In passing it may be stated, however, that since there is a joint obligation upon the state, county and railroad to maintain said bridge, in view of its peculiar situation, undoubtedly the problem of putting said bridge in a safe condition for public travel is one which should be worked out by a common undertaking, participated in by the railroad company and the county and state, and by the city in case the proper authorities of the city deem it proper to co-operate.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2835.

ATTORNEY—VILLAGE COUNCIL—WHEN LEGAL COUNSEL MAY BE EMPLOYED TO DEFEND POLICE AND BE PAID FROM PUBLIC FUNDS.

SYLLABUS:

A village council may legally expend public funds to pay legal counsel for defending a police officer of the village in a civil action, for assault and battery arising out of the arrest of a person within the confines of a village for a breach of the peace, where it finds that the officer was in good faith attempting to discharge the duties imposed upon him by law as such police officer.

COLUMBUS, OHIO, November 3, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated March 13, 1928, which reads:

> "A police officer of a village was sued in Common Pleas Court for assault and battery arising out of an arrest of the plaintiff for a breach of the peace. The case was defended by legal counsel employed by the village and the evidence disclosed that the officer was not guilty of any wrong but was acting within the line of his duty. The case was dismissed by the court.
>
> The question has arisen as to whether a municipal corporation may pay the attorney for defending the officer, such attorney being retained by the village on a basis which entitles him to extra compensation for law suits.
>
> The syllabus of Opinion No. 1556, page 1395, Opinions of the Attorney General for 1916, reads:
>
> 'The council of a village is without power to employ legal counsel to defend the village marshal against a complaint for shooting with intent to kill, arising out of the performance by the marshal of his duties as a conservator of the peace and in the enforcement of the state law, or of an ordinance passed by the council in the exercise of the police power delegated to it by the state.'
>
> QUESTION. May the village legally pay from public funds the attorney fees in question?"

The opinion to which you refer appears in Volume II of Opinions of the Attorney General for 1918, at page 1395, rather than in Opinions of the Attorney General for 1916.

The conclusion of my predecessor, as expressed in that opinion, would, if followed, negative any right of the village to pay the attorney fees here involved. In principle the case before my predecessor was the same as that which you now present. There the village marshal had been prosecuted criminally for shooting with intent to kill, in the course of the performance of his duties as conservator of the peace of the village, while here a police officer of the village has been sued civilly for assault and battery alleged to have been committed in the course of an arrest for breach of the peace. In both instances the ultimate result was favorable to the officer.

The prior opinion was premised largely upon an earlier opinion of this office found in Annual Report of the Attorney General for 1914, Vol. II, at page 1461, and the doubt remaining in the mind of the writer of the 1918 opinion is clear from the following language at the conclusion:

> "This principle still leaves the subject in some doubt. As stated, it would appear to require the concurrence of a pecuniary interest in the subject matter involved in the officer's conduct with the existence of a more or less academic public interest. In the case at hand the municipality, as the source of the legislation which was being enforced by the officer, did have apparently some duty or authority in the premises. It did have direction and control over the officer, in that he was serving its process; it did gain by his diligence, in that the public need that gave rise to the adoption of the ordinance was a municipal need and was being subserved by his official conduct; and, conversely, it would have lost by want of care because his failure to enforce the ordinance and to serve the processes of the village would have amounted to a public loss to the municipality. But the concern which the municipality has in the enforcement of its police regulations is in no sense corporate and proprietary; rather, such regulations, though adopted by the municipality, constitute an exercise of the police power of the state which is merely delegated to municipal councils in deference to the difference between conditions in incorporated communities and those in rural communities.
>
> Thus, if the municipality had been sued civilly for any conduct arising out of the discharge by the marshal of his duty in enforcing the police ordinances of the municipality, the action would have been unsuccessful upon the well settled principle that a municipality is not liable for the conduct of its officers in the course of their official employment while representing it in its governmental capacity rather than in its proprietary capacity.
>
> Of course, the analogy furnished by the rule as to municipal liability or non-liability for the acts of officers or agents may not be a trustworthy one; for the power to indemnify might exist independently of the question of municipal liability.
>
> But the cases cited by Mr. Hogan in his exhaustive opinion seems to adopt a principle which, if not analogous to the one just stated, is at least parallel to it in reasoning and result; while some of them go so far as to deny the power to indemnify upon grounds which might apply even in case the expense or liability of the officer were incurred in the course of representing the municipality in the exercise of its proprietary functions. To this effect is *Lunkenheimer* vs. *Comptroller et al.*, 23 Bull., 433.
>
> On the whole, though the question is not free from doubt, I am impelled to the conclusion as a matter of law (though as the present case is circumstanced my sympathies are the other way) that the council of the village was without power to make the employment which it attempted to make, and that the treasurer can not be compelled to pay the claim based thereon."

You will observe that at least the sympathies of the Attorney General were in favor of the contrary rule. In view of the doubt as to the law applicable to the result therein expressed, I feel free to re-examine the question in the light of the modern trend of authority.

Out of deference to the previous conclusions found in the opinions heretofore referred to, I feel that consideration should be given to the reasons actuating the conclusions therein reached. The 1914 opinion was based upon facts differing in certain respects from those here involved. There the first inquiry was whether council should legally pay judgments rendered against police officers as the result of false arrest, and it was further asked whether the expenses of the police officers, in defending the damage suits, could be paid. The conclusion of the opinion is set forth in the first branch of the syllabus, as follows:

> "While council cannot by ordinance or resolution legally pay from city funds judgments rendered against police officers because of false arrest, and cannot legally reimburse a police officer from city funds for expenses incurred in defending damage suits for such false arrests, nevertheless, in view of the uncertainty of the law, no finding should be made where payments have been made. The holding herein should be given prospective effect. In the future, findings should be made and actions instituted to recover such payments hereafter made. Such recovery may be had against the officers who have been reimbursed from city funds for judgments and expenses. As to whether recovery may be had from a police officer when council directly pays the judgment creditor, quaere."

Your attention is called to the fact that apparently the action disclosed that the officers were in the wrong, for judgments were rendered against them, and it was these judgments and the expenses incurred by the officers in defending such actions that were under consideration. The question is suggested whether the element of wrongful acts on the part of the officers does not distinguish the present case where the action ultimately resulted favorably to the police officer. Passing this question for the moment, however, I believe it proper to give consideration to the reasons for the conclusion of my predecessor in view of the exhaustive consideration which he gives to the questions.

The 1914 opinion was predicated upon certain conclusions which may be summarized as follows:

1. The subject matter of the action was not one concerning which the municipality had a duty to perform and interest to protect, or a right to defend.

2. There is no moral obligation upon the municipality in connection with the payment of the judgment or expenses incident to the suits.

3. There is no statutory authority for such payment.

Before considering these points in detail, I may suggest that the 1914 opinion has been overruled, at least in part, by opinion 1701 of this department, dated February 13, 1928, and addressed to you, in which it was held that claims for damage to property resulting from the acts of police officers in the performance of their duties might be recognized and paid as moral obligations of a municipality. Much of the discussion in this opinion is pertinent to the question here under consideration, but there still exists a distinction between the payment of a claimant who has been damaged and the reimbursement of the police officers themselves. As pointed out in my prior opinion, the claimant, who has been damaged as the result of a wrongful act of an agent of a municipality, has a claim which is properly a moral obligation, since where a private

corporation is involved, the principal would be responsible for torts of its agent arising out of acts committed in the course of his employment. It is only by reason of the intervention of the legal rule which prevents suits against a municipality for torts committed by it in its governmental capacity that action against the municipality may not be maintained directly. Under such circumstances I reached the conclusion that the recognition of such claims might properly be made as moral obligations.

The reimbursement of a police officer stands upon a different basis. It may perhaps be suggested that a judgment adverse to the police officer is decisive of the question inasmuch as there is no authority for any agent to commit a wrong and hence the judgment has conclusively established that, in committing the injury in question, the officer was acting outside of the scope of his employment so that the municipality has no interest therein. On considerations which will be hereinafter discussed, I do not believe that a distinction should be drawn between those cases which result favorably to the officer and those in which a liability is imposed upon him, provided, however, that at the time of the commission of the injury he was in good faith attempting to perform certain duties incident to his office.

Reverting to the reasons for the conclusion reached by my predecessor in the 1914 opinion, it may be stated that I am unable to follow the conclusion that a municipality is in nowise interested in the litigation in which one of its officers finds himself involved. The preservation of the public peace, while in a sense a state function, is, nevertheless, clearly also a municipal function. One of the first duties of any government is to preserve law and order and this extends to municipalities as well as to the state government. In support of this I need only cite the case of *Youngstown* vs. *Nat'l Bank,* 106 O. S., p. 563, where, on page 568, Judge Wanamaker states:

> "The first question naturally arising is as to the mayor's duties and powers in the premises. It is agreed by both sides that the first general section applicable is Section 4250, General Code:
>
> 'The mayor shall be the chief conservator of peace within the corporation.'
>
> Clearly this provision of law concisely imposed a duty upon the mayor, as the conservator and preserver of peace within the corporation, a peace that was then seriously jeopardized, which jeopardy would be increased if any indifference or hesitation was shown by the mayor. The duty imposed by that section must be equalled by the power given, expressly or impliedly, to preserve that peace.
>
> This general provision declaring a general duty involving a general power must clearly and convincingly grant sufficient general power for the mayor to accomplish and perform the duty imposed. Whatever power would be proper and pertinent to the discharge of that duty under that statute would be available to the mayor as the servant or agent of the corporation, and would likewise be obligatory upon him as such agent, and upon his principal, the city, so far as the reasonable performance of his duty required. This would be the undoubted rule of law in the absence of any special provisions."

Again, on page 574, appears the following:

> "When the people of a community organize themselves into a municipality, a public corporation, the artificial political entity created is entitled to protection against violent assault, and just as Judge Thurman says may create debts to suppress insurrection, whether it be called a mob, a riot, or any other name signifying the use of violence, organized or unorganized, which threatens and jeopardizes the very life of the community.

Common sense, common justice, the common conscience of our courts, no less than our common people, demand that the full resources of our municipalities and our states shall be employed, yes, if necessary exhausted, that law and order may be maintained; in order that the unalienable rights of men, women and children shall be safe and secure.

This view of the case is further reinforced by the enlargement of municipal powers granted in Article XVIII of the Ohio Constitution, as adopted in 1912, particularly Section 3, which vests in the municipality 'all powers of local self-government.'

It would be a strained and unnatural construction to hold that such a broad, comprehensive grant of power did not include the power of self-defense, the power of protecting human life, human liberty, and human property."

The court in that case had under consideration the question as to whether a municipality was liable to pay the salary of certain emergency policemen employed by the mayor for protection to persons and property against riot. In the face of this language I can scarcely see how it can be said that the municipality has no interest whatsoever in the action of its police officer in enforcing the peace. Certainly if the performance of the duties of the police officer has no relation to municipal affairs, then there can be no justification for the payment of salaries and other expenses concerning which there has never been any question raised.

Again my predecessor concluded that there could be no moral obligation upon the municipality, his language with respect to this particular point being found on page 1464, as follows:

"It has been contended that the right to pay claims of this character rests upon the equitable duties of a municipality—upon its moral obligation—to protect its officers in the faithful discharge of their duties. It must be remembered that in Ohio municipalities have only those powers expressly granted or necessarily implied, and in this respect they differ from the cities of many other states. In addition to this, in maintaining a police department, the municipality acts as an agency of the state, and not in its private corporate capacity. These officers act for the state, and on its behalf in making arrests, especially in state cases, which in their very designation present the state as prosecutor. The decisions are uniform in this state upon this question, and it has been repeatedly held that the municipality, when it acts as a state agent, is not liable for the torts of its officers. If it is not liable for the torts of its officers, how can it be said that there is a moral obligation upon it to pay damages arising out of delicts of such officers. While it is true that there are certain moral obligations resting upon municipal corporations, which may be recognized by payment, nevertheless those decisions must not be extended beyond their terms. They were based upon peculiar circumstances, and no general rule can be deduced therefrom.

Observe that the municipal mayor's and police courts have criminal jurisdiction throughout the county and arrests made under their authority may and frequently do occur beyond the limits of the municipality. Under such circumstances, if false arrests take place, why should the municipality have the right to reimburse the officer mulcted in damages. He is not acting for or on its behalf in making such arrest. That surely cannot be a corporate function."

You will observe that he first states that Ohio municipalities have only those powers as are expressly granted or necessarily implied. This is at variance with the language of Judge Wanamaker in the quotation above and I am in accord with the conclusion of the court that the Home Rule amendments of the Constitution have extended municipal powers beyond those which formerly existed. My predecessor also states that the police officers were acting as agents of the state and, as I have hereinabove discussed, I do not believe that this conclusion is sound. While the enforcement of law is in some respects a state function, nevertheless it is also within the authority of the municipality, as well as its duty, to see that law and order are preserved at least within its boundaries. While there may be some question arising by reason of acts committed by a police officer outside of the boundaries of a municipality, I feel that this need not be given consideration here and you may assume that my conclusion is based upon the premise that the acts of the police officer were committed within the boundaries of the municipality.

The final premise of my predecessor has already been mentioned, viz., that there is no statutory authority for the allowance of claims of this character. I do not believe that the lack of such statutory authority is an insuperable obstacle in cases such as are here involved. It is true that by virtue of Section 4220 of the General Code it is provided:

> "When it deems it necessary, the village council may provide legal counsel for the village or any department or official thereof, for a period not to exceed two years, and provide compensation therefor."

I do not believe that this section is authority for the employment of counsel for a police officer under circumstances such as are involved in your inquiry. There is, however, no specific prohibition found in the statute against the employment of other counsel under exceptional facts. The protection of police officers in the performance of their duties is, in my opinion, one of the powers necessarily incident to the maintenance of a police department. Certainly there is a right to expend moneys for expenses incurred by police officers in the performance of their duties. I do not believe that the character of that expense is necessarily decisive of whether or not it may be properly allowed and paid from the municipal treasury. In the instant case the police officer was attempting to perform his duty and, according to the conclusion of the court, did no wrongful act, and yet he was subjected to expense as a direct result of the performance of his duty. In my opinion provision may properly be made by the council for the defense of an officer under such circumstances. Of course the employment of counsel for the officer by the village necessarily involves a legislative determination that the officer, while acting in good faith and on behalf of the municipality, has incurred the possibility of liability and that it is necessary for the proper maintenance and support of the police department to provide counsel for his defense. In a sense this would be pre-judging litigation for the defense of which counsel is employed, but I believe that this legislative determination should be regarded as final in the absence of gross abuse of discretion. That is to say, if in fact the officer was acting in good faith in an attempt to perform his duty, then I believe that the actual result of the litigation is immaterial. Here, however, the result of the litigation was favorable to the officer and, even though it might be argued that the original employment was not lawful by reason of the fact that the officer might have been acting outside of the scope of his employment, such result clearly negatives any such contention.

The views which I have hereinabove expressed are not without support of very substantial authority. As I have pointed out, both of my predecessors recog-

nized the diversity of authority on the question. In fact, in the 1914 opinion there are many authorities cited sustaining the right to pay judgments and expenses of a police officer arising out of the performance of his duty. In my opinion, the true rule is expressed in McQuillin on Municipal Corporations, Second Edition, Section 532, as follows:

"Where a municipal officer incurs a loss in the discharge of his official duty in a matter in which the corporation has an interest, and in the discharge of a duty imposed or authorized by law, and in good faith, the municipal corporation has the power to appropriate funds to reimburse him, unless expressly forbidden. And this it may do although it may turn out that the officer exceeded his legal rights and authority. Thus where a mayor who in the performance of the duties of his office, in good faith, exceeds his authority which results in a judgment against him for false imprisonment, it is competent for the city to indemnify him for the expense of such judgment. So it has been held to be legal for a town to appropriate a reasonable amount of its funds to employ counsel to defend its police officers in actions for false imprisonment.

Cases may and often do arise, in which towns may assume to indemnify their agents where the result of a trial at law clearly shows that the acts were illegal, provided such acts were done by the agents in the bona fide discharge of their duties. It may assume the expense of a suit against its agent or servant in which the interests of the municipal corporation are directly involved. Where a police officer, in the discharge of his duty, in attempting to kill a mad steer at large in a crowded street, shot a boy who recovered damages therefor, the city, it was held, had a right to reimburse him for the amount paid as damages. So it may indemnify its school committee, it has been held, for expenses incurred in defending an action for an alleged libel contained in a report made by them in good faith and in which judgment was rendered in their favor. A variety of circumstances in which the municipal corporation may indemnify or reimburse appear from the adjudications.

'The true test in all such cases is, did the act done by the officer relate directly to a matter in which the city had an interest, or affect municipal rights or property, or the right or property of the citizens which the officer was charged with a duty to protect or defend?' It has been said that in order to justify the expenditure of money by a municipal corporation in the indemnity of one or any of its officers, for a loss incurred in the discharge of their official duty, three things must appear. First, the officer must have been acting in a matter in which the corporation had an interest. Second, he must have been acting in discharge of a duty imposed or authorized by law. And third, he must have acted in good faith. But municipal officials who have been adjudged guilty of contempt of court in violating a court order, cannot be said to be acting in good faith nor in the bona fide discharge of their duties. They are not entitled to indemnity from the municipal corporation for expenses incurred in their defense of the contempt proceedings."

In Volume 43, Corpus Juris, at page 695, it is said:

"It is within the discretionary power of a municipality to indemnify one of its officers against liability incurred by reason of any act done by him while in the bona fide discharge of his official duties, and the municipality has the right to employ counsel to defend the officer, or to appropriate funds for

the necessary expenses incurred by him in such defense, or to pay a judgment rendered against him. But while there exists a discretionary power thus to favor an officer, there is no fixed obligation on the part of the municipality which may be enforced by such officer in an action at law."

In the case of *City of Corsicana* vs. *Babb,* 290 So. W. (Tex.), 736, the first and fourth branches of the headnotes, are as follows:

"1. City authorized to appoint policemen, with duties of peace officers, has implied power, exercisable at its discretion, to provide means for policemen's protection in discharge of official duties, in absence of charter provision to contrary.

4. Indemnification of city officer against liability incurred by reason of acts performed in carrying out official duties is municipal function for which expenses may be appropriated from city's fund, constituting public expense."

So pertinent to our present consideration is the case of *Moorhead* vs. *Murphy,* 94 Minn., 123, 68 L. R. A., 400, that I am taking the liberty of quoting extensively therefrom. In that case a police officer was sued for false arrest and imprisonment arising out of the arrest of a person for the violation of a city ordinance. The bill for counsel fees was presented to the municipality and it was allowed by council and paid. Thereafter several taxpayers objected and the question was whether the bill could lawfully be paid. The court in its opinion said:

"The general welfare, good order, protection, and safety of the people of the city are among the specific duties imposed upon the common council to accomplish by appropriate legislation. In furtherance of this authority, city ordinances were passed for the prevention of crime, and it is made the duty of the chief of police to serve and execute warrants issued out of any justice court of the city, and to pursue and arrest any person charged with, or who has committed, any violation of any city ordinance; and he is constituted one of the conservators of the peace, with authority to command the peace, and in a summary manner suppress all riotous and disorderly proceedings. Unless expressly prohibited, the municipality possessed the general powers of a municipality at common law, and under the common law it was authorized to secure special legal assistance. *Horn* vs. *St. Paul,* 80 Minn. 369, 83 N. W. 388. We have been unable to discover any provisions in the city charter which either expressly or by implication are in conflict with the common law power to employ such legal assistance. It is made the duty of the county attorney, when directed by the council, to appear and conduct the defense in any action against any officer or employee of the city on account of any act done by him in the performance of his official duties, but the common council is not limited to the services of such attorney. Sections 136 and 137 of the charter are provisions with reference to the letting of contracts to the lowest responsible bidder, and have no reference to, and are not limitations upon, the common council in regard to the subject here under consideration. The law upon this question is well defined in *Sherman* vs. *Carr,* 8 R. I. 431. In that case the mayor of the city was sued upon a charge of false imprisonment, and he made defense upon the ground that the acts complained of were committed by him in his capacity as mayor. A verdict having been recovered against the mayor, the common council made an appropriation to reimburse him, and a suit was brought by a taxpayer to enjoin payment of the same.

The question before the court is stated thus: 'Whether it is in the power of the city council to indemnify one of the officers of said city, who, performing the duties of his office in good faith, has exceeded the powers of that office, and thereby incurred damages at law?' The city charter prohibited officers of the municipality from doing or transacting any matters except such as belonged to the legitimate duties of a municipal body within its own province, or to vote money for any object for the regular, ordinary, and usual expenses of the city. The court held that it was one of the ordinary expenses of the city to protect its officers who in good faith exercised the functions of the office. The court reasoned that it was in the interest of good government, and for the benefit of the city, that such power to indemnify should be exercised; that to hold an officer entirely responsible for his acts while in the performance of his official duties would naturally tend to make him overcautious, if not timid, to the detriment of the public service. On the other hand, if such officer had the right to fall back upon the treasury of the city, there would be danger of his becoming reckless and overbearing in the exercise of the powers of his office. The court said: 'It would seem, therefore, to be the wisest to leave the indemnification of the officer to the discretion of those who represent the interests of the city, that, on the one hand, they should not be without the power to indemnify a meritorious officer, acting in good faith, for the consequences of his conduct, and, on the other hand, they should not be obliged to protect every officer, though acting in good faith, under circumstances which seem to them to indicate a blamable want of care and caution.' Another interesting case is that of *Cullen* vs. *Carthage*, 103 Ind. 196, 53 Am. Rep. 504, 2 N. E. 571, where the marshal of the town arrested a person for an assault upon a peaceable citizen, and was sued for false imprisonment. The board of town trustees employed attorneys to defend the marshal in that action, which they successfully did. The town having refused to pay for the services, the attorneys brought an action to recover the same, and the defense was that the employment of the attorneys by the board of trustees was ultra vires. The court held that the town was bound by its contract, placing its decision upon the ground that one of the essential things in the enforcement of the laws is that the people shall have that respect for the constituted authorities that arises out of a common understanding that the laws will be rigidly executed,—following the reasoning of the Rhode Island case. Other cases bearing upon this subject are *Fuller* vs. *Groton*, 11 Gray, 340; *Bancroft* vs. *Lynnfield*, 18 Pick. 566, 29 Am. Dec. 623; *State, Bradley, Prosecutor,* vs. *Hammonton*, 38 N. J. L. 430, 20 Am. Rep. 404; *Pike* vs. *Middleton*, 12 N. H. 278. Mr. Dillon, in the fourth edition of his work on Municipal Corporations (Sec. 147), states the rule thus: 'Where a municipal corporation has no interest in the event of a suit, or in the question involved in the case * * * it cannot assume the defense of the suit, or appropriate its money to pay the judgment therein * * *. But such a corporation has power to indemnify its officers against liability which they may incur in the bona fide discharge of their duties, although the result may show that the officers have exceeded their legal authority.' The authorities on this subject are collected under note 6, p. 1160 Am. & Eng. Enc. Law, Vol. 20.

According to the facts stated in the complaint, the officer was acting in good faith in the discharge of his duties. Under the authorities above cited, not being prohibited by the charter, the city council had, in the first instance, authority to employ the attorneys, and enter into a contract with them for their compensation. Having such power, they could afterwards ratify that which they were originally authorized to do; and, when the bill for such

services was presented to the common council, so far as appears from the facts set forth in the complaint, their action in allowing the bill must be treated as an intention to approve of their conduct and accept the same for the benefit of the city. It is not to be understood that what has been said is in conflict with the right of the taxpayers to have the proceedings reviewed upon appeal in the district court. We have merely determined the legal question that, as a matter of law, the city council had authority originally to make a contract with the attorneys for their compensation, and that, upon the facts stated in the complaint, their action in allowing the bill will be deemed to be an expression of approval and reimbursement.

Order reversed."

I feel that I need add nothing to the discussion which has just been quoted. Indemnity of an officer under such circumstances should clearly be a discretionary matter resting with the municipal authorities. If in the opinion of council, the legislative body, such indemnification is necessary in the interest of good government and for the benefit of the city, I believe that, in the absence of an abuse of this discretion, it should be sustained.

Accordingly, in my opinion, the prior opinion of this department, found in Opinions of the Attorney General for 1918, at page 1395, should be reversed and the opinion of the Attorney General for 1914, at page 1461, should be modified insofar as it is in conflict with the views herein expressed.

Summarizing, and by way of specific answer to your inquiry, I am of the opinion that a village council may legally expend public funds to pay legal counsel for defending a police officer of the village in a civil action, for assault and battery arising out of the arrest of a person within the confines of a village for a breach of the peace, where it finds that the officer was in good faith attempting to discharge the duties imposed upon him by law as such police officer.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2836.

WILBERFORCE UNIVERSITY—NORMAL AND INDUSTRIAL DEPARTMENT—FREE TUITION—QUESTION OF RESIDENCE—DISCUSSION OF SAME.

SYLLABUS:

1. *The word "resident" as used in Section 7985, General Code, is synonymous with the word "domicile."*

2. *Persons cannot be said to acquire a domicile in a county, or senatorial district in this state, who move there for the sole purpose of being recipients of a designation to attend the Combined Normal and Industrial Department of Wilberforce University free of charge, or of having their minor children so designated.*

3. *Persons possessing the necessary residential qualifications, and receiving a designation to attend the Combined Normal and Industrial Department of Wilberforce University, free of tuition, must continue to possess those residential qualifications in order to permit them to continue in attendance at the university free of charge.*