and as Director of said Department acting for and on behalf of The State of Ohio, and by the Chillicothe Paper Company, the lessee therein named, acting by the hands of the president and treasurer, acting pursuant to the authority of a resolution duly adopted by the Board of Directors of said company.

It further appears upon examination of the provisions of this lease, and of the conditions and restrictions therein contained, that the same are in conformity with the statutory provisions relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1467.

BONDS—ANNUAL ALLOCATIONS RECEIVED FOR PAYMENT —SHALL FIRST BE APPLIED TO PAYMENT OF INTEREST AND WHEN BONDS MATURED, TO PAYMENT OF PRINCIPAL — IF ANNUAL ALLOCATIONS EXCEED REQUIRED AMOUNT—EXCESS SHALL BE USED FOR POOR RELIEF IN COUNTY — SEE HOUSE BILL 501, 91st GENERAL ASSEMBLY — AMENDED SENATE BILL 462, 92nd GENERAL ASSEMBLY—HOUSE BILL 572, 93rd GENERAL ASSEMBLY AND ALL AMENDATORY ACTS—EXCESS MONEYS FOR POOR RELIEF — DISTRIBUTION — AREA GEOGRAPHICAL LIMITS—SEE SECTION 3391-2 (9) G. C. — OPINION ATTORNEY GENERAL, 1937, VOLUME II, PAGE 1070 OVERRULED.

SYLLABUS:

1. Annual allocations received in each year which have been pledged for the payment of bonds issued under the provisions of House Bill No. 501 of the 91st General Assembly (116 O. L. 571), Amended Senate Bill No. 462 of the 92nd General Assembly (117 O. L. 868), and House Bill No. 572 of the 93rd General Assembly, and all acts amendatory thereto, shall first be applied to the payment of the interest on such bonds and the principal of so many of such bonds as have matured, and if such annual allocations exceed the amount required for such purpose, such excess shall then be used for poor relief purposes within the county. (1937 O. A. G., Vol. II, page 1070, overruled.)

2. Such excess moneys so received for poor relief purposes within the county must be distributed among the local poor relief area within the

geographical limits of such county in proportion to the obligations incurred by each of such areas for the preceding month, as provided in section 3391-2, General Code, subparagraph 9.

COLUMBUS, OHIO, November 22, 1939.

HON. CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

> "We are requesting an opinion as to the use of accumulated public utility excise taxes levied under the provisions of H. B. 501 and H. B. 462 as amended by H. B. 572, for poor relief purposes. Our request is prompted by the fact that your predecessor, Attorney General Duffy, held in Opinion No. 611, that the annual excesses of public utility excise taxes collected over and above the amounts required for the annual bond and interest retirement could not be used until the total accumulation of such excesses equalled the amount of outstanding bonds and computed interest. The result of this opinion is that there is 'frozen up' in the treasury of Ohio and in the treasuries of the various counties which act as their own paying agents, an unestimated sum of money which has been levied and collected for poor relief purposes and which is not usable at the present time.
>
> We would like your further advice, if in your opinion the ruling of your predecessor was erroneous and these funds can be used annually, as to the method of distribution by the various counties. At the time of the enactment of these acts, relief was centralized in the county, and subsequent relief areas have been created comprised of cities as well as counties, under the provisions of H. B. 675 and Section 9 of that act which provides for distribution of funds within the county to the relief areas. Therefore, if the public utility excise tax is made available, would the relief areas in the county other than the county itself be entitled to such distribution?"

Section 2 of House Bill No. 501 of the 91st General Assembly (116 O. L. page 571), which authorizes the issuance of bonds by counties for emergency poor relief in anticipation of the distribution of moneys from public utilities excise taxes, reads as follows:

> "Whether in the years 1935 or 1936 the county commissioners of any county adopt a resolution finding that it is necessary

to issue bonds for emergency poor relief within the county, and if on submission to the tax commission of Ohio, such commission finds that no further means exist to provide such funds except by the issuing of bonds, the county commissioners of such county may borrow money to provide funds for emergency poor relief within the county and evidence such indebtedness by the issuance of negotiable bonds or notes in the amount approved by the tax commission of Ohio. On submission of such resolution to the tax commission such commission shall estimate the amount which will probably be allocated to such county from public utility excise taxes levied by sections 5474, 5475, 5483, 5485, 5486, 5487, 5487-1 and 5491 of the General Code, and shall calculate the total amount of bonds, the principal of and interest on which can be paid out of such estimated allocation, and the tax commission shall not approve the issue of an amount of bonds by any county in excess of the total amount so calculated. So much of the installments of interest falling due prior to the receipt of the taxes so allocated to such county shall be paid out of the proceeds of the bonds, and the amount thereof as calculated by the tax commission shall be set aside out of such proceeds in a special fund and held in trust for the payment of such interest; or if the treasurer of state has been appointed paying agent for such county under the provisions of section 6 of Amended Senate Bill No. 4 (114 O. L., pt. 2, p. 17), passed March 31, 1932, and approved April 5, 1932, shall be paid to the treasurer of state as such paying agent.

The maximum maturity of such bonds shall be on or before March 1, 1944. Bonds issued in anticipation of such public utility taxes shall mature in annual installments. *The maturities shall be fixed by the tax commission and shall be so arranged that the total amount of principal and interest payable at each maturity shall not exceed the amount of taxes anticipated by such bonds as are estimated to be allocated to such county and available for the payment of the prnicipal and interest of such bonds at such maturity.* Issuance, sale and characteristics of said bonds or notes shall conform to article XII, section 2 of the constitution and to the provisions of the uniform bond act governing the issuance and sale and characteristics of bonds or notes issued without a vote of the people except as otherwise provided in this act and except that the indebtedness evidenced by such bonds or notes shall not be subject to any limitations except those provided in this act.

The proceeds of the bonds issued under the provisions of this section shall be expended for poor relief and for the payment of premiums to the industrial commission of Ohio for the public

work-relief employees' compensation fund, in accordance with the provisions of section 2 of Amended Senate Bill No. 4, passed March 31, 1932, approved April 5, 1932, as said section 2 is amended by House Bill No. 7 (115 O. L., pt. 2, page 31), passed August 23, 1933, and approved August 25, 1933." (Emphasis the writer's.)

It is significant to note that the language contained in the above section, with respect to the amount of such bonds which may be issued, clearly sets forth that such amount shall not exceed the estimated allocations calculated for the payment of the principal of and the interest on the entire issue. It will likewise be noted that such bonds shall mature in annual installments and that the total amount of principal and interest payable at each maturity shall not exceed the estimated amount to be allocated to the county issuing such bonds, at such maturity. In other words, the Legislature has limited the taxing authority to issue only such an amount of bonds which will be retired by the estimated allocation and has further, by providing that the maturities must be so arranged so that each annual allocation will be sufficient to retire the corresponding annual maturity, placed the entire procedure on an annual basis.

The above observations made at this point should be kept in mind while considering the provisions of section 6 of Amended Senate Bill No. 4 of the 89th General Assembly (114 O. L. pt. 2, p. 17), which section is, under the provisions of section 10 of House Bill No. 501, supra, incorporated by reference into said act. Said section 6, which deals with the disposition of public utility excise taxes allocated to the counties, reads as follows:

"On or before the fifteenth day of February, of each year, the auditor of state shall transmit to the county auditor of each county, a certificate of the amount of such fund standing to the credit of such county, and shall draw a warrant for such amount upon the treasurer of state, in favor of the treasurer of such county, and forward such warrant to the county auditor.

Such moneys shall be held in trust in a special fund of the county and applied solely to the payment of the principal of and the interest on the bonds issued under section 3 of this act, or if they exceed the amount required for such purposes to other poor relief purposes within the county as defined in this act, or if such moneys exceed the amount required for the aforesaid purposes the same shall be paid into the sinking fund of the county and used for the retirement of bonds of the county.

At the time of the issuance of bonds under the provisions of section 3 of this act the county commissioners of any county may adopt and deliver to the treasurer of state a resolution appointing

the treasurer of state the paying agent of the county as to such bonds. In such event the treasurer of state out of the total amount called for by the warrant of the auditor of state shall retain such amount as may in his opinion be necessary to pay the principal and interest on the bonds of the county issued under section 3 of this act, and hold the same as the paying agent of said county, and pay over only the balance if any to the treasurer of the county. After the adoption of such resolution by the county commissioners such appointment may not be revoked as long as any bonds issued under the provisions of section 3 of this act are unpaid. If the general bond of the treasurer of state does not and cannot be made to cover the custody of such funds he shall give a special bond in favor of the state of Ohio for the benefit of the county or counties affected in an amount to be fixed by the governor."

By the express provisions of the above section, it is provided that the state treasurer may by resolution of the county commissioners be appointed the paying agent of the county as to such bonds and in such event he is required, out of the total amount called for by the warrant of the Auditor of State, to retain such amount as may in his opinion be necessary to pay the principal of and the interest on the bonds.

In this connection it is important to note that the warrant referred to in this provision obviously relates back to the warrant of the Auditor of State which, under the provisions of the first paragraph of said section, is drawn *annually* before the 15th day of February of each year upon the Treasurer of State in favor of the treasurer of the county. Therefore, by the direct language of the above section, the Treasurer of State, when named paying agent, under the provisions thereof is required to pay over annually to the county treasurer all moneys received by him from the Auditor of State which are in excess of the amount necessary to pay the principal and interest on the bonds issued by the county.

Obviously, if the Treasurer of State is required to transmit this excess annually, the principal and interest on the bonds referred to in said section could only mean the principal which matures and the interest which falls due annually. In other words, the language contained in the above section, with respect to the duties of the Treasurer of State when he is named paying agent, must be construed to mean that from each annual allocation paid to him by the Auditor of State he is required to retain an amount sufficient to meet the maturity for such year and pay over the balance to the treasurer of the county.

In regard to the moneys paid over to the treasurer of the county by the Auditor of State in the event the Treasurer of State is not named paying agent by the commissioners of the county, it is provided in the second paragraph of section 6, supra, that such moneys must be used,

first, in the payment of principal of and interest on the bonds; second, any surplus shall then be used for other poor relief purposes in the county, and, third, any surplus not required for either of the above two purposes shall be paid into the sinking fund of the county and used for the retirement of bonds of the county.

It now becomes necessary to determine whether or not the above language should be construed to require that the moneys received by the county treasurers be applied, in the first instance, solely to the payment of the principal of and interest on the entire issue, or whether such language means that the moneys received by the county treasurer must be applied solely to the payment *annually* of the principal of and interest on such bonds.

In answer thereto, I feel that I must incline toward the latter view. To take the other position appears to me to be entirely untenable. To say that when the Treasurer of State is named paying agent he is required to retain out of the total amount paid him by the Auditor of State only so much thereof as is necessary to pay the current maturity and pay over to the county treasurer the balance, and then to hold that the allocations when received directly by the county treasurer from the Auditor of State, without the intervention of a paying agent, shall not be used for any purpose other than bond retirement until the entire issue has been retired, appears to be most illogical.

The conclusion reached by me finds additional support in the language contained in section 2 of House Bill No. 501, supra, which requires the maturities to be arranged so that the total amount of principal and interest payable at each maturity shall not exceed the estimated allocations at such maturity. This provision in the statute clearly indicates that it was the intention of the Legislature to treat each installment in the nature of an independent issue.

For example, let us assume that there is pledged to the payment of the principal of and interest on an issue in the amount of $100,000, maturing in one year, the allocation for one year which is estimated at $100,000; and then let us suppose that to an issue in the amount of $500,000, maturing in annual installments for five years, there is pledged five annual allocations estimated at $100,000 each, and in the latter case the installments are arranged as required in this instance, could it then be said that if such an amount of an allocation in excess of the amount required for that year's retirement is not set aside for the retirement of the entire issue, the contemplated security for the future installments is taken away? To this proposition the answer certainly would be in the negative.

On this point, it must also be borne in mind that the purpose of House Bill No. 501, supra, and its predecessor, Amended Senate Bill No. 4, supra, together with all acts amendatory thereto, is, as stated by Jones, J, in the case of State, ex rel. v. Bradon, et al., 125 O. S. page 307, "the

allevation of human suffering and the prevention of want by aiding the poor in their distress." The opinion in said case opens with the words:

> *"Salus populi suprema lex est!"* This is one of the ancient Maxims of the law, that the welfare of the people is the paramount law. It is the polestar of police power legislation. * * * And so like the Good Samaritan of old (St. Luke, 10:34) the state has extended a helpful hand to those of its people who, perhaps through no fault of their own, become destitute and needful of the necessaries of life."

It is a well settled rule of statutory construction that the policy of the state should be taken into consideration in construing the statutes, the subject matter of which is concerned with such policy. In regard thereto, it is stated in 37 O. J., pages 675, 679, sections 371 and 372:

> "Section 371. In construing a law of doubtful meaning or application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration. Unless precluded by the language of the statute, it should be given effect in furtherance of the policy it was designed to introduce or assist. Accordingly, a construction should be avoided which would defeat the policy of the statute."
>
> "Section 372. Authority is not wanting to the effect that in the interpretation of ambiguous statutes the courts may, among other matters, take into consideration the settled policy of the state in so far as it may throw light on the legislative intention. That is to say, legislative policy clearly deductible from the consistent legislation of the general assembly is a legitimate factor in determining the meaning of subsequent acts open to construction. Accordingly, there are numerous instances in the reported cases in which the general public policy of the state has been taken into consideration in construing a particular statute. Indeed, it has even been presumed that the legislature did not intend, by its enactment, to modify or change a settled public policy except in so far as it has therein declared such intention either in express terms or by unmistakable implication. Technical rules of construction should not, it has been declared, be permitted to overthrow the manifest and settled policy of the state. Hence, a construction which is contrary to the previously established public policy should be avoided. If a statute may be construed in two ways, one in accord with the public policy of the state and the other in conflict therewith, the former construction is favored. These rules are of special force if the previous public policy has been stated through legislative enactment. * * *."

In the present instance we have a declared legislative policy, as stated in the title of Amended Senate Bill No. 4, supra:

> "To authorize the issue of bonds by counties and cities and the expenditure of public moneys for the relief of the poor and unemployed, and the investment of public funds in such bonds, to levy an excise tax on certain public utilities, and to declare an emergency."

and as stated in the title of House Bill No. 501, supra:

> "To provide for the continuance of emergency poor relief in cooperation with the federal emergency relief administration; to authorize the issue of bonds by counties and cities and the expenditure of public money for such purpose; * * *."

Surely, the settled policy of the state, as declared through legislative enactment, being to provide for the relief of the poor and unemployed, and for the continuance of emergency poor relief, it could certainly not be consistently held, in view of such established policy, that the moneys levied and collected solely for poor relief purposes should, under the statutes which carry no direct provisions therefor, be "frozen up" in the treasury of Ohio and the treasurers of the various counties of the state, when the indigent and suffering people for whose benefit such laws were enacted are still in dire need.

It is therefore my opinion that the annual allocation of public utility excise tax received in each year by county treasurers or the State Treasurer as paying agent, under the provisions of House Bill No. 501 of the 91st General Assembly, shall be applied, first, to the payment of the principal of the bonds maturing in such year and the interest on the outstanding bonds, and if such annual allocations exceed the amount required for such purpose, the excess shall then be used for other poor relief purposes within the county.

While the foregoing discussion deals only with the provisions of House Bill No. 501 of the 91st General Assembly (116 O. L. 571), your question with respect to public utility excise taxes levied under the provisions of Amended Senate Bill No. 462 of the 92nd General Assembly (117 O. L. 868), and House Bill No. 572 of the 93rd General Assembly, is fully answered herein inasmuch as there is nothing contained in the two latter acts with respect to the issuance and payment of bonds issued under the provisions thereof, in so far as your question is concerned, which is in conflict with the provisions of the former with respect thereto.

You further inquire whether city local poor relief areas may participate in the excess of such funds beyond that needful to pay bonds issued in anticipation of their receipt.

Subparagraph 9 of Section 3391-2, General Code, provides as follows:

> "The moneys received by a county under any law other than this act providing for the distribution of state funds to counties for poor relief shall be paid into the county treasury to the credit of the proper funds therein; but in counties containing two or more relief areas, or part or parts thereof, the proportional share of the county relief area as determined by the provisions of this act shall be paid into the treasury of the county relief area, and the proportional shares of the city shall be distributed and paid by the county treasurer on the order of the county auditor to the treasurer of each city entitled thereto. Such distribution shall be made in proportion to the obligations incurred for poor relief in the respective local relief areas, and part or parts thereof in the county, during the calendar month next preceding the receipt of such moneys.
>
> Nothing herein shall be construed to repeal any law authorizing the county commissioners to issue bonds for poor relief purposes; but the proceeds of any such bonds shall, in a county containing two or more local relief areas, or part or parts thereof, be distributed between said local relief areas in proportion to the obligations incurred for poor relief in such respective poor relief areas, and part or parts thereof, during the calendar month next preceding the adoption of the resolution providing for the issuance of such bonds. A like apportionment shall be made whenever, and as of the date when a contract whereby a city surrenders its power to levy taxes for poor relief shall expire, unless such contract shall have been renewed or extended. * * *."

I presume that it is to such subparagraph 9 that you refer, in your request, as section 9, for the reason that section 9 of House Bill 675 (section 3391-8, General Code) contains no reference to distribution of funds.

Such subparagraph 9 specifically provides that the funds received by the county under any law, other than House Bill No. 675 of the 93rd General Assembly, shall be distributed monthly among the poor relief areas within the geographical limits of the county in proportion to the amount of obligations incurred by each of such subdivisions during the preceding month. Assuming that the expenditures within the county local relief area for the preceding month were $1,000 and for two city local poor relief areas included therein were $500 each, the language of such subparagraph would require that one-half of the funds be distributed to the county poor relief area and one-fourth to each of the two city local relief areas. This proportion would necessarily change from month

to month in the same proportions that the expenditures of each poor relief local area change with reference to each other.

You may have had some doubt in your mind as to the distribution of this fund, by reason of the fact that under the preceding poor relief laws a different method or formula of distribution was provided. However, it must be borne in mind that the excise tax mentioned above is a tax levied by the state; that no subdivision, for whose benefit it may have been levied, did have or could have had any vested interest in the revenue so produced until actually received. City of Cleveland v. Zangerle, 127 O. S. 91, 91. For such reason the Legislature may alter the method or ratio of distribution as it may desire, unless by the approval of the Legislature some vested right thereto may be disturbed, e.g., bonds issued in anticipation of its receipt under authority of legislation enacted by the General Assembly.

Summarizing, it is therefore my opinion that:

1. Annual allocations received in each year which have been pledged for the payment of bonds issued under the provisions of House Bill No. 501 of the 91st General Assembly (116 O. L. 571), Amended Senate Bill No. 462 of the 92nd General Assembly (117 O. L., 868), and House Bill No. 572 of the 93rd General Assembly, and all acts amendatory thereto, shall first be applied to the payment of the interest on such bonds and the principal of so many of such bonds as have matured, and if such annual allocations exceed the amount required for such purpose, such excess shall then be used for poor relief purposes within the county. (1937 O.A.G. Vol. II, page 1070, overruled.)

2. Such excess moneys so received for poor relief purposes within the county must be distributed among the local poor relief area within the geographical limits of such county in proportion to the obligations incurred by each of such areas for the preceding month, as provided in section 3391-2, General Code, subparagraph 9.

Respectfully,

THOMAS J. HERBERT,

Attorney General.