not at the time of the enactment of said section, authorized the inclusion of compensation and damages as an item in assessments for state aid projects as contrasted with county and township projects.

For the reasons given, you are advised that where county commissioners make application to the state for aid in improving a highway, and additional right of way is required for the carrying out of the improvement project, the cost of such additional right of way must be borne by the county alone, and is not to be treated as an item of cost and expense either for the purpose of calculating distribution of cost as between state and county or for the purpose of calculating distribution of cost as between county, township and property owners.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2377.

BOND ISSUE—PURPOSE TO COMPLY WITH ORDER OF STATE BOARD OF HEALTH—NOT NECESSARY TO SUBMIT QUESTION OF ISSUANCE OF BONDS TO VOTERS.

It is not necessary to submit the question of the issuance of bonds to the voters when said bonds are issued for the purpose of complying with an order of the state board of health.

COLUMBUS, OHIO, August 26, 1921.

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

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department as follows:

> "By virtue of section 1251 G. C., the state health board ordered the village of Hillsboro, Ohio, to change the source of its water supply in a manner satisfactory to the commissioner of health. Said village has reached the limit of bonded indebtedness under section 3940 of one-half of one per cent. It is estimated that the changes ordered would cost not less than $10,000 for which bonds would have to be issued. Section 1259 G. C. provides in part that:
>
> 'Bonds authorized to be issued for any such purpose or purposes shall not exceed three per cent of the total value of all property in any city or village as listed and assessed for taxation and may be in addition to the total bonded indebtedness of such city or village otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote of the electors.'
>
> In view of the provisions of said section 1259 G. C., may the village of Hillsboro under the conditions above outlined issue bonds without vote of the people in excess of said one-half of one per cent limitation?"

Section 1254 G. C. provides authority for the order of the state board of health issued in the instant case.

Section 1259 G. C. is as follows:

> "Each municipal council, department or officer having jurisdiction

to provide for the raising of revenues by tax levies, sale of bonds, or otherwise shall take all steps necessary to secure the funds for any such purpose or purposes. When the funds are so secured, or the bonds therefor have been authorized by the proper municipal authority, such funds shall be considered as in the treasury and appropriated for such particular purpose or purposes, and shall not be used for any other purpose. The bonds authorized to be issued for any such purpose or purposes shall not exceed three per cent of the total value of all property in any city or village, as listed and assessed for taxation, and may be in addition to the total bonded indebtedness of such city or village otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote of the electors."

Section 1259-1 G. C. is as follows:

"Interest and sinking fund levies on account of bonds issued under section 1259 of the General Code, in compliance with orders of the state commissioner of health, shall be exempt from all the limitations on tax levies provided by sections 5649-2 and 5649-3a of the General Code. Such levies shall also be exempt from the limitations provided by section 5649-5b of the General Code, if the question of making such additional levy shall be submitted to the electors of the municipality issuing, or proceeding to issue, such bonds in the manner provided in sections 5649-5 and 5649-5a of the General Code, and the same is approved by a majority of the electors voting on such question; and the proper legislative authorities of any such municipal corporation are hereby authorized to submit such question in the manner provided in said sections of the General Code at any regular election or at a special election. The number of years for which such levy shall be authorized shall not be required to be printed on the ballot, and the approval of the electors shall constitute sufficient authority for the making of such additional levy annually, during the time for which the bonds are to run, or until the same are redeemed, or the redemption thereof with interest is fully provided for."

Under section 1259 G. C., above referred to, the state board of health is given authority to issue orders for the regulation of municipal water supplies and must naturally contemplate compliance therewith by the one to whom the order is directed. A village council has no discretion in the matter. They must comply and the people have no authority or discretion to regulate the order by vote.

Attention is directed to State, ex rel. The Merydith Construction Co. vs. Dean, Auditor, 95 O. S., 108, which is a case directly in point, wherein the court says in part as follows:

"The Bense act endowed the state board of health with tremendous powers. It gave the board authority to issue its peremptory mandate to municipalities, which must be complied with under penalty of criminal prosecution. Within the field so prescribed it created a superior and independent agency not only to issue its orders to protect the public health but also to see that these orders might not be ignored.

All laws newly passed by the general assembly must be presumed to harmonize with existing statutes on kindred subjects not either

expressly or impliedly repealed. Therefore, when the general assembly empowered the state board of health to issue its orders to municipalities, the effect of which would be to require the incurring of large indebtedness, amounting in the instant case of $375,000, and knowing as it must have known that our municipalities were already overburdened with bonded indebtedness, many of them up to the limit of the Longworth act, it was the most natural and proper thing to provide some means to meet the extraordinary situation thus created. It must not be overlooked that the bonded indebtedness thus required, so far as the municipality is concerned, is altogether involuntary. Not only is the council wholly without discretion in the matter, but the electorate of the city is not to be consulted; indeed it could not be forbidden by a vote of the people.

* * * * * *

A reading of section 1259 clearly demonstrates that the municipality so issuing its bonds would not have to look beyond the terms of the section itself to obtain its authority in the premises, but, if there be any misconception in this regard, a consideration of supplemental section 1259-1 renders it clear as the English language can be expressed that the municipality so issuing its bonds did not have to look to the Longworth act for a grant of power, for by this supplemental enactment reference is made to interest on account of *bonds issued under section* 1259, *General Code.*

The drastic nature of the Bense act is more clearly comprehended when we ascertain that the general assembly in its passage, in order to make its provisions at all workable, abrogated three of the most familiar laws on our statute books—laws that have become firmly and fairly a part of the state's public policy.

These laws so set aside are: The Longworth act, the Burns law, and the Smith one per cent law.

These restrictive and safeguarding statutes, beneficent as they are, were they applicable to the Bense act, would make involuntary lawbreakers of most every municipal officer in the state.

We hold that the power to issue bonds to comply with orders of the state board of health is provided by section 1259, General Code, and we further hold that the limitations of the Longworth act, section 3952, General Code, do not govern.

The language of section 1259 on this aspect is unmistakably clear, when read with the knowledge of what is to be accomplished by the legislation. It must be noted that it is provided that 'The bonds authorized to be issued for such purpose shall not exceed five per cent of the total value of all property in any city or village, as listed and assessed for taxation, and may be in addition to the total bonded indebtedness otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote.'

* * *

The one, two and one-half, and five per cent limitations of the Longworth act are to have application to enterprises initiated by municipalities, and to its necessities, locally created; but the state, while imposing duties and responsibilities on municipalities involving large expenditures of money, very justly and quite necessarily opened up a new avenue for municipal credit."

It is therefore the opinion of this department that the municipal council shall pass the proper legislation for the issuance of bonds in the amount

necessary to comply with the order of the state board of health and that said bond issue is not to be submitted to the people.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2378.

TAXES AND TAXATION—WHERE TAXPAYER ERRONEOUSLY VALUES PROPERTY FOR TAXATION IN HIS RETURN—WHEN SUCH ERROR MAY NOT BE CORRECTED UNDER EITHER SECTION 5624-10 G. C. OR 2588-9 G. C.

Where a taxpayer erroneously values property for taxation in the return made by him, because of an honest mistake as to the existence of facts which it was his duty to ascertain in the first instance; and property so listed is entered on the tax list and duplicate by the county auditor at the valuation so made, such over-valuation does not constitute an error which the tax commission of Ohio may correct under section 5624-10 of the General Code.

Such an assessment is not an erroneous one which the county auditor may correct under section 2588-9 of the General Code.

COLUMBUS, OHIO, August 26, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission encloses in a recent letter copies of letters received by it from the auditor of Stark county and from a firm of attorneys in Dayton, Ohio, and requests the advice of this department as to the power of the county auditor to correct the tax list and duplicate on the basis of facts outlined in these letters respectively, and the power of the commission under section 5624-10 of the General Code to take similar action.

In the one case a corporation making its return for the year 1920 listed certain property at the value at which it had been purchased from a former owner. This value included good will, so that the listed value is considerably in excess of the true value in money of the specific property covered by the return. The corporation's notice was not directed to this until payment of the second half of the taxes was due. In the other case one of two or more testamentary trustees made a tax return in 1920 for the estate, in which he listed certain notes at their face value. His co-trustee has just discovered the facts respecting the value at which these notes were listed and is prepared to show that some of the notes are entirely valueless and others are not worth their face.

The time has gone by when the jurisdiction of the board of revision respecting any complaint that might have been filed on account of these facts under section 5609 G. C. could lawfully have been revoked; hence the questions dealt with in an opinion of the commission of recent date respecting the correction of mistakes of fact by boards of revision and by the tax commission on appeal from the decision of the board of revision do not arise in these cases. This seems to be conceded by both of the commission's correspondents, and it is thought, therefore, that the sections referred to in the commission's letter hereinbefore abstracted are the only ones under which relief, if any, may conceivably be had.