

*Militia Officers Must Take the Oath Within Prescribed By Law, or Their Offices Become Vacant—State Does Not Pay Costs in Homicide Cases Where Defendant is Hung.*

MILITIA OFFICERS MUST TAKE THE OATH  
WITHIN PRESCRIBED BY LAW, OR THEIR  
OFFICES BECOME VACANT.

The State of Ohio,  
Attorney General's Office,  
Columbus, Ohio, January 3, 1877.

*Colonel Charles W. Karr, Assistant Adjutant General:*

SIR:—Referring to yours of this date I have to say: The effect of an officer neglecting or refusing to take the oath prescribed in the twenty-fourth section of the act relating to the militia of the State, for ten days after the tender of his commission, is to create a vacancy in his office. He cannot take the oath after the lapse of that period, unless re-elected and re-commissioned.

Very respectfully,

JOHN LITTLE,  
Attorney General.

STATE DOES NOT PAY COSTS IN HOMICIDE  
CASES WHERE DEFENDANT IS HUNG.

The State of Ohio,  
Attorney General's Office,  
Columbus, January 4, 1877.

*W. S. Crowell, Esq., Prosecuting Attorney Coshocton, Ohio:*

DEAR SIR:—In your favor of the 29th ultimo, you ask if the State pays the costs, or any part thereof, in a case of homicide, and where the defendant is found guilty and is hung.

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*Loveland; School Tax in, Illegal.*

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I have to say in reply, that the State does not pay costs in such cases.

Very respectfully,

JOHN LITTLE,

Attorney General.

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LOVELAND; SCHOOL TAX IN, ILLEGAL.

The State of Ohio,  
Attorney General's Office,  
Columbus, January 4, 1877.

*Hon. James Williams, Auditor of State:*

SIR:—In reply to your verbal request I have to state:

My reason for regarding the school levy, purporting to have been made by the board of education of the village district of Loveland, May 29, 1876, as invalid, is that there was no legal board of education of the village district of Loveland at that date to make it. There was not a village district of Loveland even at that time. The village district could not precede the existence of the village itself; and this was not "created" prior to July 16, 1876. Your attention is respectfully directed to a letter of mine to Mr. John H. Law, under date of July 16, 1876, upon this subject, a copy of which is herewith enclosed.

Until the village was "created"—after July 16, 1876—no steps could be taken in pursuance of the fifth section of the act of March 30, 1874 (Laws, p. 56), to *organize* the village district, and until its organization under that section no board of education thereof could *exist* much less levy a tax.

The difference in this respect between this levy and the one for municipal purposes is, that the former was made *before* the village existed, and consequently, before any village district board existed to make it; while the latter was

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*Index to Laws; Compensation for Making—Superintendents of Insane Hospitals Must Be Electors.*

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made *after* the "creation" of the village (July 28) and by competent authority. Very respectfully,

JOHN LITTLE,  
Attorney General.

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INDEX TO LAWS; COMPENSATION FOR MAKING.

Xenia, Ohio, January 6, 1877.

*To the Commissioners to Revise Statutes, Etc.:*

GENTLEMEN:—I see no legal objection to your reasonably compensating by an extra allowance one of your clerks for necessary labor in the preparation of the index bound with the Laws of 1876, where and to the extent such labor was performed out of regular office or working hours, and without interference with his regular duties.

As to the principle of law involved your attention is respectfully directed to the case of Gratiot vs. United States, 15, p. 336.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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SUPERINTENDENTS OF INSANE HOSPITALS  
MUST BE ELECTORS.

The State of Ohio,  
Attorney General's Office,  
Columbus, January 12, 1877.

*Dr. H. M. Larsh, Secretary, Etc., Athens, Ohio:*

DEAR SIR:—Referring to yours of the 10th inst., I have to say:

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*Criminal Patients in Insane Hospitals; Same Rules Govern  
in Their Cases.*

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Medical superintendents of hospitals for the insane are officers within the meaning of section 4, article 15 of the Constitution; and persons not electors of the State are ineligible to be such officers.

Very respectfully,

JOHN LITTLE,

Attorney General.

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CRIMINAL PATIENTS IN INSANE HOSPITALS;  
SAME RULES GOVERN IN THEIR CASES.

State of Ohio,  
Attorney General's Office,  
Columbus, January 16, 1877.

*Dr. J. Strong, Superintendent Cleveland Hospital for In-  
sane, Newburgh, Ohio:*

DEAR SIR:—Your favor of the 13th instant is received, and in reply I have to say that I know of no reason why you are not governed by the same rules in receiving a party indicted for a criminal offense and who becomes insane and is directed to be sent to your institution by a Court of Common Pleas as in other cases.

Very truly,

JOHN LITTLE,

Attorney General.

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*Compensation of County Auditors—Measurements Under  
State Contracts.*

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COMPENSATION OF COUNTY AUDITORS.

State of Ohio,  
Attorney General's Office,  
Columbus, February 2, 1877.

*D. A. Hollingsworth, Esq., Prosecuting Attorney, Cadiz,  
Ohio:*

DEAR SIR:—In answer to your inquiries of the 31st ultimo, I have to say:

Under the ninth section of the act of April 18, 1870 (Laws, p. 103), it is made the duty of county auditors to aid county commissioners "in the performance of their duties," "when requested." To render this aid in the matter of making the detailed report contemplated by the act of April 18, 1876 (Laws, p. 141), is an official duty as much as any other service for which no compensation other than their salaries can be made. If made, it would be in "violation of law," within the meaning of said act of April 18, 1876.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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MEASUREMENTS UNDER STATE CONTRACTS.

State of Ohio,  
Attorney General's Office,  
Columbus, February 3, 1877.

*T. R. Tinsley, Architect:*

DEAR SIR:—When a contract with the State for the doing of a particular kind of work, at so much per foot or yard, is silent as to the mode of measurement, that measurement must be adopted which is usual and customary in the

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*Legal Advertisements; Tabular Work in.*

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neighborhood where the contract was made and the work done. If the contract be in writing oral statements made at the time it was entered into cannot be held to vary its terms or change the rule of measurement under it as above indicated.

Very truly,  
JOHN LITTLE,  
Attorney General.

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LEGAL ADVERTISEMENTS; TABULAR WORK IN.

State of Ohio,  
Attorney General's Office,  
Columbus, February 9, 1877.

*Joseph G. Huffman, Esq., Prosecuting Attorney New Lexington, Ohio:*

DEAR SIR:—Your favor of the 6th instant is received. You ask the following question: "Does the law of last winter fixing the price of legal advertising authorize the 50 per cent. additional upon tabular work *only*, or upon the *entire* advertisement in which tabular work appears?"

My answer is, that from the language of the statute the 50 per cent. additional is upon the entire advertisement.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

*Prosecuting Attorneys; Duties of.*

## PROSECUTING ATTORNEYS; DUTIES OF.

State of Ohio,  
Attorney General's Office,  
Columbus, February 9, 1877.

*C. L. White, Esq., Prosecuting Attorney, McArthur, Ohio:*

DEAR SIR:—Your favor of the 1st instant is received, and in reply I have to say:

First—The prosecuting attorney is not the general legal adviser of the county commissioners.

Second—The prosecuting attorney must bring such suits as are contemplated by the second section of the act of April 30, 1852 (S. & C., 1225), without special compensation other than that fixed in the statute prescribing their fees.

Third—I suppose that county commissioners would have the right to employ any attorney in cases where counsel is required.

Fourth—The prosecuting attorney is not entitled to \$3.00 per day for services as one of the committee to examine the report of the county commissioners.

Very respectfully,

JOHN LITTLE,  
Attorney General.

*Prosecuting Attorneys; How to Proceed Against in Certain Cases—Chillicothe Land Office Records; Removal of.*

PROSECUTING ATTORNEYS; HOW TO PROCEED  
AGAINST IN CERTAIN CASES.

State of Ohio,  
Attorney General's Office,  
Columbus, February 20, 1877.

*W. B. Crew, Esq., Prosecuting Attorney, McConnelsville,  
Ohio:*

DEAR SIR:—Where an outgoing prosecuting attorney retains indictments in his possession and refuses or neglects to deliver them up, on demand, to the proper officer, I think the proper course to obtain possession of them would be by a suit, which, upon showing by the prosecuting attorney the court would not hesitate to grant.

And where such outgoing prosecuting attorney retains money collected on account of fines, and neglects or refuses to pay it over, the remedy is by suit on his official bond.

Very respectfully,

JOHN LITTLE,  
Attorney General.

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CHILLICOTHE LAND OFFICE RECORDS; RE-  
MOVAL OF.

State of Ohio,  
Attorney General's Office,  
Columbus, February 22, 1877.

*To the Governor:*

Referring to the letter of Hon. Ralph Leete to you under date of February 9th *inst.*, concerning the "Records at Chillicothe of the United States and the Virginia Military Land Office," I have to say:

That in my judgment, the proper mode of obtaining

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*Chillicothe Land Office Records; Removal of.*

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possession of the same for safekeeping would be through the Department of the Interior at Washington. While it may be true, and probably is true as a proposition of law, that the cession of the unsurveyed and unsold lands in the Virginia Military District to the State, by the act of Congress of February 18, 1871, drew with it, as an incident to the grant, the muniments of title thereto, if any exist independently and of themselves, it does not follow that the State would have the right to take charge of records containing such muniments with others.

The State's interests in those records by reason of said grant, do not differ in kind from those of any other patentee or grantee of Virginia military lands. The general government, in strict right, I should say, is the proper custodian of those records as trustee for all the grantees of said lands including the State, until such time as she may make the State such trustee.

Meantime for the safety of the records, I do not see any objection that could be urged against the State, as a party largely interested, not only directly but on account of her own citizens, taking charge of them, with the consent of the interior department, until such time as the general government shall otherwise direct.

I would respectfully suggest that permission to that effect be asked of that department, and, if granted, that said records be placed in the office of the auditor of state.

Very respectfully,

JOHN LITTLE,

Attorney General.

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*Rendition of John R. Carrington and Frank A. Ammens  
—Legal Advertising.*

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RENDITION OF JOHN R. CARRINGTON AND  
FRANK A. AMMENS.

State of Ohio,  
Attorney General's Office,  
Columbus, February 28, 1877.

*To the Governor:*

Upon an examination of the papers in the matter of the requisition for John R. Carrington and Frank A. Ammens by the governor of North Carolina, I am satisfied that the cases are such as to warrant you, acting in accordance with the spirit and letter of the joint resolution of the General Assembly, adopted March 25, 1870 (Laws, p. 171), in refusing warrants upon said requisitions or in revoking any already issued.

Very respectfully,  
JOHN LITTLE,  
Attorney General.

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LEGAL ADVERTISING.

State of Ohio,  
Attorney General's Office,  
Columbus, March 30, 1877.

*Wm. J. Rannells, Esq., Prosecuting Attorney, McArthur,  
Ohio:*

DEAR SIR:—Your favor of the 21st instant is received. If the publication is made under the second section of the act of 1876, it must be published in *two* papers; but if under the act of 1874, one will suffice.

Very respectfully,  
JOHN LITTLE,  
Attorney General.