
County Commissioners; Compensation of, How Paid.

Blain for the improvement of the Ohio State library room, the library commissioners, with the written consent of the governor, auditor of state and the secretary of state, have the power to employ upon the work contracted, additional force and supply the necessary material, etc., as provided in the twelfth section of the act of April 3, 1873 (Laws, p. 106), but whether they should exercise that power rests in their sound discretion.

Very respectfully,
JOHN LITTLE,
Attorney General.

COUNTY COMMISSIONERS; COMPENSATION OF,
HOW PAID.

The State of Ohio,
Attorney General's Office,
Columbus, November 30, 1875.

*J. L. Vallandigham, Esq., Prosecuting Attorney, Hamilton,
Ohio:*

DEAR SIR:—In answer to yours of yesterday I have to say, that under the act of March 30, 1875 (Laws, pp. 169, 170), county commissioners cannot properly be paid their *per diem* mileage, etc., until the same shall have been certified to by the prosecuting attorney of the proper county and approved by the probate judge thereof.

Very respectfully,
JOHN LITTLE,
Attorney General.

County Commissioners Cannot Furnish Offices for Prosecuting Attorneys—Harries Guards; Payment of.

COUNTY COMMISSIONERS CANNOT FURNISH OFFICES FOR PROSECUTING ATTORNEYS.

The State of Ohio,
Attorney General's Office,
Columbus, December 10, 1873.

E. J. Duer, Esq., Prosecuting Attorney, Millersburg, Ohio:

DEAR SIR:—This in answer to yours of the 8th instant: County commissioners have no warrant or authority in law to rent or provide at public expense offices for prosecuting attorneys.

Yours, etc.,
JOHN LITTLE,
Attorney General.

HARRIES GUARDS; PAYMENT OF.

The State of Ohio,
Attorney General's Office,
Columbus, January 1, 1876.

General James O. Amos, Adjutant General:

SIR:—In answer to your communication of the 22d ult. I have to say:

That under the circumstances detailed, the account for the *per diem* of members of the Harries Guards, Ohio National Guards, for September 1 and 2, 1875, should be approved and paid out of the State treasury, when an appropriation shall be made for the purpose.

Very respectfully,
JOHN LITTLE,
Attorney General.

Equalization of Railroad Property for Taxation.

EQUALIZATION OF RAILROAD PROPERTY FOR
TAXATION.

The State of Ohio,
Attorney General's Office,
Columbus, January 12, 1876.

Hon. James Williams, Auditor of State:

SIR:—The words "such property" in the fifth section of the railroad tax law of May 1, 1862 (S. & S., 767), embrace "road bed, water and wood stations, and *such other realty as is necessary to the daily running operations of the road.*" All of such realty should be "distributed." What buildings and lands *are* thus necessary is a question of fact which neither of us perhaps has the means of determining. The determination is left, I should say, in the first instance, to the board of county auditors in the light of the facts which the fourth section gives them authority to obtain. The presumption is that officers do their duty. If any board, therefore, "distribute" given realty, it is to be presumed to be of the description named. Though this presumption might not be conclusive in the courts, it should not, in my opinion, be disturbed by the auditor of state, particularly after confirmatory action by the State board of equalization.

It follows that you should not advise the auditor of Franklin County to depart from the action of board of county auditors respecting the C. & H. V. R. R.

Very respectfully,

JOHN LITTLE,

Attorney General.

*The General Assembly Has Power to Levy a Special Tax
Upon Dogs.*

THE GENERAL ASSEMBLY HAS POWER TO LEVY
A SPECIAL TAX UPON DOGS.

The State of Ohio,
Attorney General's Office,
Columbus, February 4, 1876.

*Hon. Charles H. Grosvenor, Speaker of the House of Rep-
resentatives:*

SIR:—I have the honor to acknowledge the receipt of House Resolution No. 36, which reads as follows: "Resolved, that the attorney general is hereby respectfully requested to transmit to this House, at his earliest convenience, his opinion as to whether the Legislature can constitutionally enact a law levying a special tax upon dogs;" and to submit the following in answer thereto:

The power to determine the purposes, extent, objects, and manner of taxation is a legislative one.

Under the general grant, in section 1, article 2, of the constitution, unrestricted by other provisions, the General Assembly would have unlimited legislative authority, and unquestionably, could make a law to levy a special tax upon, or prescribe a penalty for the keeping of dogs.

The question, then, is presented, whether there be such a limitation upon this grant of legislative power as to prevent the enactment of such a law. If there be any, it is contained in the following language from section 2, article 12 of that instrument, to-wit: "Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and, also, all real and personal property, according to its true value in money."

And is the limitation to be found here?

Clearly not, unless dogs are "property" within the meaning of the term as used. For "an express direction to impose a tax on all *property* by a uniform rule does not nec-

*The General Assembly Has Power to Levy a Special Tax
Upon Dogs.*

essarily exclude taxation upon that which is *not* property, or cover the whole ground included within the limits of the taxing power." (11th Ohio State, 540; also 5th Ohio State, 589, and 18th Ohio State, 243.)

Property in a general sense, is the right or interest of one in a thing. It usually, but, necessarily, has a money value. Value, too, may exist aside from property. (3d Ohio State, 7.) The term, however, is here used in its more limited sense, and refers only to such property as has a money value—"a true value in money." Dogs are not of that description of property. They lack the element of money value. They are not among those domestic animals which Blackstone declares to be "absolute property," and of which he says: "The stealing and forcible abduction of such property as this, is also felony, for these are things of intrinsic value, serving for the food of man or else for the uses of husbandry" (2 Blackstone, 388). At common law a dog could not be the subject of larceny because he had no "intrinsic value." (4 Blackstone, 236; 8 Sergeant and Rawle, 571.) I do not see that the law is different in Ohio; it certainly is not as to dogs not listed for taxation.

The legislation of the State seems to recognize them as not being property of value. The act providing for their valuation for taxation significantly relieves the owner from qualifying to the return. Their destruction, when not listed for taxation, etc., without compensation to owners, would not have been authorized, I take it, especially in view of the constitutional provision that "private property shall ever be had inviolate," if they had been regarded by the Legislature as "property" having a "true value in money."

Dogs, therefore, not being property within the meaning of said section 2, and the power to tax what is *not* property not being denied by said section (as said by Gholson, J., in the case in 11th Ohio State), the General Assembly is not limited to the "uniform rule" therein prescribed with respect to their taxation, but may resort, under the general grant of

*The General Assembly Has Power to Levy a Special Tax
Upon Dogs.*

power, to any mode for the purpose it sees proper to adopt.

I would not be understood as saying that the power to levy a special tax upon the keeping of dogs or to assess a penalty against the owners thereof for a proper purpose, hinges upon the question whether dogs are property. It will be observed that the language of the section quoted is, "Laws shall be passed *taxing*," etc. "It is settled by repeated decisions of this court," says Brinkerhoff, J., in 18th Ohio State, 242, "that the section of the constitution just referred to is only applicable to, and furnishes the governing principle for, all laws levying taxes for the *general revenue*, whether for state, county, township, or municipal corporate purposes;" and it was there held that a special assessment upon gas companies imposed by the act of April 6, 1866, *was not a tax* for the purpose of general revenue, and not unconstitutional. It would seem to be the opinion of the judge that inspection and license laws, imposing special charges upon occupations and trades, would be upheld on the same grounds. And in the 8th Ohio State, 333, the doctrine is announced by the court that "assessments are not embraced within the meaning of the word 'taxing,' in the second section of the twelfth article of the Constitution."

I feel quite sure, therefore, that a law imposing a special assessment upon the keeping of dogs, not for the purpose of general revenue, but to create a fund for examples wherewith to pay for their ravages, would not be in violation of the constitution, even if they should be held to be property of value.

There is still another ground upon which such legislation would be sustained, namely: that it involves but the legitimate exercise of the police powers of the State. Under them the State has the authority to protect its citizens in their industrial pursuits, and preserve their property from wanton destruction by whatever means may be necessary. (See Cooley's Constitutional Law, 573.)

In Indiana, where the constitution on the subject of

Probate Judge; Commencement of Regular Term of.

taxation is similar to our own, it was held that "as a measure of internal police, the Legislature has the power to encourage the rearing of sheep, and with that object in view, to discourage the keeping of dogs, by assessing a penalty upon the owner or keeper of the latter," and that such a penalty is not a "tax" within the meaning of the constitution. (*Mitchell vs. Williams*, 27th Indiana, 62.)

It needs scarcely be said that the action of the people in voting down the proposed amendment authorizing a special tax upon dogs, at the recent election, can have nothing whatever to do with the interpretation of the constitution as we find it. The amendment may have been rejected because it was thought to be superfluous.

Very respectfully,

JOHN LITTLE,
Attorney General.

PROBATE JUDGE; COMMENCEMENT OF REGULAR TERM OF.

The State of Ohio,
Attorney General's Office,
Columbus, February 4, 1876.

Byron Stillwell, Esq., Prosecuting Attorney, Ashland, Ohio:

DEAR SIR:—In answer to yours of the 2d inst., I have to say: The regular term of a probate judge-elect begins February 9, succeeding his election.

Very respectfully,

JOHN LITTLE,
Attorney General.

P. S.—Please communicate the contents of this note to Mr. Taylor, the judge-elect, whose letter I have on the same subject.

J. L.

Religious Liberty in the Ohio Penitentiary.

RELIGIOUS LIBERTY IN THE OHIO PENITENTIARY.

The State of Ohio,
Attorney General's Office,
Columbus, February 4, 1876.

Colonel G. S. Innis, Warden of Ohio Penitentiary:

SIR:—I am in receipt of your communication of the 31st ultimo, in which you ask "if the word 'person' in the 'Bill of Rights'—article 1, section 7, of the Constitution of Ohio—includes convicts in the Ohio Penitentiary, or is it restricted to persons outside who have not forfeited their rights by being convicted of crime;" also, "if a prisoner says it is against the dictates of his conscience to attend any particular religious services, would it be a violation of the constitution and laws of Ohio for me to compel his attendance?"

The portion of the section, to which your inquiries relate, reads:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted."

A prisoner should be accorded the rights and immunities specified in said section, so far as consistent with a proper and necessary prison discipline. To the extent, if at all, that their "curtailment" is necessary to such discipline, he may be regarded as having put them in abeyance by his crime, for the time being. What discipline is necessary to a just and orderly administration of the affairs of the penitentiary,

Discharge of Prisoners When Not Brought to Trial.

the law must determine, and by its determination the executive officers of the prison must abide.

Very respectfully,
JOHN LITTLE,
Attorney General.

DISCHARGE OF PRISONERS WHEN NOT
BROUGHT TO TRIAL.

The State of Ohio,
Attorney General's Office,
Columbus, February 11, 1876.

G. F. Robinson, Esq., Prosecuting Attorney, Ravenna, Ohio:

DEAR SIR:—Yours of the 10th received and contents considered. I see no escape from the inflexible rule provided in the 161st section of the Criminal Code. There is no exception to the right of the prisoner to be discharged when not brought to trial before the end of the second term after indictment, except the one named in the section, to-wit: When the delay is occasioned by the prisoners' application. If it had been intended that the further exception, specified in section 87, should obtain, it would have been so provided.

I have called the attention of the chairman of the House Judiciary Committee to the matter.

Very respectfully,
JOHN LITTLE,
Attorney General.

*Agricultural College Trustees Can Compromise Certain
Land—Extra Compensation to Clerk of House of Rep-
resentatives.*

AGRICULTURAL COLLEGE TRUSTEES CAN COM-
PROMISE CERTAIN LAND.

The State of Ohio,
Attorney General's Office,
Columbus, February 24, 1876.

Hon. Ralph Lutz, Ironton, Ohio:

SIR:—In answer to your two communications—one of the 14th, per Mr. Waddle, and the other of the 19th inst., both just received—I have to say:

I think the Board of Trustees of the O. A. & M. College may legally and properly adjust and compromise claims as to odd lists and strips of land such as you describe, where the cost of appraisement, etc., would exceed the value thereof, without having the same appraised.

Very respectfully,
JOHN LITTLE,
Attorney General.

EXTRA COMPENSATION TO CLERK OF HOUSE
OF REPRESENTATIVES.

Xenia, Ohio, April 11, 1876.

Hon. James Williams, Auditor of State, Columbus, Ohio:

DEAR SIR:—Yours of yesterday at hand. You say Williams Leonard, Clerk of the House of Representatives, has been voted by resolution 180 days' pay "for bringing up the recorded journal," and has the Speaker's certificate for the same; and ask whether it should be paid in advance of the work to be done. The Statute (S. & S., 696) provides that the clerk of the House shall receive five dollars per day "for

Publication of Legal Advertisements.

each day's attendance during the session of the General Assembly;" also, that he shall be entitled to the same compensation per day *after* the adjournment "for making out indexes to the recorded and printed journals," and that he shall be entitled to no "other allowance or compensation for services after the adjournment of the General Assembly, *except as may be provided by law or resolution.*" (S. & S., 697, Sec. 3.) By implication therefore the clerk may be allowed by resolution other compensation for services than his *per diem*. *What* that shall be or *when* it shall be paid, I should say, depends upon the language of the resolution itself, which is not before me. The additional allowance is to be made "*as may be provided by * * * resolution.*"

Under the statute as it formerly stood, the clerk was allowed but the five dollars per day for any service performed under resolution. (O. L., Vol. 62, pp. 12 and 5.) This feature having been omitted in the present law, the whole subject of additional allowance is left to the proper house.

Yours, etc.,
JOHN LITTLE,
Attorney General.

PUBLICATION OF LEGAL ADVERTISEMENTS.

The State of Ohio,
Attorney General's Office,
Columbus, Ohio, May 4, 1876.

J. A. Pearson, Esq., Prosecuting Attorney, Woodsfield, O.:

DEAR SIR:—In yours of April 24th, you say there are two newspapers published in Monroe County—"The Spirit of Democracy, Democratic, and the Monroe Democrat, Independent;" and you inquire whether certain matter, specified in section 2 of the act "To fix the price of legal ad-

Apportionment of Railroad Property for Taxation.

verting" (advertising), passed March 25, 1876, should be published in both.

I think the publication should be in both. The requirement is that publication shall be in "*two newspapers.*" What follows, to-wit: "one of each political party, if there be two papers of different political principles," etc., is directory as to the mode of fulfilling the requirement.

The clause "if there be two papers of different political principles," etc., refers to and qualifies the phrase "one of each political party," and *not* the preceding one—"shall be published in two newspapers."

It follows that if there were but two papers published in a county and both were of the same political principles, publication must be made in each.

Very respectfully,

JOHN LITTLE,

Attorney General.

APPORTIONMENT OF RAILROAD PROPERTY
FOR TAXATION.

The State of Ohio,
Attorney General's Office,
Columbus, May 4, 1876.

To Auditor of State:

SIR:—All structures and realty necessary for, or used in the daily running of operations of the road, should be apportioned. Realty and structures entirely disconnected with the road and not used in connection with its operations for storage or otherwise, I think should not be apportioned.

Very respectfully,

JOHN LITTLE,

Attorney General.

Employment of Relatives of Trustees in Lunatic Asylums.

EMPLOYMENT OF RELATIVES OF TRUSTEES IN
LUNATIC ASYLUMS.

The State of Ohio,
Attorney General's Office,
Columbus, May 5, 1876.

Dr. Richard Gundry, Medical Superintendent Athens Asylum, Athens, Ohio:

DEAR SIR:—Without undertaking the difficult task of defining what is meant by the phrase, "related by blood or marriage," used in section 11 of the act of March 27, 1876 (p. 84 of Laws), I have to say in answer to yours of the 19th ult.—too long unanswered:

First—"The daughters of a trustee's wife's brother" come, in my judgment, within the prohibition of the section; but "the sister of a trustee's son's wife" does not.

Second—It is your duty to remove such employes as the section forbids to be employed.

Third—The phrase "under the direction of the medical superintendent and trustees," qualifies the last clause in section 9, as well as the preceding ones. The steward, therefore, has no authority *on his own motion* to employ and discharge attendants. Under section 12, the medical superintendent has such authority. He is the official and responsible head of the institution. It cannot have two.

Very respectfully,

JOHN LITTLE,
Attorney General.

Fees of Attorneys for Defending Indigent Prisoners—Fugitives From Justice; Rendition of; Rendition of George W. Burdell.

FEEES OF ATTORNEYS FOR DEFENDING INDI-
GENT PRISONERS.

The State of Ohio,
Attorney General's Office,
Columbus, June 30, 1876.

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

DEAR SIR:—Absence from the city has prevented earlier attention to your communication of the 22d instant.

In reply, I have now to say that, in my opinion, the county commissioners can allow each attorney \$100 for his services in defending a person on trial for homicide, if they see proper so to do. The matter is discretionary with them.

Very respectfully,

JOHN LITTLE,
Attorney General.

FUGITIVES FROM JUSTICE; RENDITION OF;
RENDITION OF GEORGE W. BURDELL.

The State of Ohio,
Attorney General's Office,
Columbus, June 30, 1876.

Hon. R. B. Hayes, Governor:

DEAR SIR:—I have examined Governor McCreary's letter to you under the date of June 23d, relative to the rendition, etc., of George W. Burdell, a fugitive from justice from the State of Kentucky, and have to say in respect thereto:

The action by and before Judge Goode, to which the

Belmont County Road Bonds; Assessment for Unpaid Ones

letter refers, was had in pursuance of the act of March 23, 1875, entitled, "An act to regulate the practice of the delivery of fugitives from justice when demanded by another State or Territory (Ohio Laws, Vol. 72, p. 79).

It has been and is a question, in my mind, whether this act can be supported in view of the legislation of Congress upon the subject. Similar legislation in the State of Indiana, however, has been upheld by the Supreme Court of that State. It is hoped the question may be judicially determined here at no distant day. But while the act stands, there seems to be no escape from the unexpected consequences of its operation.

If in this case the evidence or matter found by Judge Goodè to be wanting can be supplied a new warrant can issue and another arrest be made.

Very respectfully,

JOHN LITTLE,

Attorney General.

BELMONT COUNTY ROAD BONDS; ASSESSMENT
FOR UNPAID ONES.

The State of Ohio,
Attorney General's Office,
Columbus, July 14, 1876.

Hon. James Williams, Auditor of State:

SIR:—In response to yours of yesterday and the inquiry contained in the letter of the auditor of Belmont County addressed to me July 7 and referred to you as pertaining more especially to matters of your office, I have to say:

It seems that the county commissioners of Belmont County in the year 1868, commenced the construction of a road under the act entitled "An act to authorize the county

Gallipolis Board of Education Fail to Organize; Duties of the County Commissioners and Prosecuting Attorney in Relation Thereto.

commissioners to construct roads on petition of a majority of land owners along and adjacent to the line of said road and to repeal an act therein named," and made what was supposed to be the necessary assessments to redeem the bonds issued in that behalf; but at the end of five years there remained unpaid and unprovided for, bonds of such issue to the amount of some \$8,000.

It further appears that the District Court of that county, at its late term, in a proceeding in mandamus, instituted by the holders of such unpaid bonds, directed a levy to be made for the payment thereof without delay "according to law."

The inquiry is, what is "according to law?" Shall the "levy" be upon the property of the county generally, upon the lands within the "bounds of the road," or upon both?

My answer is, that the assessments for the redemption of such bonds should be made upon the lands only within the road limit heretofore assessed, according to the act of May 1, 1871. (Ohio Laws, Vol. 68, page 110.)

Very respectfully,

JOHN LITTLE,
Attorney General.

GALLIPOLIS BOARD OF EDUCATION FAIL TO ORGANIZE; DUTIES OF THE COUNTY COMMISSIONERS AND PROSECUTING ATTORNEY IN RELATION THERETO.

The State of Ohio,
Attorney General's Office,
Columbus, July 20, 1876.

Ira Gråham, Esq., Prosecuting Attorney, Pomeroy, Ohio:

DEAR SIR:—Under the circumstances detailed in yours of recent date, with respect to the board of education which

Rendition Case of George W. Burdell.

refuses to organize, etc., a case is presented for the interposition of the county commissioners. In case of their action, they can only exercise the powers conferred by the law in that behalf. (Sec. 59, School Law, Laws, 1875, p. 59.) They have no authority to remove the members-elect of the board.

You should, in my opinion, in the meantime enforce the penalty prescribed by law (same section) against the members "causing said failure."

Yours, etc.,

JOHN LITTLE,

Attorney General.

 RENDITION CASE OF GEORGE W. BURDELL.

The State of Ohio,
 Attorney General's Office,
 Columbus, July 20, 1876.

To the Governor:

SIR:—In regard to the request of the governor of Kentucky that "you have the Burdell case immediately carried to the Supreme Court * * so that what seems to be a conflict between State and Congressional legislation may be judicially determined," I have to say, that the record in that case (if in fact any was made) would not be in shape to carry the case to the Supreme Court.

I shall, in accordance with your request, take the first opportunity to have the question involved judicially determined.

Very respectfully,

JOHN LITTLE,

Attorney General.

*Errors in Estimates for Construction of Public Buildings
May Be Corrected—Fees of Justices and Constables.*

ERRORS IN ESTIMATES FOR CONSTRUCTION OF
PUBLIC BUILDINGS MAY BE CORRECTED.

The State of Ohio,
Attorney General's Office,
Columbus, August 4, 1876.

To the Governor:

SIR:—When clerical errors occur in estimates for the construction of public buildings, and such errors are not discovered till after the estimates are approved according to law, I see no objection to the correction of such errors by the sanction of the officers, approving at any time after the discovery.

Very respectfully,
JOHN LITTLE,
Attorney General.

FEEES OF JUSTICES AND CONSTABLES.

The State of Ohio,
Attorney General's Office,
Columbus, August 12, 1876.

*J. E. Stephenson, Esq., Prosecuting Attorney, Chardon,
Ohio:*

DEAR SIR:—An answer to your favor of the 7th ultimo has been unavoidably delayed until now.

The questions you ask are first quoted and then answered:

First—"Are county commissioners by law authorized to order payment out of the county treasury costs and fees due justices and constables in cases of misdemeanor, provided the complaining witness is pecuniarily responsible?"

Answer—No.

Meaning of the Word "Armories" in the Militia Law.

Second—"Are county commissioners by law authorized to order the payment out of the county treasury costs and fees due justices and constables in penitentiary offenses when the State fails to convict?"

Answer—Yes.

There are no other statutes regulating the payment of costs and fees due justices and constables in criminal cases, other than the ones you refer to.

Very respectfully,
JOHN LITTLE,
Attorney General.

MEANING OF THE WORD "ARMORIES" IN THE
MILITIA LAW.

The State of Ohio,
Attorney General's Office,
Columbus, September 1, 1876.

To the Adjutant General:

SIR :—The word "armories" used in the 34th section of the act of April 11, 1876 (O. L., p. 179), means places where arms and instruments of war are deposited for safe-keeping; nothing else. It does not include, in addition, the idea of drill room.

Very respectfully,
JOHN LITTLE,
Attorney General.

Church Property Not Exempt From Assessment for Improvements of Certain Class; Construction of Drains, Etc.

CHURCH PROPERTY NOT EXEMPT FROM ASSESSMENT FOR IMPROVEMENTS OF CERTAIN CLASS; CONSTRUCTION OF DRAINS, ETC.

The State of Ohio,
Attorney General's Office,
Columbus, September 20, 1876.

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

DEAR SIR:—In reply to the questions you ask in your favor of the 14th instant, I have to say:

First—I find no provision of law for exempting church property from being assessed for building and repairing sidewalks ordered by the council. It should be treated as other property.

Second—If there is no fund to construct the drain the council have no authority to construct it across private property, or elsewhere. If such construction, however, is necessary for sanitary purposes they might borrow money therefor.

Very respectfully,
JOHN LITTLE,
Attorney General.

*County Commissioners No Authority to Employ a Clerk Pro Tem When Board of Education Fail to Organize—
Legal Advertising; Construction of Act of 1876.*

COUNTY COMMISSIONERS NO AUTHORITY TO
EMPLOY CLERK *PRO TEM* WHEN BOARD OF
EDUCATION FAIL TO ORGANIZE.

The State of Ohio,
Attorney General's Office,
Columbus, September 20, 1876.

Ira Graham, Esq., Pomeroy, Ohio:

DEAR SIR:—In reply to your favor of the 6th instant, I have to say, that I do not see that the commissioners had authority to appoint and pay a clerk. The auditor, therefore, cannot be required to issue his warrant.

Very respectfully,

JOHN LITTLE,
Attorney General.

LEGAL ADVERTISING; CONSTRUCTION OF ACT
OF 1876.

The State of Ohio,
Attorney General's Office,
Columbus, December 14, 1876.

*F. C. Layton, Esq., Prosecuting Attorney Auglaize County,
Wapakoneta, Ohio:*

DEAR SIR:—In answer to your inquiries, of the 28th *ultimo*, I have to say:

The second section of the act of March 25, 1876 (Laws, p. 75), does not confer authority to publish any matter in *one* newspaper merely in a county where two papers exist. The purpose of the section is to confer the authority and impose the duty to publish in "*two* newspapers," etc.

Legal Advertising; Construction of Act of 1876.

Certain matter to-wit: That specially named in the first part of the section, must be so published at all events. Certain other matter, to-wit: "Other advertisements or notices of general interest to the taxpayers," must be so published only when the auditor, probate judge, treasurer and commissioners deem it proper to make the publication. If these officers do not deem it proper to publish such matter in "two newspapers," etc., they are not authorized to publish in one merely. Unless published in "two papers" (where they exist) the "other advertisements," etc., cannot be published at all. I fully concur with your view of the law in this respect.

BRIDGES AND CULVERTS.

The authority to construct bridges and culverts and pay for the same out of the county bridge fund by county commissioners, conferred by the twelfth section of the act of May 7, 1869 (Laws, p. 131), as explained by the act of April 29, 1871 (Laws, p. 91), is restricted to cases where the road improvements, upon which such bridges or culverts are located, have once been *completed*. The authority cannot, I think, be exercised as to such improvements under process of construction.

The case of *McVicker vs. Commissioners* (25 O. S., 608) settles this question.

We are in accord as to this question, also.

Yours, etc.,

JOHN LITTLE,
Attorney General.

Compensation of Prosecuting Attorneys—Loveland; Incorporation of; Legality of the Tax Levied By Said Village in 1876.

COMPENSATION OF PROSECUTING ATTORNEYS.

The State of Ohio,
Attorney General's Office,
Columbus, December 14, 1876.

Byron Stillwell, Esq., Prosecuting Attorney, Ashland, Ohio:

DEAR SIR:—Prosecuting attorneys are not entitled to extra compensation for services under the act of April 8, 1876 (Law, p. 141). Their compensation, prescribed in the act of March 17, 1873 (Laws, p. 67), was intended to cover all their official services then or thereafter required by law to be performed.

Very respectfully,
JOHN LITTLE,
Attorney General.

LOVELAND; INCORPORATION OF; LEGALITY OF THE TAX BY SAID VILLAGE IN 1876.

The State of Ohio,
Attorney General's Office,
Columbus, December 27, 1876.

Hon. James Williams, Auditor of State:

SIR:—In your communication of the 20th *instant*, you submit the following facts:

“The incorporation of the village of Loveland was not accomplished until after July 16, 1876. Election for corporation officers was held July 28, 1876. The council then elected on August 1, 1876, levied taxes on duplicate of 1876 for corporation purposes, which taxes were run upon the du-

*Loveland; Incorporation of; Legality of the Tax Levied By
Said Village in 1876.*

plicates of Clermont and Hamilton Counties, but not upon that of Warren (the limits of the village embracing territory in three counties, Clermont, Hamilton and Warren.) You ask my opinion as to the validity of the levy thus made. No question is made as to the amount and character of the levies, but whether the village, thus organized, has power to levy any taxes at all *upon the duplicate of 1876.*

After its organization, the village of Loveland, of course, became invested with all the powers conferred upon incorporated villages by the Municipal Code. Among such powers is that of levying taxes. The sections of the code (640-41-44) conferring this power are general and do not limit its exercise to any particular time or period; nor does the law anywhere require levies to be made at a given date. Section 648, however, provides that "the council of every municipal corporation shall cause to be certified to the auditor of the county, on or before the first Monday in June annually, the percentage by them levied on the real and personal property in the corporation," etc. A similar provision is found in section 649. It is suggested that this provision fixes a limitation upon the power of taxation conferred by section 640-1-4, as to the time of its exercise; and that the levies for each year must be made, because required to be certified, on or before the day named.

I am disposed to think otherwise. The provision, in my judgment, is directory, and not mandatory. The distinction, in general terms, may be stated thus: all provisions of law which are made for the benefit and protection of the individual taxpayer are mandatory, and must be strictly complied with, but those which pertain merely to the orderly and convenient transaction of business are usually regarded as directory. Compliance with such should always be observed, but a failure to comply is not fatal. In *French vs. Edwards et al.*, 13 Wal., 506, the law is aptly stated as follows:

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“Statutory requirements intended for the guide of officers in the conduct of business devolved upon them and designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected, are not usually regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated. But requirements intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected are not directory, but mandatory. The power of the officer in such cases is limited by the manner and conditions prescribed for its exercise.”

In Cooley on Taxation, p. 219, it is said: “So, in general, the fixing of an exact time for the doing of an act is only directory, where it is not fixed for the purpose of giving the party a hearing or for any other purpose important to him.” The case of *Hart vs. Plum*, 14 Col., 148, is cited. There the provision requiring an assessment to be filed within twenty days to constitute it a lien, etc., was held directory.

In Hilliard's Law of Taxation, at page 37, it is said: “But many regulations are made by statute designed for the information of assessors and officers, and intended to promote method, system and uniformity in the method of proceeding, the compliance or non-compliance with which does in no respect affect the rights of taxpaying citizens. These may be considered directory, officers may be liable to legal animadversion, perhaps to punishment, for not observing them; but yet their observance is not a condition precedent to the validity of the tax.”

Applying these principles to the language quoted of section 648 (and 649), it seems to me the provision must fall in the category of directory provisions. It is not en-

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acted for the benefit of the taxpayer. It makes no difference to him whether the levy is certified on the first or last Monday in June. He is only interested in this respect, that the levy be certified in time to get upon the duplicate before he pays his taxes; otherwise he might be subject to inconvenience, annoyance, and probably loss. There are no "negative words," to use the language of the U. S. Supreme Court, accompanying the provision, "importing that the acts required shall *not* be done in any other manner or *time* than that designated." On the contrary, I think the provision was designed merely "to secure order, system and dispatch in proceedings," especially in the making up of duplicates by county auditors.

The provision then being directory as to corporations existing on the first Monday of June, it is a *fortiori* directory as to this village organized in the month of July.

It follows that these levies for municipal purposes are not invalid because of their being made and certified *after* the first Monday of June. In my opinion they may be made up to a time beyond which the duplicates containing them could not reasonably be made up in time for the tax collections with material public inconvenience or expense. How the fact was in this case you are better able to judge than myself, and I leave it to you to say.

Very respectfully,

JOHN LITTLE,
Attorney General.