In such a case it might be argued that if he were also a member of a county board of education the duties required of both offices would conflict. This contention, however, has been negatived by a former opinion of this office, reported in the Opinions of the Attorney General for 1931, volume 1, page 145. In such opinion it was held as disclosed by the syllabus:

> "An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time."

It was pointed out in said opinion that members of a board of education and the township trustees might be called in by the budget commission for conferences and in such a situation persons who were members of both boards would appear as adversaries against themselves. In holding, however, that the same situation would not arise if a county board of education was involved, my immediate predecessor stated at page 146:

> "No such reason, however, could be urged against the compatibility of membership on a county board of education and a township board of trustees for the reason that the county board of education is not a tax levying body and does not receive funds for its purpose from the budget commission but from moneys retained and set aside for that purpose by the county auditor."

The sole remaining question is whether or not it is physically possible for one person to hold these two positions. In my opinion No. 338, rendered under date of March 23, 1933, I held that it is a question of fact rather than of law whether or not it is physically possible for one person to occupy two given offices at one time.

Consequently, in specific answer to your question, I am of the opinion that the offices of member of a county board of education and village clerk are compatible if it is physically possible for one person to transact the duties of both of such offices simultaneously.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1355.

DISTRICT BOARD OF HEALTH—HEALTH COMMISSIONER—NO JURISDICTION OVER STATE-OWNED PROPERTY WITHIN POLITICAL SUBDIVISION.

SYLLABUS:

Neither local district boards of health nor local health commissioners have any general jurisdiction over state owned property in their political subdivisions.

COLUMBUS, OHIO, August 8, 1933.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"In times past there have been occasions when the question has arisen as to the jurisdiction of local health departments over the buildings and lands occupied by state institutions in matters affecting the public health and general sanitation. As we are not informed of any provision of Ohio Law that exempts state property from the jurisdiction of the local board of health, we have so advised our local health commissioners.

Yesterday I received a letter from the health commissioner of the city of Columbus in regard to conditions existing on state property within the city of Columbus. In explanation of this matter, I enclose a copy of the letter from Doctor N. C. Dysart, city health commissioner.

I shall be glad to have your opinion as to the jurisdiction that may be exercised by a local board of health or health commissioner over state property in matters placed by law under the jurisdiction of local health departments."

The letter referred to reads in part:

"I would appreciate an opinion from you as to the jurisdiction of the Columbus Board of Health on state property such as the State Fair Grounds, the State University, the State Penitentiary, the Feeble Minded Institution, the State Hospital for Insane, the Institution for the Deaf and Dumb, the Institution for the Blind and in fact all state property lying within the corporate limits of the City of Columbus.

Lately several incidents have occurred which renders an opinion on this matter advisable. For instance some citizens in the neighborhood of the State University complained of odors arising from the dump maintained by that institute on its grounds on West Lane Avenue. When a city inspector endeavored to correct this nuisance, he was ordered off the dump by the caretaker who told him he had no jurisdiction on State University grounds.

Another inspector was not permitted to obtain samples of water from one of the University swimming pools for sanitary analysis."

Section 1261-16, General Code, in part provides:

"For the purposes of local health administration, the state shall be divided into health districts. *Each city shall constitute a health district* and for the purposes of this act (G. C. Sections 1261-16, et seq.) shall be known as and hereinafter referred to as a *city health district.*" (Italics the writer's.)

Section 4404, General Code, provides:

"The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act (G. C. Sections 1261-16 et seq.; 4404; 4405; 4408; 4413) contained shall

be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

Section 4404, General Code, prior to the enactment of the Hughes Act on April 17, 1919 (108 v. Pt. 1, 236) provided in part that "the council of each municipality shall establish a board of health." By such act the state in the exercise of its police power delegated some of its power to municipal corporations. Thus a city might create a municipal board of health, which board was a part of the municipal government.

In the case of the *Board of Health, et al.* vs. *The State, ex rel.,* 40 O. App. 77, at page 81, it is stated with reference to section 1261-16, General Code, supra:

"It therefore seems clear to this court that it was the intention of the Legislature to withdraw the power previously granted to cities in health matters; and well knowing that the health of any municipality was of vital concern to the whole state, and recognizing the fact that the matter of health administration had been indifferently administered in certain localities, it was intended to reserve that power to the state itself and to abolish the municipal boards of health as previously established."

The court in this case further held that withdrawing a city's health powers in this respect was not violative of constitutional home rule since under section 26 of Article II of the Ohio Constitution, the Legislature had power to enact a general law for the purpose of safeguarding the health of the people of the state *(State, ex rel. Village of Cuyahoga Heights* vs. *Zangerle,* 103 O. S. 566), and that an employee of the city board of health is not an employee of the city, as such city health district is a distinct political subdivision of the state, made so by the Hughes and Griswold Acts. (108 v. 236, 1085).

Section 4413, General Code, provides in part:

"The board of health of a city may make such orders and regulations as it deems necessary * * * for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. Orders * * * intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances. * * *"

Section 4420, General Code, reads as follows:

"The board of health shall abate and remove all nuisances within its jurisdiction. It may by order therefor compel the owners, agents, assignees, occupants, or tenants of any lot, property, building or structure to abate and remove any nuisance therein, and prosecute them for neglect or refusal to obey such orders. * * *"

While the terms of these statutes are broad and comprehensive enough to cover all property, including the state's property, still it is thought that the legislature intended a more restricted application of the statute than this language

would seem to import. These are general health statutes. In *State, ex rel. etc.,* vs. *Board of Public Works,* 36 O. S. 409, the court stated that although the statute there involved was broad enough to embrace the state, still the state was not included within the general words of a statute nor its purview only when expressly so declared. The court stated at page 414:

> "The doctrine seems to be, that a sovereign state, which can make and unmake laws, in prescribing general laws intends thereby to regulate the conduct of subjects only, and not its own conduct."

This rule that the state is not bound by the terms of a general statute, unless it be expressly so declared, has been uniformly followed in Ohio. *State, ex rel.* vs. *Capeller,* 39 O. S. 207; *State, ex rel. James* vs. *Brown, Secretary of State,* 112 O. S. 590. Such doctrine runs back to the English common law, which is expressed in the maxim:

> "The King is not bound by any statute, if he be not expressly named to be so bound." (Broom Leg. Max. 51).

And such principle was carried over and made applicable to states as sovereigns in this country.

As stated above, a city health district is now a separate and distinct political subdivision, whereas before, such board of health was a part of the municipal government. But there can be no differentiation of such principle applying in this respect to different city boards, as parts of the municipal government, and city boards of health which today are separate political subdivisions. Consequently, it becomes necessary to examine former opinions of the Attorney General's Office. The syllabus of an opinion found in the Opinions of the Attorney General for 1931, Volume 2, page 1111, states:

> "The jurisdiction of the officers and other employes of the building department of a municipal corporation in this state, acting under the assumed authority of an ordinance passed by council of such municipality, does not extend to a building owned by the state in the municipality, with respect to alterations and repairs which the public safety requires to be made in such buildings."

The principle is that a state when creating such political subdivision does not cede to them any control of the state's property situated within them. Such subdivision governs in the limited manner and in the territory that is expressly, or by necessary implication, granted to it by the state.

In Opinion No. 4230 of the Opinions of the Attorney General for 1932, this above ruling was followed. The syllabus reads:

> "The jurisdiction of the City of Cleveland, in the enforcement of its smoke ordinance, does not extend to the Central Armory which is under the exclusive control and management of the state."

There are also many court decisions in other states in accord with the opinions of this office. In the case of *Kentucky Institution for the Blind* vs. *City of Louisville,* 123 Ky. 767, it was held that the state owned institution for the

blind was not bound to comply with a city ordinance requiring fire escapes for all buildings of over three stories in height. The following language at page 774 is pertinent:

> "But beyond this is the larger question, and the one upon which this decision is rested; that is, that the State will not be presumed to have waived its right to regulate its own property by ceding to the city the right generally to pass ordinances of a police nature regulating property within its bounds. * * * The principle is that the State, when creating municipal governments, does not cede to them any control of the State's property situated within them, nor over any property which the State has authorized another body to control. The municipal government is but an agent of the State—not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the State. It is competent for the State to retain to itself some part of the government even within the municipality, which it will exercise directly or through the medium of other selected and more suitable instrumentalities. * * *"

Other cases laying down the principle that the state does not include itself, or state property in a general statute unless it does so expressly, are: *In re Willard Parker Hospital,* 217 N. Y. 1, 111 N. E. 256; *Board of Education of the City of St. Louis* vs. *City of St. Louis,* 267 Mo. 356; *City of Milwaukee* vs. *McGregor,* 140 Wis. 35; but cf. *Day* vs. *Salem,* 65 Ore. 114, at 123.

By like reasoning the jurisdiction of city health boards, even though not municipal health boards in the sense of being a city department, does not extend to or include state owned buildings and grounds *unless the statutes expressly so state,* since the above stated principle applies to all political subdivisions of the state.

Having ascertained the applicable principle, it becomes necessary to examine other relevant statutes. Section 1261-26, General Code, provides among other things:

> "The district board of health may also provide * * * for the inspection of schools, public institutions, jails, workhouses, children's homes, and other charitable, benevolent, correctional institutions."

It must be noticed that the enumerated institutions are *county* institutions and do not refer to state institutions. It cannot be argued that the words "and other charitable, benevolent, correctional institutions" include state institutions because of the well-known rule of "ejusdem generis:"

> "It is the general rule of statutory construction that where general words follow an enumeration of persons and things, by words of particular and specific meaning, such general words are not to be construed in their widest extent, but will be held as applying only to persons or things of the same general kind or class as those specifically mentioned."
>
> Black (2nd ed.) Interpretation of Laws, Section 71, page 203.

The application of this rule of interpretation to section 1261-31, General Code, providing for inspection by the district health commissioner, excludes state institutions.

Since state owned institutions are not expressly included nor by necessary implication included in the general health statutes relating to city district boards of health, it is my opinion that such boards have no jurisdiction over the state owned buildings or grounds. It was evidently the intent of the legislature to leave the health regulation of state owned buildings and grounds to the state officers having supervision of such property, except those quarantine and sanitary rules and regulations adopted by the state board of health. This is my interpretation of section 1238, General Code, which provides:

> "Local boards of health, health authorities and officials, *officers of state institutions,* police officers, * * * shall enforce the quarantine and sanitary rules and regulations adopted by the state board of health. (Italics the writer's.)

Specifically answering your inquiry, it is my opinion that neither local district boards of health nor local health commissioners have any general jurisdiction over state owned property in their political subdivisions.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1356.

COUNTY FUNDS—PERSONAL SURETIES UNDER DEPOSITORY CONTRACT LIABLE WHEN—DEPOSITORY NOT RELIEVED FROM PAYING INTEREST THEREON WHEN.

SYLLABUS:

1. *If a county executes two continuing depository contracts for the same period with the same bank, each covering one-half the total active and inactive deposits, upon the withdrawal of one-half the total deposit and the surrender of the collateral pledged as security under one contract, the personal sureties under the second contract are liable for only one-half the balance remaining after such withdrawal, where the funds deposited under both contracts are commingled, all active funds being deposited in one account and all inactive funds in another.*

2. *If the conservator of such depository bank should designate the one-half of the funds released to be the one-half secured by collateral, such designation would not bind the sureties under the other contract.*

3. *Where county funds are deposited under the county depository statute, Sections 2715 et seq. of the General Code, the bank will not be relieved from paying the rate of interest stipulated until the contract is terminated regardless of restrictions imposed upon the bank by executive order or legislative enactment after the making of the contract. It follows that the county commissioners would be justified in refusing to return collateral pledged to secure the deposit until the payment of interest accruing during the period of such restriction as well as the payment of principal.*