of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution."

It is clear from this statute that to authorize the levy of the additional tax, referred to in your letter, it is necessary that it be first authorized by at least sixty-five per centum of the electors voting on that question. In the case you present, the entire number of electors voting on this question was five hundred and twenty-two (522), and of this number three hundred and thirty-nine (339) voted for the additional levy. As three hundred and thirty-nine (339) is sixty-four and ninety-four hundredths plus per centum (64.94+%) of the total vote cast on the propsition, it follows that sixty-five per centum (65%) of the electors voting upon this additional levy did not vote in favor thereof. It is my view that the fact that sixty-five per cent (65%) of the total vote cast is three hundred and thirty-nine and three-tenths (339.3) would not make three hundred and thirty-nine (339) a sufficient number to authorize the additional levy.

An analogous situation appears in the case of *Griffin* vs. *Messenger*, 114 Iowa 99. In that case the council of a municipality consisted of seven members and a three-fourths vote was required to suspend the rule requiring the reading of ordinances on three different days, three-fourths of seven being five and one-fourth. In that case the court held that a vote of five was insufficient to suspend the rule.

I am therefore of the opinion that where the question of a levy for the current expenses of a village outside the ten mill limitation is submitted to a vote of the electors, and the number of electors voting on said question was five hundred and twenty-two (522), a favorable vote thereon of three hundred and thirty-nine (339) is not sufficient to authorize such additional levy.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3506.

COUNTY TREASURER—COUNTY AUDITOR NOT REQUIRED TO INSPECT TREASURER'S BOOKS FOLLOWING ESTABLISHMENT OF BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—SECTION 2699 REPEALED BY IMPLICATION.

SYLLABUS:

Section 2699, General Code, requiring the county auditor to examine the books, vouchers, accounts, moneys and other property of the county treasurer, was repealed by implication at the time of the enactment of the act of the 70th General Assembly, creating the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State and requiring that bureau to examine all county offices.

COLUMBUS, OHIO, November 24, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Your opinion is respectfully requested in the following connection: Section 2699 of the General Code, being originally Section 1129 of the Revised Statutes and apparently not amended since then, provides as follows:

'A thorough examination of all books, vouchers, accounts, monies, bonds, securities and other property of the county treasurer shall be made by the auditor and commissioners thereof at least every six months.'

Some years thereafter a Bureau of Inspection and Supervision of Public Offices was authorized and established under Sections 274 to 291, both inclusive, of the General Code. Apparently these sections, particularly General Code 284 provide for a full examination by the said bureau the same as is provided in G. C. 2699.

This office is informed that since the establishment of said bureau the position has been taken both in this county and other counties in the state that G. C. 2699 no longer has any further application as it would be merely a duplication of work and an unnecessary expenditure of public funds. This office, however, has been asked for an opinion upon the question of whether G. C. 2699 any longer has any further application.

Inasmuch as this is a state-wide matter and involves all counties in the state, we feel that we should request your opinion in this connection."

Section 2699, General Code, quoted in your letter, requiring the county auditor to examine the books of the county treasurer, was enacted in the year 1874, amended in 1885, again amended in 1889 and again amended to its present form in the year 1891. The act creating the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State, Sections 274, et seq., General Code, was first enacted in the year 1902, 95 O. L. 511. This act requires the Bureau of Inspection and Supervision of Public Offices to inspect and supervise the accounts and reports of all offices of each taxing district and is far more comprehensive in its scope than Section 2699 of the Code relating only to the office of county treasurer. Under Section 277, General Code, the Auditor of State, as chief inspector and supervisor of public offices, is required to prescribe and require the installation of a uniform system of accounting for all public offices, which system, by virtue of Section 278, General Code, shall provide forms of account, showing the sources of public revenue, amount collected from each source, the amount expended for each purpose and the use and disposition of other public property. Under the provisions of Section 284, all county offices are required to be examined by this Bureau at least once a year. Each deputy inspector and each state examiner is given authority under Section 285 to issue subpoenaes and compulsory process, to compel the attendance of witnesses and the production of books and papers before him, to administer oaths, and to punish for disobedience of subpoena, refusal to be sworn, or to answer as a witness, or to produce books and papers.

It is obvious that this later act creating the Bureau of Inspection and Supervision of Public Offices and requiring the periodic examination of the office of the county treasurer, covers the whole subject of the earlier act contained in Section 2699, General Code, embraces new provisions and is more complete and detailed in its requirements. Your inquiry raises the question of whether or not such later act repeals the former act by implication, Section 2699 not having been expressly repealed by the legislature.

In your letter you state that your office is informed that since the establishment of the Bureau the position has been taken in your county and in other counties of the state that Section 2699 no longer has any further application, as it would

require merely a duplication of work and an unnecessary expenditure of public funds. I am advised that for a great many years in practically every county of the state Section 2699, General Code, has been administratively construed as having been repealed by implication by the act creating the Bureau and requiring the inspection of all county offices by the state. Upon the question of the weight to be given to administrative interpretation of a law, the Supreme Court said in the case of *State, ex rel.* vs. *Brown,* 121 O. S. 73, 75, 76:

> "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission* vs. *Brown,* 92 Ohio St., 309, 311, 110 N. E., 744, 745 (L. R. A., 1916B, 1277). See also, 36 Cyc., 1140, and 25 Ruling Case Law, 1043, and cases cited."

The question thus raised by your inquiry is almost identical with that considered by this office in an opinion appearing in Opinions of the Attorney General for the year 1932, Vol. I, page 337, the syllabus of which is as follows:

> "1. Sections 697 to 709, inclusive, General Code, are applicable to domestic as well as foreign corporations transacting business in this state.
> 2. In so far as Section 697, General Code, defines every corporation, partnership or association other than a building and loan association which places or sells securities on the partial payment or installment plan as a bond investment company, such section was repealed by implication at the time of the enactment of the first Securities Law in 1913."

After commenting upon the fact that the so-called Blue Sky Law revised the whole subject matter of legislation for the purpose of providing a scheme for the protection of the investing public and provided a more comprehensive plan of control over the sale of securities in order to protect the public from fraud in such transactions, the then Attorney General said:

> "In the case of *Goff, et al.* vs. *Gates, et al.,* 87 O. S. 142, the first branch of the syllabus is as follows:
> 'An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revises the whole subject-matter of the former act and is evidently intended as a substitute for it.'
> Under authority of the above case, if the subsequent act revises the whole subject matter of the foregoing section and is evidently intended as a substitute for it, the above act will be held to be repealed by implication on the ground that such was the intent of the legislature. This principle was recognized in 36 Cyc. 1077, wherein the following language is used:
> 'When two statutes cover, in whole or in part, the same subject-matter, and are not absolutely irreconcilable, no purpose of repeal being clearly shown, the court, if possible, will give effect to both. Where, however, a later act covers the whole subject of earlier acts and embraces new provisions, and plainly shows that it was intended, not only as a substitute for the earlier acts, but to cover the whole subject then con-

sidered by the Legislature, and to prescribe the only rules in respect thereto, it operates as a repeal of all former statutes relating to such subject-matter, even if the former acts are not in all respects repugnant to the new act.'

A somewhat stricter rule was laid down in *Sstate* vs. *Hollenbacher,* 101 O. S. 478, the first branch of the syllabus reading as follows:

'A statute which revises the whole subject-matter of a former enactment, and which is evidently intended as a substitute for it, operates to repeal the former although it contains no express words to that effect. But repeals by implication are not favored, and where two affirmative statutes exist, one will not be construed to repeal the other by implication, if they can be fairly reconciled. The fact that a later act is different from a former one is not sufficient to effect a repeal. It must further appear that the later act is contrary to, or inconsistent with, the former.'

In view of the foregoing authorities, I should be reluctant to say that the provision of Section 697 to the effect that every corporation selling securities on the installment plan is a bond investment company, has been repealed by implication on account of the general reluctance of the courts to hold an act as so repealed, were it not for the fact that it has been the well established administrative practice to so construe the Securities Law as hereinabove indicated. * * *

The administrative interpretation of the law of Ohio with respect to the sale of securities on the installment plan being controlled by the Securities Law only is not to be disregarded unless judicial construction makes it imperative so to do. *State, ex rel.* vs. *Brown, supra.* I do not find such construction imperative.

* * * The legislature evidently recognized the inadequate protection afforded by the bond investment act when it enacted an entirely new scheme of legislation with respect to the sale of securities in Ohio.

Although an adherence to the strict rule as to repeals by implication laid down in *State* vs. *Hollenbacher, supra,* might be very persuasive toward reaching a conclusion contrary to the one I have already indicated, I do not feel that the Attorney General can do otherwise than recognize the long established administrative interpretation of this law."

Under authority of the foregoing opinion with which I concur, it is my opinion that Section 2699, General Code, requiring the county auditor to examine the books, vouchers, accounts, moneys and other property of the county treasurer, was repealed by implication at the time of the enactment of the act of the 70th General Assemb'y, creating the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State and requiring that bureau to examine all county offices.

Respectfully,
JOHN W. BRICKER,
Attorney General.