county elected in November, 1930, shall hold said office for four (4) years from the third Monday in September, 1931, until the third Monday in September, 1935, and until his successor is elected and qualified; provides that in November, 1932, two (2) commissioners shall be elected in each county; provides that the person who receives the highest number of votes in November, 1932, shall hold his office for six (6) years from the third Monday in September, 1933, until the third Monday in September, 1939 and until his successor is elected and qualified; provides that the person who receives the next highest number of votes in November, 1932, shall hold his office for four (4) years from the third Monday in September, 1933, until the third Monday in September, 1937, and until his successor is elected and qualified; provides that in November, 1934, and biennially thereafter one (1) commissioner shall be elected in each county, who shall hold his office for six (6) years from the third Monday in September next after his election, and until his successor is elected and qualified; provides that, after the third Monday in September, 1935, not more than two (2) members of the board of county commissioners of any county shall be of the same sex, but this provision shall not apply to members of such board elected or appointed prior to the third Monday in September, 1935; and provides that, after the third Monday in September, 1935, no person shall be eligible for appointment to any board of county commissioners to succeed a person of the opposite sex.

Section 2 of the proposed law provides that original Sections 77, 155, 235, 296, 331, 1580 and 2395 of the General Code are repealed.

Section 3 of the proposed law provides that all Sections or parts of Sections of the General Code in conflict with this Act are repealed."

I have carefully examined the full text of the proposed law, together with the synopsis quoted above, and am of the opinion that such synopsis has been prepared in accordance with law. I am expressing no opinion as to the constitutionality of any portion of the proposed law.

In view of the fact that the synopsis submitted is a truthful statement of the contents and purposes of the proposed law, I am herewith submitting, in accordance with the provisions of Section 5175-29e, General Code, my certification for use, in the method provided by law, as follows:

"I, Edward C. Turner, Attorney General of the State of Ohio, do hereby certify that the foregoing is a fair and impartial synopsis and is a truthful statement of the contents and purposes of said proposed law."

Respectfully,
EDWARD C. TURNER,
Attorney General.

2430.

SEWER DISTRICT—CREATION OF COUNTY DISTRICT—ASSESSMENT OF STATE LAND—COUNTY COMMISSIONERS MAY CONTRACT WITH LESSEES OF STATE LAND.

SYLLABUS:

1. *In the creation of a county sewer district and the improvement of the same under Sections 6602-1, et seq., General Code, land owned by the state may not, in view of the decision of the supreme court of Ohio in the case of State ex rel. Monger, Director of Health,*

vs. The Board of County Commissioners of Fairfield County, Ohio, being case No. 20,855, decided June 13, 1928, be included in said district and the cost of improving such state land be assessed by the county commissioners against the state.

2. *Where land owned by the state adjoins a county sewer district, the county commissioners may contract with lessees of such state land for the depositing of sewage from such state land in the sewers constructed to serve the district, in accordance with Section 6602-8h, General Code. In the event such contracts are made, the amount to be paid by such lessees of state land must be paid in cash.*

COLUMBUS, OHIO, August 7, 1928.

HON. JOHN E. MONGER, M. D., *Director of Health, Columbus, Ohio.*

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

> "Under date of December 10, 1925, there was transmitted to the board of county commissioners, Licking County, the following order adopted November 13, 1925, and approved by the Governor and Attorney General, December 3, 1925.
>
> 'The Director of Health, Department of Health, State of Ohio, hereby orders the board of county commissioners of Licking County, Ohio, to construct a system of sanitary sewers and sewage treatment and disposal works for the service of the territory in Licking and Union Townships, Licking County, Ohio, and territory lying north of and contiguous to Buckeye Lake and extending easterly from the Licking-Fairfield County line to and including the community known as Harbor Hills; the said sewer system and treatment and disposal works to be satisfactory to the Director of Health.
>
> The Director of Health hereby fixes the date of November 13, 1927, as the date prior to which said order shall be complied with.'
>
> Pursuant to the order, the Licking County Commissioners acting under the provisions of Section 6602-1 et seq., established a sewer district adjacent to Buckeye Lake embracing the territory indicated in the foregoing order. Mr. E. A. Lawrence, of the Jennings-Lawrence Co., of Columbus, was named county sanitary engineer and a general plan of sewerage for the territory involved was prepared. About the time the plan was ready for presentation to the State Department of Health for approval, revisions in the County Sewer District Law were being considered by the 87th General Assembly. Pending the outcome of the proposed amendments and also two suits in the Supreme Court involving questions concerning the operation of the County Sewer District Law the Licking County Commissioners did not proceed and as a consequence no plans for sewerage have as yet been approved.
>
> Now that the County Sewer District Law has been revised and the most recent case in the Supreme Court (Fairfield County) involving the County Sewer District Law has been settled, the Licking County Commissioners now desire to proceed toward full compliance with the order.
>
> In view of the fact that the Fairfield County decision declares state owned property exempt from assessment by the county the establishment of a sewer district in Licking County to serve the Buckeye Lake territory becomes somewhat complicated. We are inclined to advise the Licking County Commissioners along the following lines:
>
> Amend the boundaries of the sewer district to exclude the narrow strip of state owned property immediately adjacent to the lake front. Revise the general plan of sewerage in accordance with the new boundaries of the

district. Prepare detail plans for this amended district and proceed to figure tentative assessments for the property within this amended district. At this point the county commissioners may stop the work with reference to the amended sewer district and commission the engineer as a proposition separate from the sewer district to figure the tentative assessments for the original sewer district which included the state owned property and as if the county had been permitted to proceed with the original district. In carrying out this commission the engineer would of course be required to prepare a slightly different plan of sewerage, but in our opinion the difference between the two systems will be small; the engineering costs involved in this commission really amount only to the work involved in computing the additional assessments. It is likely that the total costs of the two projects would be about the same but that a difference will arise in the apportionment of the assessments. This re-apportionment will result in a slight reduction in the assessments as computed for the new district excluding the state owned land. The sum of these differences amount to the sum of the assessments which would have been levied against the property in the state owned land.

There remains to be determined a plan of financing the differential in assessments for the two districts plus the commission to the engineers for figuring the differential. It is our thought that there are two ways in which this expense can be met. (a) The county to carry the burden temporarily over a few years pending the reimbursement by lessees of state owned land who desire to be served by the county sewer district and who will be charged fees for sewerage service equivalent to their just share of this extra expense. (b) The county may be reimbursed within a relatively short time by an appropriation from the General Assembly covering the amount of extra expense.

We would like to receive your opinion relative to the propriety and legality of the foregoing suggested procedure."

Briefly stated, the facts relative to the status of the Licking County sewer district matter, as set out in your communication, appear to be as follows:

Pursuant to an order issued by the director of health on December 10, 1925, directing the County Commissioners of Licking County to construct a system of sanitary sewers and sewage treatment and disposal works in certain territory in Licking County north of and contiguous to Buckeye Lake, the county commissioners of said county established a sewer district embracing the territory covered by the above order and appointed a sanitary engineer to prepare a general plan of sewerage for said territory. The order of the director of health was made and the proceedings of the Licking County Commissioners were had under the county sewer district law prior to its recent amendment by the 87th General Assembly (112 O. L. 275), and included in the territory comprising the district was the narrow strip of land contiguous to Buckeye Lake, owned by the state. The approval of the general plan was postponed until the Legislature should have amended the sewer district law and until certain cases pending in the Supreme Court were decided, and the plan has as yet not been approved.

On April 14, 1927, the Legislature passed an act amending the county sewer district law and the law pertaining to county water supply systems. Among the sections of the General Code pertaining to county sewer districts amended in the act in Section 6602-8, General Code. The principal change made in Section 6602-8 in the amendment is the addition of a provision for assessing state land benefited by the improvement according to special benefits conferred. As so amended, Section 6602-8 provides:

"In the construction of a main, branch, or intercepting sewer or sewers and sewage treatment or disposal works, the property immediately abutting upon such main, branch, or intercepting sewer may be assessed for local service, and the balance of the cost and expense of such improvement to be paid by assessments shall be assessed, as a district assessment, upon all the property, including the abutting property, within said assessment district found to be benefited in accordance with the special benefits conferred, less such part of said cost as shall be paid by the county at large, *and state land so benefited shall bear its proportion of assessed cost, according to special benefit.* In the construction of a local sewer the entire cost and expense of construction and maintenance may be assessed, upon the benefited property abutting thereon, according to special benefits conferred, *and state land so benefited shall bear its proportion of assessed cost, according to special benefits.*" (Italics the writer's).

The matter italicized above constitutes the addition to and the principal change in Section 6602-8, General Code, as it read after the amendment.

Section 6602-33c, General Code, was enacted in the above act as a new section. It is in the nature of a saving clause and provides:

"All proceedings for the creation of sewer districts and for construction of sewer and water improvements under the provisions of Sections 6602-1 to 6602-33, inclusive, prior to the taking effect of this act and all petitions granted, or the letting or awarding of contracts, or all contracts made and entered into, or proceedings preliminary to or in connection therewith, or certificates of indebtedness or bonds issued or to be issued or taxes and assessments levied or to be levied on account thereof, are hereby declared and held to be valid notwithstanding any defect or irregularity therein or any failure to conform strictly to the provisions of the above mentioned act, except that in any proposed district where the contract has not yet been let, *the proceedings shall not be ratified unless state land to be benefited shall be included therein, with the power to assess such state land in proportion to its benefits the same as land privately owned,* including the cost of preliminary surveys; the boards of county commissioners or other officials shall have full power and authority to complete all improvements in process of construction under said sections and to levy taxes and assessments for such improvements, and to sell bonds to pay for the construction of such improvements, and to do all things contemplated by the provisions of said sections necessary for the completion of such improvements." (Italics the writer's.)

In amending Section 6602-8, General Code, to read as set out above, and in enacting Section 6602-33c, General Code, the Legislature has declared its intention that when, in the creation of a county sewer district and the improvement of the same by the construction of a system of sewerage in said district, land belonging to the state is included within the district and is benefited by the improvement, the state shall bear its portion of the cost of such improvement as measured by the benefits conferred, and authority is given to the county commissioners to levy and collect assessments on such state land in proportion to the benefits.

In your communication you refer to a recent case in the Supreme Court involving the county sewer district law. You refer to the case of *State ex rel. Monger, Director of Health,* vs. *The Board of County Commissioners of Fairfield County, Ohio,* being case No. 20,855 in the Supreme Court of Ohio, decided June 13, 1928. Briefly stated, the facts in that case were as follows:

At or about the time the director of health caused to be served upon the Board of County Commissioners of Licking County the order referred to in your communication, a similar order was served upon the County Commissioners of Fairfield County, Ohio, directing the Board of County Commissioners of Fairfield County to construct a system of sanitary sewers and sewage treatment and disposal works for the service of certain territory in Fairfield County contiguous to Buckeye Lake. Pursuant to said order the Fairfield County Commissioners passed a resolution creating a sewer district and then refused to take any further steps in compliance with the order. The director of health then filed a petition in mandamus in the Supreme Court of Ohio to compel the county commissioners to proceed with the improvement, in accordance with the order. A demurrer was filed to the petition, among other things attacking the constitutionality of the county sewer district law both before and after its amendment, and the Supreme Court sustained the demurrer and denied the writ of mandamus on the ground that the Legislature is without the power to delegate to a board of county commissioners the legislative power to levy and collect an assessment against the state. The opinion of the court is short and is as follows:

> "BY THE COURT. The demurrer to the petition will be sustained and a mandatory writ denied upon the ground that the present use of the state property, known as Buckeye Lake, is proprietary and, the proposed improvement being in part for the benefit of such state property, the imposing of an assessment for the entire expense of such improvement upon a district less than the state, under the provisions of Chapter 4c, General Code, whether the proposed improvement be constructed under that chapter as it existed at the time the Director of Health ordered the commissioners of Fairfield County to proceed or as it exists now would amount to an imposition on such district of a burden that belongs in part to and ought to be borne in part by the state at large, and which amount can not be apportioned to and collected from the state under Section 6602-33c, General Code, for the reason that the Legislature is without power to delegate to a board of county commissioners the legislative power to levy and collect an assessment against the state."

The effect of the above decision is to prevent the inclusion in a county sewer district of any state land which will be benefited by the improvement until the Legislature has taken further appropriate action.

In your communication you suggest that the boundaries of the sewer district created by the Licking County commissioners be amended to exclude from such district the strip of land owned by the state immediately adjacent to the lake front and that the general plan of sewerage be revised in accordance with the new boundaries of the district. You also suggest that detailed plans for the amended district be prepared and tentative assessments for the property within this amended district be computed. I see no objection to proceeding in the above manner. Inasmuch as the supreme court of Ohio has declared invalid the delegation to county commissioners of the power to levy and collect assessments against the state and inasmuch as the boundaries of the district may be so amended as to exclude state owned land without affecting the remainder of the district, I am of the opinion that such action may be taken by the Licking County commissioners.

You further suggest that the sanitary engineer be then commissioned by the county commissioners, as a separate proposition, to figure the tentative assessments for the original sewer district, which included state owned property, as if the county were able to proceed with the improvement of the district as originally created. Obviously, the purpose of the suggested procedure is to determine the amounts to be charged lessees of state land who desire to be served by the sewer district, after the improvement has been

completed, and you state, in effect, that the difference between the tentative assessments for the property in the amended district and the amount of the tentative assessments for the original district would represent the amount of the assessment which would have been levied against the property owned by the state.

Your attention is directed to Section 6602–8h, General Code, which provides, in part, as follows:

> "At any time after the formation of any sewer district, the board of county commissioners, when deemed expedient, may, on application by a corporation, individual or public institution outside of any sewer district, contract with such corporation, individual or public institution for depositing sewage from premises outside such district in the sewers constructed or to be constructed to serve such district and for the treatment or disposal thereof, on such terms and conditions as shall be by such board of county commissioners deemed equitable, but the amount to be paid shall in no case be less than the original assessment for similar property within the district, and such board of county commissioners, in any such case, shall appropriate any moneys received for such service to and for the use and benefit of such sewer district; provided, however, that whenever the board of county commissioners deem it necessary to contract with a corporation, individual or public institution for depositing sewage from premises outside such sewer district in the sewers constructed or to be constructed to serve such district, they shall so determine by resolution, and may collect said amount in cash, or the same may be assessed against said lots or parcels of land, and the method and manner of making said assessments, together with the notice thereof, shall be the same as provided herein for the original assessment.
>
> * * *."

It will be observed that under the terms of Section 6602–8h the county commissioners may contract with any corporation, individual or public institution outside of any sewer district for the depositing of sewage from premises outside of the district and for the treatment or disposal thereof, on such terms and conditions as shall be by the county commissioners deemed equitable, the amount to be paid for such service in no case to be less than the original assessments for similar property within the district. This section does not, in my opinion, contemplate the making of tentative assessments on property outside of a designated sewer district as though said property had originally been included in the district, in order to determine the amount to be paid by the owners of such property, should they desire to be served by the improvement. The section provides that the amount to be paid for the service of property outside of the district shall in no case be less than the original assessment for similar property within the district. This is a question of fact to be determined when application is filed by the owners of such property outside of the district asking such service. I have considerable doubt as to the power of the county commissioners to expend county moneys for the making of a tentative assessment for any land outside of a sewer district, as suggested in your communication.

You further suggest two plans of financing the differential in assessments for the two districts, plus the commission to the engineers for figuring the differential, the first plan being that the county shall carry the burden temporarily over a few years, pending reimbursement by lessees of state owned land who desire to be served by the county sewer district and who will be charged fees for service equivalent to their just share of this extra expense, or, second, that the county carry the burden pending reimbursement by an appropriation from the General Assembly covering the amount of such extra expense. In view of the provisions of Section 6602–8h, General Code,

supra, and in view of what has been said above, I am of the opinion that neither plan suggested can legally be carried out. The only plan that suggests itself to me and which, in my opinion, would be legal under the provisions of Section 6602-8h, General Code, is as follows: The county commissioners may amend the boundaries of the sewer district so as to exclude the narrow strip of state owned land immediately adjacent to the lake front and cause to be prepared detailed plans for the amended district. Upon approval of such plans by the director of health, tentative assessments may be prepared for the property within said district. The sewerage system should then be constructed and the cost thereof assessed upon the property within the amended district. If, thereafter, the lessees of the state owned land, or any of them, desire to be served by the improvement and make proper application for such service, the county commissioners may contract for such service and require the payment for such service of an amount which shall not be less than the original assessment for similar property within the amended district. The amount to be so paid would have to be paid in cash, because although Section 6602-8h, General Code, permits the assessment of such amount against the lots or parcels of land to be served in the same manner as provided for the original assessment, the Supreme Court of Ohio has declared the levy and collection by county commissioners of assessments against land owned by the state to be an illegal delegation of legislative authority. Upon the receipt of any moneys from lessees of state property outside of the sewer district for such service, the county commissioners are directed by Section 6602-8h to appropriate such moneys to and for the use and benefit of such sewer district. This would, of course, have the effect of reducing the assessments as levied against the property originally included in the amended sewer district and in that manner inure to the benefit of the owners of property within such district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2431.

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SYLLABUS:

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COLUMBUS, OHIO, August 7, 1928.

HON. J. L. W. HENNEY, *Supreme Court Reporter, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

> "Enclosed herewith you will find a dodger issued by the Ohio Valley Law Book Company, 217 East Eighth Street, Cincinnati, Ohio, announcing Breitenbach's Ohio State Reports of Cases Argued and Determined in the Supreme Court of Ohio, in eight volumes instead of 136 volumes of the origi-