The court say:

> "But it is needless to multiply authorities. They are substantially, if not altogether agreed upon the proposition that when a municipal body has assumed under color of authority, and exercised for any considerable period of time, with the consent of the state, the powers of a public corporation of the kind recognized by the organic law, neither the corporation nor any private party can in private litigation question the legality of its existence."

In the case of *State ex rel. Fosdick* vs. *Mayor, et al.,* 14 O. S., 472, the seventh paragraph of the syllabus reads as follows:

> "The issuing of bonds in the name of 'the town of Perrysburg,' instead of in the name of 'the incorporated village of Perrysburg,' when the latter would have been its proper legal designation, is merely a misnomer, which does not affect the validity or obligation of such bonds."

It seems clear from the authorities, that even if an election should be called and conducted in a political subdivision and the legislation and all the proceedings with reference thereto had been carried on under a name other than the name by which the subdivision had ordinarily been called, the legality of the proceedings could not be questioned by third parties.

Inasmuch as the duties of a board of elections in conducting an election called by the taxing authority of a political subdivision in pursuance of the legislation referred to in your inquiry are ministerial, and the manifest intent of the board of education in question, to call such an election, and the fact that the board of elections could not be mistaken as to such an intent or as to the particular district in which this board of education meant for its call for election to apply, I am of the opinion that it is the duty of the board of elections to proceed to hold the special election in question, assuming of course, that the proceedings of the board of education with respect to the terms and the passage of the resolution providing for the election were, except as to the previously used name of the school district, in all respects regular and according to law.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4271.

LIBRARY—LIBRARY ASSOCIATION MAY SHARE IN DISTRIBUTION OF PROCEEDS OF CLASSIFIED PROPERTY TAXES WHEN.

SYLLABUS:

Library associations or organizations established by will or otherwise, that maintain free public library service to all the inhabitants of a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio.

COLUMBUS, OHIO, May 18, 1935.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Section 5639, General Code, provides for the distribution of the classified property taxes, first, to each board of public library trustees in the county which shall have qualified or be qualified according to law to participate in such taxes.
>
> Section 5625-24, General Code, authorizes the Budget Commission to fix the amount of proceeds of the classified property taxes collected within the county to be distributed to each board of public library trustees which shall have qualified, or be qualified, as provided in Section 5625-20, General Code, to participate in such taxes.
>
> QUESTION 1: May the county commissioners fix any amount of the proceeds of this tax for distribution to a board of library trustees when such library is under the control of an Association, even in the event that such library extends its services to the county? Or does this provision apply only to libraries under the control of counties, cities, school districts or townships?
> QUESTION 2: In the event you hold that such association library may not participate in the distribution of this tax, would the fact that such library has contracted with a board of education, under the provisions of Section 7632, General Code, change the status of such library so that it could participate in the distribution of such taxes if it extended its services to the county?"

On May 2, 1935, there was rendered by me Opinion #4216, addressed to the Prosecuting Attorney of Ottawa county, in which it was held that a library which had been organized not for profit under the General Corporation Act (§ 8623-97 G. C.), is not such a library as may qualify or become qualified to participate in the distribution of the classified property tax by virtue of Sections 5625-20, 5625-24 and 5639 of the General Code of Ohio.

As there seems to be considerable misunderstanding as to the applicability of the conclusion reached in that opinion to library associations which have been created by will or otherwise, for the purpose of maintaining in perpetuity a public library and which organizations are in some cases endowed and maintain libraries free to all the inhabitants of a municipality or other political subdivision, and which have in the past been maintained largely from public funds under laws authorizing such action, I believe the former opinion should be clarified. This inquiry, therefore, will be addressed to a consideration of the status of this latter class of library associations, in so far as the applicability of the provisions of Sections 5625-20, 5625-24 and 5639, General Code, relating to the distribution to public libraries of the proceeds of classified property taxes, is concerned.

It will be observed that the question submitted in response to which the former opinion was rendered simply stated that the library association in question had been incorporated as a private institution, and it did not appear that the library had ever been operated or maintained in any other manner than as a private library. The conclusion there reached was based largely upon the case of *Providence Atheneum* vs. *Tripp*, 9 R. I., 559, in which was considered the status of a privately owned library the facilities of which were limited to members or stockholders. It was provided, however, that anyone

could become a stockholder by paying $15.00. The court held that such a library could not be regarded as a "public library" within the meaning of that term as used in a statute which exempted from taxation the property of public libraries.

The educational value and the need for free library service to the public generally, has long been recognized, and to that end legislation has been enacted authorizing county commissioners (§2976-11 et seq. G. C.), boards of education (§7735 et seq. G. C.), municipal corporations (§§3520, 3929 and 4004, G. C.) and township trustees (§3403 et seq. G. C.) to establish and maintain free public libraries. The organization of county library districts with power to establish therein free public libraries is also authorized (§7643-1 et seq. G. C.).

In many communities there have existed library organizations created by will or otherwise, which organizations were endowed, the services of which were by the terms of their creation, or otherwise, available to the public in some instances of a municipality, in some of a county and in some of a township or school district. In many such instances the endowments were small and the services of the library were, therefore quite limited if the endowments were to be depended upon entirely. It was no doubt felt that in such cases the existing library which had been so established, could serve the public at least as well if financial assistance were granted to it from public funds as would a library established by authority of the statutes mentioned above, and that the granting of assistance to these existing organizations from public funds would be more economical than to establish a new library which would result in a duplication of service in many cases entailing more expense than the same service could be had by assisting the organization already established.

To that end laws were enacted granting to public authorities the power to render such assistance to those private organizations already existing and furnishing free library service to the public.

Section 7632, General Code, reads as follows:

> "The board of education of any school district, the council of any municipality, or the trustees of any township may contract with the library trustees of any public library appointed by authority of law, or with any private corporation or library association maintaining a free public library, situated within or without said taxing district, to furnish library service to all the inhabitants of said taxing districts, and may levy a tax therefor. Such tax levying authority shall require an annual report in writing from such library board, private corporation or library association. Where such tax for library purposes has been so levied, at each semi-annual collection thereof, the county auditor shall certify the amount collected to the proper officer of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library."

As applying particularly to counties, Sections 2455 and 2456, General Code, were enacted. These sections read as follows:

> "Sec. 2455. A library association or other organization, owning or having the full management, or control of a library, or a board of trustees appointed by authority of law and having the management or control of a library free to the whole or a part of a county may contract with the county commissioners for the use thereof by the people of such county."

> "Sec. 2456. A county accepting such bequest or gift, or entering into such

agreement, shall faithfully maintain and provide such library. At their June session each year, the commissioners thereof may levy a tax not to exceed a half mill on each dollar of taxable property in such county. The fund derived from such levy shall be a special fund, known as the library fund, and shall be used only for the purpose contemplated in this section."

Similar authority was extended to municipalities by Section 3620, General Code, which reads as follows:

"To establish, maintain and regulate free public band concerts, free public libraries and reading rooms, to purchase books, papers, maps, and manuscripts therefor, to receive donations and bequests of money or property therefor, in trust or otherwise, and to provide for the rent and compensation for the use of any existing free public libraries established and managed by a private corporation or association organized for that purpose."

It is also provided by Section 4005-1, General Code, as follows:

"In any municipality where there is or may hereafter be a library organization created by will or otherwise for the purpose of maintaining in perpetuity a public library, and which organization is endowed and owns and maintains a library, the trustees mentioned in General Code, section 4004, may issue bonds as provided for in General Code, sections 4007 to 4013, both inclusive, for the purpose of providing a building or buildings for such library and furnishing the same and to pay the cost and expense thereof. The erection, equipment, maintenance and control of such building or buildings shall be vested in the trustees mentioned in General Code, section 4004, and said trustees may enter into an agreement in writing with such library organization whereby said library organization may occupy all or a part of such building or buildings, and conduct, operate and maintain therein a free public library, * *"

The result is that in many communities, even in some of the larger cities and counties, no libraries have been established or maintained under the statutes authorizing counties, municipalities, school districts and townships to establish and maintain libraries. Library service is furnished by libraries which have been established by will or otherwise, with the aid of public funds. Many such libraries have practically exhausted their original endowment and depend almost entirely upon the funds allocated to them by boards of education, city councils, county commissioners and boards of township trustees. Of course, the consideration for this public aid is the free service extended to the public, and in such communities the library in question takes the place of a library which might be established under Sections 2976-11, 7735, 3620, 3939, 4004 or 3403, General Code, referred to above. The library service is the same as might be furnished by libraries so established. This is necessarily so as a consideration to receiving aid from public funds, and to the patrons of such a library it serves the purpose of, and is regarded as a public library, and to all intents and purposes it is a public library.

Whether or not such libraries as have been established as private organizations by will or otherwise, and which have been maintaned or will be maintained in whole or in part from public funds by virtue of laws authorizing the same may, by extending their services to all the inhabitants of the county in which they are located, if that service is not already existent, may be allocated revenues from classified property taxes by virtue of Sections 5625-20, 5625-24 and 5639, General Code, is purely a question of statutory

construction and the fundamental inquiry in all such cases is to ascertain the intention of the legislature in enacting the statutes.

Without quoting the provisions of Sections 5625-20, 5625-24 and 5639, General Code, it is sufficient for our present purpose to note that the benefits of these statutes which provide for the distribution of classified property taxes to public libraries which provide county-wide library service, accrue to "public libraries." The sole question is, what is meant by the term "public libraries" as so used?

There is little, if anything, helpful so far as the context of these statutes is concerned and nothing contained therein to indicate that the legislature used the term "public library" in these statutes in any other sense than the popular sense. In fact, the term is used in that sense in several of the statutes relating to libraries maintained by private organizations. Note the terms of Section 7632, supra, where it is provided:

> "The board of education of any school district, the council of any municipality or the trustees of any township may contract * * * with any private organization or library association maintaining a free *public library* situated within or without said taxing district to furnish library service to all the inhabitants of said taxing districts and may levy a tax therefor." (Italics, the writer's)

In section 3620, General Code, it is provided that municipal corporations may provide "for the rent and compensation for the use of any existing free *public library* established and managed by a private corporation or organization organized for that purpose." (Italics, the writer's.)

In Section 4005-1, General Code, it is provided:

> "In any municipality where there is or may hereafter be a library organization created by will or otherwise for the purpose of maintaining in perpetuity a *public library,* and which organization is endowed and owns and maintains a library, etc. * * " (Italics, the writer's)

In Section 7643-1, General Code, it is provided:

> "A county library district may be created in the manner hereafter provided in any county, composed of taxing districts therein in which *public library* service *supported in whole or in part by tax moneys,* is not furnished to the citizens thereof. And said county library district may also include any taxing district having *a public library supported in whole or in part by tax moneys,* upon resolution of the board of trustees or other governing bodies of any such library." (Italics, the writer's.)

It seems clear from the provisions of the statutes referred to above, that the term "public library" is not accorded a technical meaning in this prior legislation and is there used in a popular sense, and I know of no reason why we should say it is used in any other sense in the legislation here under consideration.

In the case of *Gregory's Book Store* vs. *Providence Public Library,* 46 R. I., 283, 127 Atl., 150, 151, it was held:

> "The phrase 'free public library' in General Laws, 1923, Section 921, authorizing a state board to grant state aid to free public libraries is used in its popular sense and indicates a free library although not owned by a municipal-

ity especially in view of the fact that the state board of education has for many years granted state aid to free libraries not owned by municipalities."

Similarly, in the case of *People ex rel. The American Geographical Society* vs. *Tax Commission,* 11 Hun. 505 (1877) it was held:

"The Revised Statutes provide that real and personal property of every public library shall be exempt from taxation (1 R. S., 388, Sec. 4, Sub. 5) * * The words 'public library' are not technical. They have acquired by judicial decision no precise meaning. They are words of common use and ought therefore, as between the public, which is invited to free enjoyment and disinterested society, such as the relator, to be interpreted as they are commonly understood. Indeed it is conceded that if the free public use had been guaranteed by the express terms of the charter, it would have been a public library within the meaning of the exempting statute. We have seen that such use is guaranteed, if not by express direction, at least by necessary implication."

The syllabus of this case reads as follows:

"The relator, located in the city of New York was incorporated, among other purposes for the encouragement and advancement of geographical science, and for 'the permanent establishment in the city of New York of an institution in which shall be collected, classified, and arranged geographical and scientific works, voyages and * * *; having especial reference to that kind of information which shall be collected, preserved and be, at all times, accessible for public use in a great maritime and commercial city.' A public library has always been, and at the time of this application still was kept by the relator free and open to all. Held, that the relator was entitled to exemption from taxation as a public library by virtue of 1 Rev. Stat. 388, Sec. 4, Sub. 5."

In the case of *State ex rel. Rice, Treas.* vs. *Lutz, Co. Aud. et al,* 129 O. S., 201, reported in Ohio Law Reporter for March 4, 1935, decided February 20, 1935, where there was under consideration the question of the preference accorded to public libraries in the distribution of the proceeds of classified property taxes as provided by Section 5639, General Code, Chief Justice Weygandt said in the course of his opinion:

"A mere superficial examination of the statute might lead to a conclusion that the preference allowed the public libraries is unreasonable and discriminatory, thereby raising a serious question as to whether such a construction can be justified. However, this difficulty disappears when it is remembered that the Legislature has completely deprived the public libraries of their former revenue from other sources, and they are now compelled to rely solely upon the proceeds of classified property taxes, while the municipal corporations, the county and the school districts still derive their principal income from various other taxes."

The action of the legislature referred to by Judge Weygandt is applicable to the financing of library associations from public funds fully as much as it is to the financing of libraries established under laws authorizing political subdivisions and library districts to establish libraries. We must assume that the legislature in the enactment

of the legislation providing for the distribution of classified property taxes to public libraries was cognizant of these facts and inasmuch as it had been the settled policy of the law for many years prior to the enactment of this legislation to aid library organizations in their maintenance of free library service from public funds, we may be guided by these facts in the interpretation of the legislation so enacted.

It is a well settled rule of law that in the construction of statutes the cause or necessity of the act may be taken into consideration. *Burgett* vs. *Burgett,* 1 Ohio, 469. The object of the statute and the mischief against which it was designed to guard, may be looked to. *State ex rel. Matre* vs. *Buchanan,* W. 233; *Allen* vs. *Parish,* 3 Ohio, 107; *Tracy* vs. *Card,* 2 O. S., 431; *Doll* vs. *State,* 45 O. S., 445; *Henry* vs. *Trustees,* 48 O. S., 671.

The policy of the act must be considered and a construction given to advance it. *Wilber* vs. *Paine,* 1 Ohio, 251.

It is an equally forceful rule of law that in construing a statute the courts will take judicial notice of the history of the subject matter to which the act relates, and of all relevant facts which are matters of common knowledge, and will presume that the legislature knew such history and facts and had them in mind when it passed the act. *Reid* vs. *Board of Education,* 6 N. P. (n. s.) 526. In the case of *United States* vs. *Stickrath,* 242 Fed. 151, it is said:

> "A statute enacted by Congress must be construed with reference to the history and situation of the country to ascertain the reason as well as the meaning of its provisions."

In *Mannington* vs. *Hocking Valley R. R. Co.,* 16 O. F. D., 552, the court said:

> "In construing statutes the courts should not close their eyes to what they know of the history of the country and of the law, of the condition of the law at a particular time, of the public necessities felt, and other kindred things, for the reason that regard must be had to the words in which the statute is expressed as applied to the facts at the time of its enactment."

In construing a statute, the court will look to the circumstances which existed at the time it was enacted and it may consider the general facts of common knowledge and other legislation upon the same subject. *Paine* vs. *Skinner,* 8 Ohio, 159; *State ex rel. Turner* vs. *Fassig,* 5 App., 479; *Jones* vs. *Graves,* 15 N. P. (n. s.) 193; *Feasel* vs. *Board of Education,* 24 N. P. (n. s.) 329.

It seems clear that the legislature meant by the use of the words "public libraries" as used in Sections 5625-20, 5625-24 and 5639, General Code, to include within that term library organizations providing free public library service, that had been receiving public aid or at that time were qualified to receive public aid under laws providing for such aid either directly or under contract with public authorities to provide free public library service. If these words as used in those statutes will not bear that construction many communities will be deprived of library service until such time as the law might be changed or library service provided by means of libraries established under laws authorizing political subdivisions and library districts to establish and maintain libraries directly. This fact must necessarily have been known to the legislature at the time these sections were enacted, and I cannot believe that the legislature meant such a result.

I am therefore of the opinion that library associations or organizations established by will or otherwise, that maintain free public library service to all the inhabitants of

a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4272.

INSURANCE--FUNDS OF DOMESTIC LIFE INSURANCE COMPANY MAY BE INVESTED IN BONDS OR NOTES SECURED BY MORTGAGES INSURED UNDER NATIONAL HOUSING ACT.

SYLLABUS:

The capital, surplus and accumulations of a domestic life insurance company may be invested in bonds or notes secured by mortgages insured under the provisions of the National Housing Act, even though such mortgages do not comply with the other provisions of Section 9357, General Code.

COLUMBUS, OHIO, May 20, 1935.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your communication which reads as follows:

> "Section 9357 of the General Code, dealing with the investment of capital, surplus and accumulations of domestic life insurance companies, contains a provision in sub-paragraph H(a) that the actual market value of the real estate supporting said mortgage shall be at least double the amount loaned thereon at the time of the investment.
>
> (a-1) of Section 9357 authorizes the investment by such company—
>
> 'In bonds or notes secured by mortgages insured under the provisions of the act of the congress of the United States entitled the "National Housing Act". Am. of 2nd Sp. Sess. 90th G. A.'
>
> The regulations under Title 2 of the 'National Housing Act' provide, among other things, that—
>
> 'The original principal obligation of the mortgage may not exceed $16,000 nor 80% of the appraised value of the property as determined by an appraisal of the Federal Housing Administration.'
>
> By reason of the various provisions mentioned above I am confronted with the following question which must be determined before I can pass upon the eligibility of such 'National Housing Act' securities as an investment for such companies. Therefore, I respectfully request your opinion on the following question: