services are not otherwise demanded by such board during such vacation period, and no conflict of duty would arise thereby, his acceptance of employment as an instructor in a state normal school during such vacation period would be legal.

Respectfully,
C. C. CRABBE,
Attorney General.

688.

AGE OF MAJORITY—WHO MAY CONTRACT MATRIMONY—SECTIONS 8023 AND 11181 G. C. CONSTRUED.

COLUMBUS, OHIO, September 4, 1923.

SYLLABUS:

Amended sections 11181 *and* 8023 *of the General Code apply to all females under twenty-one years of age, and those who were eighteen years of age before the taking effect of these respective amended sections were of full legal age during the period between the date when they became eighteen years of age and the date of the taking effect of said amended sections, and resumed the status of minors upon the taking effect of said amended sections and so remain until they reach the age of twenty-one years.*

HON. WILLIAM H. LUEDERS, *Judge, Probate Court, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department upon the following:

> "The last legislature amended section 11,181 of the General Code (Senate bill 193)—which amended section became a law on either July 18th or 19th, 1923. Said section 11,181 as amended reads as follows:
>
> 'Male persons of the age of 18 years and female persons of the age of 16 years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage.
>
> Any person under the age of 21 years must first obtain the consent of his or her parents, surviving parent or guardian.'
>
> "Under the old law, female persons of 18 years of age were permitted to marry.
>
> "Again, the last legislature amended section 8023 of the General Code (Senate bill 194) to read as follows:
>
> 'All persons of the age of 21 years and upwards, who are under no legal disability, shall be capable to contract respecting goods, chattels, lands, tenements, and other matter or thing which may be a legitimate subject of a contract, and to all intents and purposes, be of full age.'
>
> "The old law fixes the age of all female persons of the age of 18 years and upwards to be "full age."

QUESTION:—Are these two amended sections retroactive?

"Would you say that a young woman who was 18 years of age *and not* 21 before the amendments became effective—was of age—or do these amendments only apply to those who were not 18 years of age when the law became effective?"

The constitutional authority for regulating marriage is found in article 4, section 8 of the Ohio Constitution, and reads as follows:

"The probate court shall have such jurisdiction * * * in the issuing of marriage licenses * * * as may be provided by law."

The statutory provisions are as follows:

Section 10492 G. C. "Except as hereinafter provided the probate court shall have exclusive judisdiction; * * * to grant marriage licenses and licenses to ministers of the gospel to solemnize marriages. * * * "

Section 11187 G. C. "No license shall be granted when either of the parties, applicants therefor, is an habitual drunkard, imbecile or insane, or who at the time of making application for license is under the influence of liquor or narcotic drug."

Section 11190 G. C. "If any of the persons intending to marry be under age, and have not had a former wife or husband, the consent of the parents or guardian shall be personally given before the judge, or certified under the hand of such parent or guardian."

It is evident from the foregoing provisions that the probate court has exclusive jurisdiction to grant marriage licenses and that the exercise of said jurisdiction is regulated by statute.

The statutes regulating the granting of marriage licenses and those regulating the time at which females shall arrive at their "majority" or become "of age" are not kindred and are not necessarily construed together. Before 1833 a female could contract marriage at eighteen, but was not an adult or of age for other purposes until she arrived at the age of twenty-one.

McClintock vs. Chambelin; W. 547.

The age of her majority was that year fixed at eighteen, but now under amended section 8023 G. C. it is again fixed at twenty-one.

Under its constitutional authority, the legislature has at various times defined the age, circumstances and conditions under which license to marry may be issued, irrespective of the statute regulating the age of majority.

Section 11181 G. C. as amended reads as follows: "Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins and not having a husband or wife living may be joined in marriage. Any such person under the age of twenty-one years must first obtain the consent of his or her parents, surviving parent or guardian."

Under the clear and unequivocal provisions of this section it seems quite evident that no exemptions or exceptions are intended and that "any such person under the age of twenty-one years" must comply with said provisions and obtain the required consent.

Section 8023 of the General Code as amended now reads as follows:

> "All persons of the age of twenty-one years and upward, who are under no legal disability shall be capable of contracting respecting goods, chattels, lands, tenements, and any other matter or thing which may be the legitimate subject of a contract, and, to all intents and purposes be of full age."

This section clearly defines who are eligible to contract and who are of "full age," and it necessarily follows that those persons who do not come within the required qualifications are not of "full age" and are not eligible to contract.

"The state has plenary power to legislate regarding minors as wards of the state; they have only such right to contract as the state awards them."

Bolton vs. State of Ohio, 11 O. C. C. 472.

"The legislature has the power to change the age at which a minor is privileged to exercise legal rights which shall be binding upon him and it may give him legal power to act when he is sixteen or it may raise the age of majority, when he shall be entitled to perform certain legal acts."

> Edw. Young, Appellant vs. Sterling Leather Works. 91 N. J. Law Reports, 289.

The theory that because a female has once reached "full age", that this status necessarily continues as a vested right is untenable since the right is conferred by statute and may be modified or abolished by statute.

"Any right bestowed by legislation can be taken away except such as affects vested interests in real or personal property."

> Jackson Hill Coal and Coke Co. vs. Board of Commis. of County of Sullivan, 181 Ind. 335—339.

The privileges and rights conferred upon females by the previous statutes in regard to legal age for marriage and age of majority were not vested rights in the sense that they could not be modified or abolished by statute.

Are these two amended sections retroactive? Black's Law Dictionary at page 1032 defines retroactive laws as follows:

> "A law is retroactive or retrospective which looks backward or contemplates the past; one which is made to affect acts or facts transpiring, or right accruing, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed retrospective."

In making these amended sections applicable to all females the legislature did not make them retroactive. These statutes do not purport to affect acts or facts transpiring, or rights accruing, before said laws became effective. Neither do they take away or impair vested rights acquired under then existing laws, nor create

new obligations, impose a new duty or attach new disabilities in respect to transactions or considerations already past.

The conclusion is therefore reached that amended sections 11181 and 8023 of the General Code apply to all females under twenty-one years of age and that those who were eighteen years of age before the taking effect of these respective amended sections were of full legal age during the period between the date when they became eighteen years of age, and the date of the taking effect of said respective amended sections, and resumed the status of minors upon the taking effect of said amended sections and so remain until they reach the age of twenty-one years.

Respectfully,
C. C. CRABBE,
Attorney General.

689.

TOWNSHIP TRUSTEES—PHYSICIAN MAY RECOVER FROM TOWNSHIP FOR SERVICES RENDERED PERSONS CONFINED IN QUARANTINED HOUSE—SECTION 4436 G. C. CONSTRUED.

COLUMBUS, OHIO, September 4, 1923.

SYLLABUS:

Under section 4436 *G. C. a physician who renders medical attention to persons confined in a quarantined house, which has been quarantined by order of the Board of Health, may recover from the township for his services independently of the provisions of section* 3480 *G. C.*

HON. WALTER K. KEPPEL, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter requesting the opinion of this department upon the following:

> "A family who live in Big Spring Township in this county were taken ill with Scarlet Fever and sent word that they needed some groceries and supplies. These were furnished them by the Trustees.
>
> At that time the trustees asked the head of the family whether they were able to pay their physician and they said they were, so nothing was done. The physician in charge has now presented a bill to the trustees, saying the family is indigent. The physician has never complied with section 3480 of the General Code in regard to notifying the trustees.
>
> The doctor now contends that irrespective of that fact he is entitled to recover under section 4436 G. C. on the ground that he notified the County Health Commissioner and the family was quarantined by his order.
>
> May he recover under 4436 G. C. without first having complied with section 3480?"