The same reasoning is applicable in the case of assessments for county roads and ditches. In the statutes applicable thereto, provision is made that the assessments be certified to the county treasurer and collected as other taxes, but in the case of county ditches and roads it is to be observed that provision is already made that the assessments shall be payable in semi-annual installments.

It follows, from what has been said, that the penalty provided by Section 5678 of the Code would only accrue on one-half of the annual assessment if it be not paid prior to the February settlement.

Accordingly, and in specific answer to your inquiry, I am of the opinion that:

(1) Where, under existing provisions of law, special assessments are certified to the county treasurer for collection in the same manner and at the same time as other taxes, such assessments are payable in two semi-annual installments, at the December and June collections, respectively.

(2) The penalty prescribed for the non-payment of assessments only accrues with respect to the portion thereof remaining unpaid at the tax settlement succeeding the tax collection period at which such portion was payable.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2011.

MUNICIPALITY—MAY NOT ERECT SANITARY PLANT WITHOUT APPROVAL OF STATE HEALTH DEPARTMENT.

SYLLABUS:

A municipality may not acquire, erect or construct a "sanitary plant," as defined in Section 4467, General Code, for the treatment, purification or disposal of either liquid or solid wastes of such municipality without first securing the approval of the State Department of Health.

COLUMBUS, OHIO, June 23, 1930.

HON. CHARLES A. NEAL, *Director of Health, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge your request for my opinion, which request is as follows:

> "Section 4469, G. C., requires the approval of the State Department of Health of plans for a sanitary plant designed to dispose of sewage, garbage, night-soil, dead animals, etc. This section is part of an act passed by the General Assembly, April 16, 1900, and is found in Vol. 94, page 342, Ohio Laws. The same act is also found at page 383 in the same volume.
>
> By referring to this act you will note that it is complete in that it contains, in addition to the authority to provide such a plant, for the financial program including the issuing of bonds, sinking fund and maintenance.
>
> Since this act was passed but two sets of plans have been submitted to the State Department of Health for approval. Both of these came from the city of Lakewood. The first set of plans was considered and approved by this department, as the legislation definitely stated that the plant was being constructed under the provisions of this act. The second set of plans is now in the department for approval, but so far as I can determine the legislation does not specify that the plant is being constructed under the provisions of Section 4467, et seq. of the General Code.

Unless the legislation specified that the bonds were to be issued under the provisions of this act, the Department of Health has concluded that it did not have jurisdiction in the approval of plans for a garbage disposal plant unless such plant had a liquid waste which would bring it under the provisions of Section 1240-1, G. C.

We are in doubt, however, as to our conclusion, due to the fact that the Uniform Bond Act (112 v. 364) repealed Sections 4471 which provided for the reissuance of bonds, and 4475 which provided for sinking fund and maintenance, the effect of which would possibly make this act of a more general nature and applicable to any plant for the disposal of garbage, refuse, etc.

We shall be glad to have your opinion as to whether or not the Department of Health has jurisdiction in the approval of plans for any form of garbage or refuse disposal mentioned in Section 4467, G. C., unless the legislation providing for such plant definitely specifies these sections as the authority under which the plant is to be constructed and operated. We do not confuse this authority with that given in Section 1240-1, General Code, which applies to a garbage disposal plant having a liquid waste."

Section 4469, General Code, to which you refer, provides as follows:

"Upon obtaining the approval of the state board of health, the council may contract for, erect and maintain a sanitary plant or plants on the lands so acquired with all necessary buildings, machinery, appliances and appurtenances for the treatment, purification and disposal in a sanitary and economic manner of the sewage or garbage, night-soil, dead animals, offal, spoiled meats and fish or other putrid substances or any liquid or solid wastes or any substance injurious to the health of the municipality."

The sanitary plant referred to herein, which may be erected subject to the approval of the State Board of Health, is defined in Section 4467, General Code, which is the first of this group of sections relating to the acquisition, construction and maintenance of such plants. It is as follows:

"The term 'sanitary plant,' as used herein, shall mean a structure with necessary land, necessary fixtures, appliances and appurtenances required for the treatment, purification and disposal in a sanitary manner of either or both the liquid or solid wastes of the municipality."

Under the provisions of this last quoted section, it is obvious that the sanitary plant referred to in Section 4469, supra, is a plant for the disposal of liquid, as well as solid, wastes of a municipality. Sections 4471 and 4475 of this group were repealed by the 87th General Assembly, as you state, for the obvious reason that their provisions have been supplanted by the provisions of the Uniform Bond Act and the Budget Law. Section 4471 authorized the issuance of bonds for the purpose of acquiring or constructing such sanitary plant, and Section 4475 related to the levy of a tax to meet the interest and principal requirements of such bonds. Municipalities now have clear authority under the Uniform Bond Act to issue bonds for such purpose and the matter of a tax levy to meet the interest and principal requirements of such bonds and disposition of the proceeds thereof, the funds to be established, etc., are provided for by the Budget Law.

The question which you present becomes one of whether or not the legislature intended to leave with the State Department of Health th duty to approve the plans for a sanitary plant as defined in Section 4467, supra, notwithstanding the fact that

it has withdrawn the special authority to issue bonds for such purpose on account of the subject matter being covered in the Uniform Bond Act. A general consideration of the responsibilities, functions and duties of your department is necessary.

Under the provisions of Section 1240, General Code, no system for supplying water, for purifying or treating water or for disposing of the sewage of a municipality may be installed until the plans therefor have been submitted to and approved by the State Department of Health. The provision of Section 4469, supra, to the effect that a sanitary plant for the treatment, purification or disposal of both liquid and solid wastes of a municipality may be acquired or erected subject to the approval of the State Board of Health, is thoroughly consistent with the provision of Section 1240 just referred to. Section 4474, General Code, provides that a sanitary board shall have the control of the erection and maintenance of sanitary plants and that such board "in its discretion may modify the original plans and specifications, subject to the approval of the state board of health." The intent is obvious that no such plant may be constructed in this state which does not meet with the approval of the State Board of Health. The legislative policy of vesting in the State Board of Health the supervision of all matters relating to the preservation of the life and health of the people of this state was discussed by Donahue, Judge, in the case of *Board of Health* vs. *Greenville,* 86 O. S. 1. The language of the court at pp. 25, 26, is pertinent:

> "In granting to a municipality certain powers to be exercised for the benefit of the public health of that municipality the state has not relinquished its authority and control in this important particular over any of the territory comprised within the limits of the state. The duties and powers of the State Board of Health extend throughout the state irrespective of political divisions or territories embraced within municipalities. Section 1237, General Code, provides that: 'The state board of health shall have supervision of all matters relating to the preservation of life and health of the people and have supreme authority in matters of quarantine, which it may declare and enforce, when none exists, and modify, relax or abolish, when it has been established. It may make special or standing orders or regulations for preventing the spread of contagious or infectious diseases, for governing the receipt and conveyance of remains of deceased persons, and for such other sanitary matters as it deems best to control by a general rule.' Section 1238 provides that: 'Local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables and other officers and employes of the state or any county, city or township, shall enforce the quarantine and sanitary rules and regulations adopted by the state board of health.' These general provisions for the preservation of the life and health of the people of this state are no more suspended in the territory comprised within a municipality than are the criminal laws of the state, and the case now under consideration would illustrate the folly of a state delegating to any municipality full and complete control of matters pertaining to the public health. A municipality might then in the preservation of sanitary conditions in its own territory work incalculable mischief to the health and comfort of people living in adjacent territory. To prevent this being done, it is primarily necessary that there should be one central authority clothed with the power of affording equal protection to all."

Again at p. 30, the court said:

> "Cities are no longer enclosed by stone walls and separate and apart from the balance of the state. The sanitary condition existing in any one city of the state is of vast importance to all the people of the state, for if

one city is permitted to maintain unsanitary conditions that will breed contagious and infectious diseases, its business and social relation with all other parts of the state will necessarily expose other citizens to the same diseases. With the wisdom or folly of withholding from the local authorities final discretion over these matters, we are not concerned. It is beyond question the right of the general assembly to do so, and the court need not, and ought not to, inquire what motives moved it in withholding such power."

Consistent with the theory that the state has the final approval as to the installation of any appliances for the disposition of wastes or sewage of municipalities, it is provided in Section 3891 as follows:

"A municipal corporation may purchase and hold land outside of the corporate limits, to be used as a sewerage farm, to construct and maintain thereon all the necessary appliances for the proper dispositions of the sewage of such corporation, under such rules and regulations as shall be prescribed by council and approved by the state board of health."

Section 3649, General Code, being contained in Chapter 1, Title XII, Division II, which is the chapter enumerating the powers of municipal corporations, is as follows:

"To provide for the collection and disposition of sewage, garbage, ashes, animal and vegetable refuse, dead animals and animal offal and to establish, maintain and regulate plants for the disposal thereof."

I find nothing inconsistent in this section with the other sections of the General Code hereinabove quoted and commented upon, placing the final approval as to appliances or works for the disposition of waste matter of municipalities, both liquid and solid, upon the State Board of Health. There is no question but that the authority and power to dispose of such waste is vested in the first instance in the municipalities themselves, subject, however, to the approval of the State Board of Health.

In view of the foregoing, it is my opinion that a municipality may not acquire, erect or construct any plant or works for the treatment, purification or disposal of either liquid or solid wastes of such municipality without first securing the approval of the State Board of Health.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2012.

BOARD OF EDUCATION—AUTHORITY TO PERMIT USE OF SCHOOL BUILDING FOR KINDERGARTEN SCHOOL CONDUCTED BY A BOARD MEMBER—CONDITIONS NOTED.

SYLLABUS:

A board of education may lawfully permit the use of a building owned by such board for the conducting of a private school therein whether such private school is conducted by a member of the board and a tuition fee charged or not, so long as such use does not interfere with the primary use of the building for which it was con-