the term "services of a hospital" in the above section includes "nursing." Of course the term hospital in its strictest meaning connotes a building only. It would seem, however, construing the term "services of a hospital" liberally, as is the rule of construction in regard to sections relating to public relief and according to its usual meaning, the same would include nursing services.

In view of the provisions of section 3480-1, General Code, and in consideration of the fact that no legal procedure is disclosed in your communication as a result of which the patient in question became a county charge, I am of the opinion that upon compliance with the terms of section 3480-1, General Code, the payment for the services of nurses incurred in the care of an indigent insane person temporarily maintained in a city hospital, is a proper charge on the township in which said person had a legal settlement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4401.

MUNICIPALITY—MAY MAKE REASONABLE CHARGE FOR USE OF WATER METERS—FUND MAY NOT BE USED FOR GENERAL MUNICIPAL PURPOSES.

SYLLABUS:

1. *A non-charter city may make a reasonable charge for the use of its water meters by users of water supplied by it.*

2. *A charge for the use of city owned water meters cannot be levied as a tax for the purpose of raising revenue for general municipal purposes, and the payment into the general fund of money realized from meter rentals would constitute an unlawful transfer of funds.*

COLUMBUS, OHIO, June 8, 1932.

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

GENTLEMEN:—I acknowledge receipt of your recent communication which reads in part as follows:

> "At the request of the City Solicitor of Warren, Ohio, we are submitting the following question for your opinion:
>
> Is an Ohio non-charter city council vested with power, under Sec-3 of Article XVIII of the State Constitution, to levy and collect a meter use license tax from persons purchasing water from the city owned water system, through city owned meters?
>
> If an affirmative answer is given to the above, the further question arises whether, since the meters are owned by the water works department of the city, the revenue derived from such a license tax could be used for general purposes, and we ask that this question also be considered."

The city solicitor's letter, a copy of which was inclosed with your communication, shows that what is termed as a meter use license tax is a charge which is proposed to be made for the use of water meters.

Section 3619, General Code, gives municipalities the power "to apply moneys received as charges for water to the maintenance, construction, enlargement and extension of the works, and to the extiguishment of any indebtedness created therefor."

Section 3958, General Code, provides in part as follows:

> "For the purpose of paying the expenses of conducting and managing the water works, such director may assess and collect from time to time a water rent of sufficient amount in such manner as he deems most equitable upon all tenements and premises supplied with water."

I find no statute expressly authorizing a city to charge meter rentals. However, there is no statutory provision prohibiting such charges and under the home rule powers granted to municipalities by the Constitution, I am of the view that a reasonable charge for the use of water meters owned by the city may be made by it.

In the case of *Rogers* vs. *Cincinnati,* 13 O. A. 472, it was held that it is not an abuse of discretion on the part of the director of public service to require users of water to install meters and keep them in repair. If this is correct, then certainly there can be no objection to a city making a rental charge where it installs its own meters. *Cuningham, et al.,* vs. *Iola, et al.,* 86 Kans. 86.

However, this charge is not sought to be made for the purpose of paying a portion of the expenses of the water works system but is a tax that is to be levied upon consumers for the use of water meters for the purpose of using the money realized therefrom for general municipal purposes. In this state, a city, in the absence of any constitutional or statutory limitations, may impose a tax so long as the same field of taxation is not occupied by the state. *State, ex rel.,* vs. *Carrel, Auditor,* 99 O. S. 220; *Loan Company* vs. *Carrel, Auditor,* 106 O. S. 43; *Marion Foundry Company* vs. *Landes, Auditor,* 112 O. S. 166; *Cincinnati* vs. *A. T. & T. Co.,* 112 O. S. 493; *Firestone* vs. *Cambridge,* 113 O. S. 57; *Cincinnati* vs. *Oil Works Company,* 123 O. S. 448; *Stredelman* vs. *Cincinnati,* 123 O. S. 542.

In the case of *Cincinnati* vs. *Roettinger,* 105 O. S. 145, the court holds in effect that rates and charges for water cannot exceed the entire cost of the service which, of course, would include costs of operation, repairs, extensions and new construction. That case, however, applied only to rates or charges for water. The first branch of the syllabus reads as follows:

> "Section 3959, General Code, is constitutional and operates as a valid limitation upon the uses and purposes for which revenues derived from municipally owned waterworks may be applied. By virtue of the provisions of that section, surplus revenues derived from water rents may be applied only to repairs, enlargement or extension of the works, or of the reservoirs, and to the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt."

The court says on pages 154 and 155:

> "If the ordinance under consideration in this case amounts to an effort to levy taxes for general municipal purposes, and if the taxing power is legislative in its nature, then the legislature has the power to place such restrictions thereon as have in fact been provided in Section

3959, General Code. While the power of taxation is expressly committed to the general assembly, the power is not specially and specifically conferred by the Ohio Constitution, but it is contained in the general legislative grant conferred by Section 1, Article II. The special provisions in the constitution relating to the subject of taxation, found in Article XII and in Section 13, Article XVIII, are not delegations of authority upon the subject of taxation, but rater limitations upon the power otherwise generally conferred by Section 1, Article II. In the instant case the petition presents not a question as to whether it is lawful to impose a tax upon the consumption of water, but whether the legislature has in fact placed a limitation upon the power of assessing rates and charges. By virtue of the provisions of Section 10, Article XII of the Ohio Constitution, laws may be passed providing for excise taxes, and unless the legislature sees fit to place some limitation upon rates and charges for water, it would seem very clear that rates and charges might legally be made beyond the cost of furnishing the water. It seems very clear on the other hand that by virtue of the provisions of Article XII, and Section 13 of Article XVIII, the legislature has power to place limitations thereon; and the provisions of Section 3959 are in the nature of such limitation."

Section 3959, General Code, reads as follows:

"After paying the expenses of conducting and managing the water works, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for water works purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever."

The first sentence of this section and the part of section 3619, herein quoted, refer only to rents and revenues derived from the sale of water. The last sentence of section 3959 refers only to taxes which may be levied upon the real and personal property of the city for water works purposes. These statutes, therefore, impose no limitation upon the right to levy a tax in the nature of a water rental.

The court, in the case of *Cincinnati* vs. *Roettinger, supra,* held that the ordinance, which provided that water rates, in excess of the amount required for the entire expenses of the water works system, be used for general municipal purposes, also violated section 3799, General Code. This section read in part as follows:

"But there shall be no such transfer except among funds raised by taxation upon all the real and personal property in the corporation, nor until the object of the fund from which the transfer is to be effected has been accomplished or abandoned."

This section has since been repealed and the following statutes have been enacted:

Section 5625-9, General Code, provides:

"Each subdivision shall establish the following funds:
* * * * * * * * *
(g) A special fund for each public utility operated by a subdivision.
* * * * * * * * *"

Section 5625-13, General Code, provides:

"No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:
* * * * * * * * *
d. Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with section 5625-9, paragraph (d), (f), or (g) or section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.
* * * * * * * * *"

The question therefore presents itself as to whether the payment of the amount realized from the so-called meter use franchise tax into the general fund of the city operates as a transfer of funds in violation of law. The meters in question were purchased by money which was raised for water works purposes, either by taxation or by charges for water, and it is now sought to pay the money proposed to be charged for the use of such meters into the general fund for general municipal purposes. It could hardly be claimed that income in the form of interest on water works funds deposited in a bank could be paid into the general fund. Any such payment would doubtless be an illegal transfer of funds, and I am of the view that where money raised for water works purposes is invested in water meters, the income from such property in the form of rental for the use thereof, can only be used for water works purposes and any payment thereof into the general fund of a city to be used for general municipal purposes would be an unlawful transfer of funds.

Answering your inquiries, I am of the opinion that:

1. A non-charter city may make a reasonable charge for the use of its water meters by users of water supplied by it.

2. A charge for the use of city owned water meters cannot be levied as a tax for the purpose of raising revenue for general municipal purposes, and the payment into the general fund of money realized from meter rentals would constitute an unlawful transfer of funds.

Respectfully,
GILBERT BETTMAN,
Attorney General.