Under Section 83
R. S.*

corporation organized under said section must be for the purposes therein named and no other.

Yours truly,

JAMES LAWRENCE,
Attorney General.

GOVERNOR AND SECRETARY OF STATE; DUTIES
UNDER SECTION 83 R. S.

Attorney General's Office,
Columbus, Ohio, February 25, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I am in receipt of your favor of this date, requesting my opinion as to whose duty it is to fill in and transmit the commissions of the officers mentioned in section 83 Revised Statutes. It seems that it has heretofore been the custom for the secretary of state to make out and transmit such commissions, but that a question has now arisen between your office and that of the governor in reference to the matter, it being claimed by you that this work should be done in the governor's office.

The statutes make no express provision upon the subject, but from the nature of the duties to be performed by the governor and secretary of state respectively, in respect to said commissions, I am of opinion that you are not required to make out and transmit the same, and that, if you decline so to do, the governor must cause the work to be done.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Sheriff; Fees of, in Certain Case.

SHERIFF; FEES OF, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, February 26, 1885.

James Holder, Esq., Probate Judge, Carrollton, Ohio:

DEAR SIR:—Your favor of the 23d instant was duly received. It appears that recently the sheriff of Carroll County, by order of your court, conveyed to the Columbus Asylum for the Insane an insane patient, and that his costs for so doing have been paid out of the county treasury, in pursuance of section 719 Revised Statutes.

While the sheriff was here on such business the authorities of the asylum delivered to him another patient to be removed to Carroll County. By reason of this the sheriff was compelled to remain an additional day and to pay the expenses of the patient to his home.

Upon these facts I am of opinion that, in addition to the amount paid on account of the first patient, the sheriff is entitled to his mileage from Columbus home (one way) and seventy-five cents per day for the support of said second patient on his journey.

Yours truly,

JAMES LAWRENCE,

Attorney General.

County Treasurer; Fees of.

COUNTY TREASURER; FEES OF.

Attorney General's Office,
Columbus, Ohio, February 26, 1885.

*C. R. Truesdale, Esq., Prosecuting Attorney, Youngstown,
Ohio:*

DEAR SIR:—Your favor of the 20th instant was duly received. In my opinion the county treasurer is not entitled to any fees or compensation for any services performed by him under and by virtue of the so-called "Scott law." So much of the costs paid by the State in cases of felony as are paid into the county treasury and all costs collected of defendants in cases of misdemeanors, and paid into the county treasurer are, in my opinion, included under the designation, "all other moneys collected," of which the treasurer under section 1117 Revised Statutes is entitled to eight-tenths of one per cent. on the first \$10,000.00, and four-tenths of one per cent. on all over that amount. All moneys collected on licenses, fines, forfeitures, bonds or recognizances must be added together and the commission of the treasurer figured upon the total amount, at the rate of eight per cent. on the first \$1,000.00 and four per cent. on all over that amount.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*County Treasurer; Fees of. Under Section 3963 R. S.—
Peace Proceedings; Costs in; Percentage of Prosecut-
ing Attorney.*

COUNTY TREASURER; FEES OF UNDER SECTION
3963 R. S.

Attorney General's Office,
Columbus, Ohio, February 27, 1885.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—I return herewith the letter of Mr. W. H. Corbet, treasurer of Van Wert County, submitted to me by you. In my opinion, the treasurer of the county in which is situated the school house of a district composed of territory in more than one county, is not entitled to any commission or percentage on the funds belonging to such district which are collected and paid to him by the treasurer of the other county or counties in pursuance of section 3963 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PEACE PROCEEDINGS; COSTS IN; PERCENTAGE
OF PROSECUTING ATTORNEY.

Attorney General's Office,
Columbus, Ohio, February 27, 1885.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—YOUR favor of the 26th instant is received. In my opinion, costs collected from defendants in proceedings to keep the peace, and paid into the county treasury, are moneys collected on costs in criminal causes, within the meaning of section 1298 Revised Statutes, and the prosecuting attorney is entitled to ten per cent. thereof. I am

*Journeyman Bookbinders' Union; Articles of Incorporation
of.*

further of the opinion that, under section 6470 Revised Statutes, the probate judge is required to pay into the county treasury all costs collected from defendants in proceedings to keep the peace before him.

It is true that the Supreme Court in the case of *Ohio vs Brazier*, 37 O. St., 78, held that the jurisdiction in the punishment of crimes and misdemeanors conferred upon the Probate Court, in certain counties, by the act of April 4th, 1859 (2 S. & C., 1223), did not embrace the power to entertain a complaint in a peace proceeding, and that the conduct which afforded ground for such proceeding is not a crime or misdemeanor, within the meaning of said act. I do not think, however, that the words "criminal causes" as used in the sections of the Revised Statutes, above referred to, should be construed with the same strictness, but that, in the sense there used a peace proceeding is a criminal cause.

Yours truly,

JAMES LAWRENCE,

Attorney General.

JOURNEYMEN BOOKBINDERS' UNION; ARTICLES
OF INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, February 27, 1885.

Hon. J. S. Robinson, Secretary of State:

SIR:—I return herewith the articles of incorporation of the "Journeyman Bookbinders' Union," and advise that you decline to file the same in your office. One object, for which it is stated that said proposed corporation is organized, is "the mutual benefit of its members by providing for said members in sickness and distress," which is included in the

Journeyman Bookbinders' Union; Articles of Incorporation of.

purposes for which corporations are authorized to be formed under section 3630 Revised Statutes. With this object are associated other objects not authorized by said statute, to-wit: "assisting journeymen workmen in getting work and the protection of the journeymen bookbinders' trade in general." For the first object above mentioned a corporation can only be organized under and by virtue of section 3630, but in that case it must be organized for the purposes therein named and no other. It cannot be created for an object which is but a part of one of the general purposes authorized by that section, nor can there be joined with such purposes objects not thereby authorized.

I also return herewith the articles of incorporation of the "Lithographic Printers' Society," and advise that you decline to file the same in your office, for the following reasons:

1. The place where said proposed corporation is to be located does not sufficiently appear.

2. A corporation can be formed to transact the business contemplated only under and by virtue of section 3630, and, for reasons heretofore given, I do not think that the purpose, for which this corporation is formed, is properly stated in the articles. It should be generally for the "mutual protection and relief of its members."

The exception in respect to associations of mechanics, etc., provided in section eight of the act of April 12th, 1880, does not apply to the organization of such associations, but merely to their conduct and management.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Russell Hill Coal Company; Articles of Incorporation of.*RUSSELL HILL COAL COMPANY; ARTICLES OF
INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, February 28, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of "The Russell Hill Coal Company" and respectfully advise that you refuse to file the same in your office, for the reason that one purpose for which the proposed corporation is formed amounts to dealing in real estate. By virtue of section 3239 Revised Statutes a corporation may acquire and convey at pleasure all such real or personal estate as may be necessary and convenient to carry into effect the objects of the incorporation. This power it has by virtue of its incorporation and whether expressed in the articles or not. A corporation, however, cannot be formed for the express purpose of buying and selling lands generally.

I am also of opinion that one terminus of the improvement, which it is proposed to construct is not sufficiently stated. It is to be constructed to "such lands," but where the lands are does not appear.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Sheriff; Fees of, on Subpoena in Capital Case—Constable;
Fee of, for Service of Subpoena.*

SHERIFF; FEES OF, ON SUPOENA IN CAPITAL
CASE.

Attorney General's Office,
Columbus, Ohio, March 9, 1885.

*R. S. Parker, Esq., Prosecuting Attorney, Bowling Green,
Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 2d instant was not received until today. Except as provided in section 1231 Revised Statutes, the sheriff can receive no allowance or payment out of the county treasury for serving subpoenas in a capital case where the defendant has been convicted but proves insolvent. I am, therefore, of opinion, that the board of county commissioners should refuse to allow the bill presented by the sheriff for such services.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CONSTABLE; FEE OF, FOR SERVICE OF SUB-
SUBPOENA.

Attorney General's Office,
Columbus, Ohio, March 9, 1885.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 3d instant was not received until today. In my opinion a constable can only charge mileage for the shortest distance necessary to be traveled in order to serve all the persons named in a subpoena. Where several witnesses reside at the same place he cannot charge full mileage

Probate Judge; Fees of, for Holding Inquest.

for each, but only one for all of them. I think that a constable is entitled to charge twenty-five cents for a copy of subpœna where the subpœna is served by copy. A subpœna is certainly a writ, and in section 622 the language is general, "for copies of all writs * * * served, twenty-five cents," no exception being made in respect to subpœnas.

Yours truly,

JAMES LAWRENCE,

Attorney General.

PROBATE JUDGE; FEES OF, FOR HOLDING IN-
QUEST.

Attorney General's Office,
Columbus, Ohio, March 10, 1885.

John T. Busby, Esq., Probate Judge, Lancaster, Ohio:

DEAR SIR:—Your favor of the 7th instant was duly received. In my opinion the bill submitted to me and which is herewith returned, cannot be paid out of the county treasury. For holding an inquest and for his services in connection therewith the probate judge is entitled only to such fees and costs as are expressly allowed him by law. No provision is made for the payment of additional compensation or expenses in cases where it is necessary for him to personally visit the person alleged to be insane.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Sheriff; Fees for Service of Summons—Township Treasurer; Manner of Payment of Compensation.

SHERIFF; FEES FOR SERVICE OF SUMMONS.

Attorney General's Office,
Columbus, Ohio, March 11, 1885.

W. H. Wolfe, Esq., Clerk of Courts, Lancaster, Ohio:

DEAR SIR:—Owing to my absence from the city and to the press of business since returning, I have been unable to reply sooner to your favor of the 2d instant.

In an action against four defendants if the precipe require a summons to be issued for all defendants to the same sheriff, I am of opinion that the clerk must issue but one summons, including the names of all defendants therein.

Yours truly,

JAMES LAWRENCE,
Attorney General.

TOWNSHIP TREASURER; MANNER OF PAYMENT
OF COMPENSATION.

Attorney General's Office,
Columbus, Ohio, March 11, 1885.

Mr. W. E. Merriman, Randolph, Ohio:

DEAR SIR:—The question presented in your favor of the 4th instant should be referred to the prosecuting attorney of the county, as I am not authorized to give to you an official opinion thereon. I would say, however, that I think there can be no doubt that under section 4056 Revised Statutes the compensation of the township treasurer, as treasurer of the township school funds, is to be paid out of the contingent fund on the order of the board of education.

Yours truly,

JAMES LAWRENCE,
Attorney General.

County Commissioners; Compensation of.

COUNTY COMMISSIONERS; COMPENSATION OF.

Attorney General's Office,
Columbus, Ohio, March 13, 1885.

Horace Smith, Esq., Attorney at Law, Youngstown, Ohio:

DEAR SIR:—Your favor of the 9th instant was duly received. I am of opinion that, in a county having less than one hundred thousand inhabitants, a county commissioner when traveling on official business within his county under the direction of the board, other than in attending regular or called sessions, is entitled to \$3.00 per day for his services, five cents per mile for mileage, and in addition thereto his reasonable and necessary expenses actually paid, but not including anything paid for railroad fare, carriage hire or other mode of conveyance. In other words, the allowance for expenses must be considered as applying only to such expenses as are in addition to those covered by the mileage. I think it may be stated as a general rule, that an allowance of mileage to an officer precludes his charging anything for traveling expenses, unless the contrary is expressly provided.

A bill for a livery team used by the commissioners in traveling on official business within their county cannot, therefore, in my opinion, be paid out of the county treasury.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Children's Home; Power of Trustees of to Indenture—
Mayor; Power to Administer Oaths; Cemeteries; Con-
trol of, by Township and Municipal Corporation.*

CHILDREN'S HOME; POWER OF TRUSTEES OF
TO INDENTURE.

Attorney General's Office,
Columbus, Ohio, March 13, 1885.

E. J. West, Esq., Prosecuting Attorney, Wilmington, Ohio:

DEAR SIR:—In my opinion the trustees of a county children's home have no authority to bind out or indenture an inmate of such home for a longer period than until such inmate shall arrive at the age of sixteen years.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MAYOR; POWER TO ADMINISTER OATHS; CEME-
TERIES; CONTROL OF, BY TOWNSHIP AND
MUNICIPAL CORPORATION.

Attorney General's Office,
Columbus, Ohio, March 13, 1885.

J. M. Toner, Esq., Mayor, Eden, Ohio:

DEAR SIR:—In reply to your favor of the 9th instant I have to say:

1. A mayor of a municipal corporation has no authority to take acknowledgments or administer oaths outside of such corporation. Within the limits of the corporation he has the same power in these respects as a justice of the peace.

2. So much of the money arising from the sale of lots in a cemetery owned in common by a village and township as may be necessary to reimburse such village and township for the cost of the lands purchased or appropriated

*Clerks and Sergeants at Arms; Per Diem During Recess of
Legislature.*

for the cemetery may, from time to time, be paid to the village and township respectively. All the rest of such receipts must be expended to keep in order and embellish the grounds, including the expenses of managing the cemetery. Rules and orders in reference to the application of said moneys for said purposes should be adopted in pursuance of section 2541 Revised Statutes, and subject to said rules and orders the trustees of the cemetery have control of the expenditure.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CLERKS AND SERGEANTS AT ARMS; PER DIEM
DURING RECESS OF LEGISLATURE.

Attorney General's Office,
Columbus, Ohio, March 13, 1885.

Hon. E. Kiesewetter, Auditor of State:

DEAR SIR:—I am of opinion that the clerks and sergeants at arms of the Senate and House of Representatives and their assistants, are not entitled to their per diem compensation during the recent adjournment of the General Assembly from February 28th to March 10th, 1885.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Costs; Payment of, in Case of Misdemeanors and Felonies.

COSTS; PAYMENT OF, IN CASE OF MISDEMEANORS AND FELONIES.

Attorney General's Office,
Columbus, Ohio, March 13, 1885.

Theodore K. Funk, Esq., Prosecuting Attorney, Portsmouth, Ohio:

DEAR SIR:—I am in receipt of your favor of the 9th instant submitting certain questions, which with answers thereto are as follows:

1. *Question.* "In felony cases where the State finally convicts how shall magistrates' costs be paid?"

Answer. Paid out of the county treasury and inserted in the judgment of conviction, and, except in capital cases, repaid to the county out of the State treasury. See section 1306 Revised Statutes.

2. *Question.* "In felony cases when recognizances are taken, forfeited and collected, how shall magistrates' costs be paid?"

Answer. I do not think that the question is affected by the fact that a recognizance has been taken, forfeited and collected. The payment of costs is governed by the rules applicable to other like cases without reference to the recognizance.

3. *Question.* "In felony cases where the State fails to find indictment or fails to convict in Common Pleas Court, what magistrates' costs shall be paid, if any, and how?"

Answer. The county commissioners may make to the magistrate, marshal, or constable an allowance in lieu of fees as provided in section 1309 Revised Statutes. The fees of witnesses are to be paid out of the county treasury as provided in section 1308.

4. *Question.* "When a party is charged with felony before magistrate, bound over, indicted for misdemeanor simply, or indicted for felony and found guilty of misdemeanor finally, what cost, if any, shall be paid and how?"

Costs; Payment of, in Case of Misdemeanors and Felonies.

Answer. It is not very clear, but I think that in such cases the fees of witnesses before the magistrate are to be paid out of the county treasury as provided in section 1308, and that the commissioners may make an allowance to the magistrate, marshal, or constable in lieu of fees as provided in section 1307.

5. *Question.* "If a party be bound over by a magistrate, charged with a felony, gives bond, leaves county and bond proves uncollectable, what magistrates' costs shall be paid and how?"

Answer. Same answer to this question as to third question.

6. *Question.* "If a party be accused of a felony, has a hearing before a magistrate court and is discharged, what magistrates' costs, if any, shall be paid and how?"

Answer. Same answer to this question as to third question.

7. *Question.* "If a party is accused of a misdemeanor before a magistrate, and is charged in that court, what magistrates' costs, if any, shall be paid and how?"

Answer. Nothing can be paid out of the county treasury.

8. *Question.* "If party is accused of a misdemeanor before a magistrate, and is bound over to proper court and the State fails, what magistrates' costs, if any, shall be paid and how?"

Answer. Same answer to this question as to seventh question.

9. *Question.* "If a party is accused of misdemeanor, bound over to proper court and the State succeeds but the defendant proves insolvent, what magistrates costs shall be paid, if any, and how?"

Answer. The county commissioners may make an allowance to the magistrate, marshal, or constable in lieu of fees as provided in section 1309 Revised Statutes.

10. *Question.* "If magistrate fails to put in cost bills

Costs; Payment of, in Case of Misdemeanors and Felonies.

in any criminal case before the expiration of a year, what magistrates' costs shall be paid, if any, and how?"

Answer. I do not think that the magistrate loses his right to an allowance in any case by failing to present a bill of costs to the commissioners before the expiration of one year from the time the same were made, provided that the amount allowed in any one year or for costs made during any period of one year shall not exceed one hundred dollars. As the commissioners have discretion in the matter, they should refuse to make an allowance in such cases unless the delay in presenting the bill occurred through some good reason.

In reference to the other matter mentioned in your letter, I have to say that the expenses of the county commissioners, while attending the recent meeting of the county commissioners' State association of Columbus cannot be paid by the county. Their business here at the time referred to was in no sense official business or business of the county pertaining to their office. Official business is such business as an officer transacts in the performance of the duties prescribed by law or in the exercise of the authority conferred thereby. The resolution of the board cannot affect the question, for the commissioners cannot add to their duties or authority as fixed by law.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Costs; Allowance to Magistrates, Etc., by County Commissioners.

COSTS; ALLOWANCE TO MAGISTRATES, ETC. BY
COUNTY COMMISSIONERS.

Attorney General's Office,
Columbus, Ohio, March 14, 1885.

Robert S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—To the several questions submitted in your favor of the 9th instant I make this general answer, which I think covers all of them. In misdemeanors no costs of any kind can be paid out of the county treasury to any justice of the peace, police judge or justice, mayor, marshal or constable. In such cases, however, where the defendant has been convicted and proves insolvent the county commissioners may make to the officers named an allowance in lieu of fees as provided in section 1309 Revised Statutes. This allowance is not a payment of fees out of the county treasury, but an allowance in lieu thereof, which may or may not equal the amount of fees legally taxed to the officer. I do not think that the scope and operation of section 1309 is enlarged or extended by implication from section 1311. The allowance provided for in the former section can only be made in misdemeanors when the defendant has been convicted and proves insolvent. In misdemeanors as well as in felonies the fees of witnesses attending under recognizance or subpoena, issued by order of the prosecuting attorney or defendant, before the Court of Common Pleas or grand jury, or other courts of record, are to be paid out of the county treasury as provided in section 1302 Revised Statutes, but in no case of misdemeanor can the fees of witnesses before the magistrate be paid out of the county treasury.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Election; Judges and Clerks in Certain Case—Adjournment; Effect of, by Legislature.

ELECTION; JUDGES AND CLERKS IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, March 17, 1885.

J. L. DeWitt, Esq., Mayor, Sandusky, Ohio:

DEAR SIR:—I am in receipt of your favor of the 13th instant in which you state that the five wards of Sandusky heretofore existing have by ordinance of the city council been divided, making ten wards in all, and you ask my opinion as to how the judges and clerks of election in the new wards shall be chosen at the ensuing election. In such case I am of opinion that the judges and clerks of election in the new wards should be chosen by the electors present at the time and place of holding said election.

Yours truly,

JAMES LAWRENCE,
Attorney General.

ADJOURNMENT; EFFECT OF, BY LEGISLATURE.

Attorney General's Office,
Columbus, Ohio, March 18, 1885.

To the Senate:

In compliance with Senate resolution No. 92, requesting my opinion relative to the legal effect, in certain respects, of the adjournment of the General Assembly from February 28th, 1885, to March 10th, 1885, I have to say that, in my opinion, when the General Assembly convened on said last named day a new session commenced, which is a separate and distinct session from that held from the 6th day of January, 1885, to the 28th day of February last. I can

Adjournment; Effect of, by Legislature.

reach no other conclusion than that, whenever the General Assembly by joint resolution of both houses adjourned for more than two days, Sundays excluded, its session ceases and determines. The resolution under which the recent adjournment was had is in form substantially the same as the usual resolutions whereby the General Assembly has heretofore in alternate years adjourned from its first or regular session to its second or adjourned session, and neither in the constitution or the statutes is there any ground for a distinction by reason of the length of time for which the adjournment is had, provided the period exceeds that for which one house may adjourn without the consent of the other. The constitution does not specifically provide for an adjourned session but in view of the uniform practice for many years and of the power which the General Assembly has to adjourn to a future day, the Supreme Court has recognized its right to hold such adjourned sessions as distinct from the regular session. Upon this subject the court say:

“The General Assembly, in legal contemplation, is a continuing body, as enduring as the constitution; but when not in session it has merely a potential existence. Its members are at all times liable to be called together to act as an organized body; and it is only when they are thus convened that the General Assembly can be said to be in session, or competent for the transaction of business. As respects the power or capacity of the General Assembly, it is a matter of indifference whether it is convened in pursuance of the express injunction of the constitution at the time prescribed for the regular session, or under the call of the governor, or at a time fixed by itself. Its authority is as ample at one session as at another.”

(State vs Harmon, 31 O. St., 250.)

The designation of the different sessions which a General Assembly may hold is not very material. The constitution calls the first session, which is to commence on the first Monday of January biennially, the regular session,

County Commissioners; Powers of, in Awarding Contracts.

and the statutes speak of regular, adjourned and called sessions. As a matter of convenience, where more than one adjourned session is held, I think that the same may properly be designated as the "first adjourned session," "second adjourned session," etc. In such case, however, it is not necessary that a separate volume of laws be published for each of said sessions, as the statutes contemplate and provide merely for an annual volume to contain all the laws and joint resolutions passed during the year.

Respectfully submitted,

JAMES LAWRENCE,

Attorney General.

COUNTY COMMISSIONERS; POWERS OF, IN
AWARDING CONTRACTS.

Attorney General's Office,
Columbus, Ohio, March 18, 1885.

*R. B. Montgomery, Esq., Prosecuting Attorney, Columbus,
Ohio:*

DEAR SIR:—I am in receipt of your favor of the 17th instant requesting my opinion whether or not the county commissioners, in letting contracts for the erection of the new court house for Franklin County "have power to award separate contracts in excess of the estimates of the several branches of the work, in other words, whether section 800 of the Revised Statutes requires that each separate contract shall be within the separate estimate of the architect for that branch of the work."

In reply I have to say that, in my opinion, the county commissioners may, in their discretion, accept a bid and award a contract for furnishing the materials or doing the work for a separate and distinct trade or kind of mechanical labor, employment or business necessary to be used

Justice of the Peace; Notice for Election of.

in erecting said building, which exceeds the estimate for that particular part of the work, provided the separate bids in the aggregate are within the estimated cost of the improvement and do not exceed in amount any bid which includes the whole of the work. The aggregate of all the contracts let must not exceed the estimates for the entire building.

Yours truly,
JAMES LAWRENCE,
Attorney General.

JUSTICE OF THE PEACE; NOTICE FOR ELECTION
OF.

Attorney General's Office,
Columbus, Ohio, March 17, 1885.

J. F. McNeal, Esq., Attorney at Law, Marion, Ohio:

DEAR SIR:—Your favor of the 13th instant is received. The trustees of Marion Township, having received notice in pursuance of section 581 that the commissions of the justices of the peace for said township will expire next September, it is their duty to notify the electors of such township to elect at the ensuing April election justices of the peace to fill such vacancies, and the terms of the persons thus elected will commence upon the expiration of the terms of the present incumbents. The purpose of the statute, in providing that the election may be held before a vacancy actually happens, is to avoid as far as possible the necessity of special elections.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Columbus Natural Gas, Light, Heat and Fuel Company;
Articles of Incorporation of.*

COLUMBUS NATURAL GAS, LIGHT, HEAT AND
FUEL COMPANY; ARTICLES OF INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, March 18, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of the Columbus Natural Gas, Light, Heat and Fuel Company and of the Cincinnati Natural Gas, Light, Heat and Fuel Company, and am of the opinion that the same should not be filed in your office for the following reasons:

1. It does not appear that a majority of the incorporators named in either certificate are residents of the State of Ohio.
2. Corporations cannot be formed to have the *exclusive privilege* of furnishing natural gas, etc.
3. The articles do not sufficiently state where the corporations are to be located or where their principal business is to be transacted.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Report; Annual, of Village Clerk, Publication of—Insurance Companies; Securities Deposited by Foreign, Cannot be Attached.

REPORT; ANNUAL, OF VILLAGE CLERK, PUBLICATION OF.

Attorney General's Office,
Columbus, Ohio, March 19, 1885.

C. M. Campbell, Esq., Proprietor Daily News, Hamilton, Ohio:

DEAR SIR:—Your favor of the 18th instant is received. I do not think that I have at any time given an opinion to the clerk of Lebanon. The publication of the annual report of a city or village clerk is regulated by section 1757 Revised Statutes (amended 80 O. L., 65), which requires that, in a corporation having over two thousand inhabitants, the clerk shall have the same published once in some newspaper published or of general circulation in the corporation.

Yours truly,

JAMES LAWRENCE,
Attorney General.

INSURANCE COMPANIES; SECURITIES DEPOSITED BY FOREIGN, CANNOT BE ATTACHED.

Attorney General's Office,
Columbus, Ohio, March 19, 1885.

Messrs. Mix, Noble and White, Attorneys at Law, Cleveland, Ohio:

DEAR SIRS:—The superintendent of insurance has not submitted to me the question referred to in your favor of the 18th instant. I am of opinion, however, that the bonds, stocks and securities deposited with him by foreign insurance companies, in pursuance of our statutes, cannot be reached by attachment. Aside from the difficulty arising

Municipal Corporation; Clerk of, Cannot Administer Oaths.

from the nature of the securities themselves, I base my conclusions upon the following:

1. The superintendent is an agent of the State, and, in respect to these deposits, acts in the name and by the authority of the State. I do not think that he can be sued at law or made a defendant to a garnishee process any more than can the State itself.

2. He holds the deposits in trust for the security and benefit of the policyholders of the several companies, and for such purpose alone.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION ; CLERK OF, CANNOT
ADMINISTER OATHS.

Attorney General's Office,
Columbus, Ohio, March 19, 1885.

Mr. J. R. Donaldson, Village Clerk, Richmond, Ohio:

DEAR SIR:—Your favor of the 17th instant is received. In my opinion a clerk of a municipal corporation has no authority to administer oaths or take the acknowledgment of deeds.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Pharmacy Act; Definition of "Country Store" in—Swamp Land Commissioner; Construction of Resolution Creating, and Appointment of Geo. H. Foster.

PHARMACY ACT; DEFINITION OF "COUNTRY STORE" IN.

Attorney General's Office,
Columbus, Ohio, March 21, 1885.

Dr. J. L. Geyer, Norwich, Ohio:

DEAR SIR:—Your favor of the 19th instant is at hand. The term "country store" used in section 4405 Revised Statutes as amended March 20th, 1884 (81 O. L., 61), is perhaps somewhat indefinite. In its most restricted sense it would apply to any store not in a city, whether in a village or the open country. I am inclined to think, however, that it has a broader meaning than this, and includes any general store such as is usually found in the country.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SWAMP LAND COMMISSIONER; CONSTRUCTION OF RESOLUTION CREATING, AND APPOINTMENT OF GEO. H. FOSTER.

Attorney General's Office,
Columbus, Ohio, March 21, 1885.

Hon. George Hoadly, Governor:

SIR:—In compliance with your request I have examined into the relations between the State and George H. Foster under the joint resolutions of the General Assembly, passed April 20th, 1881, authorizing the governor to appoint a commissioner to act on the part of the State in the adjustment and settlement of claims against the general gov-

*Swamp Land Commissioner; Construction of Resolution
Creating, and Appointment of Geo. H. Foster.*

ernment, arising out of the original swamp land grant of September 28th, 1850, and the indemnity acts of March 2d, 1855, and March 3d, 1857 (78 O. L., 435).

On the 24th day of December, 1881, Governor Foster, in pursuance of said resolution, appointed George H. Foster of Cuyahoga County a commissioner to adjust and collect the claims specified in said resolution, his compensation to be such percentage of the money collected for the State as should be thereafter determined. On the 8th day of December, 1882, the governor, as authorized by said resolution, fixed the commission of Mr. Foster for his services in the prosecution of said claims at twenty-five per cent. of the amount of money collected, he to bear all expenses of collection.

I understand that the said commissioner, in pursuance of his appointment has prosecuted the work entrusted to him with diligence and dispatch, considering the nature of the claims, and that he has already spent much time and labor and incurred large expenses in that behalf. It is now suggested that the joint resolution above mentioned provides for an appointment to an office, and is, therefore, unconstitutional and void, because the General Assembly cannot create an office by a joint resolution.

Replying to the several questions submitted by you in this connection, I have the honor to say:

1. Within its proper province a joint resolution of the General Assembly, as an expression of the legislative will, has all the force and effect of a law, but what is that proper province is a question which, so far as I am advised, has never been determined in Ohio. The constitution distinguishes between laws and resolutions. The former are bills matured into acts, by the action of the legislature in accordance with the provisions of the constitution. "Bills may originate in either house, but may be altered, amended or rejected in the other." "Every bill shall be fully and distinctly read on three different days." The presiding officer

*Swamp Land Commissioner; Construction of Resolution
Creating, and Appointment of Geo. H. Foster.*

of each house shall sign publicly, in the presence of the house over which he presides, while in session, all bills and joint resolutions, passed," etc. The style of the laws of this State shall be, "Be it enacted by the General Assembly of the State of Ohio." (Sections 15 to 18, article 2).

On the other hand, a resolution requires merely the vote of both houses, in accordance with their rules, without that deliberate action prescribed by the constitution in the case of laws.

Under the constitution the election and appointment of all officers shall be made in such manner as may be directed *by law*. I am inclined to the opinion that the words "by law" here mean a law enacted in the manner required for the passage of bills, and that the General Assembly cannot by joint resolution create an office or direct the manner in which the same shall be filled.

2. I have reached the conclusion, however, that the commissioner appointed in pursuance of the joint resolution of April 20th, 1881, is not an officer within the meaning of section 27, article 2, of the constitution, nor within the definition of an office adopted by the Supreme Court in the case of *The State vs Kennon et al* (7 O. St., 546). He is rather an agent or employe of the State for a special, limited and incidental purpose, and his duties cease upon completion of the work for which he is employed. The fact that a commission was issued to him by the governor can make no difference, for that is but the evidence of his appointment and cannot operate to enlarge the functions conferred by the resolution. I think that the General Assembly may provide for the appointment of such agent by joint resolution.

3. Where no definite term of office is prescribed, the power of removal is incident to the power of appointment, and, in the absence of any contract relation, undoubtedly the same rule is applicable to any special agent or employe of the State. But in the present case, it seems to me, there

Report; Annual, of Village Clerk; Publication of.

is a relation by contract. On the one hand the State has employed Mr. Foster to do the work specified at a commission based upon the amount of money collected, he to pay all expenses of collection; on the other hand, by accepting such employment he has in effect agreed to devote such labor and skill and incur and pay such expenses as may be necessary for the purpose. Having gone on and paid out money for expenses and devoted his time and skill to the work, I am of the opinion that he has now a right in the employment and compensation stipulated, of which he cannot be deprived, except for a cause amounting to a failure to perform the obligations on his part in the premises. In this view the governor has no power to discharge him and appoint a successor without the existence of such cause.

4. If I am correct in the foregoing, your remaining question becomes unimportant. I would say, however, that if the governor has power to remove the present commissioner and appoint a successor, it must be because there is no such contract relation as I have suggested. In that case Mr. Foster would have to lose the time and money heretofore given to the work, and would have no legal claim against the State on account thereof.

Respectfully,

JAMES LAWRENCE,

Attorney General.

REPORT; ANNUAL, OF VILLAGE CLERK; PUBLICATION OF.

Attorney General's Office,
Columbus, Ohio, March 23, 1885.

C. M. Campbell, Esq., Proprietor Daily News, Hamilton, Ohio:

DEAR SIR:—Your favor of the 21st instant is received. Under section 1757 Revised Statutes, as amended March

Municipal Corporation; Vacancy in Council of.

21st, 1883 (80 O. L., 65), the statement of your city clerk is not required to be published in a newspaper if the corporation publishes a detailed statement of receipts and expenditures in book form or in any other printed matter as provided in said section.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; VACANCY IN COUNCIL OF.

Attorney General's Office,
Columbus, Ohio, March 23, 1885.

Thomas J. Roach, Esq., Mayor, Minerva, Ohio:

DEAR SIR:—Your favor of the 21st instant is received. In case a person elected a member of the council of a municipal corporation fails to qualify within ten days after he has been notified of his election, the council may declare his office vacant, but no vacancy occurs until the council so declares. When such vacancy has occurred in the council of a village, the mayor, by and with the consent of the council, has power to fill the vacancy by appointing some elector of the corporation to serve for the unexpired term. In such case the appointee will serve until the end of the term for which the person who failed to qualify was elected.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Costs; Payment by State in Certain Cases.

COSTS; PAYMENT BY STATE IN CERTAIN
CASES.

Attorney General's Office,
Columbus, Ohio, March 25, 1885.

B. J. McKinney, Esq., Chief Clerk of Auditor of State:

DEAR SIR:—In reply to your favor of the 24th instant I have to say:

1. In my opinion, a convict in the penitentiary who is brought before a court to testify in a criminal case, in pursuance of section 7290 and 7291 Revised Statutes, is not entitled to any fees or mileage, for the reason that the special statutes upon this subject make no provision for such allowance.

2. Neither is the officer, who transports such prisoner from the penitentiary to the court, entitled to receive any per diem or other compensation for his services in that behalf. Section 7292 provides merely that the expenses of the officer in transporting the prisoner to and from the court shall be allowed by the court and taxed and paid as other costs against the State.

3. Under section 7332 Revised Statutes (amended 79 O. L., 100) any sum paid by the county commissioners for the arrest and return of a person convicted of a felony, on the requisition of the governor, is to be included as part of the costs made in the prosecution. In my opinion, it is necessary that such sum be first allowed by the county commissioners and paid out of the county treasury before the same can be included in the costs of prosecution or paid by the State.

4. I am further of opinion that, when an attachment is issued for a witness in any case, the costs of such attachment proceeding are not properly costs made in the prosecution of the case, and that the same cannot be paid by the State.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Municipal Corporation; Clerk of, Cannot Administer Oaths
—Ohio National Guard; Obligation of Municipal Corporation to Provide Armory.*

MUNICIPAL CORPORATION; CLERK OF, CANNOT ADMINISTER OATHS.

Attorney General's Office,
Columbus, Ohio, March 25, 1885.

Mr. C. F. Gardner, Village Clerk, Wadsworth, Ohio:

DEAR SIR:—Your favor of the 25th instant is received. In my opinion, the clerk of a municipal corporation has no authority to administer an oath of office.

Yours truly,
JAMES LAWRENCE,
Attorney General.

OHIO NATIONAL GUARD; OBLIGATION OF MUNICIPAL CORPORATION TO PROVIDE ARMORY.

Attorney General's Office,
Columbus, Ohio, March 30, 1885.

Hon. E. B. Finley, Adjutant General:

SIR:—Your favor of the 28th instant is received. By section 3085 Revised Statutes, a municipal corporation, in which the members of any company, troop or battery of the Ohio National Guard reside, is required to provide for such organization a suitable armory and drill room, and the expense thereof is to be paid by such corporation. In my opinion, the obligation to provide a suitable armory and drill room is a continuing one. The corporation must provide an armory and drill room, suitable for the purpose and use contemplated in the statute, and the same must be kept thus suitable at the expense of the corporation. My knowledge of military affairs is not sufficient to enable me to

Special School District; Status of Certain Territory in a.

specify everything necessary to an armory and drill room, but I have no hesitation in saying that it is not suitable within the meaning of section 3085 unless it is properly lighted and heated.

I am, therefore, of the opinion that it is the duty of the village of Bucyrus not only to provide a room for an armory and drill room for the Finley Guards, but also to properly light and heat the same so as to render it suitable for its intended use.

Yours truly,

JAMES LAWRENCE,

Attorney General.

SPECIAL SCHOOL DISTRICT; STATUS OF CERTAIN TERRITORY IN A.

Attorney General's Office,
Columbus, Ohio, March 31, 1885.

Mr. B. S. Bennett, Clerk of Board of Education, Woodstock, Ohio:

DEAR SIR:—In my opinion the act of April 24th, 1877, creating a special school district in Rush Township, Campaign County (74 O. L., 468) is unconstitutional, under the decision of the Supreme Court in the case of State vs Powers (38 O. St., 54). The status of the territory attempted to be organized into such special district is precisely the same as if said act had never been passed, and said so-called special district has no legal existence. The persons who assume to act as the board of education thereof have no warrant or authority. The question as to what is the best course for the people now to pursue is a difficult one, and one which, with my present information, I am unable to determine. I would respectfully suggest that you consult with the prosecuting attorney of the county

*County Commissioners; Power to Contract for Discovery of
Property Not on Tax Duplicate.*

about the matter. As Woodstock is an incorporated village, perhaps a village district, with territory attached for school purposes, will be the best organization.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY COMMISSIONERS; POWER TO CONTRACT FOR DISCOVERY OF PROPERTY NOT ON TAX DUPLICATE.

Attorney General's Office,
Columbus, Ohio, April 1, 1885.

Mr. John Burns, Treasurer, New Lisbon, Ohio:

DEAR SIR:—Your favor of March 30th is received. County commissioners have no authority to enter into a contract employing a person to discover and place upon the duplicate personal property which has not been returned for taxation, nor have they authority, in case the services are rendered, to pay such person either a percentage on the money collected or any other compensation.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Election; Power of Township Trustees Over Places for Holding—Justice of the Peace; Election of.

ELECTION; POWER OF TOWNSHIP TRUSTEES
OVER PLACES FOR HOLDING.

Attorney General's Office,
Columbus, Ohio, April 1, 1885.

Mr. J. M. Defour, Millers, Lawrence County, Ohio:

DEAR SIR:—Your favor of March 31st is at hand. The township trustees must fix the places of holding election in the several precincts of your township, and they may change such places as often as they see fit. See section 1443 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

JUSTICE OF THE PEACE; ELECTION OF.

Attorney General's Office,
Columbus, Ohio, March 31, 1885.

Mr. E. D. Merry, Bellevue, Ohio:

DEAR SIR:—Your favor of the 25th instant is received. In my opinion the candidates for justice of the peace should be voted for upon the same ballot with the candidates for township officers and in one ballot box, but separate poll books and tally sheets should be kept, so that a separate return of the election for justice of the peace may be made.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Board of Education; Election of Members of—Peddler;
What is, in Certain Case.*

BOARD OF EDUCATION; ELECTION OF MEM-
BERS OF.

Attorney General's Office,
Columbus, Ohio, April 2, 1885.

Col. G. H. Safford, Cleveland, Ohio:

DEAR SIR:—Your favor of the 1st instant is received. In my opinion, the election of members of the board of education in village districts must be conducted separately from the election for municipal officers, in accordance with sections 3908-3910 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

PEDDLER; WHAT IS, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, April 9, 1885.

*John M. Broderick, Esq., Prosecuting Attorney, Marysville,
Ohio:*

DEAR SIR:—Your favor of the 6th instant was duly received. In my opinion a person, who travels through the county in a wagon to gather up butter and eggs on his route and also carries goods which he sells or exchanges for produce, is a peddler within the meaning of chapter 14, title V, part second Revised Statutes, and if he sells in this State any goods, wares or merchandise, except such as are manufactured within this State by himself or employer, he must obtain a peddler's license so to do.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Justice of the Peace; Election of—County Commissioners;
Power to Cause Town Plats to be Abstracted.*

JUSTICE OF THE PEACE; ELECTION OF.

Attorney General's Office,
Columbus, Ohio, April 9, 1885.

G. C. Jeffries, Esq., Attorney at Law, Elyria, Ohio:

DEAR SIR:—Your favor of the 7th instant is received. In my opinion, the candidate for justice of the peace should be voted for upon the same ballot with the candidates for township officers and in a single ballot box. Had all the votes for justice been cast in a separate ballot box I have no doubt that the courts would hold such an election to be valid. The statutory provision as to the conduct of the election would be regarded as directory, and if the popular will was clearly manifest, it would undoubtedly be sustained. In the case stated however, a few votes for justice were found written upon tickets deposited in the regular ballot box. I have not had time to look for any authorities upon the question, but I am inclined to think that the person who received these votes was elected.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY COMMISSIONERS; POWER TO CAUSE
TOWN PLATS TO BE ABSTRACTED.

Attorney General's Office,
Columbus, Ohio, April 9, 1885.

Geo. Kinney, Esq., Prosecuting Attorney, Fremont, Ohio:

DEAR SIR:—I have been unable before now to reply to your favor of the 2d instant. You state that, owing to the fact that in an early day the original plats of towns in Sandusky County were recorded with the record of deeds only,

*Ohio National Guard; Township Funds for Payment for
Armory for.*

and that since then they have been recorded without system or order, it is now almost impossible to trace title to town property.

In my opinion the county commissioners have no authority under sections 1143 and 1154, or any other section, of the Revised Statutes to have such plats abstracted as you suggest. Should the commissioners find that the records of plats, or any part of them, have become defaced or injured, they may, under section 1156, direct the recorder to transcribe the same into new books and in so doing the plats could be arranged in their proper order. The discretion of the commissioners in determining whether such records had become defaced or injured could not be controlled unless clearly abused. If relief cannot be had in this way, I see nothing that can be done unless the law be amended.

Yours truly,

JAMES LAWRENCE,
Attorney General.

OHIO NATIONAL GUARD; TOWNSHIP FUNDS
FOR PAYMENT FOR ARMORY FOR.

Attorney General's Office,
Columbus, Ohio, April 9, 1885.

Col. E. E. Nash, Burton, Ohio:

DEAR SIR:—Your favor of the 6th instant is at hand. Section 2827 Revised Statutes directs a levy of taxes for all township purposes. The fund thus realized is available for the payment of the township's proportion of the expenses of providing an armory for an organization of the Ohio National Guard in pursuance of section 3085 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Special School District; Status of Certain Territory Comprised in a.

SPECIAL SCHOOL DISTRICT; STATUS OF CERTAIN TERRITORY COMPRISED IN A.

Attorney General's Office,
Columbus, Ohio, April 10, 1885.

Hon. L. D. Brown, Commissioner of Schools:

DEAR SIR:—In reference to the letter of Mr. C. C. Layman, which is herewith returned, I have to say:

1. A special school district attempted to be created by a special act of the legislature has no legal existence, and the status of the territory comprised therein is the same as if the act had never been passed. In the case presented it appears that at the time of the passage of the act referred to the so-called special district was formed of parts of three separate subdistricts in the same township. No legal change in organization having been made the territory still belongs to these subdistricts respectively, and is under the control of the township board of education. The persons who have assumed to be directors of such so-called special district have no authority whatever.

2. In my opinion, a village district cannot be organized so as to contain nine square miles when only a portion thereof is included in an incorporated village. The village may be organized into a village district as provided in sections 3912, 3913 and 3914 Revised Statutes. In such case the notices required must be signed by not less than five electors residing within the limits of the village. After a village district has been organized, adjoining territory may be transferred to it in the manner prescribed in section 3893 Revised Statutes, but persons residing outside of the village can take no part in the original organization of the village district.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Longview Asylum; Payment by Auditor of State of Appropriations for.

LONGVIEW ASYLUM; PAYMENT BY AUDITOR
OF STATE OF APPROPRIATIONS FOR.

Attorney General's Office,
Columbus, Ohio, April 10, 1885.

Mr. May Fechheimer, Secretary Board of Trustees of Longview Asylum, Carthage, Ohio:

DEAR SIR:—Your favor of the 8th instant is received. There is no statute specially prescribing how the money appropriated for Longview Asylum shall be drawn from the State treasury. The general appropriation act of last year provides that no money therein appropriated shall be drawn except on a requisition on the auditor of state, approved by the head of each department, which shall set forth the services rendered or the materials furnished, and the dates of purchase and time of service, but evidently the provision in respect to setting forth the service rendered, etc., is not applicable to Longview asylum. I think that the requisition must be approved by the board of trustees, but further than this the matter rests almost entirely in the discretion of the auditor of state, who, in my opinion, cannot be compelled to do more than to issue at some time during the fiscal year a warrant or warrants for the amount appropriated. All moneys received from the State treasury, in pursuance of appropriations for Longview asylum, must be paid into the county treasury of Hamilton County, and credited to the asylum fund. Such moneys cannot be retained or expended either by the trustees or steward.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Justice of the Peace; Proceedings in Case of a Tie Vote in
Election for a.*

JUSTICE OF THE PEACE; PROCEEDINGS IN CASE
OF A TIE VOTE IN ELECTION FOR A.

Attorney General's Office,
Columbus, Ohio, April 10, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your favor of this date is received. Section 569 Revised Statutes provides that all elections for justice of the peace shall be conducted in the same manner as is required in the election of members of the General Assembly, and section 2993 Revised Statutes provides that, in case of a tie vote for members of the General Assembly, the clerk of the court issuing the certificate of election, and the county auditor, with two justices of the peace of the county, shall publicly determine by lot who of those having such equal number of votes shall be elected. The proceedings for determining by lot the election of a member of the General Assembly in such case must be considered part of the election, and hence under section 569 are applicable to a like case in respect to the election of a justice of the peace. I am, therefore, of the opinion that, in the case stated by you, the tie vote between Mr. Baker and Mr. Robinson, who were candidates for justice of the peace at the recent election in Goshen Township, Hardin County, must be determined by lot in the manner prescribed in section 2993 Revised Statutes for determining a tie vote in the election of members of the General Assembly.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Taxation; Property of Secret Societies not Exempt from
—Municipal Corporation; "Cleveland Aldermanic
Law;" Power of Old Council.*

TAXATION; PROPERTY OF SECRET SOCIETIES
NOT EXEMPT FROM.

Attorney General's Office,
Columbus, Ohio, April 11, 1885.

E. P. Wilmot, Esq., Attorney at Law, Chagrin Falls, Ohio:

DEAR SIR:—In reply to your favor of the 10th instant I have to say that the lodge rooms, real estate and personal property of Odd Fellows and Masonic organizations are not exempt from taxation in this State.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; "CLEVELAND AL-
DERMANIC LAW;" POWER OF OLD COUN-
CIL.

Attorney General's Office,
Columbus, Ohio, April 11, 1885.

Arnold Green, Esq., Cleveland, Ohio:

DEAR SIR:—Your favor of the 10th inst. is received. In view of the recent decision of the Supreme Court in the case of Ohio ex rel. vs. Pugh et al., it may be doubtful whether the act of April 3, 1885 (82 O. L., 111), which provides for the election of a board of aldermen in the city of Cleveland and extends the application of certain sections of the Revised Statutes to said city, would be held constitutional. Considering said act, however, as a valid enactment, I am of the opinion that the present city council still possesses all the powers vested in it at the time said act was passed, and that it may con-

*Municipal Corporation; "Cleveland Aldermanic Law;"
Power of Old Council.*

tinue to exercise the same until the organization of the new council.

The evident purpose of the act of April 3 was not to take away or suspend any power previously vested in the corporation, but merely to transfer certain power from a single legislative body to a body composed of two houses instead of one, with a qualified veto power in the mayor. Precisely the same legislative power which already existed was conferred upon the new organization by an act which, according to its own terms, could not become operative until a future time. The general system provided for the government of municipal corporations in this State contemplates a continuous exercise of power by a council composed either of one or two houses. To the council is entrusted the management and control of the finances and property of the corporation, and no contract, agreement or obligation can be entered into except by it. Indeed most of the powers conferred upon the corporation can only be exercised by the council. The suspension of its powers is really the suspension of almost all the power possessed by the municipality. If such was the purpose of the Legislature, it ought to have been manifested in the clearest and most unmistakable manner. Not only is such purpose not thus manifested, but the contrary appears. The provision that the members of the council in office should *serve* until the expiration of their respective terms, obviously means not merely that they should remain in office but that they should continue to exercise the powers and perform the duties thereof. If, as is claimed, the city council ceased to exist upon the passage of said act, the provision referred to can have no application to those members whose terms expire this year, for, instead of serving until the end of their term, their functions ceased on the third day of April. In such case also the members holding over would be deprived of the right to serve un-

County Commissioners; Powers of, in Proceedings in Regard to Ditches.

til the act became operative by the election and qualification of the alderman and new councilmen.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY COMMISSIONERS; POWERS OF, IN
PROCEEDINGS IN REGARD TO DITCHES.

Attorney General's Office,
Columbus, Ohio, April 13, 1885.

Robert A. Scott, Esq., Prosecuting Attorney, Bryan, Ohio:

DEAR SIR:—Your favor of the 8th inst: was duly received. In my opinion, the county commissioners, under section 4492 Revised Statutes, may hear and determine at the same time, and under the same petition, an application for the location of a new ditch, together with an application for deepening, widening, straightening or altering any old ditch. Where, however, the petition merely describes the route of a proposed county ditch as beginning at a certain point and terminating at a county ditch already constructed, I do not think that commissioners have authority in the same proceeding to cause the latter ditch to be deepened or widened. It is not a side, lateral, spur or branch ditch, nor can its deepening or widening be considered as a change in the terminus of the proposed ditch, or properly speaking an extension of the new ditch down and along the old ditch. The commissioners may refuse to locate a ditch unless a sufficient outlet is provided, and, in the case you state, I think that they may either do this and require a new petition to be filed, or else they may deepen and widen the existing ditch in a separate proceeding.

Municipal Corporation; Vacancy in Council of; Appointment by Mayor.

Second—I am further of opinion that, the proper proceedings being had, the county commissioners may deepen and widen an existing township ditch, making the same a part of a county ditch by them located and constructed.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; VACANCY IN COUNCIL OF; APPOINTMENT BY MAYOR.

Attorney General's Office.
Columbus, Ohio, April 13, 1885.

Mr. C. F. Gardner, Village Clerk, Wadsworth, Ohio:

DEAR SIR:—Your favor of the 10th inst. was duly received. One of the persons elected to the council of your village in April, 1884, having failed to qualify, a vacancy happened in the council. Under section 1724 Revised Statutes the mayor was authorized to fill such vacancy for the unexpired term. In the case stated by you I am of the opinion that the person heretofore appointed by the mayor, with the consent of the council, is entitled to serve until the expiration of the term for which the person who refused to qualify was elected. Hence there was no vacancy this year.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Union Deposit Company; Articles of Incorporation of—
Roads; Preliminary Proceeding for Construction of
County.*

UNION DEPOSIT COMPANY; ARTICLES OF IN-
CORPORATION OF.

Attorney General's Office,
Columbus, Ohio, April 15, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith articles of incorporation of the Union Deposit Company of Van Wert, Ohio, and respectfully advise that you decline to file the same in your office. The business contemplated by the proposed corporation comes within the provisions of section 3,630 Revised Statutes. A corporation to transact such business must be organized under said section and for the purposes therein authorized and no other.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ROADS; PRELIMINARY PROCEEDINGS FOR CON-
STRUCTION OF COUNTY.

Attorney General's Office,
Columbus, Ohio, April 15, 1885.

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

DEAR SIR:—Your favor of the 14th inst. is received. Before the county commissioners can make an order for the review of a county road in pursuance of section 4652 Revised Statutes, a petition for such review must be presented to them signed by at least twelve freeholders of the county residing in the vicinity where the road is to be reviewed, and

Costs; What Paid by State on Felonies.

there must also be filed a bond such as is required by section 4638 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COSTS; WHAT PAID BY STATE ON FELONIES.

Attorney General's Office,
Columbus, Ohio, April 15, 1885.

Alex Hadden, Esq., Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—I am compelled to say that the action of the auditor of State in reference to the cost bill in the case of John Neal, to which you call my attention, is in accordance with my view of the law. The State has not assumed to pay all the expenses incident to the arrest and conviction of a person sentenced to the penitentiary, but only the costs made in the prosecution, including any sum paid by the county commissioners for the arrest and return of the convict on the requisition of the governor, or on the request of the governor made to the President. I do not think that the expenses of bringing a person charged with a felony from another state, without a requisition, can in any sense be said to be costs made in the prosecution.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Canals; Rights of Riparian Owners to Bed of; Power of Board of Public Works—Infirmiry Directors; Power of, in Regard to Paupers of Another County.

CANALS; RIGHTS OF RIPARIAN OWNERS TO BED OF; POWER OF BOARD OF PUBLIC WORKS.

Attorney General's Office,
Columbus, Ohio, April 15, 1885.

Mr. C. C. Brewer, Secretary of Board of Public Works:

DEAR SIR:—Where a navigable stream of water was taken possession of and appropriated for canal purposes by the State, in pursuance of section 8 of the act of February 4, 1825 (2 Chase, 1,472), all the title which the owners of lands situated on the banks of such stream had in the bed thereof became vested in the State. I am, therefore, of the opinion that the riparian proprietors have no right to the sand and gravel in the Maumee and Auglaize slack waters (so called), but that the board of public works may remove and dispose of such sand and gravel or authorize the same to be done. See *Malone vs. Toledo*, 34 O. St., 541.

Yours truly,
JAMES LAWRENCE,
Attorney General.

INFIRMARY DIRECTORS; POWERS OF, IN REGARD TO PAUPERS OF ANOTHER COUNTY.

Attorney General's Office,
Columbus, Ohio, April 16, 1885.

Mr. Wm. Hill, Clerk of Infirmiry Directors, Blue Creek, Adams County, Ohio:

DEAR SIR:—In reply to your favor of the 13th inst. I have to say:

First—There is no foundation for the claim of the former superintendent of your infirmiry for 35 cents per day

*Infirmaries Directors; Powers of, In Regard to Paupers of
Another County.*

for keeping the insane in such institutions while he was superintendent. The support was not furnished by him, and he would be required to account for any money received by him under the provisions of section 719, Revised Statutes.

Second—I think you read too strictly section 1,496 Revised Statutes (amended 77 O. L., 265). The statute provides that a pauper having a legal settlement in another county should be removed there if the pauper's health permit, and that the county of his settlement should pay all expenses of such removal and the necessary charges for relief. I do not think that the clause directing the payment of the necessary charges for relief is dependent upon a removal being made. If the health of the pauper does not permit such removal, the county of his settlement is still liable for the necessary relief furnished, and an action may be maintained therefor as provided in the statute. It is very doubtful, however, whether the expenses of burial can be included in such relief.

I have only attempted to indicate my views upon the questions presented by you, for the same ought properly to be referred to the prosecuting attorney. In what I have said I do not wish to be understood as interfering with matters within his province.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Officers; Person Cannot Hold as Member of Board of Education and of Equalization—Costs, in Transportation of Youth to Reform Farm.

OFFICERS; PERSON CAN NOT HOLD AS MEMBER OF BOARD OF EDUCATION AND OF EQUALIZATION.

Attorney General's Office,
Columbus, Ohio, April 20, 1885.

A. R. Mackall, Esq., City Solicitor, East Liverpool, Ohio:

DEAR SIR:—Your favor of the 17th inst. is at hand. A person can not at the same time be a member of the council and board of equalization of a city. A citizen member of such board of equalization, in my opinion, holds a municipal office within the meaning and spirit of section 1,681 Revised Statutes. See also section 1,717 Revised Statutes. In the case stated by you Mr. Turnbull was duly elected a member of the board of equalization of East Liverpool. Afterwards, while continuing to be a member of such board, he was elected and assumed to qualify as a member of the city council. In such case I am of the opinion that he had no right to qualify as a member of the council and that he is not now in fact entitled to act as a member of that body. I do not think, however, by attempting to qualify as a member of the council, he ceased to be a member of the board of equalization.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COSTS; IN TRANSPORTATION OF YOUTH TO REFORM FARM.

Attorney General's Office,
Columbus, Ohio, April 20, 1885.

Alex. Hadden, Esq., Prosecuting Attorney, Cleveland, Ohio:

DEAR SIR:—Your favor of the 17th inst. was duly received. In my opinion the provision in section 759 Revised

Paupers; Relief of; Powers Over and Manner of Giving.

Statutes relative to the payment of "the expenses incurred in the transportation of a youth to the reform school" does not include any per diem or other compensation to the officer who takes such youth to the reform school, but applies merely to actual traveling expenses.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PAUPERS; RELIEF OF; POWERS OVER AND MANNER OF GIVING.

Attorney General's Office,
Columbus, Ohio, April 21, 1885.

Robert C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your favor of the 16th inst. was duly received. Under section 974 Revised Statutes (amended 80 O. L., 108), when the trustees of a township, after making the inquiry provided for (i. e., in section 1495), are of the opinion that the person complained of is in a condition requiring public relief, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary. If it appears (i. e., from such statement) that the alleged pauper is legally settled in said township, or has no legal settlement in this State, or that such settlement is unknown, and the superintendent is satisfied that said alleged pauper requires public relief, he shall forthwith receive said pauper and provide for him or her in the institution. The only discretion left to the superintendent is to satisfy himself that the alleged pauper requires public relief. This discretion must be exercised fairly and not arbitrarily, and in a proper case would be controlled by the courts. The terms "order or voucher" found in section 962 Revised Statutes are not strictly ap-

Adjustment and Inspection Company; Articles of Incorporation of.

plicable to the present provisions of the law relative to the admission of paupers into a county infirmary. So far as they relate to the admission of paupers the words must be construed in connection with section 974. The admission of a pauper to the infirmary is also subject to the provisions of section 975 Revised Statutes. I do not think that section 961 confers any power upon the board of infirmary directors as to the admission of paupers. The rules and regulations therein mentioned refer to the management and government of the institution, not to the manner of becoming an inmate.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ADJUSTMENT AND INSPECTION COMPANY;
ARTICLES OF INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, April 21, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I herewith return certificate of incorporation of "the Adjustment and Inspection Company," and respectfully advise that you refuse to file the same in your office. One of the purposes, for which it is stated that said corporation is to be formed, is "for the adjustment of loss and damage by fire and marine hazards." This seems to include the business of fire insurance, whereas neither in the amount of capital stock or otherwise is the certificate sufficient for such purpose.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Tiffin Natural Gas Company; Articles of Incorporation of:

TIFFIN NATURAL GAS COMPANY; ARTICLES OF
INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of "the Tiffin Natural Gas Company," and respectfully advise that you decline to file the same in your office, for the following reasons:

First—In my opinion articles of incorporation must be acknowledged within this State, and such acknowledgment must be certified by the clerk of the Court of Common Pleas of the county in this State in which the acknowledgment was taken. It appears that the articles above named were signed and acknowledged before an officer in the State of Pennsylvania, and the official character of this officer is certified to by the prothonotary of McKean County in said State.

Second—There is no certificate to the official character of the notary public who took the acknowledgment of the three incorporators who executed the said articles in Seneca County, Ohio.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Officers; Police Judge and Clerk of Cleveland Not Commissioned by Governor—Asylums for Insane; Discharges from.

OFFICERS; POLICE JUDGE AND CLERK OF
CLEVELAND NOT COMMISSIONED BY GOV-
ERNOR.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—In reply to your favor of the 18th inst. I have to say that, in my opinion, the governor is not authorized to issue a concession to the police judge or clerk of the police court of the city of Cleveland; nor is the clerk of the Court of Common Pleas of Cuyahoga County required to send to your office a certificate of the election of such police judge and clerk of the police court. I see no objection, however, to your retaining the certificate forwarded to you, in case it will be of any use for statistical purposes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ASYLUMS FOR INSANE; DISCHARGES FROM.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

*C. M. Finch, M.D., Superintendent Asylum for Insane,
Columbus, Ohio:*

DEAR SIR:—In reply to your favor of the 17th inst. I have to say that, in my opinion, the authority to discharge a patient from an asylum for the insane as provided in section 709 Revised Statutes, is not limited by the joint resolution of the General Assembly passed May 14, 1878 (75 O. L.,

Justice of the Peace; Election of.

1,204). Section 709 was enacted in its present form in the revision of the statutes by the act passed June 20, 1879. Hence if there be any conflict between it and the joint resolution, the former, as the latest expression of the legislative will, must govern. However, there is not necessarily any conflict, for said resolution is clearly applicable merely to removals from one district asylum to another, and was not intended to render the patients therein perpetual inmates of the asylum where they then were, or to prevent discharges of such patients as in other cases.

Yours truly,
JAMES LAWRENCE,
Attorney General.

JUSTICE OF THE PEACE; ELECTION OF.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Mr. C. W. Hains, Township Clerk, Bradford, Ohio:

DEAR SIR:—I have been unable to reply until now to your favor of the 16th inst. The candidates for justice of the peace, at the recent election in your township, should have been voted for upon the same ticket and in the same ballot box with the candidates for other offices. The statutes in reference to the conduct of elections are, however, generally regarded as directory merely, and, where the popular will can be ascertained, courts are likely to sustain it. In the case stated by you a separate ballot box having been used by common consent and no votes for justice of the peace having been cast except in such separate ballot box, I am of the opinion that the election would be held valid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*County Surveyor; Official Bond Good When Employed
Under 4494 Revised Statutes—Clerk of Courts; Fees for
Issuing Subpoenas.*

COUNTY SURVEYOR; OFFICIAL BOND GOOD
WHEN EMPLOYED UNDER 4494 R. S.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Mr. E. E. Blanchard, County Surveyor, Warren, Ohio:

DEAR SIR:—Your favor of the 17th inst. was duly received. Under section 4494 Revised Statutes as amended April 20, 1881 (78 O. L., 208), it is my opinion that when the county surveyor has been appointed by the commissioners under the provisions of the chapter relating to county ditches, he is not required to give a bond, but that the sureties on his official bond are liable for the faithful performance of his duties by virtue of said appointment. I think that the last clause of said section as amended is a limitation upon the preceding part thereof.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; FEES FOR ISSUING
SUBPOENAS.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Thomas Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your favor of the 21st inst. is received, but the letter of March 27th to which you refer never came to hand. I am very sure that I never saw it and my messenger has no recollection of receiving such a letter from the post-office. From the manner in which my mail is kept it is

Schools; Levy of Taxes for High School in Certain Case.

scarcely possible for a letter to be mislaid after being received. I have, however, made a complete search of my office without finding it. I am thus particular in explaining the matter because of a similar miscarriage of a former letter of yours. The clerk of the courts is entitled, under section 1260 Revised Statutes, to eight cents for issuing a subpoena wherein there is but one witness named and four cents for each additional witness. In my opinion he is not entitled to any other or further compensation for issuing subpoenas for the grand jury or in criminal cases. The claim of your clerk to 35 cents additional fee for such subpoena on the ground that each contains a "certificate with the seal of the court annexed," seems to me to be entirely without foundation, for no certificate is required in such subpoenas. I am at a loss to know what he calls a "certificate," inasmuch as the blanks submitted to me contain nothing of the kind. The mere signature of the clerk with the seal of the court attached does not constitute a certificate.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SCHOOLS; LEVY OF TAXES FOR HIGH SCHOOL
IN CERTAIN CASES.

Attorney General's Office,
Columbus, Ohio, April 23, 1885.

Hon. L. D. Brown, State Commissioner of Schools:

DEAR SIR:—I return herewith the letter of Mr. S. P. Cramer submitted by you for my opinion. It appears that the board of education of Hubbard Township in 1868 established a central or high school for the township under the act of March 14, 1853, as amended May 14, 1868 (S. & S., 712), and erected a building in a subdistrict of the township for

Schools; Levy of Taxes for High School in Certain Case.

the use of such school. Afterwards, but prior to May 1, 1873, the territory comprised in said subdistrict was formed into the incorporated village of Hubbard and by the act of May 1, 1873 (70 O. L., 185), said village became a village school district. By a recent decision of the Supreme Court Commission it was held that the property of the central or high school and the management of the school did not, by virtue of said last named act, pass to the board of education of said village. I am not advised whether the court passed upon the question of the right of the township board to control said property and school. The syllabus of the case, which is all that I have seen, is silent upon this subject.

Assuming that the township board is entitled to such control, I am of the opinion that it has no authority, under section 3960 Revised Statutes, to cause a levy of taxes for the support of said high school to be made upon property situated in said village of Hubbard, and the county auditor could not recognize an estimate for that purpose. The township board can certify to the county auditor only an estimate to be levied upon the taxable property of the township district, which district does not include any of the territory within the incorporated village. See section 3890 Revised Statutes. It follows also if said high school belongs to the township district that children residing in the village are not entitled to be admitted free to said schools. See section 4013 Revised Statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Boards Education; Manner of Issuing Bonds by—Board of
Public Works; Leases Made by.*

BOARDS OF EDUCATION; MANNER OF ISSUING
BONDS BY.

Attorney General's Office,
Columbus, Ohio, April 30, 1885.

Mr. Alston Ellis, Clerk Board of Education, Sandusky, Ohio:

DEAR SIR:—Your favor of the 29th inst. is received. The act of March 22, 1883, (80 O. L., 68), provides that all bonds issued by boards of education, etc., shall be sold to the highest bidder after being advertised in the manner prescribed, which advertisement must state, among other things, the day, hour and place in the county where they are to be sold. In my opinion, such bonds shall be sold to the highest bidder at public auction and not on sealed proposals, for otherwise the provision in reference to the hour and place of sale would seem to have no application. If, however, the board should sell bonds on sealed proposals, the bonds would not be awarded by reason of such irregularity.

Yours truly,
JAMES LAWRENCE,
Attorney General.

BOARD OF PUBLIC WORKS; LEASES MADE BY.

Attorney General's Office,
Columbus, Ohio, April 22, 1885.

Walter S. Thomas, Esq., Attorney at Law, Troy, Ohio:

DEAR SIR:—Your favor of the 22d inst. is received. By the act of March 24, 1864 (61 O. L., 55), found on page 394 of Williams' supplement to the Revised Statutes, it is provided that all rents accruing upon leases of water power or other rights or property of the State of Ohio made by the

Officers; Power to Administer Oaths by.

board of public works, or other officer of the State, shall be a first lien upon the estates created by such lease.

Yours truly,

JAMES LAWRENCE,

Attorney General.

OFFICERS; POWER TO ADMINISTER OATHS BY.

Attorney General's Office,
Columbus, Ohio, April 25, 1885.

Mr. George E. Ryan, Clerk, La Grange, Ohio:

DEAR SIR:—Your favor of the 24th inst. is received. In my opinion the clerk of a municipal corporation has no authority to administer the oath of office required to be taken by each officer of the corporation by section 1737 Revised Statutes. It is not necessary, however, that such oath of office be administered by the mayor of the corporation. The same may be done by a justice of the peace or other officer authorized to administer oaths.

In the case stated by you the mayor was not properly qualified, and hence had no authority to administer the oath to the other officers elect.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Appropriations; Lapsing of, Contracts for Expenditure
After Two Years.*

APPROPRIATIONS; LAPSING OF, CONTRACTS
FOR EXPENDITURE AFTER TWO YEARS.

Attorney General's Office,
Columbus, Ohio, April 25, 1885.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—In reply to your favor of the 23d inst. I have the honor to say that, in my opinion, the unexpended balances of all appropriations made by the General Assembly lapse at the expiration of two years from the time the act appropriating the same was passed. I do not think that the rule is different where, as in the case of the erection of a public building, a contract has been entered into by agents of the State for the expenditure of the money appropriated, nor where an appropriation has been made for a certain purpose and afterwards an additional appropriation is made for the same purpose. In the latter case each appropriation is available for two years from the time the same was made.

An appropriation has been defined to be "the setting apart and appropriating by law a specific amount of the revenue for the payment of liabilities which may accrue or have accrued." *State vs Medbury*, 7 O. St., 522.

By section 22, Article 2 of the constitution it is provided that "no money shall be drawn from the treasury, except in pursuance of a specific appropriation made by law; and no appropriation shall be made for a longer period than two years."

The plain meaning of the constitution is that the General Assembly shall not set apart any portion of the revenue, so that the same can be drawn from the treasury, for a longer period than two years, and that money can be drawn from the treasury only while it is so set apart in pursuance of a specific appropriation. What the General Assembly is thus prohibited from doing directly, it can not be permitted to do indirectly by authorizing officers of the State to so con-

Children's Home; Power of County Commissioners to Provide a.

tract as to extend an appropriation beyond the period limited. Any other view will practically break down the constitutional limitation: which Judge Swan, in the case above cited, called the keystone of the whole financial system of the State.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CHILDREN'S HOME; POWER OF COUNTY COMMISSIONERS TO PROVIDE A.

Attorney General's Office,
Columbus, Ohio, April 28, 1885.

G. W. Rutledge, Esq., County Auditor, Kenton, Ohio:

DEAR SIR:—Your favor of the 25th inst. was duly received. The act of April 9, 1883 (80 O. L., 102), as amended March 27, 1884 (81 O. L., 92), does not authorize county commissioners to issue bonds or certificates of indebtedness for the purpose of erecting a temporary children's home. The commissioners, however, may enlarge or add to the county infirmary so as to provide suitable accommodations for keeping children therein separate from the adult paupers, and for such purpose they may, under section 871 Revised Statutes, borrow money and issue bonds, in the manner provided in that and the six sections next following.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Appropriations; Improvement of State Property, Appropriation for—Canals; Land Appropriated for, Does Not Revert Upon Abandonment.

APPROPRIATIONS; IMPROVEMENT OF STATE PROPERTY, APPROPRIATION FOR.

Attorney General's Office,
Columbus, Ohio, April 29, 1885.

Hon. Emil Kieseewetter, Auditor of State:

DEAR SIR:—Your favor of the 27th inst. was duly received. In my opinion, section 1 of the act of April 12, 1885, entitled "an act to reimburse certain citizens of the city of Columbus, etc." (82 O. L., 122), undertakes to appropriate money for the payment of claims, the subject matter of which has not been provided for by pre-existing law, and hence required for its passage the vote of two-thirds of the members elected to each branch of the General Assembly. If said act did not receive such vote, I am of the opinion that section 1 is wholly inoperative and void.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CANALS; LAND APPROPRIATED FOR, DOES NOT REVERT UPON ABANDONMENT.

Attorney General's Office,
Columbus, Ohio, April 29, 1885.

B. M. Clendening, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your letter of the 24th inst. to the auditor of state and myself was duly received. Owing to the fact that the original plat of the canals was lost some years ago, I am unable to state particularly as to the title of the state in the lands to which you refer without a more extensive examination of old records than I can give. Assuming, as I have no doubt is the fact, that the lands referred to were ac-

Township Trustees; Failure to Elect; Powers of County Auditor.

quired by the State by purchase or appropriation for canal purposes under the 8th section of the act of February 4, 1825 (2 Chase, 1472), the title of the State would be an absolute estate in fee and such lands would not revert to the original owner on abandonment by the State. See *Malone vs Toledo*, 34 O. St., 541.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TOWNSHIP TRUSTEES; FAILURE TO ELECT;
POWERS OF COUNTY AUDITOR.

Attorney General's Office,
Columbus, Ohio, April 30, 1885.

W. S. Hudson, Esq., Prosecuting Attorney, McArthur, Ohio:

DEAR SIR:—Your favor of the 28th inst. is received. After an original township has been organized and trustees once elected, I am of the opinion that a subsequent failure for the space of one year to elect trustees for such original township does not authorize the county auditor to appoint trustees under section 1371, Revised Statutes. The authority of the county auditor to appoint under said section exists only when there has been a failure to organize such original township or the trustees and treasurer elected have failed to qualify or to perform the duties incumbent on them. If after such township has been organized the trustees fail to give notice of the annual election, as required by section 1369 Revised Statutes, any elector of the township may call an election at any time thereafter.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Ministerial Fund; Catholic Church Entitled to Share In—
Swamp Land Commissioner; Disposition of Moneys
Collected by.*

MINISTERIAL FUND; CATHOLIC CHURCH EN-
TITLED TO SHARE IN.

Attorney General's Office,
Columbus, Ohio, April 30, 1885.

Mr. A. Russell, Township Treasurer, Fillmore, Ohio:

DEAR SIR:—Your letter without date is received. Each denomination of religious societies having members residing in a township which has a ministerial fund is entitled to share in such, as provided in sections 1413 and 1414 Revised Statutes. This applies to the Catholics as well as to any other denomination.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SWAMP LAND COMMISSIONER; DISPOSITION OF
MONEYS COLLECTED BY.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

Hon. George Hoadly, Governor:

DEAR SIR:—I am of the opinion that the money collected by George H. Foster from the United States government on the claims of the State arising out of the original swamp land grant of September 28, 1850, and the indemnity acts of March 2, 1855, and March 3, 1857, should be paid into the general fund for the support of common schools, so provided in the act entitled an act to amend an act entitled an act to increase the general fund for the support of the common schools, etc., passed March 5, 1883 (80 O. L., 39).

Yours respectfully,

JAMES LAWRENCE,
Attorney General.

County Recorder; Fees for Making General Index—County Recorder; for Indexing; By Whom Paid.

COUNTY RECORDER; FEES FOR MAKING GENERAL INDEX.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

M. A. Jordan, Esq., County Recorder, Urbana, Ohio:

DEAR SIR:—Your favor of the 30th ult. was duly received. In my opinion the county recorder for making the general index authorized by section 1154 Revised Statutes, is entitled merely to five cents for each tract of land described. No other fees are provided by law for such services, and the phrase, "in addition to his other fees" can only refer to other fees provided by law. I think these words were added to the section to make it clear that the compensation for the general indexes is separate and distinct from that for the alphabetical indexes provided for in section 1103 and also is in addition to the fees for making the records of which such general indexes are authorized.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY RECORDER; FEES FOR INDEXING; BY WHOM PAID.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

Mr. James Flynn, County Recorder, Sandusky, Ohio:

DEAR SIR:—Your favor of April 30th has been handed to me by the auditor of state. For indexing any mortgage, deed, power of attorney or other instrument of writing recorded in his office the recorder is entitled by section 1157

*County Clerks; Fees for Indexing; Probate Judge; Fees
on Habeas Corpus Cases.*

Revised Statutes to charge ten cents to be paid by the person presenting such instrument for record. This refers to the alphabetical indexes required by section 1153. You seem to confound such alphabetical indexes with the general indexes authorized by section 1154, whereas the two are separate and distinct. For the latter the recorder is entitled to be paid out of the county treasury, but not for keeping up the former. It is true that section 1155 also speaks of "any other indexes authorized by the county commissioners" but this certainly does not refer to the alphabetical indexes, for they are not indexes authorized by the commissioners but are specifically required to be kept by the law.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY CLERKS; FEES FOR INDEXING; PROBATE JUDGE; FEES ON HABEAS CORPUS CASES.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

*Clarence Curtain, Esq., Prosecuting Attorney, Circleville,
Ohio:*

DEAR SIR:—Your favor of the 1st inst. is received.

First—I am not quite sure that I understand what is meant by an index of "living executions", but it is certain that section 1255 Revised Statutes (amended 78 O. L., 88), does not authorize or require any such index to be kept as distinct from the indexes of "pending suits" and "living judgments." The indexes of "pending suits" and "living judgments" should show, respectively, the several things specified in said section, and the provision as to showing

Marshal; Vacancy in Office of, How Filled.

“the number of the execution” is applicable to the index of judgments and is part of the same.

Second—For hearing and determining applications on habeas corpus in criminal cases the probate judge, under section 546 Revised Statutes, is entitled to \$1.50, and no more, to be paid out of the county treasury. The clause immediately following the provision in reference to applications on habeas corpus in criminal cases applies to such applications in civil cases, while the next following clause does not refer to habeas corpus cases at all.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MARSHAL; VACANCY IN OFFICE OF, HOW
FILLED.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

J. F. Walker, Esq., Mayor, Richmond, Ohio:

DEAR SIR:—Your favor of April 29 was duly received. When the office of marshal in a municipal corporation becomes vacant more than sixty days before the next annual municipal election, the council may, in its discretion, require a special election to be held to fill the vacancy. If the council does not see fit to require a special election to be held, the mayor shall, with the advice and consent of the council, fill the vacancy until the next annual municipal election.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Secretary of State; Duty as to Supreme Court Reports—
Lima; City of, Section 4919 R. S., (82 O. L., 171).*

SECRETARY OF STATE: DUTY AS TO SUPREME
COURT REPORTS.

Attorney General's Office,
Columbus, Ohio, May 2, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your favor of this date is received. After the secretary of state, in pursuance of the act of May 1, 1871 (68 O. L., 109), has once supplied a county with such volumes of the Ohio and Ohio State reports as were missing or lost, I am of the opinion that he is not required to supply such county with any volumes thereafter lost unless it be satisfactorily shown that the same were lost or destroyed by unavoidable accident.

Yours truly,
JAMES LAWRENCE,
Attorney General.

LIMA; CITY OF, SECTION 4919 R. S. (82 O. L., 171).

Attorney General's Office,
Columbus, Ohio, May 4, 1885.

James B. Townsend, Esq., Prosecuting Attorney, Lima, Ohio:

DEAR SIR:—As requested in your favor of the 2d inst. I have examined section 4919 Revised Statutes as amended April 29, 1885 (82 O. L., 171). As the section formerly read it was an act of a general nature, but by the recent amendment it has become a special act. The proviso limits the operation of the preceding part of the section to the state outside of the city of Lima, while a different provision is made for said city. I am of the opinion, however, that this

*Taxation; Listing for, by Assignee, Debts of Assignor—
Surveyor or Engineer; Fees of, Two Mile Assessment
Pike; Expenses of One Mile Assessment Pike.*

is a proper subject for special legislation, and that the section as amended is constitutional.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TAXATION; LISTING FOR, BY ASSIGNEE, DEBTS
OF ASSIGNOR.

Attorney General's Office,
Columbus, Ohio, May 6, 1885.

Mr. J. W. King, Eaton, Ohio:

DEAR SIR:—In reply to your favor of the 4th inst. I have to say that an assignee under the insolvent laws of Ohio, in listing for taxation the assets in his hands, can not deduct from credits the debts of the assignor.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SURVEYOR OR ENGINEER; FEES OF, TWO MILE
ASSESSMENT PIKE; EXPENSES OF ONE MILE
ASSESSMENT PIKE.

Attorney General's Office,
Columbus, Ohio, May 6, 1885.

B. M. Clendening, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your favor of the 6th inst. is received. While section 4849 Revised Statutes is not very definite as

*Surveyor or Engineer; Fees of, Two Mile Assessment Pike;
Expenses of One Mile Assessment Pike.*

to the compensation of the surveyor or engineer employed in the construction of two mile assessment pikes, I am of opinion that the provision, that he shall receive such compensation as is fixed by law for the compensation of the county surveyor for like services in other cases, has reference to section 1183 Revised Statutes, which is the only statute fixing the compensation of the county surveyor as such. The provisions as to compensation found in sections 4506, 4527, 4604 and 4664 do not apply specifically to the county surveyor, but to any surveyor or engineer designated for the work. Moreover, section 4604 does not fix the compensation of the engineer, but only the limit which it shall not exceed.

Under section 4798 the expenses of surveying and locating a one mile assessment pike are to be paid out of the funds appropriated to the construction of the road. As the sum paid the surveyor and his assistants out of the county treasury can only be so paid upon the allowance of the county commissioners, I am of the opinion that the amount of their compensation is to be fixed by the county commissioners provided that the same shall not exceed the customary wages per day for like work. The determination of what is such customary wages is thus left largely to the discretion of the county commissioners. However, in determining this matter I think that the county commissioners ought to look to the wages usually prescribed in the statutes for similar services, which, in the case of the surveyor, is four dollars per day.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Township Treasurer; Compensation on Moneys Turned Over to Successor—Taxation; of Railroads; Main Line and Branches.

TOWNSHIP TREASURER; COMPENSATION ON MONEYS TURNED OVER TO SUCCESSOR.

Attorney General's Office,
Columbus, Ohio, May 6, 1885.

Mr. W. B. Woolsey, Township Trustee, Nevada, Ohio:

DEAR SIR:—In reply to your favor of the 2d inst. I have to say that, under section 1532 Revised Statutes, the township treasurer is entitled to his commission of two per cent. only on money which has been both received and paid out. In my opinion, money turned over by a township treasurer to his successor is not paid out within the meaning of the statute, and hence the outgoing treasurer is not entitled to any commission thereon. In the case stated by you, where a township treasurer has received \$3,000.00 of which he paid out \$2,000.00 on orders and turned over \$1,000.00 to his successor, I am of the opinion that he should be allowed his commission only upon the sum of \$2,000.00 so paid out.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TAXATION; OF RAILROADS; MAIN LINE AND BRANCHES.

Attorney General's Office,
Columbus, Ohio, May 6, 1885.

Hon. Emil Kieseewetter, Auditor of State:

DEAR SIR:—I return herewith the letter of Messrs. Elliott and others which you submitted to me. Where a railroad belonging to a single corporation is divided into

Secretary of State; Duty as to Supreme Court Reports; Law Library.

separate divisions or branches, I am of the opinion that, under section 2774 Revised Statutes as amended April 27, 1885 (82 O. L., 160) all the main track, road bed, supplies, moneys and credits of such company subject to taxation in Ohio must be appraised as of a single railroad, and the value of the same must be apportioned to each county in the same proportion that the length of such road in said county bears to the entire length thereof in this state. No distinction is to be made in such case between the main line and the separate divisions or branches, but each is entitled to the same valuation per mile. It may be that the legislature did not intend this result, but the language employed can have, as it seems to me, no other meaning.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SECRETARY OF STATE; DUTY AS TO SUPREME COURT REPORTS; LAW LIBRARY.

Attorney General's Office,
Columbus, Ohio, May 7, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I am of the opinion that out of the volumes of the Ohio and Ohio State reports, reserved for the use of the State, you may properly furnish to the law librarian for the use of the Supreme Court the number of volumes named in the requisition of such librarian, dated May 7, 1885, which I herewith return.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Peddlers; Power of Trustees of Hamlet to License—Municipal Corporation; Power of Council to Make New Appraisalment of Realty in.

PEDDLERS; POWER OF TRUSTEES OF HAMLET
TO LICENSE.

Attorney General's Office,
Columbus, Ohio, May 7, 1885.

Dr. J. F. Porter, Newton Falls, Ohio:

DEAR SIR:—In reply to your favor of the 6th inst. I have to say that, in my opinion, the trustees of a hamlet have no authority to license peddlers either of domestic or foreign productions.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; POWER OF COUNCIL TO MAKE NEW APPRAISEMENT OF REALTY IN.

Attorney General's Office,
Columbus, Ohio, May 7, 1885.

B. A. Holland, Esq., Attorney at Law, Ada, Ohio:

DEAR SIR:—In reply to your favor of the 4th inst. I have to say that the council of a municipal corporation has no authority under section 2753 or any other section of the Revised Statutes to order an entire new appraisalment of all real estate in the corporation to be made by the ward assessors.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*County Recorder; Fees for Indexing—County Auditor;
Vacancy in Office of.*

COUNTY RECORDER; FEES FOR INDEXING.

Attorney General's Office,
Columbus, Ohio, May 12, 1885.

Mr. James Flynn, County Recorder, Sandusky, Ohio:

DEAR SIR:—Your favor of the 11th inst. is received. The sample sheets of what you call "general indexes" to deeds and mortgages contain more details than are required by section 1153 Revised Statutes. Nevertheless these indexes are merely alphabetical indexes, and are in no sense general indexes such as are contemplated in section 1154 Revised Statutes. The latter are intended to show, in respect to the matters indicated, an abstract of title to the property.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY AUDITOR; VACANCY IN OFFICE OF.

Attorney General's Office,
Columbus, Ohio, May 12, 1885.

Hon. Geo. W. Crites, Canal Dover, Ohio:

DEAR SIR:—Your favor of the 9th inst. is received. By section 2 article X of the constitution, county officers are to be elected for such term, not exceeding three years, as may be provided by law. The only provision made by law as to the term, for which a person elected county auditor shall hold his office, is section 1013 Revised Statutes. By section 11 Revised Statutes, when an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held

Clerk of Courts; Index Under Sections 1255 and 1256 R. S.

more than thirty days after the occurrence of the vacancy.

In the case of the county auditor, there being no special provision for the election of a successor for an unexpired term, I am of the opinion that section 1013 governs, and that, at the first proper election held more than thirty days after a vacancy in said office occurs, a successor is to be elected for the full term of three years. So far as I am advised this has been the uniform practice.

In the case you mention I think that an auditor is to be elected next October for the full term of three years, commencing on the second Monday of November next.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; INDEX UNDER SECTIONS
1255 AND 1256 R. S.

Attorney General's Office,
Columbus, Ohio, May 12, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—Your favor of the 8th inst. was duly received. By the act of February 7, 1885, entitled "an act to revise and consolidate the statutes relating to the organization and jurisdiction of the circuit and other courts," section 1255 and 1256 Revised Statutes, as amended March 24, 1881 (78 O. L., 88) are repealed. This repeal is absolute and for all purposes. I can not find at any other act was passed in respect to the subject matter of these repealed sections, but until the laws of the recent session are all printed and indexed, I hesitate to speak positively. If no such act was passed I

*Clerk of Courts; Qualification of Deputy to—Taxation;
Land Contract; Not Taxable in Certain Case.*

know of no provision authorizing the clerk to make the index mentioned in said repealed section 1255.

Yours truly,

JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; QUALIFICATION OF
DEPUTY TO.

Attorney General's Office,
Columbus, Ohio, May 14, 1885.

Mr. Edward Landfair, Clerk of Courts, Celina, Ohio:

DEAR SIR:—Your favor of the 10th inst. was duly received. In my opinion a minor may be appointed and act as deputy clerk of courts, in pursuance of section 1244 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

TAXATION; LAND CONTRACT; NOT TAXABLE IN
CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, May 14, 1885.

Mr. A. W. McConnell, County Auditor, Wauseon, Ohio:

DEAR SIR:—Your favor of the 8th inst. was duly received. Where a man sells his farm under contract for a certain sum to be paid hereafter, but has given no deed for the property and not taken notes for the payment thereof,

Children's Home; Management of Temporary.

but has simply agreed in the contract to give a deed when the purchase price is paid, I am of the opinion that no part of such contract price is subject to taxation, the same not being money loaned or a credit within the meaning of section 2734 Revised Statutes. Of course if the transaction is merely colorable and is in reality a loan of money the case is different.

Yours truly,

JAMES LAWRENCE,
Attorney General.

CHILDREN'S HOME; MANAGEMENT OF TEMPORARY.

Attorney General's Office,
Columbus, Ohio, May 16, 1885.

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

DEAR SIR:—Your favor of the 14th inst. is received. The act of February 26, 1885, amending section 2 of an act passed April 9, 1883, entitled "an act to provide for the protection of children" as amended March 27, 1884 (82 O. L., 86) provides in substance, among other things, that, where the county commissioners make temporary provision for children entitled to admission into a children's home, by leasing suitable premises for that purpose, such temporary home shall be furnished, provided and managed in all respects as now provided by law for the support and management of children's homes in the State of Ohio, but provided that the infirmary directors and superintendent shall perform the same duties and have the same powers that are conferred upon trustees and superintendents of children's homes by sections 931, 932 and 933 Revised Statutes. The authority of the infirmary directors and superintendent is thus limited to the authority conferred by the sections named, while in all other respects such temporary home is to be

"Scrip Law," Actions Under.

managed as provided by the general statutes relating to children's homes. In my opinion it is still necessary for the county commissioners to appoint trustees for such temporary home, who shall designate a superintendent thereof and such trustees and the superintendent so designated will have charge and control of said home, except as to the admission and discharge of inmates and the other matters provided for in said sections 931, 932 and 933.

Yours truly,

JAMES LAWRENCE,
Attorney General.

"SCRIP LAW," ACTIONS UNDER.

Attorney General's Office,

L. McHugh, Esq., Commissioner of Labor Statistics:

DEAR SIR:—If the Ohio and Pennsylvania Coal Company compels its employes to sign an order such as is enclosed in your favor of the 20th inst. for the purpose of coercing them to purchase goods or supplies from the firm named therein, such act is in violation of section 7016 Revised Statutes as amended April 11, 1885 (82 O. L., 120). The proper way to prevent violations of the statutes referred to is to make complaint to the prosecuting attorney of the county in which the act was committed, whose duty it will then be to have such complaint investigated by the grand jury.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Taxation; Assessment of Improvements for.

TAXATION; ASSESSMENT OF IMPROVEMENTS
FOR.

Attorney General's Office,
Columbus Ohio, March 22, 1885.

G. W. Rutledge, Esq., County Auditor, Kenton, Ohio:

DEAR SIR:—Your favor of the 20th inst. is received. The authority of the assessor, under the last clause of section 2753 Revised Statutes, is limited to cases where at the last decennial period or annual return a mistake occurred in the value of any improvement or betterment of real estate, or where the true value of an improvement or betterment has been omitted. In such case it is the duty of the assessor to return the correct value of such improvement or betterment which will then be a proper subject for the determination of the next annual board of equalization. The assessor under said section 2753, has nothing to do with respect to the valuation of lands or lots, exclusive of improvements or betterments thereon, excepting only where he finds that a piece of land is not upon the tax list at all. If any change is made in the value of lands and lots which are upon the tax list the same must be done by the county board of equalization in pursuance of section 2804 Revised Statutes.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Municipal Corporation; Power to Levy a Tax for Sinking Fund—Intermediate Penitentiary: Salary of Directors of, for 1884.

MUNICIPAL CORPORATION; POWER TO LEVY
A TAX FOR SINKING FUND.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Thomas B. Black, Esq., Solicitor, Kenton, Ohio:

DEAR SIR:—Your favor of the 20th inst. was duly received. Section 2712 and section 2689a of the Revised Statutes must be construed together, and, in my opinion, the council of your village is authorized under section 2712 to levy a tax not exceeding three mills for the sinking fund, in addition to the ten mills to which it is limited by section 2689a.

Yours truly,
JAMES LAWRENCE,
Attorney General.

INTERMEDIATE PENITENTIARY; SALARY OF
DIRECTORS OF, FOR 1884.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Hon. F. M. Marriott, Delaware, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 18th inst. was not received until today. I still think that the unpaid salary of the directors of the intermediate penitentiary, for the period prior to February 15, 1885, was a deficiency existing on said date. Furthermore, the appropriation at the recent session of the General Assembly was made for the last three quarters of the fiscal year ending November 15, 1885, and the first quarter of the next

Taxation; Tax Line on Bank Shares.

fiscal year, and hence can only be applied to salary for such period.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TAXATION; TAX LINE ON BANK SHARES.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Mr. J. H. Musselman, County Treasurer, Eaton, Ohio:

DEAR SIR:—Your favor of the 18th inst. is received.

By section 2839 Revised Statutes, any taxes assessed on any shares of stock, or the value thereof, of any bank or banking association are a lien on such shares from the first Monday of May in each year until such taxes are paid. Where the charter of a national bank has expired since such lien for taxes attached to the shares of stock therein, and the bank is in process of closing up its business, I am of the opinion that such bank may properly pay the unpaid taxes on any of its shares and deduct the same from any sum then or thereafter payable on such shares, and that, proper notice of the delinquency having been given by the treasurer, until such taxes are paid no sum can lawfully be paid by said bank or any officer thereof to the holder of such delinquent shares. In short, I think that the provisions of sections 2839 and 2840 Revised Statutes are applicable to a bank in process of liquidation as well as to one which is still running.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Ditches; Power of Township Trustees Over, After Seven Years; Township Trustees; Power of, to Select Jurors.

DITCHES; POWER OF TOWNSHIP TRUSTEES
OVER, AFTER SEVEN YEARS; TOWNSHIP
TRUSTEES; POWER OF, TO SELECT JURORS.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Thomas Johnson, Esq., Prosecuting Attorney, Ironton, Ohio:

DEAR SIR:—Your favor of the 19th inst. was duly received and in reply thereto I have to say:

First—Every ditch constructed by county commissioners, or township trustees, if the same be so constructed in accordance with law, becomes at once a public water course. Under section 4500 Revised Statutes the lapse of seven years affects such township or county ditch only to the extent of curing all errors or irregularities in the location, establishment or construction of the same. I am, therefore, of the opinion that after seven years from the establishment of a township ditch, the township trustees have the same control over it, and the same power in respect to cleaning it out as they had before.

Second—In a township divided into two voting precincts, where one trustee acts as judge of election in one precinct and two in the other precinct, I am of the opinion that the three township trustees, as trustees and not as judges of election, are to select the names of the requisite number of persons for jurors from such township. There being two judges who return poll books for said township, one from each precinct, I think that the list of persons selected for jurors may be returned to the county clerk by either of such judges to be designated by the trustees.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Justice of the Peace; Jurisdiction of in Certain Case.

JUSTICE OF THE PEACE; JURISDICTION OF IN
CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio; May 22, 1885.

*Robert F. Wamsley, Esq., Justice of the Peace, Otway,
Scioto County, Ohio:*

DEAR SIR:—Your favor of the 19th inst. was duly received. When an affidavit charging any person with the commission of an offense has been filed with a magistrate, and such person has either been served with a warrant or voluntarily appeared, the prosecution for such offense is pending against him. While the prosecution is pending I do not think that another magistrate should entertain a complaint against him for the same offense, nor, after the accused has been bound over to Court on the first complaint, can he be permitted to appear in the second case and plead guilty, even though the second complaint was filed by the party injured and the former by a stranger.

In the case you state the prisoner having already been bound over to Court by another magistrate, and the warrant issued by you not having been served, I think that you may properly recall the same, as you would undoubtedly have declined to issue it had you originally been advised of the facts.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Board of Education; Establishment of Schools of Higher Grade than Primary—Railroads; Powers and Duties of Directors of, in Certain Cases.

BOARD OF EDUCATION; ESTABLISHMENT OF SCHOOLS OF HIGHER GRADE THAN PRIMARY.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Mr. W. W. Elliott, Batesville, Ohio:

DEAR SIR:—Your favor of the 18th inst. was duly received. Where a township board of education in pursuance of section 4009 Revised Statutes, establishes a school of a higher grade than the primary schools, I think that it would be better for the resolution for such establishment to state briefly in the language of the statute, the reason therefor. Still, I do not think that this is imperative and I am of the opinion that a simple resolution to establish such school of a higher grade, if duly adopted, would be legal and valid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

RAILROADS; POWERS AND DUTIES OF DIRECTORS OF, IN CERTAIN CASES.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Hon. Henry Apthorpe, Commissioner of Railroads:

DEAR SIR:—Neither you nor I have authority to give an official opinion upon the questions presented in the letter of Mr. Wm. A. Wiggins, which is herewith returned.

Railroads; Construction of act Relative to Color Blindness.

However, after a rather hasty examination, I venture to express the following views:

First—An unmarried woman who is of lawful age and otherwise qualified may be a director of a railroad corporation in this state, but a married woman can not be such director.

Second—A railroad belonging to a corporation can not be leased to an individual, but only to another railroad corporation. The statute authorizing such lease to a corporation is, in my opinion, exclusive upon the subject. Even if this were not so a director could not be permitted to contract with himself and for the company, and, therefore, could not become lessee of the property of the corporation of which he is director.

Third—The offices of president and secretary of a railroad company are necessarily incompatible, and, in my opinion, can not be held by the same person. The duties usually devolving upon a treasurer would also seem to call for a separate person to fill that office, but I do not think that it would be illegal to elect the same person president and treasurer provided the regulations of a corporation do not forbid it.

Yours truly,

JAMES LAWRENCE,
Attorney General.

RAILROADS; CONSTRUCTION OF ACT RELATIVE
TO COLOR BLINDNESS.

Attorney General's Office,
Columbus, Ohio, May 22, 1885.

Hon. Henry Apthorpe, Commissioner of Railroads:

DEAR SIR:—I return herewith the letter of Mr. W. F. Black which you submitted to me. In my opinion the act

Peddler; In Certain Case Person is Not.

of February 19, 1885, entitled an act regulating the employment by railroads of persons affected with color blindness or other defective sight (82 O. L., 65) applies only to persons hereafter employed by a railroad company in positions which require them to distinguish form or color signals. At any rate as the P., C. & St. L. Railroad Co. expresses the purpose to subject all its employes to a careful examination, my advice is that you agree to any time which may seem at all reasonable.

All persons hereafter employed must be examined before being employed, and this applies to persons already in the service of a company who are hereafter employed in a new or different position.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PEDDLER; IN CERTAIN CASE PERSON IS NOT.

Attorney General's Office,
Columbus, Ohio, May 23, 1885.

C. B. Winters Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your favor of the 22d inst. is received. In my opinion a person in your county who buys and kills cattle and other animals and travels over various portions of the county retailing the meat thereof in quantities to suit purchasers, is not a peddler within the meaning of Chapter 14, Title V, Part 2d of the Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Capital Punishment; Construction of Act of April 29, 1885
(82 O. L., 169)—Taxation; Rates of Township.*

CAPITAL PUNISHMENT; CONSTRUCTION OF
ACT OF APRIL 29, 1885 (82 O. L., 169).

Attorney General's Office,
Columbus, Ohio, May 27, 1885.

Hon. George Hoadly, Governor:

SIR:—Your favor of the 26th inst. is received. The act of April 29, 1885, relative to the mode, place and time of inflicting the death penalty (82 O. L., 169) does not apply to cases of persons under sentence of death and time of execution fixed to take place prior to July 1, 1885. In my opinion, the application of the act thus depends upon the condition of things as they existed at the time said act was passed, and can not be enlarged by the subsequent action of the governor in postponing the date of an execution by granting a reprieve. A person who, on the 29th day of April, 1885, was under sentence of death, and whose execution as thus fixed was to take place prior to July 1, 1885, must be executed in accordance with the former law, even though you should grant a reprieve to a date subsequent to the first day of July. Yours truly,

JAMES LAWRENCE,
Attorney General.

TAXATION; RATES OF TOWNSHIP.

Attorney General's Office,
Columbus, Ohio, May 27, 1885.

*Frank F. Metcalf Esq., Prosecuting Attorney, McConnells-
ville, Ohio:*

DEAR SIR:—Having conferred with the auditor of state in reference to the construction of section 2827 Revised Statutes, I concur with him in the opinion that, where the taxable valuation of the property of a township exceeds

Taxation; Rates of Township.

\$800,000.00 the township trustees may cause a levy to be made for township purposes as follows:

- On first \$200,000.00 of such valuation1 mill
- On next \$100,000.00 of such valuation8-10 mill
- On next \$200,000.00 of such valuation1-2 mill
- On next \$300,000.00 of such valuation4-10 mill
- On all over \$800,000.00 of such valuation1-4 mill

The rate to be certified to the county auditor can be arrived at by ascertaining what proportion the sum so levied bears to the entire valuation of the township, keeping the levy, however, in tenths of a mill.

It is true that the language of the statute is not altogether clear upon the subject, but, comparing this section with the language used in section 2823 relative to the levy by county commissioners, it seems evident that a different mode of determining the amount of the levy is intended. Furthermore, if we adopt the construction that, where the taxable property exceeds \$800,000.00 the levy can only be 1-4 of a mill on the entire valuation, it will in many cases result in limiting the amount to be raised in a large or rich township to a less sum than can be raised in a smaller or poorer township. For instance, suppose the valuation is \$801,000.00, then a levy of 1-4 of a mill on the whole would raise only \$200.25, whereas if the valuation is but \$800,000.00 a levy of 4-10 of a mill on the whole would produce \$320.00. So if the valuation is only \$200,000.00 a levy of 1 mill thereon would make \$200.00, while if the valuation is \$301,000.00 a levy of 1-2 mill would be only \$150.00. I am not disposed to think that the legislature intended such absurdity.

I do not know what has been the general practice in the different counties of the state but am informed that in Franklin and Delaware Counties the construction given by the auditor of state has been heretofore adopted and followed.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Residence Mutual Insurance Company; Articles of Incorporation of.

RESIDENCE MUTUAL INSURANCE COMPANY;
ARTICLES OF INCORPORATION OF.

Attorney General's Office.
Columbus, Ohio, May 29, 1885.

Hon. James S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the proposed articles of incorporation of the Residence Mutual Insurance Company, which I decline to approve.

It is stated in the letter of Mr. W. E. Chamberlain accompanying said articles that the incorporation is sought under sections 3686 to 3690 Revised Statutes, being the statutes authorizing the formation of mutual fire associations. The articles of incorporation, however, do not indicate in the remotest degree a corporation for such purpose, and the name is not one that can be assumed by a fire association. If the intention be to organize under the sections named the provisions of section 3687 must be followed, and the object of the association must be stated as set forth in the third sub-division thereof. The corporation must also be called a fire association and not a mutual *company*.

The letter of Mr. Chamberlain is returned herewith.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Capital Punishment; Construction of Act of April 29, 1885
(82 O. L., 169).

CAPITAL PUNISHMENT; CONSTRUCTION OF
ACT OF APRIL 29, 1885 (82 O. L., 169).

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

Hon. George Hoadly, Governor:

SIR:—I am in receipt of your favor of the 27th inst. asking from me a further opinion concerning the application of the act of April 29, 1885, relating to the mode, time and place of inflicting the death penalty (82 O. L., 169).

First—In reply to the question heretofore submitted by you I stated that a person who, at the time of the passage of said act, was under sentence of death, and whose execution as then fixed was to take place prior to July 1, 1885, must be executed in accordance with the former law, and that you could not change this by granting a reprieve. I have now to say that I have also reached the conclusion that said act does not apply to any person, who, at the time of its passage, was under sentence of death, whether the execution was to take place prior to July 1, 1885, or afterwards, and hence, in the case presented by you, I am of the opinion that a person under sentence of death pronounced before the 29th day of April, 1885, penalty to be inflicted after the first day of July, 1885, place of death, as named in the sentence, the county jail, hour of death between hours in the day time, must be executed by the sheriff within the walls of the county jail as directed in the sentence.

Second—The governor by granting a reprieve may change the hour at which an execution is to take place to a later hour, but he has no authority thereby to change the place of execution.

Third—The provision of said act of April 29, 1885, that the sheriff shall, within thirty days after a person is sentenced to death, convey the prisoner to the penitentiary is so far directory merely that when the sheriff, in a case to

Children's Home; County Commissioners of Fayette County; Power to Issue Bonds For, and to Build a.

which said act is applicable, fails to convey the prisoner to the penitentiary within said period, he may do so afterwards, before the date of the execution, and the sentence will not be in any respect invalidated by reason of such delay.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CHILDREN'S HOME; COUNTY COMMISSIONERS
OF FAYETTE COUNTY; POWER TO ISSUE
BONDS FOR, AND TO BUILD A.

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

Robert E. Miller Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—In reply to your favor of the 29th inst. I have to say that, in my opinion, the act of April 9, 1885, entitled "an act to authorize the county commissioners of Fayette County, Ohio, to issue the bonds of said county for the purpose of building a children's home" is valid so far as it goes and confers power upon the county commissioners, without submitting the question to a vote of the people, to issue bonds to raise money with which to erect a children's home, but I do not think that said act authorizes them to establish or erect such home. Although the act conferred no express power to establish and erect a home I should say that the necessary power was implied, were it not that there is a general law regulating the subject, which authorizes such establishment, but provides a particular mode of so doing. For this reason I think that the question of establishing the home must first be submitted to a vote of the people as provided in section 929 Revised Statutes (amended

Supreme Court; Practice in, in Regard to Criminal Cases.

78 O. L., 81). I am free to say that I have reached this conclusion after some hesitation, but, at any rate, it is safest for public officers to forbear as far as possible from attempting to exercise a doubtful power.

Yours truly,

JAMES LAWRENCE,

Attorney General.

SUPREME COURT; PRACTICE IN, IN REGARD TO
CRIMINAL CASES.

Attorney General's Office.

Columbus, Ohio, May 30, 1885.

*Thomas K. Funk Esq., Prosecuting Attorney, Portsmouth
Ohio:*

DEAR SIR:—Your favor of the 29th inst. is received. It is not necessary to file a motion for leave to file in the Supreme Court a petition in error to a judgment of the Circuit Court, but a motion for such leave is required in the case of a petition in error to the Common Pleas Court. Where in a criminal case the defendant was convicted in the Common Pleas Court, but took the case to the Circuit Court which reversed the judgment of the court below and remanded the case for a new trial, I do not think that the State can prosecute proceedings in error in the Supreme Court to reverse such judgment of reversal.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Benevolent Institutions; Pupils of, Kept During Vacations.

BENEVOLENT INSTITUTIONS; PUPILS OF, KEPT
DURING VACATIONS.

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

*Prof. Henry Snyder Jr., Supt. Institution for the Blind,
Columbus, Ohio:*

DEAR SIR:—Your favor of the 28th inst. was duly received. I think that you will have to allow indigent pupils, whose parents are unable to provide and care for them, to remain at the institution for the blind during the summer vacation.

The statutes make no provision for vacations and seem to contemplate that, after a pupil is admitted he shall remain continuously at the institution until his course is terminated or he is dismissed for cause. Under their authority to establish rules and regulations for the government of the institution the board of trustees undoubtedly has power to permit pupils to go home on a vacation, but I do not think that this extends to compelling an indigent child to do so. Such a child being entitled to a home in the institution, is not, in my opinion, a proper subject for admission into a county infirmary or children's home during a vacation.

It will perhaps be well, however, not to say much about this for fear of increasing the number of those claiming to be indigent.

In reference to a statement made in the letter of Mr. Ryan, I deem it proper to say that the trustees of a children's home have no authority to exclude a child therefrom merely because it is blind. A blind child, who is not an inmate of your institution, has the same right as any other child to be admitted to a children's home, if otherwise qualified.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Municipal Corporation; Power of Council to Employ Prisoners on Streets.

MUNICIPAL CORPORATION; POWER OF COUNCIL TO EMPLOY PRISONERS ON STREETS.

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

Mr. Philip Lanneck, Village Clerk, Port Washington, Ohio:

DEAR SIR:—Your favor of the 25th inst. was duly received. The council of a municipal corporation may require persons, who refuse or neglect to pay fines and costs imposed for offenses named in section 2108 Revised Statutes, to work out the same on the streets and roads of the corporation, under such regulations as the council may establish so as to conduct such labor to the best advantage, provided the same be consistent with the age, sex and health of the prisoners. In a proper case I think that a ball and chain may be used, but not on a woman or a very old or feeble person. See sections 2110 and 2111 Revised Statutes.

There is no authority to require such labor for non-payment of fines and costs imposed for offenses other than those named in section 2108. Sections 1863 and 2094 apply only to cases of imprisonment imposed as part of the penalty for an offense.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Costs; Fees of Witnesses Brought From Other States—
Taxation; Assessments on Improvements; Residence of
Tax Payer.*

COSTS; FEES OF WITNESSES BROUGHT FROM
OTHER STATES.

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

A. L. Sweet Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—In reply to your favor of the 22d inst. I am compelled to say that, in my opinion, there is no statute authorizing the state to pay the expenses of bringing a witness from another state or territory to testify for the prosecution in a case of felony in a court of this state. The most that can be done where a witness comes from another state is to serve him with a subpoena on entering the state, which would entitle him to mileage from the place where served.

Yours truly,

JAMES LAWRENCE,
Attorney General.

TAXATION; ASSESSMENTS ON IMPROVE-
MENTS; RESIDENCE OF TAX PAYER.

Attorney General's Office.
Columbus, Ohio, May 30, 1885.

*Mr. Chas. E. Taylor, Clerk Board of Equalization, Massillon,
Ohio:*

DEAR SIR:—In reply to your favor of the 25th inst. I have to say:

First—Buildings whose erection was begun after the second Monday of April, 1885, can not be listed for taxation this year.

Second—If the person named in your second question

Corporation; Vacancy in Board of Directors of.

is a resident of Massillon the investments referred to must be listed there, but, if she is a resident of Wheeling, W. Va., the same are not taxable in this state. The whole matter depends upon her residence, which is a question of fact.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CORPORATION; VACANCY IN BOARD OF DIRECTORS OF.

Attorney General's Office.

Columbus, Ohio, June 1, 1885.

H. A. Leese, Esq., Attorney at Law, Bowling Green, Ohio:

DEAR SIR:—Your favor of the 27th ult. was duly received. As section 3248 Revised Statutes provides that all directors of a corporation must be holders of stock, a director who has sold all his stock is not entitled longer to serve as director. He should at once resign. By the section above named, whenever the office of director becomes vacant the board of directors may fill the same for the unexpired term, unless the by-laws otherwise provide. Where, as in the case you state, all the directors become ineligible and cease to act at the same time, of course such vacancies can not be filled by the board, for there is in fact no board in existence. Unless the by-laws or regulations of the corporation provide a mode of electing directors in such contingency, a case arises which is not covered by any express provision of the statutes. In such case I think that directors may be elected for the unexpired term by the stock holders in the same manner as is provided in section 3246 Revised Statutes in the case of a failure to elect at the annual meeting. The business and property of the corporation are to

Peddlers; Definition of What is, Power to Issue License to.

be managed by a board of directors and I think that stock holders of a corporation left without an organization must of necessity have the right to organize. As bearing somewhat upon the questions considered, see *Bartholomew vs. Bentley*, 1 O. St., 37.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PEDDLERS; DEFINITION OF WHAT IS, POWER
TO ISSUE LICENSE TO.

Attorney General's Office.
Columbus, Ohio, June 1, 1885.

Mr. James M. Davidson, Ironton, Ohio:

DEAR SIR:—Your letter of the 28th ult. was duly received. Our statutes require that any person who vends or sells in this state as a peddler or traveling merchant, any goods, wares or merchandise not manufactured within this state by himself or employe shall first obtain a peddlers' license so to do, as provided in section 4398 Revised Statutes. Such license is obtained from the county auditor of any county. Municipal corporations have also authority to provide by ordinance for licensing peddlers. From your statement of the nature of your proposed business I think that it would be necessary for you to obtain a license.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Clerk of Courts; Fees for Indexing.

CLERK OF COURTS; FEES FOR INDEXING.

Attorney General's Office.
Columbus, Ohio, June 2, 1885.

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

DEAR SIR:—Your favor of the 1st inst. is received.

First—My predecessor, Mr. Hollingsworth, held that under section 5339a the clerk was entitled to twenty-three cents for making a *full* index in each case, being fifteen cents for indexing the judgment and eight cents for index to execution. As this view has been generally adopted in the different counties I have thought best to follow Mr. Hollingsworth's opinion, whenever the question has been submitted to me, although I do not regard it as free from doubt.

Second—In any event the twenty-three cents can be allowed only where an execution has been issued, otherwise the fee is only fifteen cents.

Third—Orders of the court for the appointment of assistant prosecutor, for the appointment of administrators under the old law, for the appointment of receivers, etc., are not judgments of which a general index may be made in pursuance of section 5339a. This supplementary section refers to an index such as is required by the original section 5339 which clearly contemplates only an index of judgments for money. If the clerk in making up a general index has entered therein orders of the nature above mentioned, he can be allowed no compensation for such entries.

Yours truly,

JAMES LAWRENCE,

Attorney General.

County Commissioners of Lucas County; No Power to Employ Clerk of Board of Equalization—Scrip Law; Construction of, in Regard to Corporations.

COUNTY COMMISSIONERS OF LUCAS COUNTY;
NO POWER TO EMPLOY CLERK OF BOARD
OF EQUALIZATION.

Attorney General's Office.
Columbus, Ohio, June 1, 1885.

J. H. Southard Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—Your favor of the 29th ult. was duly received. In my opinion the county commissioners of Lucas County have no authority to employ or pay a clerk or clerks for the annual city board of equalization of Toledo constituted in accordance with section 2805 Revised Statutes. I place my opinion on the ground that the statutes do not confer any such authority and that the commissioners can only act when expressly or by necessary implication authorize by statute.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SCRIP LAW; CONSTRUCTION OF, IN REGARD TO
CORPORATIONS.

Attorney General's Office.
Columbus, Ohio, June 3, 1885.

Henry Gregg Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—Your favor of the 1st inst. is received. While the meaning is perhaps not altogether free from doubt I think that the word "person" in the third line from the end of section 7015 Revised Statutes amended April 11, 1885

County Auditor; Fees for Making Tax List.

(82 O. L., 120) does not include a corporation, and hence that the provision that nothing in said section shall apply to or affect the right of any person or private individual from giving orders on any store or business house or firm in the business or profits of which he has no interest does not exempt a corporation in any case from the operation of the preceding part of the section. It is true that the word "person" may sometimes include a corporation; but the legislation in the preceding part of the section twice uses the word in a sense which clearly does not mean a corporation, and I think the word is used in the same sense in the clause above referred to.

I am of the opinion therefore that a corporation is absolutely forbidden to give to any person employed by it, in payment of wages due for labor or as advances on the wages of labor, any order payable or redeemable otherwise than in money, even though the same be done at the request of such employe.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY AUDITOR; FEES FOR MAKING TAX
LIST.

Attorney General's Office.
Columbus, Ohio, June 3, 1885.

C. B. Winters Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your favor of the 1st inst. was duly received. It is part of the duties imposed by law upon the county auditor to make out each year a tax list of all taxable property in his county which may or may not set forth the property in each ward of a municipal corporation in a separate book. In my opinion the county commissioners

Taxation; Property Subject To, In Certain Cases.

have no authority to make any allowance to your county auditor for making out such tax list for the current year even though, by reason of the redistricting of the city of Sandusky, the same required additional labor. See section 1078 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TAXATION; PROPERTY SUBJECT TO, IN CERTAIN CASES.

Attorney General's Office,
Columbus, Ohio, June 10, 1885.

Mr. Chas. E. Taylor, Sec'y Board of Equalization, Massillon, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 3d inst. was not received until the 8th inst.

First—The property of a private corporation which for a consideration in money supplies a city with water for fire purposes, and also private consumers, is subject to taxation in the same manner as the property of other corporations for the taxation of which no special provision is made in the statutes.

Second—I think the facts you state in reference to the residence of the person named justify the board in placing the investments referred to on the duplicate. Of course, as I said in my former letter, the question of residence is one of fact, which in case of a controversy must be determined by the courts. If she is a resident of Massillon the property is taxable there, but if she is a resident of West Virginia it is not taxable.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Intermediate Penitentiary; Letting of Contracts for Grading
—Ohio National Guard; Bids for Uniforms for.*

INTERMEDIATE PENITENTIARY; LETTING OF
CONTRACTS FOR GRADING.

Attorney General's Office.
Columbus, Ohio, June 10, 1885.

*Hon. John M. Pugh, President Board of Managers of Inter-
mediate Penitentiary:*

DEAR SIR:—Owing to my absence from the city I have been unable to reply to your favor of the 3d inst. until now.

In my opinion the board of managers of the intermediate penitentiary, in doing the necessary grading upon the site selected for said institution, preparatory to the erection of the prison building, are not required to proceed in accordance with chapter 1, title VI, part 1 of the Revised Statutes, relating to public buildings, but may let the contract for such grading in that mode which seems to them best.

Yours truly,
JAMES LAWRENCE,
Attorney General.

OHIO NATIONAL GUARD; BIDS FOR UNIFORMS
FOR.

Attorney General's Office.
Columbus, Ohio, June 10, 1885.

Hon. E. B. Finley, Adjutant General:

DEAR SIR:—I am in receipt of your favor of the 9th inst. from which it appears that having advertised for bids for furnishing such uniforms as may be required for the use of the Ohio National Guard, in pursuance of section 3071 Revised Statutes (amended 78 O. L., 228), a number

Ohio National Guard; Bids for Uniforms for.

of bids were received of which the two lowest, the bidders being designated as "A" and "B," were as follows:

A.....\$8.44 1-2 per uniform.
 B.....\$8.69 per uniform.

In the opinion of experts, the sample furnished by "B" is superior in quality to that furnished by "A" but the latter conforms in quality and pattern to the samples and specifications on file in your office.

In reply to the questions submitted I have to say:

First—Inasmuch as the bid of "A" is the lowest and conforms to the samples and specifications furnished by you to the bidders, I am of the opinion that you can not accept the bid of "B" and award the contract to him, even though the superiority in the samples furnished with his bid is equal to or greater than the difference in price. The statute provides that samples of material to be used in the manufacture of uniforms and specific directions for making the same shall be kept in the office of the adjutant general, and the uniforms are merely required to conform in quality and pattern to the samples and specifications so furnished. The statute also expressly provides that contracts for the purchase of uniforms shall be made with the lowest responsible bidder.

Second—I am further of the opinion that although you find his goods to be of better quality you can not accept the bid of "B" and award the contract to him on condition that he will make the uniforms for \$8.44 1-2 each, the price bid by "A."

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

Advertisement; Of County Commissioners' Report in German Newspaper—Sheriff; Reward for Arrest of Person Charged, Etc.

ADVERTISEMENT; OF COUNTY COMMISSIONERS' REPORT IN GERMAN NEWSPAPERS.

Attorney General's Office.
Columbus, Ohio, June 10, 1885.

Mr. S. R. Mining, Proprietor Der Deutsche Beobachter, New Philadelphia, Ohio:

DEAR SIR:—In reply to your favor of the 5th inst. I have to say that, in my opinion, the county commissioners are not required to publish their annual report in a German newspaper. Section 917 Revised Statutes provides merely that such report shall be published in two weekly newspapers of different political parties printed in the county. Section 4368 Revised Statutes applies only to such notices and advertisements as are mentioned in the section preceding, including those of general interest to the tax payers which the officers named may deem proper to have published as therein provided.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SHERIFF; REWARD FOR ARREST OF PERSON CHARGED, ETC.

Attorney General's Office.
Columbus, Ohio, June 10, 1885.

Messrs. R. and F. E. Dougherty, Attorneys for Sheriff, Waverly, Ohio:

GENTLEMEN:—In reply to your favor of the 6th inst. I have to say that, in my opinion, the sheriff of your county

Offices; Incompatibility of Certain.

is not entitled to receive the reward offered by the county commissioners, in pursuance of section 919 Revised Statutes (amended 80 O. L., 113) for the detection, apprehension and conviction of a person charged with or engaged in horse stealing in said county. Yours truly,

JAMES LAWRENCE,
Attorney General.

OFFICES; INCOMPATIBILITY OF CERTAIN.

Attorney General's Office,
Columbus, Ohio, June 11, 1885.

John R. Lea, Esq., Sandusky, Ohio:

DEAR SIR:—Your favor of the 5th inst. was duly received. As Sandusky has a city solicitor I feel that I ought not to express an opinion on the question submitted by you except at his request. I would say, however, that I find no express provision of the statutes preventing one person from holding at the same time the offices of city clerk and infirmary director or the offices of civil engineer and superintendent of water works of your city. The question then is, are such offices incompatible, and this depends upon the powers and duties belonging thereto. As such powers and duties in the case of the city clerk and engineer, depend to some extent on the provisions made by the ordinance, and, in case of the superintendent of waterworks, on the by-laws and regulations of the trustees, the question of the incompatibility of offices can not be determined merely from the statutes. For instance, if the city clerk also acts as auditor it is probable that his duties are incompatible with those of infirmary director, otherwise not.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Clerk of Courts; Fees For Indexing, Allowance To.

CLERK OF COURTS; FEES FOR INDEXING, ALLOWANCE TO.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

Anson Wickham Esq., Prosecuting Attorney, Bucyrus, Ohio:

DEAR SIR:—Owing to my absence from the city and engagements since returning I have been unable to answer your favor of the 4th inst. until now.

First—My predecessor, Mr. Hollingsworth, held that under section 5339a the clerk was entitled to twenty-three cents for making a full index in each case, being fifteen cents for indexing the judgment and eight cents for index to execution. As this view has been generally adopted in the different counties I have thought best to follow Mr. Hollingsworth's opinion whenever the question has been submitted to me, although I do not regard it as free from doubt. The twenty-three cents can only be allowed when an execution has been issued.

Second—I do not think that the limitation of \$300.00 in section 1261 Revised Statutes is applicable to the allowance to the clerk for his services under section 5339a. The reference to section 1261 is merely as to the manner of payment and not to the amount, and the limitation in said section applies to fees in criminal causes. Hence I think that the amount to be paid to the clerk in any one year for making the index referred to is governed by the amount of services performed.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Benevolent Institutions; Duties of Superintendent and Steward.

BENEVOLENT INSTITUTIONS; DUTIES OF
SUPERINTENDENT AND STEWARD.

Attorney General's Office.

Columbus, Ohio, June 11, 1885.

Prof. Henry Snyder Jr., Superintendent Institution for the Blind:.

DEAR SIR:—Owing to my absence from the city and my engagements since returning, I have been unable to answer your favor of the 5th inst. until now. I find it difficult to give, in the compass of a letter, a detailed statement as to the respective duties of the superintendent and steward of your institution. Speaking generally, the superintendent has control of the institution in all its departments, and is responsible alone to the trustees. Under section 649 Revised Statutes all purchases are to be made by the steward under the direction of the superintendent. I do not think that the superintendent can himself purchase any article for the institution. This must be done by the steward. The superintendent may, however, give directions as to the articles to be purchased, and the steward must follow his directions unless the funds appropriated for the institution do not admit of such purchase, or the trustees otherwise direct.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Taxation; Listing of Personalty of Insane Person—Schools;
Power of Sub-District As to Shade Trees.*

TAXATION; LISTING OF PERSONALTY OF IN-
SANE PERSON.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

Mr. F. J. Eskee, County Auditor, Chillicothe, Ohio:

DEAR SIR:—Your favor of the 8th inst. was duly received from which it appears that the guardian of an insane person appointed by the probate court of Ross County resides in the city of Chillicothe, while said insane person is a resident of Scioto Township in the same county. In my opinion such guardian should list the moneys and credits belonging to his said ward in the city of Chillicothe where he resides, and not in the township where the ward resides. See first clause of section 2735 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SCHOOLS; POWER OF SUB-DISTRICT AS TO
SHADE TREES.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

Mr. D. F. Ross, Berlin, Ohio:

DEAR SIR:—The question presented in your favor of the 3d inst. should properly be referred to the prosecuting attorney, but as I have been unable to reply until now I will depart from the usual rule so as not to cause you any further delay.

In my opinion it is the duty of the board of directors of a sub-district under section 3987a Revised Statutes (81 O.

Stationery; Authority of County Officers to Buy.

L., 106) to cause shade trees to be planted in the school grounds of such sub-district when necessary.

I am further of the opinion that the local directors are authorized to purchase the same without obtaining the sanction of the township board, and that the cost and expenses so incurred must be paid on their certificate out of the contingent fund apportioned to said sub-district.

Yours truly,

JAMES LAWRENCE,
Attorney General.

STATIONERY; AUTHORITY OF COUNTY OFFICERS TO BUY.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

Mr. A. W. McConnell, County Treasurer, Wauseon, Ohio:

DEAR SIR:—I am unable to give a general answer to the question presented in your favor of the 3d inst. for there is no uniform rule on the subject. Whenever the county commissioners are required to furnish stationery or blanks for county officers, and there is no contrary statutory provision, the board has authority to purchase the same. For instance, under sections 523, 1181 and 1217 Revised Statutes, I think that the commissioners are authorized to buy the stationery required for the offices of the probate judge, county surveyor and sheriff. But, under section 1264, the clerk may procure the stationery needed in his office, but the bills therefor must be allowed by the commissioners. See 28 O. St., 589.

Whenever a question arises as to the proper rule in any case the same should be referred to the prosecuting attorney for his decision.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Prosecuting Attorney; Fees on Collection, In Certain Case
—Municipal Corporation; Power to Prohibit Cattle
From Running at Large.*

PROSECUTING ATTORNEY; FEES ON COLLEC-
TION, IN CERTAIN CASE.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

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

DEAR SIR:—Your favor of the 8th inst. was duly received. The percentage allowed to the prosecuting attorney under section 1298 Revised Statutes is based upon *moneys collected* on fines, forfeited recognizances and costs in criminal cases. Where a judgment for costs has been rendered against a defendant in a criminal case, which the county commissioners compound or settle on the payment of part in cash and the execution of notes for the balance payable at future times with interest, I am compelled to say that, in my opinion, the prosecuting attorney at the time is entitled to receive only his commission upon the amount collected in money, and that he must wait and receive his commission on the balance as the same is paid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; POWER TO PRO-
HIBIT CATTLE FROM RUNNING AT LARGE.

Attorney General's Office.
Columbus, Ohio, June 11, 1885.

M. L. Snyder Esq., City Solicitor, Fremont, Ohio: .

DEAR SIR:—Your favor of the 9th inst. was duly received, together with a copy of an ordinance to restrain cattle from running at large within the corporate limits of the city of Fremont, I hesitate to express an opinion as to the

*Municipal Corporation; Power to Prohibit Cattle From
Running at Large.*

validity of said ordinance in all its details without having my attention specially called to possible objections thereto. I am of the opinion, however, that said ordinance in its main provisions is valid and legal.

By sections 4202 (amended 78 O. L., 19) and 4203 (amended 77 O. L., 318) of the Revised Statutes the running at large of certain animals is prohibited except where general permission by county commissioners or special permits by township trustees have been granted as provided in section 4203. But by the 11th sub-division of section 1692 Revised Statutes, which provision was in force when the ordinance in question was passed, the councils of cities and villages are authorized to regulate, restrain and prohibit the running at large within the corporation of cattle and other animals. This provision must be construed in connection with section 4202 and 4203, and, in my opinion, is a limitation thereon. When the council of a municipal corporation has exercised its power of regulation, to that extent the ordinance of the council supersedes the provisions of sections 4202 and 4203. A somewhat similar question arose under the 9th section of the act of April 17, 1883, in reference to the liquor traffic (80 O. L., 164). The sale of liquor on Sunday was made, in general terms, unlawful, but a proviso was added that nothing in said section should prevent the council of any municipal corporation from regulating and controlling on said day the sale of beer and native wine. I believe that the uniform view taken of this was that the power of regulation in the council, when exercised, superseded the general prohibition. The fact that the provisions in reference to the running at large of animals are not all embraced in one section does not, I take it, alter the case. That construction must, if possible, be adopted which will give effect to both statutes, and this can only be done in the mode I have suggested.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Taxation; Dog Tax—Costs; Fees on Requisition; Powers of Auditor of State.

TAXATION; DOG TAX.

Attorney General's Office.
Columbus, Ohio, June 15, 1885.

Mr. A. W. McConnell, County Auditor, Wauseon, Ohio:

DEAR SIR:—I think that section 2833 Revised Statutes fully answers the question presented in your favor of the 13th inst. Where the owner of a dog fixes a valuation thereon he must pay the proper tax on such valuation, and in addition thereto the \$1.00 per capita tax.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COSTS; FEES ON REQUISITION; POWERS OF
AUDITOR OF STATE.

Attorney General's Office.
Columbus, Ohio, June 15, 1885.

Hon. Emil Kiesewetter, Auditor of State:

DEAR SIR:—In reply to your favor of the 11th inst. I have to say:

First—Although the question is not very clear, I am inclined to the opinion that, when a requisition has been issued for a person charged with a felony who has fled to another state, the county commissioners have authority to allow to the agent designated in such requisition a reasonable compensation for his time and services in pursuing and returning such fugitive. I base this opinion not merely on section 920 Revised Statutes as amended April 17, 1882, but also upon the provisions of section 7332 Revised Statutes

Game Law; Regulation as to Fishing.

(amended 79 O. L., 100), as well as the obligation of the county in respect to the arrest and prosecution of persons charged with felony as shown in the various statutes upon the subject. The agent is not entitled to mileage, and the allowance to him should depend on the nature of the services performed.

Second—By section 7332 the State has assumed to pay, upon the sentence of any person for felony, the sum paid by the county commissioners for the arrest and return of the convict on the requisition of the governor. This does not include anything for expenses incurred or services performed in searching for the accused prior to the issuing of a requisition.

Third—Although an allowance has been made by the county commissioners in such cases, which is duly certified to the auditor of state, I think that it is your duty to examine into the justice and legality of such allowance, and to issue a warrant for only so much thereof as you find to be correct and proper. See sections 154 and 7337 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

GAME LAW; REGULATION AS TO FISHING.

Attorney General's Office.
Columbus, Ohio, June 16, 1885.

Elias Stafford Esq., Justice of the Peace, Montezuma, Ohio:

DEAR SIR:—In reply to your letter of the 15th inst. I have to say:

First—From the 1st day of June to the 1st day of October it is unlawful to fish in the Mercer County reservoir with any kind of a net or seine except for minnows.

*Probate Judge; Fees Not Allowed For Examining County
Treasury.*

Second—It is unlawful at any time of the year to fish in said reservoir with the device known as trammel or pocket net.

Section 6968 Revised Statutes (amended 82 O. L., 243).

Yours truly,
JAMES LAWRENCE,
Attorney General.

PROBATE JUDGE; FEES NOT ALLOWED FOR EX-
AMINING COUNTY TREASURY.

Attorney General's Office.
Columbus, Ohio, June 12, 1885.

R. W. Quinn Esq., Probate Judge, Eaton, Ohio:

DEAR SIR:—Your favor of the 9th inst. was duly received. In my opinion the probate judge is not entitled to receive any fees or other compensation for his services in connection with the examination of the county treasury in pursuance of section 1129 Revised Statutes (amended 82 O. L., 173). Such services are part of the duties of his office to be performed for the benefit of the public, and, as no provision is made for payment for the same by the county, they must be regarded as gratuitous.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Scrip Law; Construction of.

SCRIP LAW ; CONSTRUCTION OF.

Attorney General's Office.
Columbus, Ohio, June 13, 1885.

Hon. Larkin McHugh, Commissioner of Labor Statistics:

DEAR SIR:—I return herewith the order or ticket submitted to me, which is as follows :

“MESSRS. HAWK AND McGRATH :

Please pay the bearer Five Cents in Merchandise.

OSCAR F. HAWK”.

In reference thereto I have to say :

First—If Oscar F. Hawk employs not less than twenty men and is interested directly or indirectly in the firm of Hawk & McGrath it is a violation of section 7015 Revised Statutes (amended 82 O. L., 120) for him to sell, give, deliver, or in any manner issue, directly or indirectly, such an order to any person employed by him, in payment of wages due for labor or as advances on the wages of labor. The application of the statute depends on the number of men employed by him and not on the number of his employes who are paid in orders.

Second—If such order is given to compel an employe to purchase goods of Messrs. Hawk & McGrath, it is a violation of section 7016 Revised Statutes (amended 82 O. L., 120), whether the number of men employed be less than twenty or not. This section is not limited to employes of twenty men or more.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Board of Public Works; Appropriation for Survey of
Muskingum River.*

BOARD OF PUBLIC WORKS; APPROPRIATION
FOR SURVEY OF MUSKINGUM RIVER.

Attorney General's Office.
Columbus, Ohio, June 16, 1885.

Mr. O. C. Brewer, Secretary Board of Public Works:

DEAR SIR:—The general appropriation bill passed April 30, 1885 (82 O. L., 186) as the same was enrolled and signed, contains, under the appropriations for the board of public works the following item: "Muskingum improvement \$25,000.00. The journals of the house and senate for the recent session show that, during the progress of the bill, the house returned the same to the senate with the following amongst other amendments, to wit: "After the words and figures Muskingum improvement \$25,000.00 insert the following: Provided that the board of public works may use \$300.00 thereof to complete the survey heretofore commenced by the United States government known as the 'government survey of the Muskingum River.'" The senate thereupon concurred in this amendment, and without any further action upon said item, the bill passed, but in the enrollment of the bill the words added by the amendment were omitted, and in that form the bill was signed. On this state of facts I have no hesitation in saying that the journals of the two houses may be consulted at least for the purpose of showing the intention of the General assembly to include such survey as part of the Muskingum improvement, limiting the amount to be expended for that object to \$300.00. My former letter to you was written under the impression that the question involved an independent appropriation of \$300.00, which impression I obtained from a misunderstanding of what the clerk of the senate said to me rather than from your letter. Having since been able to examine the journals and thus learned the true state of the matter, I de-

Commissioners of Sinking Fund; Contract By, For Exchange of Bonds under Act of April 17, 1883.

sire to say that, in my opinion, the board of public works, out of said sum appropriated for the Muskingum improvement, may properly expend the sum of \$300.00 for the purpose of completing said government survey of the Muskingum River.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COMMISSIONERS OF SINKING FUND; CONTRACT BY, FOR EXCHANGE OF BONDS UNDER ACT OF APRIL 17, 1885.

Attorney General's Office.
Columbus, Ohio, June 18, 1885.

Hon. George Hoadly, Governor:

SIR:—As requested in your favor of the 16th inst. I have examined section 3 of the act of April 17, 1885, relating to the refunding of the state debt (82 O. L., 139), but am still of the opinion that the commissioners of the sinking fund are not thereby authorized to contract with the holder of a single certificate for the exchange of the whole of the funded debt of the State payable on the 31st day of December, 1886. A valid contract can be made only for the exchange of that portion of the debt held by the person with whom the contract is made.

This was the view of the commissioners of the sinking fund, and the proposition of Albert Netter and S. Borg & Co., which was accepted subject to your approval, was never considered to be a definite contract, whereby the future delivery and exchange of all the outstanding certificates could be enforced. So long as the debt is held

Schools; County School Examiner Can Not Teach in Normal School.

by a large number of persons, it is, for many reasons, impracticable to contract directly with the individual holders, and hence, if any exchange is made upon a large scale, it must necessarily be preceded by some arrangement or understanding to induce one or more persons to acquire the outstanding bonds. Messrs. Netter and S. Borg & Co. are each the holders of bonds, but not of the entire amount. The arrangement with them is conditioned upon the delivery and exchange of \$500,000.00 of the old bonds in as short a time as the new bonds can be engraved. As they are to receive first the bonds maturing at the earliest dates, the State has a reasonable guaranty that, after the exchange of the first \$500,000.00 the remainder of their proposition will be carried out. The actual contracts of exchange in accordance with the terms of said proposition are to be made from time to time hereafter as the bonds are delivered.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SCHOOLS; COUNTY SCHOOL EXAMINER CANNOT TEACH IN NORMAL SCHOOL.

Attorney General's Office.
Columbus, Ohio, June 18, 1885.

Mr. G. F. Haucher, Batesville, Ohio:

DEAR SIR:—Your favor of the 15th inst. is received. Section 4069 Revised Statutes does not permit a county school examiner to teach in a normal school, whether such normal school is within the county or elsewhere.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Taxation; Building Associations Doing a Banking Business.

TAXATION; BUILDING ASSOCIATIONS DOING A
BANKING BUSINESS.

Attorney General's Office.
Columbus, Ohio, June 15, 1885.

W. H. Brew Esq., County Auditor, Cleveland, Ohio:

DEAR SIR:—Sometime ago I spoke to you of a question which our state board of equalization on banks had under consideration, relating to the Merchants' and Clerks' Savings Institution of Toledo. Thinking that you might be interested in the result, I take the liberty of advising you of our action.

First—We have no hesitation in saying that such associations doing a regular savings bank business, though incorporated under the building association act, must, for the purposes of taxation, be considered as banks, within the definition of section 2758 Revised Statutes, and must make returns either as an incorporated or unincorporated bank.

Second—We have also reached the conclusion that they must be treated as unincorporated banks rather than as incorporated, and as such should make returns to the county auditor in accordance with section 2759 Revised Statutes (amended 79 O. L., 109). For the purposes of taxation they are banks and they are incorporated companies, but, not being incorporated as banks, they do not come within the provisions of sections 2762-2769 R. S.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Scrip Law; Construction of; Federal Taxation as Circulating Notes.

SCRIP LAW; CONSTRUCTION OF; FEDERAL TAXATION AS CIRCULATING NOTES.

Attorney General's Office.
Columbus, Ohio, June 19, 1885.

Hon. John McBride, Massillon, Ohio:

DEAR SIR:—I am in receipt of your favor of the 16th inst. enclosing specimens of scrip issued by the Consolidated Coal and Mining Company and the Morris Coal Company. The following is a copy of that issued by the Consolidated Coal and Mining Company, which is engraved in imitation of the fractional currency formerly issued by the government.

“(5) Consolidated Coal and Mining Co. (5)
“Sand Run, May 1st, 1885.
“For value received, five years after date, without interest, we promise to pay bearer 5 cents in cash.
“No. 70. Consolidated Coal and Mining Co.”

In my opinion the issuing of such scrip is not a violation of section 7015 Revised Statutes as amended April 11, 1885 (82 O. L., 120) for the reason that the same is made payable in money. If, however, such scrip is given to employes to compel or coerce them to purchase goods from any particular person, firm or corporation, it would be a violation of section 7016 Revised Statutes as amended April 11, 1885. The thing is on its face so obviously an attempt to evade the statutes, that it is probable that a case could very easily be made out.

I call your attention to the fact that the scrip is clearly within the provisions of the United States statutes relative to circulating notes issued and paid out by any person, firm, corporation, etc., and as such is subject to heavy taxation.

Roads; Work Upon; Collection of Road Tax.

For this reason I do not think that any company will find it profitable to long continue the issue of such notes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

ROADS; WORK UPON; COLLECTION OF ROAD
TAX.

Attorney General's Office.

Columbus, Ohio, June 23, 1885.

*Mr. S. J. Baldwin, Supervisor, Nelson, Portage County,
Ohio:*

DEAR SIR:—Not being authorized to give you an official opinion, and some of the questions presented in your letter of the 21st inst. involving a controversy between two officers, I must decline to answer the same further than to say, that the person referred to is liable to perform his two days labor on the roads in that road district in which he resides. The question of residence is not affected by the location of property owned by him nor by the place where he works. He resides where his family lives. See section 4725 Revised Statutes. The case of a removal of a person's residence after the first day of April is governed by section 4723 Revised Statutes.

A delinquent who refuses either to work the roads or pay the amount of the commutation therefor can not be committed until paid. There is no way but to bring suit and collect the judgment by execution. In the first instance the supervisor must use his own judgment as to the propriety of bringing suits. When he makes his report to the township trustees he must return the names of delinquents, and the trustees shall then make such order as to

Ditches; Proceedings by Township Trustees to Construct a Township.

the prosecution of suits against such delinquents as in their judgment the interest of the township may require.

The constitution does not prohibit the levying of poll taxes, except for county or state purposes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

DITCHES; PROCEEDINGS BY TOWNSHIP TRUSTEES TO CONSTRUCT A TOWNSHIP.

Attorney General's Office.

Columbus, Ohio, June 23, 1885.

Mr. J. B. Thorp, Williston, Ottawa County, Ohio:

DEAR SIR:—Your favor of the 20th inst. was duly received. By section 4511 Revised Statutes (amended 78 O. L., 209) township trustees are authorized to establish ditches whenever in their opinion the same will be conducive to the public health, convenience or welfare. The matter is thus left largely to their discretion, though of course the improvement must benefit the public and not merely a private individual. The Supreme Court, in the case of *Chisbrough vs Commissioners* (37 O. St., 516) say:

“It is not essential that the *public at large* shall be benefited, but only that part of the public affected by want of proper drainage, or by the improvement to be made. The injury from want of drainage and the benefits from the ditch are necessarily local in their nature. Public welfare, health and convenience, in this connection, are terms used in contradistinction from a mere private benefit.”

Before township trustees cause a ditch to be cleaned out in pursuance of section 4552 Revised Statutes (amended

Taxation; Decrease in Valuation of Buildings; Power of Board of Equalization.

80 O. L., 15), the same proceedings shall be had, so far as applicable as is required in the location and construction of a ditch by them. This includes the filing of a petition by one or more persons owning lands adjacent to the line of the ditch. I see no objection to a man not a land owner getting up such petition, if by "getting up" you mean getting adjacent land owners to sign the same.

Yours truly,

JAMES LAWRENCE,

Attorney General.

TAXATION; DECREASE IN VALUATION OF BUILDINGS; POWER OF BOARD OF EQUALIZATION.

Attorney General's Office.

Columbus, Ohio, June 24, 1885.

Robert C. Miller Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your favor of the 23d inst. is received. Where a building has not been destroyed, but has simply decreased in value by reason of having to remain idle, I am of the opinion that the county board of equalization, under section 2804 Revised Statutes, can not reduce the valuation thereof as fixed at the last decennial appraisal unless a like amount be added to the value of other real property in the county as fixed by the state board of equalization. The auditor of state, who has had great experience in tax matters and whose judgment is very good, differs with me to this extent, that he thinks that the county board can reduce the valuation of the building named without adding to the valuation of other real estate in the county, provided there are sufficient additions this year on account of new structures to leave the aggregate valuation as much as it was before.

County Auditor; Fees for Making Tax List.

I think it probable also that the auditor of state would grant relief, under section 167 Revised Statutes (amended 77 O. L., 193) provided such action was recommended by the county auditor.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY AUDITOR; FEES FOR MAKING TAX LIST.

Attorney General's Office.
Columbus, Ohio, June 24, 1885.

Mr. Wm. J. Brown, County Auditor, Sandusky, Ohio:

DEAR SIR:—Your favor of the 18th inst. was duly received. I do not yet quite understand what you mean by a "grand list" as distinguished from the tax list or duplicate. All that the auditor was required to make out, as it seems to me, was the tax list and duplicate, and there need not have been a separate book for each ward of the city.

In my opinion neither section 1076 nor 1365 Revised Statutes authorizes the county commissioners to make you any allowance. The former section applies only to the years when real property is required by law to be reappraised, and its operation can not be extended. Section 1365 does not give any new fees but simply authorizes the commissioners in certain cases to increase the rate of fees already prescribed by law, and moreover the statute has only a prospective operation.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Probate Court; Fees of Accountants to Examine County Treasury—Municipal Corporation; Construction of Sidewalks; Notice.

PROBATE COURT; FEES OF ACCOUNTANTS TO EXAMINE COUNTY TREASURY.

Attorney General's Office.
Columbus, Ohio, June 26, 1885.

S. M. Schwartz Esq., Prosecuting Attorney, Millersburg, Ohio:

DEAR SIR:—Your favor of the 25th inst. is received. In my opinion, each accountant appointed by the probate court to examine the county treasury in pursuance of section 1129 Revised Statutes (amended 82 O. L., 173) is entitled to five dollars per day for his services to be paid out of the county treasury.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; CONSTRUCTION OF SIDEWALKS; NOTICE.

Attorney General's Office.
Columbus, Ohio, July 6, 1885.

F. Newman Esq., City Solicitor, Crestline, Ohio:

DEAR SIR:—On my return to the city I find such an accumulation of work that I have been able to make only a hasty examination of the question heretofore submitted by you. In my opinion section 2304 Revised Statutes does not apply to a resolution of the council declaring that certain specified sidewalks shall be constructed or repaired. As section 2329 Revised Statutes makes provision for the service of notice in such case, I think it should be considered as

Municipal Corporation; Term of the City Clerk.

exclusive, and hence that a publication of the declaratory resolution is required only when the property owners can not be personally served. See also *Finnell vs. Kates* 19 O. St., 405, and *Bolton vs. Cleveland* 35 O. St., 319. Section 1695 Revised Statutes (amended 80 O. L., 26) relates to the publication of ordinances, and not of resolutions.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MUNICIPAL CORPORATION; TERM OF THE CITY
CLERK.

Attorney General's Office.

Columbus, Ohio, July 6, 1885.

A. M. Parrish Esq., President City Council, Wooster, Ohio:

DEAR SIR:—Owing chiefly to my absence from the city I have been unable to answer your letter of the 25th inst. until now. I am inclined now to refer you to the case of the *State vs. Brady*, found in the *Cincinnati Law Bulletin* of February 23, 1885, page 199, instead of attempting to give my own views on the questions presented, for I confess that I have no other light upon the subject. If I understand the ruling in that case when L. R. Kramer was first elected city clerk of Wooster in 1876, it was merely for the unexpired term of his predecessor, James Johnston, who, under his election in 1875 was really entitled to serve until 1877. Johnston must be considered to have abandoned the office one year before the expiration of his term, so that Kramer was elected to fill such vacancy. Beginning then in 1877 and counting two years for each term, Kramer's election in 1883 was clearly for the term of two years ending in 1885, and the so-called election in 1884 was a nullity. Hence I am of the opinion that an election was properly held in 1885,

*Clerk of the Courts; Manner of Paying Fees to, Under
Section 5339a.*

that the person then elected is entitled to serve for the term of two years, and that Kramer has now no claim to the office.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CLERK OF THE COURTS; MANNER OF PAYING
FEES TO, UNDER SECTION 5339a.

Attorney General's Office.

Columbus, Ohio, July 6, 1885.

G. A. Marshall Esq., Prosecuting Attorney, Sidney, Ohio:

DEAR SIR:—Owing to my absence from the city and engagements since returning I have been unable to answer your favor of June 25 until now, and I also owe you an apology for misunderstanding the question as presented in your former letter.

The fees to the clerk for making the index authorized by section 5339a Revised Statutes (80 O. L., 216) are to be paid out of the county treasury in the same manner as the fees specified in section 1261. By section 1261 the fees therein specified are to be paid out of the county treasury, on the warrant of the county auditor, which shall issue upon the certificate of the clerk, approved by the county commissioners. I am, therefore, of the opinion that the fees under section 5339a can only be paid upon the like certificate of the clerk approved by the county commissioners, and that the county auditor can not issue his warrant without such approval.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Prosecuting Attorney; Fees of, On Collection of Witness Fees—Liquor Law; Sale of Intoxicating Liquors Within Two Miles of Agricultural Fair.

PROSECUTING ATTORNEY; FEES OF, ON COLLECTION OF WITNESS FEES.

Attorney General's Office.
Columbus, Ohio, July 6, 1885.

B. M. Clendening Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—Your favor of the 30th ult. was duly received. In my opinion the prosecuting attorney is entitled to a commission of 10 per cent. on all costs collected from defendants in criminal causes not exceeding \$100.00 in any one case.

Your question, as I understand it, refers to fees of witnesses before the grand jury which are paid out of the county treasury in pursuance of section 1302 Revised Statutes, and which are not collected from defendants. I am of the opinion that the prosecuting attorney is not entitled to any commission on such fees thus paid out of the county treasury, the same not being *collected* within the meaning of section 1298 Revised Statutes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

LIQUOR LAW; SALE OF INTOXICATING LIQUORS WITHIN TWO MILES OF AGRICULTURAL FAIR.

Attorney General's Office.
Columbus, Ohio, July 7, 1885.

A. L. Sweet Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Your favor of June 29 was duly received. In my opinion it is unlawful, under section 6946 Revised

Scrip Law; Violation of, In Certain Case.

Statutes (amended 82 O. L., 222), to sell intoxicating liquor either at saloons permanently located in a city or village or from temporary booths or stands, within two miles of the place where an agricultural fair is being held. The prohibition is directed against the *sale* and does not depend on the nature or description of the building or structure in which such sale is made. Clearly the statute, as applicable to the State institutions named, refers to permanent as well as temporary places, and, as precisely the same language is applicable in the case of agricultural fairs, I see no ground for a distinction. Furthermore, I do not think that section 3712 Revised Statutes operates to limit the plain provisions of section 6946. These sections are not necessarily inconsistent, giving full force to each.

Yours truly,

JAMES LAWRENCE,

Attorney General.

SCRIP LAW; VIOLATION OF, IN CERTAIN CASE.

Attorney General's Office.

Columbus, Ohio, July 7, 1885.

W. S. Hudson Esq., Prosecuting Attorney, McArthur, Ohio:

DEAR SIR:—As the checks referred to in your favor of June 30 are payable in merchandise, it seems to me to be clearly a violation of section 7015 Revised Statutes (amended 82 O. L., 120) for any employer of more than twenty men to give such checks to any person employed by him in payment of wages; and, as you say, each evening an employer issues to his men checks for the amount of the day's wages, which checks are redeemable in merchandise at a store of which such employer is owner, I can not see how the transaction can be called anything else than a payment of wages in checks. The claim that checks are so issued mere-

Roads; Powers of Supervisor of, and of Council of Municipal Corporation Over.

ly as a means of keeping accounts is scarcely tenable, and at least would be regarded as rather "thin" if offered as a defense. It is both unusual and unnecessary to keep accounts in that way. You state that it is understood between employer and employe that all checks will be paid in cash on pay day if not dealt out in the store before that time; but as the checks are on their face payable in merchandise, I do not think that such verbal understanding can alter the nature of the original transaction, which is a payment of wages in checks redeemable otherwise than in money.

Yours truly,

JAMES LAWRENCE,

Attorney General.

ROADS; POWERS OF SUPERVISOR OF, AND OF
COUNCIL OF MUNICIPAL CORPORATION
OVER.

Attorney General's Office.

Columbus, Ohio, July 7, 1885.

George Rock Esq., Justice of the Peace, Sherwood, Ohio:

DEAR SIR:—Your favor of June 29th was duly received. The council of a village has control of all public highways and streets therein, and may require labor to be performed upon them in pursuance of section 2658 Revised Statutes. The jurisdiction of a supervisor of roads is limited to his road district. He has power to order out all persons resident in his district who are liable to perform labor on the roads, giving at least two days notice prior to the day named for the performance of the labor. The person so ordered out must either attend by himself or substitute at the time and place appointed, or else, within three days after being notified by the supervisor, must pay the sum of three dollars in lieu of the labor. A failure so to do renders him liable to the

*Clerk of Courts; Transfer of Transcript to Adjoining
County.*

penalties provided in section 4721 Revised Statutes. The supervisor can require a man to work at such place in his district as he (the supervisor) may designate.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CLERK OF COURTS; TRANSFER OF TRANSCRIPT
TO ADJOINING COUNTY.

Attorney General's Office.

Columbus, Ohio, July 7, 1885.

Mr. S. F. Ottinger, Clerk of Courts, Mansfield, Ohio:

DEAR SIR:—Your favor of the 1st inst. was duly received. When all the judges of the common pleas court in any sub-division are disqualified to sit in any cause, it is the duty of the clerk, under section 550 Revised Statutes (amended 82 O. L., 24), to transmit the papers in such cause to the clerk of an adjoining county which is not in such sub-division. Where practicable they should be transmitted to an adjoining county in the same judicial district, but, if this is not practicable, then to an adjoining county of another district. I am of the opinion that the transfer must be to a county which adjoins the county in which the cause originated. I do not think that the clerk is authorized to transmit the papers to a county which is not adjoining, even though such county is situated in an adjoining sub-division.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Sheriff; Fees of, For Conveying Insane Person to Asylum and For Carrying Prisoner Before a Court or Committing Him to Jail. Insane Persons; Keeping of in Infirmary and Jail.

SHERIFF; FEES OF, FOR CONVEYING INSANE PERSON TO ASYLUM AND FOR CARRYING PRISONER BEFORE A COURT OR COMMITTING HIM TO JAIL. INSANE PERSONS; KEEPING OF IN INFIRMARY AND JAIL.

Attorney General's Office.
Columbus, Ohio, July 7, 1885.

Disney Rogers Esq., Prosecuting Attorney, Youngstown, Ohio:

DEAR SIR:—In reply to your favor of June 30th, I have to say:

First—In my opinion the sheriff who conveys an insane person to or from an asylum, is not entitled under section 719 Revised Statutes to charge for carriage hire or railroad fare. The mileage covers these. The statute specifically says that he shall be paid "nothing more" than the items named therein.

Second—Section 1235 Revised Statutes, as respects the allowance for keeping lunatics, applies only to counties in which there is no infirmary. In counties where there is an infirmary it is the duty of the commissioners, under section 970 Revised Statutes to provide separate apartments, in or adjoining to said infirmary, for the keeping of all lunatics of said county who cannot be received into a state asylum. The other statutes upon the subject, I take it, contemplate that this duty will be performed. Hence I think that in a county having an infirmary lunatics should not be confined in a jail except temporarily, pending an inquest, etc. In such case the jailor is entitled only to thirty-five cents a day. If, however, the commissioners of a county having an infirmary, fail to provide sufficient accommodations at the infirmary for all the insane to be cared for, of course there is nothing to do but to keep a portion of them at the jail. In

Probate Judge of Morrow County; Jurisdiction of.

such case I still think that the jailor is limited to thirty-five cents per day, for section 71 is the only statute which is at all applicable.

Third—In my opinion the sheriff is not entitled to be paid out of the county treasury his fees for committing or discharging a prisoner from jail or taking him before a court or judge, in cases of felonies where there is no conviction, or in misdemeanors where the state fails to convict or the defendant is insolvent. It is sufficient reason to say that there is no statute authorizing such payment. The allowance of \$300.00 authorized by section 1231 is intended to cover services of this nature.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

 PROBATE JUDGE OF MORROW COUNTY; JURIS-
 DICTION OF.

Attorney General's Office.
 Columbus, Ohio, July 7, 1885.

L. K. Powell Esq., Probate Judge, Mt. Gilead, Ohio:

DEAR SIR:—Your favor of the 3d inst. is received. The act of April 29, 1885 (82 O. L., 168) clearly repealed section 6454 Revised Statutes as it existed prior to that date. The designation of said section as amended February 12, 1885, instead of February 13, 1885, is not material. It would have been sufficient simply to have repealed section 6454, without mentioning any amendments. I am, therefore, of the opinion that said section as amended April 29th, 1885, is alone in force, and hence that the probate judge of Morrow County has no criminal jurisdiction.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

Justice of the Peace; Issuing of Commission to, in Certain Case—Costs; Liability of Surety For, in Case Before Magistrate.

JUSTICE OF THE PEACE; ISSUING OF COMMISSION TO, IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, July 7, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the certificate of the clerk of Jefferson County to the election of John Trainor as justice of the peace for Wells township in said county, and am of the opinion that the same is not sufficient to authorize the issue of a commission by the governor for the reason that the certificate fails to show the date when the vacancy occurred, or that said Trainor was the former incumbent of the office so as to make a vacancy by his removal.

This is the only objection to the form of the certificate, but, if said vacancy occurred by the removal of said John Trainor from the township—he being the former incumbent of the office—I think that before issuing a commission the governor should be satisfied, in some way, that Trainor had regained his residence in the township so as to be an elector thereof at the date of his election.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COSTS; LIABILITY OF SURETY FOR, IN CASE BEFORE MAGISTRATE.

Attorney General's Office,
Columbus, Ohio, July 15, 1885.

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

DEAR SIR:—Owing to my absence from the city your favor of the 8th inst. did not come to hand until today. In

Penitentiary; Parole Law; Case of Frederick W. Newburgh.

my opinion a person who becomes security for costs in a case of misdemeanor before a justice of the peace is liable only when the case is dismissed by the justice. If the defendant is bound over I think that the surety for costs is released.

Yours truly,

JAMES LAWRENCE,

Attorney General.

PENITENTIARY; PAROLE LAW; CASE OF
FREDERICK W. NEWBURGH.

Attorney General's Office.
Columbus, Ohio, July 15, 1885.

*Hon. George S. Peters, President Board of Managers, Ohio
Penitentiary:*

DEAR SIR:—In reply to your favor of the 13th inst. I have to say that in my opinion, on the facts stated, Frederick W. Newburgh is not a proper subject for parole under the provisions of section 8 of the act of March 27, 1884, relating to the imprisonment of convicts in the Ohio Penitentiary, as amended May 4, 1885 (82 O. L., 236), for the following reasons:

First—Said section is by its terms applicable only to prisoners who have not previously been convicted of a felony and served a term in a penal institution.

I have carefully read the argument of Col. J. T. Holmes submitted with your letter, but am unable to agree with him that, in order to disqualify a prisoner to be paroled, the service of a term of imprisonment under the previous conviction must have been complete and finished before the second conviction was had. The natural and obvious meaning of the language seems to me to be simply that the persons must have not been previously convicted of a felony in consequence of which

Penitentiary; Parole Law; Case of Frederick W. Newburgh.

he served a previous term of imprisonment. In the present case both convictions preceded the actual imprisonment, but the prisoner has fully served his term under the first sentence, and is now serving a distinct and separate term under the second sentence.

Second—In my opinion the provisions of said section relative to the parole of prisoners can have no application to any prisoner, who, at the date of the passage of said amended act was under sentence for a definite term of imprisonment in the penitentiary. Under the statutes in force prior to the passage of said amended act courts were authorized to sentence a person convicted of a felony to serve a specified term of imprisonment in the penitentiary which is an institution definitely located at the city of Columbus, and as such is recognized and designated in our laws. By section 6799 Revised Statutes it is provided that, when any person is sentenced to imprisonment in the penitentiary, the Court shall declare in its sentence for what period he shall be kept at hard labor and for what period, if any, in solitary confinement, and section 7330 Revised Statutes provides that a person sentenced to the penitentiary shall within thirty days after sentence, unless the execution thereof be suspended, be conveyed to the penitentiary and delivered into the custody of the warden of the penitentiary, together with a copy of the sentence of the court, there to be safely kept until the term of his confinement expires or he is pardoned. It may well be said that the provisions of said amended act operate as a modification of these statutes in respect to prisoners subsequently sentenced. But as to prisoners under sentence either to hard labor or solitary confinement in the penitentiary, imposed prior to the passage of said amended act, a parole is in effect a conditional pardon, the rules and regulations established by the board of managers furnishing the conditions on which the prisoner is released and may be retaken. By our constitution the power to grant reprieves, commutations and pardons is

*Mayor; Duty of, on Conviction of Person Under Ordinance.
Marshal; Duty of, on Arrest on View.*

vested in the governor exclusively and can not be exercised directly or indirectly by any other authority. I return herewith the brief of Col. Holmes.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MAYOR; DUTY OF, ON CONVICTION OF PERSON UNDER ORDINANCE. MARSHAL; DUTY OF, ON ARREST ON VIEW.

Attorney General's Office.
Columbus, Ohio, July 15, 1885.

Joseph May, Esq., Mayor, Crestline, Ohio:

DEAR SIR:—In reply to your favor of the 14th inst. I have to say:

First—Where a person, who has been arrested for a violation of an ordinance, pleads not guilty to the charge and is tried and convicted before the mayor, there is nothing for the mayor to do but to impose the legal penalties provided in the ordinance for such offense.

Second—When the marshal arrests on view a person for a violation of an ordinance, the person so arrested can be detained only until a warrant can be obtained. Before a trial is had an affidavit must be filed and a warrant issued as in other cases.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Liquor Law; Distribution of Moneys Collected as Assessments Under.

LIQUOR LAW; DISTRIBUTION OF MONEYS
COLLECTED AS ASSESSMENTS UNDER.

Attorney General's Office.
Columbus, Ohio, July 15, 1885.

I. T. Siddall, Esq., Prosecuting Attorney, Ravenna, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 9th inst. did not come to hand until today. It is probable that the decision that moneys paid under the so-called "Scott law" can not be recovered back will stand, but as an application for a re-hearing is pending, if I were the county treasurer, I would not pay out any of the money until the question is definitely settled.

If the decision heretofore made, however, is sustained, I am of the opinion that the money now in the hands of the treasurer should be distributed and paid out as provided in said law and in the act of April 14, 1884, relating to the intermediate penitentiary. The money was paid for the purposes specified in the law, and certainly the treasurer can not retain it for himself or apply it in any other manner. The grounds on which the decision is based have not been announced, but it seems to me that for some reason it must have been held that the collection was valid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*County Commissioners; Power to Take Note in Payment of
Fine and Costs—Concordia Maennerchor of Cheviot;
Articles of Incorporation of.*

COUNTY COMMISSIONERS; POWER TO TAKE
NOTE IN PAYMENT OF FINE AND COSTS.

Attorney General's Office.
Columbus, Ohio, July 17, 1885.

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

DEAR SIR:—Your favor of the 15th inst. is just received. Where a person convicted of an offense has been sentenced to pay a fine of \$75.00 and costs of prosecution and to stand committed until paid, I am of the opinion that the county commissioners, under section 855 Revised Statutes, have authority to accept a secured note due in six months for the amount of the fine and as much of the costs as are due to the county; and that upon the delivery of such note and the payment of the remainder of the costs, if any, the prisoner is entitled to be discharged from custody.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CONCORDIA MAENNERCHOR OF CHEVIOT;
ARTICLES OF INCORPORATION OF.

Attorney General's Office.
Columbus, Ohio, July 17, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of the Concordia Maennerchor of Cheviot, Ohio.

Under the general powers conferred by section 3239 Revised Statutes this corporation has power to borrow

Mutual Protective Association; Term of Membership in.

money or otherwise contract debts. The corporate powers of the company can only be exercised by its trustees, and by section 3261 the trustees are personally liable for all debts of the corporation by them contracted.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MUTUAL PROTECTIVE ASSOCIATION; TERM
OF MEMBERSHIP IN.

Attorney General's Office.

Columbus, Ohio, July 17, 1885.

Mr. F. J. Critchfield, Centerburg, Ohio:

DEAR SIR:—Owing to my absence from the city and engagements since returning I have been unable to answer your favor of the 8th inst. until now.

Not being authorized to give to you an official opinion on the questions submitted, I am unwilling to express any opinion by which I would feel bound hereafter if the same question should again be presented.

In the scheme or plan of corporation organized under section 2686 Revised Statutes there is, strictly speaking, no policy of insurance. Certain persons, in the mode provided, may become members of the association, and as such may insure each other, and for that purpose may enforce any contract by them entered into for specific assessments for the payment of losses and for incidental purposes. So long as a person continues a member he is subject to all the obligations of such member. The question then is, what is the term of membership, and can a member withdraw at any time. I answer that, in my opinion, the time of membership must be controlled either by the provisions in the constitution and by-laws or by

*Election; Judges of, in Precincts Comprising More Than
One Township.*

the contract entered into by the members. Where both these are silent on the subject a member may withdraw at any time, and in that event is liable only for his share of losses and expenses up to the date of his withdrawal. But where the contract or constitution and by-laws stipulate a definite term of membership, a member is bound during said term and can not sooner withdraw without the consent of the corporation. I return herewith the certificate of membership enclosed in your letter.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ELECTION; JUDGES OF, IN PRECINCTS COM-
PRISING MORE THAN ONE TOWNSHIP.

Attorney General's Office.
Columbus, Ohio, July 17, 1885.

Mr. O. N. Bundy, Township Trustee, Colerain, Ohio:

DEAR SIR:—Your favor of the 10th inst. was duly received. Where an election precinct is composed of parts of two townships and one trustee from each of said townships resides in said precinct, I am of the opinion that these two trustees, together with a third person to be elected viva voce by the electors in the same manner as provided in section 2925 Revised Statutes, should be the judges of election for said precinct. The provision that the candidates for trustee who receive the highest number of votes of those not elected, should serve as judge of election, only applies to townships which are not divided into election precincts.

See the 4th sub-division of section 2932 Revised Statutes (amended 77 O. L., 51), also section 1393 Revised Statutes.

*Penitentiary; Parole Law; Paroles Approved by Governor
Not Pardons.*

I return herewith your diagram marked as requested.

Yours truly,

JAMES LAWRENCE,

Attorney General.

PENITENTIARY; PAROLE LAW; PAROLES AP-
PROVED BY GOVERNOR NOT PARDONS.

Attorney General's Office.

Columbus, Ohio, July 17, 1885.

*Hon. Geo. S. Peters, President Board of Managers, Ohio
Penitentiary:*

DEAR SIR:—I am in receipt of your favor of the 16th inst. referring to my former letter in which I expressed the opinion that the board of managers of the penitentiary was not authorized to grant paroles to certain persons and inquiring whether, in such cases, paroles issued by the board and approved by the governor would be valid. In reply I have to say that, in my opinion, the mere approval of the governor can not confer any authority upon the board in the premises. Of course if the action of the governor independently of anything done by the board amounts to a pardon and the requisite proceedings have been had, it would be valid as a pardon but not as a parole.

I deem it proper to say in connection with this subject that I recognize the great importance of the questions arising under the legislation referred to in my former letter, and I am not disposed to assert the infallibility of the conclusions to which I have arrived.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Prosecuting Attorney; Duty When Suit Brought Against
County Treasurer—Benevolent Institution; Ineligibility
of Trustee of, For Office in.*

PROSECUTING ATTORNEY; DUTY WHEN SUIT
BROUGHT AGAINST COUNTY TREASURER.

Attorney General's Office.
Columbus, Ohio, July 17, 1885.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your favor of the 10th inst. was duly received. It is not part of the duties of the prosecuting attorney to act as counsel in defending a suit brought against a county treasurer to recover moneys claimed to have been illegally collected by such treasurer, under any statute for the collection of the public revenue. When in such case the prosecuting attorney is employed by the treasurer, he is entitled to counsel fees for defending such suit, the same as any other attorney would be if employed for that purpose.

See section 2862 Revised Statutes (amended 78 O. L., 121).

Yours truly,
JAMES LAWRENCE,
Attorney General.

BENEVOLENT INSTITUTION; INELIGIBILITY
OF TRUSTEE OF, FOR OFFICE IN.

Attorney General's Office.
Columbus, Ohio, July 17, 1885.

Hon. D. McAlister, Columbus, Ohio:

DEAR SIR:—Your favor of the 14th inst. was duly received.

A trustee of any benevolent institution is not eli-

Ohio National Guard; Armory Furnished by Village and Township in Different Counties.

gible to the office of superintendent or steward of such institution during the term for which he was appointed, nor within one year after his term expires. See section 629 Revised Statutes (amended 81 O. L., 90).

Yours truly,
JAMES LAWRENCE,
Attorney General.

OHIO NATIONAL GUARD; ARMORY FURNISHED BY VILLAGE AND TOWNSHIP IN DIFFERENT COUNTIES.

Attorney General's Office.
Columbus, Ohio, July 18, 1885.

B. F. Thomas, Esq., Solicitor, Mt. Sterling, Ohio:

DEAR SIR:—Your favor of the 15th inst. was duly received. Where a company of the Ohio National Guard is composed of members who reside in the village of Mt. Sterling, Madison County, and in the adjoining townships of Fayette and Pickaway counties, I am of the opinion that the expense of providing a suitable armory and drill room for such organization must be paid by said village and said townships in proportion as each has resident members of such organization. I do not think it makes any difference that the townships are not situated in the same county with the village.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Special Legislation; Conflict With General Legislation; Act
of March 22, 1879.*

SPECIAL LEGISLATION; CONFLICT WITH GEN-
ERAL LEGISLATION; ACT OF MARCH 22, 1879.

Attorney General's Office.
Columbus, Ohio, July 18, 1885.

Thomas B. Black, Esq., City Solicitor, Kenton, Ohio:

DEAR SIR:—Your favor of the 16th inst. was duly received, calling my attention to section 2712 Revised Statutes and also to a special act relating to the village of Kenton, passed March 22, 1879 (76 O. L., 221), and asking whether the village as to the levy for a sinking fund is now governed by said section of the Revised Statutes or by said special act.

In the case of Commissioners vs Board of Public Works, 39 O. St., 628 it was held that a local and special act is not repealed or otherwise affected by the conflicting provisions of a subsequent general statute on the same subject, unless the legislative intent that such effect be given the later enactment is clearly manifest.

It may be doubted, however, whether section 3 and the first clause of section 4 of said special act were ever valid. I am inclined to think that they are in conflict both with section 26, article 2 and section 6, article 13 of the constitution, but I am unwilling to express a definite opinion on the hasty examination that I have been able to give to the question. See McGill vs State 34 O. St., 229.

As the levy has already been made in accordance with the general statute, would it not be well to let that stand, and, if any one raises a question, let the courts pass upon the matter?

The last clause of section 4 is so indefinite that I do not think it necessarily conflicts with section 2712 Revised Statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

County Treasurer; Defalcation by; Liability of Sureties on Bond; Vacancy in Office of, Not Created by Defalcation of.

COUNTY TREASURER; DEFALCATION BY; LIABILITY OF SURETIES ON BOND; VACANCY IN OFFICE OF NOT CREATED BY DEFALCATION OF.

Attorney General's Office.
Columbus, Ohio, July 22, 1885.

S. N. Schwartz, Esq., Prosecuting Attorney, Millersburg, Ohio:

DEAR SIR:—It appears from the statements made to me that about two weeks ago the county commissioners of Holmes County made an examination of the treasury of said county; that during the progress of such examination the treasurer left the office for a short time and on returning brought with him, as the commissioners discovered, a package of money amounting to a little over \$5,000.00; that, counting this money, the funds, which should have been in the treasury, were found to be all there, but that, without it, there was a deficit of the amount so brought in, and the circumstances indicate that this amount had either been loaned out or deposited in bank by the treasurer. The treasurer has not been removed by the commissioners, but his bondsmen, on learning these facts, made application to be released from further liability in pursuance of section 5837 Revised Statutes, which application was heard by the commissioners, and the treasurer was ordered to give a new bond by the 28th day of July, 1885.

On these facts, I am of the opinion that the present sureties on the bond of said treasurer are liable on such bond until the filing of the second bond or the expiration of the time allowed therefor.

Conceding that the facts above stated show that a technical embezzlement has been committed, they do not *per se* operate to create a vacancy in the office of the

County Treasurer; Methods of Collection of Taxes by.

treasurer, but the treasurer remains in office until the commissioners have acted and removed him, or the time allowed for the filing of a new bond has expired and he has failed to furnish the same.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY TREASURER; METHODS OF COLLECTION OF TAXES BY.

Attorney General's Office.
Columbus, Ohio, July 22, 1885.

F. F. Metcalf, Esq., Prosecuting Attorney, McConnelsville, Ohio:

DEAR SIR:—Your favor of the 20th inst. was duly received. In my opinion a county treasurer is not compelled to collect taxes assessed against real estate by distraining personal property belonging to the owner of such real estate. In case taxes are not paid within the time limited, section 1094 Revised Statutes requires the treasurer to proceed to collect the same by distress or *otherwise*. I think there can be no question but that the treasurer may resort to any one of the methods prescribed by the statutes for the collection of such taxes. The method authorized by section 1104 Revised Statutes (amended 77 O. L., 13) would ordinarily be preferable to that by distress.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Corporation; Death of One of the Incorporators—Costs; Requisition Necessary to Authorize Payment of, by State, Incurred in Extradition Cases.

CORPORATION; DEATH OF ONE OF THE INCORPORATORS.

Attorney General's Office.
Columbus, Ohio, July 22, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—Your favor of the 20th inst. enclosing letter from Mr. James Taylor, was duly received. Where there are but five subscribers to the articles of incorporation of a corporation, and one of these dies before ten per cent. of the capital stock is subscribed, I am of the opinion that, as soon as the requisite ten per cent. is subscribed, the four survivors may certify such fact to the secretary of state, setting forth in the certificate the death of one of the subscribers. See *Chamberlain vs. Railroad*, 15 O. St., 225, page 250).

Yours truly,
JAMES LAWRENCE,
Attorney General.

COSTS; REQUISITION NECESSARY TO AUTHORIZE PAYMENT OF, BY STATE, INCURRED IN EXTRADITION CASES.

Attorney General's Office.
Columbus, Ohio, July 22, 1885.

B. J. McKinney, Esq., Chief Clerk of Auditor of State:

DEAR SIR:—To the questions heretofore submitted by you I reply as follows:

First—When a person charged with a felony is arrested in another state and returned to Ohio without a

Costs; Requisition Necessary to Authorize Payment of, by State, Incurred in Extradition Cases.

requisition I am of the opinion that the amount paid for such arrest and return can not be repaid by the State to the county. Upon the sentence of a person for felony, the State has assumed to pay merely the costs made in the prosecution, including any sum paid by the county commissioners for the arrest and return of the convict on the requisition of the governor. Sections 7332 and 7337 Revised Statutes. Where a convict is arrested and returned without a requisition I do not think that the expense of such arrest and return is part of the costs made in the prosecution. Costs here evidently mean taxable costs, for which judgment may be rendered against the defendant. See section 7333 Revised Statutes.

Second—The sum paid by the county commissioners under section 1310 Revised Statutes for expenses incurred by an officer in the pursuit of a person charged with a felony who has fled the country, is of the same nature as the payment referred to in the preceding paragraph, and, in my opinion, can not be paid by the State, for the same reason.

Third—Where a person is arrested in pursuance of section 7130 Revised Statutes, and a warrant is afterwards obtained, which directs the removal of the accused to the county in which the offense was committed, I am of the opinion that the necessary expense of such removal and reasonable compensation to the officer for his time and trouble are properly part of the costs made in the prosecution of the case, and therefore are to be repaid by the State to the county. I think, however, that, at least so far as the State is concerned, the officer can only be allowed compensation for his time and trouble after such warrant is obtained.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Intermediate Penitentiary; Letting of Contracts For Erection of.

INTERMEDIATE PENITENTIARY; LETTING OF
CONTRACTS FOR ERECTION OF.

Attorney General's Office.
Columbus, Ohio, July 24, 1885.

Hon. J. Q. Smith, Oakland, Ohio:

DEAR SIR:—Your favor of the 23d inst. is received. I shall be very glad to consider anything that may be offered, either verbally or in writing, relative to the power of the board of managers to proceed with the construction of the intermediate penitentiary in the way suggested. The letter of Senator Sherman was handed to me some days ago, but, with all respect to him, I think that it amounts simply to an assumption that section 787 Revised Statutes is not applicable to this institution. His position is clearly not tenable. Section 787 and the preceding sections of the chapter relating to public buildings, by express terms, apply to the erection, alteration, addition to or improvement of any State institution, asylum or other improvement (excepting the penitentiary) erected, or now being erected, or to be erected by the State. See section 782. There being nothing in these sections which is inconsistent with the statute authorizing the erection of the intermediate penitentiary the ordinary rule of construction requires that full effect be given to both. My position is not that the board can not proceed with the construction of the building but simply that the contracts for the entire building must not in the aggregate exceed the sums heretofore appropriated, which is the only amount authorized by law for such institution. I claim that the board has no authority to adopt plans calling for an expenditure of a much larger amount, and then construct the foundation or other separate portion of the building out of the money appropriated, that the advertisement for proposals must call for bids, separately

*County Treasurer; Election to Fill Vacancy in Office of;
Division of Fees of.*

and in the aggregate, for the entire improvement; and that the contracts when let, must likewise be for the entire improvement. See section 794 Revised Statutes. This view seems to be not only in accordance with the requirement of the statutes on the subject, but also to result from the nature of the case. No money can be drawn from the State treasury except in pursuance of a specific appropriation made by law. How can the board of managers say that the General Assembly will hereafter make any further appropriation for this institution, or, if such appropriation is made, that it will amount to any given sum? Yet, if the board can proceed to expend the whole of the \$103,000 for the foundations of a building, it will thus control the future action of the General Assembly so as to require it to make an additional appropriation to complete the building in accordance with the foundations already constructed, or else such foundations will be left useless.

I have thus stated at length my views, so that the question at issue may be clearly understood. If it is desired to meet me in person, please notify me in advance so that I can arrange to be here.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY TREASURER; ELECTION TO FILL
VACANCY IN OFFICE OF; DIVISION OF
FEES OF .

Attorney General's Office.
Columbus, Ohio, July 25, 1885.

P. M. Adams, Esq., Prosecuting Attorney, Tiffin, Ohio:
DEAR SIR:—From your favor of the 22d inst. it ap-

*County Treasurer; Election to Fill Vacancy in Office of,
Division of Fees of.*

pears that, at the October election in 1883, John Heablet was elected treasurer of Seneca county, his term commencing on the first Monday of September, 1884. On the 20th day of June, 1885, while in office, he died, and the county commissioners appointed Isaac Kagy to fill the vacancy. In answer to the questions submitted on these facts I have to say:

First—By section 2, article X of the constitution, county officers are to be elected for such term, not exceeding three years as may be provided by law. As section 1079 Revised Statutes is the only provision made by law in respect to the term for which a person elected county treasurer shall hold his office, an election for county treasurer is in all cases for the full term of two years commencing on the first Monday of September next after such election. Section 1082 Revised Statutes authorizes the county commissioners, by appointment, to fill a vacancy in the office of county treasurer, and section 11 Revised Statutes provides that where an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy, etc. I am therefore of the opinion that a county treasurer for your county should be elected, at the October election of this year, for the statutory term of two years commencing on the first Monday of September, 1886, and that Mr. Kagy, under his appointment by the county commissioners, will hold the office until said first Monday of September, 1886, which is the earliest date at which his successor can be qualified. See *State vs Commissioners*, 7 O. St., 125.

Second—The late treasurer having collected a part of the June taxes and the present incumbent a part, you ask how should their respective compensation be arrived at. In my opinion the representatives of the deceased treas-

*Board of Public Works; Powers of, Over Contract With
Cincinnati and Eastern Railway Company.*

urer have the advantage in the matter, being entitled to the higher percentages allowed on the first collections, that is $2\frac{1}{2}$ per cent. on the first \$10,000.00, etc. I think that section 1117 Revised Statutes (amended 77 O. L., 115) means that there shall be allowed $2\frac{1}{2}$ per cent. on the first \$10,000.00 collected on the grand duplicate, $1\frac{1}{2}$ per cent. on the next \$10,000.00 collected on the grand duplicate, etc., and that the officer, who collects said first \$10,000.00 is entitled to the percentage thereon. It is proper to say that the auditor of state, for whose opinion in such matters I have great respect, differs with me in this construction, claiming that the fees on the whole amount collected should be apportioned *pro rata* according to the amount collected by each treasurer.

Yours truly,

JAMES LAWRENCE,
Attorney General.

BOARD OF PUBLIC WORKS; POWERS OF, OVER
CONTRACT WITH CINCINNATI AND EAST-
ERN RAILWAY COMPANY.

Attorney General's Office.
Columbus, Ohio, July 25, 1885.

Frank Snyder, Esq., Chief Engineer Public Works:

DEAR SIR:—I return herewith the copy of the order heretofore made by the board of public works granting to the Cincinnati and Eastern Railway Company the right of way along certain portions of the Ohio canal in pursuance of the act of April 14, 1882 (79 O. L., 91), and also your report to the board, setting forth numerous violations of the conditions of said grant on the part of said railroad company.

Boards of Education; No Compensation For Members of.

The act referred to expressly provides that on failure of the road to fully comply with the provisions of said act and also of any contract made with the board of public works on behalf of the state, said grant shall be null and void. I am inclined to say, however, that, if it is desired to enforce a forfeiture of the grant, such purpose ought to be declared by the General Assembly rather than the board of public works. My advice is, therefore, that the board serve notice in writing upon the grantee, clearly specifying the points in respect to which a violation of the conditions is claimed, and calling upon said grantee to comply with such conditions. A record of the proceedings should be made upon the journal of the board, and a full report should be presented to the General Assembly at its next session.

Yours truly,

JAMES LAWRENCE,

Attorney General.

BOARDS OF EDUCATION; NO COMPENSATION
FOR MEMBERS OF.

Attorney General's Office.

Columbus, Ohio, July 28, 1885.

Mr. Geo. L. Hyslop, Member Board of Education, Deshler, Ohio:

DEAR SIR:—Your favor of the 27th inst. is received. A member of the board of education is not authorized to receive any pay for his services as such member, except as clerk or treasurer of the board, and section 6975 Revised Statutes makes the act of doing so embezzlement. If your board, through ignorance of the law, allowed themselves compensation, they ought to return the same.

The statutes provide no penalty for a member's fail-

Liquor Law; Distribution of Moneys Collected Under.

ure to attend a special meeting of the board. A member however, takes an oath to faithfully perform the duties of his office, and may be expelled for gross neglect of duty.

Yours truly,

JAMES LAWRENCE,

Attorney General.

LIQUOR LAW; DISTRIBUTION OF MONEYS
COLLECTED UNDER.

Attorney General's Office.

Columbus, Ohio, July 29, 1885.

B. J. McKinney, Esq., Chief Clerk Auditor of State:

DEAR SIR:—The Supreme Court having held that moneys heretofore collected under the so-called "Scott law" could not be recovered back, I am of the opinion that all of such moneys now in the hands of a county treasurer should be distributed and paid out as provided in said law and in the act of April 14, 1884, relating to the intermediate penitentiary (81 O. L., 206).

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Advertisement; Publication of Report of Examination of
County Treasury in German Newspaper.*

ADVERTISEMENT; PUBLICATION OF REPORT
OF EXAMINATION OF COUNTY TREASURY
IN GERMAN NEWSPAPER.

Attorney General's Office.
Columbus, Ohio, July 30, 1885.

Hon. Geo. L. Foley, Probate Judge, Zanesville, Ohio:

DEAR SIR:—Mr. A. Schneider of the Zanesville Post has requested my opinion as to the authority of the probate judge to cause the report of the examination of the county treasury to be published in a German newspaper, in addition to the two newspapers of opposite politics mentioned in section 1129 Revised Statutes (amended 82 O. L., 173). I hope you will understand that I have no desire to interfere in matters not within my province, but the question having been presented I take the liberty to say that, in my opinion, the probate judge, under section 4368 Revised Statutes has authority, if he deems it proper, to cause said report to be published in a German newspaper. In respect to the character of the advertisements to be published in a German newspaper, section 4368 refers to the preceding section, which includes not only the notices specially mentioned but also "such other advertisements of general interest to the tax payers" as the officers named may deem proper.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Surveyor or Engineer; Compensation of, in One and Two-Mile Assessment Pikes—County Treasurer; Sureties on Bond of, and Their Qualifications.

SURVEYOR OR ENGINEER; COMPENSATION OF, IN ONE AND TWO MILE ASSESSMENT PIKES.

Attorney General's Office.
Columbus, Ohio, July 30, 1885.

Mr. R. E. Lowry, County Surveyor, Eaton, Ohio:

DEAR SIR:—Your favor of the 29th inst. is received. By section 4849 Revised Statutes the surveyor or engineer, employed under the provisions of the chapter relating to two mile assessment pikes, is entitled to such compensation as is fixed by law for the compensation of the county surveyor for like services in other cases. This undoubtedly refers to the general provision in section 1183 Revised Statutes concerning the compensation of the county surveyor when employed by the day. The provision concerning the compensation of the surveyor in section 4798 of the chapter relating to one mile assessment pikes are not so clear, but I am of the opinion that it also refers to the compensation of the county surveyor as fixed by section 1183.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY TREASURER; SURETIES ON BOND OF, AND THEIR QUALIFICATIONS.

Attorney General's Office.
Columbus, Ohio, July 31, 1885.

Mr. H. H. Robinson, County Commissioner, Millersburg, Ohio:

DEAR SIR:—Your favor of the 30th inst. is received. In my opinion the provisions of section 4953 Revised Statutes relative to the qualifications of sureties, apply

Clerk of Courts; Compensation of in Fairfield County.

only to bonds given in civil proceedings under part third of the Revised Statutes. I think that the question as to the sufficiency of the sureties on the bond of a county treasurer, whether such bond be the original bond or a new bond required in pursuance of section 5838 Revised Statutes, is to be determined by the county commissioners. Such sureties need not be worth in the aggregate double the amount of the bond.

The rule stated in the case of *Orr vs Orr* 5 Cin. Law Bull., 711, to which you call my attention, is undoubtedly correct as applicable to the bond there involved, which was an appeal bond given in pursuance of section 5230 Revised Statutes, but I do not think that this case has any bearing on the question presented by you.

Yours truly,

JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; COMPENSATION OF IN
FAIRFIELD COUNTY.

Attorney General's Office.
Columbus, Ohio, July 31, 1885.

*Mr. M. A. Daugherty, Jr., Prosecuting Attorney, Lancaster,
Ohio:*

DEAR SIR:—I have carefully examined the statutes which have been from time to time passed relative to the indexes of judgments and the compensation allowed therefor, but you have so clearly indicated the same in your favor of the 29th inst. that I deem it unnecessary to review them here.

In my opinion the special act of March 1st, 1861, entitled "an act relating to the indexing and transcribing of judicial records of Fairfield County," is not now in

Clerk of Courts; Compensation of in Fairfield County.

force. The first section and so much of section 4 as depends thereon are, as I understand, the only portions of said act in question. These have, in my opinion, been suppressed by section 5339 and 5424 Revised Statutes and are repealed by necessary implication therefrom. *Comms vs Frego & Buckley*, 26 O. St., 488.

Sections 5339 and 5424 Revised Statutes are not merely a re-enactment of a former act existing when the special act was passed, but, in much of their scope, are new statutes. They are applicable to every county in the State, and prescribe a uniform system for all in respect to their subject matter, and provide for complete indexes which are substantially the same as required by the special act.

It is true that the Supreme Court, in the case of *Commissioners vs Board of Public Works*, 39 O. St., 628, hold that a local and special act is not repealed or otherwise affected by the conflicting provisions of a subsequent general statute on the same subject, unless the legislative intent that such effect be given to the later enactment is clearly manifest. The Court, however, does not hold that a local or special act can not in any case be repealed by implication from a general act, but, on the contrary, it is said that, if the legislative intent that the general law shall supersede the local and special act is clear, it will of course prevail.

To my mind such intent is clear. Here is a subject in reference to which there should naturally and properly be a uniform system in all the counties of the State. The General Assembly has now provided such uniform system, which as I have said, is substantially the same as the special provision heretofore made for Fairfield County. If, as to Fairfield County, effect be now given both to the special and general acts, the clerk of that county will be required to keep two distinct sets of indexes which are substantially alike, while, without any apparent reason,

Intermediate Penitentiary; Title of Certain Land For.

he will receive greater compensation than the other clerks in the state.

I am of the opinion, therefore, that the Court of Common Pleas is not authorized to make to your clerk of courts the allowance referred to, and that the auditor can not lawfully issue a warrant therefor. I return herewith the bill of Mr. Wolf.

Yours truly,
JAMES LAWRENCE,
Attorney General.

INTERMEDIATE PENITENTIARY; TITLE OF
CERTAIN LAND FOR.

Attorney General's Office.
Columbus, Ohio, August 1, 1885.

Hon. John M. Pugh, President Board of Managers, Intermediate Penitentiary:

DEAR SIR:—I have examined the title to the property conveyed to the State of Ohio, as described in the warranty deeds from the Aultman & Taylor Company, Samuel Nail, Christian Wise, F. D. Mentzer, Thomas Tingley and Phoebe Wise, and have also gone over the description of said lands with the surveyor who was recommended to be competent and reliable. In addition to the deeds mentioned above, in order to correct certain errors in former deeds, etc., quitclaim deeds have been made to the State by C. Linn, Samuel Nail, Thomas Tingley and the Aultman & Taylor Co., for the lands respectively described therein, and a release has also been made by the assignee of a mortgage upon the land described in said deed from Frank D. Mentzer.

Basing my opinion upon the abstracts of title furnished me, dating back to the original conveyance of said

Municipal Corporation; Power of Council of, Under Section 1692b.

lands by the State, I am of the opinion that, by the conveyance aforesaid, the State acquires a good title in fee simple to the lands described in said warranty deeds from the Aultman & Taylor Co., Samuel Nail, Christian Wise, F. D. Mentzer and Thomas Tingley respectively, and that, at the date of said abstracts, said lands described in said deeds, from the Aultman & Taylor Co., Samuel Nail, Christian Wise and F. D. Mentzer were free from all incumbrances except such taxes as were a lien thereon. There is a mortgage on the land of Thomas Tingley, which, I am informed, is to be taken up out of the purchase price of said land. For the reasons heretofore explained I am not satisfied that Phoebe Wise, under the will, a copy of which is attached to her abstract, can convey an estate in fee simple to the 45-100 acres described in her deed.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

MUNICIPAL CORPORATION; POWER OF COUNCIL OF, UNDER SECTION 1692b.

Attorney General's Office.
 Columbus, Ohio, August 8, 1885.

Mr. Evan B. Kirby, Scio, Ohio:

DEAR SIR:—Your favor of the 3d inst. was duly received. Section 1692b Revised Statutes (79 O. L., 60) is still in force. In the case of Bronson vs Oberlin (see Law Bulletin of February 2, 1885, page 122) the Supreme Court Commission held that this statute was constitutional, but that it did not authorize the villages designated to prohibit, but only to regulate, the sale of intoxicating liquors.

Children's Home; Manner of Approval of Bills For.

cating liquors within the village. Hence an ordinance such as you mention would not be valid.

The power conferred upon the village is to be exercised by the council by ordinance. There is no provision for taking the vote of the people on the question, and such vote, if taken, would be of no effect.

Yours truly,

JAMES LAWRENCE,

Attorney General.

CHILDREN'S HOME; MANNER OF APPROVAL
OF BILLS FOR.

Attorney General's Office.

Columbus, Ohio, August 10, 1885.

Major. W. L. Shaw, Superintendent Children's Home, West Union, Ohio:

DEAR SIR:—YOUR favor of the 7th inst. is received. By section 934 Revised Statutes the county commissioners are quarterly to set apart a fund for the use of the children's home, which fund is to be expended upon the order of the board of trustees of the home, as provided in said section. The order upon which the county auditor draws his warrant must be signed by the trustees. So far as the mere approval of bills is concerned I think it sufficient to stamp the bill as you suggest, provided the board has not authorized its approval to be indicated in that manner. It would perhaps be better, however, to have the clerk sign the approval so as to avoid mistakes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*County Surveyor; Fees of, For Keeping Records Required
by Section 1178.*

COUNTY SURVEYOR; FEES OF, FOR KEEPING
RECORDS REQUIRED BY SECTION 1178.

Attorney General's Office.
Columbus, Ohio, August 10, 1885.

Mr. L. M. Wolf, County Surveyor, Ashland, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 4th inst. has remained unanswered until now. I had occasion before the amendment of May 4, 1885, to examine section 1178 Revised Statutes as amended April 20, 1881 (78 O. L., 286), and I then expressed the opinion that section 1177 Revised Statutes (as amended 78 O. L., 285) was applicable to said section 1178, and that for keeping the records required thereby the county surveyor was entitled to such compensation as the county commissioners may order, not exceeding the amount allowed by law for similar services. At that time the amount of such allowance was evidently limited by the amount of the fees allowed by section 1183.

By the amendment of May 4, 1885 (82 O. L., 255), section 1255 Revised Statutes (amended 78 O. L., 88) are "and shall receive the same fees as are now allowed county recorders for like work." No provision is made in said section for the payment of such fees either by the county or otherwise. The record being kept for the benefit of the public, each person who has a piece of land surveyed can not be charged with such record, nor can payment be made by the county except by authority of law.

On the whole I am inclined to the opinion that section 1177 Revised Statutes (amended 78 O. L., 285) is still applicable, and that for making and keeping the records required by section 1178, in its present form, the county surveyor is entitled to such compensation as the commissioners may order, not exceeding the amount al-

Clerk of Courts; Certain Fees Not Paid by County.

lowed by law for similar services. I think, however, that the amount allowed by law for similar services should now be ascertained by reference to section 1157 Revised Statutes instead of section 1183 as heretofore. The allowance made by the county commissioners can not exceed the fees allowed by section 1157 to county recorders for like work.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; CERTAIN FEES NOT PAID
BY COUNTY.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

*Mr. M. A. Daugherty, Jr., Prosecuting Attorney, Lancaster,
Ohio:*

DEAR SIR:—In reply to your favor of the 13th inst. I have to say that in my opinion, the fees of the clerk for making the index of living judgments as required by section 1255 Revised Statutes (amended 78 O. L., 88), are to be taxed as part of the costs of the case, and can not be paid out of the county treasury. Only such fees can be paid out of the county treasury as the law specifically prescribes shall be so paid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Taxation; Property of Rio Grande College; Exempt From.

TAXATION; PROPERTY OF RIO GRANDE COLLEGE; EXEMPT FROM.

Attorney General's Office.

Columbus, Ohio, August 17, 1885.

A. J. Green, Esq., Gallipolis, Ohio:

DEAR SIR:—Your favor of the 3d inst. with the accompanying papers has been forwarded to me here. Not being authorized to give you an official opinion on the question submitted, you must consider what I say merely as my individual views as an attorney.

On the facts stated by you, and in view of the decision of the Supreme Court in the case of Gerke vs. Purcell, 25 O. St., 229, I think that there can be no question that Rio Grande College is an institution of "purely public charity" within the meaning of section 2, article XII, of the constitution. Hence all moneys and credits appropriated solely to sustaining, and belonging exclusively to such institution, are by the sixth sub-division of section 2732 Revised Statutes, exempt from taxation.

If the fund belonging to the college, now invested in government bonds, be converted into money and loaned out at interest, and the income therefrom be appropriated to sustaining the institution, I am of the opinion that such moneys so loaned at interest would not be subject to taxation.

The will of Mrs. Ward also speaks of certain real estate, which it seems constitutes part of the endowment. So much of this real estate as is not actually occupied by the institution, or as is leased or otherwise used with a view to profit, is subject to taxation. The fact that the income from such real estate is appropriated to sustaining the institution would not exempt the same from taxation.

See *Library Association vs. Pelton*, 36 O. St., 253. *Cincinnati College vs. State*, 19 O. St., 106.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Ordinance; Certificate of Publication Entered by Clerk;
Effect of.*

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

*Leroy P. Cord, Esq., Attorney-at-Law, Gesta, Brown
County, Ohio:*

DEAR SIR:—Owing to my absence from the city your favor of the 11th inst. has been unanswered until now. In my opinion, the term "judgment" in section 6651 Revised Statutes does not include the costs of the case as part thereof. I think that this is apparent from the language of the preceding section.

Yours truly,
JAMES LAWRENCE,
Attorney General.

ORDINANCE; CERTIFICATE OF PUBLICATION
ENTERED BY CLERK; EFFECT OF.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

Dr. J. A. Morris, Kent, Ohio:

DEAR SIR:—Your favor of the 15th inst. was duly received. If in fact the repealing ordinance to which you refer was published as requested by law, I am of the opinion that said repealing ordinance is valid and in force. The failure of the clerk to enter a certificate of such publication can only affect the evidence of that fact. The validity of the ordinance in this respect does not depend on the certificate, but on the publication, and, in the absence of the certificate, I think that the fact can be shown by other evidence.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Jefferson Mutual Aid Society; Fee For Filing Articles of
Incorporation of—Schools; Appropriation of Funds of
a Joint Sub-District.*

JEFFERSON MUTUAL AID SOCIETY; FEE FOR
FILING ARTICLES OF INCORPORATION OF.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of the Jefferson Mutual Aid Society, and am of opinion that the proper fee for filing the same is \$25.00.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SCHOOLS; APPROPRIATIONS OF FUNDS OF A
JOINT SUB-DISTRICT.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

*S. R. Gottshall, Esq., Prosecuting Attorney, Mt. Vernon,
Ohio:*

DEAR SIR:—In reply to your favor of the 12th inst. I have to say that, in my opinion, the school funds apportioned by the county auditor to a joint sub-district, in pursuance of sections 3961-3964 Revised Statutes, belong to such joint sub-district, and can not be appropriated to the use of any other district.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Treasurer of School District; New Bond of; Additional Bond of.

TREASURER OF SCHOOL DISTRICT; NEW
BOND OF, ADDITIONAL BOND OF.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

Mr. Benj. Davis, New Carlisle, Ohio:

DEAR SIR:—Owing to my absence from the city and engagements since returning I have been unable to answer your favor of the 10th inst. until now. Section 4043 Revised Statutes requires each school district treasurer, before entering upon the duties of his office, to execute a bond with sufficient surety in double the probable amount of school funds that may come into his hands, but there is no statutory provision for the execution of a new or additional bond by such treasurer except in the case where his sureties apply to be discharged in accordance with section 5841 and 5842 Revised Statutes. It is the duty of the board of education to fix the amount of the bond high enough to cover all moneys that will probably come into the hands of the treasurer, and they should so arrange it that no greater sums be received by him. When this has not been done, but the treasurer has been permitted to receive money arising from the sale of bonds of the district in excess of his official bond, a case arises for which the statute makes no provision. Under the circumstances my advice is to take of the treasurer an additional bond reciting the facts and conditioned for the faithful disbursement according to law of the moneys received by him from the sale of said bonds of the district. Such additional bond of the treasurer would at least be valid as a common law bond, and in my opinion could be enforced.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Appropriation For Centennial Cotton Exposition; Can Not be Used For Any Other Purpose—Taxation; Duty of County Treasurer to Bring Suit to Collect; Payment of Costs.

APPROPRIATION FOR CENTENNIAL COTTON EXPOSITION; CAN NOT BE USED FOR ANY OTHER PURPOSE.

Attorney General's Office.
Columbus, Ohio, August 19, 1885.

Hon. George Hoadly, Governor:

SIR:—I return herewith the letter of the President of the North, Central and South American Exposition. No part of the money appropriated in the act of February 26, 1885 (82 O. L., 67), "to defray the expenses of the Ohio Exhibit to the Centennial Cotton and Industrial Exposition held at New Orleans," can be used for the purpose mentioned in said letter. Said act contains an express provision that the moneys therein appropriated shall not be used for any other purpose than the specific purpose for which the same were appropriated, and this would also be the rule without such provision.

Yours truly,
JAMES LAWRENCE,
Attorney General.

TAXATION; DUTY OF COUNTY TREASURER TO BRING SUIT TO COLLECT; PAYMENT OF COSTS.

Attorney General's Office.
Columbus, Ohio, August 25, 1885.

L. H. Platter, Esq., Prosecuting Attorney, Paulding, Ohio:

DEAR SIR:—Your favor of the 14th inst. was duly received, but, owing in part to the press of other business

Taxation; Duty of County Treasurer to Bring Suit to Collect; Payment of Costs.

and in part to the difficulty I have had in reaching a conclusion on the second question presented, I have been unable to answer until now.

First—Where a county treasurer brings suit under section 1104 Revised Statutes (amended 77 O. L., 13) to enforce the lien for taxes on real estate and fails in such suit, I concur with you in the opinion that he is liable in his official capacity for the costs of suit. I do not think that this liability can be enforced by execution, but the amount of said costs should be paid out of the county treasury on the allowance of the county commissioners. Under our system the duty of collecting taxes is imposed on the county, and the treasurer being specially authorized to bring an action to enforce the lien for taxes, he must be presumed to be authorized to incur the liability for costs as a necessary incident thereto.

Second—Where, however, judgment is rendered in such suit against the defendant for taxes, penalty and costs of suit, I am of the opinion that there is no authority for paying such costs out of the county treasury—even though the land has been offered for sale, but has not been sold after the lapse of a reasonable time. The statute itself provides an express mode for the collection of such costs, to wit, by the sale of the land. Section 1321 Revised Statutes can have no application, for it is not a case where execution can be issued either against the treasurer or the county. I return the papers submitted by you.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Toledo Asylum For Insane; Construction of Contract For
Erection of.*

TOLEDO ASYLUM FOR INSANE; CONSTRUCTION OF CONTRACT FOR ERECTION OF.

Attorney General's Office.
Columbus, Ohio, August 26, 1885.

Hon. Godfrey Jaeger, Secretary Toledo Insane Asylum, Toledo, Ohio:

DEAR SIR:—From the letter of General John W. Fuller enclosed in your favor of the 14th inst. and from the verbal statements made to me by Messrs. Nelson and Johnson of the board of trustees and by the assistant of Mr. Yost the architect, it appears that Messrs. Malone & Co., the contractors for the erection of the new asylum buildings at Toledo, in their contract with the state, agree to furnish all the materials, perform all the labor and do all the things necessary to fully erect and complete all the several branches of the work of said asylum buildings named in the bid and schedule thereto attached to said contract and also in accordance with the specifications and accompanying drawings. Said bid and schedule names as part of said work, "main sewer (2,300 ft.) \$3,450.00." The specifications provide that "the main sewer will extend from the point indicated on general plan to Swan Creek, a distance of 2,360 ft." By reason of the change in the location of the buildings the actual length of said main sewer, as the same is now to be constructed, from said point indicated on the general plan to Swan Creek will be 2,708 feet, which is 348 feet in excess of the length given in the specifications and 408 feet in excess of the length mentioned in said schedule and bid.

General Fuller says that the stakes had been fixed showing the exact position determined upon for the buildings before Malone & Co. made their bid, but from the

*Toledo Asylum For Insane; Construction of Contract For
Erection of.*

statements made by the other gentlemen named it would seem that he is probably in error as to this.

First—Unless it be true that Malone & Co. before making their bid were advised of the change in the location of the buildings and the increased length of the sewer thus made necessary, I am of the opinion that said contractors had a right to rely on the specifications and that for the contract price named in their contract they are only required to construct said sewer a distance of 2,360 feet from Swan Creek. This being so, a change in the specifications in this respect becomes necessary, and an additional contract for the extra work should be made and filed with the auditor of state in accordance with the provisions of section 786 Revised Statutes.

Second—In such case it is asked, "How much additional pay are the contractors entitled to?" The specifications, which are made part of the contract, contain the following provision: "The trustees reserve the right to make such alterations as may be deemed proper during the construction of the buildings, and such alterations are not to invalidate any contract, but the time and amount of contracts affected are to be charged at a pro rata rate." The difficulty in the present case, however, is to determine what is a pro rata rate, for it is said that the additional length of said sewer is to be constructed through what is now learned to be a bed of quicksand, differing altogether from the soil in which the original 2,360 feet was to be constructed. Under these circumstances I am unable to see how a pro rata rate for the additional work can be arrived at, and I, therefore, advise that the board prepare the necessary change in the specifications in accordance with section 786 Revised Statutes, and, if an agreement can be made with the contractors for the additional work at a reasonable price, I am of the opinion that a contract may be made therefor at such price.

In determining the length of said sewer to be con-

Prosecuting Attorney; Duty to Bring Suit to Recover Illegal Fees. County Recorder; Fees For Indexing.

structed under the present contract the distance named in the specifications must govern rather than that given in the bid.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PROSECUTING ATTORNEY; DUTY TO BRING
SUIT TO RECOVER ILLEGAL FEES; COUNTY
RECORDER; FEES FOR INDEXING.

Attorney General's Office:
Columbus, Ohio, August 26, 1885.

C. B. Winters Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—For reasons which my clerk explained I have been unable to answer your favor of the 12th inst. until now.

First—If you are satisfied that the county officers named in the communication addressed to you by Messrs. Mack and Keech are about to illegally draw moneys out of the county treasury by means of allowances made by the county commissioners for fees, compensation or expenses in excess of what is authorized by law, I am of the opinion that under section 1277 Revised Statutes you are authorized and required to bring an action to restrain such intended misappropriation of funds. In other words, I think that section 1277 is clearly applicable to cases of this character. The question then comes to this, whether in your opinion the allowances about to be made by the county commissioners, on which moneys are so about to be drawn out of the county treasury, are in excess of what the law authorizes. I do not claim that you are obliged to accept the views heretofore expressed by me on this subject, but, taking these simply for

Prosecuting Attorney; Duty to Bring Suit to Recover Illegal Fees. County Recorder; Fees For Indexing.

what they are worth, the question is left to your own best judgment.

Second—I am also of the opinion that if satisfied that a county officer has heretofore illegally drawn money out of the county treasury for fees or allowances in excess of what the law authorizes, the prosecuting attorney may bring an action to recover the same, and that, if having been duly requested he fails so to do, any tax payer of the county upon giving security for costs may bring such action.

Third—In the case of the infirmary directors, assuming as you do that allowances have been made by the commissioners to them, which are not authorized by law, I do not think that the action of the commissioners in making such allowances is a bar to a suit on the part of the county to recover moneys so illegally paid. The commissioners are only authorized to make such allowances as the law prescribes. Exceeding this their action is of no validity whatever. In respect to the annual allowance to the clerk of the infirmary board, there may possibly be difficulty in making proof that such allowance in past years was illegal. The law authorizes the appointment of one of the members as clerk, and, if his duties as such clerk required him to perform official work on days when there was no meeting of the board, he was entitled to an allowance therefor not exceeding \$2.50 per day. The burden being on you to show the illegality, unless it appear from the accounts themselves that the legal limit had been exceeded, it might be difficult now to obtain the necessary evidence.

Fourth—Some time ago Mr. Flynn, your county recorder, sent me samples of the indexes kept by him under the direction of the county commissioners. These seem to me merely alphabetical indexes with some additional facts noted thereon. They are not in any sense general indexes such as are authorized by section 1154 Revised Statutes, nor do I find any statute authorizing the county commissioners to direct the making and keeping of indexes of the kind re-

Prosecuting Attorney; Duty to Bring Suit to Recover Illegal Fees. County Recorder; Fees For Indexing.

ferred to. It is true that section 1155 Revised Statutes (amended 77 O. L., 240) provides that when general indexes such as are described in the next preceding section, *or any other indexes* authorized by the county commissioners, are brought up and completed the recorder shall keep up the same, etc. In my opinion, however, the clause which I have underscored does not confer power upon the commissioners generally to authorize any other indexes which they may deem proper. I do not think indeed that this clause is a grant of power to direct the making of any indexes, but the section simply prescribes what shall be done with indexes which have been brought up and completed under authority of law. To ascertain what indexes the county commissioners have power to authorize I am disposed to look for some express enactment conferring such power.

Fifth—Having thus answered your inquiries I deem it proper to say further that the question of the right of the officers named to the fees and allowances in controversy depends on the construction of statutes which, in some respects, are not altogether clear. Judging from the inquiries which reach this office it seems that county commissioners throughout the State have quite generally adopted the same view as your commissioners relative to their charges for mileage and expenses. It is certainly desirable that an authoritative decision be obtained on the subject. Instead, therefore, of bringing at once a multiplicity of suits of the character indicated in your letter, I think it would be better, if the matter can be arranged, to make up a few test cases involving the point at issue, so as first to obtain a judicial construction of the statutes involved. If all parties will co-operate this might be very easily done.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Schools; Teacher's Certificate; Power of Examiners to Grant.

SCHOOLS; TEACHER'S CERTIFICATE; POWER OF EXAMINERS TO GRANT.

Attorney General's Office.
Columbus, Ohio, August 26, 1885.

Mr. H. H. Porter, Port Washington, Ohio:

DEAR SIR:—Your favor of the 22d inst. was duly received. The law does not specially prescribe the age which a person must have reached in order to receive a teacher's certificate. Under section 4074 Revised Statutes, however, such certificate must state that the recipient is qualified to teach orthography and the other branches named. Now the qualification to teach does not depend alone on the knowledge of the required branches or the ability to pass an examination therein, but the age and maturity of the person is a very important element. Hence considerable discretion must be left to the board of examiners in determining whether or not to grant a certificate in any given case. Even though a candidate has passed an examination, I am of the opinion that the board may decline to grant a certificate if, in the exercise of a sound discretion, it considers such candidate too young to be qualified to teach. Of course the requisite age will be different in the case of different persons, so that it may perhaps be inexpedient to adopt a general rule upon the subject, but, with the highest admiration for a girl of twelve years who is able to pass an examination, I am convinced that no person of that age can be qualified to teach. I, therefore, think that in the case referred to the board ought not to grant a certificate.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Benevolent Institution; Appointment of Subordinate Officers—Clerk of Courts; Certain Fees Can Not be Paid Out of County Treasury.

BENEVOLENT INSTITUTIONS; APPOINTMENT
OF SUBORDINATE OFFICERS.

Attorney General's Office.
Columbus, Ohio, August 26, 1885.

To the Board of Trustees of the Girls' Industrial Home:

GENTLEMEN:—I am of the opinion that the subordinate officers of the Girls' Industrial Home are to be appointed upon the nomination of the superintendent. The word "appoint" in section 779 Revised Statutes must be considered to be used in the same sense as said word is used in section 640 Revised Statutes (amended 82 O. L., 137), that is, the trustees appoint on the nomination of the superintendent. Both of these sections are applicable to your institution, and the ordinary rule of construction requires that both, if possible, be so construed as to give effect to each.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CLERK OF COURTS; CERTAIN FEES CAN NOT BE
PAID OUT OF COUNTY TREASURY.

Attorney General's Office.
Columbus, Ohio, August 27, 1885.

W. H. Wolfe, Esq., Clerk of Courts, Lancaster, Ohio:

DEAR SIR:—I have had occasion heretofore to examine the question submitted in your favor of the 25th inst., and am compelled to say that, in my opinion, the fees of the clerk for making the indexes to pending suits and living judgments in pursuance of section 1255 Revised Statutes (amended 78

Game Laws; Definition of "Private Fishing Waters."

O. L., 88), can not be paid out of the county treasury, but must be taxed as part of the costs in the case. Only such fees can be paid out of the county treasury as the law specifically prescribes shall be so paid. Now I take it that section 1257 Revised Statutes merely fixes the rate of fees which the clerk is entitled to charge, and does not authorize or direct the payment thereof out of the county treasury any more than do the corresponding words, "shall receive the fees herein provided," found in the beginning of section 1260 Revised Statutes.

Under section 1263 Revised Statutes the clerk is entitled to receive out of the county treasury, for making up and completing general indexes, etc., eight cents for each cause. This, however, does not refer to the indexes of pending suits and living judgments, but to the general index required by section 5339 Revised Statutes.

I return herewith the bill submitted to me, concurring in the endorsement thereon by the prosecuting attorney.

Yours truly,
JAMES LAWRENCE,
Attorney General.

GAME LAWS; DEFINITION OF "PRIVATE FISHING WATERS."

Attorney General's Office.
Columbus, Ohio, August 27, 1885.

Clarence Curtain, Esq., Prosecuting Attorney, Circleville, Ohio:

DEAR SIR:—Your favor of the 22d inst. was duly received. In my opinion the terms, "private fishing waters," in section 6968 Revised Statutes (amended 82 O. L., 243), must be construed in a restricted sense as meaning waters exclusively private and in which the public has no interest

Ohio National Guard; Manner of Raising Funds by Township For Armory For.

whatever. A natural water course is also a public water course; notwithstanding its bed may be the subject of private ownership, with the right to the owner to fish therein. The public have a right in such stream. Hence I think that "private fishing waters" means ponds or other similar bodies of water belonging to a private individual or corporation and not so connected with any of the public waters of Ohio as to permit the passage of fish from one to the other. Any other view would seem to defeat the manifest purpose of the statute.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

OHIO NATIONAL GUARD; MANNER OF RAISING FUNDS BY TOWNSHIP FOR ARMORY FOR.

Attorney General's Office.
 Columbus, Ohio, August 27, 1885.

D. W. H. Day, Esq., Attorney-at-Law, Bowling Green, Ohio:

DEAR SIR:—Your letter dated August 17th, but mailed August 24th has been received.

By section 3085 Revised Statutes a township, in which all or a majority of the members of a company of the Ohio National Guard reside, is required to provide for such organization a suitable armory and drill room. What is a suitable armory and drill room must necessarily depend on the circumstances of the particular case. The obligation of the township must also be limited by its financial resources or the means at its disposal within the tax levy authorized by law for general township purposes, for no special levy is authorized for the purpose of an armory. Neither can the

Liquor Law; Sale of Intoxicating Liquors Within Two Miles of Agricultural Fair.

trustees borrow money or issue bonds to build an armory, except the question be first submitted to a vote of the people. As you state that the question, if submitted to a vote of the people, would fail to receive the requisite number of votes, the issue of bonds need not be considered unless a special act of the General Assembly be obtained. In my opinion, the township trustees have ample authority, under existing laws, to purchase or lease grounds and erect thereon, an armory, provided they have sufficient funds available for that purpose. If the trustees have not heretofore levied a tax for general township purposes up to the limit authorized by law, they should next year increase the levy to that limit, so as to make the best provision possible.

Yours truly,

JAMES LAWRENCE,

Attorney General.

LIQUOR LAW; SALE OF INTOXICATING LIQUORS
WITHIN TWO MILES OF AGRICULTURAL FAIR.

Attorney General's Office.
Columbus, Ohio, August 31, 1885.

S. A. Court, Esq., Prosecuting Attorney, Marion, Ohio:

DEAR SIR:—Your favor of the 29th inst. is received. In my opinion it is unlawful, under section 6946 Revised Statutes (amended 82 O. L., 222), to sell intoxicating liquors either at saloons permanently located in a city or village or from temporary booths or stands, within two miles of the place where an agricultural fair is being held. The prohibition is directed against the *sale* and does not depend on the nature or description of the building or structure in which such sale is made. Clearly the statute, as applicable to the State institutions named therein, refers to permanent as well

Roads; Power of Municipal Corporation Over, in Attached Territory.

as temporary places, and, as precisely the same language is applicable in the case of agricultural fairs, I see no ground for a distinction. Furthermore, I do not think that section 3712 Revised Statutes operates to limit the plain provisions of section 6946. These sections are not necessarily inconsistent if full effect be given to each.

Yours truly,

JAMES LAWRENCE,

Attorney General.

ROADS; POWER OF MUNICIPAL CORPORATION
OVER, IN ATTACHED TERRITORY.

Attorney General's Office.

Columbus, Ohio, August 31, 1885.

Mr. John L. Adams, Mayor, Dresden, Ohio:

DEAR SIR:—In answer to your favor of the 26th inst., I have to say:

First—The duty and obligation of a municipal corporation in respect to the roads and highways in territory which has been attached thereto for road purposes in pursuance of section 2662 Revised Statutes, is different from its duty and obligation in respect to the streets, alleys, etc., within the corporation. By section 2640 Revised Statutes the council is specially required to keep the latter open and in repair; and it has also power and a corresponding duty to levy a tax on the property within the corporation for street improvements and repairs. In respect to the roads and highways in such attached territory the corporation has no obligation except that which results from its voluntary assumption of the powers conferred by sections 2658 to 2663 Revised Statutes which do not confer authority upon the council to levy a tax upon the property in the territory so attached for road pur-

Roads; Power of Municipal Corporation Over, in Attached Territory.

poses. Hence, when we come to consider the liability of the municipal corporation for injuries caused by defective and unsafe roads and highways in said attached territory, the question stands on a different footing from its liability in respect to the streets, alleys, etc., within the corporation. I do not know that the question has ever been judicially decided, but, in my opinion, the corporation is not liable for a mere failure to keep the roads and highways in such attached territory in good condition, but at most is liable only for such damages as result from the positive misfeasance or negligence of the corporation, its officers or agents, in exercising the powers conferred upon it by the statutes. The corporation can not be charged with the failure of the township trustees to levy a sufficient tax to keep the roads and highways in such attached territory in repair. While the council may expend the funds of the corporation in improving said roads and highways, it is not obliged to do so.

Second—The question is not altogether clear, but I am of the opinion that, under section 2830 Revised Statutes, (amended 78 O. L., 184), a resident of territory attached to a municipal corporation for road purposes, who is charged with a road tax levied by the township trustees, may discharge the same by labor on the roads as provided in said section. It is true that there is no provision for a supervisor of roads in such attached territory, while the statute speaks of such labor being performed under the direction of the supervisor, whose certificate is to be received by the county treasurer. Still the statute is general providing that any person charged with a road tax (i. e., township road tax) may discharge the same by labor on the public highways, etc. The street commissioner or other proper officer who has charge of the roads and highways in said attached territory being an officer with corresponding duties to those of the supervisor of roads, I think that he takes the place of the supervisor in working out the road tax in said territory, and that his certificate is to be received by the county treas-

*Gettysburg Monument; Appropriation For; How Applied
—Liquor Law; Sale of Liquor Within Two Miles of
Fair; Kind of Fair Meant.*

urer in the same manner as the certificate of the supervisor
in a similar case.

Yours truly,
JAMES LAWRENCE,
Attorney General.

GETTYSBURG MONUMENT; APPROPRIATION
FOR; HOW APPLIED.

Attorney General's Office.
Columbus, Ohio, September 5, 1885.

Hon. E. B. Finley, Adjutant General:

DEAR SIR:—In reply to your favor of the 4th inst. I have
to say that, in my opinion, no part of the money appropriated
by the act of May 4th, 1885 (82 O. L., 263), to purchase a
portion of the land upon which the battle of Gettysburg was
fought and to erect thereon a monument, can be used to de-
fray expenses of the delegation, who, at your invitation, re-
cently met at Gettysburg for the purpose of pointing out the
localities where the Ohio soldiers fought in that battle.

Yours truly,
JAMES LAWRENCE,
Attorney General.

LIQUOR LAW; SALE OF LIQUOR WITHIN TWO
MILES OF FAIR; KIND OF FAIR MEANT.

Attorney General's Office.
Columbus, Ohio, September 8, 1885.

A. W. McConnell, Esq., County Auditor, Wauseon, Ohio:

DEAR SIR:—In my opinion, section 6946 Revised Stat-
utes (amended 82 O. L., 222), applies to any agricultural

*Masonic Benevolent Association; Not Entitled to Admission
Into Ohio.*

fair, and I do not think it makes any difference whether such fair is held by the county society or by an independent corporation or association.

Yours truly,
JAMES LAWRENCE,
Attorney General.

MASONIC BENEVOLENT ASSOCIATION; NOT ENTITLED TO ADMISSION INTO OHIO.

Attorney General's Office.
Columbus, Ohio, September 9, 1885.

Hon. Henry J. Reinmund, Superintendent of Insurance:

DEAR SIR:—Having examined the papers submitted by the Masonic Benevolent Association of Central Illinois, I am of the opinion that said association is not entitled to be admitted in this State.

First—I adhere to the opinion heretofore expressed by me that a corporation organized under the laws of another state to insure the lives of members on the assessment plan is entitled to admission to this State only when it appears that such corporation is organized solely for the purpose mentioned in section 3630 Revised Statutes. The purpose for which corporations can be formed under section 3630 Revised Statutes is limited to the mutual protection and relief of its members and the payment of stipulated sums of money to the family or heirs of deceased members, and the Supreme Court has held that a contract by such a corporation to pay, in case of a member's death, "to himself or assignees," "to his estate," "to his executors or administrators," or to any person, whether a relation or not, who is not of his family or heirs, is against public policy and void. By the Illinois statute corporations, associations or societies may

*Masonic Benevolent Association; Not Entitled to Admission
Into Ohio.*

be organized for the purpose of furnishing life indemnity or pecuniary benefits to the widow, orphans, heirs or relatives by consanguinity or affinity, devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, and where members shall receive no money as profit, and where the funds for the payment of such benefits shall be secured, in whole or in part, by assessment upon the surviving members. Under this statute the "Masonic Benevolent Association of Central Illinois" was organized for the purpose of giving financial aid to the widows, orphans, heirs and devisees of deceased members. It is claimed by the counsel of said company that the term "devisee," in accordance with the maxim "noscitere a sociis" must be construed as limited to devisees who are of the widows, orphans and heirs of deceased members, but I can not accept this view. In my opinion, the term embraces a distinct and independent class of beneficiaries not authorized by our statute.

Second—Furthermore a corporation organized under the laws of another state to insure the lives of members on the assessment plan should not be admitted to this State, unless it appear that its business is transacted substantially in compliance with the laws of Ohio applicable to like corporations. The certificate of incorporation of said Masonic Benevolent Association provides for the payment of the expenses of said association from a surplus fund made up of admission fees and a certain portion of death assessments set apart for such fund. This is contrary to section 3630h Revised Statutes which provides that the expenses of such corporations shall be met by fixed annual payments or by assessments made and designated to be for such expenses; but such assessment shall, in no case, be made or become a part of any assessment to pay a loss by death, and no part of the mortuary fund shall, in any case, be used to pay expenses. This provision of our laws was enacted because of the great abuses which had arisen by reason of the commingling of

*Liquor Law; Exception For Certain Sales of Liquor Under
Section 6946.*

the mortuary and expense funds under plans more or less similar to that of said Masonic Benevolent Association.

Third—But it is claimed that this is an association of secret societies, and hence, by section 8 of the act of April 12, 1880 (77 O. L., 181), is exempt from the provisions of said act, i. e., the supplementary sections to section 3630 Revised Statutes. Under this view, you would have no authority to issue a license to said association, for your department would have no jurisdiction over it. In my opinion, however, the exemption provided for in said section 8 of the act of April 12, 1880, is not applicable to an association such as said "Masonic Benevolent Association," which merely limits its membership to affiliated master masons in good standing, but is neither incorporated as a secret society nor under the jurisdiction of any grand lodge or other body of a secret society. Moreover the exemption in question applies only to associations formed for the mutual benefit of the members thereof and their families exclusively, while the purpose of this association is much broader, including heirs and devisees as beneficiaries.

Yours truly,

JAMES LAWRENCE,

Attorney General.

LIQUOR LAW; EXCEPTION FOR CERTAIN SALES
OF LIQUOR UNDER SECTION 6946.

Attorney General's Office.

Columbus, Ohio, September 9, 1885.

Mr. J. C. Weaver, Greenville, Ohio:

DEAR SIR:—Your favor of the 8th inst. is received. Section 6946 Revised Statutes (amended 82 O. L., 222), does not except from its operation sales of liquor for me-

Surveyor or Engineer; Fees of Under Sections 4454-4456.

dicinal or mechanical purposes, but, in view of the evident purpose of said act as well as of the general course of legislation in reference to intoxicating liquors, I am of the opinion that said section would not be held applicable to sales of intoxicating liquors by druggists upon prescriptions issued in *good faith* by reputable physicians, or for exclusively mechanical purposes. I do not think that sales by a druggist for what he considers medicinal purposes, but without such prescription, are exceptional.

See the case of *Schaffner vs. the State*, 8 O. St., 642, in which a somewhat similar question arising under the act of May 1, 1854, was before the Supreme Court. I do not think, however, that the grounds for the decision in that case exist here.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SURVEYOR OR ENGINEER; FEES OF UNDER
SECTIONS 4454-4456.

Attorney General's Office.
Columbus, Ohio, September 9, 1885.

John W. Winn, Esq., Prosecuting Attorney, Defiance, Ohio:

DEAR SIR:—Your favor of the 3d inst. was duly received. In my opinion the surveyor or engineer employed under sections 4454-4456 Revised Statutes relating to county ditches is not entitled to any allowance for his expenses in connection with such work. Having had occasion heretofore to examine this question, I enclose herewith copy of a letter by me to Mr. Plattor, the prosecuting attorney of Paulding County.

I am unable to concur in the opinion of my predecessor, Hon. Geo. K. Nash, to which you refer. In his letter to Mr.

Surveyor or Engineer; Fees of Under Sections 4454-4456.

Enos, dated March 13, 1882, he does not give the reason for his opinion, but I infer that he bases it upon the provision in section 4456 that the engineer shall make and file with his report an itemized bill of all costs made in the proper discharge of his duty under that and the two preceding sections; for, in the same opinion, he holds that the engineer is not entitled to his expenses in connection with subsequent services performed by him in the construction of the ditch, saying that he does not find any express provision in the statutes authorizing the payment of such expenses. In another opinion given by Mr. Nash relative to the compensation of the county surveyor he says: "I know of no law which authorizes a county surveyor to charge *expenses* in addition to the per diem allowed by law, when employed by the day. You might as well pay the viewers and chain carriers, for instance, under section 4664 Revised Statutes, their living and other expenses, as to pay the surveyor. He is paid \$5.00 per day by the same language the viewers and chain carriers receive \$1.50 and \$1.00 respectively, and no more."

Mr. Nash thus recognizes the necessity of an express provision of the statutes in order to authorize the payment of expenses in such cases. Now there is no such express provision unless it be that contained in section 4456 relative to the return of an itemized bill of costs by the surveyor. In addition to what I have said in the letter to Mr. Plattor I suggest the following considerations which in a case of doubtful construction are entitled to some weight.

First—The county surveyor or an engineer employed on the part of the county for public work is not usually allowed by the statutes anything for his expenses, although in some cases he is allowed mileage.

Second—The term "costs" as ordinarily used in the statutes does not mean or include the expenses of an officer, or other person in the performance of work authorized or required by law.

Third—Section 4456 does not purport to be a statute

Building Associations; Are Not "Companies" But Associations.

fixing the compensation or allowance of the persons employed on the ditch improvement, but that matter is provided for in section 4506. The natural place in which to find a provision for expenses, if the same was intended, would be in the latter section.

Fourth—There is no provision in section 4456 requiring the allowance by the county commissioners of any portion of the bill of costs returned by the engineer, nor does section 4507 make provision for the allowance of any expenses. The term "fees" in the latter section evidently does not mean expenses, but refers to the allowance for services. It can scarcely be supposed that the General Assembly would expressly require the allowance of the bill of fees, while permitting a bill for expenses to be returned by the engineer without such allowance. The amount of the former is definitely regulated by statute, and hence there is much less liability to abuse than in the case of the latter.

Yours truly,

JAMES LAWRENCE,

Attorney General.

BUILDING ASSOCIATIONS; ARE NOT "COMPANIES" BUT ASSOCIATIONS.

Attorney General's Office.

Columbus, Ohio, September 9, 1885.

A. G. Carpenter, Esq., Cleveland, Ohio:

DEAR SIR:—Your favor of the 8th inst. is received. In my opinion the name of a building association should not end with the word "company." Section 3269 Revised Statutes provides that the provisions of chapter I, title II do not apply when special provision is made in the subsequent chapters of said title. Now the subsequent sections relating to such

County Treasurer; No Compensation For Care of Two-Mile Assessment Pike Bonds.

corporations uniformly designate them as "associations," and the word company is never used. Inasmuch as it would be manifestly an improper use of language to speak of an "association company," I do not think it an unwarranted construction to say that these sections make provision for the name of such corporations, to wit: that they are to be called, "associations," instead of companies.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY TREASURER; NO COMPENSATION FOR
CARE OF TWO MILE ASSESSMENT PIKE
BONDS.

Attorney General's Office.

Columbus, Ohio, September 11, 1885.

B. M. Clendening, Esq., Prosecuting Attorney, Celina, Ohio:

DEAR SIR:—I am not sure that I understand what you mean by the "care and handling" by the county treasurer of the two mile assessment pike bonds referred to in your favor of the 10th inst., but I can not think of any possible service which the treasurer could render in connection with such bonds that would entitle him to compensation. Bonds issued under authority of the statutes relating to two mile assessment pikes are "bonds of the county" expressly so termed, and hence, under section 1117 Revised Statutes, no compensation, percentage, commission, or fees shall be allowed to the treasurer on any moneys received from the proceeds of such bonds. The treasurer can receive no allowance or compensation for any other service performed by him in connection with said bonds, for there is no statute

First Disciple Church of North Royalton; Articles of Incorporation of.

authorizing the same. He is entitled only to such compensation or allowance as the statutes expressly provide.

Yours truly,

JAMES LAWRENCE,
Attorney General.

FIRST DISCIPLE CHURCH OF NORTH ROYALTON;
ARTICLES OF INCORPORATION OF.

Attorney General's Office.

Columbus, Ohio, September 15, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of the First Disciple Church of North Royalton, and respectfully advise that you decline to file the same in your office. Religious societies are to be incorporated under the general statutes relating to corporations and are governed by the general provisions applicable to corporations not for profit, except where special provision is made to the contrary. The fatal objection of said articles is the recital of the election of the incorporators as trustees prior to the filing of said articles. For this there is no authority of law. There are some other matters set forth which might more properly be omitted, and I have taken the liberty to rewrite said articles as a suggestion of what seems to me to be the proper form

Yours truly,

JAMES LAWRENCE,
Attorney General.

Costs; Liability of Surety on Bond, in Case Before Magistrate—Board of Education; Estimates by, for Tax Levy.

COSTS; LIABILITY OF SURETY ON BOND, IN
CASE BEFORE MAGISTRATE.

Attorney General's Office.
Columbus, Ohio, September 16, 1885.

T. H. Toller, Esq., Attorney-at-Law, Dennison, Ohio:

DEAR SIR:—Your favor of the 16th inst. is received. In my opinion the person who becomes security for costs under section 7136 Revised Statutes (amended 80 O. L., 198) is liable only in case the complaint is dismissed by the justice of the peace. If the magistrate binds over the accused to the Probate Court the liability of such surety ceases, whatever may be the disposition of the case in the Probate Court.

Yours truly,
JAMES LAWRENCE,
Attorney General.

BOARD OF EDUCATION; ESTIMATES BY, FOR
TAX LEVY.

Attorney General's Office.
Columbus, Ohio, September 21, 1885.

Hon. L. D. Brown, Commissioner of Schools:

DEAR SIR:—I return herewith the letter of Mr. Turner, the auditor of Montgomery County, which you submitted to me. Section 3958 Revised Statutes provides that each board of education, except in cities of the first grade of the first class, shall annually between the first Monday in April

Taxation; Certain Assessments, When Placed on Duplicate.

and the first Monday in June, make estimates of the amount of money necessary to be levied as a contingent fund, and section 3960 provides that the board shall certify in writing to the county auditor on or before the first Monday of June in each year, the amount so estimated. The acts here required being for the public benefit and time not being of the essence of the thing to be done, the foregoing provisions must be regarded as merely directory to the extent that, where a board of education has failed to make such estimate and certificate within the time limited, it may do so at any time afterwards until the auditor has delivered the tax duplicate for the year to the county treasurer. Where, as in the case presented, the auditor has been perpetually enjoined from placing a certain levy upon the duplicate, of course the board of education can not cause the same levy to be placed upon the duplicate by making another estimate therefor.

Yours truly,

JAMES LAWRENCE,

Attorney General.

TAXATION; CERTAIN ASSESSMENTS; WHEN
PLACED ON DUPLICATE.

Attorney General's Office.

Columbus, Ohio, September 22, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—Your favor of the 21st inst. is received. In my opinion the assessments mentioned in section 4480 Revised Statutes (amended 78 O. L., 208) are not to be placed upon the general duplicate for collection as delinquent taxes, unless the same have remained unpaid for the full period of one year after they were placed on the special duplicate.

Costs; Poundage, How Deducted From Proceeds of Execution.

In the case to which you refer the assessments can not be placed upon the general duplicate for 1885.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COSTS; POUNDAGE; HOW DEDUCTED FROM PROCEEDS OF EXECUTION.

Attorney General's Office.

Columbus, Ohio, September 22, 1885.

John G. Beatty, Esq., Attorney-at-Law, Columbiana, Ohio:

DEAR SIR:—Your favor of the 18th inst. is received. The poundage allowed to a constable and sheriff on moneys made on execution is not to be taxed as costs in the case, but is to be deducted from the amount made on such execution and the balance applied on such judgment. For instance, suppose there is a judgment against a defendant before a justice of the peace for \$1.00 including costs, and a constable sells property on execution for \$50.00. Here the poundage of \$2.00 is to be first deducted from the proceeds of the sale, leaving \$48.00 to be applied on the judgment. The poundage practically comes out of the judgment debtor, for the judgment is only satisfied to the extent of the amount applied thereon.

Yours truly,

JAMES LAWRENCE,

Attorney General.

*Registration Law; Certain Statement Must be Signed by
Voter—Election; Proclamation of Sheriff; Need Not
Mention Proposed Amendments.*

REGISTRATION LAW; CERTAIN STATEMENT
MUST BE SIGNED BY VOTER.

Attorney General's Office.
Columbus, Ohio, September 24, 1885.

O. J. Cosgrave, Esq., Cincinnati, Ohio:

I have given no opinion relative to the registration blanks referred to in Commercial Gazette editorial, but am of opinion that statement required by section 2926c of registry law must be subscribed by the voter either by signing his name or making his mark.

JAMES LAWRENCE,
"By telegram." Attorney General.

ELECTION; PROCLAMATION OF SHERIFF; NEED
NOT MENTION PROPOSED AMENDMENTS.

Attorney General's Office.
Columbus, Ohio, September 24, 1885.

S. W. Mercer, Esq., Editor of Democrat, Medina, Ohio:

DEAR SIR:—Your favor of the 22d inst. is received. The law does not require the sheriff, in his proclamation, for the October election, to mention the proposed amendments to the constitution submitted at the last session of the General Assembly. The only publication thereof required is that provided for in section 1 article XVI of the constitution and the act of April 9th, 1885 (82 O. L., 116).

Yours truly,
JAMES LAWRENCE,
Attorney General.

Election; Registration Law; Construction of—Board of Education; Power to Incur Debt in Building Schoolhouses.

ELECTION; REGISTRATION LAW; CONSTRUCTION OF.

Attorney General's Office.
Columbus, Ohio, September 24, 1885.

Editor Plain Dealer, Cleveland, Ohio:

The registry law, 82 O. L., 23, clearly allows a voter coming of age before the election to register. I also think that persons who will be entitled to naturalization between the last day of registration and the election may register. If denied the right to do so they would on becoming naturalized undoubtedly be entitled to vote without registration, for the General Assembly can not constitutionally deprive any person of the right to vote, who on the day of election is a qualified voter under section one, article four of the constitution, unless such person has had a reasonable opportunity to register.

In my opinion registrars are authorized to pass upon the qualifications of a person offering to register, and may reject such person if satisfied from the proofs offered that he is not legally entitled to vote. Their action, however, may in a proper case be controlled by mandamus.

"By telegram." JAMES LAWRENCE.

BOARD OF EDUCATION; POWER TO INCUR DEBT IN BUILDING SCHOOLHOUSES.

Attorney General's Office.
Columbus, Ohio, September 25, 1885.

R. S. Parker, Esq., Prosecuting Attorney, Bowling Green, Ohio:

DEAR SIR:—Your favor of the 22d inst. is received. A board of education has the power to purchase sites and erect

Scrip Law; Scrip Issued is Transferable.

the necessary school houses for the district, and is authorized to levy a contingent fund which may be applied for such purpose. Such board can not issue bonds, or borrow money except as authorized by statute, but, in my opinion, under the general power to contract referred by section 3971 Revised Statutes, together with its duty to make suitable provision for all the schools of the district, it has power to contract for the purchase of a site and the building of a school house, provided the same can be paid for out of the levy for a contingent fund authorized by law. I mean that a board of education may incur a debt for said purpose, the collection of which can be enforced. There is no statute similar to sections 2698 and 2702 Revised Statutes applicable to boards of education. I do not think that the board should undertake to contract beyond the amount of the levy already made but not yet collected, nor should it build upon land to which it has not acquired a proper title.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SCRIP LAW; SCRIP ISSUED IS TRANSFERABLE.

Attorney General's Office.
Columbus, Ohio, October, 3, 1885.

Hon. Larkin McHugh, Commissioner of Labor Statistics:

DEAR SIR:—Your favor of the 1st inst. is received. Section 7015 Revised Statutes, as amended April 1, 1885 (82 O. L., 120), provides that the amount of any scrip, token, check, draft, order, or other evidence of indebtedness, sold, given, delivered, or in any manner issued in violation of the provisions of said section, may be recovered in money at the suit of any holder thereof, against the person, firm, company or corporation selling, giving, delivering, or in any

Probate Judge; Fees in Certain Cases.

manner issuing the same. The fact that scrip so issued is marked, "not transferable," does not prevent the operation of the foregoing provision of the statutes. Although thus marked such scrip may be assigned by the original holder, and the person to whom the same is assigned may bring a suit thereon in his own name and recover a judgment in money for the amount thereof. In case of a suit by an assignee or subsequent holder of such scrip, it will be necessary to show that same was originally issued in violation of the statute.

Yours truly,
JAMES LAWRENCE,
Attorney General.

PROBATE JUDGE; FEES IN CERTAIN CASES.

Attorney General's Office.
Columbus, Ohio, October 2, 1885.

Robert C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—In reply to your favor of the 26th ult. I have to say:

First—I am of the opinion that the allowance to the probate judge under section 6470 Revised Statutes covers his services under section 7178 and hence that he cannot retain any fees for such services. A proceeding had under the latter section is undoubtedly criminal business, within the meaning of section 6470.

Second—When an affidavit has been filed in the probate court in an inquest of lunacy but the alleged lunatic is not found and the sheriff makes return accordingly, I am of the opinion that all costs specified in section 719 Revised Statutes, which are properly made in said proceeding, are to be paid out of the county treasury. Of course no fee can be

*County Commissioners; No Power to Appropriate Money
For Teachers' Institute.*

charged for holding an inquest or for making out a certificate in such case.

Third—Neither in the case mentioned, nor in any other case which can arise in an inquest of lunacy, is the sheriff entitled to receive out of the county treasury the amount of "buggy hire" paid by him.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY COMMISSIONERS; NO POWER TO AP-
PROPRIATE MONEY FOR TEACHERS' INSTI-
TUTE.

Attorney General's Office,
Columbus, Ohio, October, 2, 1885.

Hon. L. D. Brown, Commissioner of Schools:

DEAR SIR:—Where the institute fund of a county is exhausted, the county commissioners have no authority to appropriate a sum of money from the county treasury towards the support of a teachers' institute.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Schools; Manner of Disbursing School Funds; Enumeration
of Youth.*

SCHOOLS; MANNER OF DISBURSING SCHOOL
FUNDS; ENUMERATION OF YOUTH.

Attorney General's Office.
Columbus, Ohio, October 3, 1885.

*Mr. J. T. Sowers, President Board of Education, Bradford,
Ohio:*

DEAR SIR:—Your favor of the 1st inst. is received.

First—Section 4047 Revised Statutes provides that, except in cases otherwise provided for, no treasurer of a school district shall pay out any school money except on an order signed by the president and countersigned by the clerk of the board of education. The clause "otherwise provided for" refers to the payment of teachers in the sub-districts. See section 4018 and 4019 Revised Statutes.

Two—You do not state the kind of a school district to which you refer. In sub-districts the director who is clerk is required to take the enumeration of youth in his sub-district; in a township district not divided into sub-districts, the president of the board shall take the enumeration; and in other districts the clerk of the board shall employ a sufficient number of competent persons for such purpose. See section 4032 and 4033 Revised Statutes. As a member of the board is thus in some cases required to take the enumeration I see no objection to his being employed to do so in cases when not so required. I also think that a member of the board who is either required by the statute or employed to take enumeration is entitled to an allowance therefor not exceeding \$2.00 per day.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Justice of the Peace; Commission Must Issue to, in Reasonable Time. Case of Horace Hearn.

JUSTICE OF THE PEACE; COMMISSION MUST
ISSUE TO, IN REASONABLE TIME; CASE OF
HORACE HEARN.

Attorney General's Office.
Columbus, Ohio, October 3, 1885.

Hon. George Hoadly, Governor:

SIR:—From the papers submitted to me, which I herewith return, it appears that on the 7th day of April, 1884, Horace Hearn was elected justice of the peace of Green Township, Hamilton County, and received a certificate of such election from the county clerk, but he has never received from the governor a commission to fill such office and never until the 12th day of September, 1885, produced to the secretary of state a certificate of his election so as to entitle him to a commission. The question now presented is whether a commission should be issued to him, and if so, whether it should be dated now or at the date of his election.

Under the constitution the term of office of a justice of the peace is three years, but no definite time is fixed for the commencement of such term. By section 83 Revised Statutes, a justice of the peace is entitled to receive from the governor a commission to fill such office upon producing to the secretary of state a legal certificate of his being duly elected. By section 579 Revised Statutes (amended 80 O. L., 186), it is provided that, when a person is elected to the office of justice of the peace, and receives a commission from the governor, he shall forthwith take and subscribe an oath of office, and that each justice of the peace so qualified shall, before he is authorized to discharge any of the duties of his office, and within ten days after taking the oath, enter into a bond, etc., and that, on refusal or neglect to enter into such bond, the office shall be deemed vacant. The issuing of a commission is thus precedent to his right to qualify or to discharge any of the duties of his office. The statutes

*Board of Education; Courses of Study Prescribed by, Must
be Reasonable.*

prescribe no time within which a commission must be issued, but from the necessity of the case it seems to me there must be some limitation. No time being fixed for the commencement of the term of office, the same must be considered as commencing from the issuing of the commission. Hence, if there is no limitation, a person could hold his certificate of election for any number of years, and, whenever it suited his convenience, he could come in and obtain his commission to serve for three years from that time. An affirmative act being required of the person elected justice of the peace, to wit, that he produce to the secretary of state the certificate of his election, I have reached the conclusion that, his failure to do this within a reasonable time should be regarded as a refusal to serve, so as to create a vacancy in the office. In the present case the delay has been almost a year and a half, which, in my judgment, is an unreasonable time. I therefore am of the opinion that a commission should not now be issued to Mr. Hearn, but that a new election should be held to fill the office.

I am further of the opinion that there is no authority in any case to date a commission back of the time of its execution.

Yours truly,

JAMES LAWRENCE,
Attorney General.

BOARD OF EDUCATION; COURSES OF STUDY
PRESCRIBED BY, MUST BE REASONABLE.

Attorney General's Office.
Columbus, Ohio, October 15, 1885.

*Prof. L. L. H. Austin, Superintendent of Schools, Napoleon,
Ohio:*

DEAR SIR:—Not being authorized to give to you an official opinion on the questions presented in your favor of the 11th

Ohio National Guard; Title to Armory Owned by Two Townships.

inst., I feel that I ought not to interfere further than to say that the rules adopted by a board of education in reference to the courses of study must be reasonable. I do not know what view the courts would take of the matter, but, in my judgment, a rule requiring a pupil on entering the high schools to select either a German-English or a Latin-English course of study, is not reasonable, and hence could not be enforced. Such a rule in effect requires each pupil to study either the Latin or German language, and I do not think the board is authorized to make such a requirement. Neither do I think that the board can compel a pupil to continue the study of a foreign or dead language notwithstanding such pupil on entering the high school selected the course embracing such language.

Yours truly,
JAMES LAWRENCE,
Attorney General.

OHIO NATIONAL GUARD; TITLE TO ARMORY
OWNED BY TWO TOWNSHIPS.

Attorney General's Office.
Columbus, Ohio, October 15, 1885.

Hon. E. B. Finley, Adjutant General:

DEAR SIR:—I return herewith the letter of Ezekiel Moore submitted to me. The statutes do not expressly prescribe how the title to real estate shall be vested, when two or more townships join in purchasing land and erecting thereon an armory and drill room for a company of the Ohio National Guard. I think, however, that such title should properly be taken to the several townships in common, according to their respective interests therein. I do not

Justice of the Peace; Case of Horace Hearn.

think the title should be vested in a council of administration as suggested by Mr. Moores.

Under a fair construction of the eight sub-divisions of section 2732 property belonging to one or more townships and used for an armory and drill rooms as provided in section 3085 Revised Statutes is exempt from taxation.

Yours truly,
JAMES LAWRENCE,
Attorney General.

JUSTICE OF THE PEACE; CASE OF HORACE
HEARN.

Attorney General's Office.
Columbus, Ohio, October 15, 1885.

Hon. George Hoadly, Governor:

SIR:—I return herewith the letter of Horace Hearn relative to the issuing to him of a commission as justice of the peace. I do not think that the fact that Mr. Hearn took an oath and gave a bond, upon receiving his certificate of election from the county clerk, affects the question. The issuing of a commission to him by the governor is precedent to his right to qualify and such oath and bond can have no validity.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Liquor Law; Sunday Closing Law; Act of April 17, 1883.
(80 O. L., 164.)

LIQUOR LAW; SUNDAY CLOSING LAW; ACT OF
APRIL 17, 1883 (80 O. L., 164).

Attorney General's Office.
Columbus, Ohio, October 15, 1885.

Messrs. J. Steinem and Brother, Fostoria, Ohio:

GENTLEMEN:—Your favor of the 13th inst. is received. If a restaurant or eating house is connected with a saloon where intoxicating liquors are sold on other days of the week, the room or part of a room used as a restaurant or eating house may be open on Sunday provided the room or part of a room used as a saloon is securely closed. It is not necessary that the partition separating the two places should extend to the ceiling but it is sufficient if such partition prevents the passage of persons from one place to the other and if the door or other opening therein is fastened.

Furthermore section 7 of an act of April 17, 1883 (80 O. L., 164) having accepted a room used as an eating house from the operation of the Sunday closing law, the subsequent part of said section authorizing municipal corporations to regulate the sale of beer and native wine on Sunday can have no application to a room or part of a room used as an eating house. The council can not by ordinance provide for the closing of a room or part of a room used as an eating house provided the saloon part is closed in the manner I have indicated.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Municipal Corporation; Transfer of Money From One Fund to Another. Townships; Transfer of Money From One Fund to Another.

MUNICIPAL CORPORATION; TRANSFER OF
MONEY FROM ONE FUND TO ANOTHER.
TOWNSHIPS; TRANSFER OF MONEY FROM
ONE FUND TO ANOTHER.

Attorney General's Office.
Columbus, Ohio, October 16, 1885.

Mr. J. C. Frederick, City Treasurer, Leetonia, Ohio:

DEAR SIR:—First—Except as provided in section 2834 Revised Statutes, the council of a municipal corporation has no authority to transfer money from one fund to another. I do not think that the expectation of restoring the same at some future time makes any difference. See section 2698 Revised Statutes. In case of an illegal transfer of funds the treasurer is primarily liable and the action of the council would be no protection to him.

Second—In reference to the transfer of township funds I prefer to express no opinion unless advised of the particular fund which it is proposed to transfer. The fund for the relief of the poor must be applied solely to that purpose and can not be transferred to any other fund. So also by fair inference from section 2834 a fund raised for a special purpose must be applied to that purpose so far as needed. The general fund of a township may be expended for any township purpose, except the support of schools or the payment of the interest and principal of the debts of the township.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Board of Education; Courses of Study Prescribed by, Must
be Reasonable.*

BOARDS OF EDUCATION; COURSES OF STUDY
PRESCRIBED BY, MUST BE REASONABLE.

Attorney General's Office.
Columbus, Ohio, October 16, 1885.

*Mr. W. F. Balsley, President Board of Education, Napoleon,
Ohio:*

DEAR SIR:—Before reaching your favor of the 10th inst. I wrote yesterday to Prof. Austin in reply to a letter from him involving the same questions submitted by you. Section 4020 Revised Statutes authorizes a board of education to prescribe a course of study for the schools under its charge, but the rules upon this subject must be reasonable. See *Sewell vs. Board of Education*, 29 O. St., 89.

In any given case I think that the question turns on the reasonableness of the rule. Now section 4020 provides that all branches shall be taught in the English language, and a fair construction of section 4021 merely authorizes the board to cause the German or other language to be taught to those pupils whose parents desire them to study the same. As I said to Prof. Austin, I do not know what view the courts would take of the matter, but in my judgment a rule, which in effect requires a pupil in the high school to study either the Latin or the German Language, is not reasonable, and hence can not be enforced. In my opinion a pupil who has selected the Latin course may afterwards quit the study of Latin, but I do not think that such pupil, after dropping the Latin, has a right to take up the study of German without the consent of the board.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Penitentiary; Construction of Sidewalks Around; Act of April 16, 1885—County Auditor; No Compensation For Making Report of Commissioners.

PENITENTIARY; CONSTRUCTION OF SIDEWALKS AROUND; ACT OF APRIL 16, 1885.

Attorney General's Office.
Columbus, Ohio, October 16, 1885.

Hon. Isaac D. Peetrey, Warden Ohio Penitentiary:

DEAR SIR:—I return herewith the notice enclosed in your favor of the 8th inst. Section 7 of the act of April 16, 1885 (82 O. L., 122) provides for the construction of sidewalks in front of State property at the expense of the State. Said section provides that the State's proportion of the expense of constructing such sidewalks shall be paid on the order of the governor on the warrant of the auditor out of any money in the treasury not otherwise appropriated. I do not regard this provision, however, to be a sufficient appropriation under the constitution so as to authorize any money to be drawn out of the State treasury. Hence I think that the cost of constructing the sidewalks referred to by you can not be paid until the General Assembly has made a specific appropriation for that purpose.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY AUDITOR; NO COMPENSATION FOR MAKING REPORT OF COMMISSIONERS.

Attorney General's Office.
Columbus, Ohio, October 22, 1885.

Mr. C. D. Crites, Deputy County Auditor, Lima, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 17th inst. was not received until today.

*County Recorder; What Constitutes Vacancy in Office of,
Officers.*

By section 1021 Revised Statutes the county auditor is made the secretary of the county commissioners and required to aid them, when requested, in the performance of their duties. By section 917 Revised Statutes one of the duties of the county commissioners is to make the report therein mentioned. If, therefore, the auditor is requested by the commissioners to aid them in the performance of such duty by preparing said report, I think he must do so. The work is also clerical work which properly belongs to the secretary of the board. I am furthermore of the opinion that the commissioners can not make to the auditor any allowance for such work, nor can they employ and pay any other person to perform the same.

Yours truly,

JAMES LAWRENCE,

Attorney General.

COUNTY RECORDER; WHAT CONSTITUTES VA-
CANCY IN OFFICE OF, OFFICERS.

Attorney General's Office.

Columbus, Ohio, October 23, 1885.

John M. Sprigg, Esq., Prosecuting Attorney, Dayton, Ohio:

DEAR SIR:—Owing in part to my absence from the city and in part to my difficulty in reaching a conclusion on the question presented, I have been unable to answer your favor of the 17th inst. until now.

It appears that the recorder of Montgomery County has become insane and is now confined in the Insane Asylum at Dayton. By section 1142 Revised Statutes it is provided that in case of a vacancy in the office of recorder the commissioners shall appoint a suitable person to fill the vacancy. There is no statutory provision, however, prescribing what

*County Recorder; What Constitutes Vacancy in Office of,
Officers.*

shall create a vacancy in said office, nor is any express power conferred upon the county commissioners to determine when a vacancy exists. It is true that by the constitution no insane person could be elected or appointed to an office in this State, and it may be claimed with some force that a person who after his election becomes permanently insane, no longer possesses the requisite qualifications to hold an office. Still I do not think that a slight or temporary insanity necessarily disqualifies such person from holding an office to which he was elected previous to his insanity. Neither do I think that the commitment of such person to an asylum for the insane is conclusive upon the question. The proper view seems to be that no judicial determination is necessary to fix a vacancy occasioned by the death or voluntary act of an officer, but that, unless otherwise provided by the constitution, such determination is necessary in order to remove a person from office or to declare a vacancy not voluntary on his part. Not being satisfied that section 1142 Revised Statutes, by implication, confers upon the county commissioners power to determine that a vacancy exists in a case such as the present, I am constrained to say that, in my opinion, they are not authorized to take any action in the premises. See *State ex rel. vs. Baird*, 47 Mo., 301 and *State ex rel. vs. McClinton*, 5 Nev., 329.

By section 10 Revised Statutes a deputy, when duly qualified, has power to perform all and singular the duties of his principal. On the whole, therefore, my advice is that the deputy heretofore appointed by the recorder continue for the present to perform the duties of the office. Should the insanity of the recorder become confirmed perhaps some relief can be obtained from the General Assembly.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Inspector of Shops and Factories; No Authority to Tear Down Insecure Buildings—Board of Education; Power of, to Admit Colored Children to White Schools.

INSPECTOR OF SHOPS AND FACTORIES; NO AUTHORITY TO TEAR DOWN INSECURE BUILDINGS.

Attorney General's Office.
Columbus, Ohio, October 24, 1885.

Hon. Henry Dorn, Chief Inspector of Shops and Factories:

DEAR SIR:—Your favor of this date is received. In my opinion the chief inspector of shops and factories has no authority to tear down a building found by him to be insecure. Neither has he power to require the owner of such building to demolish the same. Section 2451 Revised Statutes as amended March 26, 1881, (78 O. L., 76) is applicable to the city of Columbus and the facts set forth in your letter should be submitted to the board of examiners of insecure and unsafe buildings appointed in pursuance of such section.

Yours truly,
JAMES LAWRENCE,
Attorney General.

BOARD OF EDUCATION; POWER OF, TO ADMIT COLORED CHILDREN TO WHITE SCHOOLS.

Attorney General's Office.
Columbus, Ohio, October 24, 1885.

Messrs. J. W. Baldwin and E. J. Thorn, Yellow Springs, Ohio:

GENTLEMEN:—In answer to the inquiries submitted in your favor of the 20th inst. I have to say:

First—In accordance with the decision of the Supreme Court, in the case of Van Camp vs. Board of Education (90

*Board of Education; Power of, to Admit Colored Children
to White Schools.*

St., 406), which has never been overruled or modified, children having any perceptible admixture of African blood, and who are generally treated and regarded as colored children by the community where they reside, are not as of right entitled to admission to the schools set apart for white youth. To authorize the exclusion of colored children, however the separate school established for them must be reasonably accessible and must afford facilities corresponding in a reasonable degree with the facilities afforded by the schools for white children.

Second—Section 4008 Revised Statutes does not require boards of education to authorize separate schools for colored children, but merely authorizes them so to do when, in their judgment, it will be for the advantage of the district, and the constitutionality of this statute is upheld on the ground that it is simply a law of classification. Separate schools being thus authorized for the purpose of classification merely, I am of the opinion that a board of education, under the general powers conferred upon it by section 3985, 4013 and 4017 Revised Statutes, may control or modify such classification as in its judgment it deems best; that, notwithstanding separate schools have been established for colored children, it has power to admit a particular colored child to the schools set apart for white children; and that, by the admission of one or more colored children to the schools for white children, other colored children acquire no right to like admission. I do not mean that the board should act arbitrarily or with partiality, but its action should be governed by what in its judgment is for the advantage of the district, having reference to the accessibility of the schools and the facilities therein afforded to the pupils both white and colored.

Third—I deem it proper to say further that, having seen the child about whom the controversy at Yellow Springs has arisen, I am satisfied, that the admixture of African

Justice of the Peace; Notice Necessary to Validity of an Election of.

blood is so imperceptible that no court in the land would deny his right to be admitted to the schools for white children.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

JUSTICE OF THE PEACE; NOTICE NECESSARY
 TO VALIDITY OF AN ELECTION OF.

Attorney General's Office,
 Columbus, Ohio, October 24, 1885.

Mr. F. C. Russell, Pomeroy, Ohio:

DEAR SIR:—Your letter of the 19th inst. to Governor Hoadly has been by him referred to me for answer.

It is undoubtedly true that the notice prescribed by law is not in all cases necessary to the validity of an election. See *Forster vs. Scarff*, 15 O. St., 530. I am of the opinion, however, that such notice is always necessary in the case of an election of a justice of the peace. Neither the Constitution nor the statutes fix one regular day for the election of a justice of the peace, as is done in respect to the election of other officers. The election of a justice of the peace is held in pursuance of notice given by the township trustees and, in my opinion, is dependent thereon.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

*County Commissioners; Allowance in Lieu of Fees to
Officers, by.*

COUNTY COMMISSIONERS; ALLOWANCE IN
LIEU OF FEES TO OFFICERS BY.

Attorney General's Office,
Columbus, Ohio, October 24, 1885.

*Irving H. Blythe, Esq., Prosecuting Attorney, Carrollton,
Ohio:*

DEAR SIR:—In answer to your favor of the 19th inst. I have to say:

First—In my opinion section 1309, Revised Statutes, is not mandatory so as to compel the county commissioners to make to the officers named an allowance in lieu of fees. In other words I do not think that the word "may" is to be read "shall." Undoubtedly the general rule is that when a public body or officer has been clothed by a statute with power to do an act which concerns the public interest or the rights of third persons, the execution of the power may be insisted upon as a duty, though the phraseology of the statute be permissive merely and not peremptory. This rule, however, does not apply when from a consideration of the entire statute it is apparent that a discretion is vested in the board or officers in respect to the act authorized to be done. In determining this question here we are to consider not only section 1309, but the other sections of the chapter pertaining to the same subject matter. The word "allowance" itself as used in section 1309 evidently implies a grant and not merely an approval of a claim, and the reference to the fees legally taxed to an officer is simply by way of limitation. Section 1307 provides that in no other case, except as provided in section 1306, shall any costs be paid out of the state or county treasury to any justice of the peace, etc., so that the allowance mentioned in section 1309 is not a payment of fees, but is what the statute calls it, an allowance in lieu of fees. Observe also the

Veteran Volunteer; Bounty to, When Entitled to.

difference in the language employed in section 1308, which provides that the fees of witnesses shall be paid upon the allowance of the commissioners. Sections 1312 and 1314 likewise throw light upon the proper interpretation of section 1309. Now, if the word "allowance" as used in section 1309 implies a grant, the amount of such allowance is clearly within the discretion of the commissioners, limited only by the provision that it shall not exceed the sum of \$100.00 or the fees legally taxed to the officer. The allowance may be as much less as the commissioners deem proper.

Second—Where the same person holds the office of justice of the peace and mayor, I think that the commissioners may make to him an allowance as justice and a like allowance to him as mayor. The allowance is made to the officer, not to the individual.

Yours truly,

JAMES LAWRENCE,
Attorney General.

VETERAN VOLUNTEER; BOUNTY TO, WHEN
ENTITLED TO.

Attorney General's Office,
Columbus, Ohio, October 26, 1885.

Allen M. Cox, Esq., Attorney-at-Law:

DEAR SIR:—Owing to the press of other business I have been unable to answer your favor of the 17th inst. until now. By the act to authorize and require the payment of bounties to veteran volunteers, as amended April 16, 1880 (78 O. L., 294), each re-enlisted veteran volunteer who has been credited upon the quota of any township, under any requisition of the president for volunteers during the late rebellion, and who has not received any

County Commissioners; No Power to Pay Expenses For Attendance at Convention of County School Examiners at Columbus.

local bounty upon said enlistment, is entitled to receive a bounty of \$100.00 as in said act provided. By "quota" is evidently meant the proportion or share of such requisition for volunteers assigned to the township, and which it was required to fill. When, by reason of enlistments credited to the township, its quota under a particular requisition was filled, the obligation of the township ceased so far as that requisition was concerned. Thereafter there could properly be no credit upon such quota, and hence, in my opinion, a man, who is so credited to a township after its quota is filled, is not entitled to the bounty mentioned in said act. If, however, the enlistment of such person was allowed to the township as a credit upon a subsequent requisition for troops, I think that the case would be different.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COUNTY COMMISSIONERS; NO POWER TO PAY EXPENSES FOR ATTENDANCE AT CONVENTION OF COUNTY SCHOOL EXAMINERS AT COLUMBUS.

Attorney General's Office,
Columbus, Ohio, October 26, 1885.

Hon. L. D. Brown, State Commissioner of Common Schools:

DEAR SIR:—I am in receipt of your favor of this date in which you say that it is proposed to hold a convention of county school examiners at Columbus in December next, and you ask if boards of county commissioners have legal authority to appropriate money from the funds at their disposal to defray the traveling ex-

Taxation; Manner of Collecting Special Assessments; No Penalties Allowed.

penses of examiners who may attend such convention, provided the convention be called by the state commissioners of common schools. In reply I have to say that, in my opinion, county commissioners have no authority to appropriate the money of the county to pay the traveling expenses to which you refer. Furthermore, there is no mode whereby such expenses can be paid out of the county treasury.

Yours truly,
 JAMES LAWRENCE,
 Attorney General.

TAXATION; MANNER OF COLLECTING SPECIAL ASSESSMENTS; NO PENALTIES ALLOWED.

Attorney General's Office,
 Columbus, Ohio, October 27, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—Your favor of the 26th inst. is received. A penalty can be enforced only when it is expressly allowed by law. As taxes and assessments are distinct things, though they may be collected on the same duplicate and in the same manner, I am of the opinion that the penalty of 15 per cent. provided in section 2844, Revised Statutes, applies to taxes charged against real estate and not to unpaid special assessments certified to the county auditor in pursuance of section 2295, Revised Statutes (Amended 80 O. L., 52). The provision in the last named section, that an assessment so certified shall, with 10 per cent. penalty to cover interest and cost of collection "be collected with and in the same manner as state and county taxes," refers to the time and manner of collection,

Municipal Corporation; Powers of Council of, to Abate Nuisances.

and does not authorize the addition of another penalty besides the 10 per cent. so provided for.

Unless, therefore, there be some other fact affecting the question of which I am not advised, I think that the amount of the penalty of 15 per cent. collected by Mr. Christian should be refunded to him.

Yours truly,

JAMES LAWRENCE,
Attorney General.

MUNICIPAL CORPORATION; POWERS OF
COUNCIL OF, TO ABATE NUISANCES.

Attorney General's Office,
Columbus, Ohio, October 30, 1885.

Mr. J. R. Davies, Sandusky, Ohio:

DEAR SIR:—I assume that the land known as the "East Battery" in the city of Sandusky is public ground belonging to the city or dedicated to public uses. If this be true, the city council has control of such grounds, with power to keep the same in repair and free from nuisance (Section 2640, Revised Statutes). It has also general power to cause any nuisance to be abated (Section 1692, Revised Statutes).

As these grounds were never purchased or appropriated for waterworks purposes the fact that the council heretofore caused the pumping station, stand pipe and engineer's house for the waterworks to be built thereon, does not, in my opinion, divest the council of its control over the same. At most the control of the trustees of the waterworks would be limited to such portion of said grounds as are used for waterworks purposes, and this control they would exercise jointly with the council.

Schools; Revocation of a Teacher's Certificate.

Moreover, I think that the council of a city has full power to cause the abatement of a nuisance situated upon land within the corporation obtained for waterworks purposes in accordance with section 2407, Revised Statutes. The power of the council to abate a nuisance is general, extending throughout the corporation. The control of the waterworks trustees over land obtained for waterworks purposes is no more inconsistent with the power of the council to abate nuisances thereon than is the ownership of property by private individuals inconsistent with such power.

I am, therefore, of the opinion that, in the case you present, the council has full power to cause or permit the cesspool referred to by you to be filled up in the manner suggested.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SCHOOLS; REVOCATION OF A TEACHER'S CERTIFICATE.

Attorney General's Office,
Columbus, Ohio, November 3, 1885.

S. R. Gotshall, Esq., Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—Your favor of October 31st was duly received. The case of a revocation of a teacher's certificate by a county board of examiners on the ground that the holder of the certificate is intemperate, etc., is analogous to the case where an officer appointed during good behavior or for a definite term is removed for specified causes. In such case the power of removal cannot be exercised without notice to the officer and an opportunity

Municipal Corporation; Legality of Ordinance in Certain Case.

to be heard. See Hogan vs. Carberry, 4 Cin. Law Bull., 113, and State ex. rel. vs. Sutton, 4 C. L. B., 608.

In my opinion, therefore, before a teacher's certificate is revoked in pursuance of section 4073, Revised Statutes, the board must give to the teacher reasonable notice of the charge against him and an opportunity to be heard in his defense. The board may act on its own motion or on charges filed with it by others. Upon the day set for the investigation the board shall proceed to hear first the evidence in support of the charge, and then, the evidence, if any, offered in defense. I think the better plan will be to have the witnesses sworn by a magistrate.

The action of the board must be based on evidence, but its determination as to the weight of evidence is not subject to review.

Yours truly,

JAMES LAWRENCE,

Attorney General.

MUNICIPAL CORPORATION; LEGALITY OF
ORDINANCE IN CERTAIN CASE.

Attorney General's Office,
Columbus, Ohio, November 5, 1885.

P. W. Poole, Esq., Mayor, Crestline, Ohio:

DEAR SIR:—I am in receipt of your favor of the 5th inst. enclosing copy of an ordinance adopted by the council of Crestline, entitled "an ordinance to regulate skating rinks," and providing that it shall be unlawful for any person or persons to operate or conduct any skating rink for masquerade or fancy skaters from abroad, or for polo skating within the corporate limits of said village, without having procured from the mayor, or in

Municipal Corporation; Legality of Ordinance in Certain Case.

his absence or disability from the village clerk, a license, for which such person or persons shall pay for every night the sum of \$1.50 in advance before such skating commences. The ordinance also provides a fee of fifty cents for the officer issuing the license, and imposes a penalty for a violation of the provisions of said ordinance.

In my opinion an exhibition of skating of the character mentioned in said ordinance is a show or performance within the meaning of section 2669, Revised Statutes (Amended 82 O. L., 148), provided such exhibition is given for hire or reward of any kind. Hence I think that the council has power to license the same under said section. See *Baker vs. Cincinnati*, 11 O. St., 534. I think, however, that the language of the ordinance designating the thing to be licensed is somewhat too general. It might extend to a private rink opened and conducted without hire for the use of the owner and his friends. Furthermore, said section, as amended April 22, 1885, provides that in cities and villages the council may confer upon, vest in and delegate to the mayor of such city or village, the authority to grant and issue license and to revoke the same. I am inclined to think that this authority as authorized to be delegated to the mayor is exclusive, and I doubt whether the clerk can be authorized to issue such licenses. Still, I confess I have not been able to examine the question with such care as to make my opinion of much value—being about to leave the city for a few days.

The ordinance having been passed, I think that, if I were in your position, I should enforce it according to its terms, unless the question is carried into the courts and the ordinance held invalid. See sub-division 7 of section 1692, R. S.

Yours truly,

JAMES LAWRENCE,

Attorney General.

County Auditor; Fees of Under Section 1437, Revised Statutes.

COUNTY AUDITOR; FEES OF UNDER SECTION
1437, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, November 6, 1885.

Hon. Emil Kieseewetter, Auditor of State:

DEAR SIR:—I return herewith the letter of F. J. Eshee, auditor of Ross County. I concur with the prosecuting attorney of said county in the opinion that all of the fees of the county auditor mentioned in section 1437, Revised Statutes, except the fees for recording, are to be paid by the purchasers of school lands. The provisions of section 1437 on the subject are substantially the same as in section 20 of the act of April 16, 1852 (S. & C., 1316), but the punctuation is a little different. After the words "six cents" in the sixth line of section 1437 is a comma, whereas in the original statute there is a semicolon. Now, the general rule is that where an act of the General Assembly has undergone revision, the same construction will prevail as before revision unless the language of the new act plainly requires a change of construction, to conform to the manifest intent of the General Assembly. It is also a rule of construction that errors of punctuation will be disregarded. I do not think that there can be any question that in section 20 of said original act the clause, "to be paid by the purchaser," applied to all the fees prescribed for the county auditor. In my opinion the said construction is to be adopted under the present statute.

Furthermore, section 1437 clearly undertakes to provide how all the several items of costs and fees named shall be paid. Unless the view which I have taken be correct, however, there will in fact be no provision for the payment of the auditor's fees for the sale and certificate. There is no authority for paying the same out of

County Treasury; Times of Examination of.

the county treasury, and, unless they are to be paid by the purchaser, it seems an idle thing to fix the amount of such fees.

Yours truly,
JAMES LAWRENCE,
Attorney General.

COUNTY TREASURY; TIMES OF EXAMINATION OF.

Attorney General's Office;
Columbus, Ohio, November 13, 1885.

S. L. Kolp, Esq., Probate Judge, Greenville, Ohio:

DEAR SIR:—I agree in the main with your construction of section 1129, Revised Statutes, as amended April 29, 1885 (82 O. L., 173). I think that the probate judge must cause an examination of the county treasury to be made whenever a new treasurer takes his office and also at least once in every six months from the passage of said amended section. The county auditor and commissioners must also make an examination as often as every six months, but I do not think that the auditor and commissioners are compelled under said section to make such examination at the time a treasurer turns over his office to his successor though they may properly do so.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Cemetery; Regulations For Control of Joint.

CEMETERY; REGULATIONS FOR CONTROL OF
JOINT.

Attorney General's Office,
Columbus, Ohio, November 13, 1885.

Mr. C. F. Gardner, Village Clerk, Wadsworth, Ohio:

DEAR SIR:—Your favor of the 10th inst. was duly received. Where a cemetery is owned in common by a village and a township, I am of the opinion that the joint meeting of the township trustees and village council held in pursuance of section 2541, Revised Statutes, may adopt rules and regulations requiring the purchaser of a lot in such cemetery to pay the expense of a conveyance therefor, and may also fix the amount to be paid by a purchaser for such conveyance. In the absence of a rule or regulation on the subject, I am of the opinion that the purchaser is not required to pay anything for said conveyance, but only the costs of the record thereof as provided in section 2547, Revised Statutes. In such case, the service of the clerk being part of the duties of his office, his compensation must be considered to be covered by the general compensation fixed for him by the council of the corporation.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Schools; Right of Admission to, by Children of Taxpayer.

SCHOOLS; RIGHT OF ADMISSION TO, BY CHILDREN OF TAXPAYER.

Attorney General's Office,
Columbus, Ohio, November 16, 1885.

Mr. O. B. Clark, Ashtabula, Ohio:

DEAR SIR:—Your favor of the 9th inst. was duly received. Under section 4013, Revised Statutes, the children of a freeholder whose residence is without, but whose homestead is partly within a school district, should be admitted free to the schools of such district. Otherwise a non-resident of a school district who owns property and pays taxes therein is not entitled to send his children free to the schools of such district.

I remember seeing a newspaper statement of a few months ago to the effect that some court in Ohio has held that a person was entitled to send his children to a school of a district in which he owns property, but did not reside. I have been able to find no report of such decision, however, and think the statement referred to must be erroneous. It probably originated from some case involving the right of a person whose residence was without, but whose homestead was partly within a district.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Municipal Corporation; Control by, of Railroads Crossing Streets in.

MUNICIPAL CORPORATION; CONTROL BY, OF
RAILROADS CROSSING STREETS IN.

Attorney General's Office,
Columbus, Ohio, November 16, 1885.

Geo. C. Beis, Esq., City Solicitor, Sandusky, Ohio:

DEAR SIR:—I am in receipt of your favor of the 11th inst. in which you ask my opinion whether municipal corporations have power to compel railroads within their limits to build and maintain gates at street crossings. There is no provision in our statutes expressly conferring such power upon municipal corporations. Under the power to control streets conferred by section 2640, Revised Statutes, and the general power by virtue of said sub-division 3 of section 1692, Revised Statutes, to prevent injury from anything dangerous, etc., the council of a municipal corporation may make and enforce reasonable police regulations or ordinances for the security and comfort of the people. Hence the question presented by you really depends upon the reasonableness of the regulation, and this must be determined by the facts of the particular case. Every small municipal corporation through which a railroad passes cannot be permitted to obstruct the line of such railroad or impose an unnecessary burden upon the railroad company in the transaction of its business. To require a railroad company to maintain a gate at every crossing of a street on its entire line would be intolerable. Where, however, a railroad crosses a street in a large village or city on which there is a great amount of travel, I am of the opinion that an ordinance requiring the company to erect and maintain a gate at such crossing would be reasonable and could be enforced. The same necessity for a safeguard of this kind would not exist at a crossing upon a street where there is but little travel.

Paupers; Powers and Duties of Infirmary Directors and Township Trustees in Affording Relief to.

I have found no reported case involving the validity of an ordinance to require the erection of gates at a street crossing. There are cases, however, in reference to ordinances requiring railroad companies to keep a flag-man or to display signals at street crossings and the validity of these ordinances in the absence of express statutory authority is upheld where the same are considered reasonable in the view which I have indicated. I see no difference in principle between these two classes of ordinances. See *1 Rover on Railroads*, 557; *Pierce on Railroads*, 466; *Railway Co. vs. Jacksonville*, 67 Ill., 57; *Railroad Co. vs. East Orange*, 12 Vroom, 127.

Yours truly,

JAMES LAWRENCE,
Attorney General.

PAUPERS; POWERS AND DUTIES OF INFIRMARY DIRECTORS AND TOWNSHIP TRUSTEES IN AFFORDING RELIEF TO.

Attorney General's Office,
Columbus, Ohio, November 14, 1885.

Robert C. Miller, Esq., Prosecuting Attorney, Washington C. H., Ohio:

DEAR SIR:—Your favor of the 11th inst. was duly received. In a county having an infirmary the costs and expenses incurred by township trustees in affording relief to the poor is to be paid out of the county poor fund only as provided in sections 974 and 975, Revised Statutes. If a statement of facts as provided in the former section is transmitted to the infirmary authorities within five days after the same came to the knowledge of the trustees and the pauper is received into the infirmary, the

Paupers; Powers and Duties of Infirmity Directors and Township Trustees in Affording Relief to.

bill of the trustees for costs and expenses incurred by them in affording temporary relief is to be paid out of the county poor fund. Under the latter section the trustees can be reimbursed for relief furnished by them only when the case has been reported to the infirmity authorities as provided in section 974, and the directors of that institution are of the opinion that the condition of said pauper is such as to render his or her removal inexpedient or to require temporary or partial relief only, and they direct the trustees to keep and afford the pauper such relief in such manner and upon such reasonable terms as the directors prescribe, etc. In other words, section 974 makes provision for the repayment of monies expended by the trustees before the pauper is reported to the infirmity authorities, and section 975 applies to cases where a pauper has been thus reported, but, for the reasons specified, the directors direct the trustees to keep and afford the pauper temporary or partial relief as the case may be. To entitle the trustees to receive the amount expended by them prior to reporting the case to the infirmity directors they must transmit the statement of facts within five days after the same came to their knowledge. To entitle the trustees to continue thereafter to afford relief at the expense of the county they must first obtain the order of the infirmity directors so to do. I do not think that the words "temporary" and "partial" as used in section 975 are synonymous. In my opinion, they are intended to apply to two distinct classes of cases, the former referring to the duration of the relief furnished and the latter to its extent or character. The temporary relief may be full for the time it continues, while the partial relief may continue indefinitely so long as the infirmity directors order. I regret that I am unable to agree with you upon this point, but I think that the General Assembly must be understood as using these words in their ordinary meaning and by

Indictment of Thomas Ray Pilcher.

coupling the two together to distinguish between them. It is true that in the ninth and tenth lines of the section the word "temporary" alone is used, but you will observe that the clause in which this appears refers to the termination of the relief furnished, and hence the word more particularly denoting limitation in time might properly be employed. Undoubtedly cases arise where the trustees are called upon to furnish relief which cannot be repaid out of the county poor fund, for, as I have stated, this is to be done only when the case is reported to the infirmary authorities and the pauper is received into the infirmary or the directors expressly direct that outside relief be furnished by the trustees. I think, therefore, that in estimating the amount of taxes to be levied for township purposes under section 2827, Revised Statutes, a sufficient sum should be included for the relief of the poor.

Yours truly,

JAMES LAWRENCE,
Attorney General.

INDICTMENT OF THOMAS RAY PILCHER.

Attorney General's Office,
Columbus, Ohio, November 17, 1885.

D. L. Sleeper, Esq., Prosecuting Attorney, Athens, Ohio:

DEAR SIR:—First—If it be true that the indictment against Thomas Ray Pilcher charges two offenses, to-wit, one under section 7023 and the other under section 7023a, Revised Statutes (O. L., 209), then I would say the indictment would be bad for duplicity. The general rule is that two distinct crimes cannot properly be joined in the same count of an indictment. It is difficult to say

Indictment of Thomas Ray Pilcher.

what are the exact grounds on which the exceptions to this rule are based, but I do not think it would be safe to suppose that any further exceptions would be allowed in addition to those now recognized. The offenses under said two sections are not included, one within the other. They seem to me to be altogether distinct and separate.

Second—In my opinion, however, there is but one offense charged in said indictment, to-wit, the offense, under section 7023*a*, of giving intoxicating liquor to a female under eighteen years of age, with intent to enable himself to have sexual intercourse with her. As I said in my former letter, I regard the averment that “the said Thomas Ray Pilcher did then and there have sexual intercourse with her as surplusage.” I cannot see how it can be maintained that the indictment charges an offense under section 7023. Indeed, I am inclined to think that this section as amended still applies only to one who induces, etc., a female to have sexual intercourse with a person other than himself. But however this may be, the indictment charges no inducing or procuring except as a mere influence from charging, in the language of the statute, an offense under section 7023*a*. The addition of an averment that the defendant did then and there have sexual intercourse with the female named is not sufficient, in my opinion, to constitute a charge that the defendant did not induce or procure her to have sexual intercourse with himself. It is not charged that he had sexual intercourse with her by means of giving her intoxicating liquor or that he thereby induced or procured her to have sexual intercourse with him. It does not even appear that the sexual intercourse resulted from giving the liquor. It seems to me, at least, that no offense is well charged under section 7023, and the rule, as stated in *Barnhouse vs. the State*, 31 O. St., 39, is that if one offense is well charged in an indictment, and another offense in the same count is ineffectually

*Bridges; Powers and Duties of County Commissioners and
Township Trustees to Construct Approaches to.*

charged, either for want of certainty as to time or otherwise, the averments as to the latter may be rejected as surplusage.

Yours truly,
JAMES LAWRENCE,
Attorney General.

BRIDGES; POWERS AND DUTIES OF COUNTY
COMMISSIONERS AND TOWNSHIP TRUS-
TEES TO CONSTRUCT APPROACHES TO.

Attorney General's Office,
Columbus, Ohio, November 19, 1885.

Mr. John W. McNamara, Township Clerk, Zaleski, Ohio:

DEAR SIR:—Your favor of the 17th inst. is received. There is apparently a conflict between sections 861 and 4940, Revised Statutes, in respect to the proper authority to construct the approaches to bridges erected by the county commissioners where the cost of such construction does not exceed \$50.00. Where the approaches cost more than \$50.00 it is clear that the same must be constructed by the county commissioners. Independently of these statutes the cost of the construction of approaches to a bridge would naturally be included in the general costs of the bridge to be paid by the authority building the same, and, as the statutes impose no obligation upon municipal corporations to construct approaches to a bridge erected by county commissioners, I think that in the case presented by you the village of Zaleski is not required to do anything.

As between the township trustees and the county commissioners the two sections of the statutes named can be reconciled only by construing them together as

*Bridges; Powers and Duties of County Commissioners and
Township Trustees to Construct Approaches to.*

one statute. In this manner the latter part of section 861 would be applied to section 4940 and treated as a limitation thereon. I am, therefore, of the opinion that it is the duty of the township trustees to construct the approaches or ways to all bridges named in section 860, Revised Statutes, except as therein excepted, provided the cost does not exceed \$50.00. I also think that the general fund for township purpose is available for the payment of the expenditure thereby incurred.

I should add that there is considerable difference of opinion in regard to this manner, in some counties the view indicated above being taken, and in others the county commissioners generally construct the approaches to all bridges erected by them without reference to the cost. In one instance, where it seemed that unless the county commissioners acted a bridge would be left indefinitely without approaches, I expressed a verbal opinion that the commissioners would be justified in constructing such approaches, although the cost was less than \$50.00. I confess, however, that in so doing I was influenced by what appeared to be the necessity of the case rather than what I consider to be the better construction of the statutes.

Yours truly,

JAMES LAWRENCE,

Attorney General.

Game Law; Amendment in Regard to Quail.

GAME LAW; AMENDMENT IN REGARD TO
QUAIL.

Attorney General's Office,
Columbus, Ohio, November 23, 1885.

E. P. Middleton, Esq., Prosecuting Attorney, Urbana, Ohio:

DEAR SIR:—I am in receipt of your favor of the 22d inst. requesting me to give the facts as to the amendment of section 6961, Revised Statutes, at the last session of the General Assembly (82 O. L., 238).

House bill No. 748 to amend section 6961, Revised Statutes, as originally introduced, among other things made it unlawful to kill quail or prairie chickens except between the first and thirtieth days of November each year inclusive. This portion of the bill was precisely the same as the statutes printed in the annual volume of laws for 1885, except that the word thirtieth appears instead of the word thirteenth. Bills are not set forth in the journals of the General Assembly. The original bill in manuscript was sent to the printer and has been lost. It is not customary to preserve either the original bill or the engrossed bill prepared by the clerk. In this case, however, the clerk of the House has found the engrossed bill, which is simply the printed bill pasted upon a large piece of paper, and on the back his endorsement, as follows:

“In the House, passed February 18, 1885.

“Attest. D. S. Fisher, Clerk.”

Certain amendments, which are immaterial here, having been made to the bill, the journal shows that it passed the House on February 18, 1885. The bill having gone to the Senate, the following proceedings appear from the journal of that body, to-wit:

“MARCH 26TH, 1885.

“The committee on Fish Culture and Game,

Game Law; Amendment in Regard to Quail.

to whom was referred H. B. No. 748: To amend section 6961 of the Revised Statutes of Ohio as amended April 3, 1883, reported back with the following amendments and recommend its passage when so amended:

"Strike out the word 'and,' at the end of line 4. In line 5 strike out the words 'thirtieth day of November,' and insert in lieu thereof the words 'day of November and the thirty-first day of December of.'"

This report was agreed to, and said bill was ordered to be engrossed and read the third time on Wednesday next.

April 8, 1885, the bill was further amended, as follows:

"Strike out all after the word 'chicken' in line 4 to and including the word 'inclusive' in line 5, and insert as follows: 'for three years from the first day of November, A. D., 1885.'"

Thereupon the bill as amended was indefinitely postponed. April 10, 1885, a motion was made that the vote, whereby H. B. 748 was indefinitely postponed, be reconsidered, which motion was laid upon the table.

April 29, 1885, the motion was taken from the table, and the vote whereby said bill was lost was reconsidered. Next the vote whereby the amendment made on April 8th was agreed to, was reconsidered, and said amendment was then disagreed to. Thereupon the bill was amended as follows:

"In lines 4 and 5 strike out the words 'except between the first day of December' and insert in lieu thereof the words, 'except between the first and thirtieth days of November.' Also after the word 'inclusive' in line 10, insert as follows 'or any gray or fox squirrel between the first day of February and the first day of June inclusive.'"

The bill as amended then passed the Senate. By

Game Law; Amendment in Regard to Quail.

consulting the engrossed bill, it appears that the bill as thus amended was the same as the bill which passed the House, except the addition of the amendment last above recited in reference to "any gray or fox squirrel." The bill having gone back to the House, this amendment was there agreed to.

In short, it seems from the journals and the engrossed bill that the bill as passed permitted quail or prairie chicken to be killed between the first and thirtieth days of November each year. This fact, however, does not appear with certainty from the journals alone.

Probably by an error the act was enrolled precisely as it is printed on page 238, Vol. 82, Ohio Laws, and in this form it was signed by the presiding officers and filed with the secretary of state.

The foregoing, I believe, are all the material facts in the matter. I confess I have not very decided views as to the present status of the legislation in question. Undoubtedly the courts in this State will look into the journals of the two houses to ascertain whether an act received the requisite constitutional majority, and otherwise conformed to requirements which are vital, and will hold it void when thus affirmatively shown not to have been duly enacted. Whether they will go thus far in order to ascertain the contents of a statute is very doubtful. *Prima facie* the enrolled act is the law as passed. Objection to this could not be raised by a plea, but if called in question, must be determined by the court merely by inspection of the record. Now, the enrolled act is as much a record as the journals, and where they differ, how is the court to say that the latter are correct? Indeed the former would seem to be the better evidence of what a law is than the latter. The journals are usually made up hastily, they are attested only by the chief clerk of the particular house and their reading is often dispensed with. An enrolled act is prepared with care, is examined and compared by a committee of the house in

Game Law; Amendment in Regard to Quail.

which it originated, is signed by the presiding officer of each house in the presence of the House over which he presides as required by the Constitution, and then deposited in the office of the secretary of state. If courts are at liberty to go beyond the enrolled act to determine the contents of a statute that certainty as to what the law is, would be destroyed and everything be thrown into doubt. Moreover, as in this case, the journals do not set forth the bill as introduced nor the act as passed. The engrossed bills are not records. If they are to be consulted it must be upon parole evidence as to their authenticity, and thus the question of what is the law would be determined by evidence often of the most fugitive and fragmentary character. Judge Thurman, in delivering the opinion of the court in the case of *Miller vs. State* (3 O. St., 475), said:

“Now in the case before us, we have no means of knowing what was the change affected by the amendment in question. Neither bill or amendment is spread upon the journal and unless we were to run into the absurdity of receiving parole proof and trying the validity of a statute upon the testimony of witnesses, we could not say that any substantial change was made. For aught that we have before us, or can properly look at, the new bill may have been, with the exception of a single word, and that not material, identical with the matter stricken out.”

On the whole, therefore, I am of the opinion that, until the courts have decided to the contrary, section 6961, Revised Statutes, as the same was enrolled and signed, must be considered to be the law as passed.

Yours truly,

JAMES LAWRENCE,
Attorney General.

County Recorder; Fees of.

COUNTY RECORDER; FEES OF.

Attorney General's Office,
Columbus, Ohio, November 24, 1885.

Mr. L. B. Grimes, County Recorder, Cadiz, Ohio:

DEAR SIR:—Your favor of the 20th inst. is received. Section 1155, Revised Statutes (Amended 77 O. L.; 240), has no application until the general indexes referred to in the preceding section have been brought up and completed. Hence I conclude that all the work of making such indexes up to that point is covered by section 1154. In other words, when the county commissioners direct the recorder to make general indexes in accordance with section 1154, I think that the recorder is to complete the same up to the time the work is finished, and that his compensation therefor is governed by section 1154. From that time on his compensation is governed by section 1155.

I am not sure that I exactly understand your question in reference to the hypothetical case stated. Section 1154 allows the recorder five cents for each tract of land described. His compensation cannot exceed five cents for each tract of land described in the indexes as the same are finally completed, but he and the commissioners may contract for a less amount I presume.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Costs; Recording Bill of Exceptions Included in.

COSTS; RECORDING BILL OF EXCEPTIONS INCLUDED IN.

Attorney General's Office,
Columbus, Ohio, November 24, 1885.

John McGregor, Esq., Clerk of Courts, Canton, Ohio:

DEAR SIR:—A strict construction of the statutes relative to the payment of costs in criminal cases would limit such payment to those items of costs of which bills had been made out at the time the prisoner was brought to the penitentiary. I have taken a somewhat more liberal view of the matter, however, and am disposed to say that the cost of recording a bill of exceptions, where the same is properly made part of the record after the prisoner is brought to the penitentiary may be paid by the State, provided there is any appropriation available for such payment. In the present case, final judgment having been rendered more than a year ago, I do not understand how a bill of exceptions can now be filed and made part of the record of the case.

Furthermore, a claim of this character must be considered as dating back to the time when the prisoner was brought to the penitentiary, for it is by relation to that that the claim is valid, if valid it be. Under the construction which the auditor of state gives to section 2 of the general appropriation act of last winter (82 O. L., 199), such a claim would be a deficiency existing prior to February 15, 1885, and hence could not be paid out of the current appropriation.

Yours truly,
JAMES LAWRENCE,
Attorney General.

Taxation; Western Reserve Stock Company; Shares and Organization of.

TAXATION; WESTERN RESERVE STOCK COMPANY; SHARES AND ORGANIZATION OF.

Attorney General's Office,
Columbus, Ohio, November 23, 1885.

F. H. Gilmer, Esq., Prosecuting Attorney, Warren, Ohio:

DEAR SIR:—Your favor of the 20th inst. enclosing letter from the auditor of Trumbull County, was duly received.

First—The Western Reserve Stock Company being a corporation organized under the laws of Ohio, I am of the opinion that the shares of the capital stock of said company held by residents of Trumbull County, are not taxable in said county, notwithstanding the fact that the property of said company is composed mainly of cattle and real estate in Arizona Territory.

Second—I am not advised as to when or under what statute the said company was incorporated. I do not think that a corporation organized under the present general statute relative to corporations has authority to provide that no transfer of the shares of its capital stock can be made without the consent of the officers of the corporation. I take it that the phrase "which are transferable by each owner without the consent of the other partners or stockholders," found in section 2730, Revised Statutes, so far as the same is applicable to corporations, is simply the designation of one of the ordinary and usual incidents pertaining to the shares of the capital stock of a corporation.

Yours truly,
JAMES LAWRENCE,
Attorney General.

County Treasurer; Receipts Given But Not Entered by.

COUNTY TREASURER; RECEIPTS GIVEN BUT
NOT ENTERED BY.

Attorney General's Office,
Columbus, Ohio, November 26, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—I infer that your question relates to a case where the treasurer, who gave the receipt for taxes paid but not entered, has gone out of office before such receipt has been produced by the taxpayer. In that case the present treasurer is required to receive such receipt in full for the taxes for the year that was erroneously returned, with all interest and penalties charged thereon. I think that the auditor is to at once enter a credit to said treasurer who so receives such receipt, and an allowance therefor is to be made at the next settlement. Section 2898, Revised Statutes, in terms requires the auditor to forthwith proceed by action against the treasurer who gave such receipt. Still, I think this must be understood in a reasonable sense. The auditor has power forthwith to commence such action, but I think before doing so he may properly notify said treasurer and give him an opportunity to settle without suit.

Yours truly,

JAMES LAWRENCE,
Attorney General.

*Board of Education; Power to Issue Bonds—Sheriff; Fees
For "Keeping and Providing" For Prisoners in Jail.*

BOARD OF EDUCATION; POWER TO ISSUE
BONDS.

Attorney General's Office,
Columbus, Ohio, November 30, 1885.

Mr. J. E. Heiser, Hamilton, Ohio:

DEAR SIR:—Under section 3994, Revised Statutes, the board of education of Hamilton is authorized to issue bonds for the purpose of building schoolhouses, without submitting the question to a vote of the people, provided that no greater amount of bonds shall be used in any one year than would equal the aggregate of a tax at the rate of two mills for the year next preceding such issue.

Yours truly,

JAMES LAWRENCE,
Attorney General.

SHERIFF; FEES FOR "KEEPING AND PROVID-
ING" FOR PRISONERS IN JAIL.

Attorney General's Office,
Columbus, Ohio, November 30, 1885.

A. L. Sweet, Esq., Prosecuting Attorney, Van Wert, Ohio:

DEAR SIR:—Your favor of the 24th inst. was duly received. I have examined the decision of Judge White, of the Clark County Common Pleas Court, in the case of the State ex. rel. vs. Sewiss et al., reported in the Law Bulletin of July 6, 1885, and, with all due respect to him, I cannot think that his construction of sections 1235 and 7379, Revised Statutes, is correct.

By section 1235 the sheriff shall be allowed such compensation as the county commissioners shall from

Sheriff; Fees For "Keeping and Providing" For Prisoners in Jail.

time to time order and allow, not exceeding fifty cents per day for keeping and providing for prisoners in jail. Whether we consider this section alone or construe it in connection with section 7379, fifty cents must be regarded as the limit of the allowance for all that is included under the designation of "keeping and providing for prisoners in jail." Now, the statutes themselves furnish a definition of these terms; section 7368 provides that the sheriff, or person acting as such shall have charge of the jail of the county, and of all persons confined therein and the same shall safely *keep*, etc., and by section 7379 the sheriff is required to *provide* for all prisoners, fuel, bed, clothing, washing and nursing when required, and, except for those confined in jail for debt, only board, and such other necessaries as the court in its rules shall designate. In view of these plain provisions of the statutes corresponding with the natural and ordinary meaning of the words "keep" and "provide" it seems unnecessary to hunt for far-fetched distinctions. I mean no offense in this remark, but can think of no other word than "far-fetched" which is applicable to a construction which makes the phrase "for keeping and providing for prisoners in jail" equivalent to the phrase "for retaining and for taking measures to prevent the escape of prisoners in jail."

In my opinion the allowance under section 1235 not exceeding fifty cents per day is for each prisoner, and is in full for everything required to be provided or furnished by the sheriff for a prisoner.

The latter part of section 7379 provides that the sheriff shall be allowed and paid by the county for services required by the provisions of this chapter (being Chapter 1, Title 3, Part 4, of the Revised Statutes), such compensation as the commissioners may prescribe. I am disposed to say that the word "services" here means something else than the providing of fuel, board, etc., as

Election; Duty of Governor and Secretary of State in Canvassing Returns.

required by the preceding part of the section. I think it means such services as the sheriff is by the chapter named required to perform, not including the keeping and providing for prisoners in jail. For such services the commissioners in addition to the allowance specified in section 1235 may make to the sheriff a further allowance in such sum as they may prescribe.

If my view on the last point is wrong and the word "services" is applicable to fuel, board, etc., then sections 1235 and 7379, so far as they relate to an allowance to the sheriff, apply to the same thing and hence should be construed together. In that event the limitation of fifty cents per day would be applicable to the entire allowance authorized to be made by both sections. But, as I say, I am disposed to take the other view of the matter, and hence am of the opinion that an additional allowance may be made for services required by said chapter, not including the keeping and providing for prisoners in jail.

Yours truly,

JAMES LAWRENCE,

Attorney General.

ELECTION; DUTY OF GOVERNOR AND SECRETARY OF STATE IN CANVASSING RETURNS.

Attorney General's Office,
Columbus, Ohio, December 2, 1885.

Hon. George Hoadly, Governor:

SIR:—In reply to your favor of this date I have to say:

First—It is the duty of the governor and secretary of state, within ten days after the first day of December, to open the returns of abstract number two made to the

Election; Duty of Governor and Secretary of State in Canvassing Returns.

secretary of state of the votes for state officers at the recent election, and if such returns have not been received from all the counties, resort may be had to abstract number three. Unless it appear that either abstract number two or abstract number three has been received from each county in the State, I am of opinion that the governor and secretary of state cannot proceed to canvass the returns which have been received. The number of votes given for the different persons for the several offices named can be ascertained only when returns have been received from all the counties. I therefore answer your first question in the negative.

Second—If upon opening the abstract referred to it be found that returns have not been received from any county, and if the clerk of such county, without sufficient reason, refuses to make the same, I think that the governor and secretary of state may cause proceedings in mandamus to be instituted against said clerk to require him to perform the duty enjoined upon him by law. In my opinion it is not necessary to wait until the eleventh day of December before making application for a writ of mandamus. The duty of the clerk to transmit a copy of abstracts numbers two and three to the secretary of state does not relate to the time when the returns are to be opened by the governor and secretary of state. When the clerk and the two justices of the peace taken to his assistance have made, certified and signed said abstracts and deposited the same in the office of the clerk, the statute requires the clerk forthwith to transmit by mail a copy thereof to the secretary of state at Columbus.

Third—In my opinion the provision in section 2986, Revised Statutes, relative to the time within which returns are to be canvassed is directory merely, and if it should happen that returns from all the counties are not received by the eleventh day of December, the governor

*Taxation; No Power of County Commissioners to Employ
Person to Discover Frauds in.*

and secretary of state would undoubtedly be authorized to proceed to make the canvass at a later date on receipt of the requisite returns.

Respectfully yours,
JAMES LAWRENCE,
Attorney General.

TAXATION; NO POWER OF COUNTY COMMISSIONERS TO EMPLOY PERSON TO DISCOVER FRAUDS IN.

Attorney General's Office,
Columbus, Ohio, December 3, 1885.

J. H. Blythe, Esq., Prosecuting Attorney, Carrollton, Ohio:

DEAR SIR:—Your favor of November 30th was duly received. In my opinion the commissioners of your county are not authorized under section 845, Revised Statutes (Amended 78 O. L., 120), to employ a man to furnish to the county auditor proofs, etc., of persons who refuse or neglect to return all of the moneys, credits, etc., for taxation, and if the commissioners should undertake to employ a man for such purpose, I do not think that they would be authorized to allow or pay him any compensation whatever.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Prosecuting Attorney; No Fee to, For Examination of
County Commissioners' Report.*

PROSECUTING ATTORNEY; NO FEE TO, FOR
EXAMINATION OF COUNTY COMMISSION-
ERS' REPORT.

Attorney General's Office,
Columbus, Ohio, December 15, 1885.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your two letters of the 10th inst. were duly received. Having been absent from the city and being now very much pressed with work, I must ask you to give me a little more time for the consideration of the question relative to the erection of the new infirmary building.

In respect to your other question I am compelled to say that, in my opinion, the prosecuting attorney is not entitled to any compensation for his services in examining the report of the county commissioners. Section 917, Revised Statutes, expressly limits the allowance of three dollars per day to the two persons appointed to assist the prosecuting attorney. In the absence of any statute allowing prosecuting attorney special compensation for such services, I think that the same must be considered as part of the duties of his office and covered by his annual salary.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Adjournment From "Day to Day;" Meaning of Phrase—
Kelly's Island West Bay Quarry Company; Articles of
Incorporation of.*

ADJOURNMENT FROM "DAY TO DAY;" MEAN-
ING OF PHRASE.

Attorney General's Office,
Columbus, Ohio, December 15, 1885.

L. H. Plattor, Esq., Prosecuting Attorney, Paulding, Ohio:

DEAR SIR:—I regret that owing to my absence from the city I have been unable to answer your favor of the 8th inst. until now. In my opinion the clause "and may adjourn from day to day to complete their report and finding," found in section 4520, Revised Statutes, as amended 81 O. L., 81, means that the trustees may adjourn from one day to the next, and from that to the next, and so on. The phrase "from day to day" means consecutive days, as I understand it. This has always been the view of the same phrase found in the statute relative to the taking of depositions. I do not think that the trustees are authorized to adjourn to any certain day in the future beyond the day following that on which the adjournment is had.

Yours truly,
JAMES LAWRENCE,
Attorney General.

KELLY'S ISLAND WEST BAY QUARRY COM-
PANY; ARTICLES OF INCORPORATION OF.

Attorney General's Office,
Columbus, Ohio December 16, 1885.

Hon. J. S. Robinson, Secretary of State:

DEAR SIR:—I return herewith the articles of incorporation of the "Kelly's Island West Bay Quarry Com-

Sheriff; Fees of; Fuel for Jail Building.

pany." In my opinion the articles of incorporation of a corporation organized under section 3235, Revised Statutes, must be acknowledged by all the subscribers within this State. The provision in section 3235, Revised Statutes, as to the acknowledgment of such articles must be considered as limited by section 3238 which provides that the official character of the officer before whom the acknowledgment of articles of incorporation is made shall be certified by the clerk of the Court of Common Pleas of the county in which the acknowledgment is taken. A clerk of the Court of Common Pleas having no authority to certify to the official character of a commissioner of deeds for Ohio residing in another State, I think that the enclosed articles of incorporation are not properly acknowledged by two of the incorporators, and hence the same should not be filed in your office.

Yours truly,
JAMES LAWRENCE,
Attorney General.

SHERIFF; FEES OF; FUEL FOR JAIL BUILDING.

Attorney General's Office,
Columbus, Ohio, December 16, 1885.

James T. Close, Esq., Prosecuting Attorney, Upper Sandusky, Ohio:

DEAR SIR:—I regret that I cannot wholly agree with you as to the question presented in your favor of the 9th inst. By section 7378, Revised Statutes, the county commissioners are required to provide suitable means of warming the entire jail building, including the apartments occupied by the sheriff and his family. I do not think, however, that the word "means" as there used, includes fuel but it refers rather to the furnaces, pipe,

Officers; Compatibility of School Director and Superintendent Children's Home.

stoves or other appliances employed for the purpose of heating. By the next following section the sheriff is required to provide for all prisoners *fuel*, etc., and this is covered by the allowance made to the sheriff for "keeping and providing for prisoners in jail."

On the facts stated, therefore, I am of the opinion that the bill of the sheriff referred to in your letter should not be allowed by the county commissioners.

Yours truly,

JAMES LAWRENCE,
Attorney General.

OFFICERS; COMPATIBILITY OF SCHOOL DIRECTOR AND SUPERINTENDENT CHILDREN'S HOME.

Attorney General's Office,
Columbus, Ohio, December 18, 1885.

Mr. W. P. Wolf, Superintendent Children's Home, Wilmington, Ohio:

DEAR SIR:—Your favor of the 15th inst. was duly received. The fact that you are superintendent of the Clinton County Children's Home, in which a separate school has been established, does not prevent your acting as school director of the sub-district in which such home is situated. If you are an elector of said sub-district you are qualified to act as director therein.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Justice of the Peace; Election of; Irregularities in.

JUSTICE OF THE PEACE; ELECTION OF; IRREGULARITIES IN.

Attorney General's Office,
Columbus, Ohio, December 18, 1885.

S. R. Gottshall, Esq., Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—Your favor of the 16th inst. was duly received. In my opinion, the election of the justice of the peace in Clay Township, Knox County, at the general State and county election in October last, was not invalid by reason of the fact that the judges and clerks of election in said township did not make out a separate tally sheet for justice of the peace, but returned the vote for said office on the same sheet with the votes for State and county officers. I think that the correct rule is that an election is not to be considered invalid by reason of the irregularities of the election officers where such result can be avoided. Now, I see nothing to prevent the vote for justice as returned from being canvassed at the time the canvass for the other officers was made. The matter having been overlooked by the county clerk and no canvass having yet been made of said election for justice of the peace, I am of the opinion that it is the duty of the county clerk to now proceed to make said canvass in the same manner as should have been done heretofore. You will observe that no definite day is fixed by law for the commencement of the term of office of a justice of the peace. His term really commences from the date of his commission whenever that is issued. Hence the time in which the canvass is made cannot be very material.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*County Commissioners; Power to Rebuild Infirmary
Destroyed by Fire.*

COUNTY COMMISSIONERS; POWER TO RE-
BUILD INFIRMARY DESTROYED BY FIRE.

Attorney General's Office,
Columbus, Ohio, December 22, 1885.

C. B. Winters, Esq., Prosecuting Attorney, Sandusky, Ohio:

DEAR SIR:—Your question relative to the powers of the county commissioners to rebuild the Erie County infirmary building recently destroyed by fire is not free from difficulty.

Inasmuch as the proposed building will cost more than \$10,000 the commissioners cannot make a special levy to rebuild and anticipate such levy by borrowing money as provided in section 2823, Revised Statutes. The phrase, "except in cases of casualty" found in section 2825, Revised Statutes, in my opinion, has reference only to the case of building a bridge. In section 3, of the act of April 19, 1887 (74 O. L., 92), its application was evidently thus limited, being followed by the words "as provided for in section two." Under the rule stated by the Supreme Court in *State ex. rel. vs. Commissioners*, 36 O. St., 326, the same construction in this respect should prevail as before the revision. Although this may be questioned with some force, I also think that the term, "public county building" in section 2825, must be considered as including an infirmary building. Hence I regard section 2825 as a limitation on sections 870 and 871, Revised Statutes, so that in all cases where the expense will exceed \$10,000, the question as to the policy of building an infirmary building must be submitted to the voters of the county at the annual spring or fall election. I do not think that section 2826, Revised Statutes, has any application.

On the whole, therefore, I am of the opinion that, if the question be submitted to a vote of the people as

Day and Winner Notes.

provided in section 2825 and receive the requisite majority, the commissioners may, under the general statutes, rebuild the infirmary building, otherwise not.

The best course will probably be to obtain a special act of the Legislature.

Yours truly,
JAMES LAWRENCE,
Attorney General.

DAY AND WINNER NOTES.

Attorney General's Office,
Columbus, Ohio, December 22, 1885.

Hon. Peter Brady, Treasurer of State:

DEAR SIR:—In my letter to you of September 2, 1884, in reference to the Day and Winner notes, I stated that no part of the amount charged as a lien upon lot 304, in the decree entered upon the mortgage of D. W. H. Day by the Court of Common Pleas of Franklin County, appeared to have been paid. Accordingly, I commenced an action in said court to subject said lot to the payment of the same. This action has been finally disposed of and said lot sold. After payment of costs, taxes and a prior lien under a tax title, I have collected the sum of \$172.42, being the balance of the proceeds of the sale of said lot, which amount I this day pay into the state treasury.

Yours truly,
JAMES LAWRENCE,
Attorney General.

*Ohio Farmers' Insurance Company; Power to do Business
on Stock Plan.*

OHIO FARMERS' INSURANCE COMPANY; POW-
ER TO DO BUSINESS ON STOCK PLAN.

Attorney General's Office,
Columbus, Ohio, December 23, 1885.

Hon. Henry J. Reinmund, Superintendent of Insurance:

DEAR SIR:—Your favor of this date is received. The statutes of Ohio recognize and provide for two distinct kinds of insurance by companies formed for the purpose of insurance other than life, to-wit: insurance upon the stock plan and insurance upon the mutual or assessment plan. The former plan is where, in consideration of a premium paid, the company undertakes to compensate the insured if he shall suffer loss. By the latter plan the person who effects insurance is liable to assessments for the payment of losses and expenses which accrue during the period of insurance, in proportion to the original amount of his deposit note. By section 3653, Revised Statutes, it is provided that "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 two hundred thousand dollars, invested as provided in section 3637, may issue policies either upon the mutual or stock plan, and may continue to do such kind of business so long as its assets continue so invested, and may expose itself to lose on any risk or hazard, either by one or more policies to an amount not exceeding five per cent. thereof."

The Ohio Farmers' Insurance Company was incorporated by special act of the Legislature, prior to the adoption of the present Constitution, which act provided that after the expiration of twenty years from its passage the Legislature should have power to alter, amend or repeal the same. It has been held by our Supreme Court

*Ohio Farmers' Insurance Company; Power to do Business
on Stock Plan.*

that a general law, in terms applicable to all corporations of like character, affects corporations created by special acts, as to which there was reserved the power of amendment or repeal. Furthermore, by reason of the action taken by this company in respect to the issuing of policies of insurance it has, in that respect, undoubtedly brought itself under the operation of the laws passed in pursuance of the present Constitution. See section 3234, Revised Statutes.

I have, therefore, no hesitation in saying that, the foregoing provision of section 3653, Revised Statutes, is applicable to the Ohio Farmers' Insurance Company, and is, in effect, a modification of its charter. Inasmuch as said company, although incorporated as a mutual company, has net assets properly invested, exceeding the sum of two hundred thousand dollars, it is, in my opinion, authorized to issue policies of insurance upon the stock plan, that is to enter into a contract of insurance in consideration of a stipulated cash premium.

I am further of the opinion that a person who thus effects insurance in said company on the stock plan, is not liable to any assessment for losses and expenses which accrue to said company. Such person stands in the same relation as one who insures in a stock company. He gives no deposit note, but pays in lieu thereof a cash premium. Now, our statutes provide for assessments only on the basis of the deposit note, and the sum to be paid by a member is always to be in proportion to the original amount of his deposit note.

The issuing by mutual companies of policies of insurance on the stock plan is no new thing in Ohio, but, so far as I am advised it has never been questioned here that a person thus insuring on the stock plan has no liability beyond the premium which he agrees to pay in consideration of his insurance. In other States, where

Probate Judge; Fees For Services Under Section 1129, Revised Statutes.

the question has been made, the freedom of such persons from liability to assessments seems to be well settled.

Yours truly,

JAMES LAWRENCE,
Attorney General.

PROBATE JUDGE; FEES FOR SERVICES UNDER
SECTION 1129, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio, December 21, 1885.

Hon. J. W. Cummings, Probate Judge, Toledo, Ohio:

DEAR SIR:—Enclosed please find copy of opinion by Attorney General Pillars, as requested in your favor of the 18th inst. I regret to say that I cannot concur in this opinion. The statutes in question, being now section 1129, Revised Statutes (as amended 82 O. L., 173), do not provide any compensation to the probate judge for his services in appointing accountants to examine the county treasury, etc., as required by said section. The rule is well established that an officer can only receive such fees or compensation as may be specially prescribed by law. See *Anderson vs. Commissioners*, 25 O. St., 13, and *Diebolt vs. Trustees*, 7 O. St., 237.

Yours truly,

JAMES LAWRENCE,
Attorney General.

Probate Judge; Fees For Services Under Section 1129, Revised Statutes—Costs; Interest on From Date of Judgment.

PROBATE JUDGE; FEES FOR SERVICES UNDER SECTION 1129, REVISED STATUTES.

Attorney General's Office,
Columbus, Ohio December 30, 1885.

Hon. J. W. Cummings, Probate Judge, Toledo, Ohio:

DEAR SIR:—Owing to my absence from the city your favor of the 24th inst. was not received until today. Section 547, Revised Statutes, to which you call my attention, relates merely to the rate or amount of fees which the probate judge may tax in the bill of costs in a case before him or charge a person for services rendered. It does not authorize the payment of any money out of the county treasury. Hence, even if your view is correct that the services performed by the probate judge under section 1129, Revised Statutes (as amended 82 O. L., 173), are similar to services in the Court of Common Pleas, I still adhere to the opinion expressed by me in my letter of December 21.

Yours truly,

JAMES LAWRENCE,
Attorney General.

COSTS; INTEREST ON FROM DATE OF JUDGMENT.

Attorney General's Office,
Columbus, Ohio, December 24, 1885.

R. A. Scott, Esq., Prosecuting Attorney:

DEAR SIR:—Your favor of the 21st inst. was duly received. In my opinion the fees of the clerk and the

*Children's Home; Power of County Commissioners in
Counties Where There is None.*

sheriff, which are taxed as costs and included in the judgment rendered in a civil cause in the Court of Common Pleas, draw interest from the date of the judgment. I do not think, however, that such officers are entitled to any interest on increased costs made after the judgment.

Yours truly,
JAMES LAWRENCE,
Attorney General.

CHILDREN'S HOME; POWER OF COUNTY COMMISSIONERS IN COUNTIES WHERE THERE IS NONE.

Attorney General's Office,
Columbus, Ohio, December 30, 1885.

*Irving H. Blythe, Esq., Prosecuting Attorney, Carrollton,
Ohio:*

DEAR SIR:—Your favor of the 27th inst. was duly received. Section 2 of the act of April 9, 1883, as amended May 4, 1885 (82 O. L., 249), is applicable to such children, not imbecile, idiotic or insane, as are entitled to admission to a children's home in case a home has been established. In counties where children are kept in infirmaries as a children's home, the infirmary directors have the same powers conferred upon trustees of children's homes by sections 931, 932 and 933, Revised Statutes. This includes the power of passing upon the question as to whether a particular child, by reason of abandonment by parents, etc., is a suitable person for admission. In the other cases mentioned in said section 2, that is where temporary provision is made for children either by transferring them to the nearest children's home or by providing for their care and support within

Children's Home; Power of County Commissioners in Counties Where There is None.

the county. The matter is within the control of the county commissioners so far as ascertaining whether a child is such a one as is entitled to admission to a children's home in accordance with section 931, and is not idiotic, imbecile or insane. The discretion in the first mentioned case given to the infirmary directors and in the latter to the county commissioners, must however, be exercised in good faith and not arbitrarily.

Coming now to the questions submitted by you, which relate to the case where provision is made for the care and support of children within the county and not at a regular children's home or county infirmary, I have to say:

First—I consider it immaterial how the information as to any particular child is given to the county commissioners. It may come from the infirmary authorities or directly from a private individual. In either case I think that it is the duty of the commissioners to investigate the matter, and if they find that the child is one who would be entitled to admission to a children's home and is not imbecile, idiotic or insane, they ought to make provision for it. By the first part of said section 2 it is unlawful to keep such a child at a county infirmary, unless separated from the adult paupers therein. Hence where no provision is made for the proper separation of children at the infirmary, I think it is the duty of the infirmary authorities at once to notify the county commissioners whenever a child has been reported to said infirmary authorities by township trustees. I see no objection to the infirmary authorities receiving such child temporarily pending its transfer to the control of the county commissioners, keeping it in the meantime as far as possible separated from the adult paupers.

Second—Where provision is made for keeping children in families within the county, I think that all vouchers or orders for the expenses incurred should be

Pharmacy Act; Powers of Assistant Pharmacist.

signed by the county commissioners. In such case the infirmiry directors have nothing to do with the matter.

Yours truly,

JAMES LAWRENCE,

Attorney General.

PHARMACY ACT; POWERS OF ASSISTANT
PHARMACIST.

Attorney General's Office,
Columbus, Ohio, January 1, 1886.

*Mr. P. H. Bruch, Secretary Ohio Board of Pharmacy,
Columbus, Ohio:*

DEAR SIR:—In answer to the question submitted by you I have to say that, in my opinion, where a registered pharmacist is the owner of several retail drug stores he may place in charge of each or any one of them an assistant pharmacist. Indeed, upon a consideration of the whole statute, I am of the opinion that the terms, "a registered pharmacist within the meaning of this chapter," found in section 4405 of the act of March 20, 1884, must be regarded as including both a "pharmacist" and an "assistant pharmacist" as designated in subsequent sections of the act, and hence that the proprietor of a drug store, who is not himself a registered pharmacist, may carry on business, provided he employes an assistant pharmacist, who has the supervision and management of that part of the business requiring pharmaceutical skill and knowledge.

The provision in section 4407 as to registry is that the board shall keep a book of registration "in which the name and place of business of every person duly qualified under this chapter to conduct or engage in the business mentioned and described in section 4405 shall be