illogical, and I am not prepared to say that it may be done in the absence of a specific court ruling to that effect. This does not mean, however, that the people of the municipality are powerless to change the provisions of general law which they find not suited to their convenience, so far as local self-government is concerned. The remedy exists to adopt charter provisions which may, of course, be in contravention of general law provided the subject be not such as is by other constitutional provision specifically within the province of the General Assembly.

In the case of *Berry et al.* vs. *City of Columbus*, 104 O. S. cited with approval and followed by the Supreme Court in *State ex rel.* vs. *Williams*, 111 O. S. 400, it is said that Section 6 of Article XIII of the Constitution was not repealed by the adoption of Section 3, Article XVIII, or of any other home rule provision in said article.

In no case has the Supreme Court gone so far as to say that the home rule powers given to municipalities by Article XVIII of the Constitution of Ohio empower such municipalities as have not adopted a charter by authority of Section 7 of the said Article XVIII to exercise any of their municipal powers in any other manner than that provided by general laws, except the power to regulate traffic on their streets, which by force of the case of *Perrysburg* vs. *Ridgway*, 108 O. S. 245, is said to be one of the powers of local self-government that may be exercised, irrespective of general laws, by a municipality, whether such municipality has or has not adopted a charter.

Until such time as the courts recognize in non-charter municipalities home rule powers in other respects than in the regulation of traffic on their streets, administrative officers should look to the general laws for municipal power and its manner of being exercised.

I am accordingly of the opinion by way of specific answer to your inquiry, that the clerk of a non-charter village cannot legally perform the duties of clerk of the board of public affairs and clerk of the planning commission in addition to his duties as clerk of the village, but may perform the duties of secretary of the board of sinking fund trustees and is required to do so unless the village council provides by ordinance for the appointment of a secretary to such board of trustees and fixes the duties, bond and compensation of such secretary, in which case the clerk of the village is ineligible to be appointed to the position.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3136.

PUBLIC UTILITIES—FREIGHT LINE COMPANIES—VALUATION OF ROLLING STOCK ONLY DETERMINED BY TAX COMMISSION—WHAT CONSIDERED IN FINDING PROPORTION OF CAPITAL STOCK REPRESENTING ROLLING STOCK.

SYLLABUS:

1. *Under Section* 5465, *General Code, the Tax Commission of Ohio determines only the valuation of the rolling stock of a freight line company. Opinion of April* 2, 1913, *Reports of the Attorney General for* 1913, *Volume I, page* 610, *followed.*

2. *In determining the proportion of the capital stock of the company which represents rolling stock, the Commission should consider only cars owned by a freight line company and operated within the state.*

COLUMBUS, OHIO, January 14, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have asked my opinion upon the following question:

"The capital stock of the freight line company designated as 'A', a foreign corporation, is all held by a railway company having incorporation in Ohio as well as other states designated as 'B'. The report of 'A' to this Commission sets out that 13,377 cars operated in Ohio at some time during the year *were leased* by it from 'B', and that 669 cars operated in Ohio at and during the same year, are owned cars.

The Commission contends that in the case of freight line companies, the language in Paragraph 11 of Section 5463 which states 'value of the cars owned *or* leased', is identically covered by the language and meaning of the entire Section 5465 and especially by the language 'owned *and* used'.

The freight line company contends that the only part of its capital stock permissible to be considered is that represented by owned cars, and not by leased cars.

To make the question clearer, the freight line company 'A' operated in Ohio cars both owned and leased 6,943,274 miles and operated everywhere cars owned and leased 178,378,258 miles, yet they claim that all the value that can, under Section 5463, paragraph 11, and Section 5465, be taken into consideration is the value of the cars as set up by them as being owned.

Is the language used in Section 5463 'value of the cars owned *or* leased by the company', identical in meaning as 'property of such companies owned and used', as stated in Section 5465? And under these two sections is the value of cars leased to be considered the same as value of cars owned with respect to capital stock of the freight line company 'A'?"

Section 5463, General Code, relates to the report required to be made to the Tax Commission. This section provides in part as follows:

"Sec. 5463. Such statement shall contain:

* * *

10. The whole length of the lines of railway over which the company runs its cars, and the length of so much of such lines as is without and is within the state.

11. The whole number and value of the cars owned or leased by the company classifying the cars according to kind, and the daily average number of cars operated in this state."

Section 5465 of the Code provides as follows:

"Sec. 5465. On the first Monday in July, the commission shall ascertain and determine the amount and value of the proportion of the capital stock of sleeping car, freight line and equipment companies, representing capital and property of such companies owned and used in this state, and in so determining shall be guided in each case by the proportion of the capital stock of the company representing rolling stock, which the miles of railroad over which such company runs cars, or its cars are run in this state, bear to the entire number of miles in this state and elsewhere over which such company runs cars, or its cars are run, and such other rules and evidence as will enable the commission to determine, fairly and equitably, the amount and value of the capital stock of such company representing capital and property owned and used in this state."

In an opinion of this department to your commission dated April 2, 1913, Report of the Attorney General for 1913, Volume I, page 610, it was held that under the terms of these statutes, only the rolling stock of freight line companies is to be assessed for taxation by the Tax Commission; the other property being returned locally. Applying this rule, it follows that the thing to be determined by the Tax Commission is the proportion of the capital stock of the company representing rolling stock. After determining this proportion, then the Commission is to apportion that valuation to Ohio upon the basis of the proportion which the miles of railroad over which such company runs cars in Ohio bears to the entire number of miles in Ohio and elsewhere over which such company runs cars.

Specifically stated, your question is whether in determining the proportion of the capital stock of a freight line company, your Commission shall take into consideration all of the cars operated by the company or only cars owned by the company.

In the former opinion of this department above referred to, it is pointed out that the tax imposed by these sections is a property tax and that the use of the capital stock of the company is only a means of determining the value of the property.

I am advised by your department that as a matter of fact the cars which the freight line company in question leases from the railroad company are included in the report of the railroad company to the Commission for taxation and are a part of the aggregate value upon which the railroad company is assessed for taxation.

It might be argued that these leased cars represent some part of the capital of the freight line company and that in determining the proportion of the capital stock of the company representing rolling stock, the leased cars should be considered. Even so, it cannot be said that capital stock of the company to the full extent of the intrinsic value of these leased cars should be considered as capital stock of the company representing rolling stock, because the effect would be to tax the same property twice, once against the railroad company which owns them and also against the freight line company which operates them. It must always be borne in mind that it is the cars which are being taxed and not the capital stock.

Furthermore, I am unable to suggest any method of determining what the value of the lease of these cars would be even if the statute contemplated the inclusion of some value therefor.

While the statutes in question are indefinite and possibly susceptible of varying interpretations, I am forced to the conclusion that in determining the proportion of capital stock of the company which represents rolling stock, the Commission should take into consideration only cars owned by the company and not cars which it is operating under lease.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3137.

POUNDAGE—PARTITION SALE—SHERIFF ENTITLED TO FEES UPON ALL PROCEEDS DESPITE PURCHASER'S RIGHT TO A RETURN OF HIS DISTRIBUTIVE SHARE.

SYLLABUS:

In the sale of real estate, on order of the court in partition cases, the sheriff making such sale is entitled to poundage fees at the prescribed rate on all of the proceeds of such sale actually paid into his hands, irrespective of the fact that the purchaser bidding in and paying for said property is entitled to receive back from the sheriff a distributive share of the proceeds of said sale.