power to act in his stead at such meeting. See also *McCortle* vs. *Bates et al.*, 29 U. S., 419; *Merchant* vs. *North*, 10 U. S., 251.

It appears to me that the duties of a member of a public board, commission, public corporation or quasi-public corporation, are such as to require his presence at a meeting for the benefit of consultation and judgment *at least* to the extent required of directors of a private corporation, and for such reason cannot delegate their powers or attend a meeting by proxy.

I do not herein hold that the attempted action taken by such bodies, when a quorum was not present by reason of a count by proxies, may not be ratified or confirmed at a later meeting at which a quorum was actually present, such question is not now before me. It does, however, appear that such proxy votes could not be counted for determining whether action had been taken by such body.

Specifically answering your inquiry it is my opinion that:

1. There is no legal authorization for a member of a district advisory council, created under authority of Sections 1261-18 et seq., General Code, who is absent from a regular or special meeting of such body to vote by proxy.

2. Since there is no legal authority for proxy voting by the members of a district advisory council (Sections 1261-18 et seq., G. C.) any attempted votes so cast are void, and should not be counted for the purpose of determining whether action was or was not taken by such council, nor in determining whether a quorum was present at such meeting.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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2821.

GOLF—MUNICIPALLY OWNED GOLF COURSE SUBJECT TO GREEN FEE TAX.

*SYLLABUS:*

*Municipal corporations owning golf courses, which they operate on the so-called "green fee plan", are subject to the green fee tax levied by Section* 5544-2, *General Code.*

COLUMBUS, OHIO, June 15, 1934.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your request for my opinion reading as follows:

> "The question has arisen as to the taxability of 'green fees' collected for golfing privileges upon courses located within parks owned by municipalities, such courses being operated by the municipalities owning the parks.
>
> The specific question presented is as to whether or not the term 'Corporations', as the same is employed in Section 5544-1, Ohio General Code, includes such corporations as municipalities and 'Boards of Park Commissioners'.

We shall appreciate your opinion at your early convenience, covering the question as to the taxability of 'green fees' under the facts as above set forth."

I might well call your attention to the language contained in Section 5544-2, General Code, with reference to taxation of membership dues and green fees on golf courses. Such section, in so far as material to your inquiry, reads:

"For the purpose of affording emergency poor relief there is hereby levied:

* * * * * * * * *

A tax of five per centum of the amount of annual membership dues in every club or organization maintaining a golf course and a tax of ten per centum on green fees collected by golf courses either under club or private ownership. * * *"

The question naturally arises as to whether a municipal corporation operating a golf course comes within the purview of the language of such section. In other words, is a golf course operated by a municipal corporation one "under club or private ownership?"

I do not have great difficulty in arriving at the conclusion that a golf course so operated is not operated by a club. A club, as that term is generally understood, is a group of individuals joined together for a common purpose, the expense of which is borne by proportional assessment on or contribution by those compounding it. See Webster's New International Dictionary.

It has been urged that a golf course under the ownership and management of a municipal corporation is not included within the terms of Section 5544-2, General Code, in its imposition of the tax.

As stated by Marshall, C. J., in *Cassidy* vs. *Ellerhorst,* 110 O. S., 535, at 539:

"In approaching the interpretation of statutes imposing taxes, it should be recognized at the outset that the rules of strict construction should be followed, and that where there is an ambiguity or doubt as to the legislative intent, the doubt should be resolved in favor of the person upon whom the burden of taxation is sought to be imposed, and that the language employed should not be extended beyond its clear import, or to enlarge its operation so as to embrace objects of taxation not specifically named."

See also *Gray* vs. *Toledo,* 80 O. S., 445, 448; *Cincinnati* vs. *Connor,* 55 O. S., 82; *Caldwell* vs. *State,* 115 O. S., 458; *Gould* vs. *Gould,* 245 U. S., 151, and *U. S.* vs. *Merriam,* 282 U. S. 179, 189.

The lawyers who advance such contention reason that in construing a statute, the words therein contained, are to be given their ordinary meaning. As a general statement of the rule as distinguished from a specific or technical statement of the rule, I am not inclined to disagree with such proposition; however, I am inclined to the view that it would lead to fewer inaccuracies if we used a more accurate statement of such rule. The rule referred to by such counsel is well stated in 2 Sutherland's Statutory Construction, Section 389, quoted with approval and followed in the case of *Smith* vs. *Buck,* 119 O. S., 101, 105, as follows:

> "Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense; common law words according to their common law meaning; and technical words, pertaining to any science, art or trade, in a technical sense. It is a familiar rule of construction, alike dictated by authority and common sense, that common words are to be extended to all objects which in their usual acceptance, they describe or denote." See also *Keifer* vs. *State,* 106 O. S., 285,289; *Schariou* vs. *State,* 105 O. S. 535; *Millard* vs. *Lawrence,* 16 How (U. S.) 251, 261.

What is the common or ordinary meaning of the expression, "private ownership" as such term is used in subparagraph (6) of Section 5544-2, General Code? The word "private" is one of many connotations. Thus, a parcel of property may be said to be public property when it is open to the free use of *all* persons, on like terms, and private property when it is not so used. Or, in a broad sense, a parcel of real estate might be said to be publicly owned when it is owned by *all* of the people, as distinguished from being owned by a single individual or a group of individuals. On the other hand, it appears that some courts have given the term "public property" a different meaning when owned by a municipal corporation.

In the case of *New Orleans M. & C. R. Co.,* vs. *City of New Orleans,* 26 La. Ann. 481, the court classifies the property owned by a municipality into two categories; that is, public property and private property. It refers to those properties which are held by the municipality for governmental purposes, as "public" property, and those properties which it holds in a *proprietary* capacity as "private" properties. In the case of *Coyle* vs. *Gray,* 7 Houst. (Del.) 44, 30 Atl. 728, 733, the court also recognized the private ownership of property by a municipality. In such case the court had before it the question as to whether a state or a subdivision of the state, could by authority of the provisions of a statute, take the property of another subdivision without compensation therefor, having in mind the constitutional requirement that private property could not be appropriated by the state or a subdivision thereof, without compensation therefor. The court held that the real estate of the municipality, for the purposes of its waterworks system, was *private property* within the meaning of such inhibition. A similar view was expressed by Marshall, C. J., in *State, ex rel. Forchheimer* vs. *LeBlond,* 108 O. S. 41, 56:

> "It is well settled that a municipal corporation has a dual capacity, the one governmental, or public, the other proprietary or private. In all those matters where it performs its governmental functions as an agent of the state its powers may be changed or revoked without impairment of any constitutional obligation; but when acting in its proprietary capacity it is entitled to constitutional protection. In such case it stands in all respects on the same footing as any private corporation exercising similar franchises. In owning and operating a railroad the city of Cincinnati is engaged in a business undertaking for profit, and therefore subject to the same rules, and entitled to the same constitutional guaranties, as any private corporation. * *"

I am unable to distinguish the city's capacity in operating a fee golf course from that in the operation of a railway for profit.

It would appear that the meaning of the term "private ownership", as used in subparagraph (6) of Section 5544-2, General Code, is clearly not apparent from

its language alone. In an attempt to discover the sense in which the legislature used it, we may refer to the context of the statute in which it is used. Black on Interpretation of Laws, Section 75. From the statute alone, I would be unable to state definitely whether the legislature used such language with the intent to distinguish "private ownership" from *club ownership,* or whether it intended to include only golf courses which were owned and operated by clubs or private persons or private corporations, as distinguished from *public corporations.* In the case of an ambiguity in a statute, it is permissible to examine the legislative history of a statute. Black on Interpretation of Laws, Section 91; *Bowers* vs. *New York Life Ins. Co.,* 283 U. S., 242. An ambiguity in a statute is "doubtfulness or uncertainty; language which is open to various interpretations or having a double meaning; language which is obscure or equivocal." *Caldwell* vs. *State,* 115 O. S., 458, 460. An examination of the journals of the General Assembly discloses that at the time the act of which Section 5544-2, General Code, is a part (Am. S. B., 411), was introduced, it did not contain any of the language now appearing in subparagraph (6) quoted above. It further discloses that after such act was passed by the Senate it was amended on June 30, 1933, by the insertion of the following language:

> "(6) A tax of 5 per centum of the amount of the annual membership dues in every club or organization maintaining a golf course and a tax of 10 per centum on greens fees collected by golf courses either under club or private ownership, but excluding municipally owned courses."

Thereafter, by action of the House, the language *"but excluding municipally owned courses"* was deleted and in such manner that the act passed the House. On July 1, 1933, the Senate concurred in the amendment with such language deleted.

As stated in *Board of Education* vs. *Board of Education,* 112 O. S., 108, 114:

> "* * it is to be presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof."

See also, *Board of Education* vs. *Boehm,* 102 O. S., 293.

While in such cases the court was referring to the amendment of statutes after enactment rather than in the course of enactment, the reasons underlying such presumption would be equally applicable to a bill in the process of enactment. In view of the fact that the House of Representatives had just inserted the proposed subparagraph (6) in Section 5544-2, General Code, with language which would have clearly exempted municipally owned golf courses from the effect of the tax, I am unable to conceive of any plausible reason for the amendment thereof by the deletion of the language in question other than to include municipally owned golf courses as subject to the tax. The only other purpose it could have had was to enact a statute with ambiguous language therein. Such conduct on the part of the legislature is never to be presumed.

Such motive on the part of the legislature is supported by practical considerations. In many communities municipally owned golf courses are operated in competition with "fee courses" operated by private individuals or corporations. It might well have been the opinion of the legislature that it would have been inequitable to permit municipally owned golf courses to compete with other "fee courses" on an unequal basis; as, where one paid ten percent of the green

fees for taxes while the other engaging in similar business was not subject to the tax.

I am therefore of the opinion that municipally owned golf courses are subject to the tax levied by Section 5544-2, General Code.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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2822.

APPROVAL—RESERVOIR LAND LEASE FOR THE RIGHT TO OCCUPY AND USE FOR COTTAGE SITE AND DOCKLANDING PURPOSES AT BUCKEYE LAKE—OTIS M. McCLURE.

COLUMBUS, OHIO, June 15, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—Recently the Chief of the Bureau of Inland Lakes and Parks of the Division of Conservation in your department submitted for my examination and approval a reservoir land lease in triplicate, executed by the State of Ohio, through the Conservation Commissioner, to one Otis M. McClure of Columbus, Ohio. This lease, which is one for a stated term of fifteen years and which provides for an annual rental of twenty-four dollars payable in semi-annual installments, grants and demises to the lessee above named the right to occupy and use for cottage site and docklanding purposes that portion of the reservoir property at Buckeye Lake that is more particularly described as follows:

> Beginning at the southerly end of Lot No. 59, south of Lakeside and extending thence southeasterly along the waterfront, 100 feet to a point; thence southwesterly at right angles with the waterfront wall, 100 feet to a point; thence, northwesterly at right angles and parallel to the wall, 75 feet to the northerly State property line; thence northeasterly and northwesterly, 50 feet, more or less, to the southerly line of Lot No. 59; thence northeasterly along the said southerly lot line of Lot No. 59, to the place of beginning and being a part of the Southeast Quarter of Section 28, Town 17, Range 18, Fairfield County, Ohio.

Upon examination of this lease, I find that the same has been properly executed by the State of Ohio by the hand of the Conservation Commissioner and by Otis M. McClure, the lessee therein named.

I further find, upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with section 471 and other sections of the General Code relating to leases of this kind. I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*