ject to the tax, the rate of tax, the time when such tax is payable, and other elementary essentials of a taxation law. The Taft Act complies with none of these. It is simply a new scheme and a new agency created for levying taxes and enlarging the power and rate of levy, so far as they relate to the referendum article.

Something has been said that certain sections of the act are admittedly subject to the referendum, but that the act as a whole is not subject to the referendum, because certain sections do 'provide for tax levies,' and those sections save the entire act from being submitted as a whole to a referendum.

If there were any sections of the Taft Act actually 'providing for a tax levy,' then we would agree with this contention; but under Article XII, and its various sections 'providing for tax levies,' this phrase is synonymous with 'making tax levies,' and no claim of that character is made in behalf of the Taft Act." (Italics the writer's)

Here again the Supreme Court has recognized that a law "providing for tax levies must state the property subject to the tax." In the instant case we are concerned not with a tax levy upon property but with an excise tax levied upon retail sales. It seems clear that a law providing for such tax levies must set forth the retail sales which are subject to the tax, just as a law levying a property tax must state the property subject to the tax. The statement as to the retail sales which are subject to the tax is contained in Senate Bill No. 68, defining "retail sale". This act is accordingly inextricably interwoven with Section 5546-2, which is the tax levying section. Certainly a most essential and unseverable part of a law levying a tax on retail sales is the portion of such law defining that which is to be taxed. See Opinions of the Attorney General, 1927. Vol. II, p. 1234.

It is my opinion that Senate Bill No. 68 is a law "providing for tax levies" within the meaning of the term as used in Section 1d of Article II of the Constitution and accordingly not subject to referendum.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4312.

TOWNSHIP—TRUSTEES AUTHORIZED TO GRANT RIGHT OF WAY OVER TOWNSHIP LANDS WHEN.

SYLLABUS:

1. *Township trustees may grant a right of way over township lands providing they reserve the right to revoke the same when in their opinion the land should be used for other purposes or sold.*

2. *In granting a right of way over township lands, it is not necessary to advertise and conduct an auction as provided in section* 3281, *General Code, for the sale of such lands.*

COLUMBUS, OHIO, June 3, 1935.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The trustees of Orange Township hold title to a piece of land on the Southeast corner of the square in the unincorporated Village of Nankin. They desire to grant a perpetual easement to Leon Mason, a copy of the proposed easement being inclosed.
>
> In your opinion can the trustees legally make an agreement of the type proposed or can they grant any kind of a perpetual easement on township lands, excluding, of course, from your consideration leases for mineral rights?
>
> If they can legally grant a perpetual easement must they follow the procedure provided by law for the sale of real estate not needed by the township?"

The proposed easement, a copy of which you enclosed, reads in part as follows:

> "The grantor, * * * does hereby grant and release unto the grantee, his heirs and assigns forever, a right of way on and over a certain piece of land, owned by the grantor * * * ."

It is apparent that the above language would grant a perpetual right of way as there are no provisions in the instrument which would limit the tenure of the easement.

Section 3281, General Code of Ohio, provides in part as follows:

> "When the township has property which the trustees by resolution find it does not need, the trustees may sell and convey the same. Such sale must be by public auction and upon notice thereof published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of said publications to be at least five days before date of sale."

The above section grants only the power to sell and convey and it therefore becomes necessary to determine whether the power to sell and convey includes the power to grant a perpetual easement.

The power granted to township trustees under section 3281, General Code, is practically the same as that granted to county commissioners by virtue of section 2447, General Code. Both bodies are given the power to sell land, not needed for public use, to the highest bidder under certain conditions. No specific legislative authority is found, however, whereby lesser interests in land such as leases, easements, etc., may be granted by either to private parties. Both the trustees and the commissioners are limited by the authority specifically delegated to them by the legislature and therefore an interpretation of the powers of one would be analogous to like powers of the other.

In the Opinions of the Attorney General for 1924 at page 110, the power of the county commissioners to sell land not needed for public use under 2447, General Code, was held to include the lesser power to lease. On page 112, the then Attorney General stated:

> "It will be evident that the leasing of the land is granting less power than the sale of such land. It would be inconsistent with the holding of land for

public benefit if it were permitted to lie idle when proper business management would require the same to produce an income for the public use."

Judicial sanction was afforded this view in the case of *Minimax Gas Company* vs. *State, ex rel.,* 33 O. App., 501. This case even extended the power by permitting such leases without compliance with section 2447-1, General Code, which requires advertising for bidders. The second branch of the syllabus reads as follows:

"County commissioners may temporarily lease real estate owned by the county subject to repossession when the public needs require, without complying with sections 2447 et seq. General Code requiring competitive bidding after due advertisement in case of sale of real estate not needed for public use."

On the other hand, this same case placed a limitation on this power to lease by the third branch of the syllabus which reads:

"County commissioners cannot lease real estate owned by the county for definite term and thereby embarrass themselves or their successors in using the property for public purposes."

Following the law of the Minimax Gas Company case, supra, opinion number 3410 of the Opinions of the Attorney General for 1931 reads in part as follows on page 950:

"From the foregoing it would appear to be clear that county commissioners may lease property owned by the county which is not needed for public use. However, it would appear that such lease should contain a provision requiring the surrender of the property upon reasonable notice when the public interests would demand that the county take possession of the same."

The Board of Education is also a quasi public corporation existing as does the Board of Township Trustees only under statute and having only the powers granted by statute and those necessary to exercise the express powers. Section 4749 gives a Board of Education power to sell school lands not needed for school purposes, and its power to lease lands under this provision is discussed in Opinion No. 4588 of the Opinions of the Attorney General for 1932. The second branch of the syllabus reads as follows:

"When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate."

It seems obvious that if the power to sell publicly owned property includes the power to lease, it would certainly include the power to grant an easement or right of way. It is equally obvious, however, that a perpetual easement would prevent the township trustees in the case you present from using the land if and when necessary for the pub-

lic benefits if it were not within their power to cancel or revoke the easement at their pleasure upon reasonable notice.

Section 3281 of the General Code of Ohio, quoted above, requires advertising for three weeks before the sale of lands not needed for county purposes may be made. Your second question refers to the necessity of this procedure in granting easements. The Minimax Gas case, supra, held this procedure unnecessary in the granting of a lease and I therefore see no reason for advertisement in the granting of an easement. A right of way of this nature would be desirable only to the person who without it would have no access to his property and any advertising for bids would in all probability bring only one bid and that from the party with whom the trustees are now dickering as he would be the only one interested in obtaining such a right of way.

In specific answer to your questions, it is therefore my opinion that:

1. Township trustees may grant a right of way over township lands providing they reserve the right to revoke the same when in their opinion the land should be used for other purposes or sold.

2. In granting a right of way over township lands, it is not necessary to advertise and conduct an auction as provided in section 3281, General Code, for the sale of such lands.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4313.

BOARD OF EDUCATION—LIMITED BY SEC. 7704 G. C. FOR EXPENSES IN PROMOTING SCHOOLS' WELFARE OUTSIDE DISTRICT.

SYLLABUS:

In city school districts, the board of education is limited in the amount that it may allow to its members or the official representatives of the board, for expenses when sent out of the district for the purpose of promoting the welfare of the schools under the charge of the board, to the amount of the service fund established in pursuance of Section 7704 of the General Code of Ohio.

COLUMBUS, OHIO, June 3, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Referring to Opinion No. 1747, rendered by your predecessor, to this department under date of April 8, 1930:
>
> In this opinion it is held that a board of education may legally pay the personal traveling expenses of its clerk, when, under the direction of the board, he travels to Columbus to confer with the Department of Education with reference to the state equalization fund, when such mission is reasonably necessary in view of the facts and circumstances.
>
> Section 7704, General Code, provides for the establishment of a Service