ty of the state for two years, the juvenile court may make allowance to each of such women as follows: * * *"

In an opinion of one of my predecessors in office to be found in Opinions of the Attorney General for 1917, Vol. I, page 278, it was held as disclosed by the syllabus:

"Under the provisions of the law relating to mothers' pensions, the widow of an unnaturalizer person is entitled to a pension under the same conditions as is the widow of a naturalized citizen."

This opinion appears to be strictly analogous to the precise point raised by your inquiry and consequently it is my opinion that an unnaturalized person, assuming all other conditions of the law are complied with, is entitled to blind relief.

Summarizing, it is my opinion that:

1. A person receiving an Old Age Pension is not entitled to blind relief while receiving such Old Age Pension by virtue of the inhibition against such contained in Section 2967, General Code.

2. By virtue of subdivision (c) of Section 1359-10, General Code, an unnaturalized person is not entitled to an Old Age Pension.

3. An unnaturalized person, assuming all other conditions of the blind relief laws are complied with, is entitled to blind relief.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4292.

HEALTH DISTRICT—CITY AND GENERAL HEALTH DISTRICTS COMBINE —AUTHORITY OF CITY COUNCIL TO ENACT ORDINANCES REGULATING PASTEURIZATION OF MILK.

SYLLABUS:

1. *When a city health district unites with a general health district under the provisions of section* 1261-20, *General Code, the council of the city embraced within such city health district has the power to enact an ordinance regulating the pasteurization of milk, unless such ordinance is in conflict with regulations of the board of health of the combined health district in which said city is located.*

2. *If such ordinance is enacted, the city is without authority to require the combined board of health to enforce it.*

3. *Under such a combination, the board of health of the combined health district may pass a health regulation requiring the pasteurization of milk to be sold in a city which is located within said combined health district.*

4. *When a city health district unites with a general health district under the provisions of section* 1261-20, *General Code, the regulations of the board of health of the city health district made prior to uniting with the general health district, may be adopted by the board of health of the combined health district for, and be enforced in, the territory comprising the former city health district. However, only regulations*

made pursuant to the provisions of section 1261-42 *of the General Code would be valid, in so far as the entire district is concerned.*

5. *When a city health district and a general health district unite under the provisions of section* 1261-20, *General Code, it is the duty of the prosecuting attorney of the county embraced within such combined health district, to act as attorney for the board of health of such combined health district.*

6. *When a city health district unites with a general health district under the provisions of section* 1261-20 *of the General Code, regulations requiring that all milk sold to consumers in said city be pasteurized, may be passed by the board of health of a general health district in which said city is located, and enforced by such board of health. The council of said city could also pass an ordinance requiring such pasteurization and enforce the provisions thereof through its police department.*

COLUMBUS, OHIO, May 27, 1935.

DR. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> "Under authority of Section 1261-20, G. C. (114 v. 114), the city of Sidney has contracted with the board of health of the general health district for furnishing health service to that city.
>
> Several questions have arisen as to the authority of the general district board of health to enforce milk regulations within the city. Such board not being in position to adopt regulations having general application throughout the county.
>
> The city solicitor and prosecuting attorney join in submitting the following list of questions, on which I shall be glad to have your opinion:
>
> 1. When a City Board of health unites with the General Health District under Section 1261-20 of the General Code of Ohio, can the council of that city pass health ordinances regulating the pasteurization of milk and require the combined Board of Health to enforce that ordinance?
>
> 2. Under such a combination, can the combined Board of Health pass a health regulation for the pasteurization of milk for the city which has combined with it under 1261-20?
>
> 3. When a city Board of Health combines with a General Health District under 1261-20, are the regulations of the city Board of Health before uniting automatically repealed by the combination, or can the regulations of the city Board of Health before uniting be enforced by the combined Boards of Health?
>
> 4. When a city and General Health District combine under Section 1261-20, whose duty is it to act as attorney for that combined Board of Health—the County Prosecutor or City Solicitor?
>
> 5. If the city council is permitted to pass health ordinances after a combination under 1261-20 or if the combined Board of Health is permitted to enforce rules and regulations of the City Board of Health before combining under 1261-20, is it the City Solicitor's duty to act for the combined Board of Health in the city or is it the County Prosecutor's duty?
>
> 6. When a city combines with the General Health District under Section 1261-20 and that city later wants regulations and rules requiring that all

milk sold in the city to consumers be pasteurized, whose duty is it to pass those regulations and whose duty is it to enforce it?

The city council has under contemplation the immediate adoption of an ordinance regulating the sale of milk within the city of Sidney, and I shall be glad to have your opinion as soon as possible."

Section 1261-20 of the General Code, which provides for the union of a city health district with a general health district, so far as is pertinent to your questions, reads as follows:

"When it is proposed that a city health district unite with a general health district in the formation of a single district, the district advisory council of the general health district shall meet and vote on the question of union and it shall require a majority vote of the total number of townships and villages entitled to representation voting affirmatively to carry the question. The council or body performing the duties of council of the city shall likewise vote on the question and a majority voting affirmatively shall be required for approval. When the majority of the district advisory council and the council of the city have voted affirmatively, the chairman of the district advisory council and the mayor or chief executive of the city shall enter into a contract for the administration of health affairs in the combined district. Such contract shall state the proportion of the expenses of the board of health or health department of the combined district to be paid by the city and by that part of the district lying outside of the city; the contract may provide that the administration of the combined health district shall be taken over by either the board of health or health department of the city or by the board of health of the general health district and shall prescribe the date on which such change of administration shall be made. A copy of such contract shall be filed with the state director of health.

The combined health district hereinbefore provided for shall constitute a general health district, and the board of health or health department of the city or the board of health of the original health district as may be agreed in the contract, shall have within the combined district all the powers hereinafter granted to, and perform all the duties herein or hereafter required of the board of health of a general district.

* * *"

Public health comes within the proper exercise of the police power of the state and within the police powers of a municipality if such are conferred upon the municipality by the state. Section 3652 of the General Code, which relates to the powers of municipal corporations, reads as follows:

"To provide for the inspection of spirits, oils, milk, breadstuffs, meats, fish, cattle, milk cows, sheep, hogs, goats, poultry, game, vegetable and all food products."

However, apart from the powers conferred by statute, municipal corporations are by virtue of section 3 of Article XVIII of the Constitution of Ohio invested with authority to adopt and enforce local health regulations not in conflict with general laws of this state. Said section reads as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt an enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

The above constitutional provision grants to municipalities the right to exercise the same police power which may be exercised by the state, the only limitation being that the exercise of that power by a municipality shall not conflict with the general laws of the state.

In the case of *City of Bucyrus* vs. *State Department of Health, et al.,* 120 O. S. 426, the first branch of the syllabus reads as follows:

"The provisions of Article XVIII of the Constitution of Ohio do not deprive the state of any sovereignty over municipalities in respect to sanitation for the promotion or preservation of the public health which it elects to exercise by general laws."

At page 427, it is stated as follows:

"The surrender of the sovereignty of the state to the municipalities by that article (Article XVIII, section 3, Ohio Constitution) was a partial surrender only, and, with reference to sanitary regulations, was expressly limited to such sovereignty as the state itself had not or thereafter has not exercised by the enactment of general laws. With respect, then, to local sanitary regulations, the municipalities are in no different situation since the adoption of Article XVIII than they were before, except that before the adoption of that article they had such power to adopt local sanitary regulations as had been conferred upon them by the Legislature of the state, and since the adoption of that article they have such power to adopt local sanitary regulations as has not been taken away from them by the Legislature in the enactment of general laws. Therefore that article, instead of being a limitation upon the power of the legislature to enact general legislation upon the subject of sanitation, is a reservation of such power to the Legislature. In other words, the grant of power in that respect to the municipality by the Constitution is made subject to the limitation of general laws theretofore or thereafter enacted by the Legislature.

The effect of the constitutional provision granting to municipalities the power to adopt local sanitary regulations is therefore no different than though the power had been conferred by legislative enactment instead of constitutional provision; for if conferred by legislative enactment, the act would be subject at all times to revision or repeal by the Legislature. The constitutional provision, conferring the power with the limitation that the municipal regulation must not be in conflict with general laws, operates to bestow upon the Legislature the same power to control sanitation by general laws that it had prior to the adoption of that article. The power conferred by that article is conditioned upon the Legislature not having enacted general laws with which the local sanitary regulations of the municipality conflict." (Words in parenthesis the writer's)

From the above, it would appear, therefore, that the state has not been deprived, by section 3 of Article XVIII of the Ohio Constitution, of any of its sovereignty over mu-

nicipalities, with respect to health matters, and that the surrender of the sovereignty of the state to municipalities with reference to health regulations is expressly limited to such sovereignty as the state itself has not exercised by the enactment of general laws.

The preservation of the health of the pulibc is within the police power of the sovereignty of the state and, in that respect, extends to that part of the state lying within municipalities as well as that part lying without, and the power of the municipalities with respect to public health is limited to such regulations as are not in conflict with state legislation and as may be determined by the municipality to be necessary for the preservation of the health of its own public and to meet its own local situation.

While the General Code of Ohio does not contain any statutes requiring or regulating the pasteurization of milk, yet the state in the exercise of its police power has nevertheless provided for such regulation by creating by statute health districts and boards of health of such districts, and granting to such boards of health very broad powers with reference to health matters.

Section 1261-16 of the General Code, reads as follows:

> "For the purpose of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purpose of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

Section 1261-42 of the General Code, reads as follows:

> "The board of health of a general health district may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded and certified as are ordinances of municipalities and record thereof shall be given in all courts of the state the same force and effect as is given such ordinances, but the advertisements of such orders and regulations shall be by publication in one newspaper published and of general circulation within the general health district. Publication shall be made once a week for two consecutive weeks, and such orders and regulations shall take effect and be in force ten days from date of first publication. Provided, however, that in cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying."

By the terms of the above sections, the power of the state to preserve the public health has been delegated to the boards of general and city health districts, and power has been given to such boards of health to enact health regulations, having the form and effect of law within the districts over which their jurisdiction extends. The

power vested in boards of health is therefore the same as the police power inherent in the state.

With reference, then, to the matter before us, it would therefore appear that the city of Sidney could enact an ordinance regulating the pasteurization of milk, unless such ordinance would be in conflict with regulations of the board of health of the combined health district in which said city is located. The question of whether the city council could require the combined board of health to enforce such ordinance seems to be answered by the case of *State, ex rel. Hanna,* v. *Spitler,* 47 Ohio Appellate, 114, wherein it was held that the board of health of a city health district is a governmental agency, separate and distinct from the municipality, and not subject to its jurisdiction. In said case it was declared by the court, at page 121, as follows:

> "We find no provision of law making a board of health of a city health district subject or amenable in any way to the government of the municipality with which the district is coextensive, except that appointments of members of the board are made by the mayor of such municipality, and such board, under the law, constitutes a governmental agency separate and distinct from such municipality and not in any way subject to the jurisdiction of the municipality. It is said in 20 Ohio Jurisprudence, 572, that: 'Local health officers in the exercise of the power delegated to them are plainly engaged in a purely public service in the performance of strictly governmental duties. They cannot in any sense be considered as the agents of the corporation, which is, accordingly, not liable for their negligence or misdoings.' "

I come now to your second question.

The powers of boards of health are statutory. The statutes to which they owe their existence are the source and limit of their powers. Such powers may be expressly conferred by statute or fairly implied from those expressly granted. In other words, they have such implied powers as are necessary to carry the express powers into effect. Section 1261-42, General Code, supra, confers upon the board of health of a general health district the power to make such orders and regulations *as it deems necessary* for the public health, prevention or restriction of disease and the prevention, abatement or suppression of nuisances.

From the above it is seen that the power expressly conferred is very broad. In the case of *Nemis Metropolis* vs. *City of Elyria,* 23 O. C. C. (N. S.), page 544, it was held, as disclosed by the syllabus:

> "An order or regulation of a city board of health, forbidding the sale of ice cream on highway or public grounds of the city unless contained in sealed or locked cans or other containers approved by the board of health, is a valid exercise of police power, and is constitutional."

At page 545, it is stated:

> "The power delegated to boards of health to provide measures for the protection of the public health is very broad. It is practically co-extensive with the necessities that may arise for the purpose indicated. The authority for the exercise of such power is referable to the police power inherent in the state."

It was held in the case of *State, ex rel. City of West Park,* vs. *Zangerle,* 103 O. S., page 566, in the first branch of the syllabus, as follows:

"The general assembly in the exercise of the legislative power conferred by the constitution has authority to enact general laws prescribing health, sanitary and similar regulations effective throughout the state; and to provide such reasonable classifications therein as may be deemed necessary to accomplish the object sought."

From the language of the statute, it would appear that while the authority given to a board of health of a general health district does not authorize it to arbitrarily establish a rule that is without reason, yet it leaves to the board a very broad latitude in determining what is reasonable. It is readily understood how conditions under which milk is handled and sold in a city might be different from those existing in less populated areas. There can be little doubt that, in order to preserve the public health in closely built-up sections, certain safe-guards are necessary without which the public health in other sections would be amply protected. It would therefore appear that a regulation requiring the pasteurization of milk sold in a city would be reasonable and consequently could be passed by a board of health of a general health district in which such city is located.

Pertinent to your next question is that part of section 1261-20, General Code, which reads as follows:

"The combined health district hereinbefore provided for shall constitute a general health district, and the board of health or health department of the city or the board of health of the original health district as may be agreed in the contract, shall have within the combined district all the powers hereinafter granted to, and perform all the duties herein or hereafter required of the board of health of a general district."

Section 4413 of the General Code, which provides for orders and regulations by the board of health of a city, reads as follows:

"The board of health of a city may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances. Provided, however, that in cases of emergency caused by epidemic of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying."

Section 1261-42, General Code, supra, provides that the advertisements of all regulations of a board of health of a general health district shall be by publication in one newspaper published and of general circulation within the general health district.

Therefore, in view of the fact that the combination of a city health district with a general health district, constitutes a general health district, it would appear that in so far as the entire district is concerned, only regulations made pursuant to the statute providing for the making of regulations by a board of health of a general health dis-

trict, would be valid. However, regulations made by a board of health of a city health district prior to its combining with a general health district would be valid after such combination in the territory embraced within such city health district as existed prior to such combination, and such regulations could be adopted by the board of health of the combined health district, for, and to be exercised in, the area comprising the former city health district.

The next question presented for my determination is answered by the provisions of section 1261-37, General Code. Said section reads as follows:

> "In general health districts the prosecuting attorney of the county constituting all or a major part of such district shall act as the legal advisor of the district board of health. In a proceeding in which the board of health of any general health district is a party the prosecuting attorney of the county in which such proceeding is instituted shall act as the legal representative of the district board of health."

By the terms of the above section, the prosecuting attorney is made the legal adviser of the board of health of a general health district, and in view of the fact that the combination as provided for in section 1261-20, General Code, supra, constitutes a general health district, it would follow that when a city health district and general health district combine, it would be the duty of the prosecuting attorney of the county which is coterminus with the combined health district, to act as attorney and legal adviser for such combined health district.

I come now to the sixth question presented for my determination. As stated previously, a municipality has the authority to pass an ordinance requiring all milk sold to consumers in such municipality to be pasteurized, unless such ordinance is in conflict with a regulation of the board of health of a combined health district of which the municipality is a part. If such an ordinance is passed, it is the duty of the municipality to enforce the provisions of the same. If, however, the board of health of a combined health district passes such a regulation, the duty of the enforcement thereof is upon the board of health of the combined health district.

Summarizing, it is therefore my opinion that:

1. When a city health district unites with a general health district under the provisions of section 1261-20, General Code, the council of the city embraced within such city health district has the power to enact an ordinance regulating the pasteurization of milk, unless such ordinance is in conflict with regulations of the board of health of the combined health district in which said city is located.

2. If such ordinance is enacted, the city is without authority to require the combined board of health to enforce it.

3. Under such a combination, the board of health of the combined health district may pass a health regulation requiring the pasteurization of milk to be sold in a city which is located within said combined health district.

4. When a city health district unites with a general health district under the provisions of section 1261-20, General Code, the regulations of the board of health of the city health district made prior to uniting with the general health district, may be adopted by the board of health of the combined health district for, and be enforced in, the territory comprising the former city health district. However, only regulations made pursuant to the provisions of section 1261-42 of the General Code would be valid, in so far as the entire district is concerned.

5. When a city health district and a general health district unite under the provisions of section 1261-20, General Code, it is the duty of the prosecuting attorney of

the county embraced within such combined health district, to act as attorney for the board of health of such combined health district.

6. When a city health district unites with a general health district under the provisions of section 1261-20 of the General Code, regulations requiring that all milk sold to consumers in said city be pasteurized, may be passed by the board of health of a general health district in which said city is located, and enforced by such board of health. The council of said city could also pass an ordinance requiring such pasteurization and enforce the provisions thereof through its police department.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4293.

REAL ESTATE—OWNER MAY SECURE BENEFITS OF AM. S. B. #200, 90TH G. A. WITHOUT FILING APPLICATION FOR SHELTER ALLOWANCE WHEN.

SYLLABUS:

Under the provisions of House Bill No. 21 of the 91st General Assembly, an owner of real estate whose property was occupied prior to March 1, 1935, by an indigent person, is not required, in order to secure the benefits of Amended Senate Bill No. 200 of the 90th General Assembly, 115 Ohio Laws, 194, to file an application for shelter allowance for such occupancy, within thirty days of said date.

COLUMBUS, OHIO, May 27, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of recent date, which reads as follows:

> "In Amended Senate Bill No. 200 regular session, 90th G. A., and the amended sections of House Bill No. 21, regular session, 91st G. A. and particularly referring to Section 4 of that law, we find the following:
>
> 'No voucher shall be issued under the provisions of this act toward the payment of rent for occupancy of any persons unless an application is filed for the same within thirty days of the month for which shelter allowance is applied for, nor shall any voucher be issued under the provisions of this act after March 1, 1937, but any vouchers or warrants issued as herein provided shall be honored if presented for the payment of taxes including those levied for the year 1936, but not thereafter.'
>
> Our question is: Does this law exclude the landlord whose property has been occupied by a person on relief at any time prior to March 1, 1935 from benefiting for those past months under the provisions of this act, if he fails to file his application until after the amended law went into effect?"

Section 4 of Amended Senate Bill No. 200, of the 90th General Assembly, 115