had in mind the menace of this disease to the general welfare whether its victims be found among the indigent or among those more fortunate or better able to provide against it by the use of antitoxin.

These statutes in a way cannot be well said to be in conflict since the later enactment simply engulfs or absorbs the subject matter of the former by a mandate which secures the free administration of a well tried treatment to all persons threatened with or afflicted by diphtheria.

Under the present health laws the executive officer of a "health district" is called a "health commissioner," who must be a licensed physician. So, to make sections 2500 and 2501 operative you must read "health officer" as "health commissioner," which is an implied use of the later law to support the operation of the former law. That "health officer" may be so interpreted as to mean "health commissioner" is without doubt true, yet even then some doubt must exist as to the commissioner's right to make payment for said treatment since the later law provides for the unlimited free administration of the antitoxin treatment for which the health district is charged by a mandatory provision of law to supply to all afflicted persons.

In the Lorain Plank Road Company vs. Cotton, 12 O. S. 263, and quoted in Goff vs. Gates et al., 87 O. S. at page 151, in the opinion the court says:

> "A section which revises the whole subject matter of the amendatory act of March 10, 1836, for the regulation of turnpike companies is evidently intended as a substitution for it and is to be regarded as superseding the latter act, and not as furnishing an additional or cumulative remedy."

In enacting the new health laws the legislature repealed or revised all or nearly all the former laws on that subject. Except for certain sections of the poor laws relating to the care of the sick poor of the state and sections 2500 and 2501 G. C. the new laws effect a new policy of health administration and are complete and sweeping in the change and revision intended. From the foregoing and because of the evident legislative intent to provide and inaugurate a new health policy this department is constrained to hold that sections 2500 and 2501 G. C. do not afford an additional or cumulative remedy and the same are superseded by section 1261-29 G. C. (108 O. L.).

Respectfully,
JOHN G. PRICE,
Attorney-General.

1468.

SCHOOLS—WHERE CHIEF INSPECTOR OF WORKSHOPS AND FACTORIES ORDERS REPAIRS OF VARIOUS KINDS UNDER SECTION 7630-1 G. C.—EQUIPMENT CAN NOT BE BASIS OF BOND ISSUE—INSTALLATION OF HEATING SYSTEM, SANITARY SYSTEM, ETC. COME WITHIN MEANING OF SECTION—WHEN ONE ORDER OF INSPECTOR COVERS REPAIRS AND ALSO FURNISHINGS—HOW TO PROCEED—BUILDING FOR COUNTY NORMAL SCHOOL MAINTAINED BY DISTRICT BOARD OF EDUCATION—WHEN BOND ISSUE MAY BE MADE BY LOCAL BOARD OF EDUCATION FOR COUNTY NORMAL SCHOOL FOR REPAIRS, ETC.

Under section 7630-1 G. C. mere equipment or furnishings for a school house, made necessary by the order of the department of inspection of public buildings in the Industrial Commission, can not be made the basis of the issuance of bonds the sinking fund levies on

account of which may be exempted from all limitations; but installation of such equipment as a heating system, a sanitary system, the removal of floor registers, new hardware on doors, provision for cloak room and provision for additional means of egress, involving as they do fundamental alterations of the building itself are not to be classed as mere furnishings but as repairs and rebuilding within the meaning of the section cited.

Where a single order of the department of inspection relates to the making of what constitute repairs and the installation of what constitute mere furnishings bonds may be issued for the securing of the funds necessary to make the repairs or rebuilding under section 7630-1; and if it is necessary to issue bonds for the purpose of procuring the furnishings and installing them, such action should be separately taken under section 7625 G. C.

All the repairs or rebuilding made necessary by one or more orders of the department of workshops and factories in a given district may be included in one bond issue under the combined operation of sections 7630-1 and 7625 of the General Code.

The building in which a county normal school is located by order of the superintendent of public instruction and action of the local board of education remains a school building of the district; it is the duty of the local board of education to maintain the room or rooms or building in which such normal school is located, as well as the furniture therein, and the county board of education, which is required to "maintain the school" out of its contingent fund, is not required to provide for the maintenance of the rooms and furniture. If, therefore, the building in which the normal school is housed needs repair or rebuilding or additional room or rooms are necessary for the proper accommodation of the normal school and the other schools of the district, bonds may be issued by the local board of education under the statutes providing for the issuance of bonds for school building purposes.

COLUMBUS, OHIO, July 29, 1920.

HON. CHARLES R. SARGENT, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter requesting the opinion of this department upon the following questions:

> "The Industrial Commission of Ohio, by order of the chief deputy dated March 25, 1920, reporting on inspections of school buildings in Kingsville township, Ashtabula county, on the findings of deputy inspector issued orders to effect as follows:
>
> That as to what is known as the high school and grade building, a new heating system should be installed, floor registers in halls removed, the exit doors equipped with Panic Proof hardware, additional fire extinguishers should be installed, gas jets should be changed, the seating in certain rooms changed, a cloak room should be provided, additional means of egress should be provided and toilets should be installed in the building to comply with the state sanitary code, dispensing with outside toilets.
>
> As to the primary building, the furnace is required to be rebuilt, and certain fire proofing put inside the building.
>
> As to the *normal* school building: Certain fire proofing should be installed, various sanitary equipment should be installed together with fire extinguishers and gas jets should be changed.
>
> A county normal school has been established in Kingsville township under the provisions of section 7654-1 G. C. Kingsville township is not only up to its limits of taxation, but the operation of the new school law as to taxation will not afford them sufficient relief so that they will have funds to provide for the cost of carrying out the orders of the industrial commission on any levy within the fifteen mill limitation. The estimated cost of putting the buildings in shape to comply with the order of the industrial commission is reported to me by the board of education to be $25,000.00. A new heating system it is stated.

should be installed at an expense of about $8,500.00 which is included within the $25,000.00 estimate. In connection with the installation of the heating system it will be necessary to construct a new smoke stack on the building.

I wish to inquire whether in your opinion the above items could be included under the heading of 'repairs' or 'rebuilding' under the provisions of 7630-1, General Code, with the levy being made outside of the fifteen mill limitation.

Second: All of these orders having been included in one report, if the items covered by it could be included under the heading of repairs or rebuilding under section 7630-1 G. C., could the proposition to issue $25,000.00 in bonds be submitted as one bond issue and could one bond issue cover the entire matter?

Third: Since section 7654-1 provides that board of education of the district in which the normal school is located shall provide suitable room or rooms and provide such furniture as may be required by the superintendent of public instruction, and having once made provisions under said section, has the township board of education any authority to *issue bonds* to provide additional room or rooms or to repair or rebuild a building used exclusively for normal school purposes?"

Section 7630-1 of the General Code provides as follows:

"If a school house is wholly or partly destroyed by fire or other casualty, or if the use of any school house for its intended purpose is prohibited by any order of the chief inspector of workshops and factories, and the board of education of the school district is without sufficient funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may, subject to the provisions of sections seventy-six hundred and twenty-six and seventy-six hundred and twenty-seven, and upon the approval of the electors in the manner provided by sections seventy-six hundred and twenty-five and seventy-six hundred and twenty-six issue bonds for the amount required for such purpose. For the payment of the principal and interest on such bonds and on bonds heretofore issued for the purposes herein mentioned and to provide a sinking fund for their final redemption at maturity, such board of education shall annually levy a tax as provided by law."

It will be observed that this section (which must be read in connection with section 5649-4 of the General Code, exempting the tax levies provided for by section 7630-1 from any of the limitations of the so-called Smith one per cent. law) has for its purpose the financing of certain building enterprises in a special way. The authority granted therein is to issue bonds for certain purposes and to make sinking fund levies on account thereof, which under the other sections referred to are to receive special preference in so far as limitations on tax levies are concerned. It is by no means an exclusive method of financing expenditures required in order to comply with the orders of the inspection department of the industrial commission (which has taken over the functions of the chief inspector of workshops and factories).

This statement of the purpose of the section seems to be in accord with your understanding of it.

You make inquiry as to whether all the items of expenditure required by the particular orders abstracted by you constitute such items of expenditure as may be made the predicate of the issuance of what might be called the preferred bonds under section

7630-1 of the General Code. That section, it will be observed, defines the purpose for which the bonds may be issued, as follows:

> "to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district."

This language is obviously not so broad as that of section 7625 General Code, for example, which provides in part as follows:

> "to purchase a site or sites to erect a schoolhouse or houses, to complete a partially built schoolhouse, to enlarge, repair or furnish a schoolhouse, or to purchase real estate for playground for children, or to do any or all of such things."

Thus, for example, the purchase of a site is within section 7625, but not within section 7630-1. (Annual report of Attorney-General for 1914, Vol. II, p. 1128.) On the same principle, we are forced to the conclusion that what section 7625 designates as "to furnish a school house is not within the scope of section 7630-1. The two sections must be read together because section 7625 is expressly referred to in section 7630-1.

We must, therefore, draw a line between such alterations of a building as constitute "repairs" or a "rebuilding" on the one hand and such installations therein as amount to "furnishing' on the other hand. The word "equipment" might be fairly employed as a synonym for the kind of installation that falls outside of section 7630-1.

Coming now to the statement of facts, the most important item is what is designated as a new heating system. Does this constitute a part of the building itself, or is it merely equipment? In the opinion of this department the installation of a new heating system is a rebuilding or repair of the building itself, and not a mere furnishing of the building. Of course, all the equipment of a school building is necessary in order to enable it to be used for its intended purpose; but it is obvious that a heating system can not be installed without fundamental structural changes in the building itself. The heating system, in other words, enters into and becomes a part of the very walls and partitions of the structure. Indeed, you state that "it will be necessary to construct a new smoke stack on the building" in order to install the heating system.

It is the opinion of this department therefore, as stated, that the installation of a new heating system as required by the order of the inspection department is within section 7630-1 of the General Code.

So also with the equipping of exit doors with panic proof hardware. Undoubtedly doors are a part of the building, but the hardware on the doors constitutes a part of the doors; for still more obvious reasons the provision for a cloak room and the pro vision for additional means of egress and the installation of toilets so as to dispense with outside toilets constitute fundamental changes in the building.

Coming to the primary building, the rebuilding of the furnace and the installation of fire proofing, in the opinion of this department, constitute a rebuilding or repair and comes within section 7630-1.

As to the normal school building, considering this part of the question first, the installation of fire proofing and sanitary equipment would seem clearly to constitute repairs or rebuilding.

On the other hand, the installation of additional fire extinguishers in the high school and grade building and in the normal school building and changing of the seating in certain rooms in the former building (in so far as such changing in seating does not require floors or platforms to be rebuilt) are clearly items of equipment merely. So also the changing of the gas jets in this building and in the normal school building, while presenting a very much closer question, should for caution's sake doubtless be classified as "equipment."

It is thus apparent that your first question can not be answered in an unqualified

way either in the affirmative or in the negative, but that in the main the items mentioned in the order should be included under the heading of "repairs" or "rebuilding" under the provisions of section 7630-1 of the General Code.

While, on the other hand, a few of the minor items could not be so included.

This conclusion raises your second question which contains several parts.

In the first place, you inquire whether the fact that one report recommended all these changes is such as to make it impossible to separate some of the items of expenditure from others for the purpose of action under section 7630-1.

The answer to this question is in the negative for reasons already pointed out. In other words, the principle is that when the inspection department orders a number of expenditures, some of which constitute rebuilding and others of which constitute a mere installation of equipment, the amount of money necessary to effect the rebuilding may be raised by the issuance of bonds under section 7630-1, and if the issuance of bonds for the equipment is necessary that can be done under section 7625 of the General Code by separate action. In other words, the two groups of items should be separated if bond issues are necessary for both, and the issuance of bonds for each of them respectively should be separately submitted to the electors.

Another question which seems to be involved in your second inquiry is as to whether the entire amount of rebuilding or repairing made necessary in the district by the orders of the inspector can be included in one bond issue under section 7630-1 of the General Code. You refer in this connection to the fact that all the orders were included in one report. This is believed to be immaterial. The question would be just the same if more than one report had been made. It is the opinion of this department that, if so desired, the repair or rebuilding necessary with respect to more than one structure may be included in one proposition submitted under section 7630-1 and in one bond issue thereunder.

True, the references in section 7630-1 to the structure or building which it is necessary to repair, to replace or to rebuild are all in the singular number. This fact is not of great significance, as it is well understood that where the sense requires it words in the singular number may be interpreted in the plural. Here we have, however, several references to other sections of the General Code. First, as a predicate for any action under section 7630-1 it must be found that it is not practicable to secure the necessary funds "under any of the six preceding sections." The "six preceding sections" are those beginning with section 7625 of the General Code. Under section 7625 it is very clear that expenditures relative to more than one building, and indeed more than one school purpose, may be included in one issue. After the enumeration of things above quoted from that section it is provided that:

> "the board shall make an estimate of the probable amount of money required for such purpose or purposes and at a special election * * * called for that purpose, submit to the electors of the district the question of the issuing of bonds for the *amount so estimated*."

Here it is clear that a single bond issue and a single election will suffice for more than one purpose.

Again, section 7630-1 provides that the approval of the electors shall be had "in the manner provided by sections seventy-six hundred and twenty-five and seventy-six hundred and twenty-six." Here we are again referred to section 7625 this time by its own number.

From still another point of view the practical consequence of any other holding may be considered briefly. It would be very likely that at a given inspection of the school houses in the district made by the department of inspection different orders of different characters will be made with respect to different buildings. It would be most inconvenient and expensive to have to submit different propositions with respect to each building and issue different sets of bonds for each.

For the foregoing reasons it is the opinion of this department that all the items referred to by you which may come properly under the heading of "repairs" or "rebuilding" may lawfully be covered by one estimate, and the proposition of issuing bonds for the amount thereof may lawfully be submitted to the electors as a single proposition.

The third question submitted by you is as to whether or not he board of education has authority to issue bonds to provide proper accommodations for a normal school located in the district by order of the superintendent of public instruction, under section 7654-1 of the General Code. This section as recently amended (108 O. L., p. 233) provides, in part, as follows:

> "County boards of education may establish county normal schools in districts maintaining first grade high schools * * *. Counties desiring such normal schools shall make application therefor to the superintendent of public instruction. * * * The superintendent of public instruction shall * * * designate the location of such normal school. * * *
>
> The board of education of the district in which the normal school is located shall furnish suitable room or rooms and provide such furniture as may be required by the superintendent of public instruction. The county board of education shall furnish such other equipment as may be necessary. The local expense of maintaining the normal school in each county shall be paid by the county board of education from its contingent fund."

While these provisions are somewhat meagre, the intention of the legislature is reasonably clear. The superintendent of public instruction has the power to determine the location of the normal school petitioned for by the county board of education. His order imposes a paramount duty upon the board of education of the district to furnish the room or rooms and the furniture. The remaining expense incident to the normal school is to be paid by the county board of education.

From this it is clear that the normal school when established is a part of the school system of the state and, in the territorial sense at least, the building in which it is housed is one of the schools "of such district" within the meaning of section 7625 of the General Code, and it is a "school house" within the meaning of section 7630-1 of the General Code, which has an "intended purpose," viz., wholly or in part the housing of a normal school—and is located in a district upon the board of education of which it is incumbent to furnish the room.

The opinion of this department is that under section 7654-1 the duty of the board of education is not completely discharged when it has turned over to the coun y board of education for normal school purposes "a suitable room or rooms" and "such furniture as may be required." The maintenance and repair of the building in which the room or rooms is located and the maintenance and upkeep of the furniture therein are duties which devolve upon the boa'd of education of the district, and not upon the coun'y board of education. To reach this conclusion, of course, interpretation must be given to the phrase "the local expense of maintaining the normal school in each county shall be paid by the county board of education from its contingent fund," as used in section 7654-1 of the General Code. This sentence is believed to refer to the expense of "maintaining" the school as distinguished from the expenses of "maintaining" the room or rooms and the furniture This seems to be the clear intention of the legislature as embodied in the paragraph under examination

It is the opinion of this departmet, therefore, that the duty of a local board of education under section 7654-1 of the General Code is not discharged when it has made the initial provision of rooms and furniture for the use of the county normal school, but that it must continue to provide such rooms and furniture and to keep them in "suitable" condition and that if in order to do so the issuance of bonds be-

comes necessary, whether by reason of an emergency within the meaning of section 7630-1 or not, such bonds may lawfully be issued, the building being a school building of the district within the meaning of the sections relating to the issuance of bonds for the repair of school buildings.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1469.

TAXES AND TAXATION—NOTICE AND OPPORTUNITY TO BE HEARD REQUIRED BY SECTION 5401 G. C. MUST BE GIVEN BY COUNTY AUDITOR IN PROCEEDING EITHER UNDER SECTION 5398 OR SECTION 5399 G. C. TO PLACE OMITTED PROPERTY ON DUPLICATE.

The notice and opportunity to be heard required by section 5401 *of the General Code must be given by the county auditor in proceeding either under section* 5398 *or section* 5399 *of the General Code to place omitted property on the duplicate.*

COLUMBUS, OHIO, July 29, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission recently submitted to this department for opinion thereon certain questions raised by Mr. M. E. Thrailkill in respect to omitted taxes charged against the estate of a certain deceased person. In the view which will be taken of the questions submitted it will be necessary to consider but one of them. The facts may be abstracted as follows:

> "The decedent died testate very soon prior to tax listing day in 1919. His will was admitted to probate after tax listing day of that year and shortly thereafter the executor qualified and filed an inventory and appraisement of the estate, in which certain taxable stocks and bonds were listed as assets of the estate at their par or face value.
>
> The then county auditor, without giving any notice whatever, without conducting any investigation other than to examine the inventory, and without having in his possession any information other than said inventory tending to establish the value of such securities listed them for taxation for five years previous and charged the omitted taxes against the estate of the decedent together with a penalty of fifty per cent.
>
> In the course of the settlement of the estate it has developed that the assets thus listed for taxation were in value only about three-fourths the amount charged by the auditor on the duplicate as aforesaid.
>
> The executor being prepared to establish the discrepancy in value, raises the question as to whether on the facts he is obliged to pay the full tax and penalty assessed by the auditor, or whether he may pay taxes on the basis of the actual value as subsequently developed, without penalty."

It is understood that both parties in interest have submitted the question to the commission, and that the commission desires the advice of this department in the premises.

It is obvious that if no valid listing has been made the questions about valuation,