ture was not to authorize either an executor or an administrator to participate in a merger, I would be without authority to render such opinion.

An examination of the language of Section 10506-44, supra, discloses that the only time it is necessary to obtain the approval of the court in such transaction is when it becomes necessary for the shareholders to advance additional funds in order to participate in a reorganization, this being the express language of the legislature.

Specifically answering your question, I am of the opinion that, by virtue of the provisions of Section 10506-44, of the General Code, an administrator or an executor has the authority, when, in the exercise of his discretion it is deemed advisable, to participate in a merger or a reorganization of a corporation to exchange shares of stock which are part of the assets of the estate for shares of stock in the new corporation and that it is not necessary, although probably advisable, to obtain the consent of the Probate Court to such transaction unless it is necessary to invest additional funds from the estate in order to effect such merger.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4109.

SPECIAL ASSESSMENTS—RAILROAD COMPANY IN LIQUIDATION—UNPAID INSTALLMENTS ARE PROVABLE CLAIMS AGAINST RECEIVERSHIP ESTATE.

SYLLABUS:

When a railroad company has elected to pay that portion of a special assessment assessed against it, in installments, and thereafter, before all of such installments have been paid, such corporation is placed in receivership for the purpose of liquidation, such remaining installments are a personal obligation of such corporation, and a provable claim against the receivership estate.

COLUMBUS, OHIO, February 27, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following question:

> "The F. and F. Railway Company, is in the hands of a receiver, and has been allowed by the Public Utilities Commission to discontinue rendering service and sell the assets of the company. Among the claims against the company is that of taxes and assessments. Some years ago some of the streets in Fostoria whereon tracks of the company were located were improved. The company elected to pay the assessments against it in installments, which I believe were for a period of ten years. Some have been paid, some are in arrears, and the balance are not yet due. The receiver claims that the authorities are not entitled to payment of

the installments not yet due, and that they would not be considered as a valid claim against the assets of the company. Please let me know whether or not these installments not yet due can be asserted as a claim at the present time, or whether the receiver must pay only the installments due to date, and then may wind up the company, pay out the money, and the city lose the installments not yet due."

You do not inquire, so I have not considered the propriety or validity of the original assessment but presume it to be regular and valid.

Section 6905-6, of the General Code, pertinent to your inquiry is as follows:

"Any street railroad company operating its line of street railroad in the street so improved shall be assessed for and shall pay for such part of said additional improvement as it is required to do by law, or by the terms of its franchise."

Your query involves the question as to whether there is a personal liability for the assessments. Section 3897, of the General Code, specifically provides that they are not only a personal obligation but also a lien on the property. This section, in so far as material, is as follows:

"Special assessments shall be payable by the owners of the property assessed personally, by the time stipulated in the ordinance providing therefor, and shall be a lien from the date of the assessment upon the respective lots or parcels of land assessed. * *"

If there were any doubt or ambiguity as to personal liability in the language of this section, it would be removed by the language of the next succeeding section, which authorizes suit and recovery of an assessment against the owner. Said Section 3898, General Code, is as follows:

"If payment is not made by the time stipulated, the amount assessed, together with interest, and a penalty of five per cent thereon, may be recovered by suit before a justice of the peace, or other court of competent jurisdiction in the name of the corporation, against the owner or owners, but the owner shall not be liable, under any circumstances, beyond his interest in the property assessed, at the time of the passage of the ordinance or resolution to improve."

The courts have consistently held that these sections have the effect of creating a personal obligation for the payment of special assessments. See *B. & O. Railroad Co.* vs. *Oak Hill,* 25 O. App., 301, *Harper* vs. *C. C. & St. L. R. R. Co.,* 30 O. App., 576. In *Douglas* vs. *Cincinnati,* 29 O. S., 165, the Supreme Court in construing a section in language identical with that part of Section 3897 of the General Code, quoted above, held in the second paragraph of the syllabus:

"It is not the object of Section 545 to define the property liable to be assessed to pay for such improvement; but to prescribe the time at which the assessment becomes a lien on the property *and a personal charge on the owner.*"

Such assessment being a personal obligation of the railroad company the question remains as to whether the fact that certain of the installments are not yet payable renders such unmatured installments an unprovable claim against the estate.

In 8, Fletcher's Cyclopaedia of Corporations, Section 5068, the claims provable against a receivership estate are classified as follows:

> "Claims which are provable may be divided into three classes: (1) Claims which at the commencement of proceedings furnish a present cause of action; (2) Claims which at that time are certain but not matured; (3) Claims which are contingent."

To similar effect is 53 C. J., 230.

It is evident that the claim at issue falls in neither class one nor three, but it is certain, that is, the amounts of the remaining installments are known, and the contention of the objectors to the claim is that it is not matured. However, since such assessments are a personal obligation of the railroad company and are certain, as distinguished from unliquidated or contingent, I am of the opinion that such assessments constitute a provable claim against the property and funds in the hands of the receiver.

Specifically answering your inquiry, I am of the opinion that when a railroad company has elected to pay that portion of a special assessment assessed against it in installments, and thereafter, before all of such installments have been paid, such corporation is placed in receivership for the purpose of liquidation, such remaining installments are a personal obligation of such corporation, and a provable claim against the receivership estate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4110.

TOLEDO METROPOLITAN PARK BOARD—TAXING DISTRICT UNDER SECTION 14178-8, G. C.

SYLLABUS:

A park district organized under the provisions of sections 2976-1, *et seq., General Code, is a taxing district within the meaning of section* 14178-8, *General Code.*

COLUMBUS, OHIO, February 27, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

> "Both the Department of Public Works and the State Highway Department are anxious to have you construe the fourth paragraph of Amended Senate Bill No. 112 as passed by the 89th General Assembly, (O. L. 114, pages 19 and 20.)
>
> The question involved is whether or not the Toledo Metropolitan