wherein more than one tenant or water taker is supplied with one hydrant, etc., as mentioned in said section. It therefore would seem rather absurd that the Legislature would contemplate the certification in the one instance and not make such requirement in others, which is another argument for my conclusion above stated.

While the foregoing is dispositive of your first inquiry, an entirely different situation exists with reference to a board of public affairs operating under the provisions of Section 4361, General Code. This section expressly authorizes the trustees to make such by-laws and regulations as it may deem necessary for the management of the waterworks when such regulations are not repugnant to the ordinances of the municipality or the constitution or laws of the state. The section further expressly authorizes such trustees in the management of waterworks to assess a water rent of sufficient amount "in such manner as they deem most equitable upon all tenements and premises supplied with water", and "when such rents are not paid, such trustees may certify the same to the auditor of the county in which such village is located, to be placed on the duplicate and collected as other village taxes or may collect the same by an action at law in the name of the village." Clearly, the latter section authorizes in express and unambiguous language the certification and placing of such assessments upon the duplicate. It will further be noted that this section is general in its application in so far as the certification and collection is concerned thereby applying to all delinquent unpaid assessments.

In view of the foregoing, and in specific answer to your inquiries, I am of the opinion that:

1. There is no authority which authorizes the certification of delinquent water rentals to the county auditor by a city. Neither is there any authority authorizing the county auditor to place such certification upon the tax duplicate for collection.

2. By reason of the express provisions of Section 4361 of the General Code, the board of public affairs of a village may legally certify to the county auditor the delinquent water rentals. Upon such certification, the county auditor is required to place the same upon the tax duplicate for collection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1204.

STATE OFFICE BUILDING—RIGHT OF CITY OF COLUMBUS TO DONATE RIVER FRONT TO STATE FOR SUCH BUILDING, DISCUSSED.

SYLLABUS:

Should the river front site be selected for the state office building, the City of Columbus may lawfully convey the property necessary therefor in view of the fact that the incidental benefits accruing to the city, as distinguished from the state, by reason of such conveyance, constitute adequate value therefor.

COLUMBUS, OHIO, November 18, 1929.

HON. CHARLES D. SIMERAL, *Executive Secretary, The Ohio State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication in which you state that the State Office Building Commission is considering among others, what is known as the river site, and you inquire whether the city has the right to give to the State property

which has heretofore been acquired by it for park purposes and has been paid for with bonds issued specifically for that purpose.

In order that an adequate consideration of your question may be had, it becomes necessary to recite certain of the history relating to the efforts of the State to erect a new office building for State employes.

In 1923, the Legislature of Ohio passed an act creating a commission to acquire a site, and provide for the erection thereon of a state office building. (110 O. L. 149). No action was taken thereunder which resulted in the selection of a site for an office building, and the said act was repealed in 1925, and a new act passed, entitled: "An Act providing for the creation of a state office building commission." (111 O. L., 475). By the terms of Section 3 of the said act of 1925, the commission was empowered to acquire by purchase or condemnation a site for a state office building at one of several prescribed places. No site having been selected by authority of the said act of 1925, the Legislature in 1929 amended several sections of the former act (113 O. L., 58) including sections 1 and 3 thereof, thereby changing the personnel of the commission and causing Section 3 of the act to read as follows:

> "The commission is hereby empowered to * * * acquire a site for a state office building * * * directly opposite the State House grounds on Broad, Third, State or High Streets or may acquire a site outside of the area above set forth but conveniently located near the state capitol in the city of Columbus, Ohio. * * * The commission is hereby empowered to acquire such land by purchase, gift or * * * appropriation in the manner hereinafter provided. If the commission is unable, within sixty days after the going into effect of this act, to purchase said land or any part thereof for a reasonable amount, the commission shall institute proceedings to appropriate such property in the manner provided by law for the appropriation of property by the Superintendent of Public Works and such proceedings shall be instituted in the name of the State and it shall be the duty of the Attorney General to represent the state in such proceedings.
>
> If a site is selected the whole or part of which belongs to the city of Columbus, Ohio, said city of Columbus is hereby empowered to convey, transfer, assign, and deliver to the State of Ohio without cost any and all title or interest which it may have in and to any lands within the boundary lines of the site so selected. In such event the city of Columbus is likewise empowered to vacate any streets or public thoroughfares within such boundary and to open and establish new streets which, with the consent of the commission may be established through part of the land acquired by the commission."

The State Building Commission, appointed in pursuance of legislation providing for its creation, as amended in 1929, now has under consideration several suitable sites for the state office building, but has not definitely selected any particular one. As one of the sites that is being considered includes property belonging to the city of Columbus, it becomes important, for the purpose of arriving at the comparative cost of the several sites under consideration, for the Commission to know whether or not the city of Columbus lawfully may convey, without cost, to the State of Ohio, its title and interest in lands which it owns within the boundary lines of the proposed site, if that site is eventually selected and the city chooses to donate the lands as the statute is clear and unambiguous language authorizes it to do.

The questions arising in this connection are:

First, whether or not the city of Columbus possesses such title to the lands in question that they may be diverted to other uses than the particular use for which

they were acquired, without first acquiring any reversionary interest that attaches to said property if in fact there is attached to the property a reversionary interest.

Secondly, if it should be determined that the city possesses a fee simple absolute title, without restriction as to alienation, to any lands lying within the boundaries of a site selected by the Commission for the State Office Building, has it the power, even though expressly authorized so to do by the Legislature, to convey these lands to the State of Ohio free of charge? In other words, has the Legislature the constitutional power to authorize the city to convey its property to the State without cost to the State?

One of the proposed sites which the Commission has under consideration is located south of Broad Street and west of Front Street, with its northerly boundary on Broad Street, its southerly boundary on Town Street and extending along said Front Street from Broad Street to Town Street, having a depth westerly from Front Street sufficient to provide space for the purposes of the office building to be erected.

If that site is selected, it will be necessary for the State to acquire, by purchase or condemnation, the lands lying between Broad and Town Streets, bounded by Front Street on the east and Scioto Street on the west, consisting of city lots Nos. 111 to 124, inclusive. When these lots are acquired, the State will own all the abutting property on Capital Street between Front and Scioto streets, on State Street between Front and Scioto Streets and on Chapel Street between Front and Scioto Streets, which portions of Capital, State and Chapel Streets must necessarily be vacated for street purposes in order that the State may have a clear and contiguous tract of land from Broad to Town Street for building purposes.

After this property is acquired, as stated above, the State will own the entire frontage on the easterly side of Scioto Street between Broad and Town Streets, and the city of Columbus will own the entire frontage on the westerly side of Scioto Street from Broad Street to Town Street.

The portions of Capital, State and Chapel Streets from Front Street to Scioto Street, and of Scioto Street from Broad Street to Town Street were each dedicated for street purposes at the time the city of Columbus was first laid out, as is shown on the original plat of said city of Columbus. These portions of streets may be vacated by action of the council of the city of Columbus, upon petition of the abutting owners, in the manner provided by statute. See Sections 3725, et seq., General Code.

If action is taken vacating the aforesaid portion of Scioto, Capital, Chapel and State Streets, the land now occupied by the streets will revert to the abutting owners, as successors in title to the original dedicators. *The Kinnear Manufacturing Co., et al.* vs. *Beatty,* 63 O. S., 264; *Kerr* vs. *Commissioners,* 42 O. L. B., 193; *Stevens* vs. *Shannon,* 6 O. C. C., 142.

If this site is selected by the Commission, it will be necessary in order to make the site suitable for the purposes of the Commission, for the State to acquire not only the lands heretofore mentioned, to wit, city lots Nos. 111 to 124, inclusive, and the lands now occupied by Capital Street, State Street and Chapel Street from Front Street to Scioto Street, but all the portion of Scioto Street between Broad and Town Streets, and a small strip of land consisting of about .12 of an acre lying immediately west of the present westerly line of Scioto Street, which land is now owned by the city of Columbus. If Scioto Street between Broad and Town Streets is vacated by proper proceedings after the State acquires the land mentioned, there will revert to the State of Ohio as the abutting owner, the easterly half of the portion of the streeet so vacated, and to the city of Columbus the westerly half of the lands so vacated for street purposes. The city now owns all the land west of Scioto Street to the Scioto River between Broad and Town Streets included within which is the .12 acre strip of land mentioned above.

The city acquired the lands between Scioto Street and the Scioto River, and Broad Street and Town Street by purchase, in most instances. Some few parcels of

this land were acquired by condemnation. All of this land has been acquired by the city since 1920, and in each instance, whether the land was acquired by purchase or condemnation, a fee simple title was acquired. See Section 3691, General Code. The lands thus acquired were paid for with the proceeds of a bond issue authorized by Ordinance No. 33,302 of the council of the city of Columbus, which ordinance authorized the issuance of bonds "to pay the cost and expense of acquiring by purchase or condemnation proceedings the real estate on the east bank of the Scioto River between Broad Street and Town Street for park and boulevard purposes and for improving said property."

The city is now constructing a wall along the east bank of the Scioto River for the purposes of protecting the east bank of the river and the sewers and other public property located there. No part of this wall, however, will be on property needed by the State for its office building site, and the construction of the wall will in no way interfere with, or delay the State in acquiring or utilizing its site for an office building if it should determine to acquire the site here under consideration for that purpose.

It is the intention of the city, I am informed, to vacate Scioto Street between Broad and Town Streets, and to re-establish a street or boulevard farther west toward the river, on lands lying west of the present westerly line of Scioto Street whether the State locates the State Office Building in this locality or not. This contemplated relocation of Scioto Street and the improvement of the river front at this point is in furtherance of a concerted plan which for several years has had as its objective the improvement of the Scioto River front through the city, and the development, both north and south of Broad Street, of a civic center, consisting of the grouping of public buildings and the embellishment of the grounds surrounding those buildings with parks and boulevards. In furtherance of this objective, there have already been constructed immediately north of Broad, and east of Water Street, the new City Hall and Safety Building, and the city is now constructing a boulevard and developing a park site along the east bank of the river from Broad Street northerly to Spring Street.

The fact that the land which it will be necessary to acquire from the city, if the site here under consideration is chosen, was acquired by the city in the first place for street, boulevard and park purposes, does not prevent the city from conveying a clear absolute estate in fee simple to said property to be used for other purposes than street, park and boulevard purposes, especially since clear and positive statutory authority exists therefor, and this is so even though the declared purpose of acquiring these lands was for park and boulevard purposes or for street purposes.

The city, upon acquiring the lands west of Scioto Street, took a fee simple title to those lands and no reversionary right exists in the original owner if the lands are diverted to some other use than the purpose declared upon acquiring them. Likewise, if Scioto Street is vacated, the city, as the owner in fee simple of the abutting property, succeeds to the same title to the land of the abandoned street that the original dedicator had, which we may safely assume at this time is a fee simple title, the street having been originally dedicated more than one hundred years ago.

The quality of a title such as the city will have in all this land upon the vacation of Scioto Street and the right of the city to sell it for other than street or park purposes were involved in the cases of *White* vs. *City of Cleveland*, and five other cases involving the same questions decided by the Circuit Court of Cuyahoga County in 1911 (14 C. C. (N. S.) p. 369).

The City of Cleveland owned certain lands fronting on Lake Erie which it had acquired for park purposes. In 1906, the Legislature passed an act, Section 18 of which provided that when a municipality appropriates land "upon the payment or deposit by the corporation of the amount assessed, as ordered by the court, an absolute estate in fee simple shall be vested in such corporation, unless a lesser estate is asked for in

the application." Thereafter, the council of the city of Cleveland authorized the re-appropriation of the lands in question "for park purposes."

Section 24 of the said act of 1906 authorizes a municipal corporation owning land to sell the same under certain circumstances to a railroad company.

After re-appropriation by the city of Cleveland, as authorized by its council, the city undertook to sell a portion of said land to a railroad company for depot purposes. An injunction was sought to prevent this disposition of the property. It was claimed that the council knew at the time it authorized the re-appropriation the purpose for which the fee simple title was sought, that is, to enable the city to sell the property to the railroad company. The court held:

> "Said act of 1906 although it authorizes the completion of the title to the park property for the purpose of turning over part of it to the railroads for depot purposes, is constitutional, and it is no objection to the councilmanic proceedings authorizing the reappropriation, that the councilmen had the latter purpose in mind when they voted to complete the title 'for park purposes' only."

This case was affirmed by the Supreme Court without report, 87 O. S. 483.

Said Section 18 of the act of 1906, spoken of above, was later codified as Section 3691, General Code.

I am firmly of the opinion that although the city of Columbus acquired the lands in question for street, park and boulevard purposes, that fact does not prevent it from conveying the property to the State of Ohio for the purpose of constructing thereon a state office building.

A more difficult question arises with reference to whether or not this conveyance may be made without cost to the State.

It is a well established principle of law that municipal corporations have such powers only as are granted to them by statute or by the Constitution.

The power granted by the Legislature to the city of Columbus to convey this property to the State of Ohio without cost is stated in clear and unambiguous language. The only question is whether or not the Legislature lawfully may grant such power to a municipality, in view of the constitutional provisions relating to taxation.

Section 2, Article XII, of the Constitution of Ohio, provides among other things: "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money." Then follow certain exceptions not material to our present inquiry.

As the source of revenue of all public corporations such as municipalities is the power of taxation, any course of conduct which affects the tangible property of a municipality, either by reducing or increasing the assets of the corporation, directly affects the amount of revenues which must necessarily be raised by taxation and thus, in the last analysis, must be governed by the limitations imposed upon the power of taxation.

Uniformity of taxation as provided for by the State Constitution is required throughout the territorial limitations of any taxing district. If the tax is a State tax, it must be uniform throughout the State. If it is a county tax, it must be uniform throughout the county and, if a city tax, throughout the city or if a school tax, throughout the district. In order to give validity to any demand made by the State upon its people under the name of a tax, it is essential not only that the purpose to be accomplished thereby shall be public in its nature, but it is equally essential that the purpose shall be one which, in a substantial and peculiar manner, pertains to the

district within which it is proposed that the tax be collected, and which concerns the people of that district more particularly than it does others.

Taxes are collected as proportionate contributions to public purposes, but to make them such in a true sense, they must not only be such as between the persons called upon to pay them, but also those who ought to pay them. It is therefore of prime necessity in taxation that it should first be determined what public, whether State or local, should bear the burden and that it should then be imposed ratably, as between those who constitute that public. Commenting on this subject, Cooley, in his work on Taxation, Fourth Edition, Section 314, says:

> "If a single township were to be required to levy upon its inhabitants and collect and pay over to the State whatever moneys were necessary to pay the salaries of the several state officers, it would be apparent, 'at first blush,' that the enactment was not one which, either in its purpose or tendency, was calculated to make the taxpayers of that township contribute only their several proportions to the public purpose for which the tax was to be levied. If, on the other hand, for the purpose of purchasing and ornamenting a city park or any other improvement of mere local convenience, a tax should be imposed upon the whole state, it would be equally manifest that equality and justice were not the purpose of the imposition, but that, if carried into effect, the people of the state not residing in the city would be compelled to contribute to a purpose in which, in a legal sense, they had no interest whatever. * * *
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> The cases suggested are extreme cases, but the principle that controls them is universal, and a disregard of it is fatal to the tax; and whether the unjust consequences are slight or serious is unimportant. Where the principles of taxation are disregarded, every one is entitled to claim strict legal right; for in no other way can the power be restrained from perversion and oppression. It can therefore be stated with emphasis that the burden of a tax must be made to rest upon the state at large, or upon any particular district of the state, according as the purpose for which it is levied is of general concern to the whole state, or, on the other hand, pertains only to the particular district. A state purpose must be accomplished by state taxation, a county purpose by county taxation, and a public purpose for any inferior district by taxation of such district. This is not only just but it is essential. * * * This principle has met with universal acceptance and approval because it is as sound in morals as it is in law.
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> In cases where the character of the work, as local or general, is plain, the rule of right is clear. If a single locality were to assume to tax itself, or the state were to undertake to tax it, for the construction of a state work or the erection of a state building, no one could hesitate for a moment in saying there was no such right, and that there could be none so long as taxation by the fundamental law is required to be laid by fixed rules, and is not subject to the arbitrary caprice of legislative bodies. * * *
>
> So in Ohio a tax for an armory cannot be imposed by a county, for this reason; and a county tax to secure the location of a state institution in such county, by purchasing a site and constructing buildings, is held to violate such a provision."

In support of the author's reference to Ohio, in the last sentence of the above quotation, there are cited the cases of *Wasson* vs. *Wayne County Commissioners,* 49 O. S., 622, and *Hubbard* vs. *Fitzsimmons,* 57 O. S., 436. In the former of these cases it was held that an act of the Legislature authorizing the several counties of the state to raise money to secure the location of the Ohio Agricultural Experiment

Station, and to provide for such location, was unconstitutional, as being violative of Section 2 of Article XII of the Constitution. It was held that the Ohio Agricultural Experiment Station was a state project and its maintenance was a state function and that it was not within the power of the Legislature to authorize a county or any subdivision of the state to tax local property for the purpose of securing and maintaining a State institution.

Following the Wasson case, the Supreme Court in the Hubbard case, supra, held void an act of the Legislature authorizing the commissioners of any county containing a city of a certain grade to borrow money and issue bonds for the purpose of building and furnishing an armory in such city for the use of the Ohio National Guard, because it was an attempt to make a general State purpose the subject of a local imposition. The first branch of the syllabus of this case reads as follows:

> "The erection of an armory for the use of the national guard is a general purpose of the State, and taxes to be devoted to that purpose, must, in obedience to the requirement of Section 2, of Article 12 of the Constitution, be levied by a uniform rule upon all the taxable property within the State."

The two Ohio cases mentioned above are clear and to the point. They frequently have been cited by textwriters and commentators as dispositive of the question passed on therein, so far as Ohio is concerned. See Dillon on Municipal Corporations, 4th Ed., 2346; Cooley on Constitutional Limitations, page 1059; Cyc., Vol. 37, page 723, and Cyc. Vol. 36, pages 987 and 1008.

The cases have not been overruled and have consistently been referred to by the courts with approval. In later cases the Supreme Court apparently has somewhat modified the rule laid down in the Wasson and Hubbard cases, supra, to the effect that, where some incidental benefit flowed to the municipality, then though another taxing subdivision was receiving the greater benefit, a municipality lawfully might donate property for the use of the other political subdivision. *State ex rel.* vs. *Turner, Attorney General,* 93 O. S., 379; *Cleveland* vs. *Library Board,* 94 O. S. 311. The first branch of the syllabus of the Cleveland case, supra, reads as follows:

> "A municipal corporation has no authority to donate real or personal property to the trustees of a public library of a school district within which such municipality is situated. (*Wasson et al.* vs. *Commissioners,* 49 Ohio St., 622; *Hubbard, Treas.,* vs. *Fitzsimmons,* 57 Ohio St., 436, *and The State ex rel. The Clemmer & Johnson Co.* vs. *Turner, Attorney General,* 93 Ohio St., 379, approved and followed.)"

Under the facts presented, however, in the particular case, it was held that an incidental benefit inured to the city of Cleveland, by reason of the location of the school district public library upon the lands which the city proposed to donate to the library board, and that therefore the conveyance was lawful.

The situation with which we will be confronted with reference to the city's right to donate property to the State if the building commission selects this site, bears very close analogy to the situation passed upon by the court in the Cleveland Library case, supra. It would be a distinct advantage to the city to have the State Office Building located on this site, inasmuch as it would further the purposes of the city in the development of its civic center and the beautifying of the river front.

It must be borne in mind that, aside from the office building project, the city's development of the property here under consideration, for park and boulevard purposes, would necessarily be confined within narrow bounds. The property owned is very limited, and the existing physical situation is such that, after a boulevard is com-

pleted such as is called for under present plans, very little existing city property will be available for park purposes.

On the other hand, the tentative plans for the erection of a State Office Building upon this site make it clear that there will be grounds surrounding the building much more extensive in size than any grounds which would be available for park purposes were the city to proceed alone. Of course, strictly speaking, these grounds would not be municipal park grounds, but I believe we may justifiably take notice of the fact that the grounds surrounding the present statehouse are, in effect, park grounds, available and actually made extensive use of by the citizens of Columbus. Assuming that similar conditions would exist with reference to the grounds surrounding the contemplated building, then it would seem clear that the use of the site by the State would create an incidental municipal benefit. These facts, when properly presented to a court, would in all probability bring the present situation within the rule announced by the Supreme Court in the case of *Cleveland* vs. *Library Board, supra.* However, inasmuch as under that decision it becomes a question of fact, and not one purely of law, I am unable to make my answer to your inquiry more definite than to state that, in my opinion, the facts are such as would probably appeal to the court as furnishing adequate value and justifying the conveyance by the city.

In your letter you also inquire as to the possibility of any undue delay incident to litigation arising out of the selection of the so-called river site. Every official action on the part of public officers involves the possibility of resort to the courts to test the validity of such action. It does not, however, follow that any undue delay will be occasioned thereby. I feel confident that any questions brought before the courts in matters involving substantial public interests will receive prompt and expeditious treatment.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1205.

TOWNSHIP TRUSTEE—EMPLOYED BY SURVEYOR TO WORK ON ROAD CONSTRUCTED BY COUNTY, BUT PARTLY FINANCED BY TOWNSHIP—LEGAL.

SYLLABUS:

A township trustee may be employed by a county surveyor on a road which is being constructed by a county, notwithstanding the township trustees are contributing to the financing of such project under the provisions of Sections 6906, *et seq., of the General Code. Under such circumstances the limitations provided in Section* 3294 *of the General Code have no application.*

COLUMBUS, OHIO, November 18, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

> "The county surveyor has advised with me recently relative to a question that is bothering him somewhat as is set out in the following paragraphs.