

County Commissioners Can Compound a Judgment Upon an Unforfeited Recognizance—Proceedings Against County Commissioners for Not Making Annual Report Must Be Had in Court of Common Pleas.

COUNTY COMMISSIONERS CAN COMPOUND A JUDGMENT UPON AN UNFORFEITED RECOGNIZANCE.

The State of Ohio,
Office of the Attorney General,
Columbus, January 10, 1872.

L. T. Neal, Prosecuting Attorney, Ross County:

SIR:—Yours of yesterday is to hand and in reply I have to say:

First—In my judgment the county commissioners have power under section 13 of the act of March 12, 1863, (S. & C., p. 246) "to compound for, or release in whole or in part" a judgment rendered upon an unforfeited recognizance in a penitentiary case. I think such a judgment is "due the county and for the use thereof."

Second—The Supreme Court has the case of *the State vs. Behimer* in its hands, but has not yet announced its opinions. I do not know the reason why.

Very respectfully, etc.,

F. B. POND,
Attorney General.

PROCEEDINGS AGAINST COUNTY COMMISSIONERS FOR NOT MAKING ANNUAL REPORT MUST BE HAD IN COURT OF COMMON PLEAS.

The State of Ohio,
Office of the Attorney General,
Columbus, January 13, 1872.

H. H. Williams, Prosecuting Attorney, Union County:

SIR:—In reply to yours of yesterday I have to say:

Under the act of April 5, 1866, (S. & S., p. 88) the penalty against county commissioners therein provided for, for

*Crimes Act of April 7, 1863, Not Repealed By Criminal
Code—Re-Insurance Fund of Insurance Companies.*

failure or neglect in filing report should be proceeded for in the Court of Common Pleas by indictment.

Very respectfully,

F. B. POND,
Attorney General.

CRIMES ACT OF APRIL 7, 1863, NOT REPEALED
BY CRIMINAL CODE.

The State of Ohio,
Office of the Attorney General,
Columbus, January 13, 1872.

J. O. Grimes, Esq., Prosecuting Attorney:

SIR:—Yours of 9th inst. is to hand. In my judgment the one hundred and eightieth section of the code (Criminal) and the act of April 7, 1863, (S. & S., 610) stand together and whatever could be done under the act of April 7th before the code; can be done now. I do not think that act is repealed by implication.

Very respectfully, etc.,

F. B. POND,
Attorney General.

RE-INSURANCE FUND OF INSURANCE COM-
PANIES.

The State of Ohio,
Office of the Attorney General,
Columbus, January 23, 1872.

Hon. James Williams, Auditor of State:

SIR:—Your communication of yesterday is received. I have examined the insurance act of April 15, 1867, and the

*School District No. 5, Lawrence Township, Washington
County.*

amendments thereto of May 7, 1869, and in reply to your inquiries I have to say:

In my judgment insurance companies can be required by the Auditor of State to hold in reserve for re-insurance and other purposes such a percentage of their "surplus" or "profits" as the statute fixes and no more. That percentage is fixed by the second section of the act of 1869 (O. L., Vol. 66, p. 326) at forty per cent., and I can find no other provision by which that amount can be increased or diminished. The act of 1867 fixes this rate of reservation at fifty per cent., but the amendment of 1869 reduces this rate to forty, which is all I think that may be required.

Whether the reduction is wise or unwise this seems to me to be the law, and until altered will, I think, have to be obeyed. I do not think the Auditor of State has any discretion in that regard.

Very respectfully, etc.,

F. B. POND,
Attorney General.

SCHOOL DISTRICT No. 5. LAWRENCE TOWN-
SHIP, WASHINGTON COUNTY.

The State of Ohio,
Office of the Attorney General,
Columbus, January 23, 1872.

Hon. T. W. Harvey, Commissioner of Schools:

The communication of M. D. Follett, Esq., relating to sub-district No. 5 in Lawrence Township, Washington County, has been examined by me and in answer to the question therein asked I have to say:

First—The title to the schoolhouse lot in said sub-district by force of section 11 of the act of 1853, relating to

Prosecuting Attorney; Duty of in a Case Where a Client of His is to be Prosecuted For a Criminal Offense.

common schools, vests in the board of education of Lawrence Township.

Second—Under the twenty-fourth section of that act “school moneys coming into the hands of the treasurer derived from * * * sale or rents of section sixteen *or other school lands*, shall be applicable only to the payment of teachers in the proper township.”

I think the profits derived from the oil well on the school house lot are in the nature of “rents” of “other school lands” mentioned in this last section, and as such should be paid into the treasury of the township and applied for tuition purposes alone.

In order to allow the investment of the fund and to make it safe for all the time, legislation, it appears to me, should be had so that the fund as it accrues should either legally be made part of the irreducible debt of the State for the benefit of that township, or some other mode provided for its safe and permanent investment.

Very respectfully, etc.,

F. B. POND,
Attorney General.

PROSECUTING ATTORNEY; DUTY OF IN A CASE
WHERE A CLIENT OF HIS IS TO BE PROSE-
CUTED FOR A CRIMINAL OFFENSE.

The State of Ohio,
Office of the Attorney General,
Columbus, January 23, 1872.

W. S. Kennon, Esq., Prosecuting Attorney:

SIR:—Yours of the 20th came to hand yesterday and in reply I have to say:

Under the second section of the act of April 30, 1852, (S. & C., 1225) it is made the duty of the prosecuting at-

*County Auditors Can Discharge Offenders Imprisoned For
Non-Payment of Fines.*

torney "to prosecute for and in behalf of the State all complaints, suits and controversies in which the State shall be a party." I do not think the law, however, was designed to compel the prosecuting attorney to do an immoral act and your prosecuting of Shallcross under the circumstances would, in my judgment, be such an act. You cannot defend him, however, in my judgment, and still remain prosecuting attorney. You can do, it appears to me, one of two things, to-wit: Resign your position as prosecuting attorney and defend your first client; or remain prosecuting attorney and have nothing further to do with the case, releasing Shallcross from any liability to you for fees and repaying him what he has paid you.

The question is a mixed one of law and ethics and I have intimated what I think ought to be done in both aspects of it.

Very respectfully,

E. B. POND,

Attorney General.

COUNTY AUDITORS CAN DISCHARGE OFFENDERS
IMPRISONED FOR NON-PAYMENT OF
FINES.

The State of Ohio,

Office of the Attorney General,

Columbus, February 21, 1872.

G. W. Knapp, Esq., Prosecuting Attorney:

SIR:—I am clear that under the seventeenth section of the act of April 18, 1870, that the auditor of your county may discharge from imprisonment any person confined in the county jail for non-payment of any fine or amercement, except as therein excepted, and that this rule applies as well to cases where the imprisonment is made part of the sen-

*Treasurer of Reform School For Girls Should Renew His
Bond at Each Election.*

tence, under the act of 1863 (S. & S., p. 610), or one hundred and eightieth section of criminal code as any other. I do not see any reason for the distinction taken by your auditor.

Very respectfully, etc.,
F. B. POND,
Attorney General.

TREASURER OF REFORM SCHOOL FOR GIRLS
SHOULD RENEW HIS BOND AT EACH ELEC-
TION.

The State of Ohio,
Office of the Attorney General,
Columbus, February 21, 1872.

A. Thompson, Esq.:

SIR:—Yours of 17th inst. came to hand in my absence or would have been answered sooner.

In my judgment the treasurer-elect of the State Reform and Industrial School for Girls should give a new bond upon each election.

Very respectfully, etc.
F. B. POND,
Attorney General.

*Lands Devised to a School For Free Education of Children
of Certain Ages Exempt From Taxation.*

LANDS DEVISED TO A SCHOOL FOR FREE EDU-
CATION OF CHILDREN OF CERTAIN AGES
EXEMPT FROM TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, February 21, 1872.

James McVey, Esq., Secretary Board of Education:

SIR:—Owing to sickness in my family, yours of 9th inst. has not been answered sooner. In reply I have now to say:

The property was devised to your school district for the purpose of establishing a school or schools for children between the ages of five and fourteen years free of charge, and the entire net incomes derived therefrom have been devoted to that purpose alone.

If the above is a correct statement of the case, in my judgment those lands come clearly under the last clause of the first sub-division of the first section of the act of March 21, 1864, (S. & S., p. 761, and O. L., Vol. 61, p. 39) and is exempt from taxation.

Very respectfully,

F. B. POND,
Attorney General.

Game Law Makes no Exception in Favor of Science—Prosecuting Attorneys; Duties of in Certain Cases.

GAME LAW MAKES NO EXCEPTION IN FAVOR
OF SCIENCE.

The State of Ohio,
Office of the Attorney General,
Columbus, February 22, 1872.

Prof. H. S. Leland, Mt. Union College:

SIR:—The game laws of the State are general in their nature, and prohibit *any and all persons for any and all purposes* to kill the kinds of game described within the portion of the year specified in the several acts. Scientific use affords, in my judgment, no exception to this rule.

I can readily see that such a construction will operate to some extent against the cause of science, but I do not think the statutes will bear any other construction. If the matter were brought to the attention of the General Assembly I am inclined to think it would modify its acts so as to relieve you.

Very respectfully, etc.

F. B. POND,
Attorney General.

PROSECUTING ATTORNEYS; DUTIES OF IN CERTAIN CASES.

The State of Ohio,
Office of the Attorney General,
Columbus, March 4, 1872.

James Watts, Esq., Prosecuting Attorney, Hardin County:

SIR:—Yours of 27th ult. would have received earlier attention but for absence from the city on account of sickness in my family. In reply I have now to say:

First—Under section 2 of act of April 30, 1852, (S. & C., 1225) in my judgment it is the duty of the prosecuting

*Property Used Jointly For Public Worship and a Residence
is Subject to Taxation.*

attorney to appear in habeas corpus cases where a prisoner confined under sentence or pending trial, for violation of criminal statute, is sought to be discharged from such confinement.

In many cases of habeas corpus where private persons are alone interested, I do not think the prosecuting attorney would be bound to appear.

Second—I do not find a statute requiring the prosecuting attorney to bring an action in *another county* for the infirmity directors of his county or anybody else.

Very respectfully, etc.

F. B. POND,
Attorney General.

PROPERTY USED JOINTLY FOR PUBLIC WORSHIP AND A RESIDENCE IS SUBJECT TO TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, March 5, 1872.

Hon. James Williams, Auditor of State:

SIR:—You state that a building or house in Cincinnati is *used* in part as a place of public worship and in part as the *residence* of the sexton, and you ask if under the circumstances such house or building and the grounds attached and necessary for its enjoyment are exempt from taxation.

The act of March 21, 1864, (S. & S., p. 761) or that part of it relating to this matter reads as follows: "Section 3—That all property described in this section *to the extent herein limited* shall be exempt from taxation," that is to say:

First—"All * * * houses used *exclusively* for public worship, the books and furniture therein and the grounds attached to such buildings and are for the proper

*Property Used Jointly For Public Worship and a Residence
is Subject to Taxation.*

occupancy and enjoyment of the same and not leased or otherwise used with a view to profit.”

As indicated in the Supreme Court in the case of the Cincinnati College vs. The State (19 O. R., p. 110), all laws exempting property from the uniform rule of taxation are in derogation of equal rights and are, therefore, to be construed strictly. A second rule is also laid down by the court in that case, to-wit: “The law applies to the property as it finds it in use and not to what may be done with its accumulations in future.” Apply these rules to this case.

The law finds the property not exclusively in use as a place of religious worship, but also as a residence. What the contract may be with the sexton for his occupancy does not appear, whether he pays a cash rental for its use, or whether its use is to compensate him for his services as sexton, nor do I conceive that it makes any difference which. The use in one case brings a direct profit, and in the other saves the church from an expenditure, thus indirectly yielding a profit.

This statute seems to have been carefully framed to restrict the exemption to the house, grounds and other property while exclusively in use for religious worship.

I think so long as this *joint use* continues this property is subject to taxation as other property.

The statute may be unwise, but I can put no other construction upon it as it stands.

Very respectfully,

F. B. POND,
Attorney General.

Lake Erie, Evansville and Southwestern Railway Company.

LAKE ERIE, EVANSVILLE AND SOUTHWESTERN
RAILWAY COMPANY.

The State of Ohio,
Office of the Attorney General,
Columbus, March 7, 1872.

Hon. I. R. Sherwood, Secretary of State:

SIR:—I have examined the agreement of consolidation sought to be filed by the Lake Erie, Evansville and Southwestern Railway Company, and another under the act of May 1, 1856.

I think the agreement ought not to be filed and entered of record for the following reasons:

First—"The fact" required by the statute touching the vote of the stockholders of each company, certified by the secretary of each, is not "certified thereon."

Second—The place of residence of each director and officer is not sufficiently stated therein.

Third—I doubt if the act authorizes the "directors of the several companies" to make an agreement in this way; or in other words, there is no evidence that the "directors of the several companies" made this agreement at all.

Very respectfully,

F. B. POND,
Attorney General.

Twenty Per Cent. Penalty Belongs to the County, Not the Treasurer—Claim of Montgomery County Children's Home.

TWENTY PER CENT. PENALTY BELONGS TO
THE COUNTY, NOT THE TREASURER.

The State of Ohio,
Office of the Attorney General,
Columbus, March 16, 1872.

Hon. James Williams, Auditor of State:

SIR:—The letter of the treasurer of Hamilton County has been examined and in reply to question therein asked I have to say:

The penalty of twenty per centum charged upon real estate for non-payment of taxes by the act of February 7, 1861, (S. & S., pp. 779 and 780) is no part of the fees of the officers of the county, but is payable into the county treasury as so much additional tax for the general purposes of the county. Such being the case I do not think the act of April 6, 1870, (O. L., Vol. 67, p. 36) applies to or affects such penalty in any way.

Very respectfully, etc.

F. B. POND,
Attorney General.

CLAIM OF MONTGOMERY COUNTY CHILDREN'S
HOME.

The State of Ohio,
Office of the Attorney General,
Columbus, March 16, 1872.

Hon. James Williams, Auditor of State:

SIR:—I have postponed advising as to the payment of Montgomery County Children's Home for support of the children of McCann and McLaughlin because the act of 1870

Judge of Election; Who to be the Third.

did not make it perfectly clear to my mind that the children of soldiers other than Ohio soldiers were intended to be included in its provisions.

The General Assembly has taken no action in the matter further and does not seem likely so to do.

My best judgment now is that section 6 of the act of April 14, 1870, (O. L., Vol. 67, p. 55) applies to *resident children* of all soldiers who served in the land and naval forces of the United States during the late rebellion.

I therefore advise the payment of the claim.

Very respectfully,

F. B. POND,
Attorney General.

JUDGE OF ELECTION; WHO TO BE THE THIRD.

The State of Ohio,
Office of the Attorney General,
Columbus, March 16, 1872.

Edmund M. Rice, Esq.:

SIR:—Yours of the 8th inst. is to hand, and in reply I have to say:

The person receiving the highest number of votes of those not elected as trustees is by law to be one of the judges of election. It does not matter whether he be of the same political party or not with the other judges of the election. He is the person to act as judge of the election.

Whatever the object of the framers of the law may have been, such is clearly its legal effect.

Very respectfully, etc.

F. B. POND,
Attorney General.

*One Assessor For Each Township; Not Election Precinct.
Act of 1859.*

ONE ASSESSOR FOR EACH TOWNSHIP; NOT
ELECTION PRECINCT; ACT OF 1859.

The State of Ohio,
Office of the Attorney General,
Columbus, March 16, 1872.

M. W. Bryan, Esq., Gettysburg, Ohio:

SIR:—Yours of the 10th is to hand and in reply I have to say:

In my judgment the office of assessor in your township is a township office and but one should be elected, notwithstanding the division into election precincts.

The words "election district" in the act of 1859 (S. & C., 85) must be held to mean the smallest civil or political division *for which* officers are elected.

An election precinct is not such a sub-division. For in it no officers are elected. It is merely a division for the convenience of voting and no other purpose; and the returns in all such cases of the votes for assessor and other township officers should be made to the township clerk as provided in section 6 of the act of April 1, 1853. (S. & C., 1574.)

I think the same rule applies to the election of supervisors of roads and highways.

Very respectfully,

F. B. POND,
Attorney General.

*Township Trustees Can Fix the Places For Voting For
Township Officers or Purposes Without Regard to Di-
vision For—Notaries Public Must be Male Citizens.*

TOWNSHIP TRUSTEES CAN FIX THE PLACES
FOR VOTING FOR TOWNSHIP OFFICERS OR
PURPOSES WITHOUT REGARD TO DIVISION
FOR.

The State of Ohio,
Office of the Attorney General,
Columbus, March 18, 1872.

J. C. Wales, Esq., White House, Ohio:

SIR:—Yours of the 9th inst. would have received earlier notice but for press of other matters.

In reply I have now to say that *for the election of township officers* and for voting for township purposes, the trustees under the act of 1868 (O. L., Vol. 65, p. 73) may fix the place or places of holding elections at such place or places in the township that they may agree upon without reference to the division into precincts. I do not see the reason for this, but it is clearly the effect of this statute.

Very respectfully,

F. B. POND,
Attorney General.

NOTARIES PUBLIC MUST BE MALE CITIZENS.

The State of Ohio,
Office of the Attorney General,
Columbus, March 21, 1872.

To the Governor:

SIR:—The application of Annette Cronise for application as notary public has been considered and I am of the opinion that under existing legislation your excellency is not authorized to appoint and commission her as a notary public.

*Mayor Acting as President ex-Officio of Village Council
Cannot Vote on Passage of an Ordinance.*

Article V, section 1 of the constitution defines an elector as a male citizen, etc.

Section 1 of the act of March 13, 1856, authorizes the governor to appoint, etc., "as notaries public as many citizens of this State having the qualifications of electors," etc.

I do not think either that legislation can be so changed as to warrant such appointment. See article XV, section 4 of the constitution.

Very respectfully,

F. B. POND,
Attorney General.

MAYOR ACTING AS PRESIDENT EX-OFFICIO OF
VILLAGE COUNCIL CANNOT VOTE ON PAS-
SAGE OF AN ORDINANCE.

The State of Ohio,
Office of the Attorney General,
Columbus, April 17, 1872.

B. C. Waters, Esq., Delaware, Ohio:

SIR:—Yours of the 6th inst. came to hand during my absence from the city or it would have been answered sooner.

By section 82 of the Municipal Code, all *legislative* authority in villages is vested in a council consisting, etc. Of this council as constituted by that section the mayor is not a part. Here then is the law making power. Ordinances are the work of legislative power. Section 97 fixes the vote required for the passage of an ordinance to be a majority of all the *members elected*. The mayor is not *elected* a member of the council, in my judgment. By virtue of his office as mayor he becomes president of the council, but is still not a *member elected*. There may be cases where the mayor under that section may vote, but in my judgment there must

*Terms of County Commissioners When Two or More are
to be Elected at the Same Time.*

be the concurrence of a majority of the members elected to the council, outside of any vote the mayor may cast, to make a valid ordinance.

Very respectfully, etc.

F. B. POND,
Attorney General.

TERMS OF COUNTY COMMISSIONERS WHEN
TWO OR MORE ARE TO BE ELECTED AT THE
SAME TIME.

The State of Ohio,
Office of the Attorney General,
Columbus, April 17, 1872.

To the Governor:

SIR:—I have the communication of W. H. Ball and the statement of the Secretary of State touching the election of county commissioners in Muskingum County, and in reply have to say:

I am of the opinion that the person having the highest number of votes at that election for the office of commissioner must be considered as elected for the longest period, and the person receiving the next highest number of votes must be deemed elected for the shorter term.

The fourth section of the act of March 12, 1853, (R. & C., 243) lays down the rule so clearly that I cannot avoid the conclusion above stated.

Very respectfully,

F. B. POND,
Attorney General.

Distribution of Common School Tuition Funds.

DISTRIBUTION OF COMMON SCHOOL TUITION
FUNDS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 18, 1872.

Hon. T. W. Harvey, Commissioner of Schools:

SIR:—The action of the board of education of Bloom Township, Fairfield County, submitted to me by you has been examined, and in reply to your verbal question as to the proper construction of the law regulating the disposition of common school tuition funds, I have to say:

First—It is clear that the funds derived from the State tax and section 16, or other school lands, can be applied only to the payment of teachers, and must be divided among the sub-districts strictly in proportion to the enumeration of scholars therein.

Second—So much of the township as may be set apart for the continuation of the schools after the State fund shall have been exhausted, is under the control of the board of education for the sole purpose of enabling sub-districts that contain comparatively a small number of scholars, to continue the same length of time as the larger and stronger sub-districts.

With regard to this fund, in my judgment, the board should not make and cannot legally make a uniform rule, but should at all times hold this fund subject to its control, to so distribute it, or re-distribute or apportion it as fully to accomplish the above object. If at any time an apportionment has been made that will not fully accomplish this object, it is the duty of the board to change it so that it will.

Very respectfully,

F. B. POND,
Attorney General.

Solemnization of Marriages By Mayors—Township Trustees Can Levy a Tax for a Township House the Entire Costs Thereof Not to Exceed Two Thousand Dollars.

SOLEMNIZATION OF MARRIAGES BY MAYORS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 19, 1872.

Ino. B. Schnitzler, Mayor, Archibold, Ohio:

SIR:—In reply to your question as to whether a mayor can solemnize marriages, I have to say that I entertain grave doubts about it. Section 114 of the Municipal Code seems to invest the mayor within his territorial limits, with all the jurisdictions and powers of a justice of the peace in all matters civil and criminal arising under the laws of the State, and yet I doubt whether this carries with it any other authority, or incidents, than those properly belonging to the justices original jurisdiction. If I were a mayor I think I should not attempt it.

Very respectfully,

F. B. POND,
Attorney General.

TOWNSHIP TRUSTEES CAN LEVY A TAX FOR A
TOWNSHIP HOUSE THE ENTIRE COSTS
THEREOF NOT TO EXCEED TWO THOUSAND
DOLLARS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 19, 1872.

P. B. Miller, Esq.:

SIR:—Your favor came to hand this morning, and in reply I have to say:

Under the act of the General Assembly of May 6, 1869, (O. L., Vol. 66, p. 120) in my judgment the trustees of any

Central Lunatic Asylum Contracts.

township may levy a tax for, purchase a site for, and build a township house so that the entire cost thereof shall not exceed two thousand dollars, without submitting the same to a vote of the electors of the township.

Very respectfully,

F. B. POND,
Attorney General.

CENTRAL LUNATIC ASYLUM CONTRACTS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 19, 1872.

Hon. N. H. Van Voorhes, Speaker of the House of Representatives:

SIR:—In compliance with joint resolution of the General Assembly passed February 20, 1872, entitled "joint resolution instructing the Attorney General to examine contracts between the trustees of Central Ohio Lunatic Asylum and contractors," I have the honor to say:

That I have examined the contracts for the construction of said asylum made by the trustees thereof, with sundry contractors, and am of the opinion that said contracts are amply adequate to protect the interests of the State in the premises.

A change of location of said asylum was made under the act of the General Assembly of April 18, 1870 (O. L., Vol. 67, p. 90) and some changes in said contracts were found necessary by the trustees to be made to carry on the work upon the new site. The changes made, I am satisfied, were fully warranted by the second section of that act, and the contracts now existing are, I believe, fully adequate to protect the State from loss.

Very respectfully,

F. B. POND,
Attorney General.

Schoolhouse Case in Sub-District No. 5, Canaan Township, Madison County.

SCHOOLHOUSE CASE IN SUB-DISTRICT No. 5,
CANAAN TOWNSHIP, MADISON COUNTY.

The State of Ohio,
Office of the Attorney General,
Columbus, April 26, 1872.

Hon. F. W. Harvey, State Commissioner of Schools:

SIR:—I have examined the papers submitted to me touching sub-district No. 5, Canaan Township, Madison County. From them I learn that in August, 1869, the board of education of that township, upon evidence satisfactory to it, voted that a new schoolhouse in said sub-district ought to be built as soon as practicable, and that to best accommodate the scholars such new house should be located "on the first knoll north of the big run on the same road that the old schoolhouse stands on."

After establishing these facts the board sought to take steps to build such a house, so that the commissioners of the county were moved to and did in 1871 levy a tax upon the township for the purpose of building such schoolhouse. Said tax, I am informed, has been collected and is applicable to that purpose, and the board of education still refuse to proceed with the matter further.

Under such circumstances it seems to me that on an application to the District Court of Madison County, a peremptory mandamus could be obtained to compel the board to do what it ought to do.

Very respectfully,

F. B. POND,
Attorney General.

Railroad Policemen Have Not the Powers of Constable to Serve Warrants, Etc.—Foreign Life Insurance Companies Must File Waivers of Right to Remove From State to United States Courts.

RAILROAD POLICEMEN HAVE NOT THE
POWERS OF CONSTABLE TO SERVE
WARRANTS, ETC.

The State of Ohio,
Office of the Attorney General,
Columbus, April 26, 1872.

S. B. Marsh, Esq.:

SIR:—Your communication of 23d inst. is received. In reply I have to say I do not think by your commission as railroad policeman, under the act of the General Assembly of March 18, 1867, (S. & S., 171) that you have the general power of a constable to serve warrants and other process issued by justices of the peace and magistrates.

Very respectfully,

F. B. POND,
Attorney General.

FOREIGN LIFE INSURANCE COMPANIES MUST
FILE WAIVERS OF RIGHT TO REMOVE
CAUSES FROM STATE TO UNITED STATES
COURTS.

The State of Ohio,
Office of the Attorney General,
Columbus, April 30, 1872.

Hon. James Williams, Auditor of State:

SIR:—I have examined the letter of the vice-president of the New York Life Insurance Company with some care, and in answer to the inquiries therein contained, I have to say:

The additional requirement imposed upon foreign insurance companies by the act of the General Assembly of

*Foreign Life Insurance Companies Must File Waivers of
Right to Remove Causes From State to United States
Courts.*

April 10, 1872, O. L., Vol. 69, p. 66) which is in the following language, viz.: "And said company shall also file with said superintendent a written statement duly signed and sealed waiving all right to transfer or remove any cause then or thereafter pending in any of the courts of this State wherever said company is or may be a party, to any of the courts of the United States," was, in my judgment, fully within the power of the General Assembly to make, and being made must be complied with, as a condition of their being allowed to transact business in this State.

The license already issued is not in the nature of a contract, but is merely evidence that the company has complied with the requirement of the law as it stood when such license issued. Additional requirements may be made by the legislature at any time and when made must be in a reasonable time complied with. If not so complied with, the penalty provided in section 37 of the act of 1867 (O. L., Vol. 64, p. 37), will attach, and the company must cease to transact business in the State.

Very respectfully,

F. B. POND,
Attorney General.

*Villages and Other Separate School Districts Have Power
to Build School Houses Under Act of March 13, 1868.*

VILLAGES AND OTHER SEPARATE SCHOOL DIS-
TRICTS HAVE POWER TO BUILD SCHOOL
HOUSES UNDER ACT OF MARCH 13, 1868.

The State of Ohio,
Office of the Attorney General,
Columbus, May 1, 1872.

J. P. Bradbury, Esq., Pomeroy, Ohio:

SIR:—Yours of the 29th ult. is to hand, and in reply I
have to say:

In my judgment abundant authority in ordinary cases
is given to village and other separate school districts by the
act of March 13, 1868, (C. & S., pp. 710 and 711) to issue
bonds and levy taxes for purchasing a site and building a
school house thereon, upon a vote therefor. Many local acts
have been passed without any reason therefore that I can
see. In some instances the General Assembly seems to have
overlooked the existence of this act, and in others, some
special reason may have operated to induce the passage. I
was in the General Assembly when the act was passed, and I
know its main object was to head off so much special legis-
lation upon this subject.

Very respectfully,

F. B. POND,
Attorney General.

Northern Lunatic Asylum Appropriation.

NORTHERN LUNATIC ASYLUM APPROPRIATION.

The State of Ohio,
Office of the Attorney General,
Columbus, May 11, 1872.

Hon. John Hutchins, Trustee N. O. L. Asylum:

SIR:—Yours of the 8th inst. is received asking my opinion as to whether the appropriation made by the General Assembly last winter must be expended under the provisions of the act of April 2, 1868, commonly known as the Jewett law. The appropriation reads as follows: "For new roofing and fitting up fourth story of main building for patients, eighteen thousand dollars." In reply I have to say:

In my judgment the provisions of the act of 1868 were intended by the legislature to apply to cases of this kind. My opinion was not asked as to the Dayton asylum expenditure of last year, but the Auditor of State informs me that the plans, specifications, biddings, advertisements, lettings, etc., were made in full compliance with that act.

While in many instances I am well satisfied, as you say in this case, the work could be done "quicker and cheaper" than by complying fully with that act, yet I cannot think the General Assembly intended that such work as this, and to that amount, should be done outside of the manner prescribed by that act.

Very respectfully,

F. B. POND,
Attorney General.

Apportionment of Railroad Property For Taxation.

APPORTIONMENT OF RAILROAD PROPERTY
FOR TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, June 8, 1872.

Daniel Murphy, Esq., Auditor of Highland County, Ohio:

SIR:—Yours of the 4th inst. is to hand and in reply I have to say:

Under date of May 23, 1872, I sent you my opinion touching, as I think, the questions you inquire about, and I have seen no reason to change that opinion. On this matter the language is as follows:

First—The words “stationary personal property” I understand to mean all personal property except the rolling stock of the company.

Second—The rolling stock of the company in value is to be apportioned to each district, county, city, village or township in proportion to the number of miles of road in each.

Third—All other personal property (than rolling stock) value being equalized by the board is to be apportioned to the county, city, village, township or district *where it is found* without regard to miles of road.

Very respectfully,

F. B. POND,
Attorney General.

*Bank Director Cannot Hold Office of Notary Public—
Zanesville Atheneum Exempt From Taxation.*

BANK DIRECTOR CANNOT HOLD OFFICE OF
NOTARY PUBLIC.

The State of Ohio,
Office of the Attorney General,
Columbus, June 8, 1872.

To the Governor:

SIR:—Under the act of the General Assembly of April 6, 1866, (S. & S., p. 498) "no banker, broker, officer or clerk of any bank, banker or broker" can hold the office of notary public in Ohio, or discharge any of the functions of a notary public. A bank director is an *officer* of a bank.

A stockholder in a bank is not forbidden to hold the office of notary, but he may not act as such in any matter wherein the bank in which he owns stock is an interested party.

Very respectfully,

F. E. POND,
Attorney General.

ZANESVILLE ATHENEUM EXEMPT FROM
TAXATION.

The State of Ohio,
Office of the Attorney General,
Columbus, June 8, 1872.

Hon. M. M. Granger:

SIR:—Your favor of 3d inst. would have received an earlier answer but for absence from the city on account of sickness and death of my father. In reply I have now to say:

I understand the library and reading room of the "Zanesville Atheneum" is open to the *free use* of all non-residents of Zanesville, and to the *use* of residents of the city

East Union Township Insurance Company; Status of.

upon payment of a small monthly sum, the object of which is to pay for care of and supplying books, magazines, papers, etc., therefor, and the moneys so raised are all consumed for that purpose.

It appears to me clear that this sort of an institution comes within the language of the first sub-division of first section of act of March 21, 1864, (S. & S., p. 761) to-wit: "Public institutions of *learning not used with the view to profit,*" and as such is exempt from taxation.

Very respectfully,

F. B. POND,
Attorney General.

EAST UNION TOWNSHIP INSURANCE COM-
PANY; STATUS OF.

The State of Ohio,
Office of the Attorney General,
Columbus, June 8, 1872.

W. F. Church, Superintendent Insurance:

SIR:—Yours of 7th inst. is to hand covering constitution and by-laws of the "East Union Township Insurance Association," and letter of Smith Orr, Esq., and asking my opinion "as to the legal rights" of that association.

It is difficult for me to ascertain what is desired from the letter submitted.

The status of the associations seems to be:

First—A voluntary association for the purpose of mutual insurance.

Second—It is unincorporated and proposes to do business as a partnership.

As I understand the twenty-fifth section of the act of March 12, 1872, entitled an act "to provide for establishing an insurance department in the State of Ohio," (O. L., Vol. 69, p. 39), this company or association is subject to all the

Securities Deposited by Insurance Companies Should be Transferred to the Superintendent of Insurance Department; Who to Sign Orders For.

provisions and requirements of that act as fully as if it were any ordinary insurance corporation; and it is unlawful for its officers to do "insurance business" without having in all respects complied with the provisions of that act.

I do not know that I have answered all you desire touching the matter; if not please advise me.

Very respectfully,

F. B. POND,
Attorney General.

SECURITIES DEPOSITED BY INSURANCE COMPANIES SHOULD BE TRANSFERRED TO THE SUPERINTENDENT OF INSURANCE DEPARTMENT; WHO TO SIGN ORDERS FOR.

The State of Ohio,
Office of the Attorney General,
Columbus, June 10, 1872.

Hon. James Williams, Auditor of State:

SIR:—In answer to the inquiries contained in your letter of May 31, I have to say:

Section 3 of the act "to provide for establishing an insurance department in the State of Ohio," (O. L., Vol. 69, p. 33) "that said superintendent shall possess all the powers, perform all the duties and be subject to all the obligations and requirements now invested in or appertaining to the Auditor of State by the laws relating to insurance and insurance companies. And from the date of entering his office shall take the place of said auditor under all the provisions of said laws and have the sole and exclusive charge and control over said insurance department," etc.

Section 6 provides that "all books, documents and other papers whatever in the office of the Auditor of State relating

Securities Deposited by Insurance Companies Should be Transferred to the Superintendent of Insurance Department; Who to Sign Orders For.

to insurance shall on demand be delivered and transferred to the superintendent of insurance," etc.

It is clear to me that the provisions of that act confer full and complete authority upon the Auditor of State to transfer securities held by him in his office relating to insurance to the superintendent of insurance; and that, upon demand, it is his duty so to do—being careful to take a proper receipt therefore—as much as it is to transfer books and other papers and documents.

I confess I do not fully understand what object the General Assembly had in view in using the following language in the latter part of section 16 of that act: "And said treasurer shall only deliver such securities or coupons attached thereto upon the written order of the superintendent of insurance and upon the warrant of the Auditor of State," unless it was for the purpose of imposing a check upon the superintendent of insurance, and even then the auditor will have nothing in his office from which to determine upon the propriety or impropriety of such delivery.

But the General Assembly has seen fit so to fix the law, and it must be complied with if possible, and I see no difficulty in complying with it, nor do I think the Treasurer of State would be justified in delivering securities or coupons without both the written order of the superintendent and the warrant of the Auditor of State.

Very respectfully, etc.

F. B. POND,
Attorney General.

*County Auditors and Surveyors Entitled to Compensation
For Services as Members of Boards of Equalization.*

COUNTY AUDITORS AND SURVEYORS EN-
TITLED TO COMPENSATION FOR SERVICES
AS MEMBERS OF BOARDS OF EQUALIZA-
TION.

The State of Ohio,
Office of the Attorney General,
Columbus, June 12, 1872.

Ino. T. Matthews, Esq., Auditor of Washington County:

SIR:—By the fourth section of the act of May 8, 1868, the county auditor and county surveyor are made *members* of the county board of equalization for the real property of the county; and by the eighth section of said act (S. & S., p. 750) the auditor is made a *member* of the annual board. The fiftieth section (S. & C., p. 1458) provides that “each *member*” of the county boards of equalization shall receive,” etc.

It seems clear that this allows compensation to be paid to the auditor and surveyor as well as to the commissioners; and I can see no reason why the same rule should not apply to the auditor as member of city boards under sections 5 and 9 of said first act, which provides that the members of the board shall be governed by the “same provisions” that are prescribed for the government of county boards.

Very respectfully,

F. B. POND,
Attorney General.

The Grand River Improvement Company; Certificate for Incorporation Of.

THE GRAND RIVER IMPROVEMENT COMPANY;
CERTIFICATE FOR INCORPORATION OF.

The State of Ohio,
Office of the Attorney General,
Columbus, June 27, 1872.

Hon. I. R. Sherwood, Secretary of State:

SIR:—Yours containing certificate of incorporation for "The Grand River Improvement Company," and letters of Sidney Strong, Esq., asking my opinion as to whether the certificate ought to be filed and recorded in your office is received. In reply I have to say:

I find no statute which in my judgment authorizes the incorporation of such an association. There must be authority in some statute for creating a corporate body, or it cannot be created at all.

If the act of 9th of March, 1867, (S. & S., pp. 166-7) contemplates conferring corporate existence upon such an association as this, then the certificate ought not to be filed or recorded in the office of Secretary of State.

No certificate should be allowed to go upon record in that office but such as some statute directs.

I am so clear this certificate ought not to be recorded that inasmuch as legal proceedings are talked of to determine the character of this certificate, it would, in my judgment, be as well for the applicant here to make application for a mandamus to compel you to file and record.

Very respectfully,

F. B. POND,
Attorney General.

County Board of Equalization; Duties of Where a Certain Class of Property Has Been Uniformly Valued Too Low in a Township.

COUNTY BOARD OF EQUALIZATION; DUTIES OF
WHERE A CERTAIN CLASS OF PROPERTY
HAS BEEN UNIFORMLY VALUED TOO LOW
IN A TOWNSHIP.

The State of Ohio,
Office of the Attorney General,
Columbus, July 11, 1872.

Hon. James Williams, Auditor of State:

SIR:—In reply to yours of 8th inst. I have to say:

If a county board of equalization should find upon careful examination that all the property of a certain class in any township had been valued too low, and that the valuation was uniform throughout the township, I can see no objection whatever to the boards increasing the valuation of property of that class by a uniform addition thereto.

But if such valuation be not uniform the board ought not to make a uniform increase, but it is their duty in such case to examine the list of each person and make such increase to the valuation in each case, or deduction therefrom, as may be equitable.

This is what I understand the law to intend, and any other course can but work injustice to the man who fairly lists his property, and a benefit to the dishonest one. Against any such wrong the party aggrieved will be relieved by the courts.

Very respectfully,
F. B. POND,
Attorney General.

Person Committed For Any Offense is Entitled to a Full Examination.

PERSON COMMITTED FOR ANY OFFENSE IS ENTITLED TO A FULL EXAMINATION.

The State of Ohio,
Office of the Attorney General,
Columbus, August 16, 1872.

George F. Pendleton, Esq., Prosecuting Attorney, Hancock County:

SIR:—Yours of 14th inst. is to hand and has been carefully examined.

Section 48 of the criminal code (O. L., Vol. 66, p. 294), in my judgment, authorizes and entitles the person "*committed to jail charged with the commission of any crime or offense*" to a full and entire examination upon the charge preferred against him, whether he has been previously examined before a magistrate or not.

I can easily see how a question has arisen in your mind, both as to what construction the statute is capable of and as to what the law ought to be, but upon a careful examination of the statute above referred to, I do not see that I can construe it otherwise. Sections 48 and 51 seem to contemplate proceedings entirely different—one an examination upon the merits of the charge, the other purely as to the admissibility to bail and the amount thereof.

Very respectfully,

F. B. POND,
Attorney General.

*Compensation of Probate Judges; How Paid Under the
Birth and Death Registry Act.*

COMPENSATION OF PROBATE JUDGES; HOW
PAID UNDER THE BIRTH AND DEATH REG-
ISTRY ACT.

The State of Ohio,
Office of the Attorney General,
Columbus, August 22, 1872.

Hon. E. G. Dial, Probate Judge, Clark County:

SIR:—Your verbal inquiry as to how the probate judges of the State are to be paid for services rendered under the fourth section of the act of April 30, 1869, (O. L., Vol. 66, p. 70) has been examined and my judgment of the matter is:

That the probate judge should make out his account for services rendered under that section and submit the same to the county auditor. If the auditor shall find the amount charged for such services such as is "charged and taxed by law for similar services in other cases," it is his duty to draw his order on the treasurer of the county for its payment. If the account is not correct in the rate charged or otherwise, he should correct it and draw his order for the proper sum.

The commissioners of the county, in my judgment, have nothing whatever to do with the matter.

Very respectfully, etc.

F. B. POND,
Attorney General.

J. Davis' Claim to Have Taxes Refunded—Taxation for Schoolhouses in Townships.

J. DAVIS' CLAIM TO HAVE TAXES REFUNDED.

The State of Ohio,
Office of the Attorney General,
Columbus, August 30, 1872.

Hon. James Williams, Auditor of State:

SIR:—In the matter of Mr. J. Davis, who claims to be entitled to have taxes refunded from Hamilton County illegally collected, I have to say:

After the appropriation by the city of the property for public uses no taxes accrued thereon, and the amount paid as for taxes thereon to the county treasurer should be refunded. I do not see, however, what you have to do with the matter.

Very respectfully,
F. B. POND,
Attorney General.

TAXATION FOR SCHOOLHOUSES IN TOWNSHIPS.

The State of Ohio,
Office of the Attorney General,
Columbus, August 30, 1872.

Hon. James Williams, Auditor of State:

SIR:—In reply to yours covering communication of E. Finger, auditor of Ashland County, I have to say:

It is clearly the intention of the General Assembly to have all schoolhouses built by a general township levy so soon as it can be equitably done; and to sustain a levy for that purpose upon a sub-district it must clearly appear that such sub-district has not borne its share of the common

Licensed Preacher of the Lutheran Church is Entitled to a License to Marry.

burden of taxation for that purpose in the township, and that no such tax has been before levied upon such sub-district. It does not matter what the custom of a township board has been in the matter.

By the affidavit it appears that schoolhouses in sub-district No. 1 burned down, was built by a levy on the school district alone. The board cannot then make another special levy on the sub-district for that purpose.

It also appears that the sub-district has borne its reasonable share of taxation for that purpose.

If such be the facts it is clearly the duty of the township board to direct the necessary levy upon the whole township to be made. No other power may do it.

Very respectfully,

F. B. POND,
Attorney General.

LICENSED PREACHER OF THE LUTHERAN
CHURCH IS ENTITLED TO A LICENSE TO
MARRY.

The State of Ohio,
Office of the Attorney General,
Columbus, August 30, 1872.

Rev. J. B. Baltzby, President Wittenberg Synod:

SIR:—Yours of the 24th inst. is received. The liturgy of your church invests the licentiate with all the powers of the ordained minister, and authorizes him as fully to perform all ministerial functions as if he were technically ordained.

Upon this subject Mr. Webster says "ordain" means "to invest with ministerial or sacerdotal functions; to introduce into the office of the christian ministry by," etc., etc.

Penitentiary Explosion; Contractor Responsible For Damages Caused by Thomas Lough, Contractor.

When a person in your church is licensed as a minister he is invested with these ministerial or sacerdotal functions, and it appears to me that it matters little whether in the language of the church he may be said to be "licensed," set apart, appointed, constituted or "ordained" a minister, the *substance* is there in either case where the power is given to exercise the functions; and the law looks to the substance alone.

In some churches this is different because the licentiate is in them not invested with full ministerial power. In my judgment, with my understanding of your church liturgy, a licensed preacher in your church ought to receive a license to marry.

Very respectfully,

F. B. POND,
Attorney General.

PENITENTIARY EXPLOSION; CONTRACTOR RESPONSIBLE FOR DAMAGES CAUSED BY THOMAS LOUGH, CONTRACTOR.

The State of Ohio,
Office of the Attorney General,
Columbus, August 30, 1872.

R. Burr, Esq., Warden Ohio Penitentiary:

SIR:—Your communication of July 30, 1872, was received by me yesterday, and in reply to the question submitted, I have to say:

I examined the evidence submitted and also your statement touching the boiler explosion in the shop occupied by Mr. Lough in the penitentiary, and am led to believe therefrom that the explosion was the result of negligence on the part of the agents of Mr. Lough.

*County Treasurer's Office Vacant if Bond is Not Filed at
Requisite Time.*

In that case whatever damages necessarily resulted to the State from the explosion, the State is entitled to recover from him.

First—Among these damages, it is clear, is the damage to the buildings and other property of the State caused by the explosion. Whatever it will cost to replace this, in my judgment, Mr. Lough is liable for.

Second—I am equally clear that under his contract with the State Mr. Lough, or "The Ohio Brush and Wire Work Company," is liable to the State for the pay of the men contracted for therein during the time they were unemployed by him on account of the explosion.

Very respectfully,

F. B. POND,
Attorney General.

COUNTY TREASURER'S OFFICE VACANT IF
BOND IS NOT FILED AT REQUISITE TIME.

The State of Ohio,
Office of the Attorney General,
Columbus, September 14, 1872.

D. S. Spriggs, Esq., Prosecuting Attorney, Noble County:

SIR:—Yours of the 9th inst. was handed me this morning.

Too much care cannot be observed in standing by the letter of the law touching the duties and liabilities of public officers.

Under the fifteenth section of the act of April 2, 1859, (S. & C., p. 1479) if the bond of the county treasurer-elect was not *on file* in the proper place on the first Monday of September next after his election, the office of treasurer of your county *was vacant* by operation of the statute, so far

Morgan Raid Claims; Status of Those Classified.

as the person elect was concerned, without any action of the commissioners in the matter; and your commissioners should proceed at once to fill the place by appointment, as indicated in the act of May 1, 1854. (S. & C., 1593.)

Notwithstanding this, I am of the opinion that the obligors upon the bond of Mr. Mosely will be liable for the safekeeping, etc., of the public funds that have come into his hands while acting as treasurer.

Upon his re-appointment a new bond should, of course, be taken.

Very respectfully,

F. B. POND,
Attorney General.

MORGAN RAID CLAIMS; STATUS OF THOSE
CLASSIFIED.

The State of Ohio,
Office of the Attorney General,
Columbus, September 27, 1872.

Hon. James Williams, Auditor of State:

SIR:—The question submitted to me verbally touching the status of the Morgan raid claims re-classified and assigned to the third class of said claims by the commissioners appointed by the Governor under the act of last winter, I have examined, and have to say in reply:

Those claims, since their assignment to the third class by the commissioners and the report thereof to the Governor, belong to said third class as fully as if they had been originally there, and are to be so treated by the Auditor of State and all State officers, and any unexpended appropriation made by the General Assembly for that third class is applicable to the payment of these claims.

Very respectfully,

F. B. POND,
Attorney General.

*Election Returns May be Corrected in Certain Cases.
Certificates of Incorporation For Beneficial Associations.*

ELECTION RETURNS MAY BE CORRECTED IN
CERTAIN CASES.

The State of Ohio,
Office of the Attorney General,
Columbus, October 19, 1872.

General I. R. Sherwood, Secretary of State:

SIR:—In the matter of the commission of Mr. Wm. Hall, if the clerk erred in sending you the return of the election, in my judgment, that return may be corrected in your office, and should be before any change is made in the commission. If a change is made both commissions should be changed so as to correspond to the returns as corrected, and I should require both to be returned before correcting either.

Very respectfully,

F. B. POND,
Attorney General.

CERTIFICATES OF INCORPORATION FOR BENE-
FICIAL ASSOCIATIONS.

The State of Ohio,
Office of the Attorney General,
Columbus, October 24, 1872.

General I. R. Sherwood:

DEAR SIR:—The certificate of William J. Forbes and others of Cuyahoga County submitted to me by you, I suppose was intended to be framed under the act of April 20, 1872, (O. L., Vol. 69, p. 82, 83.) This act does not provide for such a certificate as this, nor do I think such a one ought to be recorded in your office.

Lake Shore Christian Home; Certificate to Incorporate the.

The act provides in the first place for the organization of an association, the adoption by it of rules and regulations and the election thereunder of *trustees* and other officers for the association. When all this has been done the *trustees* so chosen "shall under their hands and seals make a certificate which shall specify," etc.

In my judgment such certificate when made by the trustees should recite the history of the organization, and how the trustees acquired authority to make the certificate, and then specify as directed by the act. Any other certificate under that act is worthless.

Very respectfully,

F. B. POND,
Attorney General.

LAKE SHORE CHRISTIAN HOME; CERTIFICATE
TO INCORPORATE THE.

The State of Ohio,
Office of the Attorney General,
Columbus, October 24, 1872.

General J. R. Sherwood:

SIR:—The certificate of the "Lake Shore Christian Home" has been examined.

I find no statute under which such an association may become incorporated.

The act of April 9, 1852, provides for incorporating an association "to establish a *college, university or other institution* for the purpose of promoting," etc.

The act of April 15, 1867, (S. & S., p. 186) provides for incorporating an association, etc., for the purpose "of constructing a park, pond or rink to be used for skating, public meetings," etc.

In all cases the purposes expressed by the statute should be stated in the certificate in the exact words of the statute.

*No Statute Authorizing the Incorporation of Persons to do
a General Express Business.*

Any thing more than this in stating the purposes should not be allowed because it is not warranted by the law. Nor will it do to state different purposes in one certificate which are provided for by *independent statutes*. Each statute, with its purposes, must stand upon its own bottom, without help from others in this respect.

Very respectfully, etc.

F. B. POND,
Attorney General.

NO STATUTE AUTHORIZING THE INCORPORATION OF PERSONS TO DO A GENERAL EXPRESS BUSINESS.

The State of Ohio,
Office of the Attorney General,
Columbus, October 25, 1872.

General I. R. Sherwood, Secretary of State:

SIR:—Yours covering certificate of "Cincinnati Special Messenger Post Company" is received and has been examined.

In my judgment this certificate ought not to be recorded in your office, for the reason that I find no statute authorizing the incorporation of persons for the purpose of doing a "general express messenger business."

I do not think the third clause of the ninth section of the act of February 25, 1869, (O. L., Vol. 66, p. 14) covers it or provides for it.

That clause simply provides for the incorporation of associations for the *advancement of knowledge in all the sciences*, etc. This contemplates a scientific or literary purpose and not a commercial one.

Very respectfully, etc.,

F. B. POND,
Attorney General.

*Taxes Paid Into the State Treasury Cannot be Refunded by
the Auditor of State—Terms of County Commissioners.*

TAXES PAID INTO THE STATE TREASURY CAN-
NOT BE REFUNDED BY THE AUDITOR OF
STATE.

The State of Ohio,
Office of the Attorney General,
Columbus, October 25, 1872.

Hon. James Williams, Auditor of State:

SIR:—The communication of Gendo Melasse has been examined.

After taxes have been paid into the State treasury, I find no statute authorizing the Auditor of State to refund them.

Under the nineteenth section of the act of January 31, 1831, (S. & C., p. 12) the Auditor of State may remit penalties, etc., and correct duplicates. And under the act of May 1, 1856, (S. & C., pp. 1151 and 1152) provision is made for recovering back taxes illegally collected by suit, etc., but I nowhere find that the General Assembly has seen fit to invest the Auditor of State with the power to refund as asked for.

Very respectfully,
F. B. POND,
Attorney General.

TERMS OF COUNTY COMMISSIONERS.

The State of Ohio,
Office of the Attorney General,
Columbus, October 28, 1872.

L. R. Hoagland, Prosecuting Attorney:

SIR:—In reply to yours of the 25th inst. I have to say: In my judgment a county commissioner elected for the full term holds his office for three full years, and his suc-

Cincinnati Coal & Freight Elevator Company.

cessor will be entitled to take the office immediately upon the expiration of that period. If elected to fill a vacancy, he will hold the office for the remainder of the unexpired term of the commissioner whose place he is chosen to fill, and until his successor shall have qualified for the office.

Very respectfully, etc.,

F. B. POND,
Attorney General.

CINCINNATI COAL & FREIGHT ELEVATOR
COMPANY.

The State of Ohio,
Office of the Attorney General,
Columbus, November, 1872.

General I. R. Sherwood, Secretary of State:

SIR:—The certificate of the "Cincinnati Coal & Freight Elevator Company" has been examined.

The purpose or business for which it may be incorporated under the act of March 19, 1867, (S. & S., pp. 194, 195) may be that of "receiving, storing, delivering and forwarding *grain* of all kinds." (See Sec. 3.) This is the only purpose for which the association may primarily be incorporated.

If it sees fit to file a certificate stating *that* as its purpose, it may in addition to *that* add in the certificate "the business of general storage, warehousemen and forwarders of all kinds of produce and merchandise." It may not, however, be incorporated for the last purpose alone.

I do not think the certificate ought to be filed in its present shape.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Duties of Prosecuting Attorneys Under the School Laws.

DUTIES OF PROSECUTING ATTORNEYS UNDER
THE SCHOOL LAWS.

The State of Ohio,
Office of the Attorney General,
Columbus, November 16, 1872.

Ino. T. McCruy, Prosecuting Attorney Ashland County:

SIR:—In reply to yours of 15th inst. I have to say:

Section 65 (S. & C., p. 1365) of the school law provides as follows: "Any suit either in favor or against any such board or other school officers shall be prosecuted or defended, as the case may be, by the prosecuting attorney of the proper county as part of his official duties."

In an adversary proceedings wherein one school board is plaintiff and another defendant, you cannot of course act for both, and in that case it is somewhat difficult to determine what course the prosecuting attorney should take. I am inclined to the opinion that, if upon a careful consideration of the matter in controversy the prosecutor can see clearly which board has the right side, he should act for that board. If it is a doubtful question in his mind I think he should decline to act at all.

Very respectfully, etc.,

F. B. POND,
Attorney General.

Ashland County Mutual of Ashland—Salary of County Auditors.

ASHLAND COUNTY MUTUAL OF ASHLAND.

The State of Ohio,
Office of the Attorney General,
Columbus, November 19, 1872.

Hon. W. F. Church, Superintendent of Insurance:

SIR:—In reply to yours of the 5th inst., touching the sixth section of the charter of the "Ashland County Mutual of Ashland," I have to say:

To entitle *that company* to a lien upon the lands and property insured for the amount of the premium note I do not think it necessary that the certificate provided for in section 24 of the insurance law of last winter (O. L., Vol. 69, p. 150) should be filed with the recorder of the county in which the property insured is situate.

Very respectfully,

F. B. POND,
Attorney General.

SALARY OF COUNTY AUDITORS.

The State of Ohio,
Office of the Attorney General,
Columbus, December 5, 1872.

C. B. Goodman:

SIR:—In reply to yours of the 2d inst. I have to say:

Under the act of April 17, 1867, (S. & S., p. 370) the regular salary of a county auditor in a county containing 6,000 male inhabitants is \$1,520 per annum.

Very respectfully,

F. B. POND,
Attorney General.

Commissions Under the Tax Law.

COMMISSIONS UNDER THE TAX LAW.

The State of Ohio,
Office of the Attorney General,
Columbus, December 6, 1872.

Hon. James Williams, Auditor of State:

SIR:—In reply to yours covering communication of Mr. Kile, auditor of Franklin County, I have to say:

An omission under the act of May 6, 1869, I understand to be property discovered liable to taxation by the Auditor after the return to him of the property of a township by the township assessor, or the district appraiser, as the case may be. If the property of a corporation, or natural person either, has been thus omitted, and subsequently discovered by the auditor of the county and placed upon the tax duplicate, such auditor is entitled to receive the five per centum provided for in that act.

Very respectfully,

F. B. POND,
Attorney General.

DAYTON INSURANCE COMPANY.

The State of Ohio,
Office of the Attorney General,
Columbus, December 10, 1872.

Hon. W. F. Church:

SIR:—Yours of yesterday is to hand. Under the twenty-fourth section of the act of March 12, 1872, (O. L., Vol. 69, p. 39) see the prosecuting attorney of Montgomery County and institute proceedings against the president and secretary of Dayton Insurance Company, if as provided in section 7 of that act you have "reason to suspect that the affairs of the county are in an unsound condition."

I leave the city tonight to be gone until Monday. On

Ohio State Reports; Contracts for Furnishing.

my return I will institute proceedings here for mandamus if you can make the proper showing.

Very respectfully,

F. B. POND,
Attorney General.

OHIO STATE REPORTS; CONTRACTS FOR FURNISHING.

The State of Ohio,
Office of the Attorney General,
Columbus, December 19, 1872.

Hon. J. R. Sherwood, Secretary of State:

SIR:—In reply to yours of today, covering the communication of Robert Clarke & Company, I have to say:

In the appropriation act of last winter (O. L., Vol. 69, p. 135) occurs the following provisions:

“For printing for the State fifteen thousand dollars.”

“For the purchase of Ohio State Reports, fifteen hundred and seventy-five dollars.”

This last provision was intended, as it seems to me, to apply to the “*purchase*” of the twenty-first volume of Ohio *State Reports*, and covers just the number of volumes provided for by the act of April 11, 1865 (S. & S., p. 622.)

The contract of Messrs. Robert Clarke & Company is “to furnish the material and to print and bind,” etc., a sufficient number of copies of each volume of Ohio Reports, etc.

Here is a contract to *furnish complete to the State, books*. It is not a contract to *print* for the State merely, but an entire contract to supply the volumes, and I do not think the appropriation for printing could have been intended by the General Assembly to apply to this contract.

Very respectfully,

F. B. POND,
Attorney General.

Buena Vista Freestone Company; the Language of the Statute Should be Followed in Certificates of Incorporation.

BUENA VISTA FREESTONE COMPANY; THE LANGUAGE OF THE STATUTE SHOULD BE FOLLOWED IN CERTIFICATES OF INCORPORATION.

The State of Ohio,
Office of the Attorney General,
Columbus, December 23, 1872.

Hon. I. R. Sherwood, Secretary of State:

SIR:—I have examined the certificate of the Buena Vista Freestone Company.

I suppose it was designed to have this association incorporated under the provisions of the act, without date, found on pp. 169 and 170, S. & S. statutes. If so, in stating the object (as indicated in a former opinion from this office) the language of the statute should be followed. If followed the object and purpose would be stated as follows, to-wit: "quarrying stone or manufacturing the same in whole or in part, or both, and carrying on business usually connected with the main objects of such corporations."

These objects need not all be named, but the character of none of them should be changed in stating the purpose; nor should different language be used than that used in the statute.

Very respectfully,

F. B. POND,
Attorney General.