tenth day following the day he reported at the State House he was rejected as unfit for service and discharged, not from the army but from the draft."

The court further says:

"The petitioner never had an opportunity to report for active duty. His experience with the draft never brought him to the stage where it was possible for the army or navy department to order him to attack the enemy or endure other perils of war. He was not called for active duty. His name was selected by lot as were the names of all other persons who were called by the draft, and he, like the others, were ordered to report to a camp for final examination to determine his fitness for active duty. Had the petitioner successfully passed the physical examination, he probably would have been enrolled as a member of the army and assigned to active duty in a training camp."

The facts in the case of the applicant before me are very similar to those in the Bannister case, and while the court held in that case that the petitioner was not mustered into the federal service, or enrolled into the service, it supports the view expressed by me that the applicant in the case before me had not served in the army, for if such an individual is not mustered into the service he certainly is not one who had served in the army and honorably discharged therefrom within the meaning of Section 486-10, General Code.

In view of the discussion herein, and in specific answer to your inquiry, I am of the opinion that a person inducted into the service by a local draft board on the 27th day of August and discharged from the draft on the 2nd day of September, 1918, because of physical deficiency, upon filing such certificate of service and discharge with the civil service commission is not entitled to receive additional credits in a regular examination in which he receives a passing grade, as provided in Section 486-10 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2145.

SCHOOL DISTRICT — ISSUING BONDS FOR SCHOOLHOUSES — COMBINED PROCEEDS MAY NOT BE USED ON SCHOOL HOUSE IN MERGED DISTRICT.

SYLLABUS:

When two adjoining school districts have each issued and sold bonds for the purpose of constructing a schoolhouse in each district, the proceeds of such issues may not be used for the construction of one large schoolhouse to serve the entire territory involved as a result of the two districts having become one district.

COLUMBUS, OHIO, July 23, 1930.

HON. I. B. STEELE, *Prosecuting Attorney, Lima, Ohio.*

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

"A rural school district and a special school district both situated within the same township are each considering submitting a bond issue to be voted on this coming election for the purpose of providing school buildings in each of the respective school districts.

In the event both of the respective bond issues are approved at the election, would it be possible for the two separate school districts to be united by the county board of education and the funds realized by the two separate bond issues be united in a common fund and used for the erection of one school building for the students of both districts?"

I assume your communication refers to two rural school districts or to a rural and a village school district, since special school districts have been abolished since 1914. The organization of special school districts as such was provided for in Section 3928, Revised Statutes, 97 O. L. 345. These were abolished as aforesaid in 1914 when Section 4735, General Code (104 O. L. 138), was enacted providing that "The present existing township and special school districts shall constitute rural school districts * * * . " Under Section 4679, General Code, the school districts of this state consist of city school districts, exempted village school districts, village school districts, rural school districts and county school districts.

I assume from your inquiry that the two districts propose to each issue and sell bonds and then, prior to spending the proceeds, unite and pool the proceeds of the two issues for the purpose of erecting one school building.

The proposed plan of uniting the two districts is not mentioned; district "A" may be united to district "B," thereby retaining the identity of district "B," or vice versa, or the two may be abolished and district "C" created. In any event, however this union may be accomplished, it must inevitably result in the extermination of at least one of the taxing authorities. The accomplishment of the proposed plan will necessitate using the proceeds of at least one, if not both, of the issues for a purpose other than authorized by the electors. This is prohibited by Section 5625-10, General Code, the pertinent portions of which are as follows:

" * * * * * * * * * * *

All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision.

* * * * * * * * * * * *

Money paid into any fund shall be used only for the purposes for which such fund is established."

Obviously, when a fund has been established by "A" school district for the construction of a $50,000.00 schoolhouse for instance, such fund may not be used by "B" school district for the construction of a $100,000.00 schoolhouse, perhaps upon a site entirely outside of what was heretofore "A" school district.

There are many ramifications of the question which you present which I do not deem it necessary to here consider. The districts should be first united, after which time the question of a bond issue for the real purpose, viz., the erection of one large building, may be submitted to the electors of the one large district.

In answer to your inquiry, it is my opinion that when two adjoining school districts have each issued and sold bonds for the purpose of constructing a schoolhouse in each district, the proceeds of such issues may not be used for the construction of

one large schoolhouse to serve the entire territory involved as a result of the two districts having become one district.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2146.

TOWNSHIP CEMETERY—WITHIN MUNICIPALITY—LEGALITY OF EXTENSION TO WITHIN ONE HUNDRED FEET TO DWELLING HOUSE ERECTED TWO HUNDRED YARDS AWAY SINCE SAID CEMETERY WAS ESTABLISHED.

SYLLABUS:

A cemetery within the corporate limits of a municipality which is under the control of a board of township trustees may be extended to within one hundred feet of a dwelling house which was erected within two hundred yards of such cemetery and since the establishment thereof.

COLUMBUS, OHIO, July 23, 1930.

HON. GEORGE C. MCKELVEY, *Prosecuting Attorney, St. Clairsville, Ohio.*

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

"We are writing you for an opinion as to the construction of Section 3455 of the General Code of Ohio which is as follows:

'Addition to cemetery grounds. In any township in which there is a cemetery owned or partly owned, by such township, if in the opinion of the trustees of the township, it is desirable to add to the area of such cemetery by the purchase of additional grounds, and if suitable lands cannot be procured by contract on reasonable terms, they may appropriate lands therefor, not exceeding five acres, as provided for establishing a township cemetery; provided however, if any person shall erect a dwelling house within two hundred yards of an established cemetery in such case the restrictions of Section 3442 shall not apply, and such additional lands shall be considered a part of such original cemetery even though separated therefrom by a road or highway.

Tax levy for payment. For such purpose, they may levy a tax not to exceed one-half of one mill, on the taxable property of the township, for a period not exceeding five years, which shall be collected as other taxes, and appropriated for the purchase or appropriation of such additional cemetery grounds which shall become part of such township cemetery, and be governed in all respects as provided by law.'

The trustees of Union Township, in our county, have asked us for an opinion as to whether or not they would be permitted to purchase additional land increasing the area of an old cemetery which is located within the corporation limits of the village of Morristown, Ohio, and said cemetery being under the control and supervision of the trustees of said township.

The trustees can secure this property by purchase and it will not be necessary for them to secure same by appropriation proceedings but the additional area will be within about one hundred feet of buildings of abutting property owners. These houses were erected since the establishment of the