it has indicated a liberal policy which has as its object, the providing of the opportunity for education at public expense of all children whose mental and physical condition is such as to permit them to profit by such instruction. Thus, some provision has been made for practically every kind of handicap that may exist.

In recent times there has been a tendency on the part of public authorities to provide for the care of the unfortunates of this State in the home, in so far as the same may be done with expediency. It is believed that the history of this legislation justifies and requires a liberal interpretation, to the end that unfortunate children who are afflicted with epilepsy and have a sound mind, may have some advantages with reference to obtaining an education which they otherwise could not obtain. While the question is not free from doubt, in view of the nature of the law being considered, I am inclined to the view that the term "cripple" is sufficiently broad to include one who is suffering from epilepsy if such a child has a sound mind, and in the opinion of the Director of Education his instruction will be profitable. In other words, a cripple is one who is disabled, and an epileptic is certainly disabled.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that:

First, under Section 7755-4 of the General Code, and its related sections, the Director of Education may require a board of education to furnish home teaching for children of sound mind who are suffering from epilepsy, who on account of said affliction can not be assembled in school, when in his judgment the same will be beneficial to them.

Second, boards of education, under such circumstances, may employ private teachers to teach such children at certain hours, and such teachers may be compensated according to the time expended on such teaching.

Respectfully,
GILBERT BETTMAN,
Attorney General.

382.

APPROVAL, ARTICLES OF INCORPORATION OF THE CAPITAL MUTUAL CASUALTY COMPANY OF COLUMBUS.

COLUMBUS, OHIO, May 7, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of The Capital Mutual Casualty Company of Columbus, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

383.

HOUSE BILL No. 188—PROVISIONS RELATING TO GASOLINE TAXES—NO TAX LEVY IMPOSED—SUBJECT TO REFERENDUM.

SYLLABUS:

House Bill No. 188, *enacted by the* 88*th General Assembly is not a law providing for a*

tax levy within the provisions of Section 1d of Article II of the State Constitution; and it appearing that said act after approval by the Governor was filed in the office of the Secretary of State on April 26, 1929, the same will not go into effect until the twenty-fifth day of July, 1929.

COLUMBUS, OHIO, May 8, 1929.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication requesting my opinion as to the date when House Bill No. 188, Mr. Sullivan, enacted at the recent session of the General Assembly, and approved by the Governor, will go into effect.

On April 17, 1925, the 86th General Assembly, for the purpose of providing additional revenue for road and street maintenance and repair, passed an act known as House Bill No. 44 (111 O. L. 294), providing for the levy of an excise tax of two cents on each gallon of motor vehicle fuel sold or used for the purpose of propelling motor vehicles on the public highways. The provisions of said act, so far as they related to said excise tax on the sale or use of motor vehicle fuel, were carried into the General Code as Section 5526 to 5540, inclusive. In the case of *State ex rel.* vs. *Brown*, (112 O. S. 590), it was held that said House Bill No. 44 was a law providing for a tax levy within the provisions of Section 1d of Article II of the Constitution of Ohio, and as such, went into immediate effect on its passage by the General Assembly notwithstanding the objections of the Governor. Inasmuch as all the sections of said Act relating to said excise tax, other than the section thereof imposing the tax, were merely incident to the tax so levied in a definitive way, and by way of providing for administrative measures with respect to the computation and collection of the tax, and by way of appropriations of the proceeds of said tax for the purposes for which the same was levied, the Supreme Court in the case above cited held that the act itself, and not only the section thereof providing for the imposing of the tax, was exempt from the referendum reserved and provided for by Section 1 and 1c of the State Constitution. In this connection, it will be noted that the purpose of the act was not to confer upon the public authorities the power of maintaining and repairing roads and streets and to levy a tax for the purpose of enabling the public authorities to carry out the power thus granted; but the purpose of the act was to levy an excise tax on the sale and use of motor vehicle fuel for the purpose of obtaining additional revenue to carry out a power which the public authorities already had with respect to the maintenance and repair of roads and streets. And in this view, it was held, as above noted, that the act itself was exempt from the referendum, and went into immediate effect.

On April 21, 1927, the General Assembly passed an act known as House Bill No. 177 (112 O. L. 191), amending certain sections of said excise tax law relating to the administration thereof, and enacting certain other supplemental sections of an administrative nature relating to the collection of the tax. Apparently, no question was made as to when the provisions of said House Bill No. 177 went into effect, and no decision or opinion was rendered on the question by the courts or by this department. It was assumed, however, in the Legislative Bulletin issued under the authority of the 87th General Assembly and in the Code Services, that the provisions of said act did not go into effect until after the expiration of the referendum period, that is, ninety days from the time said act was filed in the office of the Secretary of State.

Later, in the same session of the 87th General Assembly, House Bill No. 206 (112 O. L. 508), was passed, providing an additional excise tax of one cent on each gallon of motor vehicle fuel, for the purpose of providing revenues for the State's share of the cost of constructing and reconstructing highways and abolishing railway grade crossings thereon. The provisions of this act were carried into the General Code as Sections 5541 to 5541-10, inclusive. This act of the General Assembly became a law without the signature of the Governor, and it appearing that this bill was presented

to the Governor on May 12, 1927, this department in an opinion under date of May 24, 1927, Opinions of Attorney General, 1927, Vol. II, p. 871, held that said act went into effect on the first minute of the day of May 25, 1927.

House Bill No. 188, referred to in your communication, was enacted as a law by the 88th General Assembly, and was approved by the Governor on the 25th day of April, 1929, and filed in the office of the Secretary of State on the 26th day of April 1929. This act does not provide for a tax levy of any kind, but consists of provisions defining certain incidents of the excise taxes provided for by Sections 5527, 5526-2 and 5541-1, General Code, and provisions securing the State in the collection of said taxes and relating to the administration of the same.

Touching the question presented in your communication, it is to be noted that the only laws or parts thereof excepted from the right of referendum reserved and provided for by Section 1 and 1c of Article II of the State Constitution are those which come within the provisions of Section 1d of Article II of the Constitution. This section provides:

> "Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect * * *. The laws mentioned in this section shall not be subject to the referendum."

In the case of *State ex rel.* vs. *Forney*, 108 O. S. 463, it was held that the language of Section 1d of Article II of the Constitution expressly enumerating certain exceptions to the peoples' right of referendum upon acts of the General Assembly, must be strictly construed; and it was therein further held that the language of said section, "laws providing for tax levies", is limited to an actual self-executing levy of taxes, and that said language is not synonymous with laws "relating" to tax levies, or "pertaining" to tax levies, or "concerning" tax levies. In the case above cited, the court in its opinion, among other things said:

> "But there is another rule that would forbid liberal extension of the words 'providing for tax levies' to such extent and degree as contended for by relator, and that is the well-known rule pertaining to exceptions to a general law or class. The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law.
>
> In view of the great precaution taken by the constitutional convention of 1912 to set forth and safeguard, with the particularity of detail usually found only in legislative acts, the right of referendum, and the three exceptions thereto, our court should not deny the people that right, unless the act in question is plainly and persuasively included within one of the three classes excepted from the operation of the referendum."

Further touching the question here presented, the court in its opinion said:

> "You cannot have a law 'providing for tax levies,' except its public purpose be stated; but, in addition thereto, such law must state the property subject to the tax, the rate of tax, the time when such tax is payable, and other elementary essentials of a taxation law."

Consistent with the principles of construction above noted, it is quite clear that none of the provisions of House Bill No. 188 relating to tax levies imposed by other

sections of the General Code, are provisions providing for tax levies within the meaning of Section 1d of Article II of the State Constitution. The provisions of House Bill No. 188 are so related in a definitive and administrative way with the tax levies, imposed by Sections 5527, 5526-2 and 5541-1, General Code, that of said taxes were provided for by the act here in question said act and each and all of the sections thereof would, perhaps, be exempt from the right of referendum reserved by the Constitution. In the absence of any provision in the act imposing such tax levy, said act, and each and every section thereof, is subject to referendum; and by way of specific answer to the question presented in your communication, I am of the opinion that House Bill No. 188 will go into effect ninety days from the time said act was filed in the office of the Secretary of State, to-wit, on the 25th day of July, 1929.

Respectfully,
GILBERT BETTMAN,
Attorney General.

384.

APPROVAL, LEASE FOR RIGHT TO LAY AN OIL PIPE LINE OVER ABANDONED MIAMI AND ERIE CANAL LAND IN MONCLOVA TOWNSHIP, LUCAS COUNTY, OHIO—BUCKEYE PIPE LINE COMPANY.

COLUMBUS, OHIO, May 8, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate executed by you as Superintendent of Public Works and as director thereof, to The Buckeye Pipe Line Company. By this lease it is granted to The Buckeye Pipe Line Company, for the rental therein provided for, the right to construct and maintain an oil pipe line over the bed and embankment of the abandoned Miami and Erie Canal at or near Station 547 of F. G. Blue's survey of said canal through Monclova Township, Lucas County, Ohio, for a term of fifteen years.

The execution of this lease is well within the authority granted to you by the provisions of Section 13970, General Code; and inasmuch as the provisions of said lease are in conformity with said section, and other sections of the General Code relating to leases of this kind, said lease is hereby approved, and my approval is endorsed thereon and on the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

385.

APPROVAL, LEASES TO ABANDONED MIAMI AND ERIE CANAL LANDS IN THE CITY OF CINCINNATI—CITY OF CINCINNATI.

COLUMBUS, OHIO, May 8, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval six certain