7. By virtue of section 6301, General Code, a dealer using a dealers' motor vehicle for private purposes is not exempt from other registration or taxation provided for other motor vehicles.

8. A dealer using a dealers' motor vehicle for private purposes violates section 12618-2, General Code, and is subject to the penalties therein provided.

9. A service truck should be classified as a "commercial car" for the purpose of taxation and its scale weight should include the weight of the wrecking equipment permanently attached thereto.

10. If a person owns a truck and drives it himself for contract hauling for commercial purposes, he is required to take out a chauffeur's license.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1886.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, $34,000.00.

COLUMBUS, OHIO, November 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1887.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO. $6,000.00.

COLUMBUS, OHIO, November 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1888.

SANITARY DISTRICT—AUTHORIZED BY SECTIONS 6602-34, ET SEQ TO EMPLOY ATTORNEY TO CONDUCT LEGAL BUSINESS.

SYLLABUS:

The director or directors of a sanitary district organized in pursuance of Sections 6602-34 *et seq., of the General Code of Ohio, may in his or their discretion lawfully*

employ and pay attorneys for the conducting of any legal business in which the district is interested, similar to that for which attorneys at law are usually employed.

COLUMBUS, OHIO, November 20, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I have your request for my opinion concerning the following:

> "In a sanitary district, established under the provisions of Sections 6602-34 et seq., may the board of directors of such district legally pay from the funds under its control, the expenses of a director in contesting a suit brought against him for libel?
>
> In this connection, we are enclosing copy of the petition and answer in the case; also copy of the resolution of the board authorizing payment of such expenses; also copy of resolution of the board authorizing settlement of a certain case, which resolution is involved in the libel suit."

"Sanitary districts" in Ohio, exist by virtue of action taken in pursuance of Sections 6602-34 to 6602-106, General Code. The law does not create sanitary districts but authorizes their creation by courts of common pleas, upon the filing of a proper petition therefor. When, upon proper showing, a sanitary district is created,

> " * * thereupon the district shall be a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation, shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested. * * "
> (Section 6602-39, General Code.)

The affairs of a district are to be administered by a director or board of directors, as the case may be, depending upon whether or not the territory of the district lies in one or more counties, to be appointed by the court or courts creating the district and authorizing its organization.

Although the director of a sanitary district or the board of directors thereof, are granted by the sanitary act quite broad authority in the administration of the district's affairs, he is, in my opinion, nothing more than an administrative officer and is bound by the well established rule that the contractual powers of an officer or board are fixed by the statutory limitations upon his power and that any doubt as to the power of a public officer as between himself and the public, must be resolved in favor of the public and against the officer. As the rule is oftentimes expressed, he has such powers and such only as are expressly granted to him by statute, together with such incidental powers as are necessary to carry out the express powers so granted. This rule has been applied in many cases by the Supreme Court of this state and especially in cases involving the expenditure of public funds. *Ireton* vs. *State ex rel. Hunt,* 12 C. C. (N.S.) 202, affirmed by the Supreme Court without opinion 81 O. S. 562; *Peter* vs. *Parkinson,* 83 O. S. 36; *State ex rel. Locher, Prosecuting Attorney* vs. *Menning,* 95 O. S. 97; *State ex rel. A. Bentley & Sons Co.,* vs. *Pierce,* 96 O. S. 44;

State ex rel. Clarke vs. *Cook, Auditor,* 103 O. S. 465; *Schwing* vs. *McClure,* 120 O. S. 335.

It is equally well settled, however, that within the limits of a public officer's authority conferred upon him by law, his acts will not only be presumed to be in good faith but in the exercise of good judgment as well. In the absence of a showing of fraud, collusion or a clear abuse of discretion the action of a public officer involving the use of discretion in the carrying out of powers expressly or impliedly granted to him will be upheld. *State ex rel. Attorney General* vs. *Ironton Gas Co.,* 37 O. S. 45; *State ex rel. Milhoof,* 76 O. S. 297; *Board of Education of Sycamore* vs. *State,* 80 O. S. 133; *Brannon* vs. *Board of Education,* 99 O. S. 369; *Board of Education* vs. *Boehm,* 102 O. S. 292; *State ex rel.* vs. *Board of Education,* 104 O. S. 360.

The director or board of directors of a sanitary district is expressly authorized to employ an attorney or attorneys if necessary.

In Section 6602-44, General Code, it is provided as follows:

> "The board may also employ * * and attorney; and such other engineers, attorneys and other agents and assistants as may be needful; and may provide for their compensation. * * "

The statute does not enumerate the purposes for which an attorney may be employed. Obviously it was the intention of the legislature to grant to the directors the right to employ attorneys for any district purpose which the directors felt to be necessary, the necessity therefor being within the discretion of the directors. That discretion can not be interfered with in the absence of fraud or its abuse. The only legal question to be determined in cases such as you present is whether or not the purpose is one which is recognized by the courts to be a proper district purpose.

Courts are not in entire accord as to the power of political subdivisions to reimburse their officers for expenses incurred by the officer on account of suits brought against him personally, as a result of official acts performed in good faith and in pursuance of his official duties, in the absence of express statutory authority therefor.

In so far as municipal corporations are concerned it is pretty well settled in most jurisdictions that such an expenditure of public funds is justified. The rule is stated in Dillon on Municipal Corporations, 5th Ed., Section 307, as follows:

> "Where a municipal corporation has no interest in the event of a suit, or in the question involved in the case, and the judgment therein can in no way affect the corporate rights or corporate property, it cannot assume the defence of the suit, or appropriate its money to pay the judgment therein; and warrants or orders for the payment of money based upon such a consideration are void. But such a corporation has power to indemnify its officers against liability which they may incur in the bona fide discharge of their duties, although the result may show that the officers have exceeded their legal authority. Thus, it may vote to defend suits brought against its officers for acts done in good faith in the exercise of their office."

See McQuillin on Municipal Corporations, 2d Ed., 532, and cases there cited. In one case, at least, this principle has been applied in a libel suit. In *Fuller* vs. *Inhabitants of Groton,* 11 Gray 340, it was held:

> "A town may appropriate money to indemnify a school committee for expenses incurred in defending an action for an alleged libel contained in a

report made by them in good faith and in which judgment has been rendered in their favor."

Whether or not the courts of this state would apply this rule where suit was brought against an officer of a corporation such as a sanitary district is problematical. Under the circumstances, I do not feel it to be necessary to pass upon the question.

Inasmuch as the sanitary district to which you refer, lies in two counties, its board of directors consists of two persons. The libel suit in question, was brought against one of the directors who was also secretary-treasurer of the district. Prior to the bringing of the libel suit, the district had been involved in some litigation with respect to which negotiations were being carried on looking to its settlement.

From the petition in the libel suit, it appears that the defendant is charged with having accused the plaintiff, who was also plaintiff in the litigation with respect to which negotiations for settlement were being carried on, of the crime of blackmail in connection with his suit against the district. The defendant is alleged to have said: "This is nothing more than a blackmail scheme" and of declaring further, that the district would not "negotiate or even discuss" the possibility of a settlement. Allegedly, these statements were made to a newspaper reporter who caused the same to be published in a local newspaper, the publishers of which paper were joined as co-defendants in the libel suit. A resolution of the board of directors assuming the burden of the defense of this suit for the director who was the defendant therein, recites in part:

"WHEREAS, the said slanderous and libelous matter complained of in the suit now pending against ———— and The ———— Printing Company grew out of the refusal of said ———— to negotiate with said ———— or his attorneys, and

WHEREAS, ———— in said interview stated that the claim attempted to be asserted was unjust and fraudulent, and

WHEREAS, said ————'s action and statements in said matter was for the protection and benefit of the funds of said District.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ———— SANITARY DISTRICT: That said District pay the expenses of said ———— in defending said suit of ———— now pending in the Court of Common Pleas, ———— County, Ohio."

I, of course, have no knowledge as to the truth of the allegations of the petition. If they are true, the recitals of the resolution quoted above, are not in accord with the facts. If the alleged libelous accusations had grown out of statements made while negotiating a settlement, and had consisted of nothing more than a statement that the claim for which settlement was being negotiated was unjust and fraudulent as stated in the resolution, an entirely different question, in my judgment, would be presented as to the right of the district to assume the defense of the action than if the allegations of the petition are true. In all the cases holding that the reimbursement of an officer for the expense of defending suits such as this, or that the defense of such actions may lawfully be assumed by a public corporation such expenditures are limited to cases where the officer acted in good faith, and in the performance of a public duty, or at least, a duty that the officer thought to be a public duty. It cannot be said that the accusing of another of a crime under circumstances such as this, could have been honestly considered by the director to have been the performance of

an act within his official duties and in furtherance of the welfare of the district. He is in an entirely different position than a peace officer, whose duty it is to make arrests or prefer criminal charges or execute the criminal laws. In my opinion, the case is of such a nature as to not warrant the sanitary district in assuming its defense, at least if the allegations of the petition are true. Of course, it may have been necessary to make some investigation to determine whether or not they were true, although one of the directors, the one who was charged with making the statements, must necessarily have known whether they were true or not. At any rate, it appears, from information which I have before me, that the district did not follow the resolution and employ and pay attorneys to defend this suit.

What actually took place was, that attorneys were employed to take a deposition in connection with the suit for the purpose of securing certain information in the belief that future litigation might thereby be forestalled or at least properly defended. It was felt that the only way this information might be obtained was by the taking of a deposition, and that the only way the deposition could be taken was by attorneys at law who were attorneys of record in the case. These attorneys filed an answer in the case and took the deposition and then withdrew from the case. It was for the taking of this deposition that the attorneys were paid.

The advisability of taking this deposition was a matter purely within the discretion of the directors, providing it related to a matter in which the district had an interest. The forestalling of future litigation and the securing of evidence for use in further litigation certainly was such a matter. I have no reason to think that the directors' determination with respect to the taking of this deposition was not made in good faith and with the honest intention that it was an act in line with their official duties and in pursuance of the welfare of the district.

Upon consideration of the foregoing principles in the light of the facts presented it is my opinion that the expenditure in question was lawful.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1889.

COUNTY JAIL—MATRON THEREOF NOT ENTITLED TO MEALS FREE OF CHARGE UNLESS CONTRACT SO PROVIDES—COMMISSIONERS UNAUTHORIZED TO PAY FOR LIGHTING OF QUARTERS OCCUPIED BY SHERIFF'S FAMILY.

SYLLABUS:

1. *A jail matron appointed under the provisions of section* 3178, *General Code, is not entitled to her meals free of charge in the absence of a provision in her contract which would take into consideration the question of meals.*

2. *Where persons are employed to prepare meals for prisoners in a county jail and their compensation is fixed at a certain sum and board, the county is authorized to furnish them their meals without any additional charge.*

3. *County commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence. County commissioners are unauthorized to pay for the electric current used to pre-*