reference to this subject where the authorities are reviewed at some length. In an opinion found in the Opinions of the Attorney General for 1927, at page 814, the question with reference to the power of a board of county commissioners to effect this type of insurance was considered. The conclusions therein set out with reference to a board of county commissioners would apply as well to a board of trustees of a children's home as the nature of the power of the two boards is the same. It was there held:

> "A board of county commissioners cannot legally enter into a contract and expend public moneys for the payment of premiums on 'public liability' or 'property damage' insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles; there being no liability to be insured against, the payment of premiums would amount to a donation of public moneys to the insurance company."

And again, in 1929, similar questions were considered with reference to boards of county commissioners, township trustees, and similar boards, and a like conclusion was reached. See Opinions of the Attorney General for 1929, at page 1013.

In view of the authorities referred to in the aforesaid opinions, it clearly follows that neither the board of trustees of a children's home nor the board of commissioners of the county in which a children's home is located, would be liable in damages for personal injuries received by anyone, either the children being conveyed or third parties, in the event of an accident occurring while the children were being transported, regardless of what may have caused the accident.

I am therefore of the opinion that neither a board of county commissioners nor the trustees of a children's home are empowered to spend the funds of the county to procure "liability" or "property damage" insurance upon a bus which is used to convey the inmates of the children's home to the school to which they are assigned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3304.

CONSERVATION COUNCIL—MAY EXCLUDE PUBLIC FROM EXECUTIVE SESSIONS.

SYLLABUS:

The conservation council may lawfully hold executive sessions from which all persons except members of the council are barred.

COLUMBUS, OHIO, June 6, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt from you of the following inquiry:

> "At the regular meeting of the Conservation Council on March 26th,

> the question arose as to whether or not a public board like the Conservation Council, could legally go into executive session, if they choose, barring from the session all but members of the Council."

The Conservation Council, as created by act of the General Assembly in 1929 (113 O. L. 551) consists of eight competent citizens of the state, appointed by the Governor, with the advice and consent of the Senate.

As such council, it is clothed with authority and control in all matters pertaining to the protection, preservation and propagation of song and insectivorous and game birds, wild animals and fish, except authority to change laws in the General Code, covering commercial fishing in the Lake Erie fishing district, and in such other waters wherein fishing with nets is licensed by law, within the State and in and upon the waters thereof.

It is to have general care, protection and supervision of certain state parks named in said act, and is charged with the duty of planning, developing, formulating and instituting programs and policies of the division of conservation and of establishing such bureaus within the division as are approved by the Governor.

The act is entirely silent so far as fixing the time, place or manner of the meetings of council is concerned, other than the provisions of section 1438-3, General Code, to the effect that as soon as possible after the taking effect of the act, the conservation council shall organize and recommend to the director of agriculture a conservation commissioner to be appointed by such director.

Any action taken by the council is of course done as a board, and it necessarily must hold meetings in order to carry out the purposes for which it was created.

The making of rules and regulations to govern the organization and procedure of the board is left entirely to the board, with the single injunction that such rules and regulations be not inconsistent with the law. This power is found in the last paragraph of Section 1438-1, General Code, which reads as follows:

> "The conservation council may make and establish such rules and regulations not inconsistent with law governing its organization and procedure and administration of the division of conservation as it may deem necessary or expedient."

The power to make rules and regulations as stated here includes, in my opinion, the power to fix the time for holding meetings and to provide for any other procedure relating to the same, so long as nothing inconsistent with law is attempted. The act itself does not prescribe that meetings of the board be open to the public and it only remains to determine whether or not, if the board should decide not to admit the public or any portion of the public, to its meetings, such a rule would be inconsistent with law.

I know of no general law covering this subject, and it has had very little consideration by the courts. In fact, the only case in the United States that has come to my attention after considerable search, is the case of *Acord* v. *Booth,* 33 Utah 279, 93 Pac. 734, and that case is not at all dispositive of the question before us. It is there held that a statute which requires a city council to sit with open doors requires that council even when sitting as a "committee of the whole," must likewise sit with open doors. This case is cited in Corpus Juris, Volume 43, page 497, where it is stated:

> "In the absence of statutory requirement, meetings of a municipal council are not open to the public, but a statute which requires a city

council to sit with open doors extends to a session of a city council while sitting as a 'committee of the whole,' and the public can not be excluded therefrom."

The only case there cited in support of the rule that meetings of the municipal council are not open to the public, in the absence of statute, is an English case decided in 1908, *Mayor, Aldermen and Burgesses of Tenby* v. *Mason,* 1 Ch. 403, 1 B. R. C. 282, where it is held as stated in the syllabus:

"In a municipal burough neither the public, nor the burgesses, nor reporters for newspapers, have the right to attend the meetings of the borough council without the consent of the council, expressed or implied."

With respect to its public aspects there is a close analogy between the council of a municipal corporation and other public boards. Each transacts public business and there is probably no good reason why one should be open to the public any more than the other. The English case cited above, while entitled to considerable weight, can not be said to be entirely dispositive of the question in this country because of the fundamental difference in viewpoint which exists with respect to the relation of the individual citizen to the governing authorities under the English and American systems of government. However, in the absence of any controlling American decision, I am inclined to follow this holding, especially since the doctrine of this case is stated as the rule in the text of Corpus Juris cited above.

Another circumstance that is entitled to some weight, at least, is that the Legislature of Ohio has specifically provided in Section 4239, General Code, that the meetings of a municipal council "shall be open at all times to the public." This would seem to indicate that if this provision had not been made, the Legislature would not have intended that such meetings need necessarily be open, and fortifies the conclusion that the meetings of the conservation council may be closed to the public since no provision is made requiring them to be open.

It is, of course, not my province to discuss questions of policy, and I am accordingly not expressing any opinion with respect to the wisdom of the adoption by the council of a course which might be misconstrued by the public. "Star Chamber" sessions are peculiarly susceptible of misinterpretation, since they are in a sense contrary to the spirit of free government. However, this may be, it follows from what I have heretofore said, that the conservation council may lawfully hold executive sessions from which all persons except members of the council are barred.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3305.

COUNTY FUNDS—GASOLINE TAX FUND RECEIVED UNDER SECTION 5537, G. C., NOT APPLICABLE FOR COMPENSATING ROAD PATROLMEN BUT MAY BE USED FOR PURCHASE AND ERECTION OF ROAD LIMIT SIGNS—SPECIFIC APPROPRIATION FROM ROAD AND BRIDGE FUND FOR ROAD PATROLMEN'S COMPENSATION, NECESSARY.