municipal and school district deposits and, although my objection to the policy o law is equally applicable with respect to these funds, in view of the clear language of the Legislature the only conclusion to be reached is that a bank is authorized to offer first mortgages of the character described in Section 2288-1, supra, as security for such funds.

While all of the sections referred to in Section 2288-1, supra, were amended by the last Legislature, there is nothing in such amendments which in any way affects the question here presented and I do not feel that such amendments can be said to vitiate the additional authority contained in the section under discussion.

I may point out that no reference is made to the security for the deposit of township funds which is covered by Section 3322 of the Code. Accordingly there is no authority for the receipt of mortgages as security for township funds.

By way of specific answer to your inquiry, I am of the opinion that banks are authorized to pledge as security for the deposit of county, municipal and school district funds first mortgages of the character described in Section 2288-1 of the Code and, if such securities be offered, the public authorities cannot reject the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2425.

TAX AND TAXATION—ELECTRIC LIGHT COMPANY, DEFINED—EXCISE TAX NOT DEPENDENT ON PUBLIC SERVICE.

SYLLABUS:

A corporation which habitually and customarily furnishes electric current to consumers and charges separately therefor is an electric light company within the meaning of Section 5416 of the General Code, and hence is subject to the excise tax provided by the succeeding sections of the Code, it being immaterial that such business is incidental to the main purpose of the corporation or that the class of consumers to whom such current is furnished is restricted so that there is no holding out of such service to the general public.

COLUMBUS, OHIO, August 6, 1928.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"The Commission desires to submit for your consideration and opinion the following question:

'Is the Seton Realty Company, and similar companies, public utilities within the meaning of the Tax Laws of Ohio?'

As an explanation, there was operating in the City of Cincinnati, a small corporation known as The Lion Light, Heat and Power Company, which company was organized for the sole purpose of handling the distribution of electric current to the tenants of the Lion Building.

The Lion Light, Heat and Power Company owned no property whatever and according to its books leased the electric light distribution property and purchased wholesale surplus energy from the Lion Building Company, in turn making sale and distribution to the tenants of the building and collecting therefor in the regular manner.

After an operation of about two years, said Lion Building was sold to the Seton Realty Company, which company immediately dissolved the so-called Lion Light, Heat and Power Company but continued the operations of current distribution to tenants, collecting therefor in the name of the Seton Realty Company.

This Commission acting under the provisions of Sections 5416 and 5419 of the General Code has classified the entire property as that of an electric light company and is endeavoring to secure an annual report as required under the provisions of Section 5422 of the General Code giving a complete return of the property for taxation purposes. To date and since the transfer in 1927, the company, viz., The Seton Realty Company refuses to file such report, stating that such operations are not that of a public utility and cite the decision of the case entitled '*Jonas* vs. *The Swetland Company*,' No. 2921, decided May 31, 1928, on error to the Court of Appeals of Cuyahoga County and argued before the Supreme Court in which judgment was affirmed. Marshall, C. J., Day, Allen, Kincaid, Robinson, Jones and Matthias, J. J., concur.

It is our contention that the decision referred to above comes within the jurisdiction of the rates and service department of the Public Utilities Commission only, and has no bearing whatever upon the matter of taxation, and it is further our contention that the Seton Realty Company and other similar companies making a distribution of electric current to the tenants of their building and to adjoining buildings are public utilities and as such are to be classified and valued by this commission for taxation purposes and such valuation certified to the county auditors of the counties in which such property is located and taxes collected in the regular manner.

We enclose herewith our complete file on the subject which you will please return."

As I understand the facts from your statement and the file which you enclosed, The Seton Realty Company is now the owner of the Lion Building and, as an incident of that ownership, is furnishing electric current to its tenants only. The company makes a separate charge for such current apart from the ordinary rentals paid by the tenants.

It is accordingly clear that the lighting business of the company is purely incidental to its main purpose, namely, the ownership and management of the building, and the company does not in any way hold itself out to the public generally as being engaged in the electric light business. In view of this, it is the contention of the attorney representing the company that it is not subject to the excise tax, the case of *Jonas* vs. *The Swetland Company*, decided by the Supreme Court on May 31st of this year, being cited to sustain this contention.

The question which you present is one of grave difficulty in view of the language of the statutes applicable and the attitude of the courts in the construction of similar language. In the Annual Report of the Attorney General for 1913, at page 545, is found an opinion dealing exhaustively with the question of the applicability of the excise tax provided by Sections 5415 et seq. of the Code to various classes of firms and corporations engaged in different types of business coming within the descriptive language of the definitions set out in Section 5415 of the Code, where such business is incidental to the main purpose or object of the corporation in question. The exhaustive consideration of the subject there given prevents me quoting more than the syllabus of that opinion, which is as follows:

"Section 5415, General Code, specifies that the term 'public utility' shall embrace electric light companies, and that the term also includes any plant or property owned or operated, or both, by such company.

Section 5416, General Code, specifies that any person, persons, firm, firms, copartnership, voluntary association, joint stock association, or corporation, wherever organized or incorporated, when engaged in the business of supplying electricity for light, heat or power purposes is an electric light company; and Section 5483, General Code, requires the auditor to charge for collection from each electric light company, an excise tax for the privilege of carrying on its intrastate business. The term business as it is used in these statutes, includes an incidental as well as the primary activity of a corporation.

Excise taxes are two sorts: those imposed upon the manufacture or sale of commodities; and those imposed upon pursuits or occupations. The latter is the form comprehended by these statutes. Excise taxes are imposed either by reason of a special privilege enjoyed, or because of an enhanced value attached to the business by reason of its nature, or by reason of the fact that the business is a natural monopoly.

The foundation of the excise tax, under these statutes, is based partly on each of these incidents. These incidents attach to a business, whether or not the same is pursued as an incident to the primary activity of a person, firm or corporation, or whether such business is itself the principal pursuit engaged in.

License taxes which are imposed in the carrying out of the police power have for their foundation, practically the same reasons which justify the imposition of excise taxes, and therefore, decisions construing the exercise of the power to impose license taxes may be applied in interpreting the right to impose excise taxes. The decisions relating to license taxes endorse the rule that an incidental business may be subject to a separate license or excise tax, upon the value thereof. When a corporation, therefore, is incidentally engaged in a manner not even independent of the primary purposes for which it was formed, such incidental activity may be taxed by reason of the fact that it is devoted to a public use and therefore charged with a public interest, under the above statutes, providing for the imposition of an excise tax.

This rule is supported by the principle that the Legislature is not presumed to have left open the question, whether or not, the business of supplying electric light and power was in reality an incidental or an independent activity.

Under the rule of *State ex rel.* vs. *Taylor*, where specific provision is not otherwise made, a corporation may be formed for the carrying on of but one specific primary purpose. Manufacturing companies, therefore, may not be authorized to pursue, in addition to the power to manufacture, the further independent power to dispose of electric light and power to consumers. The same is true as to corporations organized to construct and operate a public building; and the rule is also applicable to the Cleveland Trust Company, organized primarily for the purpose of conducting a banking business.

Under Section 10212, General Code, however, natural or artificial gas companies, gas light or coke companies, companies for supplying water for public or private consumption; electric light companies, or any electric light and power company, or any water company; or any heating company, or any incline, movable or rolling road company, doing business in the same municipal corporation, may consolidate into a single corporation, and this statute is construed to give the implied power to form a corporation for the carrying on of any one or several of these businesses in the first instance. These rules do not apply to foreign corporations, which may be admitted to

do business in this state in the performance of any number of purposes for which any one corporation may be organized to conduct within this state.

Any of these companies, however, may be engaged in the production of electric light and power for purposes incidental to their primary activities, and if when producing the same within these limitations, to prevent economic waste they dispose of their surplus current to outside consumers, such business may be authorized as incidental to their primary activity. Under these rules, therefore, when a corporation is authorized to pursue but one purpose, within the limitations aforesaid, it is not prevented from pursuing several businesses, providing that all businesses, not authorized by their primary purpose clauses, are indulged in as merely incidental to their principal business or purpose.

Inasmuch as the Legislature cannot be presumed to have intended that the question, whether or not a business is or is not a public utility business, shall be left to the discretionary determination of the taxing power, and in view of the clean cut definitions comprehensive of the term public utility, as set out in the above statutes, the question as to whether or not such business constitutes a public utility, must be left to the determination of the court in a quo warranto or injunction proceeding, and therefore, when a corporation is supplying electric light or power to consumers, as set out in Section 5416, General Code, whether incidental or primary, such business shall be subjected, by the taxing authorities, to the taxes provided for public utilities, even though it is supposed that the powers, in so conducting such business, are ultra vires. Regardless of the extent, therefore, to which a corporation may be engaged in the business of furnishing electricity to consumers, regardless of the fact that it may be engaged in some other principal enterprise, to which the furnishing of electricity is subordinate, regardless of whether the furnishing of electricity is properly incidental to such other enterprise, or is virtually independent thereof, regardless of the declared purpose of the corporation, and regardless of the question of ultra vires, such company is, if it habitually and customarily furnishes electric current to consumers, an electric light company within the meaning of Section 5416, General Code.

Such corporation, therefore, must make reports to the tax commission and pay excise tax on its gross receipts. Its property must also be valued for tax on a unit basis by the tax commission, upon property reports made to the commission. Such corporation is not required to make annual reports to the commission as a domestic corporation for profit, or as a foreign corporation for profit, doing business in Ohio.

The gross receipts required to be reported to the tax commission, upon which the excise tax is to be computed, under Section 5417, General Code, are all the intrastate receipts of the corporation so engaged in the operation of a public utility.

Under Section 5419, General Code, all the real estate, personal property, moneys and credits, owned and held by such corporation, within this state, in the exercise of its corporate powers, or as incidental thereto, whether such property or any portion thereof is used in connection with such public utility business or not, must be reported and valued upon the unit basis by the tax commission."

Before proceeding further, however, it may be well to quote the pertinent portions of Sections 5415 and 5416 of the General Code.

The term "public utility" as used in the laws governing the imposition of the excise tax is defined, so far as pertinent to our present inquiry, by Section 5415, as follows:

"The term 'public utility' as used in this act means and embraces each corporation, company, firm, individual and association, their lessees, trustees, or receivers elected or appointed by any authority whatsoever, and herein referred to as * * * electric light company, * * * and such term 'public utility' shall include any plant or property owned or operated, or both, by any such companies, corporations, firms, individuals or associations."

What constitutes an "electric light company" is defined in Section 5416, as follows:

"That any person or persons, firm or firms, co-partmership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

* * *

When enagaged in the business of supplying electricity for light, heat or power purposes, to consumers within this state, is an electric light company;

* * *"

The literal application of the language of the section leaves little doubt as to the proper answer to your inquiry. Clearly, the corporation in this instance is enagaged in the business of supplying electricity for light purposes to consumers within this state. Hence, it is an electric light company and, as such, by the language of Section 5415 is a public utility. This conclusion is true whether the business so defined is the major business of the corporation or merely incident to some main purpose. Nor have I overlooked the fact that in so concluding there is perhaps a departure from the ordinary rule defining what a public utility is. As was pointed out in the opinion of my predecessor, we are dealing here with an excise tax, and such a tax may be imposed upon various pursuits and occupations within the discretion of the Legislature, and it is wholly unnecessary, as a justification of such tax, that the business in question be affected with a public interest so as to bring it within the common law definition of a public utility. The Legislature has apparently adopted for convenience sake the term "public utility", but has seen fit so to define that term as to include businesses other than those ordinarily embraced within its definition.

The language of the section being clear, it becomes necessary to determine whether there is any constitutional objection preventing the exercise of this power by the Legislature and for this purpose a review of the pertinent court decisions becomes necessary.

Shortly after the rendition of the opinion of which I have heretofore quoted the syllabus, the case of *State* vs. *Power Co.*, 16 N. P. (N. S.), 545, was decided by Judge Kinkead of the Common Pleas Court of Franklin County. The head-note of the case is as follows:

"A corporation organized for the sole purpose of furnishing electric current, heat and water to a group of manufacturing establishments, which does not exercise the power of eminent domain, or make use of streets or public ways, or serve the general public in any way, the stock whereof is owned by the factories served in proportion to the amount of service rendered to each, is not a public utility, but a private corporation, and as such is subject to a franchise tax but not to the excise tax."

It is to be observed that the corporation in question was purely a cooperative enterprise through which a group of manufacturing establishments obtained electric current for their own use. There was no holding out to the public in any way, and the court's conclusion was that this corporation was not a public utility and hence

not subject to the excise tax. The court reviews to a considerable extent the development of the excise tax laws of Ohio and reaches the conclusion that, in the instance cited, it was not the legislative intent to treat the corporation as subject to the excise tax. The conclusion of the court is stated on pages 552 and 553, as follows:

> "Purely private corporations only are required to pay the franchise tax. Quasi public corporations, or public utilities, are to pay excise taxes, but not the franchise tax.
>
> There is a potent reason for this distinction and rule. One kind of corporation does not undertake to serve the general public, while the other conducts a business of such nature and character that the whole people, or general public, is interested in, and must some time or other, or all the time, use.
>
> An electric light company which holds itself out to serve the general public, owes certain public duties, derives greater advantages, and, therefore, greater exactions may be exacted from it. It is a public utility, or public service corporation.
>
> What is to be deemed a public utility must depend upon the nature and character of the business carried on.
>
> The distinction which has always existed in the taxation laws, and which have been thoroughly understood, is unequivocally expressed in the Code by the constant use of the word public utility, which was first used in the Langdon act (101 O. L., 399). So that one who runs may read the several statutes on the subject will readily understand what is meant. Particularly is Section 5 (5542-3), 101 O. L., 399, significant:
>
> 'Electric light, gas, natural gas, waterworks, pipeline, street railroad, suburban or interurban railroad, steam railroad, messenger, union depot, express, freight line, sleeping car, telegraph, telephone, *and other public utilities*, required by law to file annual reports with the commission,' etc.
>
> And *other public utilities* is thus inserted in this section exempting electric light and other companies carrying out the legislative intent and purpose to construe all of the specially named corporations, including electric light companies—as public utilities, to be distinguished from other domestic corporations for profit which are not organized to, and do not hold themselves out to serve the public at large.
>
> This legislative interpretation and construction is in exact accord with the general understanding of bench and bar."

I am unable to agree with the conclusions of the court as a broad proposition, and feel that the decision must, in view of the specific language of the section, be limited to the particular case there under consideration. The enterprise there being purely cooperative in character, the manufacturing corporations were, in effect, merely supplying current to themselves and for this reason I believe the conclusion of the court is justifiable. It is, however, not within my province to depart from the plain language of the statute and say as, in effect, the court in the case above quoted says, that the Legislature did not intend by the language it used to broaden the common law definition of public utility, which is apparently what Judge Kinkead had in mind in reaching the conclusion which he did. It remains to be seen whether the Supreme Court has in any instance so interpreted the pertinent section of the Code as to restrict their application in the manner adopted by Judge Kinkead, or whether, in the face of the specific language of these sections, the power of the Legislature has in any instance been denied.

As has been heretofore stated, the attorney representing the company here involved cites in support of its contention the case of *Jonas* vs. *The Swetland Company*. In that case the defendant company was engaged in business in precisely the same

manner as the company here under discussion. The Swetland Company owned and operated a building and the plaintiff in the case was one of its tenants. The company was engaged incidentally in furnishing electric current to its tenants and did not in any way hold itself out to furnish current to the general public. A controversy having arisen between the tenant and the company as to the rate to be charged for the current, an action was brought to enjoin the company from cutting off the supply of current and from forfeiting plaintiffs' lease, the contention being made that the defendant company was charging excessive and discriminatory rates. The opinion of the Supreme Court is in memorandum form and is as follows:

> "There being no evidence in the record that the realty company had dedicated its property to the public service, nor had been willing to sell current to the public, under the holding of this court in *Hissem* vs. *Guran*, 112 Ohio St., 59, the Swetland Company is not a public utility. The cases cited on behalf of plaintiff in error were cases in which the companies in question furnished service to the public generally, not confining their services to their tenants and employes—an entirely different situation from that disclosed by this record. Not being a public utility, the Swetland Company cannot be compelled to furnish electricity except pursuant to the terms of its voluntary contract. The petition asks that the Swetland Company be forced to furnish electric current at a price to be fixed by the court, which is less than the price voluntarily agreed upon by Jonas and the Swetland Company as one of the terms of the lease and as part of the consideration thereof. To state this proposition is to state that the judgment of the Court of Appeals must necessarily be affirmed."

It is to be observed that the court's conclusion is premised upon the fact that The Swetland Company is not a public utility in fact and accordingly that it can not be compelled to furnish electricity except in pursuance of a voluntary contract therefor. The court points out that the company had never dedicated its property to the public service nor had it been willing to sell current to the public. The conclusion was accordingly reached that it was not a public utility *within the meaning of the public utilities act*. The court also adopts as a basis of its conclusion its prior decision in the case of *Hissem* vs. *Guran*, 112 O. S., 59. It accordingly becomes necessary to examine this latter opinion, in the light of the utilities act, to determine the basis of the conclusion of the court both in the Hissem and the Jonas case. Before discussing the Hissem case, however, it is well to invite attention to the fact that the definitions of a public utility and an electric light company are substantially the same in the public utilities act as they are in the above quoted sections of the excise tax law. Thus, in Section 614-2 of the General Code we find the following:

> "The following words and phrases used in this chapter unless the same is inconsistent with the text, shall be construed as follows:
>
> * * *
>
> When engaged in the business of carrying and transporting persons or property, or both as a common carrier, for hire, in motor propelled vehicles of any kind whatsoever, under private contract or for the public in general, over any public street, road or highway in this state, except as otherwise provided in Section 614-84, is a motor transportation company;
>
> * * *
>
> When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company:
>
> * * *"

The portion of the above section relative to motor transportation companies has been quoted because of its bearing upon the discussion later in this opinion of the case of *Hissem* vs. *Guran*, supra.

Section 614-2a of the Code, defining a "public utility," is as follows:

> "The term 'public utility' as used in this act, shall mean and include every corporation, company, co-partnership, person or association, their lessees, trustees or receivers, defined in the next preceding section, except private contract carriers and except such public utilities as operate their utilities not for profit, and except such public utilities as are, or may hereafter be owned or operated by any municipality, and except such utilities as are defined as 'railroads' in Sections 501 and 502 of the General Code, and these terms shall apply in defining 'public utilities' and 'railroads' wherever used in chapter one, division two, title three, part first of the General Code and the acts amendatory or supplementary thereto or in this act."

This section need not be discussed, but it is sufficient at this point to say that, with relation to the question now before us, the provisions of the public utilities act and the excise tax law are identical. That is to say, lighting companies are defined in precisely the same language and all lighting companies are made public utilities, with certain exceptions not necessary to discuss.

Thus it will be seen that the company here involved is apparently within the terms of both the utilities act and the excise tax law. The facts are that the company is engaged in the business of furnishing electric current for lighting purposes to consumers within this state. The Legislature has stated that this subjects a corporation so engaged to regulation as a public utility and to the imposition of the excise tax. The language is so plain in both statutes that it leaves no ground for interpretation. In my opinion, the Supreme Court in the case of *Jonas* vs. *The Swetland Company*, supra, has not in any way made an interpretation of the language of the public utilities act. It has merely stated that The Swetland Company is not in fact a public utility and hence that the regulation of its prices can not be sustained. While it is true that the court has not made entirely clear the basis of its conclusion, its reference to the case of *Hissem* vs. *Guran*, supra, as supporting its conclusion, resolves all doubt as to what the court intended. In that case the court also had under consideration a question arising under the public utilities act. The defendant had contracted with certain parties to carry milk into the city of Akron over a certain route, and the plaintiff, who had theretofore been operating also under contract over the same route, brought a suit to enjoin such operation on the ground that the defendant had not secured a certificate of authority from the Public Utilities Commission. The determination of the case hinged upon whether the defendant was a public utility within the meaning of the act. You will observe that I have heretofore quoted the pertinent provision of Section 614-2 of the General Code with relation to motor transportation companies. The section in its form as quoted was passed in 111 Ohio Laws and at the time of the decision of the case referred to the definition of a motor transportation company was in this language:

> "When engaged in the business of carrying and transporting persons or property, or both, in motor propelled vehicles of any kind whatsoever, for hire, over any public street, road or highway in this state except as hereinafter provided in Section 614-84 is a motor transportation company and as such is declared to be a common carrier."

Comparing this language with the pertinent portion of Section 614-2, supra, it is to be noted that the Legislature has included the words "as a common carrier" and

has omitted the subsequent assertion that such a company "is declared to be a common carrier." I think it manifest that the changes in the definition directly resulted from the decision of the court in the case now under consideration. In discussing the facts, the court, through Chief Justice Marshall, quotes the provisions of Section 614-2 as then in force and then continues as follows, on page 62:

> "The term, 'motor transportation company,' is first used in Section 614-2, and if we insert the definition of the term and write it into that section in the place of the term itself it will be found that the General Assembly has attempted by legislative fiat to constitute the person or company who may do the things therein referred to a common carrier. In this controversy this court is required to determine the limitations upon the power and authority of the General Assembly to declare certain persons and firms to be common carriers, when the business conducted by them is such as not to bring them within the common-law definition of common carriers. By Section 614-2 it is declared that any transportation for hire of persons or property in motor-propelled vehicles over the streets and highways of the state constitutes the operators of the vehicles common carriers. If common carriers, they are of course subject to regulation both as to the rates to be charged and the service to be rendered. They are subject also to taxes and charges, and involved in expenses which do not have to be met by persons and firms not subject to public regulation. If they are common carriers their vehicles and other property are devoted to public use, and they cannot complain of public regulation, with the taxes, charges, expenses, and other inconveniences incident thereto. If their business has not in fact been dedicated to public use and service, any regulation would amount to a taking of private property for public use, and therefore be beyond the power of the state, unless just compensation were first paid in money."

Again on page 65 is found the following:

> "This question is not a new one, but, on the contrary, has been met by many courts. The Supreme Court of California, in *Allen* vs. *Railroad Comm.*, 179 Cal,, 68, 175 P., 466, 8 A. L. R., 249, in a very clear opinion, denies the right of the Legislature to constitute a private carrier a public and common carrier by legislative fiat, as being in contravention of Section 10, Article 1, and of the Fourteenth Amendment of the Federal Constitution. Aside from the logic of the opinion in that case, it becomes a very cogent authority by reason of an application having been made to the Supreme Court of the United States for a writ of *certiorari*, which writ was denied."

The conclusion of the court is stated commencing on page 66:

> "For the foregoing reasons, and upon the foregoing authorities, any interpretation of Section 614-2 which would give state agencies any authority to regulate motor-propelled vehicles employed only in private service would constitute a violation of Section 10, Article I, of the Fourteenth Amendment of the Federal Constitution.
>
> Section 614-2, being a part of a general scheme of legislation to regulate motor-vehicle transportation, and essential to the other provisions of the Freeman-Collister Act, this constroversy can be disposed of by an interpretation of that section whereby it will be made to apply only to motor-vehicle transportation which comes within the purview of the common-law definition of common carriers."

From the foregoing language of the court it appears to be clear that the real conclusion was based upon the lack of power in the Legislature to make a business that of a common carrier which was not that at common law. Although the language last quoted would indicate that the court was interpretating the language of Section 614-2 of the Code, rather than denying its application, yet I feel that the conclusion was nothing more or less than a denial of the right of the Legislature to regulate a business private in character. And this was said in spite of the language of Section 614-2 and not because of that language.

This analysis of the two Supreme Court decisions has been necessary because the language of the statutes under consideration is substantially the same as that found in the excise tax law. If, however, I be correct in my conclusion that these cases were not decided upon statutory interpretation, but rather upon constitutional limitation, then there exists no definite action of the Supreme Court which may be used as a yardstick in the interpretation of the excise tax law. This is so because in the laying of an excise tax the Legislature is subject to no such constitutional objection as is involved in the regulation of the rates and service of public utilities. The latter power can not extend to businesses other than those which are affected with a public interest. Consequently the legislative fiat, declaring those engaged in transporting persons or property for hire upon the highways of the state to be common carriers, was of no effect except they actually be common carriers under the common law definition of that term.

It is, however, an entirely different matter for the Legislature, by its own fiat, to declare that certain businesses shall be subject to the excise tax. In order to sustain such a tax it is unnecessary that the businesses covered be of a public character. While it is of course true that the vast majority of the businesses included have that characteristic, yet the Legislature has specifically gone farther and defined as subject to the tax, all corporations, firms, etc., engaged in the business of furnishing electric current for lighting purposes to consumers. The corporation here in question is clearly so engaged, since a separate charge for such current is made in addition to the rental, and no qualifying language is used in the statute permitting it to escape the tax on the ground that such business is merely incident to the main purpose of the corporation. You are accordingly advised that the corporation in question is subject to the excise tax.

Summarizing my conclusion and in specific answer to your inquiry, I am of the opinion that a corporation which habitually and customarily furnishes electric current to consumers and charges separately therefor is an electric light company within the meaning of Section 5416 of the General Code, and hence is subject to the excise tax provided by the succeeding sections of the Code, it being immaterial that such business is incidental to the main purpose of the corporation or that the class of consumers to whom such current is furnished is restricted so that there is no holding out of such service to the general public.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2426.

SANITARY ENGINEERING SERVICE—CONTRACT WITH COUNTY COMMISSIONERS FOR SEWER DISTRICT IMPROVEMENT—BASED ON COST OF IMPROVEMENT.

SYLLABUS:

1. *Certain contracts with the board of county commissioners of Portage County, for sanitary engineering services in connection with county sewer district improvement, con-*