question of law applicable to all cases. I am inclined to the view that, the courts would be justified in considering each case upon the particular set of facts surrounding it. Conceivably, if a particular extension involved the extension of water mains whereby new consumers were to be served and the increased operating expense resulting from such extension were negligible, it might accurately be said that under proper circumstances the income "is sufficient." On the other hand, if the extension involved the installation of a filtration plant at considerable expense with no direct prospect of increased revenue, upon completion of such extension by reason of increased operating expenses and larger funded debt, the utility bonds may be entirely within the limitations of net indebtedness provided. The number of failures of businesses which have been profitable until expansion, and, as a result of expansion, have gone into receivership or bankruptcy is too numerous to require further comment on this matter of extension or expansion. I adhere to the view that as an abstract principle, when bonds are issued for the extension of a waterworks insofar as after the completion of such extension the operating costs may be changed, the earnings after such completion may only at the time of issuance of such bonds be estimated. However, on account of established administrative practice and until the contrary rule is laid down by a court of competent jurisdiction, bonds to be issued for the extension of a waterworks may be outside the next limitations of indebtedness which may be incurred by a municipality as excepted in paragraph (d) of Section 2293-14, General Code, providing and to the extent that the income from such waterworks is sufficient to cover the cost of all operating expenses and interest charges on all outstanding waterworks bonds and also such extension bonds presently to be issued, and to provide a sufficient amount for the retirement of all such bonds as they become due.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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550.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ASHLAND AND SANDUSKY COUNTIES.

COLUMBUS, OHIO, June 21, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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551.

APPROVAL, ABSTRACT OF TITLE TO LAND IN THE VILLAGE OF BEREA, OHIO, FOR STATE ARMORY.

COLUMBUS, OHIO, June 21, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of even date

herewith, submitting for my examination and approval, a corrected statement of title and a corrected warranty deed covering a part of Outlet No. 10 of the village of Berea, Ohio, which is being donated to the State of Ohio by said village as a site for the construction of a state armory building.

With said statement of title and warranty deed, there is likewise submitted a certified copy of a resolution adopted by the council of the village of Berea, authorizing the donation of said tract of land for the purpose above indicated, and authorizing and directing the acting mayor and the clerk of the village to execute to the State of Ohio the warranty deed above referred to.

The tract of land here under investigation is more particularly described as follows:

> "Beginning in the easterly line of Mulberry street at the northwesterly corner of said Out-lot No. 10; thence north 89° 59′ 55″ east along the northerly line of said Out-lot No. 10, a distance of 346.50 feet according to the record plat, which distance by survey is found to be 341.02 feet to the northeasterly corner of said Out-lot No. 10; thence south 00° 09′ 25″ west along the easterly line of said Out-lot, a distance of 125.73 feet according to the record plat, which distance by survey is found to be 125.95 feet to the southeasterly corner of said Out-lot; thence south 89° 59′ 45″ west along the southerly line of said Out-lot, a distance of 243.21 feet according to the record plat, which distance by survey is found to be 241.53 feet to the southwesterly corner of said Out-lot at a point in the northeasterly line of Rocky River Drive (formerly Furnace street), (60 feet wide); thence north 44° 31′ 40″ west along said norrtheasterly line of Rocky River Drive (formerly Furnace street), 85.88 feet to a point of curve; thence northwesterly 76.24 feet along the arc of a circle deflecting to the right, having a radius of 161.62 feet, and a chord which bears north 31° 00′ 50″ west, 75.54 feet to the place of beginning, according to the survey of Charles W. Root, civil engineer, dated March, 1929, be the same more or less, but subject to all legal highways."

The title to the above described tract of land was the subject of Opinion No. 400 directed to you under date of May 13, 1929. In said opinion the statement of title and the warranty deed submitted for my examination and approval, were disapproved for the reasons set out in said opinion.

An examination of the corrected statement of title and warranty deed now submitted to me, shows that the objections pointed out in said former opinion have been corrected, and I am of the opinion, upon the corrected statement of title submitted, that the village of Berea has a good and indefeasible fee simple title to said tract and parcel of land free and clear of all encumbrances excepting the taxes for the last half of the year 1928 amounting to the sum of $154.55 including installments of special assessments, if any, shown on the 1928 treasurer's general tax duplicate, and excepting the undetermined taxes on said property for the year 1929. The taxes above mentioned are of course a lien upon said property.

The corrected statement of title submitted does not show whether or not there are any special assessments upon this property. Before the transaction for the donation and acceptance of this property is closed by your department, some adjustment should be made with respect to the taxes which are a lien upon said property, and with respect to special assessments if it should appear that any such have been assessed and certified against said property.

An examination of the resolution of the council of the village of Berea above referred to, shows that the same is in proper form to authorize the donation of this

parcel of land and to authorize the execution of the warranty deed by the acting mayor and the clerk of the village.

An examination of the warranty deed now submitted to me, shows that the same has been properly executed and acknowledged by Howard A. Geiger, acting mayor, and by W. H. Parshall, clerk of the village, and that the same is in form sufficient to convey to the State of Ohio, a fee simple title in and to the above described tract of land free and clear of all encumbrances whatsoever.

I am returning to you said corrected statement of title, warranty deed and copy of resolution referred to above.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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552.

## OFFICES INCOMPATIBLE—SCHOOL TEACHER AND MUNICIPAL COUNCILMAN.

*SYLLABUS:*

*A teacher in the public schools of the State of Ohio is ineligible to membership in the council of a municipality.*

COLUMBUS, OHIO, June 24, 1929.

HON. MARION F. GRAVEN, *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion as follows:

> "Is it proper and legal for a high school teacher, employed in such schools within the city of Wooster, holding no special office in such schools, to run for the office of councilman for the city of Wooster? In other words, are these two positions incompatible so that he would have to give up the one in order to hold the other?"

Section 4207,General Code, relating to the qualifications of councilmen in cities, reads as follows:

> "Councilmen at large shall have resided in their respective cities, and councilmen from wards shall have resided in their respective wards, for at least one year next preceding their election. Each member of council shall be an elector of the city, shall not hold any other public office or employment, except that of notary public or member of the state militia, and shall not be interested in any contract with the city. A member who ceases to possess any of the qualifications herein required, or removes from his ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit his office."

It is held in the case of *State ex rel.* vs. *Gard,* 8 O. C. C. (N. S.) 599, as follows:

> "The inhibition found in Section 4207, G. C., against holding another public office is not limited to office in or appointment by the municipality, but extends to all public offices and employments."