" * * * In other words, the laws dealing with the care of the tubercular are not part of the poor relief laws but are laws for the protection of the public health to prevent the spreading of the disease. * * *"

It is, therefore, my opinion that the family in question, by moving to Big Island Township, has established a residence for the purpose of poor relief in that township and the act of the county commissioners in giving hospitalization to a member of that family suffering with tuberculosis does not constitute the granting of relief under the provisions of law for the relief of the poor.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

36.

COMPLAINT TO DEPARTMENT OF HEALTH—CONCERNING CONDITION OF A STREAM OR PUBLIC WATER SUPPLY MUST BE SIGNED HOW—MANDATORY ORDER MAY BE ISSUED WHEN.

SYLLABUS:

1. *Under the provisions of Section* 1249, *General Code, a complaint filed with the Department of Health setting forth a condition of stream or public water supply pollution, as provided in such Section* 1249, *which is signed by fifty or more qualified electors is insufficient to impose upon the Director of Health the mandatory duty to forthwith inquire into and investigate such conditions complained of unless such complaint is signed by fifty qualified elcctors of any one city, village or township.*

2. *The provisions of Section* 1249, *General Code, imposing upon the Director of Health the mandatory duty of investigating stream pollution conditions, complained of in writing as set forth in such section, are jurisdictional and no mandatory order as authorized by Section* 1251, *General Code, may be issued except pursuant to investigation and findings made after the filing of the written complaint provided for in such Section* 1249.

COLUMBUS, OHIO, January 25, 1937.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: You have requested my opinion in two letters of recent

date upon questions involving the construction of Sections 1249, et seq., General Code, which I shall consider together. These letters read as follows:

"The State Department of Health recently received a complaint signed by seventy-three residents of Paulding and Defiance Counties alleging that conditions injurious to the health and comfort of the citizens of Paulding and Defiance Counties are being caused as a result of the pollution of Flatrock Creek by industrial wastes discharged to that stream from the plant of the Paulding Sugar Company at Paulding. The Deputy State Supervisor of Elections of Paulding County certifies that thirty-nine of the signers of this petition are qualified electors of Paulding Village, while twenty others are qualified electors of several other political subdivisions of Paulding County.

This complaint is evidently intended to be prepared in accordance with the provisions of Section 1249 G.C. This section states that such a complaint may be submitted "by fifty of the qualified electors of any city, village, or township." In this instance it will be noted that fifty-nine of the signers of this complaint are qualified electors of villages and townships in Paulding County, but do not reside in any one village or township.

I shall be glad to have your opinion as to whether Section 1249 G.C. requires that the stipulated fifty electors shall be qualified in any one city, village or township or whether the fifty signers of such a complaint may include electors qualified in several different political subdivisions."

"The State Department of Health recently received a complaint signed by seventy-three residents of Paulding and Defiance Counties alleging that conditions injurious to the health and comfort of the citizens of Paulding and Defiance Counties are being caused as a result of the pollution of Flatrock Creek by industrial wastes discharged to that stream from the plant of the Paulding Sugar Company at Paulding.

This complaint was received by this department on December 16, 1936, approximately two weeks after the season's operations at the Paulding Sugar Company's plant had been suspended. In the interim the conditions concerning which complaint is made have disappeared due to the flushing action of the normal flow in Flatrock Creek. It will be impossible to find similar conditions until the operation of the plant is resumed

about October 15, 1937. However, this department has found, as the result of investigations made this year prior to the receipt of this complaint and in other years past, that conditions detrimental to the health and comfort of the citizens of Paulding County have been created as the result of the pollution of Flatrock Creek by industrial wastes discharged to this stream from the plant of the Paulding Sugar Company.

We shall be pleased to have your opinion as to whether the findings of the Director of Health, required in such cases under Section 1250 G. C., must be based on facts determined after receipt of a complaint prepared in accordance with the provisions of Section 1249 G. C. or whether facts determined prior to the receipt of such complaint may be used as the basis of such finding by the Director of Health."

Section 1249, General Code, provides:

"Whenever the council or board of health, or the officer or officers performing the duties of a council or board of health, of a city or village, the commissioners of a county, the trustees of a township or fifty of the qualified electors of any city, village or township, or the managing officer or officers of a public institution set forth in writing to the state department of health that a city, village, public institution, corporation, partnership or person is discharging or is permitting to be discharged sewage or other wastes into a stream, water course, canal, lake or pond, and is hereby creating a public nuisance detrimental to health or comfort, or is polluting the source of any public water supply, the commissioner of health shall forthwith inquire into and investigate the conditions complained of."

It is observed in considering your first question that according to the terms of this statute, before the mandatory duty of forthwith inquiring into and investigating the conditions complained of is imposed upon the Director of Health, it is necessary that fifty qualified electors of any "city, village or township" set forth their complaint in writing, in the absence of a written complaint from one of the other authorities mentioned in the section. The terms in question as used in this section are singular and not plural.

A determination of whether the number of the terms "city, village or township" may be construed as including the plural, requires that consideration be given to Section 27, General Code, which is as follows:

> "In the interpretation of parts first and second, unless the context shows that another sense was intended, the word 'bond' includes an 'undertaking', and the word 'undertaking' includes a 'bond'; 'and' may be read 'or,' and 'or' read 'and,' if the sense requires it; words of the present include a future tense, in the masculine, include the feminine and neuter genders, and in the plural include the singular and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other words in such parts, or in this code."

Section 1249, supra, is a section contained in the first part of the General Code. Strict regard to the punctuation of Section 27, supra, would indicate that words in the singular shall include the plural, and vice versa, without regard to the context, but the Supreme Court in Aultman & Co. vs. Guy, 41 O.S. 598, took a different view of the matter. Speaking of Section 23, Revised Statutes, now Section 27, General Code, the court said at page 599:

> "Section 23 R. S., authorizes us, in the interpretation of this section, to hold that words in the plural number include the singular, and words in the singular include the plural, unless the context shows that another sense was intended."

Considering the context of Section 1249, General Code, I find nothing therein to show that the context requires that the words "city, village or township" be construed as including the plural; in fact since the statute is clear in setting forth these terms in the singular, it would seem that the context requires that they be so limited. "If the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction." Slingluff vs. Weaver, 66 O. S. 621.

In view of the foregoing, it is my opinion that in the case you cite the written complaint is insufficient to confer jurisdiction under Sections 1249, et seq., General Code.

Coming now to your second inquiry, a much more difficult question is presented. Section 1249, supra, imposes a specific duty on the Director of Health to investigate the condition complained of in the written complaint referred to in that section. This section does not give him

jurisdiction to investigate any conditions other than those so complained of. Section 1250 provides as follows:

> "If the commissioner of health finds that the discharge of sewage or other wastes from a city, village or public institution, or by a corporation, partnership or person, has so corrupted a stream, water course, canal, lake or pond, as to give rise to foul and noxious odors or to conditions detrimental to health or comfort, the source of public water supply of a city, village, community or public institution is subject to contamination, or has been rendered impure by such discharge of sewage or other wastes, he shall notify the mayor or managing officer or officers of such city, village, public institution or corporation, partnership or person of his findings and of the time and place when and where a hearing may be had before the public health council. The notice herein provided shall be by personal service or by registered letter."

The language at the beginning of this section obviously refers to the investigation conducted pursuant to the jurisdiction conferred upon the Director of Health by the immediately preceding section. In fact, both Section 1249 and 1250 were incorporated in one section in the original act which conferred upon the state the power to compel cessation of stream pollution under certain circumstances as set forth in these and following sections of the General Code. The original act was passed in 1908, 99 O. L. 74. Section 1 was divided by the codifying commission in 1910 and became Sections 1249 and 1250, General Code.

It is recognized that a liberal construction of Section 1250, supra. particularly reading the section as standing alone, would indicate a conclusion that the finding of the Director of Health could be predicated upon an investigation conducted prior to the filing of any written complaint referred to in Section 1249 or perhaps in the absence of written complaint. A strict construction of this and cognate sections of the General Code would impel a contrary conclusion. It becomes necessary to consider the act as a whole in order to determine the question.

Section 1251, General Code, confers upon the Public Health Council after hearing the power to determine that improvements or changes are necessary and should be made, and upon such determination the Director of Health is required to notify the city, village, public institution, corporation, partnership or person that such offender is ordered to install works or means to correct the situation within a time fixed in the order.

Sections 1252 to 1256, both inclusive, General Code, relate to public water supply rather than stream pollution and confer far wider latitude

in the power of the Director of Health than in the case of the statutes relating to stream pollution.

Sections 1257 to 1258-8, both inclusive, provide for an appeal from the order of the Director of Health to referees and modification thereof, as well as for a direct appeal to the Supreme Court to review the proceedings. Section 1259, General Code, provides that all authorities having power to raise money by taxation shall take all steps necessary to secure funds to comply with the order of the Director of Health. Section 1259-1 provides for the issuance of bonds to comply with such order and makes special provision for issuing bonds beyond the statutory limitation as to the amount of net indebtedness which may be incurred by a subdivision upon certificate of the Tax Commission and approval of the Governor. This section also provides that certain levies to meet the principal and interest requirements of such bonds shall be outside of tax limitations. Although this last mentioned provision is undoubtedly of no force and effect since tax limitations have been written into the Constitution in the so-called fifteen and ten mill constitutional amendments, it is nevertheless believed that the provisions of Section 1259-1 with respect to issuing bonds outside of limitations as to net indebtedness are still in full force and effect to the extent that the obligations incurred by the issuance of such bonds can be met within tax limitations as construed by the Supreme Court in the recent decision of State, ex rel. vs. Kountz, 129 O. S. 272. Sections 1260 and 1261 relate to penalties for failure to comply with the order of the Director of Health.

It is apparent that in the enactment of the foregoing sections of the General Code, the legislature has imposed upon the state extraordinary power for the protection of the public health and welfare and has conferred powers which in many instances subject private property of individual citizens to increased burdens for the public good. In the enactment of these sections, the legislature has also imposed upon the citizens of individual localities and in many cases small localities, increased burdens of taxation for the health and welfare of the state at large. These statutes have been invoked and attacked in several cases in the Supreme Court and consistently upheld but in each case the court has strictly adhered to the letter of these statutes. I refer to the cases of the State Board of Health vs. Greenville, 86 O. S. 1, upholding the constitutionality of the act, State vs. Dean, 95 O. S. 108, involving the levy of taxes in excess of limitations to carry out the provisions of the act and the more recent cases of State, ex rel. vs. Williams, 120 O. S. 432, Bucyrus vs. State Department of Health, 120 O. S. 426 and State, ex rel vs. Van Wert, 126 O. S. 78.

Having in mind that these sections of the General Code relating to stream pollution involve on the one hand, in many cases, the individual

citizen and on the other the sovereign state and also remembering that these statutes create liabilities and impose obligations which did not exist at common law, the rule of strict statutory construction is clearly indicated. In 37 O. Jur. 738, the following is said:

> "In statutes where the state is involved on the one side and the citizen on the other, a rule has been held applicable which is analogous to the rule of interpretation governing contracts—namely, that the document is construed strictly against the person who prepared it and favorably to the person who had no voice in the selection of the language. Thus it is that a rule of strictness will generally be followed as against the sovereign and a rule of favor toward the citizen in the interpretation of penal statutes and statutes levying a tax."

This same principle of statutory construction is set forth in Lewis' Sutherland Statutory Construction, Vol. 2, Second Edition, pages 1019 and 1020:

> "Statutes interfering with legitimate industries, etc.—All statutes for interference with legitimate industries or the ordinary uses of property, or for its removal or destruction for being a nuisance or contributory to public evil, are treated with a conservative regard for the liberty of the citizen in his laudable business, and in the innocent enjoyment of his possessions, and generally the rights of property. Such interferences are cautiously justified on principles of the common law, and only in cases of imperative necessity, or under valid statutes plainly expressing the intent.
>
> Statutes creating liability.—If a statute creates a liability where otherwise none would exist, or increases a common-law liability, it will be strictly construed. A statute, even when it is remedial, must be followed with strictness, where it gives a remedy against a party who would not otherwise be liable. The courts will not extend or enlarge the liability by construction; they will not go beyond the clearly expressed provisions of the act. Statutes are construed strictly against a forfeiture. A statute which subjects one man's property to be affected by, charged or forfeited for the acts of another, on grounds of public policy, should be strictly construed; it cannot be done by implication."

I am aware of the many cases holding that statutes which are strictly construed must be reasonably construed and in the instant case

it would appear that no purpose would be served in waiting until next year to again make the investigation which has already been made. But as to this, it must be remembered that if proceedings may be taken in accordance with Sections 1249, et seq., General Code, predicated upon investigations made by the Director of Health one year previous to the filing of a written complaint, in so far as the law is concerned such extraordinary proceedings may be instituted which are based on an investigation of the Director of Health ten years previous to the time when any complaint whatsoever has been filed, and a finding made and mandatory order issued solely upon facts diclosed by such ten year old investigation. I do not, however, wish to be understood as holding that when making an investigation after a written complaint has been filed, in accordance with the statute, the conditions found in previous investigations may not be considered and included in the report.

Having in mind the extraordinary remedies provided by the sections of the Code here under consideration, I am impelled to the conclusion that these sections must be strictly construed and that the filing of the written complaint provided for in Section 1249, supra, is jurisdictional and must precede any investigation on the part of the Director of Health from which the mandatory order provided in Section 1261 may be issued.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

37.

AUTHORITY TO SELL LANDS FOR DELINQUENT TAXES—STATUTORY—MUST BE SUBSTANTIALLY AND CHRONOLOGICALLY FOLLOWED—PROSECUTING ATTORNEY MUST FOLLOW UP WHEN—VOLUNTEER ACQUIRES NO TITLE, NOT SUBROGATED TO THE RIGHTS OF THE STATE.

SYLLABUS:

(1) *The authority to sell lands for delinquent taxes is conferred by statute. The procedure is jurisdictional and the statutory requirements must be substantially and chronologically followed, else the purchaser at a delinquent tax sale acquires no title.*

(2) *Where suit was brought by the prosecuting attorney of the county in which the delinquent land was located to foreclose the delin-*