to submit to having his child meet the bus one and three-quarter miles from his home, could transport the child himself and compel the board of education to pay for that transportation.

However, it appears that there is a nearer school in another district. If this other school is nearer to Mr. Y's residence than the Pennsville school, even though it be further than the child would be required to go to meet the school bus under present conditions, the child might attend the other school and the Hopewell board of education would be required to pay its tuition in this other school. Authority for such action is found in Section 7735, General Code, which provides in substance that when pupils live more than one and one-half miles from the school to which they are assigned, they may attend a nearer school in all grades below the high school, and the board of education in the district wherein they reside must pay the tuition of such pupils without an agreement to that effect, providing proper notice is given of their attendance in this nearer school. There is no provision, however, for requiring a school district of residence to pay transportation to the other school under such circumstances.

This question was considered by the Court of Appeals in the case of *State ex rel Keller* vs. *Board of Education of Licking County School District,* 11 Ohio App. 298, wherein it was held:

> "The statutory requirement that boards of education of rural and village school districts shall transport to and from the schoolhouse pupils of the district who live more than two miles from the nearest school in the district in which they reside, does not require that such transportation be furnished to children living in the district who are attending a nearer school in another district, and mandamus does not lie to compel provision of such transportation."

I am of the opinion, therefore, in reference to the concrete case submitted, that Mr. Y. may himself, under the circumstances, transport his child or children in the elementary grades to the Pennsville school, and the Hopewell board of education can be required to pay him for such transportation, or he may permit the children to attend the nearer school spoken of, in which case the Hopewell board of education shall be required to pay the tuition of those children in this nearer school.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1043.

RESOUTION OF NECESSITY—SUBMITTING LEVY OUTSIDE LIMITATIONS TO VOTERS—EFFECT OF FILING OF SUCH RESOLUTION WITH ELECTION BOARD AFTER STATUTORY TIME LIMIT.

SYLLABUS:

Where, in submitting to the electors of the subdivision the question of a tax levy, the Resolution of Necessity of such levy is not filed with the election board prior to September 15th, as required by Section 5625-17, General Code, but all other provisions governing such submission are followed, and the question carries at the election, it is

unlikely that the courts would hold invalid the tax levy so authorized by reason of such non-compliance with the statute.

COLUMBUS, OHIO, October 17, 1929.

HON. CHAS. T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> "I am calling your attention to Section 5649-5a of the General Code, which provides for the submission to the voters of a taxing district, the question of a levy of tax outside of all limitations.
>
> The Legislature of 1925 amended this section by providing that a copy of the Resolution of Necessity should be filed with the Board of Deputy State Supervision and Inspectors of Election prior to September 15th, of any year. This was not required in the statute as it was previous to the enactment of this one.
>
> The Village of ----------, Williams County, Ohio, failed to file the Resolution of Necessity with the Election Board until after September 15th, but did so in plenty of time to comply with the law regarding the necessary advertising.
>
> Query: Would the acceptance of this resolution by the Board of Deputy State Supervisors of Election subsequent to September 15th, invalidate the election upon the proposed tax levy?"

Section 5649-5a, General Code, to which you refer, was repealed by the Eighty-seventh General Assembly, which enacted in its stead Sections 5625-15, 5625-16 and 5625-17, General Code, the latter section retaining the provision that a copy of the Resolution of Necessity of the taxing authority shall be certified to the election board prior to September 15th in order that the proposal be submitted to the electors at the succeeding November election. Sections 5625-15 and 5625-17, General Code, as far as pertinent, are as follows:

> Sec. 5625-15. "The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:
>
> * * * "
>
> Sec. 5625-17. "A copy of any resolution adopted as provided in Section 15 shall be certified by the taxing authority to the board of deputy state supervisors and inspectors of election for the proper county or counties prior to September 15th in any year, and said board shall submit the proposal to the electors of the subdivision at the succeeding November election. Such board shall make the necessary arrangements for the submission of such question to the electors of such subdivision and the election shall be conducted, canvassed and certified in like manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto, setting out the purpose, the proposed increase

in rate, and the number of years during which such increase shall be in effect and the time and place of holding the election.

The form of the ballots cast at such election shall be:

'A tax for the benefit of (name of subdivision) _____ for the purpose of (purpose stated in the resolution) _____ _____at a rate not exceeding _____ mills for _____ (life of indebtedness or number of years the levy is to run).

	FOR THE TAX LEVY
	AGAINST THE TAX LEVY

The question covered by such resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. More than one such question may be submitted at the same election."

In consideration of the question propounded, it will be assumed that the tax levy for one of the seven purposes outlined in Section 5625-15, supra, was confined to a definite purpose, that it was passed by a two-thirds vote of council and that it otherwise complied with the provisions of Section 5625-15, supra.

It appears from your inquiry that the village of _____ failed to file the resolution of necessity with the election board until after September 15th, but that said resolution of necessity was filed with the election board in plenty of time to permit the publication of notice of the election in a newspaper of general circulation in the village once a week for four consecutive weeks prior to the election. This publication, which is notice to the electors, is a *mandatory provision.* (*City of Barberton* vs. *Dutt,* 22 Ohio App., 200).

The purpose of a popular election is to ascertain the will of the electors as to a given proposition submitted to them, or as to who shall serve them as officers. Where a substantial right is violated, there is not such a fair and honest expression of the will of the electors.

The following authorities have a bearing upon the present question.

"Clerical and ministerial duties, the observance or non-observance of which does not affect the taxpayer injuriously, must be classed as directory." *State Auditor* vs. *Jackson County,* 65 Ala., 140.

"If the law itself declares a specified irregularity to be fatal, the courts will follow that command, irrespective of their views of the importance of the requirement. In the absence of such declaration, the judiciary endeavor, as best they may, to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. It it had, the irregularity is held to vitiate the entire return. Otherwise, it is considered immaterial. It has been sometimes said in this connection, that certain provisions of election laws are mandatory, and others directory. These terms may perhaps be convenient to distinguish one class of irregularities from the other. But strictly speaking, all provisions of such laws are mandatory, in the sense

that they impose the duty of obedience on those who come within their purview. But it does not therefore follow that every slight departure therefrom should taint the whole proceeding with a fatal blemish. Courts justly consider the chief purpose of such laws, namely, the obtaining of a fair election and honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end." *Bowers* vs. *Smith,* 111 Mo., 45.

"It is a well recognized principle of statutory construction that election laws are to be liberally construed when necessary to reach a substantially correct result; and to that end, their provisions will, to every reasonable extent, be treated as directory, rather than mandatory." *Duncan* vs. *Shenk,* 109 Ind. 26.

"The statutory requirement for opening and closing the polls is directory only, hence where election officers kept the polls open and received votes half an hour later than the legal time, the result is not invalidated thereby. Chagrin Falls Election, 91 O. S., 308."

Specifically answering your question, I am of the opinion that in the event that no litigation is commenced to prevent the question from going on the ballot, and said election is held, and the levy carries, it is unlikely the courts would hold invalid the tax levy authorized by reason of the fact that the resolution of necessity required by Section 5625-17, General Code, did not reach the election board prior to September 15th, other statutory steps having been complied with.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1044.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF G. F. THOMAS, JEFFERSON TOWNSHIP, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, October 17, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have resubmitted for my examination an abstract of title, warranty deed, encumbrance estimate and Controlling Board's certificate relating to a tract of two hundred ninety-nine (299) acres of land in Jefferson Township, Adams County, Ohio, of which one G. F. Thomas, trustee in trust for the Bank of Peebles, Peebles, Ohio, is the owner of record, and which property is more particularly described in Opinion No. 3123 of this department directed to you under date of January 10, 1929.

This matter has been the subject of two prior opinions, Opinion No. 3123, above referred to, and Opinion No. 79, directed to you under date of February 1, 1929. In the former opinion the title of G. F. Thomas, as trustee in trust for the Bank of Peebles, was disapproved on account of certain substantial and jurisdictional defects in the proceedings in the Court of Common Pleas of Adams County, whereby the said G. F. Thomas, as trustee aforesaid, obtained a record title to the lands here in question.

You have now submitted to me an extension of the abstract of title which