OPINIONS

OF THE

ATTORNEY GENERAL

OF

OHIO

FOR THE

PERIOD FROM JANUARY 1, 1945 TO DECEMBER 31, 1945

PAGES 1-1023

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THOMAS J. HERBERT	
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THE STAFF OF THE OFFICE OF THE ATTORNEY GENERAL

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1945

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E. G. Schuessler	.Chief Co	unsel	
Walter P. Beck	.Assistant	Attorney	General
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Resigned Sept. 15, 1945			
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BILL-GENERAL ASSEMBLY-

General Assembly:

- 1. To compute ten day period within which bill presented to governor will become a law, if not returned by governor with his objections, to House in which bill originated, day of presentation is to be excluded and tenth day included—Article II, section 16, Constitution of Ohio.
- 2. Term "adjournment" within meaning of Article II, section 16, Constitution of Ohio, means a final adjournment of the General Assembly, not an adjournment from day to day or a temporary adjournment.
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- 2. Child, delinquent—Alleged to have committed act, which would be a felony, if committed by an adult—Juvenile judge can not order such child to enter into recognizance for appearance before court of common pleas—Child subject to full investigation, mental and physical examination—Section 1639-32 G. C.
- 3. Person who may be child under eighteen years of age—Charged with crime in this state—Fled to another state—May be returned upon requisition of governor—Uniform Extradition Act—Sections 109-1 to 109-31 G. C.—If such person a child at time crime committed, he should be taken before juvenile judge—If before any other court, such court required to transfer case to juvenile judge and discontinue further proceedings against accused— Section 1639-29 G. C.

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- 1. Clerk, court of common pleas—May issue warrant, returnable to court having jurisdiction—Arrest of person charged with misdemeanor, based on affidavit, filed by peace officer before information has been filed by prosecuting attorney.
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- 1. Bid-Submitted to Department of Highways of Ohio-Response to advertisement-Accompanied by certified check for five per cent of estimated cost of project, together with "non-collusion affidavit," may be considered by Director, notwithstanding fact bid proposal was not signed at end by bidder.

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- Election—Mistake—Where two members, board of education of local school district were to be elected—Voters advised by printed directions on ballot at head of list of school board candidates to "vote for not more than three"—All ballots on which more than two persons for such office were voted for, invalid as to members, board of education—Such ballots should have been rejected—Election nullity—No one elected.
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 - Gasoline tax—Where portion paid over to treasurer of county, to credit of township in county, and prior to apportionment and payment, county ceased to exist, amount credited should be refunded to state treasury—Credit— Township's share of highway construction fund—Supplementary distribution should go to township so entitled—Sections 5541 to 5541-8 G. C..... 315

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- 1. Agricultural school—Scope of authority, board of education to establish and maintain such school in connection with public school system—No authority to purchase property on agreement to pay on installment plan— Exception, school busses and transportation equipment—Section 4855-5 G. C.
- 2. No authority to purchase farm upon agreement to pay any part of purchase price, or to repay money borrowed from payments which arise from sale of products of farm, such deferred payments to be secured by mortgage on property
- 1. Insurance—Building and loan association—Provision in note secured by mortgage on real estate for payment in monthly installments and that "in the event one of the undersigned dies leaving a husband or wife surviving who is also one of the undersigned" and for fulfillment of certain conditions that "the interest remaining unpaid on this obligation for said six months period will be cancelled upon prompt payment of the first monthly installment due thereafter" is a contract substantially amounting to insurance— Building and loan association entering into such contracts is engaged in transaction of business of insurance.

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- 4. No authority in law to submit to voters of fire district, created pursuant to section 3298-54 G. C., proposition to levy tax upon property of district to afford fire protection.....
- 1. Fire marshal, state—Assistants—Have authority to enter into all buildings within state where fire occurred-Purpose, inspection, conditions as to liability to fire of such buildings or other buildings in vicinity-Authority extends to buildings privately owned or those owned by state or any of its subdivisions-Section 833 et seq., G. C.
- 2. Dwellings constructed or owned by United States, pursuant to federal legislation which preserves to state and its political subdivisions civil and criminal jurisdiction over property, may be entered and inspected by state fire marshal and assistants for purposes mentioned in sections 833 to 837 G. C. 170
- 1. Fire marshal, state-Deputies-Subordinates-Fire department-Provision "an order of an officer under the last three preceding sections" found in section 836-2 G. C. relates to and includes orders made and proceedings had under sections 835, 836 and 836-1 G. C., and includes by reference in section 835 G. C. orders made by officers named in section 834 G. C.

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- Provision for punishment of persons who fail to comply with orders "of any officer named in the last four preceding sections" found in section 837 G. C. relates to and includes those officers named in sections 835, 836 and 836-1 G. C. and does not include officers of local subdivisions named in section 834 G. C.
- Firemen's pension fund—Provision of section 3298-60 G. C. requiring twentyfive percent of amount received by municipality on contracts to furnish fire protection outside of its boundaries, to be paid into firemen's pension fund, applies only to contracts with a person, group of persons, firm or corporation, and not to contracts with township or another municipality.....
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- If person has legal settlement in some other city or township of state, city furnishing hospital service has right to reimbursement for expense from city or township of such legal settlement—Sections 3480-1 to 3484-2 G. C.
- 3. If person has no legal settlement in city furnishing hospital service, or elsewhere in state, expense should be paid by county in which service is administered
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- 1. Playgrounds and other recreational activities—Municipal council authorized to raise money by taxation and appropriate it to maintain and operate such activities—Section 4065-7 G. C.
- 2. Municipal corporation may make cooperative agreement with board of education of school district to supervise recreational activities—May appropriate and pay to such board of education a sum of money not in excess of estimated cost of such supervision—Section 4065-3 G. C.

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- 1. Insurance—Building and loan association—Provision in note secured by mortgage on real estate for payment in monthly installments and that "in the event one of the undersigned dies leaving a husband or wife surviving who is also one of the undersigned" and for fulfillment of certain conditions that "the interest remaining unpaid on this obligation for said six months period will be cancelled upon prompt payment of the first monthly installment due thereafter" is a contract substantially amounting to insurance— Building and loan association entering into such contracts is engaged in transaction of business of insurance.

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- 2. Where person's name appeared on ballot as independent candidate for an office and he received votes on party ticket, which had no candidate for such office, the name having been written on party ticket and a cross mark placed at left of name, all votes so cast, together with those cast by placing cross mark in front of name on independent ticket, should be counted in his favor

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O. I. C. SWINE-

 Agricultural societies—County and independent—Organized under provisions Section 9880 and 9880-1 G. C. in so far as provisions of Section 1094-1 G. C. are concerned, not under supervision of Department of Agriculture—Provisions of Section 1094-1 G. C. relative to classification of O. I. C. breed of swine, have no application to agricultural exhibits and county fairs—Management and control of county and independent agricultural societies.

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 County commissioner who was in office prior to repeal of section 6502 G. C. by House Bill 313, 95 General Assembly, effective September 3, 1943, is not affected during his then existing term—Entitled to compensation provided by section 6502 in addition to compensation provided by section 3001 G. C. 	
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 Fire marshal, state—Assistants—Have authority to enter into all buildings within state where fire occurred—Purpose, inspection, conditions as to liability to fire of such buildings or other buildings in vicinity—Authority extends to buildings privately owned or those owned by state or any of its subdivisions—Section 833 et seq., G. C. OFFICER—Concluded

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- Dwellings constructed or owned by United States, pursuant to federal legislation which preserves to state and its political subdivisions civil and criminal jurisdiction over property, may be entered and inspected by state fire marshal and assistants for purposes mentioned in sections 833 to 837 G. C. 170
- Fire marshal, state—Deputies—Subordinates—Fire department—Provision "an order of an officer under the last three preceding sections" found in section 836-2 G. C. relates to and includes orders made and proceedings had under sections 835, 836 and 836-1 G. C., and includes by reference in section 835 G. C. orders made by officers named in section 834 G. C.
- Provision for punishment of persons who fail to comply with orders "of any officer named in the last four preceding sections" found in section 837 G. C. relates to and includes those officers named in sections 835, 836 and 836-1 G. C. and does not include officers of local subdivisions named in section 834 G. C.

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- 1. Hospital expense—Where person is shot and wounded by police officer in course of attempted arrest—Person in act of committing a felony—Placed in private hospital in city—If he be indigent, expense of hospital, surgical and medical care is under sections 3476 and 3480 G. C., primary obligation of city, subject to notice, section 3480 G. C.
- If person has legal settlement in some other city or township of state, city furnishing hospital service has right to reimbursement for expense from city or township of such legal settlement—Sections 3480-1 to 3484-2 G. C.

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- 2. Where person's name appeared on ballot as independent candidate for an office and he received votes on party ticket, which had no candidate for such office, the name having been written on party ticket and a cross mark placed at left of name, all votes so cast, together with those cast by placing cross mark in front of name on independent ticket, should be counted in his favor

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- Dwellings constructed or owned by United States, pursuant to federal legislation which preserves to state and its political subdivisions civil and criminal jurisdiction over property, may be entered and inspected by state fire marshal and assistants for purposes mentioned in sections 833 to 837 G. C.
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- Provision for punishment of persons who fail to comply with orders "of any officer named in the last four preceding sections" found in section 837 G. C. relates to and includes those officers named in sections 835, 836 and 836-1 G. C. and does not include officers of local subdivisions named in section 834 G. C.

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- Fire marshal, state—Assistants—Have authority to enter into all buildings within state where fire occurred—Purpose, inspection, conditions as to liability to fire of such buildings or other buildings in vicinity—Authority extends to buildings privately owned or those owned by state or any of its subdivisions—Section 833 et seq., G. C.
- 2. Dwellings constructed or owned by United States, pursuant to federal legislation which preserves to state and its political subdivisions civil and criminal jurisdiction over property, may be entered and inspected by state fire marshal and assistants for purposes mentioned in sections 833 to 837 G. C.
- Fire marshal, state—Deputies—Subordinates—Fire department—Provision "an order of an officer under the last three preceding sections" found in section 836-2 G. C. relates to and includes orders made and proceedings had under sections 835, 836 and 836-1 G. C., and includes by reference in section 835 G. C. orders made by officers named in section 834 G. C.
- Provision for punishment of persons who fail to comply with orders "of any officer named in the last four preceding sections" found in section 837 G. C. relates to and includes those officers named in sections 835, 836 and 836-1 G. C. and does not include officers of local subdivisions named in section 834 G. C.

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- 2. Municipality, acquiring land for extension of waterworks, may pursuant to contract with conservation and natural resources commission, convey to state said land or an interest therein in consideration of construction thereon by commission, of a dam and reservoir—Municipality to reserve right to obtain water supply.
- Conservation and natural resources commission authorized and required to enter into contracts with political subdivisions for cooperative agreements where purposes of commission and interests of subdivisions overlap --Section 1438-2f G. C.
- 4. Commission may enter into contract with municipality for municipality to draw water supply from reservoir to be constructed by commission on land to be acquired from municipality
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- 2. Status, justice of peace and constable, township trustees, township clerk, sections 1579-907, 3268, 3299 G. C.
- 3. City of East Liverpool identical with Township of East Liverpool—No township officers to be elected—Officers, justice of peace and constable superseded by organization of East Liverpool Municipal Court—Section 1579-867 et seq., G. C.
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- Child, delinquent—Alleged to have committed act, which would be a felony, if committed by an adult—Juvenile judge can not order such child to enter into recognizance for appearance before court of common pleas—Child subject to full investigation, mental and physical examination—Section 1639-32 G. C.
- 3. Person who may be child under eighteen years of age—Charged with crime in this state—Fled to another state—May be returned upon requisition of governor—Uniform Extradition Act—Sections 109-1 to 109-31 G. C.—If such person a child at time crime committed, he should be taken before juvenile judge—If before any other court, such court required to transfer case to juvenile judge and discontinue further proceedings against accused—Section 1639-29 G. C.....

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- 1. Vacancy—Office, justice of peace—Occurs when incumbent of office has been absent six months, although during that period he was on active duty as member of United States navy—Section 1714 G. C.

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- 2. Township trustees—No legal authority to expend public funds for insurance to protect township from liability for damages due to death or injury of fireman in employ of township.
- 3. Basis to determine total disability allowance from firemen's indemnity fund—To volunteer fireman for total disability—Under section 4647-8 G. C. total of average earnings both as fireman and in regular employment, allowance limited to two-thirds of average earnings, and to a maximum of eighteen dollars per week.

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 - 3. Protest, section 4831-3 G. C., to be effective to deprive superintendent of public instruction of authority to adopt plan of reorganization proposed by county board of education must be signed by 51% or more of all electors who reside in combined territory of local district or districts within county district to which proposed transfer is to be made—No provision in law for protest by electors in district to which such transfer proposed.
 - 4. Duty superintendent of public instruction to determine validity and sufficiency of protests of electors when copies of all protests filed—Sections 4831-3, 4831-4 G. C.

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- 2. Judge, court of common pleas, may admit such person to bail before an information is filed by prosecuting attorney.

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- Agricultural society, county—Owns or has leased for term of twenty years or more, site whereon to hold fairs, or where title is vested in fee in county —County commissioners empowered to appropriate from general fund, not to exceed in aggregate, ten thousand dollars in any year—Purposes, to construct race track and make authorized improvements, in addition to proceeds of special tax levy, approved by electors at November election in next preceding year, purpose to erect coliseum for fair purposes—Section 9887 G. C.
- 1. Agricultural school—Scope of authority, board of education—City, exempted village or local school district—May lawfully establish and maintain agricultural school in connection with public school system—May purchase farm and other agricultural equipment for such purpose—Proviso, funds available—May pay cash for farm and equipment.
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- Detention hospital—Facilities provided by county commissioners of county through contract with officers in control of private or municipal hospital or sanitarium—Care and treatment of mentally ill in county until state provides facilities for treatment and care of such persons.
- 3. Section 1890-17 G. C. does not prohibit designation of facilities as "receiving" hospital.
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- 2. Term "adjournment" within meaning of Article II, section 16, Constitution of Ohio, means a final adjournment of the General Assembly, not an adjournment from day to day or a temporary adjournment.
- Recess or temporary adjournment—Proper return of bill, together with governor's objections in writing, may be made to presiding officer, clerk or other officer, or any member of House in which bill originated.
- 4. Where governor disapproved an item in a bill, making appropriation of money, and copy of item with governor's written objections was delivered to house where bill originated, on eleventh day following day on which bill was presented to him, the attempted veto of governor was ineffective— Such item on expiration of tenth day following day of presentation of bill to governor, became law......

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- 1. Health, board of—Regulation—Provision any dog, cat or other animal inflicting a bite or injury shall be confined in county dog pound or placed under care of veterinarian—Does not authorize county dog warden to impound and maintain at county expense such an animal in county dog pound.

VETO---

General Assembly:

- To compute ten day period within which bill presented to governor will become a law, if not returned by governor with his objections, to House in which bill originated, day of presentation is to be excluded and tenth day included—Article II, section 16, Constitution of Ohio.
- Term "adjournment" within meaning of Article II, section 16, Constitution of Ohio, means a final adjournment of the General Assembly, not an adjournment from day to day or a temporary adjournment.
- 3. Recess or temporary adjournment—Proper return of bill, together with governor's objections in writing, may be made to presiding officer, clerk or other officer, or any member of House in which bill originated.

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- Firemen's indemnity fund—Mandatory duty of township which has fire department, maintained in whole or in part at expense of township, to establish such fund—Section 4647-1 C. G.
- 2. Township trustees—No legal authority to expend public funds for insurance to protect township from liability for damages due to death or injury of fireman in employ of township.
- 3. Basis to determine total disability allowance from firemen's indemnity fund —To volunteer fireman for total disability—Under section 4647-8 G. C. total of average earnings both as fireman and in regular employment, allowance limited to two-thirds of average earnings, and to a maximum of eighteen dollars per week.

VOTE-

- Bonds under Uniform Bond Act, section 2293-1 et seq., G. C.-May be issued by county commissioners within \$20,000.00 limitation, section 2293-16 G. C., to remodel county jail, without submitting question of issuance to electors-Proviso, they can be issued within prescribed net indebtedness limitations and be serviced within aggregate ten mill tax limitation of Article XII, section 2, Constitution of Ohio-Bonds may not be issued in excess of \$20,000.00 and net indebtedness limitations of section 2293-16 G. C., without approval of electors.
- No provision in Uniform Bond Act to declare emergency to enable county commissioners to issue unvoted county jail improvement bonds in excess of limitations on bonded indebtedness prescribed by section 2293-16 G. C...... 760
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- 2. Where it was shown there was only one candidate for mayor of village, and name was not printed on ballot, a ballot on which surname "Litten" was written in should be counted in favor of Harry Litten.....
 - 767
- Election—Mistake—Where two members, board of education of local school district were to be elected—Voters advised by printed directions on ballot at head of list of school board candidates to "vote for not more than three"—All ballots on which more than two persons for such office were voted for, invalid as to members, board of education—Such ballots should have been rejected—Election nullity—No one elected.
- 2. Two members, board of education whose terms expired first Monday in January, 1946, will continue to hold offices for full term of four years, commencing first Monday in January, 1946, and until successors elected and qualified.

- VOTE—Concluded Page 1. Election—Votes—Person nominated by petition—Where elector placed cross mark at left of name as same appears on ballot on independent ticket, and elector also voted for such person for same office by writing his name on party ticket, and placed cross mark at left of such name written in, on which party ticket no candidate was nominated at party primary election, such ballot should be counted as one vote for such person.
 - 2. Where person's name appeared on ballot as independent candidate for an office and he received votes on party ticket, which had no candidate for such office, the name having been written on party ticket and a cross mark placed at left of name, all votes so cast, together with those cast by placing cross mark in front of name on independent ticket, should be counted in his favor

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- Salary and wage increases for state employes—Amended House Bill 484, 96 General Assembly—Effective October 11, 1945.

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- Bid-Submitted to Department of Highways of Ohio-Response to advertisement-Accompanied by certified check for five percent of estimated cost of project, together with "non-collusion affidavit," may be considered by Director, notwithstanding fact bid proposal was not signed at end by bidder.

WARRANT-

- Bids—Lowest and best bidder—Contract can not be lawfully split between rival bidders—There can not be two "lowest responsiblle bidders" or two "lowest or best bidders"—Director of Highways may within his discretion purchase certain products of different chemical composition from different bidders for road repair or road construction—Where purchases are regular and in acaccordance with law, Auditor of State should issue warrants in payment of purchase price—Section 1226-2 G. C.....
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- Conservation and natural resources commission authorized and required to enter into contracts with political subdivisions for cooperative agreements where purposes of commission and interests of subdivisions overlap-Section 1438-2f G. C.
- 1. Municipality—Where it is proposed to extend water service to properties situate outside corporate limits, a board of education of rural school district, for purpose of obtaining water supply for school building and property may contract for and pay reasonable cost to procure such service—Section 4834-10 G. C.

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- 2. Where it was shown there was only one candidate for mayor of village, and name was not printed on ballot, a ballot on which surname "Litten"

1. Election-Votes-Person nominated by petition-Where elector placed cross mark at left of name as same appears on ballot on independent ticket, and elector also voted for such person for same office by writing his name on party ticket, and placed cross mark at left of such name written in, on which party ticket no candidate was nominated at party primary election, such ballot should be counted as one vote for such person,

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