tions in favor of sub-contractors, material men, laborers and mechanics shall apply to contracts let under the provisions of the preceding sections as fully and to the same extent as in the case of counties.'

This is also new matter, the same not being found in the law as it stood prior to June 28, 1917.

In answering this question, exactly the same reasoning applies as was used in answering your first question.

Hence, it is my opinion that the provisions of section 1208 G. C., which are applicable to your second question, would not apply to contracts entered into prior to June 28, 1917."

The views just quoted furnish answer to the effect that the lien section (1208 G. C.) of the Busby-Fouts law does not apply to contracts in force prior to the becoming effective of the law. The lien section of the White-Mulcahy law (1208 G. C., 107 O. L. 126) applies to contracts entered into subsequent to the becoming effective of that law and prior to the becoming effective of the Busby-Fouts law.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1107.

SCHOOLS—TAXES AND TAXATION—EFFECT OF VOTE UNDER SECTION 5649-5a G. C. MERELY AUTHORIZES MAKING OF ADDITIONAL LEVIES SUBJECT TO FIFTEEN MILL LIMITATION IMPOSED BY SECTION 5649-5b G. C.—WHERE LEVYING AUTHORITIES FAIL TO MAKE LEVY—NO AUTHORITY TO MAKE SUCH LEVY IN ANY YEAR AFTER EXPIRATION OF PERIOD OF TIME COVERED BY VOTE.

The effect of a vote under section 5649-5a G. C. is merely to authorize the making of additional levies subject to the fifteen mill limitation imposed by section 5649-5b for and during the period of time covered by such vote. Such vote is not in and of itself effective as a levy, and if the levying authorities omit to make the levy in any year within such period no authority is thereby granted to make such levy in any year after the expiration of the period. This is true even though the omission to make the levy is due to the breach of a mere ministerial duty, and no steps had been taken in time to compel the performance of such duty.

COLUMBUS, OHIO, March 29, 1920.

HON. F. B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You have requested the opinion of this department upon the following question:

"A taxing unit voted a two mill levy for five years. The auditor failed to put it on the tax duplicate for the first year and now claims that funds, as a result of this levy, will be available for the remaining four years only. Will the district be deprived of one year's levy from this two mill levy because of the failure of the auditor to place it on the tax duplicate?"

It is assumed that the action described by you was taken under sections 5649-5 et seq. of the General Code, which provide, in part, as follows:

"Sec. 5649-5. * * * any board of education may, at any time, * * * declare by resolution that the amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by sections 5649-2 and 5649-3 of the General Code * * * will be insufficient and that it is expedient to levy taxes at a rate, in excess of such rate and cause a copy of such resolution to be certified to the deputy state supervisors of the proper county. Such resolution shall specify the amount of such proposed increase of rate above the maximum rate of taxation and the number of years not exceeding five during which such increased rate *may be continued to be levied.*"

Section 5649-5a provides the machinery for the submission to the vote of the people.

"Sec. 5649-5b. If a majority of the electors voting thereon at such election vote in favor thereof, it *shall be lawful to levy taxes* within such taxing district at a rate not to exceed such increased rate *for and during the period provided for in such resolution,* but in no case shall the combined maximum rate * * * exceed fifteen mills."

I interpret the question submitted by you as implying that the resolution of the board of education, expressly or by necessary implication, fixed the years in which it would be lawful to make the increased levy and that the ultimate question is as to whether or not failure to make the levy in the first year, to whosesoever fault such failure may be imputable, will justify the making of the levy during the year beyond the period specified in the resolution. So interpreted, your question is susceptible of but one answer, which must be in the negative.

Moreover, it may be pointed out that the county auditor is under no duty to place an increased levy on the tax duplicate by virtue merely of a vote taken under the sections which have been quoted. The effect of the vote is merely to make it lawful, i. e., permissible, to make the additional levy. Such additional levy is susceptible to revision by the budget commission for the purpose of enforcing the fifteen mill limitation to which it is subject. The levy must be made, in the first instance, by the board of education in the usual way, though not necessarily at the regular time. It must be then laid before the budget commission to see whether the full number of mills allowed in the first instance by the vote can be levied in the district without affecting other levies already approved and without violating the fifteen mill limitation. The board of education is not justified in assuming that merely because a favorable vote of the electors has been secured the levy will follow automatically. It must take the necessary steps which have been outlined, and if it does not take them in timely fashion the result will be that the authority which the vote has given to it will not have been exercised, and it will then be too late to exercise it.

It is, of course, possible that these steps were taken and that the failure to put the levy on during the first year covered by the vote of the electors arose from mere breach of ministerial duty on the part of the auditor. Even in that instance the remedy was by mandamus to compel the auditor to place the levy on the duplicate. This remedy might have been pursued even after the collection of taxes for the first half year had been completed (State ex rel. vs. Roose, 90 O. S. 345); but when the public officials interested in the levy allow the duplicate to go into the hands of the treasurer for the collection of the second half of the taxes, without exercising their legal rights, it becomes too late to secure any relief, and the result is that the tax was not levied and the first year within which it may be levied has gone by without the making of any levy. Such fact cannot be given effect to prolong the period within which the additional levy can be made.

The above conclusions are all based upon the interpretation of your question which was stated at the outset of this opinion. It may be that the resolution of the board of education and the proposition submitted to the electors were indefinite in the description of the particular five-year period covered by the vote, and that the proceedings are susceptible to such interpretation as would make the five-year period commence with the year after the vote was taken and run for five years thereafter. If this is the case, then without impairing any of the propositions laid down in this opinion, it might turn out that the district has not really been deprived of the one year's levy described in the question. This department would, however, without additional information, be unable to express an opinion upon this point.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1108.

STATE DEPARTMENT OF OIL INSPECTION—BENZOL—SECTION 865 G. C. CONSTRUED AS TO VOLATILE LIQUID USED FOR PURPOSES SIMILAR TO THAT OF GASOLINE OR PETROLEUM-ETHER WHICH EXPLODES AT SIMILAR TEMPERATURE—IS "SIMILAR" OR "LIKE" GASOLINE OR PETROLEUM-ETHER WITHIN MEANING OF SAID SECTION—WHAT FEES CHARGEABLE.

A substance, which is a volatile liquid used for purposes similar to that of gasoline or petroleum-ether, and which explodes at a similar temperature, is "similar" or "like" gasoline or petroleum-ether within the meaning of section 865 *G. C. and such a substance should be inspected by the department of oil inspection. The same fees should be paid for such an inspection as are provided for the inspection of gasoline or petroleum-ether under said section.*

COLUMBUS, OHIO, March 29, 1920.

HON. CHARLES L. RESCH, *State Inspector of Oils, Columbus, Ohio.*

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

> "I am advised by my deputy inspectors that there is being sold within the state a quantity of Benzol also a product known as B-Zol both of which I understand to be coal tar products and on which we have not been making any inspection for the reason that in every section of the inspection laws reference is made only to petroleum products.
>
> For a time it was understood that these products were used only in manufacturing of rubber goods and cleaning, but I now understand that B-Zol especially is being advertised and sold as a substitute for gasoline in the operation of motor vehicles; you will find attached a small circular to this effect.
>
> My object in writing this letter is to ask you for an opinion as to whether or not there should be an inspection made and fees collected on these so-called coal tar products."

Sections 854 to 865 G. C. relate to the inspection of oil which is sold for