at all as to the method of selection of the park commissioners, their powers or their duties. Their jurisdiction is coterminus with the boundaries of the township and the levy authorized by Section 3423 of the General Code is actually a levy upon all the property in the township.

This is evident from the fact that the language of that section with reference to an increased levy provides that it shall not be made "unless the question of increasing such levy is submitted to and approved by a vote of the electors of such township, at a general or township election."

In view of the foregoing, I am of the opinion that the constitutional objection raised by my predecessor still holds good and that these commissioners are in reality township officers required by the constitution to be elected in spite of the amendments herein above mentioned.

I further call your attention to the fact that the only authority for the issuance of bonds of the park district is contained in the following language of Section 3425, General Code:

> "For the purpose of raising money to pay for and improve such park, the commissioners may issue the bonds of said park district, in any sum not in excess of the taxes herein authorized to be levied, to be denominated convert it into a public utility, * * * ."

No procedure to be followed in the sale of the bonds is given and no restrictions or qualifications other than the limitations on the amount are set forth. We are left entirely in the dark as to the proper method to follow. If recourse is had to Sections 2294, et seq., of the General Code, which provide the procedure in the case of the sale of bonds of township trustees, among others, a satisfactory procedure may be adopted, but it seems to me that the application of this procedure to the present bond issue would be in the nature of a confession that these bonds are in reality township bonds.

I am accordingly at a loss to determine just what sections of the General Code limit and restrict the authority attempted to be conferred by Section 3425, General Code.

In view of the foregoing, and especially the substantial doubt as to the constitutionality of the sections applicable, I do not feel justified in approving the present bond issue. If objections were raised and sustained by a competent court, the bonds themselves and the levy to pay them would be void. You are accordingly advised to reject the issue.

Respectfully,
EDWARD C. TURNER,
Attorney General.

189.

GAS—WHEN PRODUCER OF NATURAL GAS IS NOT A PUBLIC UTILITY.

SYLLABUS:

1. *A producer of natural gas who sells his or its gas in bulk, either at the well or at the end of a pipe line constructed by him or it, and used solely for the delivery of his or its own gas to the line of a pipe line company where he or it sells it outright, and who is not interested, directly or indirectly, in the further transportation or distribution of the gas to consumers, is not a public utility, and not within the definition of a natural gas company contained in Section* 614-2, *General Code, as proposed to be amended by House Bill No. 72.*

2. *No specific exemption of such a producer, such as is contained in House Bill No. 72 is necessary, but if so worded as to be consistent with the definition itself, such exemption will not interfere with the proper interpretation of the law.*

3. *A person who transports only his own gas through a pipe line, and does not devote the line to the use of the public, is not a public utility, and cannot be made so by legislative declaration. The words "whether of its own production or otherwise" should be omitted from the definition of a pipe line company, as proposed by House Bill No. 72.*

COLUMBUS, OHIO, March 15, 1927.

HON. E. R. HAZARD, *Chairman Utility Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date, submitting a copy of House Bill No. 72, being "A bill to amend Section 614-2 of the General Code, defining electric light companies, gas companies, natural gas companies, water works companies and heating or cooling companies," received.

You request my opinion on the question whether the amendments proposed in the paragraph defining a "natural gas company" and a "pipe line company" will exclude small independent producers of gas from classification as public utilities.

These paragraphs, if amended as proposed, will read as follows:

> "When engaged in the business of supplying natural gas for lighting, heating or power purposes, *directly or indirectly,* to consumers within this state, is a natural gas company; *provided, however, that a producer who sells his or its natural gas and is not interested or engaged, directly or indirectly, in the business of the transportation or distribution thereof shall not be held to be a public utility.*
>
> When engaged in the business of transporting natural gas or oil, *whether of its own production or otherwise,* through pipes or tubing, either wholly or partly within this state, is a pipe line company;"

For the purpose of this discussion, it should be stated that House Bill No. 72 seeks to broaden the definition of electric light, gas, natural gas, pipe line, water works and heating or cooling companies by inserting in the respective definitions thereof apt words to bring within the terms of Section 614-2, General Code, persons, firms, copartnerships or voluntary associations, joint stock associations, companies and corporations engaged *indirectly* in the business of supplying electric light, heat or power, artificial or natural gas, water, or water, steam or air through pipes or tubing for heating or cooling purposes, to consumers within the state.

In so doing your committee apparently desires to recommend an amendment to the bill which will clearly negative any intention to classify as public utilities small and independent producers, whose sole business is the production of natural gas, and who sell it outright at the well, or at the end of pipe lines constructed by themselves and used solely to deliver their gas to the purchaser thereof; and upon which sale the producer thereupon ceases to have any interest in the transportation or sale of the gas, either by participation in the proceeds of the sale thereof to consumers, or by financial interest in the utility which transports or sells the gas to the consumer.

Assuming the above to properly describe the producers sought to be excluded by the proviso in question, it may be said that such producers are not, and could not legally be included in the definition, and there is no legal necessity for the proviso. Such producers are clearly not public utilities in any sense, and not being engaged in the business, either directly or indirectly, of transporting gas for the public generally,

or of supplying gas to consumers, they could not be made public utilities by legislative definition.

In the case of *Producers Transportation Company* vs. *R. R. Commission,* 251 U. S., 228, the Supreme Court of the United States said:

> "It is of course true that if the pipe line was constructed solely to carry oil for particular producers, under strictly private contracts and never was devoted by its owner to public use, that is, to carrying for the public, the state could not by mere legislative fiat or by any regulating order of a commission, convert it into a public utility, * * * ."

This decision applies specifically only to the pipe line feature of the present question, but the principle applies equally to the production and sale of gas by the producers in question, when sold as outlined above.

In view of the fact that an interpretation which will sustain the constitutionality of a statute, is universally adopted by courts, if such interpretation can be reconciled with the language used, it is my opinion that these producers who sell their gas outright at the well, or at the end of their own pipe lines, constructed and operated solely for the purpose of conveying their own gas from the well to the line of a pipe line company, at which point it is sold outright and all further interest of the producer in the gas or its sale or distribution ceases, are not "engaged in the business of supplying natural gas for lighting, heating or power purposes, directly or indirectly, to consumers," and are not, even in the absence of any exception, included in the definition of a natural gas company, as contained in Section 614-2, General Code, set out in House Bill No. 72.

If, however, notwithstanding this conclusion, your committee still desires to recommend the insertion of such a proviso, I would suggest the following language:

> "Provided, however, that a producer who sells his or its natural gas in bulk, and is not interested or engaged, directly or indirectly in the business of transportation of gas for the public generally, or the distribution of gas to consumers within the state, shall not be held to be a public utility."

Such a proviso would be consistent with the definition of a natural gas company, and while it is really surplusage, it would do no violence to the purpose sought to be accomplished by the bill.

Coming now to the paragraph relating to pipe line companies, it is apparent from the language of the Supreme Court of the United States, in the case of Producers Transportation Company vs. R. R. Commission, supra, that only those pipe lines which are devoted to public use can be declared to be public utilities and subjected to regulation as to rates, etc.

The addition of the words "whether of its own production or otherwise" necessarily evince an intention to include pipe lines which may not be devoted to public use, to-wit, pipe lines which carry no gas except that owned by the owner of the pipe line. To this extent the provision is unconstitutional. The language in question should, in my opinion, be omitted from the bill.

As pointed out above, a producer may transport his or its own gas through his or its own pipe line, to the point of sale, free from public regulation, so long as it does not serve the general public. If, however, such an operation is part of the particular producer's business of supplying gas to consumers, or if such producer is interested, directly or indirectly, in the distribution of the gas in question to consumers, its operations would thereby bring it within the definition of a natural gas company, and subject it to regulation as such.

I am of the opinion, therefore, that producers of gas who sell their gas outright, either at the well or at the end of pipe lines constructed and used by them solely for their own use, are not public utilities and are not included in the definition of natural gas companies contained in Section 614-2, General Code, as that section is proposed to be amended by House Bill No. 72; that no specific exemption of such producers is necessary, such as is contained in the proviso now embodied in the bill; but that if such proviso is couched in the language hereinabove suggested, it will not be inconsistent with the language of the section and will not interfere with the purposes sought to be accomplished.

The use of the words "whether of its own production or otherwise" in the paragraph defining a pipe line company, does include a producer who transports only his or its own gas, and to that extent would be unconstitutional.

Respectfully,
EDWARD C. TURNER,
Attorney General.

190.

BOARDS OF EDUCATION— DUTIES OF COUNTY BOARD UNDER SECTION 4692, GENERAL CODE—ASSUMPTION OF INDEBTEDNESS AFTER TRANSFER OF PROPERTY IS MADE.

SYLLABUS:

1. *It is the duty of county boards of education upon transfer of property from one district to another pursuant to the provisions of Section 4692, General Code, to make an equitable division of the funds and of the indebtedness of the transferred territory.*

2. *That part of said indebtedness which said county board of education in the exercise of its discretion determines shall be assumed by the school district to which said territory is transferred will become an indebtedness of the entire district to which said territory is transferred, and not merely an indebtedness of the territory transferred thereto.*

COLUMBUS, OHIO, March 15, 1927.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR—I am in receipt of your recent communication, which is as follows:

> "The following questions are presented in connection with a contemplated transfer of territory by the County Board of Education from Brushcreek Rural School District to the Marshall Rural School District, Highland county, Ohio.
>
> In transferring territory under Section 4692 G. C. if Brushcreek Rural School District, from which territory is to be transferred, has a large building debt, and Marshall Rural School District which is to receive the territory transferred, has no building debt, how shall the equitable division of the indebtedness be divided?
>
> Is it mandatory for the County Board of Education to cause Marshall Rural School District to assume part of the debt? If Marshall Rural School District does assume a portion of the debt, will the entire Marshall