real property in the county below the aggregate value on the duplicate of the preceding year, and not including the value of new structures as returned by the assessors for the current year.

I make this limitation because the board of equalization is limited in a like manner.

In closing I deem it not improper to say, that if city councils were a little more careful in the selection of members of boards of equalization, and such boards more careful in the discharge of their duties, that much of the injustice complained of would be avoided.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR; PAY OF.

State of Ohio,
Attorney General's Office,
Columbus, December, 1878.

D. M. Brown, Esq., Prosecuting Attorney Carroll County, Carrollton, Ohio:

DEAR SIR:—In answer to yours of the 20th inst., I have to say, that a county auditor is entitled to no compensation except what is specifically provided for in the general act fixing the salary, etc., of auditor.

Respectfully yours.
ISAIAH PILLARS,
Attorney General.

"Soldiers' Relief Fund;" County Commissioner in Regard to —County Seat; Removal of.

"SOLDIERS' RELIEF FUND;" COUNTY COMMISSIONER IN REGARD TO.

State of Ohio,
Attorney General's Office,
Columbus, December 23, 1878.

C. A. Atkinson, Esq., Prosecuting Attorney Jackson County, Jackson, Ohio:

DEAR SIR:—Yours of the 18th inst., inquiring as to "what the powers and duties of the county commissioners are under the amendatory act of 1873, in regard to the soldiers' relief fund, came duly to hand. I do not see how I can make their duties any plainer than does the original act of 1865 and the amendatory act you refer to.

If I knew just the question you were troubled with I would endeavor to assist you.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNTY SEAT; REMOVAL OF.

State of Ohio,
Attorney General's Office,
Lima, December 30, 1879.

Messrs. C. L. Coorman, D. Dawford and J. A. Gallagher, Bellaire, Ohio:

GENTLEMEN:—Your letter of the 24th inst. reached me here, and I have given your inquiries a careful examination.

First—I have no doubt but that proceedings for the removal of a *county seat* can be legally commenced by giving notice thirty (30) days prior to the commencement of an adjourned session of the Legislature.

Tax Notice; Publishing of—Tax Levied; Soldiers' Relief Fund.

Second—Even if any such notice was *illegal* and the Legislature should act upon it, and pass a law authorizing a vote, such act, and the vote thereunder would, in my judgment, be valid, and so held by the court. About this I have no doubt.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX NOTICE: PUBLISHING OF.

State of Ohio,
Attorney General's Office,
Columbus, January 2, 1879.

A. H. Wilson, Esq., Prosecuting Attorney Logan, Ohio:

DEAR SIR:—Yours of the 27th ult. came duly to hand, and in answer would say, that the section you refer to, requires the notice to be given for two weeks, but two insertions is all that is required; that is, *one insertion each week.* (75 O. L., 480).

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX LEVIED; SOLDIERS' RELIEF FUND.

State of Ohio,
Attorney General's Office,
Columbus, January 3, 1879.

C. A. Atkinson, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Yours of the 28th ult. came duly to hand.

There has not been for several years past a State tax levied for "Soldiers' Relief Fund."

The county map you describe, I should think, will answer the purpose of the law. Respectfully yours,

ISAIAH PILLARS,
Attorney General.

JONES, DR. W. W.

State of Ohio,
Attorney General's Office,
Columbus, January 7, 1879.

Dr. W. W. Jones, Toledo, Ohio:

MY DEAR SIR:—Yours of the 5th inst. came duly to hand.

My talk and communication with the city solicitor of Dayton was precisely of the same character I had with you, and was inofficial.

The question has never come before me, so that I could give an official opinion, which would have any valid force.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR OF STATE ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, January 7, 1879.

M. G. Watterson, Esq., Treasurer Cuyahoga County, Cleveland, Ohio:

DEAR SIR:—Yours of the 4th inst., came duly to hand, and in answer would have to say, that the matter about which you write and desire to be advised, is one which is especially

Mileage; of Officer in Reviewing the Writ—Stone; the Right to Quarry on State Property on Lease of Contract With B. P. W.

under the directions of the auditor of state; I would not therefore, be justified or warranted in giving any opinion in the matter, except at the request of the auditor of state.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

MILEAGE; OF OFFICER IN REVIEWING THE WRIT.

State of Ohio,
Attorney General's Office,
Columbus, January 7, 1879.

M. D. Mann, Esq., Prosecuting Attorney Paulding County, Paulding Ohio:

DEAR SIR:—Yours of the 6th inst. came duly to hand.

My answer to your inquiry is, That, in my opinion, the officer is entitled to mileage for the number of miles he *necessarily* travels in reviewing the writ.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

STONE; THE RIGHT TO QUARRY ON STATE PROPERTY ON LEASE OF CONTRACT WITH B. P. W.

State of Ohio,
Attorney General's Office,
Columbus, January 8, 1879.

W. J. Jackson, Esq., Chief Engineer Public Works:

SIR:—Yours of the 23d ult., enclosing copies of lease entered into between the board of public works and A. L.

Incligibility of Non-Resident to Fill the Position of "Elder Brother" of a Family in the Ohio State Reform School.

Conger, of the dates of May 28, 1870, and February 11, 1873, for the right to quarry stone on the property of the State upon certain terms and asking my opinion as to the validity of said contract of lease, has been carefully considered by me.

The powers of the board of public works are, and always have been strictly defined by statute; and it can legally only do such acts, create such obligations, and lease such portion of the public property, as is especially authorized by statute.

I find nothing in the laws which, either expressly or by implication, authorized the board of public works, to enter into the contract of lease, referred to. And therefore, I am compelled to say, they were unauthorized; and the lessee acquired no right under them.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

INELIGIBILITY OF NON-RESIDENT TO FILL THE POSITION OF "ELDER BROTHER" OF A FAMILY IN THE OHIO STATE REFORM SCHOOL.

[*Copy.*] Letter of inquiry from J. C. Hite, Superintendent Ohio Reform School.

"Lancaster, January 7, 1879.

"*General Pillars:*

"DEAR SIR:—I am instructed by the commissioners of the Ohio Reform School to ask your opinion relative to the eligibility of one of the officers of this institution. I have employed a gentleman, who was once a resident of Ohio, but afterwards lived in the State of Indiana and still later in the State of Michigan.

"I employed him because he had experience in the reformatory work. He is in charge of a 'family,' and is called

an Elder Brother. The question is, is he ineligible, even if he voted in one or both of the States named, to be an Elder Brother, in this institution? Please answer on opposite page.

"Respectfully, etc.,
"J. C. HITE,
"Superintendent."

Following the answer thereto:

Columbus, January 8, 1878.

There is nothing in the statute which would render the party ineligible.

It is simply a question of policy as to whether an employe shall be a resident of Ohio, or not.

Probably the better rule would be to select them from the State of Ohio.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SCRIP IS NOT MONEY.

State of Ohio,
Attorney General's Office,
Columbus, January 8, 1879.

Orrin Thatcher, Esq., Auditor Perry County, New Lexington, Ohio:

SIR:—The scrip is not money, and you are not entitled to a percentage on it.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Treaty of 1840 Between U. S. and Great Britian—Leoine, David; Extradition for Requisition for.

TREATY OF 1840 BETWEEN U. S. AND GREAT BRITAIN.

State of Ohio,
Attorney General's Office,
Columbus, January 8, 1879.

Wm. B. Woolverton, Esq., Prosecuting Attorney Huron County, Norwalk, Ohio:

DEAR SIR:—Yours of the date of January 4th came to hand yesterday.

On examination I find the treaty of 1840, between the United States and Great Britain provides for extradition for the crimes of murder, assault with the intent to murder, piracy, arson, robbery, and forgery.

I cannot find that the list has been since enlarged.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

LEOINE, DAVID; EXTRADITION FOR REQUISITION FOR.

State of Ohio,
Attorney General's Office,
Columbus, January 13, 1879.

To His Excellency, R. M. Bishop, Governor of Ohio:

The application for the revocation of the warrant issued upon the requisition of the governor of New York, for the arrest and extradition of David Leoine, upon the charge of obtaining goods under false pretenses, has in connection with the affidavits and other proofs in support of said application been carefully considered by me.

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

I am clearly of the opinion from the showing so made that said warrant for the arrest and extradition of said David Leoine was obtained for the purpose of subserving private interests in attempting to enforce the collection of a debt owing by said David Leoine to Messrs. H. B. Claflin & Co., and the same therefore in contravention of the purposes contemplated by the extradition laws of the United States; and of the joint resolution of the General Assembly of Ohio of the date of March 25, 1870 (67 O. L., 171). I therefore recommend that said warrant so issued as aforesaid, be revoked.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

RUSSELL, MATTHEW, WILL CASE, FINAL SETTLEMENT OF, TO THE COLUMBUS ASYLUM FOR THE INSANE AND DEAF AND DUMB; WITH STATEMENTS FOLLOWING.

State of Ohio,
Attorney General's Office,
Columbus, January 15, 1879.

Colonel E. J. Blount, President Board of Directors of Columbus Asylum for Insane, Columbus, Ohio:

DEAR SIR:—Having finally closed up and realized the money upon the bequests to the Columbus Asylum for the Insane, and to the Deaf and Dumb Asylum at Columbus, Ohio, provided for in the last will and testament of Matthew Russell, deceased, I deem it very proper to make a somewhat full statement with regard to the matter. This is the more de-

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

sirable, inasmuch as both the institutions have, within the past year, been reorganized by acts of the General Assembly, and new boards of directors appointed, many of the members of which boards may not be familiar with all of the proceedings had in the case.

In July, 1877, Matthew Russell died in Jefferson County, Ohio, leaving a last will and testament of which the following is a copy:

> I, Matthew Russell, of the county of Allegheny, and State of Pennsylvania, being of sound mind, memory and understanding, do make and publish this my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made.
>
> And first, I direct that my body be decently interred in Pinegrove Graveyard (Martin Adam's place of burial), Brushcreek Township, Jefferson County and State of Ohio.
>
> As to such estate as it hath pleased God to intrust me with, I dispose of the same as follows, viz:
>
> *Item.* I give, devise and bequeath to the Lunatic Asylum of the State of Ohio, situate at Columbus, Ohio, the sum of thirty thousand dollars.
>
> *Item.* I give, devise and bequeath to the Deaf and Dumb Asylum, situate at Columbus, Ohio, the sum of twenty thousand dollars.
>
> *Item.* I give, devise and bequeath to Matthew C. Russell, of Brushcreek Township, Jefferson County, Ohio, the sum of one thousand dollars.
>
> *Item.* I give, devise and bequeath to Nancy Russell, daughter of Joseph Russell, of Brushcreek Township, Jefferson County, Ohio, five hundred dollars.
>
> *Item.* I give, devise and bequeath to Ann Cope, of Brushcreek Township, Jefferson County, Ohio, the sum of five hundred dollars.

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

Item. I give, devise and bequeath to Robert Russell, son of George Russell, parish of Estraw, county of Tyrone, Ireland, the sum of two thousand dollars.

Item. I give, devise and bequeath to Robert Anderson, son of William Anderson, formerly of Killan, county of Tyrone, the sum of two thousand dollars.

Item. I give, devise and bequeath to Ann Swiney, of Ramelton, Donegal County, Ireland, the sum of five hundred dollars.

Item. I do hereby nominate and appoint William Floyd, of the city of Pittsburg, Pennsylvania, and Joseph Jackman, of Brushcreek Township, Jefferson County, Ohio, executors of this my last will and testament.

In witness whereof, I, Matthew Russell, the testator, have to this, my will, set my hand and seal, this fifteenth day of May, A. D. 1877.

[SEAL.] MATTHEW RUSSELL.

Signed, sealed, published and declared by the above named Matthew Russell as and for his last will and testament, in the presence of us, who have hereunto subscribed our names, at his request, as witnesses thereto, in the presence of the said testator and of each other.

JOHN F. McENULTY,
H. S. FLOYD,
THOS. FLOYD.

Mr. Russell left no kindred nearer than first cousins. He had, at the time of his death, on deposit with a safe deposit company of Pittsburg, Pennsylvana, in money and securities some $65,000.00.

On the discovery of the will, sometime after his death, a controversy arose between the heirs, who are numerous and legatees as to the proper place for the probating of the will, it being contended by the heirs that his place of domicile when he died, was Jefferson County, and that the will

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

should be there probated; and upon the other hand, that his place of domicile was in Pittsburg, where with his means, he had gone to reside some three years before his death, and that during said time he had but occasionally made a visit to Ohio at his old home, where he had resided for many years.

The heirs hoped that by having the will probated in Jefferson County, Ohio, they could easily contest it and set it aside and thereby avoid the bequests, which they would undoubtedly have accomplished, had the will been probated in Ohio.

It was all important to the Ohio institution to defeat this attempt and have the will probated in the city of Pittsburg. For this purpose, my predecessor, Hon. John Little, with the assent of the board of directors of Insane Asylum, and Deaf and Dumb Asylum called to his assistance Thomas M. Marshall, an attorney of Pittsburg, and W. P. Hays, an attorney in Jefferson County, Ohio. After a hearing in October, 1877, in the Court of the Register of Wills for Allegheny County, Pennsylvania, the will was there admitted to probate. From this adjudication an appeal was taken to the Orphans' Court of that county, where the case was pending for trial when I came into office. I at once made myself familiar with all the facts in the case and prepared for the trial of it.

Before the case came on for trial in the Orphans' Court, the following proposition was submitted on behalf of the heirs for a settlement:

> Columbus, March 2, 1878.
>
> On behalf of the heirs-at-law Matthew Russell, late of Jefferson County, Ohio, deceased, we propose to compromise the difference between the parties interested in his estate as follows:
>
> "The Hospital for the Insane and the Deaf and Dumb Asylum to take $28,500.00 in full satis-

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

faction of the legacies left to them and to turn over to the heirs $21,500.00, the balance of said legacies.

"This proposition leaves the burden of paying the collateral inheritance tax of the State of Pennsylvania on the heirs.

"J. H. MILLER,
"J. DUNBAR,

"On behalf of the heirs of Matthew Russell, deceased."

A joint meeting of the two boards of directors was at once had in this office to consider said proposition.

At said meeting the members of the boards, with one exception, were unanimous in directing me to proceed to Pittsburg, and, if I could get no better terms, to accept the proposition of settlement.

The case was set for trial March 13, 1878, and upon said day I met the parties in Pittsburg; and finally consummated the settlement at $30,000 to the Ohio institutions, three-fifths of said amount to go to the Columbus Asylum for the Insane, and two-fifths to the Deaf and Dumb Asylum, and had the will probated.

Pending this controversy to probate the will, an administrator had been appointed upon the estate of said Matthew Russell, *deceased*, into whose hands the entire assets of the estate had passed.

The next vexatious proceeding was having to get the assets out of the hands of this administrator and into the hands of the executor under the will.

This was not accomplished until in October last, and after various proceedings, one question in the matter going even to the Supreme Court of Pennsylvania for determination.

After the assets were thus finally placed in the hands of the executor, some little delay occurred in converting them into money. This was finally done, however; and an account filed in the Orphan's Court for distribution, and set for hearing December 21st last.

Russell, Matthew, Will Case, Final Settlement of, to the Columbus Asylum for the Insane and Deaf and Dumb, With Statements Following.

Thereupon came in a new batch of heirs, not parties to and unknown at the time of the compromise, who filed exceptions to said account and contested the right of the Ohio institution to take under said will.

This position was assumed on two grounds, first, the want of their legal capacity to take; and second, want of identity.

After a full hearing, the exceptions were overruled, and distribution ordered. The matter was then delayed for twenty days to give the parties the right to appeal. The appeal not being perfected, I met the parties interested in Pittsburg on the 13th inst., to finally close up the matter, and receive the bequests under said compromise.

Messrs. Marshall and Hays were unwilling that the funds should pass out of the hands of the executors until their fees for legal services had been paid. They therefore receipted to the executors for a sufficient amount to cover their charges, and applied the same to the payment of their accounts; and delivered to me their respective accounts so receipted, which I herewith enclose, as well as a complete statement of the legacies so received by me.

These show a net balance as follows:

To the Columbus Asylum for the Insane	$16,329
To the Deaf and Dumb Asylum	10,886
Total	$27,215

These amounts I have paid into the treasury of the state and placed to the credit of each institution in a special account for the respective amounts going to each. A copy of this was sent to the president of the board of directors of the Deaf and Dumb Asylum, with the change from $16,329 to $10,886, also from Columbus Insane Asylum to the Deaf and Dumb Asylum in clause marked. The receipt of

the treasurer for $16,329, the amount placed to the credit of the Columbus Asylum for the Insane, I herewith enclose.

I have made the statement thus full, so that a history of the bequests might be presented, and should the board so desire, ordered to be made a part of their next annual report, and thus preserve the matter in permanent form.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

P. S.—I brought the money in person from Pittsburg, thus saving the institutions.

TO COLUMBUS ASYLUM FOR THE INSANE THREE-FIFTHS OF $30,000, AMOUNT OF COMPROMISE $18,000.

		$18,000
Marshall's fees as per account herewith filed.	$540	
Hays' fees as per account herewith filed....	555	
Three per cent. to self as attorney general's services	540	
Three-fifths of expenses in three trips to Pittsburg	36	
		1,671
Balance		$16.329

Paid into treasury January 15, 1879.

TO DEAF AND DUMB ASYLUM TWO-FIFTHS OF $30,000, AMOUNT OF COMPROMISE $12,000.

		$12,000
Marshall's fees as per account herewith filed.	$360	
Hays' fees as per account herewith filed....	370	
Three per cent. to self as attorney general for services	360	
Two-fifths of expenses in three trips to Pittsburg	24	
		1,114
Balance		$10,886

Paid into treasury January 15, 1879.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, January 15, 1879.

W. G. Beebe, Esq., Mt. Gilead, Ohio:

DEAR SIR:—Yours of the 9th inst., I found on my return here yesterday.

I am wholly unauthorized to give you an opinion about the matter. The statute makes me the legal adviser of certain officers, and outside of them I have no power to act.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, January 15, 1879.

Hon. B. F. Thomas, Probate Judge, Hamilton, Ohio:

DEAR SIR:—Yours of the 14th inst., came duly to hand.

I am not authorized under the statute to give you an opinion on the question submitted. The prosecuting attorney is made the legal adviser of all county officers.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DAVID LEVINE, ETC.

State of Ohio,
Attorney General's Office,
Columbus, January 15, 1879.

Hon. George Hoadly, Cincinnati, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand.

I assure you, that, so far as I am concerned, no further action will be taken in the Levine extradition matter until all parties are fully heard.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

RECORDER'S OFFICE; DUTIES OF OFFICERS.

State of Ohio,
Attorney General's Office.

W. O. Hallaway, Esq., Recorder Clinton County, Wilmington, Ohio:

DEAR SIR:—Yours of the 13th inst. duly received.

The records of your office must be open for free public examination. Should you be asked to make the examination, you can then charge, and *then* only.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COMMISSIONER'S REPORT; PUBLISHING OF.

State of Ohio,
Attorney General's Office,
Columbus, January 16, 1879.

John M. Sprigg, Esq., Prosecuting Attorney Montgomery County, Dayton, Ohio:

DEAR SIR:—Yours of the 10th inst. came duly to hand. Press of business has caused the delay in the answer.

The act of April 8th, 1876 (73 O. L., 141-2), was intended to control in the publication of the commissioner's report.

But, notwithstanding this, I have no doubt but that it would be entirely competent for the auditor, probate judge, treasurer and commissioners, under the act of March 26, 1876 (73 O. L., 75), to cause said report to be published in a German newspaper of Montgomery County.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITORS' FEES.

State of Ohio,
Attorney General's Office.

To the Commissioners of Darke County, Ohio:

GENTLEMEN:—At the request of your legal adviser, Mr. C. M. Anderson, I submit the following as my opinion, as to the compensation of county auditors prior to the passage of the act of 1877:

Laws governing auditors' fees.

Fees in road and ditches provided by laws 1859 S. & C., 636.

Next laws 1861 pages 7 and 8.
Next laws 1862 page 104.
Next laws 1865 pages 125 and 126.
Next laws 1867 pages 249 and 250.
Next laws S. & S. page 371.
Next laws 1876 page 127.
Next laws 1877 pages 125 and 128.

The last clause of the act of 1859, S. & Cr., 636, where the service is required to be done and authorized by law *to be done,* for such services only, where no fees are provided; then he may be allowed compensation by the commissioners the same fees as for like services. But, my opinion is that there are no services required of auditors by the law to be done by him in road or ditch proceedings but what are fully provided for fees by the act of March 30, 1859 (S. & Cr., 636).

First—*For all indexing, recording all proceedings, estimates, registering bonds and coupons, posting accounts, in fact all minutes, journal work,* 10 *cents per* 100 *words.*

Second—*For filing all papers,* 5 *cents each.*

Third—*For bonds,* 25 *cents each.*

Fourth—*Issuing all orders and certificates,* 5 *cents each.*

Fifth—*Attending as clerk to board,* $2.00 *per day.*

Sixth—*For advertising notice to printers at* 15 *cents per* 100 *words.*

Seventh—*For duplicate* 10 *cents per* 100 *words, and counting two figures one word.*

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Prosecuting Attorney of Lucas County Salary—In Relation to the Deposit of the Bequest of M. Russell.

PROSECUTING ATTORNEY OF LUCAS COUNTY SALARY.

State of Ohio,
Attorney General's Office,
Columbus, January 20, 1879.

J. P. Jones, Esq., Auditor Lucas County, Toledo, Ohio:

DEAR SIR:—Yours of the 17th inst. came duly to hand, and has been carefully considered.

The act of March 17, 1873 (70 O. L., 67), fixes the salary (exclusive of commissioners on collections), of the prosecuting attorney of Lucas County at $2,000. With this salary the commissioners have nothing to do except to fix the installments (and their times of payment) for the payment of said salary.

I mean to say, that the county commissioners can neither *increase* nor *diminish* this salary.

It is barely possible that a prosecuting attorney could enter into an understanding on his part to receive a less amount for this salary than that fixed by statute that might preclude him.

But you do not present such a case in your letter.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

IN RELATION TO THE DEPOSIT OF THE BEQUEST OF M. RUSSELL.

State of Ohio,
Attorney General's Office,
Columbus, January 14, 1879.

Hon. James Williams, Auditor of State:

SIR:—In depositing the bequest of the late Matthew Russell in the State treasury for the benefit of the Columbus

Asylum for the Insane and for the Institution for the Deaf and Dumb, I desire it to be specifically understood that it is for temporary purposes only, and for safekeeping, and that the respective sums are to be held subject to the requisition of the respective boards of trustees of said institution, and to be drawn by such persons as may be authorized by said respective boards.

Yours,
ISAIAH PILLARS,
Attorney General.

SALARY TO ATTORNEY BY STATE IN CRIMINAL CASES.

State of Ohio,
Attorney General's Office,
Columbus, January 21, 1879.

Frank Moore, Esq., Prosecuting Attorney, Mt. Vernon, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand.

The provisions of the statute are very clear. Section 6, chapter 5, Criminal Code procedure, provides, that the court may assign not exceeding two counsel to defend an indigent prisoner. And section 7 provides that "Counsel so assigned in any case of felony shall be paid for their services by the county, and may receive therefor, in any case of homicide, *not exceeding one hundred dollars.*"

This has been uniformly held, so far as my experiences extend, to limit the total fees to counsel in such case, to-wit: homicide, to $100. Where two counsels are assigned to defend, the statute does not provide that *each* can be allowed $100; but however unjust it may be, the statute limits the pay to both to $100.

Special Report of the Attorney General to the House of Representatives, Under House Resolution No. 134 in Relation to the Case of the State of Ohio Against Wm. M. Ampt.

This being the law, you will see that counsel in the case you refer to, have already got double the pay the statute provides for.

There is no provision in the statute for the payment of the *expenses* of the counsel so assigned.

I certainly wish I could help them out.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SPECIAL REPORT OF THE ATTORNEY GENERAL TO THE HOUSE OF REPRESENTATIVES, UNDER HOUSE RESOLUTION NO. 134 IN RELATION TO THE CASE OF THE STATE OF OHIO AGAINST WM. M. AMPT.

State of Ohio,
Attorney General's Office,
Columbus, January 28, 1879.

To the Hon. James E. Neal, Speaker of the House of Representatives:

House Resolution No. 134, adopted January 22, 1879, and which was duly transmitted to me is as follows, to-wit:

H. R. No. 134.

MR. WRIGHT.

"WHEREAS, By joint resolution adopted April 27, 1877, the attorney general was directed to bring suit to recover from Wm. M. Ampt certain monies claimed as due from him to the State unless said Ampt paid the same upon demand of the auditor, therefore

Special Report of the Attorney General to the House of Representatives, Under House Resolution No. 134 in Relation to the Case of the State of Ohio Against Wm. M. Ampt.

> *Resolved,* That the attorney general communicate to the House what action has been taken under said resolution; if suit has been brought and said cause tried, the result of said trial; if any settlement has been made with said Ampt, the terms of said settlement, whether said settlement was made before or after suit; if any attorneys were employed to prosecute said suit, by what authority they were employed, and the amount paid them for their services; if the prosecuting attorney of Hamilton County refused to bring or attend to said suit any other information the attorney general may have necessary for the full understanding by the House of the action taken under the said joint resolution of April 7, 1877."

In compliance with said resolution, I have the honor to report that much of the information called for by said resolution is contained in the last biennial report of my predecessor, Hon. John Little.

On pages 7 and 8 of that report, he makes the following statement:

SUITS AGAINST HAMILTON COUNTY.

> These suits, a full account of which is given in the letter of W. M. Ampt, Esq., attorney for the State, published in my report for 1874-5 have been concluded. The aggregate amount recovered was $86,340.05, of which the State has received in cash $66,291.69, leaving a balance of $20,048.36, which has been paid to Mr. Ampt by the county. This last sum, less $402.75 paid out as expenses on account of litigation, and $60.60 retained by error of calculation, that is to say, the sum of $19,585.01, Mr. Ampt has retained on account, or to await the adjustment of his fees. The auditor of state and myself not being able to agree with him as to the proper compensation to be allowed for his services (admitted by us to be valuable in an un-

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> usual degree), and at the same time doubting our authority in the premises under the joint resolution of May 6, 1873 (Laws, p. 403), Mr. Ampt agreed that he would invest in standard securities and safely preserve said balance, until such time as his compensation could be lawfully adjusted, when he would pay over the residue, if any, coming to the State. He has, I believe, made the investment accordingly, and is ready to answer as to any balance that may be found due.

This subject was referred to the General Assembly at its last session by the auditor of state, when, on the 27th of April, the following joint resolution was adopted:

JOINT RESOLUTION.

> Directing the auditor of state and attorney general to adjust the claim of William M. Ampt, Esq., of Cincinnati, provided he complies with certain conditions herein mentioned.
>
> *Resolved* by the General Assembly of the State of Ohio, That the auditor of state be and he is hereby directed to immediately demand of William M. Ampt the money in his hands belonging to the State, with interest from the date he received it.
>
> *Resolved*, That in default of said Ampt paying over the moneys mentioned in the foregoing resolutions within a reasonable time after demand, the attorney general of the State is directed to bring suit to recover the same.

Just what was intended by this resolution, it is difficult to imagine. The title seems to contemplate some adjustment of Mr. Ampt's claim by the auditor of state and attorney general, on his complying with certain conditions. Yet there is no express authority for any such adjustment in the resolutions; nor are there any conditions specified.

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Whether it was intended that the officers named should fix his compensation, and that the phrase "the money in his hands belonging to the State," meant the balance in his hands after deducting the compensation so fixed, was, to my mind uncertain. I was, and am still, rather inclined to the view that the Legislature intended that the demand should be made for the entire sum, leaving Mr. Ampt to be paid out of the general appropriation made for the payment of local attorneys engaged by the attorney general on behalf of the State.

Accordingly the auditor of state, under my advice, duly demanded the sum of $20,048.36 with interest, the payment of which was refused. Suit was thereupon (October 17) instituted in the Superior Court of Cincinnati for the recovery of the amount, Messrs. Taft and Lloyd being retained as local counsel on behalf of the State. Mr. Ampt entered his appearance, and answered promptly. The case is now at issue and will no doubt be speedily determined.

It is due Mr. Ampt to say that in this controversy he has exhibited no disposition to delay the State in the assertion of its claim. On the contrary, he has from the first manifested a desire and readiness to have the matter adjusted as speedily as practicable.

This was the status of the case when I came into office, January 14, 1878.

I at once gave the case attention, and made myself familiar, as far as possible with all the facts surrounding it. I visited Cincinnati a number of times to assist in the preparation of the case for trial, and in its trial, and to urge a speedy disposition of the case. It finally came on for trial December 14th in the Superior Court of Cincinnati, before Judge Harman and a jury, with the result stated in the following communication from Messrs. Taft and Lloyd:

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In Re
STATE OF OHIO
AGAINST
WM. M. AMPT.
LAW OFFICE
OF
TAFT & LLOYD.

"Cincinnati, December 14, 1878.

"*Hon. Isaiah Pillars, Columbus, Ohio:*

"DEAR SIR:—We have the honor to report that we began the trial of the case of the State of Ohio against Wm. M. Ampt on Monday morning last and have continued without intermission until today (Saturday), when the jury brought in a verdict for the State for $60.60 and interest from July 26, 1877, thus allowing Mr. Ampt, as compensation for his services, the full amount of 25 per cent. upon the amount recovered. A large number of witnesses were called from the prominent members of our bar, including Judge Hoadly, Judge Whitman, Judge Tilden, W. M. Ramsey, C. W. Moulton and many others, all of whom testified *uniformly* that the services rendered were worth the full amount claimed.

"We called Judge Collins, Judge Fox, General Bates, Judge Pruden, Henry Snow and Mr. Merrill, who put the rate of compensation much lower. We enclose the newspaper report of judge's charge, which will give you an idea of the instruction to the jury.

"There was grave error on the part of the court, in admitting against our objection much testimony in the case which we will not now take time to particularize.

"We shall file a motion for a new trial, and shall be ready to argue it on the 21st, which is motion day. If our motion is overruled do you desire us to have a bill of exception prepared to take the case to a higher court on a petition in error? We were greatly astonished at the result of the case,

> and were greatly astonished during the trial at the glibness with which such prominent men testified so strongly in Mr. Ampt's behalf; but from the statements previously sent to your office and to the auditor, you could see what Judge Whitman, Mr. Ferguson, Mr. Matthews and Mr. Perry thought of the case. Great stress was also laid upon the fact that these payments had all been reported to the State and attorney general in the letters sent by Mr. Ampt two or three years ago, and that no dissent or protest was ever made against the charge of 25 per cent. by any of the State authorities.
>
> "Please write us and oblige,
>
> "Yours respectfully,
>
> "TAFT & LLOYD."

In another letter from Messrs. Taft and Lloyd of the date of December 17th they said: "Ampt's counsel now offer to pay all costs incurred by the State, if the case goes no further."

I thereupon submitted these letters to the auditor of state (Hon. James Williams), and we carefully considered as to what would be for the best interest of the State in the premises. As the result of said conference, I wrote to Messrs. Taft and Lloyd in substance suggesting whether it would be for the interests of the State to waste any more money and time in further prosecuting the case, and to get from Mr. Ampt his most favorable proposition for a compromise.

In answer to this, I received from Messrs. Taft and Lloyd a communication of which the following is a copy:

Special Report of the Attorney General to the House of Representatives, Under House Resolution No. 134 in Relation to the Case of the State of Ohio Against Wm. M. Ampt.

In Re
STATE OF OHIO
AGAINST
WM. M. AMPT.
LAW OFFICE
OF
TAFT & LLOYD.

"Cincinnati, December 21, 1878.

"*Hon. Isaiah Pillars, Attorney General, Columbus, Ohio:*

"DEAR SIR:—We have the honor to acknowledge the receipt of your favor of the 18th inst. and have carefully noted the contents.

"Our motion for a new trial was called this morning, and was passed till Tuesday next. We have gone over the testimony with considerable care, and have come to the conclusion that the verdict will not be set aside as against the weight of evidence. The array of prominent attorneys was very large who pronounced the charges fair and reasonable, and with our utmost effort we could get few in opposition. Several lawyers to whom we applied, refused outright to testify at all.

"The correspondence, too, was heavily against us. Mr. Ampt's letter and full statement to the attorney general, Hon. John Little, under date of May 20, 1876, made the distinct charge of 25 per cent. for his fees and showed this deduction made from the amount collected by him. To this charge there was no dissent, and there was a tacit acknowledgement of its fairness.

"We were satisfied that the court made some errors on the trial, but they were not of vital importance, and we have no affidavits to use on the argument. In this situation we are offered the payment of all costs of the suit, the payment of our fees and $250.00 to be paid to the State; if the case can be closed at once, and let the present verdict stand. But this offer will be *withdrawn* if the motion for a new trial is *argued.*

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"If a compromise is to be made without taking the case to the Supreme Court, now is much the best time. We shall never get this offer again.

"Will you please advise us at once and use the telegraph if necessary, so that the matter can be closed on Tuesday.

"We have the honor to be,

"Very respectfully,

"TAFT & LLOYD."

This I immediately submitted to the auditor of state, and that officer and myself were decidedly of the opinion that the interests of the state would be best subserved by accepting Mr. Ampt's proposition as contained in the said letter.

I accordingly telegraphed to Messrs. Taft and Lloyd to accept the proposition, and, if possible, to get Mr. Ampt to pay in addition, at least a part of my personal expenses in looking to the case. This Mr. Ampt agreed to do. And the case was thus closed up. The amount to be paid to the State ($250.00) under the settlement, was forwarded to me, and has been paid into the treasury of the State.

Mr. Ampt having assumed the payment of the fees of Messrs. Taft and Lloyd, and they under the compromise having agreed to look to him for the same, it became a matter of indifference to the State how much Messrs. Taft and Lloyd would charge for their professional services.

I am wholly unadvised how much their charges were, or, if indeed, Mr. Ampt has, as yet paid them anything.

Under what circumstances my predecessor retained Messrs. Taft and Lloyd in the case, I have no personal knowledge; but I presume (and of this I have no doubt), that they were retained in the case by my predecessor by virtue of a statute which authorizes the attorney general, by and with the consent of the governor and auditor of state, to employ local counsel in civil action to which the

State is a party, when, in his opinion, the interests of the State requires the same to be done (73 O. L., 190).

It is but proper here to say, that Messrs. Taft and Lloyd gave the case careful and diligent attention.

I have no knowledge as to whether the prosecuting attorney of Hamilton County "refused to bring or attend to said suit." I do know, however, that had said prosecuting attorney been requested to have rendered professional services in said action, that there was no law which would have made it a part of his official duty to have so done.

The foregoing covers, I believe, the whole scope of the inquiries embraced in the resolution, and all the facts within my knowledge with regard to said action.

Respectfully submitted,

ISAIAH PILLARS,

Attorney General.

LEVY OF TAX BY CITIES OF THE FOURTH GRADE OF THE SECOND CLASS.

State of Ohio.
Attorney General's Office,
Columbus, January 25, 1879.

M. D. Baldwin, Esq., City Solicitor of Fremont, Ohio:

DEAR SIR:—Yours of the 20th inst. reached me here today. The question you submit is, "Whether in cities of the fourth grade of the second class, a tax can be levied under section 1, chapter 3, 9th division of the Municipal Code (75 O. L., 406) for the purpose of creating a sinking fund in addition to the nine mills authorized to be levied in such cities by section 9, chapter 1, of said division (75 O. L., 400)?"

I am clearly of the opinion that it cannot be so done.

The language of the first paragraph of said section 9 is

the aggregate of *all* taxes levied or ordered to be levied by any municipal corporation, including the levy for general purposes, above the tax for county and State purposes, and excluding the taxes for schools, etc., "Shall not exceed in any one year." "In cities of the fourth grade of the second class, nine mills." Here there is no provision for a sinking fund tax in addition to the nine mills. But in the second paragraph of said section there *is* a provision for an additional levy for a sinking fund for a certain purpose in cities of the first grade of the first class.

Said second paragraph reads, "In cities of the first grade of the first class, twelve mills, and such further rates as may be necessary to provide for the payment of the interest, and to create a sinking fund," etc., etc.

A sinking fund can only be raised in cities of the fourth grade, second class, under present legislation, by levying it within the nine mills.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, January 28, 1879.

W. T. Exline, Esq., County Auditor, Van Wert, Ohio:

DEAR SIR:—Yours of the 29th inst. came duly to hand. The law does not make me the legal adviser of county auditors, and therefore, my opinion on the questions you submit, would be no authority.

The prosecuting attorney and auditor of state are made by law your advisers.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Witnesses in Criminal Cases, Tried Before the Probate Judge, Pay of—Pay of an Employe at Asylum.

WITNESSES IN CRIMINAL CASES, TRIED BEFORE THE PROBATE JUDGE, PAY OF.

State of Ohio,
Attorney General's Office,
Columbus, January 28, 1879.

John R. Moore, Esq., Prosecuting Attorney, Georgetown, Ohio:

DEAR SIR:—Yours of the 24th inst. I found upon my arrival here last night.

I am now of the opinion that the fees of witnesses in criminal cases tried before probate judges, should be paid out of the county treasury on the certificate of the probate judge. The law is somewhat obscure on the question. But, I am disposed to construe the law as to the payment of witnesses, in such cases as though the case was tried in Common Pleas.

Section 17, 75 O. L., 962, controls as to compensation of a probate judge in criminal cases.

The section is very clear in its meaning, and needs no construction.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PAY OF AN EMPLOYE AT ASYLUM.

[Copy of Letter.]

"DAYTON ASYLUM FOR THE INSANE.

"Dayton, Ohio, January 28, 1879.

"Hon. Isaiah Pillars, Columbus, Ohio:

"DEAR GENERAL:—I telegraphed you to Columbus and to Lima; from both places came the reply that you were at the other end of the line.

Please inform me if an employe under the asylum law is discharged if such employe can claim a full month's pay when discharged before month is over.

"Respectfully yours,
"D. A. MORSE.

"We have a case the 31st, woman discharged middle of month for striking patient."

To this was answered by the attorney general, by telegraph:

If employes are discharged for fault on their part, they are only entitled to pay up to the time of said discharge.

ISAIAH PILLARS,
Attorney General.

PROBATE JUDGE PAY OF, FOR CERTAIN WORK.

State of Ohio,
Attorney General's Office,
Columbus, February 10, 1879.

Hon. U. U. Utthoff, Probate Judge, Ottawa County, Port Clinton, Ohio:

DEAR SIR:—Yours of the 6th inst. came duly to hand. Your question is: Is the probate judge entitled to fair and reasonable fees for appointing an examiner of the county treasury, and recording the examiner's report, and furnishing a duplicate of said report for publication under section 12, S. & Cr., 1609, as amended in 1874, Vol. 71, pages 137-8; and if so, should not the commissioners allow the same to be paid out of the county treasury?

In answer I have to say, that most unquestionably the county commissioners should make you such allowance. While there is no statute directing them so to do, yet the services performed by a probate judge under said statute

Ohio Penitentiary Board Correspondence; Requesting Warden to Call at Attorney General's Office for Consultation.

providing for such examination of the treasury, is in the interests of the county, and to secure the greater of the public funds; and his reasonable pay for such services should be allowed by the county commissioners to be paid out of the county funds, and their action would be entirely legal.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

OHIO PENITENTIARY BOARD CORRESPONDENCE; REQUESTING WARDEN TO CALL AT ATTORNEY GENERAL'S OFFICE FOR CONSULTATION.

State of Ohio,
Attorney General's Office,
Columbus, February 11, 1879.

To the Board of Directors of the Ohio Penitentiary:

Your communication of the 7th inst. to hand.

I confess I am unable to understand just what is wanted. In matters of this kind it is far better for the warden to call at my office and consult fully. I find this is much more satisfactory than long correspondence, which is liable to be misunderstood.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Probate Court Procedure in an Attempt to Construe the Statute (75 *O. L.*, 961).

PROBATE COURT PROCEDURE IN AN ATTEMPT TO CONSTRUE THE STATUTE (75 O. L., 961).

State of Ohio,
Attorney General's Office,
Columbus, February 13, 1879.

Harvey J. Eckley, Esq., Prosecuting Attorney, Carrollton, Ohio:

DEAR SIR:—Yours of the 30th ult. did not come into my hands until today.

I have carefully examined section 14, chapter 8, of Procedure in Probate Court (75 O. L., 961). It certainly contains some strange and ridiculous provisions which have been engraved into the statute by our *wise* codifying commission.

The provision that a defendant can be held to answer in one *Court*, and then upon the arbitrary choice of a prosecuting attorney, that same defendant can be compelled to be tried upon the same charge in *another* tribunal, has no sense in it; and I question if it would stand the test of the adjudication of the courts of the State.

However, until repealed or set aside, I suppose we are bound to regard it as valid, however ridiculous it may be.

Then, under said section, if a party is held by an examining court to answer to the charge (a misdemeanor) in the Court of Common Pleas and a transcript is filed with the clerk of said court, and the prosecuting attorney afterwards concludes he would like to try the case in the probate court, the question is, how shall the case and the transcript be got into the Probate Court.

Certainly this anomalous and senseless statute makes no provision for it.

I would suggest, however, two ways, that the transfer of the case can be accomplished: First, the clerk of the Common Pleas would be entirely justified, in fact, I would

regard it no more than his duty in such case of a desire to transfer, to file the transcript in the Probate Court, upon the written request of the prosecuting attorney. Or, should he refuse to do this; second, a *new* transcript can be obtained, and filed in the Probate Court; and upon this an information can be filed.

This is the best that can be made out of this foolish legislation.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

IN THE MATTER OF THE EXTRADITION OF DAVID LEVINE.

State of Ohio,
Attorney General's Office,
Columbus, February 21, 1879.

To His Excellency, R. M. Bishop, Governor of Ohio:

The requisition of the governor of New York upon the governor of Ohio, filed in the executive office January 8, 1879, for the arrest and rendition of one David Levine, an alleged fugitive from justice, was, under the extradition rules in relation thereto, referred to me for examination. Finding the requisition accompanied with a duly authenticated copy of an indictment found by "the jurors of the people of the State of New York in and for the city, and county of New York" against the said David Levine, charging him with the crime of obtaining goods by means of false pretenses; and also, accompanied with a verified statement "that before being arrested, the said David Levine fled from the State of New York, and is now a fugitive from justice at Cincinnati in the State of Ohio," I advised the issuing of a warrant for the arrest and extradition of

said David Levine, as demanded by said requisition; and the said warrant was accordingly issued, and the sad Levine arrested thereunder.

At once, and during the pendency of the proceedings under the act of the General Assembly of Ohio, entitled "An act to regulate the practice of the delivery of fugitives from justice, when demanded by another State or Territory" passed March 23, 1875 (72 O. L., 79), an application was made to the governor to revoke said warrant upon the ground that the extradition of said Levine was sought for the ulterior purpose of enforcing the collection of a debt. This application was referred to me to hear and advise upon.

An *ex parte* showing was made in support of the application. It is also proper to state, that at the time of the hearing of the application to revoke, it was supposed that counsel for the prosecution had notice, which seems to have been a mistake.

The result of that hearing is stated in the following opinion; and which was followed by a revocation of the warrant:

State of Ohio,
Attorney General's Office,
Columbus, February 13, 1879.

To His Excellency, R. M. Bishop, Governor of Ohio:

The application for the revocation of the warrant issued upon the requisition of the governor of New York, for the arrest and extradition of David Levine, upon the charge of obtaining goods under false pretense, has, in connection with the affidavits and other proof in support of said application been carefully considered by me.

I am clearly of the opinion from the showing so made, that said warrant for the arrest and extradition of said David Levine was obtained for the purpose of subserving private interests in attempting to enforce the collection of a debt owing by David Levine to Messrs. H. B. Claflin & Co.,

and that the same is therefore in contravention of the purposes contemplated by the extradition laws of the United States, and clearly within the purview of the joint resolution of the General Assembly of Ohio of the date of March 25, 1870 (67 O. L., 771).

I therefore recommend that said warrant so issued as aforesaid be revoked.

ISAIAH PILLARS,
Attorney General.

I have made the foregoing statement that an orderly history of the case may be presented.

Soon after the revocation of the warrant, an application was made for the issuing of another or second warrant upon said requisition, for the extradition of said Levine. Of this application notice was given to counsel for Levine and the hearing fixed for the 14th inst. Upon invitation I was present and sat with your excellency in the hearing of the application.

A very full showing was made on both sides as to the purposes for which the extradition of said David Levine was sought, and able counsel heard in argument.

I am now asked to advise your excellency in the premises. It is insisted by counsel for Levine.

First—That a *second* warrant cannot issue upon the same requisition.

I am clearly of the opinion that this objection is not tenable. As well might it be said, that the second capias or warrant for the apprehension of a party charged on affidavit or indictment, cannot be issued.

Second—It is urged that the indictment accompanying the requisition is defective in charging the offense.

This objection, in my judgment, is one that cannot be here urged. With defects in the indictment, or whether, the offense is sufficiently charged, executive has nothing to do. He is as much without the power to pass upon the sufficiency of the indictment as he is to inquire as to the guilt or innocence of the accused.

As to the offense the sole question is, whether the indictment or affidavit (as the case may be) charges a *crime* under the laws of the demanding State or Territory. In the very able opinion delivered by Judge Okey in the case of *Work vs. Corrington* in the Supreme Court of Ohio (34 O. St., 64) it is said on page 72: "The guilt or innocence of the accused cannot be tried by him (the executive) and, where a crime is actually charged, formal defects as to the manner in which it is stated, ought not to be regarded." And to the same effect are numerous authorities.

This want of power to inquire as to the *truth* of the charge in the case before the executive, disposes of much of the proofs submitted on both sides in the hearing of this application.

Third—It is urged by counsel for the application, that the requisition and accompanying papers, being in form, and containing everything required by the Federal interstate extradition statute, that the executive upon whom the demand is made for the rendition of a fugitive from justice within his State, has no discretion as to the issuing of the warrant for the rendition of the alleged fugitive; that his action in that respect is *purely ministerial.*

To this I cannot assent.

I am aware that there is a large array of cases sustaining the doctrine contended for. The leading case always appealed to is that of the *Commonwealth of Kentucky* vs. *Williams Dennison, governor of the State of Ohio* (24 Howard, 66).

That was a proceeding in the Supreme Court of the United States to compel by the writ of *mandamus* the governor of Ohio to issue his warrant upon the requisition of the governor of Kentucky for the rendition of one Lago, a fugitive from justice, charged with the crime of assisting a slave to escape. The case was one that attracted great attention at the time. Among the propositions of law the court announced were these:

> "It was the duty of the executive authority of Ohio, upon the demand made by the governor of Kentucky and the production of the indictment duly certified, to cause Lago to be delivered up to the agent of the governor of Kentucky, who was appointed to demand and receive him.
>
> "The duty of the governor of Ohio was merely ministerial and he had no right to exercise any discretionary power," etc., etc.

Had the case been before that high tribunal so that it had taken jurisdiction, and thus spoken with authority of law, its decision would have been conclusive of the question, until reversed or modified by its subsequent adjudication, and would have been the supreme law of the land. But, the court was without jurisdiction, or any power whatever in the case. The learned Chief Justice Taney, at the close of his opinion, says: "But if the governor refuses to discharge his duty, there is no power delegated to the general governments, either through the judicial department or any other department, to use any coercive means to compel him. And upon this ground the mandamus must be overruled."

The same principle had been recognized twenty years before, in the case of *Briggs* vs. *Pennsylvania* (16 *Peters Reports,* 541).

Thus the entire opinion *Kentucky* vs. *Dennison* is but an *obiter dictum.*

And of the same character is much of the opinion of Judge Yaple (whose learning and ability is fully recognized) of the Superior Court of Cincinnati, in the case of *Compton et al.* vs. *Wilder.* (7 American Law Record, 212.)

In support of the doctrine of executive discretion, we have the practice in many of the States; many adjudications of the courts; as well as being in accordance with sound principle, and our State and Federal systems of government.

In the case of *Taylor* vs. *Taintor* (16 Wallace, 366) the Supreme Court of the United States clearly recognizes the right of executive discretion. And so also in the case

of Troutman in the Supreme Court of New Jersey (4 Bab., 634).

In both these cases the parties whose extradition were demanded, were at the time of the demand in the custody under State laws. In such case it was held that the executive upon whom the demand is made can well refuse to issue his warrant of extradition until this party is released from custody under the State law.

In the State of Massachusetts, since 1801 the right of the executive authority to exercise a discretion in the rendition of alleged fugitives from justice has been recognized. See Mass. General Statute, Chapter 177.

The most notable case in Massachusetts, and where this executive discretion was carried the farthest is that of Kimpton which occurred but a few months since.

In that case the governor of South Carolina made his requisition on the governor of Massachusetts for the arrest and extradition of Hiram H. Kimpton, a fugitive from justice, who had been indicted in South Carolina for a crime under her laws. The matter was referred to the attorney general of Massachusetts for his opinion. In his opinion to the governor, the attorney general says: "The uniform practice of yourself and your predecessors, as far as I can ascertain, has been to exercise a discretion in such cases, not only as to the matters named in the statute, but as to any matter which might or ought to control the judgment of the executive. If it is manifest that the rendition is sought to enable the prosecutor to collect a debt * * * * * * the uniform practice has been not to comply with the requisition. So when an indictment has not been sought or found for several years after the alleged commission of the crime, unless satisfactory reasons appear for the delay, and when the offense charges is so trivial," etc. "Other illustrations," says the attorney general, "might be given of the exercise of the executive discretion by the executive in this behalf, but those already given are sufficient for my purpose."

The attorney general advised, and the governor so acted

upon it, not to issue the warrant for the rendition of Kimpton as demanded by the governor of South Carolina for the reason that the crime was committed in 1872 and that he was not indicted until 1877, and the attorney general thought there was no present intention to try him.

It may be that this case carries the doctrine of executive discretion a step too far.

In the State of Ohio the right of the governor to exercise this discretion, or prerogative, as one writer calls it, has been for many years fully recognized and acted upon; and is now the established doctrine of the legislative, executive and judicial departments of the government of Ohio. With the governor it has been his practice for many years to exercise this discretion.

At the suggestion of Hon. R. B. Hayes, then governor of Ohio (now president), the General Assembly of Ohio passed the following joint resolution March 25, 1870 (67 O. L., 171), omitting the preamble, the resolution reads:

> "*Resolved by the General Assembly of the State of Ohio*, That the executive authority of this State, in its action under said clause of the constitution of the United States, should in the opinion of the General Assembly be governed by the following rule, both in making requisitions on other states and on this State, namely: No requisition should be made or allowed for an alleged fugitive, unless the governor be clearly satisfied that the requisition is sought or made in good faith, for the punishment of an offense within the proper meaning of said clause of the constitution, and that it is not sought or made for the purpose of collecting any debt or pecuniary mulct, or for the purpose of removing the alleged fugitive to a foreign jurisdiction, with a view there to serve him with civil process."

While this resolution is nothing more than *advisory* so far as the governor is concerned, yet it is a clear recognition of the executive discretion. In the case of *Work* vs.

Corrington (34 O. St. 65) before referred to, there is the most emphatic assertion of this discretion in the executive.

In this case the court hold that the governor has the power to revoke a warrant, and hence he must have discretion as to issuing it. The court says: "It is a mistake to say that in determining whether a case contemplated in the provisions of the constitution is presented, the governor upon whom the demand is made is vested with no discretion."

It is urged by an able writer that the assertion of this right of executive discretion, is inconsistent with the United States being a nation. (See American Law Review, January, 1879, page 242.) Most certainly it is, and it ought to be. The United States are in no political or governmental sense a nation. This notion that our Federal Union is a nation is one of the follies born of the heresy of consolidation. This very provision of the Constitution (Art. 4, Sec. 2) for the rendition of fugitives from justice, is a recognition of the sovereignty of the States in relation to this subject. Its language is: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." It has been determined by the highest judicial tribunal in the general government, that there is no power to *compel* a compliance with this provision; and that its enforcement rests upon *moral* grounds alone. (*Kentucky vs. Dennison*, 24 Howard, 66; see also, 4 Harring, 577; 16 Wallace, 366; 19 Albany Law, journal 153.)

The enforcement of this solemn compact between the States being thus left solely to the action of each State executive authority, a governor should be exceedingly cautious in refusing a demand for the return of a fugitive from justice, lest the constitutional obligation and comity between the States be disregarded.

In application now before your excellency, Horace B. Claflin, the senior member of the firm of Horace B. Claflin

Probate Judge; His Jurisdiction in Committing of Boy to the Reform School if Found Incorrigible.

& Co., makes oath: "That the criminal proceedings in this case were began and are being carried on *solely* for the purpose of prosecuting the offender and obtaining his punishment for his crime. I have been offered one hundred cents on the dollar for the claim of my firm against the said Levine since these proceedings were begun; but I have utterly refused to listen to any terms of settlement whatever, as it is my intention to prosecute the matter to its final end and to listen to no terms of compromise."

This statement cannot be disregarded, and I recommend to your excellency to re-issue a warrant for the arrest and rendition as demanded by said requisition.

Respectfully submitted,

ISAIAH PILLARS,

Attorney General.

PROBATE JUDGE; HIS JURISDICTION IN COMMITTING OF BOY TO THE REFORM SCHOOL IF FOUND INCORRIGIBLE.

State of Ohio,
Attorney General's Office,
Columbus, February 22, 1879.

Hon. L. W. Brown, Probate Judge Fulton County, Wauseon, Ohio:

DEAR SIR:—In answer to your letter of the 20th inst., I have to say, that in my opinion any probate judge has the jurisdiction to hear cases and commit boys to the Reform School if found incorrigible.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Attorney General Not Legal Adviser—Publishing of Certain Notices.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, February 24, 1879.

Messrs. George H. Ham & Co., Mansfield, Ohio:

GENTS:—Yours of the 21st inst. came duly to hand. I do not feel at liberty to give you an opinion upon the question submitted, for two reasons:

First—The matter is entirely within the direction and control of either the prosecuting attorney or the Court of Common Pleas, to whom the Com. make their report.

Second—Under the law, the attorney general is made the legal adviser of certain designated officers and public boards and my predecessors have held that the attorney general had no legal right to advise outside of them.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PUBLISHING OF CERTAIN NOTICES.

State of Ohio.
Attorney General's Office,
Columbus, February 24, 1879.

H. D. Ham, Esq., Prosecuting Attorney, Paulding County, Ohio:

DEAR SIR:—Your inquiry of the 17th inst., came duly to hand and through press of business I was unable to answer it until now.

The notice required to be published by section 273, O. L., 75, in two newspapers, one of each political party does

not include notice of the location or improvements of roads. Such notices may, however, be published by direction of the auditor, treasurer, probate judge and county commissioners all concurring.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX LEVIED BY COUNCIL, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 5, 1879.

W. S. Forgey, Esq., City Solicitor, Ironton, Ohio:

DEAR SIR:—Your inquiry of the 1st inst. came duly to hand. I have heretofore given the question careful attention, and wrote an opinion to the city solicitor of Fremont.

The nine mills covers the entire tax that can be levied by the council.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX ON DOGS; COMPENSATION OF AUDITOR.

State of Ohio,
Attorney General's Office,
Columbus, March 5, 1879.

C. A. Atkinson, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—On my return here this morning I found your two letters of the 27th and 28th ult., and in answer

have to say: That the only services for which a county auditor can be paid a compensation in addition to his salary, is found in the act of April 24, 187 (74 O. St., 124). See especially Sec. 11 of that act.

The tax on dogs is collected as any other tax, and the treasurer is entitled to the same percentage.

A careful examination of the statutes will enable you to ascertain the exact pay to which officers are entitled.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

F. H. DOLSON.

State of Ohio,
Attorney General's Office,
Columbus, March 6, 1879.

Thos. H. Dolson, Esq., Lancaster, Ohio:

DEAR SIR:—On my return from Washington, D. C., yesterday I found your letter of 28th ult. (with enclosures), in relation to the subjection of certain property to the payment of the judgment for costs in the case of the State of Ohio vs. Sarah F. Creighton.

Of course, you are aware that I am not required by virtue of my office, as attorney general, to render services in the matter. Neither do I so understand you to ask me.

But your county commissioners, when asked to make an allowance for my fees, might so regard it. Would it not be well then to have the commissioners fully understand the matter, and make an order for my employment to assist you in the matter.

The question as to the title to the property is one of great importance, and I would like to give it a thorough examination before giving an opinion.

The question as to giving a bond of indemnity to the sheriff is also one that should be considered with care.

If yourself and commissioners desire me to take hold of the matter with you, I will do so most cheerfully, and will visit you at Lancaster, where we can fully exchange views, and determine what course we will pursue.

Yours truly,

ISAIAH PILLARS,

Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 12, 1879.

E. B. Moore, Esq., Fremont, Ohio:

DEAR SIR:—The attorney general directs, in answer to yours of the 8th inst., to say, that he is not authorized to give you an opinion. The prosecuting attorney of your county is made your legal adviser.

Respectfully yours,

JAMES PILLARS,

Clerk, Attorney General's Office.

ATTORNEY GENERAL NOT LEGAL ADVISER, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 12, 1879.

L. H. Williams, Esq., Ripley, Ohio:

DEAR SIR:—Yours of the 8th inst. came to hand. On the return of the attorney general this morning he directs in answer that his opinion on the subject to you, would be inofficial. He is made the legal adviser of certain officers under the statute.

Respectfully,
JAMES PILLARS,
Clerk, Attorney General's Office.

ATTORNEY GENERAL NOT LEGAL ADVISER, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 12, 1879.

A. L. Allen, Esq., Kenton, Ohio:

DEAR SIR:—Yours of the 8th inst. duly received. On the return of the attorney general this morning, he directs me to say in answer that he is not made the legal adviser of private parties, hence anything he would say, would be inofficial.

Respectfully,
JAMES PILLARS,
Clerk, Attorney General's Office.

Attorney General Not Legal Adviser, Etc.—Tax on Dogs; Compensation of Auditor.

ATTORNEY GENERAL NOT LEGAL ADVISER, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 12, 1879.

James W. Danson, Esq., Sloan's Station, Jefferson County, Ohio:

DEAR SIR:—The attorney general cannot "consistently" give you his opinion as requested. He is made the legal adviser of certain officers, hence his opinion to you on the subject would be entirely outside of his duties, which he so directs me to say.

Respectfully,
JAMES PILLARS,
Clerk, Attorney General's Office.

TAX ON DOGS; COMPENSATION OF AUDITOR.

State of Ohio,
Attorney General's Office,
Columbus, March 12, 1879.

C. F. Bronson, Esq., Prosecuting Attorney Defiance County, Ohio:

DEAR SIR:—In answer to yours of the 10th inst. I have to say that there is no statutory provision for extra pay to county auditors in addition to their general compensation for services performed under the law taxing dogs. It must be regarded, therefore, as covered by the general compensation to auditors.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, March 18, 1879.

B. F. Knight, Esq., Pomeroy, Ohio:

DEAR SIR:—On my return here today I found yours of the 13th inst.

I am compelled to say to you that you must consult the prosecuting attorney in the premises. He is the legal adviser of the commissioners. I am not authorized to give advice except to the officers whom the statute makes me the legal adviser of.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

McCURDY, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 19, 1879.

Hon. A. C. Voris, Akron, Ohio:

DEAR SIR:—Fearing that you might not have received my letter of the 7th inst., and disliking to commence suit against the bondsmen of Mr. McCurdy, without giving them an opportunity to adjust without suit, I herewith enclose you a copy of my letter of the 7th inst.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Prosecuting Attorney as to Fees in Criminal Cases—Prosecuting Attorney Wood County, Salary of.

PROSECUTING ATTORNEY AS TO FEES IN CRIMINAL CASES.

State of Ohio,
Attorney General's Office,
Columbus, March 19, 1879.

T. L. Magruder, Esq., Prosecuting Attorney Greene County, Xenia, Ohio:

DEAR SIR:—In answer to your inquiry of yesterday, I have to say that a prosecuting attorney is *not* entitled to 10 per cent. on amounts paid by the State as costs in criminal cases. It is in no sense a collection.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY WOOD COUNTY, SALARY OF.

State of Ohio,
Attorney General's Office,
Columbus, March 15, 1879.

Frank A. Baldwin, Esq., Prosecuting Attorney Wood County, Bowling Green, Ohio:

DEAR SIR:—Your inquiry of the 11th inst. came duly to hand.

You state that Wood County by the census of 1870 contained a population of 24,596. Your *salary* therefore as prosecuting attorney under the statute of March 17, 1873 (70 O. L., 67), would be $492.00.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Mayor; Election of for Unexpired Term—J. P. Neglect to Qualify, Etc.

MAYOR; ELECTION OF FOR UNEXPIRED TERM.

State of Ohio,
Attorney General's Office,
Columbus, March 15, 1879.

John Walters, Esq., Mayor of Dunkirk, Ohio:

DEAR SIR:—Your letter of the 10th inst. was duly received. I have been engaged and could not answer until now.

Under the statute your election as mayor was only for the *unexpired term*, Hullinger having resigned more than thirty (30) days prior to the April election in 1878. See section 11, chapter 5, division 4, Municipal Code.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

J. P. NEGLECT TO QUALIFY, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 17, 1879.

John H. Liler, Esq., Shelby, Ohio:

DEAR SIR:—In answer to yours of the 14th instant, I have to say, that if a man is elected as justice of the peace and neglects to give bond and qualify within the time named in the statute there certainly continues to be a vacancy in the office. He did not by the election become a justice of the peace and cannot now qualify.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Buck Township, Hardin County, as a Voting Place, Etc.—Office of Assessor Where Elected.

BUCK TOWNSHIP, HARDIN COUNTY, AS TO VOTING PLACE, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 17, 1879.

S. E. Young, Esq., Prosecuting Attorney, Hardin County, Kenton, Ohio:

DEAR SIR:—Your inquiry of the 14th instant at hand. There certainly is some question in view of the act of May 14, 1878 (75 O. L., 546), just where the electors of the first and fourth wards of Kenton living in Buck Township should vote for township officers. They certainly cannot vote outside of their township for such officers. Neither can they be deprived of their vote, for township officers.

My opinion, therefore, is that the proper voting place of such elector for township officer is at the regular voting place in Buck Township.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

OFFICE OF ASSESSOR WHERE ELECTED.

State of Ohio,
Attorney General's Office,
Columbus, March 15, 1879.

E. P. Wilmot, Esq., Chagrin Falls, Ohio:

DEAR SIR:—In answer to your inquiry of the 6th instant, I have to say, that under the provisions of Sec. 13, Chapt. 2, Div. 4 (75 O. L., 206), each municipal corporation must elect an assessor, and if divided into wards, each ward must elect an assessor.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DR. FIRESTONE & SPARROW.

State of Ohio,
Attorney General's Office,
Columbus, March 17, 1879.

A. B. Berrick, Prosecuting Attorney Licking County, Newark, Ohio:

DEAR SIR:—Yours of the 14th instant came duly to hand. I know of no law which would authorize the court to make an extra allowance to Drs. Firestone & Sparrow by reason of their having been subpoenaed and examined as *experts* in the criminal case you refer to. In my judgment there is no power to make such allowance. The fact that the witnesses named are, and were at the time of testifying in the employment of the State, I do not think, would affect the question one way or the other.

I have not had the opportunity of examining the case in 25 American Reports you refer me to. But whatever it may be, I do not think it can determine the question you submit.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PUBLIC WORKS IN RELATION, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 18, 1879.

W. J. Jackson, Esq., Chief Engineer Public Works:

DEAR SIR:—The communication you handed me for examination and advice in the premises from W. H. Messiole, Esq., collector of tolls on the Miami and Erie Canal at the port of Cincinnati of the date of the 27th ult., enclosing

a copy of the opinion of Clement Bates, Esq., city solicitor of Cincinnati, in relation to the legal liability of the city and the lessee of water privileges for the payment of rent as provided by their respective leases with the State has been carefully considered by me.

If the city solicitor means to say, that the lessees of all water privileges along the line of the Miami and Erie Canal east of Broadway, in Cincinnati, to the Ohio River, existing by virtue of contracts of lease at the time the city took possession of that part of the canal in 1863, by the virtue of the act of the General Assembly of that year, for street and sewerage purposes, are under no legal obligations to pay rent to the State under said lease in view of said legislation, then I must respectfully, but decidedly dissent from such opinion. A careful examination of the case of *Hubbard vs. City of Toledo,* 21st O. St., 379, and *Elevator Co. vs. Cincinnati,* 30 O. St., 629, in my judgment support no such proposition. Neither does the published syllabus in *Fox vs. Cincinnati* decided by the commission in December last. See also *Malone vs. Toledo,* 28 O. St., 643. While it is placed beyond all question by these cases, that it is entirely competent for the State to abandon any part or all of her canals without incurring any legal liability for damage to the lessees of surplus water, yet it is certainly just as competent for the General Assembly to provide for the preservation of existing water privileges and the rights of lessees therein, in the abandonment for the purposes of navigation, of any part of the canals, and this is just what the General Assembly did by the act of March 23, 1863 (60 O. L., 44) granting to the city of Cincinnati, with the reservation and stipulations therein provided that part of the Miami and Erie Canal which extends from the east side of Broadway to the Ohio River for street and sewerage purposes. Section two of that act expressly provided "That said grant shall not extend to the revenues derived from the water privileges in said canal which are hereby expressly, and the said grant shall be made upon the further condition that the said city

in the use as aforesaid of all or any portion of said canal *shall not obstruct the flow of water through said canal nor destroy nor impure the present supply of said water for milling purposes."* And the entire validity of this has been recognized and concurred in by city lessees of these water privileges for the last sixteen years without intimation from any source until now, that the State had not the right to thus protect the right of her lessees. Notwithstanding the length of the syllabus and opinion in the case of *Elevator Co. vs. Cincinnati* (30 O. St., 629) all that was actually as a matter of law, decided in that case by the commission was, "That it was not the intention of the legislature (by this reservation in section two) to protect and save, as the subject of *future grant*, the water power to which there was not then an outstanding right or claim" (30 O. St., 643), or, in other words, that it was not the intention that the reservation aforesaid should, and that it does not extend to new water privileges, or any not in existence at the time of the legislature of 1863.

I am clearly of the opinion that the lessees of the water privileges in question, cannot escape the payment of rent as provided for by their respective leases, and in this it seems to me the city solicitor of Cincinnati must concur upon a re-examination of the question.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TRUSTEES OF CEMETERY ASSOCIATION, ETC.

State of Ohio,
Attorney General's Office,
Columbus, March 20, 1879.

Hon. Wm. Johnson, Esq., Member of the House of Representatives, Columbus, Ohio:

DEAR SIR:—While it is not strictly within the line of

my official duty, yet I cannot well refuse to give an opinion upon the question submitted by our mutual friend, Hon. G. B. Smith.

1st. In my opinion the trustees of the Cemetery Association had and have no power to loan the funds of the association without being so authorized by a vote of the members of the association.

2d. Unless directed by the association, the trustees had no power to settle with the treasurer by taking his note for $600. I mean that they had no power to thus settle with him, and release his bondsmen. I am of the opinion that his bondsmen are still holden.

Should the bond or note have to be sued on, the action would have to be commenced in the name of the association.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

INSURANCE LAW CONSTRUCTION OF SECTION 25.

State of Ohio,
Attorney General's Office,
Columbus, March 20, 1879.

Hon. Joseph F. Wright, Superintendent of Insurance, Columbus, Ohio:

DEAR SIR:—The letter of the 7th instant to you from Messrs. J. A. Beemer and Ira W. Gregory, manager of a business for the insurance of plate glass against breakage, together with a very full statement of the manner of conducting said business, form of policy used, and a carefully prepared argument as to the legal right to pursue said business in the State of Ohio, without being answerable to the insurance laws of Ohio, and the regulations of the insurance

department of Ohio, have all at your request, been carefully examined and considered by me.

The statement of the manner of doing said business is as follows:

> "Statement of facts as to manner of doing business by individual underwriters who make contracts for insurance of plate glass at the 'Lloyds' in the city and State of New York.
>
> "First—In August, 1875, twelve individual citizens of the United States residing in the State of New York determined to individually make contracts for insurance of plate and other glass against breakage from causes other than fire.
>
> "Second—For convenience they determined to use only one contract by which each individual was held for his proportionate share of the insurance and no more, and for convenience they gave powers of attorney to two persons, I. W. Gregory and J. G. Beemer, to make such contracts for them and for convenience they did all their business at one office which they called the 'Lloyds.'
>
> "Third—These individuals then instead of making twelve contracts made one which each is bound for one twelfth of the loss, instead of having twelve offices they have one, instead of signing each contract personally they give a power of attorney to two persons to sign for them.
>
> "Fourth—These individuals act solely in their individual capacities. They are not organized in a corporation or company or partnership; they remain at all times individuals.
>
> "Each one of the individuals is bound to the whole extent of his property for the liabilities which he incurs on his contracts issued as aforesaid, and is not bound for one cent of the liabilities incurred by any of the others.
>
> "They each receive a proportionate share of the money received from parties insured on each contract to which their respective names are affixed.
>
> "Fifth—Because that form is familiar to everybody, the contracts are made in the form of poli-

> cies (a copy is annexed); and they are made at the 'Lloyds,' the name the insurers have given to their office because that name has been associated in London with individual underwriting for many years.
>
> "Sixth—The method of doing business is as follows: Two of the individual underwriters hold powers of attorney from the others to make contracts of insurance; the attorneys have charge of the office the 'Lloyd'; the attorneys make contracts with parties to insure in the name of all the individual underwriters stating therein how each individaul is bound, the premiums are recived by the attorneys at the 'Lloyds'; in case of loss notice is sent to the attorney through whom the loss is paid; in case it should be necessary to sue the individual underwriters they stipulate that they can be sued in one action and the attorneys are authorized to accept service for all of them (that is, for the convenience of the insured.)
>
> "Seventh—As above stated the said individual underwriters have issued contracts from said August 18th, till now and so issue them now.
>
> "Eighth—We have made no reference to the securities which such contracts offer to the character or financial standing of the individual underwriting or to the record which the individuals who issue contracts at the 'Lloyds' have made wherever known for honesty and security for the reasons that those matters are not in issue."

The twenty-fifth section of the act of March 12, 1872 "To provide for establishing an insurance department in the State of Ohio," provides that,

> "The provision of this act shall apply to individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance."

Now are the parties in question, doing business under the name of or "at the Lloyds" engaged in the business of insurance? About this there seems to me there can be no

question. Mr. May in his work on insurance (and which is a standard authority) in section one defines insurance thus: "Insurance is a contract whereby one, for a consideration, undertakes to compensate another if he shall suffer loss."

I find the business carried on under the name of, or at the "Lloyds" for the insurance of plate glass against breakage, to be "the business of insurance." In my judgment, it matters not what the extent of the individual liability (or how limited) of each of the gentlemen engaged in said business, is in case of loss, the fact remains that they are doing an insurance business; and in order that they legally carry on this business in Ohio they must bring themselves under the legislation of Ohio.

The last sentence of said section twenty-five reads:

> "It shall be unlawful for any company, association or corporation, whether organized in this State or elsewhere, either directly or indirectly, to engage in the business, *or to enter into any contract substantially amounting to insurance,* or to in any manner aid therein, in this State, *without first having complied with all the provisions of this act.*"

It is insisted, that the persons engaged in the business in question are neither a corporation, association nor company, and hence, that the act does not apply to them.

That they are not a corporation is admitted. Neither can there be a corporation formed under the laws of Ohio, for the purpose of insuring plate glass against breakage. But the persons engaged *together* in carrying on this insurance business, form a *"company,"* irrespective of any question of partnership between them.

I am clearly of the opinion that it is unlawful for these individuals thus carrying on together the business of insuring plate glass to pursue said business in the State of Ohio, "without having first complied with the act" herein referred to.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Recorder, Power of, in Withholding the Records in Certain Cases—Assessor, Election of.

RECORDER, POWER OF, IN WITHHOLDING THE RECORDS IN CERTAIN CASES.

State of Ohio,
Attorney General's Office,
Columbus, March 20, 1879.

Hon. James Williams, Auditor of State:

SIR:—The statement of facts contained in your communication of today has been carefully considered.

In my judgment the recorder of Meigs County has no legal right to withhold the use of the records of deeds and plats, for the purpose of making the maps and plats for the re-appraisement of 1880, as has been contracted to be done by the commissioners of said county.

Said use, however, shall not interfere with the recorder in the discharge of his official duties, nor prevent any one from having access thereto (the records) for all proper purposes.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ASSESSOR, ELECTION OF.

State of Ohio,
Attorney General's Office,
Columbus, March 26, 1879.

F. M. Rummell, Esq., Mayor of Napoleon, Ohio:

DEAR SIR:—Your favor of the 22d instant requesting my construction of Sec. 13, page 206, 75 O. L., providing for the elections of assessors in municipal corporations, came to hand.

Execution.

My construction of the section is this: That in all municipal corporations where there is but one voting place, there shall be one assessor elected.

And in municipal corporations with more than one voting place for municipal elections (as where the city or village shall be divided into wards and precincts) an assessor shall be elected at each voting place.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

EXECUTION.

State of Ohio,
Attorney General's Office,
Columbus, March 26, 1879.

D. Allen, Esq., Prosecuting Attorney Warren County, Lebanon, Ohio:

DEAR SIR:—Yours of the 24th instant came duly to hand. While there may be some doubt in relation to the question, yet I am inclined to the opinion that a fair construction of Sec. 77, 74 O. L., 354, gives the right to issue execution for the body of a defendant (where he has no property) for the satisfaction of a judgment for *costs*, in a case where the court sentences the party to imprisonment and payment of costs.

Of course, the execution should not issue until after the expiration of the term of imprisonment.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SCHOOL LANDS.

State of Ohio,
Attorney General's Office,
Columbus, March 26, 1879.

Hon. J. J. Burns, Commissioner Common Schools:

DEAR SIR:—In answer to your inquiry I have to say, that the right of appeal to the county commissioners, where there is a *failure* of boards of education to mutually agree to the transfer of a part of the territory of a school district to an adjoining one under Section 40, 70 O. L., 205, does not exist. It is only where a *transfer* is made, that such right of appeal exists.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

JUDGES OF ELECTIONS IN INCORPORATED VILLAGES.

State of Ohio,
Attorney General's Office,
Columbus, March 31, 1879.

F. A. Witt, Esq., City Solicitor, Columbiana, Ohio:

SIR:—On my arrival here Saturday evening, I found yours of the 27th instant.

In pursuance of the provision of Sec. 8, Chapt. 3, Div. 4, of the new municipal code (75 O.L., 208) in all corporations which are not divided into wards, and have but one voting place for municipal officers, the mayor and council, or *any of them*, must act as judges of elections. This power and duty the council cannot delegate to any one else.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SUPERVISORS OF ROADS; PAY OF.

State of Ohio,
Attorney General's Office,
Columbus, April 1, 1879.

A. H. Wilson, Esq., Prosecuting Attorney, Logan, Ohio:

DEAR SIR:—Your inquiry of the 29th ult. came duly to hand, and has been carefully considered.

The statute providing for compensation of road supervisors (75 O. L., 83-4) is certainly not as clear as it should be; but in my judgment, the fair construction of the statute is this:

1st. The maximum amounts named in said section to be paid supervisors, do not include pay for working out road tax.

2d. A supervisor is entitled to a sum equal to 8 per cent. of the amount of road tax, *when the same is worked out upon any road in his district,* in addition to the amount first named, provided the whole amount so received does not exceed $1.50 per day for the time actually employed in working out said road tax.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

RECORDERS; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, April 1, 1879.

Ira Graham, Esq., Prosecuting Attorney Meigs County, Pomeroy, Ohio:

SIR:—Yours of the 26th ult. has been received, and the

question therein referred to has been carefully considered by me.

Section 5. As amended April 11, 1865 (S. & S., 367) provides:

> "That recorders shall receive the following fees: For recording a mortgage, deeds, etc., for every 100 words, 12 cents, to be paid to the recorder on the reception of such deed, etc.; for all copies for every 100 words, 12 cents; *for every search where no copy is required*, 15 cents; for assignment of mortgages, 25 cents."

The fees thus fixed by the statute are for service *actually rendered* by the recorder.

The official records in a county recorder's office, like the records in any other public office are public records, and open to the world for examination. Any person interested has the right to search such records for such information as he may suppose they contained in which he is interested; provided always that such search does not materially interfere with the recorder in the discharge of his official duties.

Where the recorder makes this search, he is entitled to 15 cents for every such *search*.

If the recorder does not make the search, but it is done by the party interested or by some one for him, the recorder is not entitled to charge a fee for the search. This in my opinion, is the true construction of the law.

Section eight of the recorder's act (S. & Cr., 1274) provides, among other things, that if any recorder "shall demand and receive any greater fee *for his services* than is allowed by law," he may be indicted therefor, and upon conviction, may be fined in any sum not exceeding $500, and shall be forthwith removed from office, and be ineligible for re-election to the same office for three years next ensuing.

Respectfully yours,

ISAIAH PILLARS,

Attorney General.

Fire Department Appointment of Chief in Villages—Marriage Law; Mayor Cannot Solemnize.

FIRE DEPARTMENT APPOINTMENT OF CHIEF IN VILLAGES.

State of Ohio,
Attorney General's Office,
Columbus, April 1, 1879.

O. J. Osendorf, Esq., Clerk of Delphos, Ohio:

DEAR SIR:—Yours of the 29th ult. came duly to hand, inquiring in whom is vested the power to appoint the chief of the fire department in villages.

In answer I have to say that Sec. 31, Chapter 2, Div. 8, of the new Municipal Code (75 O. L., 353) gives the power to the council of all cities and villages "to establish and maintain a fire department," etc.

Under this section the council have full power to provide by ordinance, how the chief of fire department shall be appointed. I think it is generally the practice to provide that the council shall make the appointment.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

MARRIAGE LAW; MAYOR CANNOT SOLEMNIZE.

State of Ohio,
Attorney General's Office,
Columbus, April 7, 1879.

Hon. S. D. Cowden, Probate Judge, Gallipolis, Ohio:

DEAR SIR:—In answer to your inquiry of the 31st ult. I have to say, that in my opinion, a mayor has not the power to solemnize marriages. It must be done by such minister, or such officer or in such manner as is named and pointed

out in section two of the marriage act, S. & Cr., 855.
Substantially re-enacted by Sec. 2, 75 O. L., 952.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

MARRIAGE LAW; AS TO WHO MAY SOLEMNIZE.

State of Ohio,
Attorney General's Office,
Columbus, April 9, 1879.

Hon. W. H. Mogier, Probate Judge, Van Wert County, Van Wert, Ohio:

DEAR SIR:—Your favor of the 2d instant came duly to hand.

Your inquiry, whether a minister of the Quaker or Friend Church can be authorized or "licensed" to solemnize marriages, has been considered.

Section three of the marriage act (75 O. L., 952) provides that,

> "Any minister of the gospel upon producing to the judge of the Probate Court of any county within this State, in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive from said court, a license, authorizing him to solemnize marriages within this State, so long as he shall continue a regular minister in such society or congregation."

The leading question to be determined is, What is meant by the phrase as used in said statute, *"a regular ordained minister?"* "Ordained" is defined in Webster's dictionary to be "appointed; instituted: invested with ministerial or pastoral functions." Now, if the religious society or church,

known as Quakers or Friends, have persons who are, under the policy and doctrines of said society, especially set apart, designated, affirmed and authorized to perform the religious functions generally understood as pertaining to a minister of the Gospel, then such persons (or ministers) come within the provisions of the statute quoted; and upon proof of the foregoing ministerial designation and appointment, and that the same continues to exist, you as probate judge, would be authorized to license such to solemnize marriages.

In my judgment, it does not matter in what particular *form* this ordination, appointment, designation or setting apart for the ministerial office, takes place, so the fact actually exists.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

JONES.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

J. P. Jones, Esq., Auditor Lucas County, Toledo, Ohio:

DEAR SIR:—On my return here this morning, I found yours of the 9th instant, and in reply would say that if you will refer me to the statute upon which you desire my opinion, I will endeavor to construe it for you. I am so exceedingly busy that I have not the time to make general search of the statutes.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

School Lands; Annexation of—Road; Vacation of.

SCHOOL LANDS; ANNEXATION OF.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

J. H. Robinson, Esq., Auditor Crawford County, Bucyrus, Ohio:

DEAR SIR:—In answer to yours of the 9th instant I have to say, that the annexation of territory to an incorporated village does not necessarily bring in the territory so annexed, for school purposes.

To accomplish this the action of the school boards interested is required.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ROAD; VACATION OF.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

Hon. James Crosson, Member House of Representatives:

DEAR SIR:—The letter of J. V. Christy, to yourself of the 10th instant I have carefully read, and from the statements therein, as well as those made by you, I am of the opinion that the safer, if not the only legal way would be to re-establish under the statute, that part of the road vacated by non-use.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Attorney General not Legal Adviser—Assessors, Election of in Certain Cases.

ATTORNEY GENERAL NOT LEGAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

Charles Cawood, Esq., Cleveland, Ohio:

DEAR SIR:—On my return here I found yours of the 8th instant. As I am, by statute, made the official adviser of certain designated officers only, I am wholly unauthorized to give you an opinion on the question you submit.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ASSESSORS, ELECTION OF IN CERTAIN CASES.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

C. A. Atkinson, Esq., Prosecuting Attorney, Jackson, Ohio:

DEAR SIR:—Your favor of yesterday came duly to hand. The election of assessors was right, that is, the law now provides for the election of one assessor for each ward, and one for the township outside the corporation.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Local Laws; 1878, p. 88—Judges of Election; Pay.

LOCAL LAWS; 1878, p. 88.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

D. A. Hamlin, Esq., Village Marshal, Wauseon, Ohio:

DEAR SIR:—In answer to yours of the 12th instant I have to say, that the act on page 88, Laws of 1878, was, in fact, but a local act, and applied solely to a village in Hamilton County, with a population, at the last federal census, of 1,417,

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

JUDGES OF ELECTION; PAY.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

John McSweeney, Jr., Esq., City Solicitor, Wooster, Ohio:

DEAR SIR:—On my return here I found yours of the 11th instant. I have no doubt, from an examination of the statute you refer to, but that your position is correct, with reference to the pay of the judges.

You will notice, however, that if a justice of the peace was elected at said election, the judges are entitled to two dollars per day each.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, April 15, 1879.

S. L. P. Stone, Esq., Urbana, Ohio:

DEAR SIR:—On my arrival here today I found your letter of the 12th instant.

The question you submit is one which should be submitted to the city solicitor of Urbana, for an opinion. Unless he should request it, I would hardly feel at liberty to give an opinion upon the questions suggested.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNCIL; POWER OF.

State of Ohio,
Attorney General's Office,
Columbus, April 17, 1879.

T. C. Brown, Esq., Marion, Ohio:

DEAR SIR:—In answer to yours of yesterday, I have to say, that in my answer to the inquiry of the mayor, I did not say that a city or village council had not the power to employ an attorney to render legal services. This is often done when there is a solicitor, in the matters where he cannot act or it is deemed advisable that he have assistance. So I presume a man might be employed to superintend certain work upon streets. Experience shows, however, that the better way is for council to create by ordinance, the office of solicitor and street commissioner. They can be filled by election, by council, or by the people, and depends in that respect, entirely upon the provisions of the ordinance creating the office.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

NOTARIES PUBLIC; FEMALES.

State of Ohio,
Attorney General's Office,
Columbus, April 17, 1879.

Mrs. M. W. Banes, Notary Public, Springfield, Ohio:

MADAM:—Your letter of yesterday came duly to hand, in which you state that you as a notary public, had administered the oath of office to some of the incoming city officials of Springfield, and that, inasmuch as many citizens were questioning your legal right as a woman to hold the office of notary public, and exercise its powers, you ask my opinion in the premises.

The question whether the recent act of the General Assembly authorizing women to be commissioned as notaries public is constitutional is one which the courts can alone finally determine.

For my part, I am of the opinion that the act is constitutional. In my judgment, the office of notary public is not such a public office as is contemplated by section four, article fifteen of the constitution.

I am strengthened in this opinion by the holding and reasoning of the Supreme Court of Ohio, in the case of *Warwick vs. The State*, 25 O. St. R. See also 7 O. St., 556.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

DUE BILLS FOR WORK AND LABOR.

State of Ohio,
Attorney General's Office,
Columbus, April 22, 1879.

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

DEAR SIR:—Yours of yesterday came duly to hand. With the policy in the enactment of the statute to which you call my attention (75 O. L., 141) of course, we have nothing to do. The sole question is, Does the issuing or making of the due bills you enclose me, constitute a criminal offense, or offenses, under the first section of the act of May 10, 1878 (75 O. L., 141).

If the due bills in question were *made in payment of or accounting for the wages,* or any balance due upon *the wages of the respective payees, for work and labor,* and so made by the respective makers of said due bills, *knowing that the same were for wages for work and labor,* then the making of each one of said due bills constituted a violation of the first section of said act. All the other necessary elements existing, it matters not that the labor was not performed for the party making the due bills. The makers however must have knowledge that the paper is made for wages, for work and labor.

I think my meaning cannot be misunderstood.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

REAPPRAISEMENT OF REAL ESTATE IN 1880.

State of Ohio,
Attorney General's Office,
Columbus, April 28, 1879.

Hon. James Williams, Auditor of State:

DEAR SIR:—Your inquiry of the 19th instant, enclosing the communication of the auditor of Knox County of the 11th instant, in relation to the duties of county auditors, the furnishing of maps, etc., under the 4th section, Chapter 3, of the revised tax laws (75 O. L., 460) as amended January 31, 1879, for the reappraisement of real estate in 1880, has been carefully considered.

It is the duty of each county auditor, under said amended act of January 31, 1879, to make out from the books in his office, and deliver to the assessor of each district within his county:

I. An abstract containing, 1st, a description of each tract, or lot of real property situate within such district; 2d, the name of the owner (if known) of each of such tracts or lots, and 3d, the number of acres, or quantity of land contained in each.

II. The county auditor shall also deliver to each assessor a *map* of each *township* and *town* within such district.

III. The county auditor shall also deliver to each assessor "such *plat-books* as may be necessary to enable the district assessor to make a correct plate of *each section, survey* and *tract* in the district."

The most troublesome inquiry is, what is the kind and character of the *maps* required to be furnished the district assessors?

The law provides, that they are to be maps of the township and towns. I suggest, that this means an outline map of each township and town, with a delineation of sections and parts of sections and lots, as to ownership, so far as the same can be made approximately correct.

Reappraisement of Real Estate in 1880.

These maps are intended simply to assist the several assessors in determining tracts and parcels of real estate by them to be appraised. The fifth section of the law then provides (75 O. L., 461) that each district assessor shall make out from the abstract and maps thus furnished him, "and from such other sources of information as may be within his reach, a correct and pertinent description of each tract and lot of real property" appraised by him, and of these he shall make plate upon the plat-books so as aforesaid furnished to the said assessors by the respective county auditors.

But, how shall these maps of townships and towns be supplied so as to be furnished the district assessors?

It is well known that in many of the counties there already exists county, township and town maps, which will answer every purpose of the law. This precise state of facts was intended to be met by the amendment of January 31, 1879. The last clause of that amendment provides: "But in counties or districts having no maps, it shall be the duty of the commissioners to furnish the same under the provisions of this act." And that is by advertising for four consecutive weeks for "sealed proposals" to construct the necessary maps. (See the provisions of the sections.) In thus letting the contract for the drafting of the maps, the provisions of the law must be strictly followed. It is hardly necessary to say, that a county auditor, independent of the action of the commissioners has no power to contract to supply these maps.

The entire additional compensation of county auditors for services performed by them in the reappraisement of real estate in the year 1880, is found in section nine, page one hundred and twenty-seven, laws of 1877, and that additional compensation shall not exceed twenty-five per cent. of the annual pay of the respective county auditors for that year (1880).

The foregoing, I believe, covers the scope of your inquiries.

Respectfully yours,

ISAIAH PILLARS,
Attorney General.

Publishing Notice—Legality of a Joint Resolution.

PUBLISHING NOTICE.

State of Ohio,
Attorney General's Office,
Columbus, May 1, 1879.

John Hamilton, Esq., Prosecuting Attorney Lawrence County, Ironton, Ohio:

DEAR SIR:—On my return here this morning, I found yours of the 26th ult.

I herewith enclose you a copy of opinion to Prosecuting attorney of Montgomery County, which will answer your inquiry. It is *discretionary* with the officers named.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

LEGALITY OF A JOINT RESOLUTION.

State of Ohio,
Attorney General's Office,
Columbus, May 10, 1879.

Hon. James W. Rymer, House of Representatives:

In answer to your inquiry, I have to say, that I have no doubt of the entire legality of the joint resolution of the General Assembly "For the relief of William F. Woolerly and Andrew Driess," and further, that it is the legal duty of the board of trustees of the Ohio penitentiary to comply with said joint resolution.

The joint resolution is hereto attached.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AN ORDINANCE TO ESTABLISH CITY POLICE IN GALION, OHIO.

State of Ohio,
Attorney-General's Office,
Columbus, May 15, 1879.

John D. DeGolley, Esq., Solicitor, City of Galion, Ohio:

SIR:—Your inquiry of the 15th instant in relation to the validity of certain ordinances passed by the council of the incorporated village of Galion, has been very carefully considered.

Your statement in substance is, that shortly prior to the election of officers, and the complete organization of the municipal government of Galion into a city of the second class (all the previous steps having been taken, the council passed certain ordinances in due form, and properly attested and published. One of the ordinances so passed, you enclose me. It is entitled, "An ordinance to establish a city police," etc. The enacting clause of this ordinance is: "Be it ordained by the council of the city of Galion, Ohio." And so you say, it is in the ordinance referred to.

The sole question presented is, Does the use of the words or style of the municipality "city of Galion," as used in the enacting clause, render the ordinance invalid?

I am of the opinion that it does not.

The statute does not prescribe any form for the enacting clause in the passage of ordinances, and, in my judgment, the use of the words "Be it ordained by the council," or their equivalents, without the use of the words "incorporated village of ————," or "city of ————," would be sufficient.

The council of Galion, as then constituted, being an office body, and having full power over the subject matter, as it had to organize and maintain police department (75 O. L., 199, par. 29) and the ordinances being passed, attested and

published as provided by law, would be the controlling facts in determining the validity.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AN AFFIDAVIT TO FILL A VACANCY IN THE OFFICE OF CORONER.

State of Ohio,
Attorney General's Office,
Columbus, May 15, 1879.

Geo. B. Smith, Esq., Prosecuting Attorney Ashland County, Ashland, Ohio:

SIR:—In answer to yours of the 9th instant, I have to say, certainly, an affidavit to fill a vacancy in the office of coroner is entitled to a commission from the governor.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CEMETERY TRUSTEES.

State of Ohio,
Attorney General's Office,
Columbus, May 25, 1879.

Geo. E. Campbell, Esq., City Solicitor, Ironton, Ohio:

SIR:—Your inquiry of the 19th instant came duly to hand, and has been carefully considered.

Your inquiry, substantially is, can a board of cemetery trustees elected in pursuance of the provisions of chapter seven, division eight, of the new Municipal Code (75 O. L., 363) appoint one of their number clerk by virtue of section thirteen of that chapter, and is such clerk so chosen from their own number entitled to pay for services rendered.

I am compelled to answer in the negative.

In my opinion such board of cemetery trustees can no more elect one of their numbers clerk of the board than can a council of a municipal corporation elect one of its members clerk of the council.

Section four of the chapter referred to provides: *"The trustees shall serve without compensation."* And such was the provision of section three hundred and sixty-four of the muncipal code of 1869 (66 O. L., 210).

This is mandatory and cannot be defeated by the trustees placing each other in positions in which pay is drawn.

But, Mr. Bixbe, as one of the trustees, having already, through misapprehension of the law, drawn pay for actual services rendered, which if performed by another not a member of the board of trustees, would have been legally paid for, it becomes a matter of equitable consideration whether he should be asked to refund.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CLERK OF COURT; PAY OF IN CERTAIN CASES.

State of Ohio,
Attorney General's Office,
Columbus, June 5, 1879.

S. S. Linton, Esq., Sheriff of Lucas County:

DEAR SIR:—In answer to your inquiry, I have to say, that, unless there is some specific statutory provision directing you to pay to the clerk of the Court of Common Pleas, the amounts you may receive from the State in conviction for felony by virtue of Sec. 24, Chapt. 7, of the criminal code, the same should be paid into the county treasury.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SHEEP LAW, ETC.

State of Ohio,
Attorney General's Office,
Columbus, June 6, 1879.

H. J. Eckley, Esq., Prosecuting Attorney Carroll County, Carrollton, Ohio:

DEAR SIR:—Yours of the 4th instant came duly to hand.

If I correctly understand your inquiry, they are answered by saying, that all claims allowed by the commissioners for sheep killed after the act to which you refer, went into force (which was June 1, 1877) stand upon an equal footing. The statute provides: "If such fund shall be insufficient to pay all such claims allowed in full, they shall be paid *pro rata.*" See Sec. 8, 74 O. L., 178.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CITY TREASURER'S PAY.

State of Ohio,
Attorney General's Office,
Columbus, June 9, 1879.

Hon. James Williams, Auditor of State:

SIR:—Your inquiry of the 5th instant with the letter of the treasurer of Meigs County enclosed, was received and has been carefully considered.

The question submitted is, as to the compensation of a city treasurer, or of a county treasurer who is ex-officio city treasurer, in the disbursement of school funds which may come into his hands.

Section forty-four of the school law of 1873 (70 O. L., 206) provides that "In each city district the treasurer of the city funds shall be ex-officio treasurer of the school funds of the school district." And Sec. 3, Chapt. 2, Div. 4, of the new municipal code (75 O. L., 204) provides, that "in all cities of the third grade of the first class embracing a county seat, there shall be no election of a city treasurer, but the county treasurer shall act as city treasurer." In which case the county treasurer becomes the custodian of the school funds of the city.

The compensation of a treasurer of a city *not a county seat*, is provided for by Sec. 27, Chapt. 5, Div. 4, new municipal code (75 O. L., 217). In this section it provides, "He shall be allowed as compensation for the disbursement of moneys, *other than school funds*, which shall come into his hands," certain percentage named. The last clause of said section reads: "and no other compensation shall be allowed corporation treasurers for services performed under this title."

The compensation of a county treasurer, who, by reason of location becomes the treasurer of a city, and hence has the disbursement of the school funds, is provided for in the last clause of Sec. 3, Chapt. 2, before referred to (75 O.

Prosecuting Attorneys; as to Whom He is Made the Official Adviser.

L., 204) and which reads: "But the county treasurer shall act as the city treasurer at the rate of compensation to be determined by the county commissioners, but not exceeding five hundred dollars a year."

Whatever is allowed under this provision, is the entire compensation a county treasurer can receive for acting as a city treasurer, and a part of whose duty it is to disburse the school funds of the city.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEYS; AS TO WHOM HE IS MADE THE OFFICIAL ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, June 17, 1879.

Charles E. Bronson, Esq., Defiance, Ohio:

DEAR SIR:—Your letter of the 12th instant came duly to hand, and in answer would say, that in my opinion a prosecuting attorney is the official adviser of the county commissioners of his county, and that without any additional compensation. This is the practice generally throughout the State.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Auditor; Duty of as to the Appraisement of Railroad Property.

AUDITOR: DUTY OF AS TO THE APPRAISEMENT OF RAILROAD PROPERTY.

State of Ohio,
Attorney General's Office,
Columbus, June 18, 1879.

Hon. James Williams, Auditor of State:

DEAR SIR:—Your inquiry of yesterday, enclosing the letter of J. P. Jones, Esq., has been carefully considered.

It seems to me the language of the statute answers the inquiry as clearly as language can.

Sec. 39, page 453, laws of 1878, after providing for the time and place for the meeting of the board of county auditors and that they shall proceed to appraise the property of the railroad company, reads: "*And also locomotives and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping car company* or other company; but as to such rolling stock, not belonging to it, but under its control, the railroad company may return the same separate from its own property." Said section further provides that, "Such boards shall have power to *require* from the president, secretary, treasurer, receiver and principal, accounting of such road, a detailed statement, under oath, of all the items" upon which said boards have to pass, and which may enter into their appraisements.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Dog-Tax Law As to Pay of Auditor by Commissioners for Services Rendered—Prosecuting Attorney; As to Percentage on Collection.

DOG-TAX LAW AS TO PAY OF AUDITOR BY COMMISSIONERS FOR SERVICES RENDERED.

State of Ohio,
Attorney General's Office,
Columbus, June 18, 1879.

Henry M. Higgins, Esq., Counsel for Com. Highland County, Hillsboro, Ohio:

DEAR SIR:—Yours of the 16th instant came duly to hand.

I have had the question of the power, on the part of county commissioners, to make an extra allowance to county auditors for services rendered under the dog-tax law, many times submitted to me. I have been compelled to uniformly answer, that there are no such powers.

Section eleven of the act of April 24, 1877 (74 O. L., 128) prohibits an auditor from receiving any additional compensation to that provided for by said act of April 24, 1877.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY; AS TO PERCENTAGE ON COLLECTION.

State of Ohio,
Attorney General's Office,
Columbus, June 19, 1879.

H. Calkins, Esq., Prosecuting Attorney Darke County, Greenville, Ohio:

DEAR SIR:—In answer to yours of the 18th instant I have to say, that a prosecuting attorney is entitled to percentage only on the actual amount collected.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Dog-Tax Law (Same as 275)—City Treasury (Same as 2725.)

DOG-TAX LAW (SAME AS 275).

State of Ohio,
Attorney General's Office,
Columbus, June 21, 1879.

J. R. Kagy, Esq., Auditor Hancock County, Findlay, Ohio:

DEAR SIR:—Yours of the 19th instant is at hand, and in answer would say, that the commissioners have no power to make an allowance for services under dog-tax law.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CITY TREASURY (SAME AS 2725).

State of Ohio,
Attorney General's Office,
Columbus, June 25, 1879.

S. B. Berry, Esq., Auditor Butler County, Hamilton, Ohio:

DEAR SIR:—Yours of the 21st instant came duly to hand. I confess, that, amidst the multiplicity of laws, the amendment of May 5, 1873 (70 O. L., 241) entirely escaped my attention.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

City Treasury (Same as 2725)—Tax Titles are to be Listed and Taxed, Etc.

CITY TREASURY (SAME AS 2725).

State of Ohio,
Attorney General's Office,
Columbus, June 26, 1879.

E. Ackers, Esq., Auditor Fairfield County, Lancaster, Ohio:

DEAR SIR:—The auditor of state handed me yours of the 21st instant. I frankly confess, that, amidst the multiplicity of laws, that I had overlooked the amendment of May 5, 1873 (70 O. L., 241).

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TAX TITLES ARE TO BE LISTED AND TAXED, ETC.

State of Ohio,
Attorney General's Office,
Columbus, June 28, 1879.

P. D. Veach, Esq., Newark, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand, and in answer would say, that tax titles are to be listed and taxed as personal property.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SENATE JOURNAL AS TO THE PRINTING, ETC.

State of Ohio,
Attorney General's Office,
Columbus, June 30, 1879.

Allen O. Myers, Esq., Clerk of the Senate:

DEAR SIR:—In answer to your inquiry of the 27th inst., I have to say:

That section sixteen of the act in relation to the public printing (S. & Cr., 1205) provides, among other things, that "all contractors under the provisions of this act shall *promptly*, and without unnecessary delay, execute all orders to them issued by the General Assembly, or *either branch thereof*, or the executive officers of the State, and the laws and volumes of the public documents shall be delivered to the contractor for the folding, stitching and binding, on the order of the secretary of state, within thirty days after the adjournment of the General Assembly; *and the journals of the two houses shall likewise be delivered within ninety days after the adjournment of the General Assembly.*"

Sec. 2 (S. & S., 621) provides, "If from death, or other cause the successful bidder shall fail to execute his contract, *or shall fail to execute the work embraced therein with reasonable* promptness and in a suitable manner * * * the commissioners of printing, or a majority of them, may enter into a contract with some other person to execute the work."

I presume that these provisions fully explain thereunder.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Coroner's Inquests Costs in, Etc.—As to Precincts in Townships.

CORONER'S INQUESTS COSTS IN, ETC.

State of Ohio,
Attorney General's Office,
Columbus or Lima, July 1, 1879.

W. S. Eberly, Esq., Clerk of Wood Common Pleas, Bowling Green, Ohio:

DEAR SIR:—Yours of the 27th instant came duly to hand at Columbus. But I was so busy I could not answer until I arrived here.

My understanding of the law is, that the clerk has nothing to do with the allowance of the costs made in the holding of a coroner's inquest. The costs proper of the inquest must be passed on directly by the auditor.

Where a physician asks pay for services in the making of a postmortem examination during the inquest, the allowance to him must be made by the Court of Common Pleas.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AS TO PRECINCTS IN TOWNSHIPS.

State of Ohio,
Attorney General's Office,
Columbus or Lima, July 3, 1879.

J. P. Jones, Esq., Auditor Lucas County, Toledo, Ohio:

DEAR SIR:—Your favor of the 30th ult. reached me here today.

The question you submit to me is one that the prosecuting attorney ought to and probably has advised the commissioners upon.

If I was the legal adviser of the board of commissioners I would say that the statute you refer to (73 O. L., 187) must be *strictly* construed; and that they had no power, under said statute to create more than *two* precincts in any township.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

HABEAS CORPUS; RULING TO PROBATE COURT IN.

State of Ohio,
Attorney General's Office,
Lima, July 3, 1879.

F. F. Oldham, Esq., Prosecuting Attorney, Washington County, Marietta, Ohio:

DEAR SIR:—Your inquiry of the 30th ult. reached me here, and I have given the same very careful thought, I am strongly of the impression that the ruling of the Probate Court in the *habeas corpus* was correct. While it is true, that the discharge by the auditor under Sec. 17, 67 O. L., 106, does not discharge the judgment, yet, I think, the courts would hardly tolerate the arrest and imprisonment of the party a second time after such discharge.

Under the practice in the Supreme Court, you will have to file your petition in error in the courts below in order to test the validity of the ruling of the probate judge.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Taxable Institutions—Auditor of State Adviser of.

TAXABLE INSTITUTIONS.

State of Ohio,
Attorney General's Office,
Columbus, July 9, 1879.

Hon. James Williams, Auditor of State:

DEAR SIR:—In answer to your inquiry of the 7th instant enclosing the letter of the auditor of Cuyahoga County, I have to say, that the entire assets of any person, society or institution, which is not an institution of purely public charity, and which assets do not consist of non-taxable bonds, *are taxable.*

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR OF STATE ADVISER OF.

State of Ohio,
Attorney General's Office,
Columbus, July 9, 1879.

J. P. Jones, Esq., Auditor Lucas County, Toledo, Ohio:

DEAR SIR:—The question you submit in yours of the 3d instant is one that can only be answerd officially to you, by the auditor of state, who the law makes your adviser.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

AUDITOR'S FEES (IN CERTAIN CASES).

State of Ohio,
Attorney General's Office,
Columbus, July 10, 1879.

C. A. Atkinson, Esq., Prosecuting Attorney Jackson County, Jackson, Ohio:

DEAR SIR:—Yours of the 8th instant came duly to hand.

If the *law* did not give the auditor the fees in dispute, I apprehend any allowance by the commissioners could not give them validity.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CENTRAL INSANE ASYLUM.

State of Ohio,
Attorney General's Office,
Columbus, July 10, 1879.

Col. E. J. Blount, President Board Directors Columbus Hospital for Insane:

SIR:—Your inquiry of yesterday has been duly considered.

The party to whom the contract was awarded, having declined, as you state, to enter into articles of agreement, the board is at perfect liberty to rescind the resolution or action, by which the present plans and specifications were adopted, without the assent of the State officials who approved them.

The board has full power to adopt any other plan and specifications for the improvement, it may think proper.

Should the estimate be $3,000 or over, the new plans

will again have to be submitted for the approval of the same officials, and advertisement for bids published.

If the estimate is below $3,000, then none of the above requirements are necessary; and the improvement can be made by private contract.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

REFORM SCHOOL; AS TO MEANING SEC. 8, 75 O. L., 61.

State of Ohio,
Attorney General's Office,
Columbus or Lima, July 15, 1879.

Col. G. S. Innis, Superintendent Reform School, Lancaster, Ohio:

SIR:—Your letter of the 11th instant came duly to hand at this place and in answer would say, that the section you refer to (Sec. 8, 75 O. L., 61) means just what it says, and must bestrictly construed. I know of no power in a mayor of a city or village under existing legislation, to commit to the Reform School.

If you have any boys under ten years of age, I think I would let them remain; but would receive no more under that age.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Probate Judge; Fees of—Insane Persons as to the Counties Obligation in Removing Their Insane from Asylum.

PROBATE JUDGE; FEES OF.

State of Ohio,
Attorney General's Office,
Columbus, July 19, 1879.

Hon. W. D. Matthews, Probate Judge, Mt. Gilead, Ohio:

DEAR SIR:—Yours of the 18th instant at hand. I am so pressed with business I cannot give the statutes a thorough examination, but will say unless the item of fees you refer to, is specifically named it is unlawful to charge it.

Yours truly,
ISAIAH PILLARS,
Attorney General.

INSANE PERSONS AS TO THE COUNTIES OBLIGATION IN REMOVING THEIR INSANE FROM ASYLUM.

State of Ohio,
Attorney General's Office,
Columbus, July 14, 1879.

Dr. W. H. Holden, Superintendent Athens Asylum for Insane, Athens, Ohio:

DEAR SIR:—On my return here I found your inquiry of the 12th instant.

After careful examination of the question I am of the opinion that the county should pay the expense of the removal of a patient from the asylum to the county from which he or she was sent, by virtue of the provisions of Sec. 26, 75 O. L., 72.

The removal is made by the probate judge of the proper county.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

County Commissioners; No Error, Etc. (In Certain Case)—Prosecuting Attorney, as to Fees of in Probate Court.

COUNTY COMMISSIONERS; NO ERROR, ETC. (IN CERTAIN CASE).

State of Ohio,
Attorney General's Office,
Columbus, July 19, 1879.

F. C. Van Ander, Esq., Prosecuting Attorney Auglaize County, Wapakoneta, Ohio:

DEAR SIR:—Yours of the 18th instant came duly to hand.

I can see no error in the action of the commissioners and know no right of appeal.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY, AS TO FEES OF IN PROBATE COURT.

State of Ohio,
Attorney General's Office,
Lima, August 2, 1879.

Geo. B. Smith, Esq., Prosecuting Attorney Ashland County, Ashland, Ohio:

DEAR SIR:—Your letter of the 24th ult. containing a number of inquiries came to my hands here today.

1st. There is no law by which a prosecuting attorney can get extra pay for service rendered in the Probate Court.

2d. A prosecuting attorney has nothing to do officially with peace warrant cases, and officer's fees cannot in such cases, under any circumstances be paid out of the county treasury.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Seventy-Five O. L., 65, Sec. 3—Council's Power of Ditches in Certain as to the Contract of.

SEVENTY-FIVE O. L., 65, SEC. 3.

State of Ohio,
Attorney General's Office,
Lima, August 9, 1879.

James Barrett, Esq., Secretary Board Trustees Cleveland Hospital for Insane:

SIR:—Your inquiry of the 5th instant reached me here today.

In answer I have to say, that the statute is so bunglingly drawn (75 O. L., 65, Sec. 3) that it is difficult to say just what it does mean, but I have concluded your safer course would be to recognize Mr. Winstone a trustee until the assembling of the next General Assembly.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNCIL'S POWER OF DITCHES, IN CERTAIN AS TO THE CONTRACT OF.

State of Ohio,
Attorney General's Office,
Lima, August 11, 1879.

John D. DeGalley, Esq., City Solicitor, Galion, Ohio:

DEAR SIR:—Yours of the 6th instant reached me here.

The inquiry you submit is, has the council of a city or of an incorporated village the right to construct a ditch through lands and lots within the corporate limits?

To which I answer they have no such power. The entire control of "ditches" is given to the county commissioners or township trustees.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Sales Made Under Act of January 28th (1828 Chase 1589). Misdemeanors as to the Prosecution of.

SALES MADE UNDER ACT OF JANUARY 28TH (1828 CHASE 1589).

State of Ohio,
Attorney General's Office,
Lima, August 13, 1879.

Hon. James Williams, Auditor of State:

Yours of the 9th instant has been carefully considered.

If the sales were made under the provisions of the act of January 28th (1828 Chase 1589) as you say, your construction of the law in your letter to Mr. Barnet was undoubtedly correct.

I cannot see that the act of January 16, 1879, has anything to do with it.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

MISDEMEANORS AS TO THE PROSECUTION OF.

State of Ohio,
Attorney General's Office,
Lima, August 13, 1879.

Frank Moore, Esq., Prosecuting Attorney Knox County, Mt. Vernon, Ohio:

DEAR SIR:—Your inquiry of the 11th instant reached me here.

The question you submit is not without difficulty in properly determining it. It arises under the 17th Sec. Chapt. 2, 74 O. L., 320. If I were a judge and adjudicating the question, I would hold that for all such misdemeanors, as you name, to-wit, prosecution for selling intoxicating

liquors, carrying concealed weapons, and like offenses, that any citizen of the whole community would be the "party injured" within the meaning of that section, and upon a plea of guilty to an affidavit charging any such offense, the magistrate would have full power to finally dispose of the case.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ACCOUNTANT PAYMENT OF (71 O. L., 138).

State of Ohio,
Attorney General's Office,
Lima, August 14, 1879.

J. P. Spriggs, Esq., Prosecuting Attorney, Woodsfield, Ohio:

SIR:—Yours of the 12th instant came duly to hand.

It seems to me that the meaning of the statute in relation to the payment of the accountant (71 O. L., 138) can hardly be misunderstood.

The language is "said accountant so appointed * * * shall be paid at the rate of three dollars per day * * * out of the county treasury, on a warrant drawn by the county auditor and approved by the certificate of said court."

That is the Probate Court. The treasurer cannot legally pay the warrant until it is approved by the probate judge.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Rape and Incest, as to Both Being Charged in Same Indictment—Treasurer; in Certain Cases as to Term of Period of Holding the Office.

RAPE AND INCEST, AS TO BOTH BEING CHARGED IN SAME INDICTMENT.

State of Ohio,
Attorney General's Office,
Lima, August 15, 1879.

L. M. Jewitt, Esq., Prosecuting Attorney Athens County, Athens, Ohio:

DEAR SIR:—Yours of the 13th instant came duly to hand and has been carefully considered. While it might possibly be sustained where it grows out of the same state of facts, yet I would not join rape and incest in the same indictment. I would draw separate indictment, charging the two distinct offenses. It is nevertheless rape if force be used, however near the relationship. It is nevertheless incest if within the statutory degree of relationship if force be used.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

TREASURER; IN CERTAIN CASES AS TO TERM OF PERIOD OF HOLDING THE OFFICE.

State of Ohio,
Attorney General's Office,
Columbus, August 30, 1879.

D. Allen, Esq., Prosecuting Attorney Warren County, Lebanon, Ohio:

DEAR SIR:—Yours of the 26th instant I found on my return here, and I confess that I am unable from the reading of your letter to get at the state of facts.

Your letter states that Totten was appointed in September, 1875, to fill a vacancy in the office of county treasurer, and that he was also elected to the same office at the October election in 1875 and was re-elected in 1877. Now, this being a true statement of the facts, Mr. Totten would have held the office by *appointment* until the 1st Monday in September, 1876. His first term by virtue of the *election* would expire in September, 1878, and his *second* term by election, would run from September, 1878, to September, 1880. His successor should be elected at the coming October election.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

FEES OF COUNTY OFFICERS (76 O. L., 117).

State of Ohio,
Attorney General's Office,
Columbus, August 30, 1879.

Hon. J. B. Priddy, Probate Judge Fayette County, Washington C. H., Ohio:

DEAR SIR:—Your inquiry of the 23d instant I found upon my return here, and in answer would say, that the act of June 3, 1879, in relation to the fees of county officers (76 O. L., 117) does not apply to persons in office at the time of the passage of the act. See last clause of Sec. 36, page 130.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Sheriff's Election Proclamation, as to Publishing of.

SHERIFF'S ELECTION PROCLAMATION, AS TO PUBLISHING OF.

State of Ohio,
Attorney General's Office,
Columbus, September 11, 1879.

Messrs. McFadden and Hunter, Publishers Steubenville Gazette:

GENTS:—On my arrival here I found your inquiry of the 5th instant in relation to the publication of the sheriff's election proclamation.

The statute in relation to the matter is found in Swan and Critchfield statutes, pages 532-3, Sec. 18. All that relates to the publication of the proclamation in a newspaper reads: "and inserted in some newspaper published in the county, if any be published therein."

As the first part of the section provides that the proclamation shall be posted throughout the county not less than fifteen days before the election, so, in my opinion, the insertion in the newspapers should be fifteen days before election.

The statutes, undoubtedly, contemplated the publication of the proclamation in a weekly newspaper in each county *as often as the same might be issued within the fifteen days.*

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Treasurer and Sheriff, as to Term or Period of Holding Office.

TREASURER AND SHERIFF, AS TO TERM OR PERIOD OF HOLDING OFFICE.

State of Ohio,
Attorney General's Office,
Lima, September 1, 1879.

D. Allen, Esq., Prosecuting Attorney, Lebanon, Ohio:

DEAR SIR:—When I wrote you yesterday (Saturday) I had for the moment overlooked the constitutional provision that no person shall be *eligible* to the office of sheriff or county treasurer for more than four years in any period of six years, Art. 10, Sec. 3.

This complicates the question you submit, and makes it exceedingly difficult to determine.

It certainly is without precedent in Ohio.

After most careful thought, I am of the opinion, that the person being *eligible* when elected, and when he qualfies and enters upon the discharge of the duties of treasurer or sheriff would be held to be legally competent to complete his full term of office, although it would make more than four years in a period of six years, that he had held the office by appointment and election. In this I may be in error. Of two things, I am quite confident.

1st. If it was attempted to elect a treasurer at the fall election of 1878, whose term of office should commence at the end of the *first* year of the second term by election, of the present incumbent, *that election was invalid*, and does not entitle the party so claiming to be elected, to the office, and

2d. That the county commissioners have no power to *remove* the present incumbent by reason of ineligibility.

If the present incumbent insists upon filling out the term for which he was last elected, the only manner of testing his legal right so to do would be by *quo warranto*.

If it is thought best to test the question in the Supreme Court the commissioners might *treat the office as vacant,* appoint a person to fill the vacancy, and let him institute his proceedings against the present incumbent.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ST. CLEVELAND ASYLUM FOR INSANE.

State of Ohio,
Attorney General's Office,
Lima, September 8, 1879.

C. W. Deihl, Esq., St. Cleveland Asylum for Insane, Newburg, Ohio:

DEAR SIR:—Your inquiry of the 1st instant reached me here on Saturday, and in answer will say, that it is a matter of indifference in which manner you speak of, the contract is signed. *The legal effect is just the same.*

However the contract may be signed on the part of the institution, it is supposed to be and must be with the approval of a majority of the board of trustees and superintendent.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Warden of Penitentiary, as to What Office He Holds in the State—Appropriation (Clerk of Bellevue).

WARDEN OF PENITENTIARY, AS TO WHAT OFFICE HE HOLDS IN THE STATE.

State of Ohio,
Attorney General's Office,
Lima, September 8, 1879.

M. W. Odell, Esq., Prosecuting Attorney, Toledo, Ohio:

DEAR SIR:—Your inquiry of the 1st instant reached me here on Saturday. I am of the opinion that the warden of the penitentiary is not a *State officer* within the meaning of Sec. 6, Chapt. 74, O. L. 288.

Is not the offense you intend to charge covered by the latter provision of the section?

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

APPROPRIATION (CLERK OF BELLEVUE).

State of Ohio,
Attorney General's Office,
Lima, September 6, 1879.

H. F. Baker, Esq., Clerk of Bellevue, Ohio:

DEAR SIR:—Yours of the 1st instant reached me here today. Certainly it is not necessary to pass ordinances for the payment of the various items which may be presented.

The appropriation referred to in the statute, is the appropriation of certain gross sums for different purposes, and these amounts are to be drawn on as occasion may require.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SHERIFF'S ELECTION PROCLAMATION.

State of Ohio,
Attorney General's Office,
Columbus, September 15, 1879.

W. C. Ong, Esq., Prosecuting Attorney, Steubenville, Ohio:

DEAR SIR:—In answer to your inquiry of the 13th instant, I have to say that I am of the opinion that the proclamation should be inserted in the weekly newspapers for 15 days before the election.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

QUO WARRANTO.

State of Ohio,
Attorney General's Office,
Lima, September 25, 1879.

R. H. Bishop, Esq., Private Secretary to Governor, Columbus, Ohio:

DEAR SIR:—Yours of yesterday with enclosures came duly to hand, and in answer would say, that the governor has clearly the power, under section three of the chapter of the civil code, relating to proceedings in *quo warranto* (75 O. L., 815) to direct the prosecuting attorney of Ross County to commence proceedings in *quo warranto* as requested in the communication of the president of the council, the mayor and city solicitor of the city of Chillicothe of the 17th instant which I herewith return.

ISAIAH PILLARS,
Attorney General.

ELECTION OF LAND APPRAISER.

State of Ohio,
Attorney General's Office,
Columbus, September 25, 1879.

Hon. Lewis Green, New Lexington, Ohio:

DEAR SIR:—Yours of the 23d instant came duly to hand and has been carefully considered.

Your inquiry is, substantially, whether in the election of a land appraiser as provided for by section one, laws 1878, page 459, the name of a candidate can be printed upon the same ticket with the candidates for State and county officers, and voted for in the same ballot-box.

My answer is in negative.

That part of the statute providing for the *manner* of the election of land appraiser reads: "The judges of election shall keep a separate poll book for the election of said assessors; and the returns thereof duly certified as in other cases, shall be made to the *county auditor,* who, with the clerk of the Court of Common Pleas and probate judge of the county, shall act upon the same and declare the result."

To comply with this provision there must be, in the election of a land appraiser:

1st. A separate ballot, or ticket.
2d. A separate ballot-box.
3d. A separate poll-book and tally-sheet and
4th. A separate return must be made to the auditor.

A separate board of judges, however, is not required.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

ELECTION IN FOURTH WARD, LIMA.

State of Ohio,
Attorney General's Office,
Columbus, October 8, 1879.

J. H. Hutchison, City Solicitor of Lima, Ohio:

SIR:—Your inquiry of yesterday with regard to the opening of a poll at the forthcoming election on the 14th instant in the newly created fourth ward of Lima, has been very carefully considered.

As I understand the facts, the fourth ward of Lima has now, and has bad for some months past, as definitely established legal existence as any of the other wards of the city.

The fact that as yet it has no distinctive representation in the city council makes it none the less a ward; and by reason of its being a ward it becomes an election *precinct* in pursuance of the provision of Section 2, Act 7. of May 14, 1878 (75 O. L., 546).

As each legal voter can only legally vote in the township, ward or precinct in which he has actual residence, a poll should be opened in said fourth ward at such place as may be designated by council, for the voters of said ward.

There being no officers in said ward who can, *ex officio*, act as judge of election, the board of judges and clerks must be chosen the morning of election, *viva voce*, by the legal voters of said ward who may be then present.

These, when so chosen, can be qualified by taking the necessary oath as required by law.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

As to vote of J. P. and Land Appraiser—Prosecuting Attorney Adviser.

AS TO VOTE OF J. P. AND LAND APPRAISER.

State of Ohio,
Attorney General's Office,
Columbus, October 31, 1879.

Hon. Martin Perky, Probate Judge, Bryan, Ohio:

DEAR SIR:—I arrived here this morning and found yours of the 25th instant, and in answer I have to say, that the vote for justice of the peace and land appraisers *together* should not be counted.

I find no provision in the statute for the determination of a *tie* vote on land appraiser.

In such case it would seem as though a vacancy would exist, by reason of failure to elect, to be filled as provided in Sec. 3, page 460, O. L., Vol. 75.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, October 31, 1879.

J. P. Jones, Esq., County Auditor, Toledo, Ohio:

DEAR SIR:—I am compelled to ask you to refer the question submitted in yours of the 29th instant to your prosecuting attorney, who is made the legal adviser of county officers.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Auditors' Fees, Etc.—Surveyor Not Disqualified from Acting Real Estate Assessor.

AUDITORS' FEES, ETC.

State of Ohio,
Attorney General's Office,
Lima, October 29, 1879.

Benj. Eason, Esq., Wooster, Ohio:

SIR:—In answer to yours of the 28th instant, I have to say in reply to interrogatory one (1) No.

To interrogatory two (2) Yes.

To interrogatory three (3) Yes.

The act of April 24, 1878, prescribes the fees a county auditor is entitled to (See Sec. 11 especially).

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

SURVEYOR NOT DISQUALIFIED FROM ACTING REAL ESTATE ASSESSOR.

State of Ohio,
Attorney General's Office,
Lima, October 27, 1879.

O. S. Ferris, Esq., Prosecuting Attorney Portage County, Ravenna, Ohio:

SIR:—Yours of the 23d instant reached me here. There is nothing in the statutes which disqualifies a county surveyor from acting real estate assessor.

We are compelled to be governed by the statutes to put it as it is, and not what it should have been.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Attorney General Not Adviser—County Commissioners; Duties of.

ATTORNEY GENERAL NOT ADVISER.

State of Ohio,
Attorney General's Office,
Columbus, November 6, 1879.

W. H. Gray, Esq., Cincinnati, Ohio:

DEAR SIR:—In answer to yours of yesterday I have to say, that I am not, under the statute, authorized to give an opinion upon the very important question submitted.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

COUNTY COMMISSIONERS; DUTIES OF.

The State of Ohio,
Attorney General's Office,
Columbus, November 6, 1876.

J. H. Mitchell, Esq., Prosecuting Attorney, New Philadelphia, Ohio:

DEAR SIR:—In answer to yours of the 1st inst. I have to say that I know of no provision of the statute authorizing county commissioners to advance any costs in a criminal case.

Yours truly,
ISAIAH PILLARS,
Attorney General.

Attorney General Not Adviser—Prosecuting Attorney; Duty of.

ATTORNEY GENERAL NOT ADVISER.

The State of Ohio,
Attorney General's Office,
Columbus, November 13, 1879.

A. H. Haines, Esq., Auditor of Clinton County, Wilmington, Ohio:

DEAR SIR:—Yours of the 8th inst. came duly to hand. The question submitted is quite important, but inasmuch as the statute makes the auditor of state the *adviser* of county auditors in relation to their official duties, I do not feel at liberty to give an opinion on the question, unless requested to do so by the auditor of state.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

PROSECUTING ATTORNEY; DUTY OF.

The State of Ohio,
Attorney General's Office,
Columbus, December 11, 1879.

Frank Moore, Esq., Prosecuting Attorney, Knox County, Mt. Vernon, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand. In my opinion, under the act of March 30, 1875 (72 O. L., 170), it is made the duty of the prosecuting attorney to pass upon and certify to the entire compensation of county commissioners, including per diem, mileage and necessary expenses while out of the county on official business.

Such has been my answer to similar inquiries heretofore.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

Election of Appraisers; Pay of Clerk in—Creation of an Office by the General Assembly.

ELECTION OF APPRAISERS; PAY OF CLERK IN.

The State of Ohio,
Attorney General's Office,
Columbus, December 11, 1879.

Wm. G. Way, Esq., City Solicitor, Marietta, Ohio:

DEAR SIR:—Yours of yesterday came duly to hand and in answer would say that the clerks of election of land appraisers should be paid out of the county treasury. The townships, villages and cities as such, are not chargeable with the expense of electing land appraisers.

The office of land appraiser is not a city, village nor a township office.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.

CREATION OF AN OFFICE BY THE GENERAL ASSEMBLY.

Columbus, Ohio, January 10, 1880.

Hon. Thos. A. Cowgill, Speaker of the House of Representatives:

DEAR SIR:—House resolution No. 12, by Mr. Scott, of Warren, has been carefully considered. I am of the opinion that, under section 27, article II of the constitution, the General Assembly may create an office and prescribe the qualifications of a person to fill said office, and to this extent the governor may be restricted by the General Assembly in his appointments.

Respectfully yours,
ISAIAH PILLARS,
Attorney General.