

them, such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the department of agriculture."

Thus, it can be seen that the duties and powers of the Bureau of Markets and the Department of Agriculture must be construed together.

It will be seen that Section 1101, *supra*, provides that the Department of Agriculture has the right, in carrying out the purpose of the laws it is required to administer, to inspect books, accounts, and records of any company, etc., subject to the provisions of such laws. It, therefore, appears that with respect to foodstuffs, it is the duty of the Bureau of Markets to investigate the cost of marketing the same, to its satisfaction. If the Director of Agriculture deems it necessary, in order that said investigation may be properly carried on, to examine the books of any person, company, etc., Section 1101, *supra*, gives him the right to do so.

In view of the above and in specific answer to your inquiry, I am of the opinion that: (1) In the absence of mutual invitation or consent, the Bureau of Markets has no authority to mediate or arbitrate a dispute between producers and distributors; (2) by virtue of Section 1089-2, General Code, it is the duty of the Bureau of Markets to investigate the costs of production and marketing of foodstuffs; (3) in such investigation, the Director of Agriculture is authorized under the provisions of Section 1101, General Code, to examine the books of any person, corporation, etc., subject to the provisions of the laws.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

934

LAND FOR FORESTRY PURPOSES—WHERE TOWNSHIP TRUSTEES ACCEPT DONATION—SEWER AND WATER LINE ASSESSMENTS LEVIED—TAX MONEYS MAY BE LEVIED AND COLLECTED TO PAY SUCH SPECIAL ASSESSMENTS—SECTION 5650-1 G. C.—INTERPRETATION WORD "MAINTAIN".

SYLLABUS:

Where the township trustees accept a donation of land suitable for forestry purposes, against which sewer and water line assessments have been levied, such township trustees are authorized to use the tax moneys levied and collected pursuant to the authority of Section 5650-1, General Code, to maintain such forests, to pay said special assessments.

COLUMBUS, OHIO, July 24, 1939.

HON. HAROLD K. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR: I have your letter of recent date in which you state that the township trustees of one of the townships in your county accepted a donation of land pursuant to Section 5650-1, General Code, for forestry purposes. You also state that sewer and water line assessments had been levied against said lands and ask my opinion as to whether the township trustees may lawfully use the tax money which they collect pursuant to section 5650-1, General Code, for the purpose of maintaining the forest, to pay said special assessments.

It appears from your letter that these assessments were levied against said lands prior to the time title thereto was acquired by the township trustees and they are therefore a lien against such lands even though they are now owned by a political subdivision of the state. In fact, it appears to be the rule that special assessments may be levied against lands belonging to political subdivisions. See *Jackson vs. Board of Education*, 115 O. S. 368.

If these assessments are not paid, an action to foreclose may be brought and the lands could be sold to satisfy the lien of such assessments and the township would thereby be deprived of its forest.

Section 5650-1, General Code, provides as follows:

“The governing body of any municipality, township or county of this state shall have power to accept donations of land suitable for the growth of timber which shall be known as municipal, township, or county forests, and may manage the same on forestry principles. The governing body of any municipality, township or county in this state where funds are available or have been levied therefor may, when authorized by a majority vote of the electorate voting at any general election, purchase or obtain by condemnation proceedings, any tract of land suitable for a forest which is conveniently located for the purpose, and under the direction of the state forester shall manage the same on forestry principles. Such municipality, township or county is authorized to levy and collect an annual tax of not exceeding three mills on the dollar of its assessed real estate valuation in addition to all other taxes authorized or permitted by law to procure and *maintain* such forests.” (Emphasis the writer's.)

In order to determine whether the tax authorized to be levied and collected by the township trustees may be used for the purpose of paying the special assessments in question, it is necessary to determine whether the word “maintain,” as used in said section, is broad enough in its mean-

ing to include such payment. In Webster's New International Dictionary, among other definitions of the word "maintain," I find the following: "To bear the expense of ; to support ; to keep." In order for the township trustees to keep and maintain the forest, it is necessary that they retain title and possession of the lands in question and this can not be done unless the special assessments are paid. It therefore seems clear that payment of these special assessments falls within the meaning of the word "maintain" as used in the above quoted statute.

I therefore advise you, in specific answer to your question, that where the township trustees accept a donation of land suitable for forestry purposes, against which sewer and water line assessments have been levied, such township trustees are authorized to use the tax moneys levied and collected pursuant to the authority of Section 5650-1, General Code, to maintain such forests, to pay said special assessments.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

935.

PUBLIC EMPLOYES RETIREMENT SYSTEM—WHERE MEMBERS ENTITLED TO PARTICIPATE IN FIREMEN'S PENSION RELIEF AND PENSION FUND—EXEMPTED—NOT ELIGIBLE FOR MEMBERSHIP IN SUCH RETIREMENT SYSTEM—WHEN MEMBER OF RETIREMENT SYSTEM ELIGIBLE TO PARTICIPATE IN SAID PENSION FUND—DUTY RETIREMENT BOARD TO REFUND ACCUMULATED CONTRIBUTIONS—SECTIONS 4600, 486-33c, G. C.

SYLLABUS:

1. *Members of the public employes retirement system who become entitled to participate in a firemen's relief and pension fund established pursuant to the mandatory provisions of Section 4600 and related sections of the General Code are, by the terms of Section 486-33c, excepted from the provisions of the public employes retirement act and are not eligible for membership in the public employes retirement system.*

2. *When a member of the public employes retirement system becomes eligible to participate in the benefits of a firemen's relief and pension fund established pursuant to the mandatory provisions of Section 4600 and related sections of the General Code, it is the duty of the retirement board to refund the accumulated contributions of such member, which should be refunded when he comes within the provisions of the municipal firemen's relief and pension system.*