(3) Where the president of the board of education in a village or rural district having the largest number of teachers in a supervision district, refuses to issue a call for the meeting of the presidents of the boards of education in such supervision district as provided for in section 4742 G. C., then a majority of the personnel in such electing body in such district can call themselves together for the purpose of performing the duties placed upon them by the statutes.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1467.

ANTITOXIN—FREE DISTRIBUTION FOR TREATMENT OF DIPHTHERIA—SECTION 1261-29 G. C. (108 O. L. 241) REPEALS SECTIONS 2500 AND 2501 G. C.

Section 1261-29 (108 *O. L.* 241) *is intended as a substitute for sections* 2500 *and* 2501 *G. C., and so repeals or supersedes said sections.*

COLUMBUS, OHIO, July 29, 1920.

State Department of Health, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request of recent date asking for an opinion of this department on the following matter:

> "Section 2500 and 2501 G. C. (O. L. 99, Vol. 19, section 1) provide for furnishing antitoxin for the treatment of diphtheria in persons in indigent circumstances where the antitoxin is furnished on application to a health officer and certification of indigency is made by the health officer to the county commissioners.
>
> Section 1261-29 (O. L., 108, Pt. 1, 241, section 14) provides that 'each district board of health shall provide for the free distribution of antitoxin for the treatment of cases of diphtheria and shall establish sufficient distributing stations to render such antitoxin readily available in all parts of the district.'
>
> The question is now raised that the section just quoted impliedly repeals sections 2500 and 2501, whereby the county commissioners are no longer required or authorized to pay for diphtheria antitoxin. This department does not believe that there has been any such repeal and that until such time as city and general health district boards of health are provided with sufficient funds to carry out the provisions of 1261-29 that the county commissioners can pay for antitoxin."

Since your letter quotes section 1261-29 G. C. in full it will not be repeated. The other sections are as follows:

> "Sec. 2500. When a physician, regularly authorized to practice medicine under the laws of this state, is called upon to treat a person suffering from diphtheria who is in indigent circumstances, or a child suffering from diphtheria whose parents are in indigent circumstances, and he is of the opinion that antitoxin should be administered to such person or child or to others who may have been exposed to the contagion of such disease, he may make application to any health officer within the county therefor.

"Sec. 2501. When satisfied of the indigent circumstances of the persons to be treated, such health officer shall certify the fact to the county commissioners and immediately authorize the attending physician or any druggist to furnish such antitoxin for the persons so to be treated. The antitoxin so furnished shall be paid for upon the allowance of the county commissioners from the general fund of the county."

In order to determine whether sections 2500 and 2501 G. C. are repealed by implication, we must look to the provisions of more recent enactments of the legislature for its intent therein. The act of May 12, 1919, revised and extended the health laws of the state, and made a complete new local method of operation by dividing the state into districts and giving these local units a great increase of powers in the administration of health and sanitation laws in their communities. This law because, perhaps, of the complete change in administration it contemplates was delayed by express terms therein in coming into operation until January 1, 1920. At the next meeting of the general assembly the act of May 12, 1919 was in part repealed and other sections enacted and was declared to be an emergency measure thus becoming effective on January 2, 1920.

The revised and amended portions of the law are to be found in house bill No. 633 (108 O. L.). The section under discussion, i. e, section 1261-29, is a part of the act of May 12, 1919 not repealed or changed by the later enactment found in house bill No. 633. There can be no doubt that the legislature by enacting and revising the health laws as it has in these acts intended to substitute the later laws for those before in force and to create a new health administration and a broader health policy for the state, and it believed the later laws made such drastic changes that it delayed the operation of the new law until readjustment could be had to accommodate and accomplish their enforcement.

That repeal by implication is not favored by the courts is a well established law of the state, yet we find that in the opinion, Rabe vs. Board of Education, 88 O. S. 409, the court says:

"It is the duty of a court to harmonize and reconcile laws where possible. It is also the settled law of this state that an act of the legislature that fails to repeal in terms existing statutes on the same subject matter must be held to repeal the same by implication if the later law is in direct conflict therewith."

Again, in the syllabus in State vs. Railroad, 83 O. S. 412, the law is:

"The doctrine relating to repeals and amendments by implication applies alike to constitutions and statutes, and it requires that earlier expressions yield when it is necessary to give effect to the latest expression of the intention of those whose intention is entitled to control."

In the sections under discussion the earlier statutes provide for payment for the administration of diphtheria antitoxin by a physician to indigent persons after such condition of indigency is determined to exist by a health officer. The later statute provides for the free use of such antitoxin for all persons found to be afflicted with diphtheria. And this duty is made mandatory. No condition of indigency or other condition is contemplated by the later enactment. The subject matter of the earlier law found in sections 2500 and 2501 G. C. is swept away by the later act. In the view and operation of the present law there are no persons to whom sections 2500 and 2501 may apply. And there being none to whom such sections may apply they cannot be said to be an added or cumulative remedy. In the later law the legislature

had in mind the menace of this disease to the general welfare whether its victims be found among the indigent or among those more fortunate or better able to provide against it by the use of antitoxin.

These statutes in a way cannot be well said to be in conflict since the later enactment simply engulfs or absorbs the subject matter of the former by a mandate which secures the free administration of a well tried treatment to all persons threatened with or afflicted by diphtheria.

Under the present health laws the executive officer of a "health district" is called a "health commissioner," who must be a licensed physician. So, to make sections 2500 and 2501 operative you must read "health officer" as "health commissioner," which is an implied use of the later law to support the operation of the former law. That "health officer" may be so interpreted as to mean "health commissioner" is without doubt true, yet even then some doubt must exist as to the commissioner's right to make payment for said treatment since the later law provides for the unlimited free administration of the antitoxin treatment for which the health district is charged by a mandatory provision of law to supply to all afflicted persons.

In the Lorain Plank Road Company vs. Cotton, 12 O. S. 263, and quoted in Goff vs. Gates et al., 87 O. S. at page 151, in the opinion the court says:

> "A section which revises the whole subject matter of the amendatory act of March 10, 1836, for the regulation of turnpike companies is evidently intended as a substitution for it and is to be regarded as superseding the latter act, and not as furnishing an additional or cumulative remedy."

In enacting the new health laws the legislature repealed or revised all or nearly all the former laws on that subject. Except for certain sections of the poor laws relating to the care of the sick poor of the state and sections 2500 and 2501 G. C. the new laws effect a new policy of health administration and are complete and sweeping in the change and revision intended. From the foregoing and because of the evident legislative intent to provide and inaugurate a new health policy this department is constrained to hold that sections 2500 and 2501 G. C. do not afford an additional or cumulative remedy and the same are superseded by section 1261-29 G. C. (108 O. L.).

Respectfully,
JOHN G. PRICE,
Attorney-General.

1468.

SCHOOLS—WHERE CHIEF INSPECTOR OF WORKSHOPS AND FACTORIES ORDERS REPAIRS OF VARIOUS KINDS UNDER SECTION 7630-1 G. C.—EQUIPMENT CAN NOT BE BASIS OF BOND ISSUE—INSTALLATION OF HEATING SYSTEM, SANITARY SYSTEM, ETC. COME WITHIN MEANING OF SECTION—WHEN ONE ORDER OF INSPECTOR COVERS REPAIRS AND ALSO FURNISHINGS—HOW TO PROCEED—BUILDING FOR COUNTY NORMAL SCHOOL MAINTAINED BY DISTRICT BOARD OF EDUCATION—WHEN BOND ISSUE MAY BE MADE BY LOCAL BOARD OF EDUCATION FOR COUNTY NORMAL SCHOOL FOR REPAIRS, ETC.

Under section 7630-1 G. C. mere equipment or furnishings for a school house, made necessary by the order of the department of inspection of public buildings in the Industrial Commission, can not be made the basis of the issuance of bonds the sinking fund levies on