bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

867.

OHIO PENITENTIARY—GUARDS—PAID IN ACCORDANCE WITH SCHEDULE, SECTION 2181, G. C.—GENERAL APPROPRIATION ACT—STATUTORY CONSTRUCTION.

SYLLABUS:

Guards at the Ohio Penitentiary should be paid in accordance with the schedule set up in Section 2181, of the General Code of Ohio.

COLUMBUS, OHIO, July 8, 1939.

HONORABLE H. D. DEFENBACHER, *Acting Director of Finance, Columbus, Ohio.*

DEAR MR. DEFENBACHER: This will acknowledge receipt of your request for my opinion concerning the compensation to be paid guards at the Ohio Penitentiary, in view of the apparent conflict between the provisions of Section 2181, General Code, and the provisions of the current General Appropriation Act (House Bill 674 of the 93rd General Assembly) which limits the compensation to be paid guards at penal institutions.

Section 2181, General Code, as enacted by the 92nd General Assembly (117 O. L., 850), reads as follows:

> "Effective March 1, 1938, the salary of Class A Guards, employed at the Ohio Penitentiary, shall be increased to $170.00 per month; the salary of Class B Guards at the Ohio Penitentiary shall be increased to $160.00 per month; the salary of Class C Guards shall be increased to $150.00 per month."

In House Bill 674 of the 93rd General Assembly, the General Appropriation Act in which general appropriations were made for the biennium of 1939-1940, appropriated in Section 3 thereof to "Department of Public Welfare—Administration—Personal Service—A-1—Salaries for 1939—$3,760,628.85—for 1940—$3,760,628.85." In Section 10 of said act the following appears:

> "So much of the appropriation made for personal service as pertains to the compensation of employes in the following groups

and grades of the classified civil service of the state, save and except * * * may be expended only in accordance with the classification and rules of the state civil service commission at the following rates of annual salaries for the respective groups and grades. * * *

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Grade I.	Rate A	$1,800.00	$150.00
	Rate B	1,680.00	140.00
	Rate C	1,560.00	130.00"

Prior to the enactment of Section 2181, General Code, no specific statutory provision existed fixing the compensation to be paid guards at the Ohio Penitentiary except as such provision was contained in appropriation acts.

As an appropriation act is a law of equal dignity during its existence with all other laws of the state, the provisions contained in such an act limiting the amount to be paid from a general appropriation to a department for salaries to certain employees in the department are as potent to fix the compensation to be paid during the life of the appropriation as though that compensation had been fixed for such employees by express statutory provision other than the provision with respect thereto in the Appropriation Act. See opinions of the Attorney General, 1927, page 718, and for 1928, page 436.

In the instant case the question is presented whether or not the general provisions of said House Bill 674, the current Appropriation Act, with respect to the compensation to be paid guards at penal institutions, suspends during the life of the act and therefore repeals temporarily the provisions of Section 2181, General Code, which definitely and specifically fixes the compensation to be paid guards at the Ohio Penitentiary—said Appropriation Act being of later enactment than the provisions of Section 2181, General Code.

It is a well settled principle of law that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to priority of time may subsist together, the specific qualifying and supplying exceptions to the general. Lewis' Sutherland on Statutory Construction, 2nd Edition, Section 278; Endlich on Interpretation of Statutes, Section 223; Sedgwick on Statutory Construction, Section 98; Bishop on Written Laws, Section 112b; Corpus Juris, Volume 59, page 1056; Ohio Jurisprudence, Volume 37, page 408; Gas Company v. Tiffin, 59 O. S., 420; Mizner v. Paul, 29 O. C. A., 33-41; Opinions of the Attorney General, 1914, page 1195.

In an early case decided by the Supreme Court of Ohio in 1863, Fosdick v. Village of Perrysburg, 14 O. S., 473, it is held, as stated in the fifth branch of the syllabus:

> "It is an established rule in the construction of statutes, that a subsequent statute, treating a subject in general terms, and not expressly contradicting the provisions of a prior act, shall not be considered as intended to affect more particular and positive provisions of the prior act, unless it be absolutely necessary to do so in order to give its words any meaning."

The rule stated in the Fosdick case has been cited with approval and applied many times by the courts of Ohio and by the federal courts in later cases. Knox County v. McComb, 19 O. S., 320-346; Old's v. Franklin County, 20 O. S., 421; Shunk v. First National Bank, 22 O. S., 508-515; State v. Newton et al., 26 O. S., 200-206; Carns v. Board of Public Works, 39 O. S., 628-632; Gas Company v. Tiffin, 59 O. S., 420; Townsend v. Little, 109 U. S., 512; 27 L. E., 1012-1015; Holt v. National Life Insurance Company, 80 Fed., 686-692; McClure v. U. S., 95 Fed. 2d, 749.

The rule, as stated, is, of course, not to be applied literally and with mathematical strictness irrespective of circumstances, but must be applied with due consideration to the all inclusive rule that in the interpretation of statutes legislative intent is of predominating force and must be held to be controlling in all cases.

Like all rules of statutory interpretation, it is nothing more than an aid to determine legislative intent. It has, however, been applied so generally and for such a period of time that it may be said to be controlling in determining the legislative intent where it applies, as legislation must be held to have been enacted with full knowledge of the possibilities of its application.

It cannot be said to be such a rule as to import the prohibition of the repeal of a special act by a later general one. In order to effect a repeal by implication under such circumstances, however, the inconsistency between the general and special provisions should be express or manifest and irreconciliable and necessary to give effect to the terms of the later general act or when the terms of the later general act manifest a clear legislative intent to repeal the special provisions of the earlier act dealing with subjects included within the subject matter treated in the later act.

In the instant case the legislature must be held to have known of the existence of the statutory provisions contained in Section 2181, General Code, in force at the time of the enactment of the Appropriation Act in question and did not in terms fix the compensation to be paid guards at the Ohio Penitentiary in the Appropriation Act or otherwise use language therein that would indicate a legislaitve intent to repeal the statute in question.

In view of that fact, it is my opinion that the general rule, as stated in O. Jur., Volume 37, page 412, applies. The rule as there stated is as follows:

"The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

I am therefore of the opinion, in specific answer to your question, that guards at the Ohio Penitentiary should be paid in accordance with the schedule set up in Section 2181 of the General Code of Ohio.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

868.

VOTING MACHINES—WHERE COUNTY COMMISSIONERS AND ELECTORATE DID NOT AUTHORIZE PURCHASE—BOARD OF ELECTIONS—MAY NOT LAWFULLY ENTER INTO CONTRACT TO PURCHASE OR RENT ONE OR MORE FOR LESS THAN ENTIRE COUNTY—STATE EX REL. FISHER V. SHERMAN ET AL., 135 O. S., 458—TRUMBULL COUNTY.

SYLLABUS:

Under the holding of the Supreme Court of Ohio in the case of State, ex rel. Fisher v. Sherman et al., 135 O. S., 458 (1939), since the board of county commissioners of Trumbull County has not authorized the purchase of voting machines for the entire county, and since there has been no adoption of voting machines by the electorate of such county, the board of elections may not lawfully enter into a contract or contracts providing for the purchase of one or more voting machines for less than the entire county and the renting of an additional number sufficient to supply the entire county.

COLUMBUS, OHIO, July 10, 1939.

HON. PAUL J. REAGEN, *Prosecuting Attorney, Trumbull County, Warren, Ohio.*

DEAR SIR: I have your letter of June 30, 1939, enclosing original copies of two contracts and requesting my opinion in the following language:

"Confirming our 'phone conversation of today regarding two contracts submitted to my office for an opinion, one a lease agreement between the Automatic Voting Machine Corporation and the Board of Elections of Trumbull County, Ohio, and the other a purchase agreement between the Automatic Voting Machine