and in that way attract graduates from the high schools to the University, and further that the compensation he would receive from the boards of education for making these addresses would augment his regular salary. It was upon that evidence that the Court based its finding that:

> "In the instant case, as a part of his employment he had gone to the village of Green Springs to interest the graduating class of its high school in his employer's University;"

The facts presented in your inquiry do not indicate that any such requirement is a part of the contracts of employment entered into by the professors you mention, and I do not believe that the courts would construe the law to apply to such a state of facts as you present. However, the determination of whether or not an employee is in the course of his employment depends upon the facts in each particular case.

Therefore, in specific answer to your inquiry, it is my opinion that a professor in the employ of Ohio State University who during his vacation period attends meetings not required or contemplated by his contract of employment, is not performing services for such University and is not an employee within the meaning of the Workmen's Compensation Law even though he is attending such meetings as a representative of Ohio State University, and, therefore, would not be entitled to the benefits of the Workmen's Compensation Law of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2989.

CITY—UNAUTHORIZED TO CREATE LIEN FOR WATER RENTS BY ORDINANCE OR RULES AND REGULATIONS ADOPTED FOR MANAGEMENT OF MUNICIPALLY OWNED WATER WORKS.

SYLLABUS:

A city may not, by ordinance or by rules and regulations, adopted for the management of its municipally owned waterworks, create a lien for water rents. (Hohly, Director, et al., vs. State, ex rel., 128 O. S. 257.)

COLUMBUS, OHIO, August 3, 1934.

HON. JOHN I. MILLER, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"When a property has been sold for delinquent taxes, may a city or municipality collect delinquent water rentals from the new purchaser, that were a lien against the property at the time it was sold?

We find in Circular No. 688, Section 2100, that on July 16, 1930, Attorney General Gilbert Bettman's opinion on the above question. The State Examiners have construed it that any purchaser of a property which has been sold to pay taxes would be liable for any delinquent water rentals on the property so purchased."

In your request you make use of the term "municipality". However, in a subsequent communication you state your question refers solely to a city. Sections 3957 and 3958 General Code read as follows:

Sec. 3957.

"Such director may make such by-laws and regulations as he deems necessary for the safe, economical and efficient management and protection of the water works. Such by-laws and regulations shall have the same validity as ordinances when not repugnant thereto or to the constitution or laws of the state."

Sec. 3958.

"For the purpose of paying the expenses of conducting and managing the water works, such director may assess and collect from time to time a water rent of sufficient amount in such manner as he deems most equitable upon all tenements and premises supplied with water. When more than one tenant or water taker is supplied with one hydrant or off the same pipe, and when the assessments therefor are not paid when due, the director shall look directly to the owner of the property for so much of the water rent thereof as remains unpaid, which shall be collected in the same manner as other city taxes."

This office has, in numerous opinions, declared that a municipality could create a lien upon property for water rent and that the Director of Public Service could pass rules and regulations placing the primary obligation for the payment of water rents upon the owner of the premises. See Opinions of the Attorney General for 1928, Volume 2, Page 1202; Opinions of the Attorney General for 1929, Volume 3, Page 1788; Opinions of the Attorney General for 1930, Volume 2, Page 1127 and Opinions of the Attorney General for 1932, Volume 1, Page 468. Likewise, in the case of the *City of Bucyrus* vs. *Sears*, 34 O. App. 430 it was held as disclosed by the syllabus:

"Under Sections 3956, 3957 and 3958, General Code, city owning and operating waterworks and having furnished water to tenant of defendant who failed to pay charges held authorized to enforce charge against defendant's real estate in accordance with rules and regulations, since property owner who pipes property and connects with city waterworks assents and agrees to such terms."

While not dealing with the specific question presented in your letter, the

following language by Robinson, J. appears in his opinion in the case of *Steel Company* vs. *Cuyahoga Heights,* 118 O. S., 544 at Page 457:

> "We are cited to Sections 3957, 3958, and 4361, General Code, and are asked to find from those sections the existence of a statutory lien upon the premises at the time the water rent accrued and while owned by the Hunter Crucible Steel Company. These sections empower the director of public service or the board of trustees of public affairs to assess water rents against the property upon which water has been furnished and to collect such assessment in the same manner as other city taxes. They have application to municipalities owning and operating municipal water plants and confer unusual and exclusively statutory power upon certain designated officials. The power so conferred has no common-law basis, nor does it grow out of any inherent municipal power. They create in the municipality a power, which, but for the existence of the statute, it would not have, and a liability upon property, which, but for the existence of the statute, would not obtain. They will therefore be construed strictly and will not include any property or any situation which does not fall within the exact terms of the statute."

The question is now presented as to the effect of a recent decision of the Supreme Court in the case of *Hohly, Director of Department of Public Service, et al.* vs. *The State, ex rel Summit Superior Company,* published in the Ohio Bar for May 28, 1934. The per curiam opinion of the court is as follows:

> "It is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby affirmed for the reason that neither Sections 3957 and 3958, General Code, nor Sections 41 and 1415 of the Code of 1919 of the city of Toledo, Ohio, create nor authorize the creation of a lien upon real property for charges for water supplied by such city to the premises of defendant in error. Judgment affirmed. Weygandt, C. J., Allen, Stephenson, Jones, Matthias, Bevis and Zimmerman, JJ., concur."

An examination of the pleadings and the briefs in the above case discloses that an original action in mandamus was filed in the Court of Appeals for Lucas County, wherein the relator alleged that he made an application to the Division of Water of the City of Toledo for the furnishing of water service for the relator's premises.

The relator further alleged that he offered and agreed to pay all lawful rents and charges which might thereafter be assessed for the furnishing of water service to said premises, but that the defendant refused to furnish water service. The defendants, in their answer, stated that when the application for water was made, certain unpaid bills were charged and assessed against the premises and were, in accordance with the laws of Ohio and the rules and regulations of the Division of Water, a lien on the premises. The answer also stated that when the relator became the owner of the premises, he was bound, under the law, to know of the existence of said unpaid bills and the lien created thereby and that the relator refused to pay the arrearages.

The relator, in his reply, denied that the arrearages for water bills were a lien upon the premises and that if they were, the statutes and the rules and regulations were unconstitutional.

The Court of Appeals, in the Journal Entry, granted the prayer of the plaintiff's petition and ordered that a peremptory writ in mandamus should be issued, ordering the defendants to furnish the relator water service upon the payment of certain water rents that accrued after the relator became owner of the premises.

Section 158 of the charter of the City of Toledo provides:

> "The Commissioner of Water shall have charge of and operate the water works system of the City and shall enforce the rules and regulations thereto pertaining. Until a Department of Public Utility is established the Division of Water shall be a division of the Department of Public Service under the supervision of the Director thereof."

Sections 14 and 1415 of the Code of the City of Toledo provide as follows:

> "The Commissioner of Water shall have charge of and operate the water works system of the City and shall enforce the rules and regulations thereto pertaining. Until a Department of Public Utility is established the Division of Water shall be a division of the Department of Public Service under the supervision of the Director thereof."
>
> "The Director of Public Service shall take such steps as may, in his judgment, be deemed necessary to enforce the provisions of this chapter, by shutting off water or by other regulations to the end that the distribution of free water and water furnished at reduced rates shall cease and that all water furnished by the Division of Water to any customer shall be paid for at the regularly established prices."

The rules and regulations governing the Division of Water of the City of Toledo specifically provide that water rents shall be a lien upon the premises. From the facts in the above case it might be argued that all the Supreme Court decided was that the City of Toledo did not by its charter, nor by ordinance, create a lien for water rents and that the Division of Water could not create a lien by a rule or regulation. However, the language of the decision states that Sections 3957 and 3958, supra, do not *create* nor *authorize* the creation of a lien upon real property for water supplied by such city. In view of this clear language, it would appear that a city may not create a lien upon real property for water rents. Whether or not a city could provide in its charter for the creation of water rents, is not presented in your inquiry and I express no opinion upon the question of the existence or non-existence of such power.

Without further prolonging this discussion, it is my opinion, in specific answer to your question, that a city may not, by ordinance or by rules and regulations, adopted for the management of its municipally owned water-works, create a lien for water rents.

Respectfully,
JOHN W. BRICKER,
Attorney General.