
*Relative to Fines for Benefit of Common Schools—Directors
on Part of State in Certain Companies Powers Cease on
Sale of State's Interest.*

January 8, 1866—Term of Chauncey N. Olds expired,
and that of Wm. H. West (elected in October election,
1865) commenced.

RELATIVE TO FINES FOR BENEFIT OF COM-
MON SCHOOLS.

Attorney General's Office,
Columbus, March 14, 1866.

Hon. John A. Norris, Commr. Common Schools.

SIR:—The duties of justices in regard to fines, and the
mode of proceeding for neglect, are prescribed in sections
28 and 29 of the act of March 27, 1837 (S. & C. Stat., Vol.
1, pages 814 and 815); and sections 2 and 4 of the amen-
datory act (S. & C., 280 and 821.).

You will address the auditor, treasurer, and prosecut-
ing attorney of the proper county, directing them severally
to proceed under the statutes, giving them the sections and
pages.

Yours truly,

W. H. WEST,
Attorney General.

DIRECTORS ON PART OF STATE IN CERTAIN
COMPANIES. POWERS CEASE ON SALE OF
STATE'S INTEREST.

Attorney General's Office,
Columbus, June 27, 1866.

His Excellency, J. D. Cox, Governor.

SIR:—I have the honor to acknowledge the receipt of
your letter of the 26th, inst., and in reply have to say: That

*Proceedings When Realty is Liable for Fines, Etc., Under
Liquor Law.*

the State having disposed of its interest in the stocks of sundry turnpike and other companies, has ceased to have any further control thereof as a party in interest. The directors of said companies appointed by the State have, therefore, ceased to have any official existence—the interest which they represented having ceased to exist. Either this is true, or the transfer is void.

Besides, if the present directors may continue to exercise their powers, others may be appointed by the State to succeed them *ad infinitum*, which is absurd.

Truly yours,
W. H. WEST,
Attorney General.

PROCEEDINGS WHEN REALTY IS LIABLE FOR
FINES, ETC., UNDER LIQUOR LAW.

Attorney General's Office,
Columbus, June 27, 1866.

J. D. Taylor, Esq., Prosecuting Attorney.

SIR:—Where, in case of conviction under the liquor law, judgment is recovered against the accused, execution issues against him, as in ordinary cases of debt; but he is not entitled to the benefit of any of the exemption laws of Ohio.

If property of persons other than the defendant is liable, under the last clause of the 10th section, a petition must be filed against said property and the owner thereof, to subject it, in the nature of a creditor's bill, or a bill to enforce equitable liens on real estate. All the facts necessary to render it liable must be set forth.

Very respectfully,
W. H. WEST,
Attorney General.

*Expenses Making Arrests, Where Persons Charged, Etc.
—Have Fled County Where Crime Was Committed—
Authority of Trustees to Change Investments, Etc.*

EXPENSES MAKING ARRESTS, WHERE PER-
SONS CHARGED, ETC., HAVE FLED COUNTY,
WHERE CRIME WAS COMMITTED.

Attorney General's Office,
Columbus, July 6, 1866.

L. T. Hunt, Esq., Kenton, Ohio.

SIR:—The subject of the inquiry embraced in your communication of the 28th, ult., is governed by section three of the act of 1824—(S. & C. Vol. 2, page 1398).

The section does not cover the ordinary expenses of trial within the county, but simply the expenses incurred in apprehending the criminal, and removing him to the county where the crime was committed.

Very respectfully,
W. H. WEST,
Attorney General.

AUTHORITY OF TRUSTEES TO CHANGE INVEST-
MENTS, ETC.

Attorney General's Office,
Columbus, July 11, 1866.

Messrs. Beers and Clark.

GENTLEMEN:—You inquire whether, under the 2d section of the act of April 2, 1863, (page 53, Vol. 60, of the Ohio Laws) the commissioners of Van Wert County, who, under said act, sold railroad bonds, and invested the proceeds in U. S. bonds and re-invest in mortgage securities.

In *Hill on Trustees* it is said (page 562-381):

“Where the trust moneys are once properly invested in stock, the trustees cannot, without an

Do Colored Men Constitute a Portion of the Militia? Members of National Guard Not Exempt From Performance of Labor on Public Highway Since Their Discharge, Etc.

authority, dispose of the stock and re-invest in other securities. * * * It has been decided that *even an express power for the trustees to vary the securities* does not authorize changes to be made without any apparent object."

It is further added that if the trustees "venture to do so, they will be decreed immediately to replace the stock."

It would seem clear from the above, that there can be no re-investment until the bonds are taken up at their maturity, or special authority be given by the legislature.

Truly, etc.,

W. H. WEST,

Attorney General.

DO COLORED MEN CONSTITUTE A PORTION OF THE MILITIA? MEMBERS OF NATIONAL GUARD NOT EXEMPT FROM PERFORMANCE OF LABOR ON PUBLIC HIGHWAY SINCE THEIR DISCHARGE, ETC.

Attorney General's Office,

Columbus, July 11, 1866.

General B. R. Cowen.

DEAR SIR:—1ST. The first section of the militia law provides that only "white male citizens" "shall be enrolled in the militia." The 11th section enacts that the "organized militia" (white male citizens) "of this State shall be composed of (designating them), "and such further volunteer companies as may be formed *under this act*."

It seems then, that all "volunteer companies" must compose a part of the "organized militia." But the militia are composed of none but "white male citizens." Hence, volunteer companies can be composed of none but "white

Do Colored Men Constitute a Portion of the Militia? Members of National Guard Not Exempt From Performance of Labor on Public Highway Since Their Discharge, Etc.

male citizens." I presume, however, the word "white" would, as in the constitution, be construed to embrace all who have a preponderance of "white blood."

2d. There is no tax lien attaching for the two days labor required by law to be performed on the public highways. On page 88, Vol. 62, O. L., these two days labor are required to be performed between the 1st day of April and the 1st day of September, by all male persons between 21 and 55 years, except active members of the national guard. Now, whether a person coming of age after the 1st of April, or whose period of three months residence expires after that time, is required, on notice, to work the roads, is a question I cannot find to have been decided. Hence I have no analogies from which to form an opinion in respect to the national guard who were mustered out in June. The above act of April 6, 1865, (Vol. 62, page 88, O. L.) enacts that the national guard shall be exempt, etc., so long as they *remain active members, etc.* This affords the necessary implication that so soon as they cease to be active members, their liability attaches. Muster out determines their active membership.

But, were they liable after the passage of the act of April 2, 1866, and before June 2? I presume they could hardly be regarded as active members after the repeal of the act which alone gave their organization vitality, and its members active being as such. None of the active duties required of them by that law could have been exacted after its repeal. So that, unless they indicated their intention to continue their organization, they virtually ceased to be "active members of the National Guard" on the 2d day of April, 1866. Be this as it may, they certainly ceased to be members June 2d.

I am of the opinion that non-age on the 1st of April will not exempt, if full age be attained before the 1st of

Vacancies in Office of School Director.

September, in time to receive notice and perform the work. So, if the N. G. be notified after the 2d of June, in time to perform the labor before the 1st of September, they are liable on the same principle.

Yours truly,

W. H. WEST,
Attorney General.

VACANCIES IN OFFICE OF SCHOOL DIRECTOR.

Attorney General's Office,
Columbus, July 16, 1866.

Hon. Jno. A. Norris, Commissioner Common Schools.

SIR:—By section three (3) of the school law it is enacted that “in case a vacancy shall occur in the office of director” (of any sub-district) “by death, resignation, refusal to serve, or otherwise, it shall be the duty of the township clerk to fill the vacancy.” By the thirty-fourth (34th) section, as amended April 23, 1862, it is enacted that “the board of education of any city or incorporated village, at the first annual meeting, shall elect from their own number a *clerk or recorder* * * * *and he shall do and perform all the duties required of the clerk of a township board.*” It is therefore quite obvious that all vacancies in the village board occurring from death, resignation, refusal to serve, or *otherwise*, (which includes removal) must be filled by the clerk or recorder of the board, under such amended 34th section.

Truly, etc.,

W. H. WEST,
Attorney General.

*Duty of Supervisor in Certain Case—Joint Sub-Districts in
Montgomery County.*

DUTY OF SUPERVISOR IN CERTAIN CASE.

Attorney General's Office,
Columbus, July 26, 1866.

Robert Raley, Esq., Prosecuting Attorney.

DEAR SIR:—Your inquiry I think is explicitly answered by the act of 1840—2d Vol. S. & C. Stat., 1301, Sec. 55. I cannot well see how the plain letter of the statute can be misunderstood.

As to the duty of the supervisor, he certainly is not required to open or work a road which the law declares to be vacated. It is, however, clearly his duty to perform labor on the township road terminating in the county road as now altered, if it ever was his duty to do so. (2d Vol. S. & C. Stat., 1297, Sec. 41—"Proviso.") As to the road which falls short by the alteration, the question is more doubtful. I am inclined to think that he is not required, unless the township road is extended to the altered road, or else the original termini of the two roads be united by the location of a new connecting link.

Yours, etc.,

W. H. WEST,
Attorney General.

JOINT SUB-DISTRICTS IN MONTGOMERY
COUNTY.

Attorney General's Office,
Columbus, August 6, 1866.

Hon. Jno. A. Norris, Commissioner Schools.

DEAR SIR:—Your letter of inquiry relative to the joint sub-districts in Mad River and other townships, in Montgomery County, is received.

Boards of Education Cannot Be Held Liable for Acts of Individual Members.

I have heretofore given it as my opinion that all sub-districts composed of parts of two or more townships, existing at the date of the act of 1853, were recognized as sub-districts and continued in existence by said act.

By Sec. XVI as amended in 1865, the boards of education of adjoining townships are authorized by concurrent action to form and organize *other* joint sub-districts which had no existence at the passage of the act. Thus there are two classes of joint sub-districts—viz.: those which existed at the passage of the act, and those organized since.

By the last clause of the amended Sec. 16, it is enacted that no joint sub-district *which now is*, or may hereafter be organized, can be dissolved or altered without the concurrence of the respective boards. This obviously extends to both classes of joint sub-districts above mentioned.

Very respectfully,

W. H. WEST,

Attorney General.

BOARDS OF EDUCATION CANNOT BE HELD
LIABLE FOR ACTS OF INDIVIDUAL MEMBERS.

Attorney General's Office,
Columbus, September 25, 1866.

Hon. Jno. A. Norris, Commissioner Common Schools.

SIR:—Your favor covering the letter of E. B. Coke is received.

Members of the board of education cannot make contracts, except by order or resolution at a regular or special meeting, and duly entered of record in the books of the township by the clerk. Orders drawn by the clerk in payment of any such contract, and the payment thereof by the treasurer, if done knowing the contract to have been thus illegally made, are alike acts of official malfeasance. The money can

*Right of Persons Convicted in U. S. Courts to Exercise
Elective Franchise.*

be recovered back from any or all the parties thus acting illegally. But the maps cannot be retained by the township, and the money recovered also. I have no doubt that if the maps were returned to Ball & Co., or tendered to them, they could be made to respond. In any event the ownership of the maps must be distinctly repudiated. If any action be brought against the individual members of the board, or against either the clerk or treasurer, whoever does it should clearly set forth all the facts, and repudiate the contract in the name of the party suing.

Yours, etc.,

W. H. WEST,

Attorney General.

RIGHT OF PERSONS CONVICTED IN U. S. COURTS
TO EXERCISE ELECTIVE FRANCHISE.

Attorney General's Office,
Columbus, October 2, 1866.

W. R. Sapp, Esq., Mt. Vernon, Ohio.

DEAR SIR:—1st. Your letter inquiring whether, by the 41st section of the crimes act, Edward Beech, convicted in the U. S. District Court, Northern District Ohio, of passing counterfeit coin, is disqualified as an elector, is received.

I am of the opinion that the provisions of that section are limited to convictions in the courts of this State, under the laws thereof. The section reads as follows: That "any person sentenced to be punished for any crime specified *in this act* * * * shall be deemed incompetent to be an elector * * * unless the said convict shall receive from the governor of this State, a general pardon."

The governor of this State has no power to pardon criminals convicted under the laws of the United States, or

*Right of Persons Convicted in U. S. Courts to Exercise
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of other states. The sentence spoken of in the act is limited to convictions for crimes specified in this act. It seems to me, therefore, that the legislature had in contemplation only conviction in the courts and under the laws of this State, and no other.

This opinion is strengthened by the further consideration that the pardon in the act spoken of can be granted only by the governor of this State. Hence, if the provisions of the section extend to sentences by the courts of other states, or of the United States, a full pardon by the president, or the governor of a sister state, of an innocent party convicted under the laws of either, would not have the effect to restore him to full citizenship, and the rights of an elector in this State, in the event of his settling therein. I have no idea the legislature ever intended any such result; for in such case an innocent party, convicted in the United States court, and pardoned by the president because shown to be innocent, would nevertheless be forever excluded from the privileges of an elector, because the pardon was not, as it could not be, granted by the governor of this State.

Our constitution provides that an elector must be a citizen of the United States. If by the laws of the United States, a person convicted in the Federal Courts is decitizenised, then Mr. Beech is not a voter; otherwise he is. But I have not time to examine this last point.

Yours respectfully,

W. H. WEST,
Attorney General.

Relative to Operation of Soldiers' Voting Law.

RELATIVE TO OPERATION OF SOLDIERS' VOTING LAW.

Attorney General's Office,
Columbus, October 3, 1866.

J. E. Ferrec, Esq., Clerk Court, Etc.

DEAR SIR:—The operation of the law referred to in your communication of the 1st inst., depends upon two contingencies—1st. The continuance of the rebellion. 2d. The absence of qualified voters of this State in the military service.

If either of these contingencies does exist, the law is operative. The existence of the first is a matter in controversy between the president and congress. The existence of the second must be *officially* known to the governor, otherwise the presumption will be that no qualified electors are absent in the service, which presumption must control the operation and execution of the law. There being no voters so absent, so far as the governor is advised, the law need not and will not be regarded in the present election.

Very respectfully,

W. H. WEST,
Attorney General.

Allowance to Probate Judge and Sheriff Where Probate Court Has Criminal Jurisdiction in Minor Offences.—Authority of Commissioners to Furnish Sheriff Stationery.

ALLOWANCE TO PROBATE JUDGE AND SHERIFF
WHERE PROBATE COURT HAS CRIMINAL
JURISDICTION IN MINOR OFFENCES.—AU-
THORITY OF COMMISSIONERS TO FURNISH
SHERIFF STATIONERY.

Attorney General's Office,
Columbus, November 23, 1866.

W. K. Hastings, Esq., Prosecuting Attorney.

SIR:—I am in receipt of your communication of the 15th inst., wherein you make the following inquiries:

“1st. If the probate judge of a county in which criminal jurisdiction in minor offences is conferred on the Probate Court, authorized to make the sheriff an allowance for services when the State fails, or the defendants prove insolvent?”

“2d. Are the county commissioners authorized to furnish the sheriff with the necessary stationery for the proper discharge of his official duties?”

“3d. The law conferring criminal jurisdiction on the Probate Courts of certain counties was passed April 13, 1865, and took effect from and after its passage. The commissioners of Jackson County fixed the allowance of the probate judge, for his services under this act, at \$400 *per annum*, and allowed him from April 13, 1865, to February 8, 1866 (being nine months and twenty-five days), \$400. Was this allowance proper?”

I answer each in its order as follows:

1st. No!

2d. There is no authority of law for it; but it seems to be the universal custom, and is always done.

*Relative to Rights of Persons Who Enlisted When Minors,
to Attend Public Schools.*

3d. No allowance could be made by the commissioners at a rate greater than at the rate of \$400 for twelve months. For any shorter period the allowance must be *pro rata*, and no more. The allowance was too great.

Very respectfully,

W. H. WEST,
Attorney General.

RELATIVE TO RIGHTS OF PERSONS WHO EN-
LISTED WHEN MINORS, TO ATTEND PUBLIC
SCHOOLS.

Attorney General's Office,
Columbus, December 11, 1866.

Hon. Jno. A. Norris, Commissioner Common Schools.

SIR:—In reply to your communication asking if persons who enlisted in the military service of the United States when minors, are entitled to attend the public schools free of charge for tuition, in districts of which they are not residents at the time of demanding admission, I have to say, that inasmuch as Commissioner White has given an opinion upon the subject, and as uniformity in the premises is desirable, I will simply affirm the opinion of Mr. White, although as an original question, I might render a different opinion upon it.

If you think the construction erroneous, the legislature might, if you call attention to the law, amend it so that it shall be more explicit in its terms.

Very respectfully,

W. H. WEST,
Attorney General.

*Liability of Contractors for Convict Labor to Keep Shops
in Repair.*

LIABILITY OF CONTRACTORS FOR CONVICT
LABOR TO KEEP SHOPS IN REPAIR.

Attorney General's Office,
Columbus, December 20, 1866.

Genl. C. C. Walcutt, Warden Ohio Penitentiary.

SIR:—I have again examined the question touching the rights and obligations of Hall, Brown & Co., under their contracts for convict labor, etc.

Looking into Taylor's *Landlord and Tenant*, Section 343, I find that "a tenant for years, or from year to year, must keep the premises wind and water tight, and is bound to make fair and tenantable repairs, such as replacing doors and windows that are broken during his occupation."

Are Hall, Brown & Co., tenants in the above sense? By the terms of the contract "the said directors and warden agree to furnish within the prison walls sufficient shop room, in the rooms now occupied by said Hall, Brown & Co., for carrying on said business and working said convicts to advantage, and room for the raw material; amount and place to be selected by the directors and warden."

1st. It will be observed that the directors and warden are bound to furnish the room in the shops particularly specified, and not in any shop, at their discretion.

2d. The amount of room, and its place in that particular shop, are to be selected by the directors and warden. The duty of selecting is a part of the contract; and when the selection is once made, the contract, in that particular, becomes executed. They cannot afterward, change the amount or place.

Thus the contract is, in effect and in fact, to give Hall, Brown & Co. a specified amount, and a specified portion, of a particular shop, for their sole occupancy, use and possession, during the period of contract. It is the same as if they should rent a particular room in a block. They are, there-

Liability of Officer for Demanding Illegal Fee AFTER Performance of Duty.

fore, tenants of the portion of the shop which they thus occupy, and are bound by all the liabilities which attach to tenants for years:

Very respectfully,
W. H. WEST,
Attorney General.

LIABILITY OF OFFICER FOR DEMANDING IL-
LEGAL FEE AFTER PERFORMANCE OF DUTY.

Attorney General's Office,
Columbus, December 21, 1866.

A. W. Train, Esq., Prosecuting Attorney.

SIR:—The language of the 96th section of the crimes act is apparently ambiguous. A strict construction thereof would seem to imply that the corrupt demand should precede, and that compliance, or promised compliance therewith, should be made the condition of performing the official duty. But I do not think the court would so interpret it. It is more rational to render the words "to execute" as equivalent to, or synonymous with, *for executing*. If it were not so, a sheriff corruptly incorporating illegal fees in an execution, and enforcing collection by levy and sale, would not be liable. But the whole spirit of the act is to restrain extortion under color of office. It is possible that a demand not complied with, made after the duty is fully performed, would not be covered by the act; but a corrupt receiving surely would. I can find no construction of any statute similar to ours, except in the 12th O. R., referred to in S. & C.'s note to the section, which is merely obiter. I therefore give you my own best opinion.

Truly yours,
W. H. WEST,
Attorney General.