that the legislature had in mind the provisions of the other sections of the same chapter of the Code, concerning the practice of dental surgery, when it enacted the amendments or supplements thereto, and that it had some purpose in using the language "under the supervision of", rather than "under the direct supervision of" and intended to give it a broader meaning.

While there are apparently no decisions of the courts construing the language of this statute, I do not believe the language will bear the construction that the work must be carried on in the same room in which the dentist conducts his dental practice. Since the ordinary meaning of "supervision" implies the act of inspection and supervision, the requirement of the statute is satisfied when the dentist inspects the work of the dental hygienist in such places as he or she is legally entitled to practice, and not elsewhere.

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

1. A dental hygienist may legally practice such profession *only* in a dental office, public or private school, hospital, dispensary or public institution, and there *only* when such practice is under the supervision of a licensed dentist.

2. A dental hygienist may not legally practice such profession in his or her office several blocks distant from a dental office and not a part thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4033.

ANNEXATION—COUNTY SANITARY SEWER DISTRICT TO MUNICIPALITY—CITY MAY PAY SUM AGREED UPON WITH COUNTY COMMISSIONERS FOR WATER LINES LYING WITHIN ANNEXED TERRITORY—FROM WHAT FUNDS SUCH MADE.

SYLLABUS:

1. *When territory is annexed to a municipality from a county sanitary district, and the city has entered into an agreement for the purchase of the water lines within such annexed territory the payment of the sums agreed upon between the county commissioners and the municipality is legal.*

2. *When territory is annexed to a city and the city, as a part of the annexation agreement, agrees to purchase the water lines existing therein at the time of the purchase, such purchase price may be paid either from a fund derived from the sale of bonds issued "for the purpose of procuring the real estate and rights of way for an improvement of the waterworks for supplying water to the city of Dayton and its inhabitants, and for extending, enlarging and improving said waterworks", or from the funds derived from the income of the waterworks and taxes assessed for such purpose.*

COLUMBUS, OHIO, February 6, 1932.

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

GENTLEMEN:—I am in receipt of your communication enclosing letter from a state examiner, which letter reads in part as follows :

> "The enclosures are quotations from the contracts of purchase of certain water systems from Montgomery County by the City of Dayton

at the time of annexation of the territory containing such water systems.

Among the terms incorporated in the contracts were those to require the city to pay the items in cash of $13,350.00, in the case of the Broadway district and $14,650.00, in the case of the Belmont district.

These items were additional to the whole amount of the county debt on these water lines that was to be assumed by the city, within the annexation area.

In other words these two additional items were required from the city in order to provide a fund from which to pay the consulting engineer for services he may have rendered in preparing the data and effect sales of the water lines to the city.

Now when it came to fulfilling the terms of these contracts the city Director of Finance found that he could not expend water works funds for any purpose other than for the payment for water lines and while he paid the two items in question, he specified such payments for the water lines and for no other purpose.

It will thus be seen that the city has paid into the county sinking funds, the total of $28,000, in excess of the amount necessary to meet the debt maturities assumed by the city under the contracts.

Will you kindly go into this matter with the Attorney General's Department and advise if the payments in question are illegal and if so may we make finding for recovery for said amounts? Also, if the payments are legal were they proper payments from the bond fund or should we render finding for adjustment against the revenue fund in favor of the bond fund for these amounts?"

Subsequent correspondence discloses that these two items were paid from the waterworks bond fund.

I assume that the contracts to which you refer, were entered into by virtue of Sections 6602-32a and 6602-32b, of the General Code, which read as follows:

"Sec. 6602-32a. At any time after the formation of any sewer district the board of county commissioners may enter into a contract upon such terms and conditions and for such period of time as may be mutually agreed upon with any city or village or any other county to prepare necessary plans and estimates of cost and to construct any water supply improvement or improvements to be used jointly by the contracting parties, and to provide for the furnishing of water and for the joint use by such contracting parties of such water supply improvement or the joint use of any suitable existing water supply or water mains belonging to either of such parties."

Sec. 6602-32b:

"All such contracts shall provide for payment to the county, city or village owning, constructing or agreeing to construct such water supply improvement or improvements to be jointly used, of the amount agreed upon as the other party's share of the cost of such water supply improvement or improvements, and shall also provide for payment to the county, city or village, owning or constructing, and maintaining same of the amount agreed upon for the other party's share of the cost of operating and maintaining such water supply improvement or improvements including the cost of water or, in lieu of all other payments, and agreed

price per unit for water furnished; provided, however, that any such county, city or village, owning, constructing, or agreeing to construct any such water supply improvement or improvements, as provided herein, and permitting the use thereof by such other county, city or village, shall retain full control and management of the construction, maintenance, repair and operation of such water supply improvement or improvements, except when conveyed to a municipality as hereinafter provided; and provided, further, that any such contract, before going into effect, shall be approved by the Ohio state department of health. Any completed water supply or water works system, as defined in section 6602-17, General Code, for the use of any sewer district, constructed under the provisions of sections 6602-17 to 6602-33, inclusive, General Code, and any part thereof, and located within any municipality or within any area which may be incorporated as a municipality or annexed to an existing municipality, or which provides water for such area, may, by mutual agreement between the county commissioners and such municipality, be conveyed to such municipality, which shall thereafter maintain and operate such water supply and water works. The county commissioners may retain the right to joint use of such water supply and water works for the benefit of the sewer district. The validity of any assessment which may have been levied or may thereafter be levied to provide means for the payment of the cost of such construction or maintenance of such water supply or water works or any part thereof shall not be affected by such conveyance."

While Section 6602-32a, supra, by its express language purports to refer to ontracts or improvements to be constructed, the next subsequent section commencing with the language "All such contracts" provides in part:

"Any completed water supply or water works system, * * and any part thereof, and located within any municipality or within any area which may be * * annexed to an existing municipality or which provides water for such area, may, by mutual agreement between the county commissioners and such municipality, be conveyed to such municipality, which shall thereafter maintain and operate such water supply and water works. The county commissioners may retain the right to joint use of such water supply and waterworks for the benefit of the sewer district. * *"

The statute does not specifically state or dictate upon what terms the mutual agreement or conveyance shall be entered into nor does it state upon what terms he county commissioners may retain the right to the joint use of such water supply. It does, however, state that such municipality shall thereafter (after the conveyance) maintain and operate such water supply and waterworks.

It is to be presumed that by the use of the language "mutual agreement" the legislature intended that the municipality and the county commissioners would agree upon the terms and conditions of the purchase contract by which the county commissioners would retain the right to its joint use. I am therefore of the opinion that the city had the authority to enter into an agreement and purchase the waterworks system upon the terms and conditions set forth. The city therefore having entered into a legal contract for the purchase of certain water lines in the annexed portion of the city and having agreed to pay therefor, the aggregate

sum of $28,000 in excess of the debt assumed, the question arises whether the payment of this sum from the waterworks fund was legal.

Section 3619, General Code, having to do with the general powers of municipalities reads in part:

> "To apply moneys received as charges for water to the maintenance, construction, enlargement and extension of the waterworks, and to the extinguishment of the indebtedness created therefor."

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 Supreme Court, in the case of *City of Cincinnati* vs. *Roettinger,* 105 O. S., 145, has held in the first branch of the syllabus:

> "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 term "waterworks" is defined in Webster's New International Dictionary as,

> "A system of works or fixtures by which a supply of water is furnished for useful or ornamental purposes, including dams, sluices, pumps, aqueducts, distributing pipes, fountains, etc."

From a reading of the sections above quoted it may be inferred that the moneys received as charges for water by the water department and the funds received from taxes may be legally used for the enlargement or extension of waterworks. I believe the water mains in the annexed area are properly an enlargement of the waterworks. Since the payment of these two items was made from the waterworks bond fund, the question arises as to whether or not this payment was illegal, that is, being prohibited by Sections 5625-9 to 5625-13 of the General Code, being a part of the Budget Act. This act specifically limits the use of this fund to the purpose for which the fund was created, and prohibits the transfer of moneys from one fund to another except as therein provided. No provision is contained therein for the transfer of moneys from a bond issue fund.

An examination of Ordinance No. 14239 discloses that the purpose of the $300,000 bond issue therein authorized was "for the purpose of procuring the real

estate and rights of way for an improvement of the Water Works for supplying water to the City of Dayton and its inhabitants, and for extending, enlarging and improving said Water Works." (Section 1.)

Section 5 of such ordinance reads: "That the proceeds from the sale of said bonds, except premium and accrued interest thereon, shall be placed in the City Treasury to the credit of the Water Works Extension and Improvement Fund."

Such water lines being a part of the "Waterworks", I do not believe that any distinction could be made between the purchase of the extension lines and the laying of the lines by the city after the acquisition of the territory annexed. In either case the "waterworks" would be extended and enlarged and possibly also improved by the making of its benefits accessible to the citizens in the annexed territory.

I am therefore of the opinion that:

1. When territory is annexed to a municipality from a county sanitary district, and the city has entered into an agreement for the purchase of the water lines within such annexed territory the payment of the sums agreed upon between the county commissioners and the municipality is legal.

2. When territory is annexed to a city and the city, as a part of the annexation agreement, agrees to purchase the water lines existing therein at the time of the purchase, such purchase price may be paid either from a fund derived from the sale of bonds issued "for the purpose of procuring the real estate and rights of way for an improvement of the waterworks for supplying water to the city of Dayton and its inhabitants, and for extending, enlarging and improving said waterworks", or from the funds derived from the income of the waterworks and taxes assessed for such purpose.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4034.

APPROVAL, FINAL RESOLUTION COVERING EXTRA WORK CONTRACT ON ROAD IN PORTAGE COUNTY.

COLUMBUS, OHIO, February 6, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4035.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN TUSCARAWAS COUNTY—GEORGE E. ARNOLD.

COLUMBUS, OHIO, February 6, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond, in the penal sum of $5,000.00, with surety as indicated, to cover the faithful performance of the duties of the official as hereinafter named: