whether or not the August Primary may be regarded as a regular municipal election.

An examination of the other provisions of the Constitution of Ohio fails to throw any light upon the question. Without attempting to analyze all of the various provisions of the statute in which reference is had to various types of election, I deem it sufficient to call your attention to the case of Yeatman vs. State, 28 O. C. A., p. 10. The court in that case made an exhaustive analysis and review of all of the provisions of the constitution and statutes in an effort to arrive at a proper definition of the terms "regular," "primary", "general" and "special", when used with reference to elections. The conclusion of the court pertinent to our present consideration is found on page 13 in the following paragraph:

> "It therefore appears that the provisions of the Constitution and the General Code recognize 'regular' elections and 'primary' elections, and 'general' elections and 'special' elections. *The term 'regular election' seems to be used in the same way and to mean the same thing as the term 'general election'.*"

I see no reason to disagree with the conclusion of the court just quoted and am therefore of the opinion that the words "regular municipal election", as used in Section 8 of Article XVIII of the Constitution, has reference to the November election in the odd numbered years only.

In answer to your second inquiry, therefore, I am of the opinion that the August Primary at which municipal officers are to be nominated, is not a "regular municipal election" within the meaning of that term as used in Section 8 of Article XVIII of the Constitution and that the proposed ordinance to which you refer cannot be submitted to the people by a referendum at that time unless such date be designated as the date of a special election and all the necessary steps incident to the calling of a special election be taken.

Respectfully,
EDWARD C. TURNER,
Attorney General.

381.

SPECIAL ASSESSMENTS—SERVICE UPON THE BOARD OF EDUCATION OF NOTICE OF PASSAGE OF THE RESOLUTION OF NECESSITY—NO AUTHORITY TO SERVE BY PUBLICATION—ASSESSMENT ORDINANCES.

SYLLABUS:

1. *When it is sought to levy special assessments for street improvements on school property the notice of the passage of the resolution of necessity provided for in Section* 3818, *General Code, should be served on the board of education having title to said school property in the manner provided for the service of process on said board of education in civil cases. There is no authority to make such service by publication.*

2. *When properties of a board of education against which special assessments are levied do not appear in the assessment ordinance adopted in past years such assessment cannot be collected at this time.*

COLUMBUS, OHIO, April 25, 1927.

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

GENTLEMEN:—I am in receipt of your communication, requesting my opinion in answer to the following questions:

"QUESTION 1. When a city fails to serve notice on the board of education of the passage of a resolution of necessity for any such improvement may the assessment be subsequently collected from said board of education?

QUESTION 2. Could publication of the resolution of necessity constitute sufficient notice to the board of education?

QUESTION 3. When properties of the board of education against which special assessments are levied do not appear in the assessment ordinance adopted in past years for the reason that the city did not anticipate any such collection, could such assessments be collected at this date?"

Section 3818, General Code, provides as follows:

"A notice of the passage of such resolution (Resolution of Necessity) shall be served by the clerk of council, or an assistant, upon the owner of each piece of property to be assessed, in the manner provided by law for the service of summons in civil actions. If any such owners or persons are not residents of the county, or if it appears by the return in any case of the notice, that such owner can not be found, the notice shall be published at least twice in a newspaper of general circulation within the corporation. Whether by service or publication, such notice shall be completed at least twenty days before the improvement is made or the assessment levied, and the return of the officer or person serving the notice, or a certified copy of the return shall be prima facie evidence of the service of the notice as herein required."

It has been decided by the Supreme Court of Ohio in the case of *Joyce vs. Barron, Treasurer*, 67 O. S. 264, that the service of the notice provided for in Section 3818, supra, is jurisdictional, and is a condition precedent to the exercise of authority to pass a valid ordinance authorizing the improvement so far as the owner who did not receive the notice or upon whom notice was not served in accordance with the statute is concerned, and that no assessment could be made on his property unless he had been served with notice in accordance with the terms of the statute.

This statute requires that actual service must be made on the owner of each piece of property to be assessed, as summons are served in civil actions, unless such owner is a non-resident of the county or unless it appears that such owner cannot be found. If the owner is a non-resident of the county or cannot be found notice by publication may be given.

It is evident that the board of education which could be assessed by a municipal corporation is a resident of the county and can be found. There is provided no authority whatever to serve notice on such board of education by publication.

It is provided by Section 4749, General Code, that the board of education of each school district is a body politic and corporate and capable of suing and being sued, and contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property and it is provided in Sections 4683, 4690 and 4735-2, General Code, that in the event territory is transferred from one school district to another the legal title to the real estate so transferred is vested in the board of education to which the territory is transferred. It is clear therefore that the board of education is owner of the real estate belonging to the school district and I see no reason why the provision of Section 3816, supra, where it says that a notice shall be served upon the owner of each piece of property to be assessed does not apply to boards of education as well as to any other owner of property including corporations both private and public.

Section 4672, General Code, provides that "process in all suits against a board of education shall be by summons which shall be served by leaving a copy thereof with the clerk or president of the board." This is the only provision of law setting

forth how service may be made on a board of education but it is clear that it is the policy of the law that boards of education should receive proper notice of any proceedings in which they were interested the same as any other person or corporation.

Prior to the decision of the Supreme Court in the case of *Jackson, Treasurer vs. Board of Education of Cedarville*, O. L. B., January 23, 1927, and under a former decision of our Supreme Court school property was not subject to special assessment for public improvements benefiting such property. The Supreme Court in the Cedarville case reversed the former decision of the court and held that Section 3812, General Code, which authorized municipal corporations to levy and collect special assessments for public improvements, conferred upon the municipality authority to levy assessments for street improvements on school property as well as any other and that there was no provision in the General Code of Ohio exempting such property from the authority so conferred on the municipality. However, where special assessments had been levied before the decision in this case and property of the board of education was not assessed and no notice of the original resolution of necessity was served on said board of education, assessments could not now be collected for such property.

Specifically answering your questions, I am of the opinion that:

1. When a municipality fails to serve notice on a board of education of the passage of a resolution of necessity for a street improvement the asssessment cannot subsequently be collected from the said board of education.

2. There is no authority for serving notice of a resolution of necessity on the board of education by publication.

3. When properties of the board of education against which special assessments are levied do not appear in the assessment ordinance adopted in past years no assessment against such property can be collected at this time.

Respectfully,
EDWARD C. TURNER,
Attorney General.

382.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND BRUCE WILDER SAVILLE, NEW YORK CITY, FOR CONSTRUCTION OF MONUMENT OF GENERAL WAYNE, AT TOLEDO, OHIO, AT EXPENSE OF $12,000.00.

COLUMBUS, OHIO, April 25, 1927.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works and Bruce Wilder Saville of New York City, N. Y., covering the preparation of sketches, models, drawings and specifications and the construction of a monument to commemorate the victory of General Wayne on the Battlefield of Fallen Timbers in Lucas county, Toledo, Ohio, and calls for an expenditure of $12,000.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract.

Since the proposed monument is not in my opinion a building or structure within the contemplation of the laws pertaining to public buildings (Sections 2314, et seq., General Code) it is not deemed necessary that the steps laid down in said sections 2314, et seq., General Code be complied with. It is therefore not necessary that there