"Under Sections 11419-42 of the General Code, found in Volume 114, page 205, Ohio Laws, the law of this state is stated as follows:

'The ballots shall be uniform slips of paper, and the name of each person on the jury list who is qualified and liable for jury duty, with his residence, shall be written separately on an individual ballot.'

Under that sentence of the General Code, the jury commissioners of this county desire to know whether the names and addresses may be typewritten or whether they must be written by long hand?"

Your question involves the interpretation of the phrase "shall be written." In Anderson's law Dictionary, under the title "writing," the statement is made that words traced witht pen, or stamped, printed, engraved or made legible by any other device are "written".

An examination of the statute in question and its correlative statutes discloses no reasons or policy which would either require the writing of such names and addresses in long hand or which would prohibit such writings to be done by typewriter.

A few of the cases which hold that typewritten words are "written" withtin the meaning of various statutes requiring documents to be "written" are:

Johnson vs. *Mangum* (Tex.), 227 S. W. 750;

Prudhomne vs. *Savant* (La.), 90 So. 640;

Pingree Nat. Bank of Ogden vs. *McFarland* (Utah), 195 P. 313.

Hunt vs. *Dexter Sulphite Pulp and Paper Co.*, 91 N. Y. Supp. 279.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that under Section 11419-42, General Code, the name and address of each person on the jury list who is qualified and liable for jury duty, may be typewritten separately on an individual ballot for the purpose of selection from the jury wheel.

Respectfully,
GILBERT, BETTMAN,
Attorney General.

4520.

PUBLIC LIBARARY—INTANGIBLE TAX— BUDGET COMMISSION SHOULD CERTIFY TO TAXING AUTHORITY AMOUNT REQUESTED FOR SUCH PURPOSES.

SYLLABUS:

When the needs of a public library for the year 1932 *or* 1933 *are in excess of the amount of taxes levied for such purposes during the year* 1930, *the budget commission, when such need is certified to it, should deduct from such estimated needs of the public library the amount of taxes levied for such library for the year* 1930 *and should include such excess in its computations in preparing the budget which can be assessed within the limitations of law, and when it has determined that such excess may be levied by a taxing authority within the limitations of law it should certify such finding to the tax levying authority in order*

that it may levy a tax on the taxable property within such taxing district to the amount of the excess so found.

COLUMBUS, OHIO, July 25, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

> "The Public Library of the school district of Cincinnati has operated under contract with the Board of County Commissioners of Hamilton County under favor of Section 2455 of the General Code. A new contract which both boards can agree upon is now suggested to be made for the year 1933.
>
> The Board of Trustees has sent a communication to the County Commissioners, stating the amount of money necessary to increase, maintain and manage the library for the year 1933 and requesting that a levy be made on the valuation of the taxable property in Hamilton County under Section 2456 and the Act of April 13, 1927, by which is meant Section 5625-6, General Code, and related sections. While operating under contract, copy of which is enclosed herewith, and an extension thereof for the year 1932, no levy was made in the year 1931, to be collected in 1932, although levies had been made for prior years. This was because it was thought the library was to be supported entirely by the intangible tax.
>
> In view of your Opinions Nos. 3810 and 3903 for 1931 and in view of the comment under Section 5403-3 found in Page's Annotated Ohio General Code.
>
> 'Public library trustees and township park districts are to receive their entire budget from the intangible tax fund,'
>
> I am in doubt as to how to advise the County Commissioners in connection with the request of the Library Trustees for a tax levy,"

I am informed that "the Public Library of the school district of Cincinnati" is a school district library organized under the provisions of Sections 7635 et seq. General Code.

From the enclosure accompanying your request I learn that on the 16th day of May, 1930, the board of trustees of such library entered into an agreement with the board of county commissioners of Hamilton County agreeing to furnish "library service free to all of the residents of Hamilton County." This agreement was evidently entered into pursuant to the authority contained in Section 2455, General Code, which reads as follows:

> "A library association or other organization, owning or having the full management or control of a library, or a board of trustees appointed by authority of law and having the management or control of a library free to the whole or a part of a county may contract with the county commissioners for the use thereof by the people of such county."

After entering into such contract the country commissioners are authorized by Section 2456, General Code, to levy a tax for the purpose of per-

forming its part of such contract. Such section reads as follows:

> "A county accepting such bequest or gift, or entering into such agreement, shall faithfully maintain and provide such library. At their June session each year, the commissioners thereof may levy a tax not to exceed a half mill on each dollar of taxable property in such county. The fund derived from such levy shall be a special fund, known as the library fund, and shall be used only for the purpose contemplated in this section."

The enclosed copy of agreement contemplates the levying of a tax by the county commissioners in an amount sufficient to take care of the entire needs of the library for the entire county to the exclusion of the tax which might be levied by the board of education library pursuant to Section 7639, General Code. I am therefore rendering no opinion as to the right of the board of education to levy a tax in behalf of such library by virtue of the provisions of such section.

Since the contract was entered into under date of May 16, 1930, I assume that the county commissioners at their June session in the year 1930 levied a tax pursuant to the agreement. You do state, however, that at the June session in 1931, no levy was made for the purpose of performing the contract for the reason that the county commissioners relying on the language of Section 6, of Am. S. B. 323, enacted by the 89th General Assembly, assumed that they would receive the amount of tax levied for library purposes in the year 1930. I am informed that by reason of this assumption, together with other causes, there will be a deficit in the operating expenses of the library for the current year. Your inquiry then resolves itself into a question of whether or not the county commissioners may, during the years 1932 and 1933, when the needs of a public library are in excess of the amount levied by Am. S. B. 323 for such purpose during the year 1932, levy a tax on the taxable property in such county for this amount.

In Section 6, of Am. S. B., 323, enacted by the 89th General Assembly, the following language is contained:

> "In preparing the tax budget for the years 1932 and 1933, under section 5625-20 of the General Code, the taxing authorities of each subdivision shall estimate that said subdivision will receive from the intangible tax fund the full amount to which such subdivision is entitled under the provisions of this section, to be apportioned among the several funds, including funds for the payment of interest, sinking fund and retirement charges on bonds, in accordance with the provisions of this act."

The words "is entitled under the provisions of this section" refer back to the second preceding paragraph in such section; "to each board of public library trustees the amount of taxes levied for library purposes in the year 1930."

The express language of this section is to the effect that when the needs of the subdivision are presented to the budget commission the commission shall deduct therefrom the amount of taxes which were assessed for such purpose for the year 1930. Thus, if the estimated needs for the purposes of libraries for the year 1933 were $350,000, and during the year 1930 there had

been assessed by Hamilton County, for library purposes, the sum of $250,000, the budget commission would be required to assume that the library would receive $250,000 from the so-called intangible tax and could include in the budget only the sum of $100,000.

Your inquiry suggests that Section 6, of Am. S. B. 323, supra, might repeal by implication the provisions of Section 2456, General Code, and you quote a comment which you state follows Section 5403, in Page's Annotated General Code. You also cite my opinions Nos. 3810 and 3903 as causing doubt in your mind as to the construction of such Section 6. In my opinion No. 3810 I held, as stated in the second paragraph of the syllabus, as follows:

> "The budget commission in determining the amount to be taxed for the purposes of the Cleveland Public Library should deduct from the amounts certified to it an amount equal to the tax levied for library purposes for the tax year of 1930 and base any assessment which it makes upon the product arrived at in this manner."

In my opinion No. 3903 I did not construe this portion of Section 6, but held that all public libraries, regardless of whether they were board of education libraries, township libraries, county libraries, county district libraries or municipal libraries, were entitled to share in the distribution of the tax during the years 1932 and 1933 by reason of the language contained in the fifth paragraph of such section.

A subsequent enactment by the legislature, which does not in express terms repeal an earlier section, should never be held to repeal an earlier enacted section unless the language of such section is contradictory to such extent that the provisions of the later act are "incongruous and irreconcilable with the old statute." (See *City of Cleveland* vs. *Purcell,* 31 O. App. 495). There must be such repugnancy that the provisions of the two sections cannot be given effect at the same time by any mode of interpretation. (See In re. Hesse, 93 O. S. 230, 234; *State* vs. *Building Commission,* 123 O. S. 70.) In other words, the provisions of the new act must so revise the *whole subject matter* covered by the former section as to show that the legislature clearly intended the provisions of the new act to supersede the provisions of the former and to clearly indicate that the legislature failed to expressly repeal the former section through inadvertence.

The language of Section 6, supra, does not indicate such intent on the part of the legislature to repeal Section 2456, General Code, and I do not believe there is any real inconsistency between their provisions when read together. It is uniformly held that it is the duty of a court to give effect to the provisions of both sections, if possible, by any mode of construction. (See In re. Hesse, supra).

I believe that my former opinion No. 3810 will give effect to the provisions of both sections, and shows the legislative intent as expressed throughout the entire act (Am. S. B. 323).

Specifically answering your inquiry, it is my opinion that, when the needs of a public library for the year 1932 or 1933 are in excess of the amount of taxes levied for such purposes during the year 1930, the budget commission, when such need is certified to it, should deduct from such estimated needs of the public library the amount of taxes levied for such library for the year 1930, and should include such excess in its computations in preparing the budget which can be assessed within the limitations of law, and when it has determined that such excess may be levied by a taxing authority,

within the limitation of law, it should certify such finding to the tax levying authority in order that it may levy a tax on the taxable property within such taxing district on the amount of the excess so found.

Respectfully,
GILBERT, BETTMAN,
Attorney General.

4521.

CONSERVATION COUNCIL — UNAUTHORIZED TO LEASE OR PURCHASE LANDS FOR PUBLIC FISHING.

SYLLABUS:

The Conservation Council has no power to lease or buy lands under and along both sides of streams in order to allow the public to fish under such restrictions as are deemed necessary by the Council.

COLUMBUS, OHIO, July 25, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This acknowledges the receipt of a recent communication from Hon. William H. Reinhart, Conservation Commissioner, which reads as follows:

> "Please render an opinion on the following:
> Can the Division of Conservation legally lease or buy land under and along both sides of streams in order to allow the general public to fish, under such restrictions as are deemed necessary and lawful by this Division?"

The Conservation Council, being of statutory origin, has only such powers as are expressly granted thereto and such additional powers as are necessary to carry the express powers into effect.

A review of the various statutes relative to the authority of the Conservation Council is therefore necessary to a determination of your inquiry. Section 1435-1, General Code, reads in part as follows:

> "The conservation council shall be empowered to acquire by gift, lease or purchase suitable lands or surface rights upon suitable lands, for the purpose of establishing thereon public hunting grounds as a state game refuge. * * * It may also acquire by gift, lease or purchase suitable land for the purpose of establishing state fish hatcheries and may erect thereon such buildings or structures as it shall deem necessary.
>
> The title or lease to any and all such lands shall be taken by the division of conservation in the name of the state of Ohio, and when so acquired the entire supervision of such lands shall be under the division of conservation. The lease or purchase price of any and all such lands may be paid for from hunters' and trappers' license funds."