By the original lease executed to The Columbus, Newark & Zanesville Electric Railway Company, there was leased and demised to said company the right to use and occupy for railway right-of-way and for electrical current pole line purposes Ohio Canal lands located in Newark, Licking and Union Townships in said county, which property is more particularly described in said original lease, above referred to.

The modification here in question is in effect an abandonment of said original lease and of the Ohio Canal lands therein demised for all purposes other than that for a pole line right-of-way over which to maintain and operate a line of poles, as now located, on the towing path embankment on said Ohio Canal property for the transmission of electrical current; and by said modification the annual rental for the use of said property is reduced from that provided for in the original lease to the sum of four hundred twenty dollars ($420.00). Said written modification is, as above noted, executed by you as superintendent of public works and as director of said department and the same is approved by the Southern Ohio Public Service Company, which company is now the owner and holder of said original lease.

The modification of said original lease, above referred to, was executed by you under the authority of House Bill No. 86, which was passed by the 89th General Assembly April 9, 1931, approved by the Governor April 21, 1931, and which went into effect on the 23d day of July, 1931. By the terms of this act, the director of public works of the State of Ohio is authorized to modify the lease executed to The Columbus, Newark & Zanesville Electric Railway Company, above noted, so as to adjust the rental called for in said lease and to relieve the Southern Ohio Public Service Company, the successor in title of The Columbus, Newark & Zanesville Electric Railway Company, from the payment of the rental of Canal land described in said lease excepting that part used for pole line purposes, the rental of which is to be fixed at the sum of four hundred twenty dollars ($420.00) per year for the balance of the term of said lease.

Upon consideration of the terms and provisions of the written modification of said lease, I find the same to be in conformity with the provisions of the act of the General Assembly, above noted, and with other statutory provisions relating to releases of this kind. Said written modification is accordingly approved by me as to legality and form, as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which, together with the original lease and copies thereof, are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3625.

COSTS—PUBLISHING AMENDMENTS TO CONSTITUTION OF OHIO—PAID BY COUNTIES UNDER NEW ELECTION CODE.

SYLLABUS:

The cost of publishing in the various counties, amendments to the Constitution proposed by the General Assembly, as provided in Section 1, Article XVI of the Constitution, heretofore borne by the state, must, in view of the repeal

of the law providing for such payment by the state and the enactment of the new election code, be paid by the counties in which such amendments are published.

COLUMBUS, OHIO, October 2, 1931.

HON. HOWARD L. BEVIS, *Chairman, Emergency Board, Columbus, Ohio.*

DEAR SIR:—Your letter of September 29th is as follows:

"On September 18th, Clarence J. Brown, Secretary of State, addressed a request to the Emergency Board for an allowance of $24,000 to defray the cost of legally advertising the proposed amendment to the Constitution relative to the issuance of bonds for welfare purposes.

On September 21st, the Emergency Board granted an allowance of $24,000 from the Emergency Fund appropriated in House Bill No. 624, for the purpose of legally advertising the proposed amendment in accordance with article 16, Section 1 of the Constitution, providing this cost cannot be legally paid from some other fund.

Your representative having informally informed the Board that payment for this advertising could not legally be made by the State of Ohio, because the existing law imposes the duty of payment for such advertising upon the county boards, the Emergency Board directs me to request of you a formal ruling upon this subject."

Section 1, Article XVI of the Constitution provides in so far as pertinent:

"Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. * * * * * * * * * *."

It is clear that the foregoing section discloses no provisions with respect to how the publication of proposed amendments to the Constitution shall be paid Nor does the Constitution elsewhere reveal any provision with respect to this matter. An answer to your question requires, therefore, an examination of the statutes. It is necessary, as will hereinafter appear, to consider first the statutory provisions with respect to the publication of such amendments, as well as the publication of notices relating to elections as in force and effect prior to the enactment of Amended Substitute Senate Bill No. 2 by the 88th General Assembly, being an act "To revise, recodify and supplement the election laws, by repealing sections 4785 to 4828, inclusive; 4828-2, 4830 to 5175-29r, inclusive; 13250 to 13360, inclusive; and substituting therefor the following new and amended sections, to be known as the 'Election Laws of Ohio'."

Sections 5123-3 and 5123-4, General Code, provided as follows:

Sec. 5123-3

"The secretary of state shall cause amendments to the constitution proposed by the general assembly to be published once a week for five consecutive weeks preceding such elections in at least one newspaper in each county of the state, where a newspaper is published."

Sec. 5123-4

"The charges for publication shall not exceed fifty per cent. of the rates established in section 6251 of the General Code for legal advertising. Such cost of publication shall be paid out of the state treasury upon the warrant of the auditor of state, upon vouchers approved by the supervisor of public printing who shall make legal measurement of the matter published."

There is no doubt but that under the clear and specific provisions of the foregoing sections, the expense of the publications in question was heretofore payable by the state. These sections were, however, expressly repealed by the new election code.

Before considering the provisions of the present law, which may be generally applicable to the subject matter of your inquiry, it should be observed that prior to the enactment of "The Election Laws of the state of Ohio", the notices and proclamations with respect to elections were not uniformly published or made by the boards of deputy state supervisors of elections, or deputy state supervisors and inspectors of elections, as the county boards of elections were then known.

Title XIV, Chapter 2, of the General Code, comprising Sections 4824 to 4841, both inclusive, related to "Time and Notice of Elections". Section 4825 provided that the sheriff of each county shall issue a proclamation of elections for electors of president and vice president. Sections 4827 provided that the county sheriff shall issue proclamations of elections for state and county offices. Section 4832 and 4834, General Code, imposed upon the township trustees of the various townships the duty of notifying the electors of elections for township officers. Section 4837 provided that the mayors of municipalities shall issue proclamations of elections for municipal officers. Section 4839, General Code, provided that the clerk of each board of education desiring to submit a question of issuing bonds to the electors, shall publish the notice of such election. All of these sections were repealed at the time of the enactment of the present election code of Ohio.

It is manifest that the responsibility as to publishing and issuing notices and proclamations of elections was under the old law distributed among several different officials throughout the state and in the counties. The present election code in my judgment, has clearly changed all this and placed the responsibility as to notices of all elections upon the boards of elections of the counties. Section 4785-13 provides in part as follows:

"The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:

* * * * *

g. To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

* * * * *."

Section 4785-5, General Code, has also taken from the county sheriffs the duty of issuing the proclamations with respect to elections heretofore provided in Section 4825 and 4827, General Code, and placed that duty squarely upon the boards of elections, this section providing as follows:

> "At least ten days before the time for holding an election the board shall give public notice by a proclamation, posted in a conspicuous place in the court house and city hall; or by one insertion in a newspaper published in such county; and if no newspaper is published in such county, then in a newspaper of general circulation therein. Such newspaper notice shall not exceed six inches in length of double column width."

The reference in the foregoing section to "the board" is to the board of elections under Section 4785-3, General Code, which so defines the term "board."

It is apparent that the legislature in the enactment of the present election code has in unmistakable language changed the old order and placed upon the county boards of elections alone the duty to "provide for the issuance of all notices, advertisements, and publications concerning elections required by law." The publication of a proposed constitutional amendment to be voted upon is without doubt a publication concerning an election and it is required by law.

Since county boards of elections are charged with the duty of providing for the issuance of all notices, advertisements and publications concerning elections required by law, it is next pertinent to consider the provisions of Section 4785-20, General Code, relating to the expenses of the board of elections in each county. Paragraph "a" of this last mentioned section provides as follows:

> "The entire compensation of members of the board and of the clerk, deputy clerk and other assistants and employes in the board's offices; the expenditures for the rental, furnishing and equipping of the offices of the board and for the necessary office supplies for the use of the board; the expenditures for the acquisition, repair, care and custody of polling places, booths, guard rails and other equipment for polling places; the cost of poll books, tally sheets, maps, flags, ballot boxes, and all other permanent records and equipment; the costs of all elections held in and for the state and county; and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section, shall be paid in the same manner as other county expenses are paid."

The foregoing portion of Section 4785-20 contains an express provision that "the cost of all elections held in and for the state" shall be paid in the same manner as other county expenses are paid, that is to say, by the county. The expense of the publication of an amendment to the Constitution, required to be published in the counties prior to submission to the electors of the state, is obviously a part of the cost of an election held in and for the state.

It cannot be said that the failure of the legislature to re-enact the old provisions for payment of these items by the state, was a mere inadvertence,

this, for the reason that it is elsewhere provided in the present election code that certain expenses connected with the submission of constitutional amendments to the electors, shall be paid by the state. I refer to Section 4785-180c, relating to the cost of printing and distributing publicity pamphlets in connection with constitutional amendments. This section provides:

> "The cost of printing and distributing such pamphlets shall be paid by the state. The auditor of state upon receipt of a voucher signed by the secretary of the state, shall draw his warrant on the state treasurer for such amount as may be necessary to pay for such printing, postage and cost of distribution, and the same shall be paid from the general revenue fund of the state."

When the legislature has provided that a certain item of the cost of elections upon constitutional amendments shall be borne by the state, it must be concluded that other items are intended to be excluded. The expression of one thing is the exclusion of another. This principle of statutory construction has been universally followed by the courts. *Lindsley* v. *Coats,* 1 Ohio 243; *Mack* v. *Brammer,* 28 O. S. 508; *Cleveland* v. *Payne,* 72 O. S. 347.

It must be also noted that this cost of publishing constitutional amendments is not the only cost of a state election which the legislature has provided shall be paid by the counties. The cost of printing ballots of state issues, for instance, is but one of these items of cost borne by the counties.

The basic principles of statutory construction applicable to this question are well established and succinctly stated in 25 R. C. L. 1051, in the following language.

> "The legislature must be presumed to know both the language employed in the former acts and the judicial construction placed upon them; and if in a subsequent statute upon the same subject it uses different language in the same connection, the courts must presume that a change of the law was intended, and after a consideration of the spirit and letter of the statute will give effect to its terms according to their proper significance. * * * Where it is apparent that substantive portions of a statute have been omitted and repealed by the process of revision and reenactment, courts have no express or implied authority to supply the omissions that are material and substantive and not merely clerical and inconsequential, for that would in effect be the enactment of substantive law. The statute in such a case should be effectuated as the language actually contained in the latest enactment warrants; * * *."

There is, then, here a situation where, in the process of revision of the entire election laws, substantive statutes have been expressly repealed. Under such circumstances courts by judicial fiat have no authority to continue in effect such statutes, especially where the legislature has with reasonable clarity made other and inconsistent provisions on the subject.

In specific answer to your question, therefore, it is my opinion that the cost of publishing in the various counties amendments to the Constitution proposed by the General Assembly, as provided in Section 1, Article XVI of the Constitution, heretofore borne by the state, must, in view of the repeal of the

law providing for such payment by the state and the enactment of the new election code, be paid by the counties in which such amendments are published.

I express no opinion on the policy of the legislature in repealing Sections 5123-3 and 5123-4, supra, and in placing upon the counties the duty of paying for these publications. The duty of the Attorney General is to construe the acts of the legislature in accordance with the established rules of statutory construction.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3626.

CHARTER MUNICIPALITY—ELECTORS MAY VOTE ON TWO CONFLICTING AMENDMENTS AND MAY VOTE IN AFFIRMATIVE ON BOTH AMENDMENTS—AMENDMENT RECEIVING HIGHEST VOTE PREVAILS.

SYLLABUS:

1. *In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of government under Sections 7 and 8 of Article XVIII of the Constitution of Ohio, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary.*

2. *A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.*

COLUMBUS, OHIO, October 2, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "We have today received the following statement and inquiries from the Board of Elections of Lucas County, in reference to the right of electors to vote upon two separate charter amendment questions and the proper procedure in counting votes under certain circumstances.
>
> 'At the coming election we are submitting two charter plans both of which are in the form of an amendment to the charter of the City of Toledo, and both of which are submitted by the City Council to the voters under the city charter provision and the provisions of the Constitution of the State of Ohio. The one plan provides for a city manager with a small council of nine members elected from districts and at large, and the other plan for a city manager with a large council, one elected from each of the twenty-one wards. The small council plan provides for the election of a mayor by the council, while the large council plan provides for the election of a mayor by the voters. These are the only essential differences between the two plans.
>
> Obviously, both plans provide for the city manager form of government and in that respect are consistent, but the two plans are incon-