at the same time and have practically the same status. In this opinion it was clearly inferred that a special constable appointed under either of the sections hereinbefore quoted, must have the qualifications of an elector. In that case the court dismissed an attachment proceeding because the evidence disclosed that the special constable appointed to serve the process was not a resident of the township from which the justice issuing the same was elected. The fifth branch of the head-notes of said case is as follows:

> "Proof that the special constable, appointed to serve the process, was not an elector of the township in which the action was brought, is ground for discharge of an attachment based upon such service."

From the foregoing, it must be concluded that a person cannot be appointed either as a constable to fill a vacancy under the provisions of Section 3329, General Code, or as a special constable under the provisions of Sections 3331 or 1732, General Code, unless he possess the qualifications of an elector.

You are therefore specifically advised that the person whom you mention in your communication may not legally be appointed constable in a township in which he does not reside, or in which he has not the qualifications of an elector.

In view of the conclusion that I have reached, it is unnecessary to consider the other phase of your question in reference to the service of civil or criminal papers in townships other than the one from which he is appointed, for the reason that if he cannot be legally appointed constable in the township in which such an attempted appointment was made it necessarily follows that he is unqualified to serve process in any township.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3107.

TAX AND TAXATION—EXEMPTION OF PUBLIC COLLEGES INCLUDES PROPERTY OCCUPIED, RENT FREE, BY PRESIDENT AND PROFESSORS.

SYLLABUS:

Section 5349, *General Code, exempting from taxation "public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit", is not limited to such buildings and property as may be used exclusively for literary and educational purposes but includes all property with reasonable certainty used in furthering or carrying out the necessary objects and purposes of such institutions. College property consisting of residences occupied, rent free, by the president or professors thereof, though not used exclusively for educational or literary purposes, are exempt from taxation under said section.*

COLUMBUS, OHIO, January 5, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

"Under date of September 12, 1928, the Commission received an application for exemption of property belonging to the Western Reserve University, Cleveland, Ohio. At the same time we received three other applications for exemption of property in the title of the Western Reserve University, about which later three in the opinion of the commission there is not any question as to its exemptability. It is in relation to the one first referred to, tax commission's number 2383, that we desire to ask the opinion of the attorney general.

It is stated in the application that the house is used for higher education, but to be more specific the Treasurer, Sidney S. Wilson, informed the Auditor of Cuyahoga County as follows:

'This house will be occupied by Dr. J. H. H., recently of the University of Michigan, a very eminent English scholar whom the University is proud to add to its Graduate School Faculty. President V. is anxious to have him undertake a project which will be new at Western Reserve, and which will add prestige not only to the University, but to the community and the City, so that while the house will be occupied by Dr. H. and his family as a private residence, it will attract students of English to his home and will be a part of his compensation; this was one of the inducements by which we were able to bring Dr. H. to Cleveland, in the attempt to create a new approach to the study of English literature. It will be a very unique experiment and I trust that you can see your way clear to recommend to the Tax Commission the exemption from taxation of this property.'

It is to this question that the commission addresses the Attorney General for light. We have been unable to find just the thing, in the light of the assertion above quoted, that will permit us to exempt the property, taking into consideration the fact that it was a part of the contract of the university with the professor to furnish him a residence in which he and his family were to live.

The question of the tax commission is, does the description of the purpose and use of the property come within the purview either of Sections 5349, 4759 and 7915-1, which are the only sections this commission is able to find as having to do with exemption of the property of colleges, universities and schools."

The constitutional authority for the exemption of property from taxation is contained in Section 2 of Article XII of the Ohio Constitution, and reads in part as follows:

"Laws shall be passed, taxing by uniform rule, * * * all real and personal property according to its true value in money, * * * but burying grounds, public school houses, * * * public property used exclusively for any public purpose, * * * may, by general laws, be exempted from taxation; * * * ."

Section 5349, General Code, enacted in conformity with the foregoing constitutional provision, reads as follows:

"Public school houses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public

> institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state, but leaseholds, or other estates or property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for the support of free education by such city, village, district or subdistrict."

In the application for exemption it is stated that the house in question is used for higher education and the treasurer of the Western Reserve University stated to the county auditor that:

> "This house will be occupied by Dr. J. H. H., recently of the University of Michigan, a very eminent English scholar whom the University is proud to add to its Graduate School Faculty. President V. is anxious to have him undertake a project which will be new at Western Reserve, and which will add prestige not only to the University but to the community and the City, so that while the house will be occupied by Dr. H. and his family as a private residence, it will attract students of English to his home and will be a part of his compensation; this was one of the inducements by which we were able to bring Dr. H. to Cleveland, in the attempt to create a new approach to the study of English literature. It will be a very unique experiment, and I trust that you can see your way clear to recommend to the Tax Commission the exemption from taxation of this property."

The difference in the phraseology in the constitutional provision and in the statute is quite apparent. The subject of exemption in the former is "public school houses" and not "public colleges and academies and all buildings connected therewith and all lands connected with public institutions for learning not used with a view to profit." It might appear that the constitutional provision exempting public school houses only would not justify statutory exemption of public colleges and academies and all buildings connected therewith and all lands connected with public institutions of learning not used with a view to profit. A reading of Section 2 of Article XII literally, without reference to its legislative interpretation, as shown by the history of Section 5349, supra, would indicate that the statutory provision is unauthorized by the constitution. However, the object of interpretation is to ascertain the intention of the law-making body, whether that body consists of the people in adopting constitutional amendments or the General Assembly in enacting legislation.

In *Raffner* vs. *Hamilton,* 12 Dec. Rep., 571, and in many other cases, it has been held that an interpretation of a constitutional provision by the legislature contemporaneous with the adoption of the constitution is of great weight. It has also been held that long continued interpretation on the part of administrative officers and acquiescence on the part of the public, in cases of doubt, is of very great weight although not absolutely controlling. See *State ex rel. Smith* vs. *State,* 71 O. S. 13.

Section 5349 was passed immediately after the adoption of the Constitution and has ever since been in force.

In enacting Section 5349 at that time, the Legislature very clearly negatived the idea of only exempting public school houses. It went further. In positive terms it provided not merely for the exemption of public school houses, but for the exemption of "public colleges and academies and all buildings connected therewith and all lands connected with public institutions of learning not used with a view to profit." This much is clear. This interpretation by the General Assembly has been followed by the administrative officers and has been acquiesced in by the taxpayers and the public in general from the time of the adoption until the present time.

It is therefore clear that the property of public colleges and academies and all buildings connected therewith and all lands connected with public institutions of learning not used with a view to profit are exempt from taxation. The question here presented, however, is whether the house belonging to said educational institution and occupied by a member of its graduate school faculty and his family, as a private residence, comes within the exemption as defined in Section 5349, General Code, said occupation of said residence being a part of the professor's compensation as provided in the contract of the University with said professor.

In the case of *Kenyon College* vs. *John K. Schnebly, Treasurer,* 31 Cir. Ct. Rep. p. 150, the court was construing Section 2732, Revised Statutes, now Section 5349 of the Code, and held, as stated in the syllabus, as follows:

> "Section 2732, Rev. Stat., exempting from taxation 'all colleges, public academies, all buildings connected with the same and all lands connected with public institutions of learning, not used with a view to profit' is not limited to such buildings and property as may be used exclusively for literary and educational purposes but includes all property with reasonable certainty used in furthering or carrying out the necessary objects and purposes of such institutions. Hence, college property consisting of residences occupied rent free by the president, professors and head janitor thereof, though not used exclusively for educational or literary purposes, are exempt from taxation under Section 2732, Rev. Stat.
>
> A contract by which certain persons were to take charge of and conduct a grammar school and preparatory department for a college and pay the college a stipulated sum yearly, and encourage students subsequently to attend the college, the college also applying part of the money received from such students for improvements, etc., on the property, is not a contract with a view to profit on the part of the college within the meaning of Section 2732, Rev. Stat., and such property is not taxable.
>
> Vacant and other unproductive lands of a college are within the provisions of Section 2732, Rev. Stat., exempting 'all lands connected with public institutions of learning, not used with a view to profit;' but lands used and rented for agricultural and pasturing purposes and a water pumping station, supplying water to buildings and residences of college professors and vending the same to citizens of the town where located, being for revenue are subject to taxation."

This case was affirmed without report in the case of *Schnebly* vs. *Kenyon College,* 81 O. S. 514.

It is further stated in said opinion, at page 151, that:

> "It appears that the college has a number of residences which are occupied by the members of the faculty of the college. It has been the policy of the college to permit such of its professors as are married, and

also its president, to use these residences, rent free. It further appears that they are primarily residences, and no literary exercises or instructions are conducted therein."

It is also stated at page 153, et seq.:

"In the case of *Little* vs. *Seminary*, 72 Ohio St. 417, 428 (74 N. E. Rep. 193), the Supreme Court, in effect says, that the court in its interpretation of statutes is not required or permitted to go beyond the plain meaning of the language which the Legislature has used to express its intention.

So that we must determine whether or not it was the legislative intent that the residences of professors or the residences occupied by the president and professors, are exempt from taxation, judging from the plain meaning of the language employed. While the college is a 'corporation,' it is also defined as the 'building' or 'collection of buildings used by the college.' Another meaning is, 'A society of scholars, incorporated for the purposes of study or instruction.' So that the plain meaning of this statute is as follows: 'All public colleges, public academies, all buildings connected with the same, are exempt from taxation.' All buildings connected with the same refers to 'public colleges' and 'public academies,' and refers to buildings that are associated with, or assist in carrying out, the uses and purposes of the institution known and designated by the terms, college or academy.

It is urged upon our attention by the defendant, that these houses or residences are not used, 'exclusively,' for literary purposes, and that unless used exclusively for literary purposes, or for the purpose of instruction, that they are not exempt.

But there are many buildings connected with colleges and academies which are necessary for the proper conduct of the business of the college, in which literary exercises do not take place, and which are not employed for the purpose of giving instruction. Many buildings are employed for the purpose of storing the necessary equipment and apparatus of the college, or for the purpose of carrying on the experiments, or for the purpose of storing the archives and records of the college, and conducting its financial affairs; yet, because these, or any of these, are carried on in the buildings, or a portion thereof, it cannot be said, that they are not devoted to the uses and purposes of the college. It appears that the occupation of these residences grew from the necessities of the case; that adequate accommodations and facilities were not at hand for the president and professors.

We can see no difference between these members of the faculty occupying these residences, free of rent, than if they were lodging in the other buildings of the college; but the plain language of the statute is, 'All public colleges, public academies, or buildings connected with the same, are exempt.' And we think it was the purpose to exempt all buildings that were with reasonable certainty used in furthering or carrying out the necessary objects and purposes of the college. We do not think the term, 'not used with a view to profit' refers to or controls the clauses, 'all public colleges, public academies, or buildings connected with the same,' but refers simply to the clause preceding it in the statute—'all lands connected with public institutions of learning, not used with a view to profit.' But it is insisted that the case of *Kendrick* vs. *Farquhar*, 8 Ohio 189, is a case controlling this question. That being the case in which the direct question was in-

volved, as to whether a house occupied by the professor was exempt from taxation under the law, as it then stood. But looking to the law at that time there was an expressed exclusion from exemption of buildings, or any of them, not occupied for literary purposes, and, upon this provision of the law, it was held that the residences occupied by professors were subject to taxation. So that, with this view of the law and its construction, we think the residences occupied by the president and professors and the janitor, are exempt from taxation.

* * * * * *

But speaking with reference to these buildings and the residences hereinbefore mentioned, it is strongly urged upon our attention that the case of *Watterson* vs. *Halliday*, supra, is controlling in this case. Counsel urge upon our attention the following part of the opinion of the court found on page 180, to wit: 'The use to which the property is devoted determines its right to exemption, under any clause of the section,' and claim that the uses to which those buildings and lands are devoted are for the purpose of securing a revenue, and that being so devoted to this purpose, they are not exempt; that the residences fall within the same class as the parish houses or parochial residences of the priests and bishops, which it was claimed were exempt in the case under consideration.

But an examination of this case discloses that the Legislature has used entirely different language with respect to parish houses and residences of priests and bishops of the Roman Catholic Church, or of any other church, than that which is employed in respect to buildings connected with public colleges and public academies. The language of the statute which was under consideration in this case is as follows: 'All public school houses and houses used exclusively for public worship'; it being claimed further that these residences or parish houses were buildings 'belonging to institutions of purely public charity.'

The court in this case based its decision upon two grounds; 'That the houses were not used exclusively for public worship; neither were they buildings belonging to institutions of purely public charity; the court finding that the Roman Catholic Church, while it is engaged in charitable works, its chief and primary object was not charity, but its chief and primary purpose and object was the teaching and extending of its recognized form of religious belief and worship into all parts of the world, and was founded to continue the work of Christ upon earth and to teach, govern, sanctify and save all men.'

So that we think that the case at bar is clearly distinguishable from the case of *Watterson* vs. *Halliday*, supra.

In view of the constitutional and statutory provisions herein quoted, and the reasoning and conclusions of the cases herein cited, it is my opinion, specifically answering your question, that the dwelling house belonging to the Western Reserve University and occupied, rent free, by Dr. J. H. H., one of its professors, and his family, as a private residence, should be exempted from taxation.

Respectfully,
EDWARD C. TURNER,
Attorney General.