When, under the provisions of Section 4785-155, General Code, the Secretary of State has opened the abstracts submitted to him in accordance with the provisions of Section 4785-153, General Code, showing the votes cast for the offices included in the abstract submitted to the president of the senate under the provisions of Section 4785-154, General Code, and publicly canvassed these returns, in the event he has reason to believe that material errors may exist in some or all of the abstracts received by him from the various counties, it is his duty as chief election officer charged with the enforcement of the election laws to require the boards of elections of such counties to recheck the abstracts submitted to him or resubmit new abstracts of the precinct vote for any office included in such abstracts, in order that any county boards of elections which might have made errors in the preparation of their abstracts may have an opportunity to correct such errors, thus enabling the president of the senate, during the first week of the session of the General Assembly in January next following the election, to have correct abstracts to canvass as provided in Section 3, Article III of the Constitution and Section 4785-154 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General

2680.

NOTARIAL SEAL—USE OF RUBBER STAMP AND INK IN AFFIXING SEAL NOT A COMPLIANCE WITH STATUTE.

SYLLABUS:

A rubber stamp and ink are not proper constituents of the seal with which the statutory law enjoins each notary public to provide himself.

COLUMBUS, OHIO, December 16, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I wish to acknowledge the reception of your letter which reads as follows:

> "I am enclosing herewith a paper showing an imprint of what purports to be a notarial seal, said imprint having been made by rubber stamp.
>
> I understand that several companies are selling these stamps and represent that it is legal to use them. I respectfully ask your opinion as to whether or not such a stamp will take the place of the notarial seal which we are accustomed to use."

The statutory provisions which relate to the constituents of a notarial seal are Sections 30, 31, 32 and 123 of the General Code. They necessarily constitute a starting point to the solution of your inquiry and, therefore, I deem it advisable to quote them in part:

Section 30.

> "Device of coat of arms of the state. The coat of arms of the State of Ohio shall consist of the following device: A shield, in form, a circle; on it, in the foreground, on the right, a sheaf of wheat; on the left, a bundle of

seventeen arrows, both standing erect; in the background, and rising above the sheaf and arrows, a mountain range, over which shall appear a rising sun."

Section 31.

"*Engraving* upon and dimensions of official seals. All official seals shall have *engraved* thereon the coat of arms of the state, as described in the preceding section.

* * * * * * * * *

The seal of a notary public shall not be less than one and one-fourth inches in diameter, and shall be surrounded by these words: 'Notarial seal, ----------county, Ohio.' (Insert the name of the proper county.)

All the seals mentioned in this section shall contain the words and devices mentioned herein, and no other."

Section 32.

"Seal; of what it may consist. When an official or a corporate seal is required to be affixed to an instrument of writing, *an impression* of such seal upon either wax, wafer or other adhesive substance, or *upon the paper or material on which such instrument is written*, shall be alike valid and sufficient. * * * . "

Section 123.

"Seal and register of notaries public. Before entering upon the discharge of his duties, a notary shall provide himself with the seal of a notary public. Said seal shall contain thereon the emblem of the State of Ohio, the words 'notary public', 'notarial seal', or words to that effect, the name of such notary public and the county for which he is commissioned. Provided, that the name of the notary public may, instead of appearing on the seal, be printed, typewritten, or *stamped* in legible, printed letters near the signature of such notary on each and every document by him signed. * * * . "

(Italics the writer's.)

Since both the impression made and the apparatus by which it is made are equally known by the term "seal", (Giauque's Notaries Manual, 1928 ed., Section 30), I think clarity will be achieved best, where it is necessary to distinguish the two meanings, by designating the former as the use of the term in the primary sense, and the latter as its use in the secondary sense.

It is a matter of common knowledge that the notarial seal (secondary sense) now in prevalent use is an apparatus having two discal, metallic plates between which the page to be sealed is impressed. The adjacent faces of said plates bear the devices and words required of a notarial seal, the figures upon the one being raised and those upon the other being depressed so that, when the two plates are forced together, the raised characters on the one fit snugly into the depressed characters of the other. These plates are known respectively as the male and female dies, and their application creates an embossed impression on paper.

I take it that the imprint in question satisfies all of the statutory requirements relative to the design, size, devices and wording of a notary's seal, and that the sole question for determination is whether, everything else being equal, a rubber stamp and ink are valid instrumentalities for the affixture of a notarial seal.

Section 32, General Code, supra, pertaining to the constituents of an official seal in so far as the element of impression, irrespective of design and lettering, is con-

cerned, is applicable to notarial seals, there being no doubt but that a notarial seal is an official seal. The word "official" means "of or pertaining to an office, position or trust" (Webster's Dictionary). And, that one who is a notary is the holder of an office, is determined by statutory provisions which refer to his status as such (General Code, Sections 120, 122, 123, 124, 131 and 12929). as well as by express judicial decision. *Bettman* vs. *Warwick,* 13 O. F. D. (U. S. Cir. Ct. App.) 668.

An examination of Section 32, General Code, supra, discloses that "an impression" of a notarial seal "upon the paper or material on which" the "instrument is written" is "valid and sufficient". Lexicographically speaking, the term "impression" is sufficiently comprehensive to include figures made by the communication of a rubber stamp. It is evident, from the following definition by Webster's New International Dictionary, that an "impression" need not necessarily create figures alone by depression or embossment, and that an "impression" includes the communication of characters and forms by physical contact or external force or influence, under which, of course, the communication of figures by a rubber stamp may readily be classed:

> "1. Act of impressing, or state of being impressed; communication of a stamp, mold, style, or character, by external force or influence.
>
> * * * * * * * * *
>
> 3. The effect produced by impressing; an impress, an indentation, stamp, form, or figure, resulting from physical contact; as, the impression produced in wax by a seal: * * * . "

However, the jurist's inquiry is not concluded upon consulting the pronouncement of the lexicographer. He must ascertain the legal as well as the lexical import, for the Legislature speaks legally always; and though on occasion that is lexically too, yet often the two meanings do not coincide throughout. Especially may it be said that the Legislature is not chargeable with having had in mind every possible connotation which may be ascribed to a given word.

Having in mind this distinction, I find that the objections to a determination that, legally, the words "impression * * * upon the paper" as used in Section 32, General Code, sanction an imprint made by ink with a rubber stamp, are insuperable. This position becomes pronounced upon a consideration of the significant changes which have been wrought in the legislative history of said section. Thus, on February 3, 1831, the Legislature enacted a statute entitled "An Act concerning seals to be affixed to instruments of writing", 29 O. L. 349. Said act, which became Section 4 of the Revised Statutes of Ohio, read in part:

> "Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That in all cases where a seal is or may be required by law to be affixed to any instrument of writing, and the seal so required is not specific, a seal either of wax, wafer *or if ink*, commonly called a scrawl seal, shall be alike valid, and deemed sufficient." (Italics the writer's)

On March 29, 1883, the Legislature passed a law entitled "An Act to amend Sections 4 * * * of the Revised Statutes of Ohio", 80 O. L. 79, which read partially:

> "Section 1. Be it enacted by the General Assembly of the State of Ohio, That Sections four * * * of the Revised Statutes of Ohio be amended so as to read as follows:
>
> Section 4. In all cases where an official seal is required by law to be affixed by any officer to any instrument of writing, an impression by such

officer of his official seal upon either wax, wafer or other adhesive substance, or upon the paper or material on which such instrument is written, shall be alike valid and sufficient. * * * . "

* * * * * * * * *

"Section 2. That said original Sections 4 * * * be and the same is hereby repealed; and this act shall take effect on its passage."

The act of 1883 was repealed in April, 1884, and, in its place was passed the act which became Section 32, General Code, still existent today in the form quoted above in the first part of this opinion. (81 O. L. 198). It will be noted that, with the exception that the presently existing statute pertains to both official and corporate seals while the 1883 enactment relates to official seals only, the two statutes are practically identical in substance.

It will be observed that the 1831 enactment, in stating what should be deemed valid and sufficient materials for a seal, expressly includes "ink", that the act of 1883 expressly repeals the 1831 statute, and that the acts of 1883 and 1884 patently omit any mention of ink. Such a radical change by repeal and omission manifests, I believe, an unequivocal legislative intent to exclude ink from the materials which may constitute a valid seal. The plain common sense in which this deduction is lodged has, by courts, been seized upon for the basis of the well known rule of statutory construction, well epitomized in 25 Ruling Case Law 1051, thus:

"The legislature must be presumed to know both the language employed in the former acts and the judicial construction placed upon them; and if in a subsequent statute upon the same subject it uses different language in the same connection, the courts must presume that a change of the law was intended, and after a consideration of the spirit and letter of the statute will give effect to its terms according to their proper significance. So the *omission of a word* in the amendment or reenactment of a statute will be assumed to have been intentional. Where it is apparent that substantive portions of a statute have been omitted and repealed by the process of revision and reenactment, courts have no express or implied authority to supply the omissions that are material and substantive and not merely clerical and inconsequential, for that would in effect be the enactment of substantive law. The statute in such a case should be effectuated as the language actually contained in the latest enactment warrants; and the words that were a part of the omitted substantive provisions but are useless as reenacted may be disregarded as being mere surplusage; and appropriate effect should be given to the connected and complete terms and provisions as they appear in the reenacted statute, when it can be done without violating the organic law or the legislative intent."

But not only does the omission of the specific term "ink" in the later forms of Section 32, General Code, signalize the intention of the Legislature to withdraw ink from the materials of a proper notarial seal, but the very same intent is exhibited by the last Legislature in the most lately enacted provision dealing with such seals. I refer to Section 123, General Code, supra, 113 O. L. 56. This statute provides, for the first time, the requirement that "Said seal shall contain thereon * * * the name of such notary public." To this, there is appended the very significant proviso—"Provided, that the name of the notary public may, instead of appearing upon the seal, be printed, typewritten, or *stamped* in legible, printed letters, near the signature of such notary on each and every document by him signed." This proviso, (as does the previous form of Section 32, General Code), evidences very cogently

that whenever the Legislature intended ink or the stamping process to be used, it has so stated in words whose clearness is not clouded by the slightest possibility of doubt; and, from this, one deduces readily that the Legislature, under the existing statutes, does not intend that ink shall be used for a notary's seal.

The "impression * * * upon the paper" referred to in Section 32, General Code, has reference, I believe, to the orthodox, blindly embossed impression made upon paper by the commonly-used apparatus having the male and female dies. See *Richard* vs. *Boller,* 51 How. Prac. 371, 373. This type of seal had long been in use in the country (as is seen by the date, 1851, of an early case involving the validity of such a seal, *Pillow* vs. *Roberts,* 13 How. 472) when he first Ohio statute referring to "an impression * * * upon the paper" was passed in 1883, 80 O. L. 79, supra. That this interpretation is the correct one is indicated by an administrative practice which, for years, has been marked by the practically exclusive use of this apparatus for this function. The importance of administrative practice in statutory construction was lately reiterated in *State ex rel.* vs. *Brown,* 121 O. S. 73, 75-76, thus:

> "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do'. *Industrial Commission* vs. *Brown,* 92 O. S. 309, 311, * * * . See also, 36 Cyc., 1140, and 25 Ruling Case Law 1043, and cases cited.
>
> "This is a well recognized principle of statutory construction * * . "

But, more important still, the orthodox seal has transcended mere administrative practice—it has become entrenched in the public mind as the badge of official seal authentication.

Some further support may accrue to this position in the rule of construction known as "noscitur a sociis". Thus, in 25 Ruling Case Law 995, it is stated:

> "Where any particular word is obscure or of doubtful meaning, taken by itself, its obscurity or doubt may be removed by reference to associated words."

In applying this to the situation at hand, it will be observed that, in Section 32, General Code, supra, the word "impression" as pertaining to "paper" is contained in the same sentence with, and equally modified by, the prepositional phrase—"upon either wax, wafer or other adhesive substance". The type of impression authorized by this phrase is obviously of an indentured nature, and under the rule now being considered (especially in view of every other reason and rule of construction already advanced) one might say that the impression on paper contemplated, is likewise indentured.

Cases such as *Fund Commissioner* vs. *Glass,* 17 Ohio 542, *Ashley* vs. *Wright,* 19 O. S. 291, and *City Commission of Gallipolis* vs. *The State, ex rel.,* 36 O. A. R. 258 (found in the Ohio State Bar Association Report of November 25, 1930), which hold that it is not indispensable to the validity of certain documents that any notarial seal be affixed at all, are irrelevant. We are not concerned with the problem of determining what particular instruments require notarial seals and what instruments do not, nor with the question whether a particular document which has been authenticated by an unorthodox notarial seal is valid or invalid, but rather, whether, according to the gauge set by the Legislature, certain materials measure up to the proper constituents of the notarial seal with which the statutory law enjoins each notary public to provide himself. Besides, note that Section 32, General Code, pertains to the situation "When an official * * * seal is *required* to be affixed to an instrument in writing".

I am aware of *Pierce* vs. *Indseth*, 106 U. S. 546; *The Gallego*, 30 Fed. 271; *Vinson* vs. *Nicholas*, 28 S. C. 198; *Flemming* vs. *Richardson*, etc., 13 La. Ann. 414; and *Ralph* vs. *Gist*, 4 McCord (S. C., Ct. App.) 267. But these cases, likewise, are not controlling, for they were decided by judicial decision extra-statutory. In contrast, around the field of our inquiry, the Ohio Legislature has erected a definite statutory fence and closed the common law gate. These boundaries must be respected. And see also: *Mason* vs. *Brock*, 12 Ill. 273; *Oelberman* vs. *Ide*, 93 Wis. 669; *Hinckley* vs. *O'Farrel*, 4 Blackf. (Ind.) 185; *Carter* vs. *Burley*, 9 N. H. 558, 569, *Hendrix* vs. *Boggs*, 15 Neb. 469, 472; *Richard* vs. *Boller*, 5 How. Prac. 371.

Certain other cases cannot be dispositive of our question for they were decided either under one of the previous forms (3 O. L. 211, passed in 1805; and 29 O. L. 349, supra, passed in 1831) of the statute now Section 32, General Code, which expressly authorized the use of ink, or else they were cases which had no statutory provisions at all which were applicable to them, in contradistinction to our question. *Howe* vs. *Dawson*, Tappan 169 (1817); *Michenor* vs. *Kinney*, Wright 459 (1833); *Gazzam* vs. *Ohio Insurance Company*, Wright 214 (1833); *Johnson* vs. *Nelson*, 2 Ohio Dec. Reprint 487 (1861); *Osborn* vs. *Kistler*, 35 O. S. 99 (1878); *Bobe* vs. *Moon Building Association*, 6 Bull. 124 (1881).

In view of the fact that I deem the above considerations decisive of our question, I do not believe it necessary to make a determination either way upon a further factor about which I have great doubts, that is, whether a rubber stamp seal meets the requirement of Section 31, General Code, which requires that "All official seals shall have *engraved* thereon the coat of arms of the state * * * ". See *Stephens* vs. *Williams*, 46 Iowa 540.

I have made no attempt to compare the relative merits of the rubber stamping process and the process by which the conventional seal is made. That is a matter for the Legislature. But under the present law, as the Legislature has enacted it, I am of the opinion that a rubber stamp and ink are not proper constituents of the seal with which the statutory law enjoins each notary public to provide himself.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2681.

APPROVAL, BONDS OF PORTSMOUTH CITY SCHOOL DISTRICT, SCIOTO COUNTY, OHIO—$16,000.00.

COLUMBUS, OHIO, December 16, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2682.

APPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM GERLACH, JR. AND ANNIE E. GERLACH IN CITY OF PIQUA, MIAMI COUNTY, OHIO.

COLUMBUS, OHIO, December 16, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from your office over the signature of Mr. Carl L. Van Voorhis, Assistant Commissioner