

It has long been the established rule in reference to reported cases that the law announced thereby must be in accordance with the facts which the courts are called upon to decide.

In the case of *Cohens vs. Virginia*, 6 Wheat., at page 399, Chief Justice Marshall, among other things, says:

"It is a maxim not to be disregarded that general expressions, in their opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

The same general rule has been announced by the Supreme Court of Ohio in the case of *White vs. Lockwood*, 39 O. S., p. 145, as follows:

"An examination of the Ohio cases shows an apparent conflict in the syllabi or head-notes. Although in this state such head-notes are prepared by the judges, and in all cases receive the assent of a majority—a practice with which we are well satisfied—they are always to be read in connection with the facts appearing in the report, and so read, the cases are not in conflict, nor are they in conflict with the principles asserted in this case."

Notwithstanding the statutory limitations, however, with reference to the challenging of grand jurors, I am of the opinion that should it appear to the court that a person or persons summoned for grand jury service, on appearance, are exempt or manifestly unsuitable, on account of defective hearing or eyesight, or other impediment, or that persons are called who are exempt from service within the provisions of sections 11443 and 11444, General Code, the court may lawfully excuse such person or persons from service and command the sheriff to summon additional jurors until the deficiency is made up, as provided in section 11431, General Code.

In specific answer to your inquiry, I am of the opinion that the prosecuting attorney may not challenge grand jurors on the grounds provided in the statute applicable to petit jurors.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3135.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENTS IN PORTAGE COUNTY.

COLUMBUS, OHIO, April 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

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3136.

APPROVAL, AGREEMENT FOR ELIMINATION OF GRADE CROSSING NEAR WORTHINGTON, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, April 10, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*