teachers under the state teachers retirement system, as provided in Section 7890-40 of the General Code. * * * "

The language above quoted clearly indicates that the membership of a custodians' pension fund is confined to those employees who receive a salary.

In the case of *Fagan* vs. *City of New York,* 84 N. Y. 348, 352, the term "janitor" is defined as follows:

> "Janitor is understood to be a person employed to take charge of rooms or buildings, to see that they are kept clean and in order; to lock and unlock them, and generally to care for them."

The above is the definition given by Bouvier for the term "janitor". Confining the term strictly to the definition given, it would probably not include the heating of the building, as in many instances, the heating of large buildings is done separately from the janitorial work, the heating being in charge of what is often called a heating engineer.

In referring to the term "janitorial work" of small buildings we usually think of the heating of the building, as a part of the work, but this is not true with reference to larger buildings, either public or private. The heating of the building is entirely separate from the cleaning of the building or the keeping of same in repair. It is, of course, true that in many buildings even of the larger type, the head janitor or custodian, is directly in charge of the heating plant, and is required to be licensed to operate steam boilers for the heating plant of the building before he can be employed as janitor or custodian of the building, but this is not usually the case. Ordinarily, the heating and janitorial service are entirely separate, but oftentimes are under the same superintendent. I am of the opinion, however, that the language of the statute is not sufficiently broad to include the heating engineer unless he be at the same time the caretaker of the building or in charge of the janitorial work of the building, as well as the heating of the building.

In specific answer to your question, therefore, I am of the opinion:

1. The term "custodian", as used in the act, providing for a pension fund for the custodians of the public schools in city school districts, applies not only to head janitors or caretakers of the school buildings, but to all those persons regularly employed on a salary who are charged with the duty of either overseeing or performing the janitorial work in a building or buildings belonging to his school district.

2. An engineer in charge of the heating plant of a school building is not a "custodian", as the term is used in the act providing for a pension fund for the custodians of school buildings in city school districts, unless he in fact is in charge of some part of the janitorial work for the building.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1431.

FEES—RESULTING FROM CIVIL CASES—VILLAGE MAYOR AND MARSHAL MAY RETAIN.

SYLLABUS:

The mayor and marshal of a village may retain fees in civil cases tried by the mayor of such village, for their own use.

COLUMBUS, OHIO, January 20, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads:

"Section 4548, G. C., reads:

'The mayor shall be a conservator of the peace throughout the corporation, and within the limits thereof shall have the jurisdiction and powers of a justice of the peace in civil cases, and his proceedings therein may be reviewed in the same manner. He shall have the jurisdiction in criminal cases herein provided.'

Section 4550, G. C., reads:

'He shall keep a docket, and shall be entitled to receive the same fees allowed justices of the peace for similar services. He shall keep an office at a convenient place in the corporation, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, "Mayor of the city of _____," "Mayor of the village of _____," as the case may be.'

Section 4556, G. C., reads:

'The fees of the mayor, in all cases, shall be the same as those allowed justices of the peace, and the fees of the marshal, chief of police, and other police officers serving writs or process of the court, in all cases, shall be the same as those allowed constables.'

The pertinent part of Section 4270, G. C., reads:

'All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner come into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all money received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month.'

Question: May the mayor and marshal of a village retain fees in civil cases tried by the mayor of such villages?"

In the consideration of the question presented in your communication, your attention is directed to the case of *State ex rel. Nead* vs. *Nolte,* 111 O. S. 486. Although the court in that case had under consideration the disposition of fees by a mayor, arising from state criminal cases, nevertheless in the opinion the complete construction to be placed upon Section 4270, General Code, was determined. Said section has been amended since the rendition of the Supreme Court opinion referred to, but the reasoning is still applicable so far as the question presented here is concerned.

Section 4270 read prior to its last amendment in 112 O. L. 141 (1927) and at the time the above case was decided, as follows:

"All fines and forfeitures in ordinance cases and all fees collected by the

mayor, or which in any manner comes into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all money received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month, *provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses.* At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month." (*Italics the writer's.*)

It may be noted that the only change made was the elimination of the italicized portion, thus removing the right of a village council to authorize retention by the mayor and marshal of their fees. The court in the Nolte case, supra, stated at pages 494, 495 and 496:

"Prior to the last amendment (108 O. L. pt., 2, 1208), that section (P. & A. Code, Section 4270) read as follows:

'All fines and forfeitures collected by the mayor, or which in any manner comes into his hands, and all moneys received by him in his official capacity other than his fees of office, shall be by him paid into the treasury of the corporation weekly. At the first regular meeting of the council in each and every month, he shall submit a full statement of all such moneys received, from whom and for what purpose received, and when paid over. All fines, penalties, and forfeitures collected by him in state cases shall be by him paid over to the county treasurer monthly.'

It will be observed that several changes were made by the amendment, and it will be presumed that the Legislature intended that certain rights and privileges which existed before, should no longer exist after, the amendment. The case is full of difficulty, and has commanded the earnest consideration of the court.

The conclusion which has been reached by the majority is that the section as amended leaves the fees taxed in favor of the mayor in two general classes, to wit, ordinance cases and state cases. The earlier provisions of the section apply only to ordinance cases, and the latter provision only to state cases. Taking up the latter provision first, it will be observed that in state cases it is the duty of the mayor to pay into the county treasury 'all fines and forfeitures collected by him * * * together with all fees and expenses collected, which have been advanced out of the county treasury.' It requires no elaboration of argument to show that the fees taxed by the mayor are not included within the language quoted. Construing the earlier parts of the section, it is plain that whatever moneys are described therein must be paid into the municipal treasury. But, if those portions of the section apply only to ordinance cases, and this controversy relates only to state cases, then the relator is clearly not entitled to the relief prayed for. The amendment has left out the phrase 'other than his fees of office,' but this omission has no controlling significance in the determination of this suit involving fees in state cases, since the earlier portion of the statute applied, prior to the amendment, only to ordinance cases.

This amendment has, however, made a change in that respect, and this omission from the statute as formerly existing seems quite harmonious with another clause which was added in the amendment, to wit, 'provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries.'

It is, of course, a well-settled rule of interpretation, well expressed by this court in *Board of Education of Hancock County* vs. *Boehm,* 102 Ohio St., 292, 131 N. E., 812, that:

'When an existing statute is repealed, and a new and different statute upon the same subject is enacted, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof.'

Very important changes were therefore made by the amendment, but they apply only to ordinance cases, and, whereas formerly the mayor was entitled to hold fees in ordinance cases, the matter is now placed as to villages under the entire control of the village council."

Analyzing the above language, it is apparent that the first part of Section 4270 applies solely to ordinance cases and the latter portion to state cases. Hence it would seem that there is no inhibition placed against retention of fees in civil cases by the mayor and marshal, and I find no other section of the General Code regulating the disposition of such fees.

In view of the foregoing, I am of the opinion that the mayor and marshal of a village may retain fees in civil cases tried by the mayor of such village, for their own use.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1432.

DISAPPROVAL, LEASE TO LAND OF R. B. COCHRANE, IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO, FOR USE OF THE DEPARTMENT OF AGRICULTURE.

COLUMBUS, OHIO, January 20, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in duplicate executed by one R. B. Cochrane, by which there is leased and demised to the Department of Agriculture of the State of Ohio, for the term of one year, a certain vacant lot on the east side of South Third street in the city of Columbus, Ohio, the same being the first vacant lot north of East Main street in said city.

As above indicated, the named lessee in said lease is "The Department of Agriculture of the State of Ohio." Inasmuch as the Department of Agriculture is not a legal entity, separate and apart from the director of said department, it is suggested that said lease be corrected by inserting the words, "Perry L. Green, Director of," immediately before the words, "The Department of Agriculture of the State of Ohio."

The lease, as submitted, purports to be signed by the lessor, R. B. Cochrane. By some inadvertence or mistake said lessor placed his signature on the line reserved in the deed form for the signature of the notary public, and said lease should again