under the lien law, the provisions for the enforcement of the law are limited to municipal corporations and do not apply to the state, and hence there is no method by which a lien against the state may be enforced."

The above case was affirmed by the Circuit Court on October 21, 1910, in a memorandum opinion wherein the court says:

"We think that the judgment of the lower court should be affirmed for the reasons given by Judge Kyle in his opinion * * * ."

The above case is cited in *State of Ohio* vs. *The Citizens Trust and Guaranty Company, et al.*, 15 O. N. P. (N. S.) 149, the second paragraph of the headnotes reading as follows:

"A mechanics' lien filed on property belonging to the state is void, and it follows that a proceeding does not lie to subject funds in the hands of the state to payment of claims for work and material which went into a state building under a contract which was abandoned before completion."

Section 2316 of the General Code, which sets forth the terms and conditions of the bond to be given by contractors engaged in work on public buildings, provides that:

"Such bonds shall also be conditioned for the payment of all material and labor furnished for or used in the construction for which such contract is made. The bond may be enforced against the person, persons or company executing such bond by any claimant for labor or material, and suit may be brought on such bond in the name of the State of Ohio on relation of the claimant within one year from the date of delivering or furnishing such labor or material, in the court of common pleas of the county wherein such labor or material are delivered * * * ."

For the reasons stated in the above authorities, it is my opinion that Section 8324 of the General Code does not apply to construction work on public buildings in charge of the Division of Public Lands and Buildings, and that material men and others who have furnished material, machinery or fuel, or have performed labor in connection with the construction of such buildings should find their remedy in the provisions of Section 2316 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

63.

SPECIAL ASSESSMENTS—BOARD OF EDUCATION—UNDER SECTION 3822 G. C. REIMPROVING OF STREET DOES NOT APPLY TO PROPERTY WHERE NO ASSESSMENT HAS BEEN PAID—HOW BOARD OF EDUCATION MAY BE ASSESSED.

SYLLABUS:

The limitation of assessments for the reimproving of a street provided in Section 3822 of the General Code, does not apply to property of a board of education for which

no assessment has been paid either by reason of the fact that no assessment was levied, or, if such assessment has been made, because the same remains uncollected, and such property may on such reimprovement be assessed to the full amount of the cost of the proposed improvement subject to the general limitations provided for in Section 3812 et seq., of the General Code.

COLUMBUS, OHIO, February 10, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication, which is as follows:

"Section 3822 G. C. reads:

'When an assessment is levied for the reimprovement of any street, for the original improving of which an assessment has theretofore been levied and paid, there shall be deducted from the assessment calculated as an assessment for an original improvement, one half of the amount paid on the highest prior assessment, but in no case shall the assessment for such reimprovement be reduced to less than fifty per cent of what it would have been as an original assessment, unless council deems a greater reduction equitable and all amounts deducted under this section shall be paid as part of the municipal corporation's portion of the cost of the reimprovement.'

The Supreme Court of Ohio recently decided that special assessments for street improvements etc., levied against property owned by a board of education could be collected. In the past many municipal corporations have failed to make detailed assessments against boards of education's property and in those instances where assessments were levied no collection has been made.

When assessments are levied for the reimproving of streets may properties, owned by boards of education, which have never paid an assessment for the original improvement be assessed for the full amount of such improvement?"

Your letter does not disclose whether, for the original improvement, an assessment was actually levied against the property of the board of education, or whether due to the recognized inability to collect any such assessment, none was ever made against the property. From my view of the matter, however, it is immaterial which course was pursued, inasmuch as the same conclusion must be reached.

The recent decision of the Supreme Court to which you refer, is that of Jackson vs. Board of Education of Cedarville township, 115 O. S., page 368. That decision overruled what theretofore had been regarded as the settled law of Ohio, and held that a board of education owning school property abutting on a proposed improvement could be assessed proportionately for the cost thereof.

The general right of municipalities to levy special assessments for local improvements has at all times been recognized as constitutional, and the method of such assessments is specifically defined by statute.

Section 3812 et seq., of the General Code give, in detail, the statutory method to be pursued in making an assessment. The Constitution of Ohio has given to the Legislature in Section 6, of Article 13, the authority to restrict the power of municipalities as to assessments. The language of that section is as follows:

"The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation,

assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

Pursuant to this section the legislature has provided the limitation set forth in Section 3822 of the General Code, which you quote in your letter. For the purpose of clarity, it may be well to paraphrase the language of this section.

When the reimprovement of a street is contemplated, this section provides that the assessments shall be calculated as if the improvement were an original one. In other words, the first steps taken are exactly the same as though the assessment were to be made under the provisions of Section 3812 et seq., of the General Code. Thereafter, however, it is necessary to go back to the records of the original improvement and ascertain just what assessments have theretofore been made against the particular properties involved for the same kind of an improvement. If it be ascertained that prior assessments for the improvement of the street have been *levied and paid,* then the present contemplated assessment must be reduced by deducting therefrom one half of the *amount paid* on the highest prior assessment. I assume that the Legislature, in using the words "highest prior assessment" had in mind the possibility of there having been more than one prior improvement on the street. There is the further qualification that this reduction shall in no case extend to more than fifty per cent of the assessable cost of the present improvement unless the council deem such further reduction equitable. Amounts deducted are to be paid as part of the municipal corporation's portion of the cost of the reimprovement.

It will thus be seen that the section in reality provides an exemption, upon terms, from the general power of municipal corporations to levy assessments, and in the absence of this section the whole cost of the reimprovement might properly be assessed under the provisions of Section 3812 et seq., of the General Code.

It is essentially a restriction upon the otherwise general power of levying assessments.

It is a general rule of statutory construction, that provisions exempting from the otherwise general application of a law must be strictly construed. Before one may take advantage of such an exemption it must be clearly shown that he comes within the strict terms of the provision.

Applying this rule to Section 3822 of the General Code it seems to me obvious that the Board of Education is not within the terms of that section and is not entitled to the benefits of its exemption. You will note that the section lays stress on the fact that an assessment must have theretofore been not only levied but *paid.* This is, in my opinion, a condition precedent, which must exist before any of the other terms of the section become operative. In the absence of proof thereof, the assessment as for an original improvement must stand undisturbed. It is here conceded that no assessment was ever paid on this property for any previous improvement, and the conclusion is inescapable that the board of education is therefore not entitled to the benefits of the exemption provided in Section 3822 of the General Code.

I do not deem it of any importance that the assessment was theretofore not paid by reason of judicial authority. The legislature has made the existence of a fact the controlling element and the reason why that fact fails to exist appears to me to be immaterial.

A casual examination of the language of Section 3822 might at first raise some doubt as to the exact meaning. It might possibly be suggested that the use of the word "assessment" has application to the legislation assessing all properties for the improvement. In other words, the construction might be suggested that if general assessments were levied and paid for the improvement of a street within certain limits, one half the lump sum so assessed and paid by the property owners should be deducted from the assessable cost of the present contemplated improvement.

I do not deem such an interpretation of the language of the section proper. It seems to me that the section fairly contemplates an individual computation for each piece of property. This being true, if any particular lot or parcel has for any reason whatsoever theretofore not been subjected to an assessment, the general authority remains to assess the entire cost upon such property within the general limitations prescribed in Section 3812 of the General Code. This interpretation is substantiated by the fact that in cases arising under this section, particularly Page vs. Columbus, 15 O. C. C., (N. S.) page 40 (Affirmed, 86 O. S., 33) evidence was adduced as to the individual assessment made upon the particular property and not as to the assessment as a whole.

It might possibly be argued that the prior assessment against the property of the school board was, in effect, paid, because the money evidently came either out of the general fund of the municipality or out of the municipality's portion of the improvement. Such a construction of the section however, appears to me to be strained. The legislature undoubtedly intended to permit the exemption only in case the particular property had already borne a previous assessment. Since this was not the fact, and the portion of the cost of the improvement properly chargeable against the property was borne by the general tax payers, the exemption provisions do not come into operation.

You are therefore advised that where assessments are levied for the reimprovement of streets, property owned by boards of education which have never paid any assessment for any previous improvement of such streets may be assessed for the full amount of such improvements within the general limitations prescribed by Section 3812 et seq., of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

64.

TOWNSHIP ROAD—SECTION 7177 G. C. APPLIES TO ROAD ESTABLISHED AS LINE OR BOUNDARY OF TOWNSHIP OR MUNICIPAL CORPORATION—VILLAGE COUNCIL HAS NO AUTHORITY TO REPAIR SAID ROAD LYING WHOLLY WITHOUT CORPORATE LIMITS.

SYLLABUS:

1. *General Code Section 7177 does not apply to an existing township road lying entirely without the corporate limits of a village, such section relating only to a road established as part of the line or boundary of a township or municipal corporation.*

2. *There is no authority in law for a village council to repair, or assist the township trustees in repairing, a township road lying wholly without the corporate limits of such village, notwithstanding the fact that the boundary of said village has been extended by the annexation of territory to the boundary of such township road.*

COLUMBUS, OHIO, February 10, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of January 14, 1927, in which you quote a letter received from the solicitor of the village of Pataskala, Ohio.

In the letter quoted, the solicitor states that a road known as Vine street is, and has been for about fifty years, a township road; that in December, 1915, an addition, known as Bishop and Brown's Addition, was annexed to the village of Pataskala;