of the citizens against damages and accidents resulting therefrom, and when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and for such purpose, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township."

* * *

The following sections of the General Code provide for the levy of taxes, issuance of bonds, etc., in order to carry out the provisions of Section 3298-54, General Code. Section 3298-60, General Code, expressly provides that the trustees of a township may enter into a contract for a period not to exceed three years with any city, village or township for the use of its fire department and fire apparatus.

It is believed that when the principles enunciated in the cases cited in my 1929 opinion, hereinbefore referred to, are applied to the question you present, the conclusion is irresistible that township trustees may not purchase group insurance for the members of its volunteer fire department. The powers of the township trustees are expressly set forth and it is believed that by no process of reasoning can the conclusion be reached that it would be necessary to enter the field of group insurance for the volunteer fire department in order to carry into effect any of the express powers granted to the township trustees with reference to protection against fire.

You are therefore specifically advised that it is my opinion that the board of township trustees may not legally spend money for the purpose of purchasing group insurance for the members of the volunteer fire department.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3860.

STATUTE OF LIMITATIONS—FOUR YEAR STATUTE APPLICABLE TO SUITS TO ENJOIN COLLECTION OF SPECIAL ASSESSMENTS—MUNICIPALITY LIMITED TO TWO YEARS IN COLLECTION OF SUCH ASSESSMENTS.

SYLLABUS:

The four year statute of limitations provided by section 11224 *of the General Code is applicable to and will bar an injunction suit when four years shall have elapsed after such installments became payable.*

Section 11222 *of the General Code has no application to an action for the collection of special assessments by a municipality. Actions brought by a municipality to collect such special assessments are limited to two years by section* 3906 *of the General Code.*

COLUMBUS, OHIO, December 16, 1931.

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

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

> "We have been requested to submit the following questions to you for an opinion:
>
> First: Does the four year limitation apply to individuals enjoining collection of assessments?
>
> Second: Does the six year limitation as fixed by statute apply in any manner to actions for the collection of assessments?"

In the case of *Dickerson* vs. *City of Cincinnati,* 3 Ohio App., 68, the Court of Appeals of Hamilton County held as follows:

> "An action to enjoin the collection of a street assessment payable in annual installments is not barred by the statute of limitations where brought within four years from the time any particular installment of said assessment which is being contested became due."

This decision of the court is interpreting section 11224 of the General Code. This holding of the court was affirmed by the Supreme Court under the title of *City of Cincinnati* vs. *Dickerson without report in* 91 O. S., p. 406.

There is also a similar holding in the case of *Gault* vs. *City of Columbus,* 10 O. C. C. (N. S.) 263.

It is therefore my opinion, as to your first question, that the four-year statute of limitation, as provided in General Code Section 11224, prevents the bringing of an injunction against the collection of any installment of the assessment by the municipality, unless such action is brought within four years from the time such installment of the assessment shall become due and payable.

Section 3906, General Code, reads as follows:

> "The lien of an assessment shall continue two years from the time it is payable, and no longer, unless the corporation, before the expiration of the time, causes it to be certified to the auditor of the proper county, for entry upon the tax-list for collection, or causes the proper action to be commenced in a court having jurisdiction thereof, to enforce such lien against such lots or lands, in which case the lien shall continue in force so long as the assessment remains on the tax-list uncollected or so long as the action is pending, and any judgment obtained, under and by virtue thereof, remains in force and unsatisfied."

Section 11222 of the General Code reads:

> "An action upon a contract not in writing, express or implied, or upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued."

The Supreme Court, in the case of *Hartman* vs. *Hunter,* 56 O. S., 175, held that county ditch assessments were subject to the six year limitation and that an action to collect the same was barred unless brought within six years from the time each assessment became due and bayable. However, in this case, which was decided March 30, 1897, the action was brought against the taxpayer by the county treasurer.

General Code Section 2670, reads as follows:

> "A finding shall be entered of the amount of such assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisement for not less than the total amount of such finding and costs, unless the county treasurer shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of the General Code, and shall be sold for at least two-thirds of the appraised value thereof. From the proceeds of the sale the costs shall be first paid, next the finding of the amount of assessments, and the balance shall be distributed according to law. No statute of limitations shall apply to such action. When the land or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer."

This section abolishes the defense of the statute of limitations in all actions brought by the county treasurer to collect either taxes or special assessments. General Code Section 2670 was formerly Revised Statutes 1104, and has contained this provision depriving the taxpayer of the defense of the statute of limitations since its enactment in 95 O. L., p. 93, which was passed on April 4, 1902. By reason of this fact, the case of *Hartman* vs. *Hunter* is no longer the law of Ohio, its effect having been abolished by direct act of the legislature.

In the case of *Fox* vs. *Cincinnati,* 21 O. C. D., 613, the syllabus reads:

> "The particular act which saves an assessment from the two-year statute of limitations fixed by section 3906 is its certification by the municipal corporation to the county auditor by virtue of section 3865 of the General Code."

Since the legislature, by the enactment of section 3906 of the General Code, has provided specific statutes of limitations concerning the collection of an assessment by the city, limiting it to a two-year period unless it shall have certified the assessment to the county auditor for collection, and since the legislature and the courts have held that an injunction may be brought at any time within four years after an installment of an assessment becomes due and payable, it is my opinion that the six year statute of limitations provided by General Code Section 11222 has no application to the collection of special assessments.

Summarizing:

The four year statute of limitations provided by General Code Section 11224 is applicable to and will bar an injunction suit when four years shall have elapsed after such installments become payable.

Section 11222 of the General Code has no application to an action for the collection of special assessments by a municipality. Actions brought by a municipality to collect such special assessments are limited to two years by section 3906 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3861.

BOND—CONTRACTOR WHO FILES BOND, COMPLYING WITH SECTION 1208, GENERAL CODE, NOT REQUIRED TO FILE SUBSTITUTE BOND—NO MECHANICS LIEN AGAINST THE STATE.

SYLLABUS:

1. *The state has no authority to require a contractor to substitute a new bond filed pursuant to the terms of Section* 1208 *of the General Code, where the surety becomes insolvent. (Opinions of the Attorney General for* 1918, *Volume II, page* 1449, *approved and followed.)*

2. *The State Highway Department owes no debt to labor or material lien claimants under Sections* 8324 *et seq. General Code.*

COLUMBUS, OHIO, December 16, 1931.

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

DEAR SIR:—Your request for an opinion reads as follows:

> "On May 27, 1930, the Director of Highways awarded a contract to L. J. K., of Jackson, Ohio, for the construction of an improvement in Jackson county. The contractor gave a bond, which was approved by the Insurance Department, with the Equitable Casualty & Surety Company of New York as surety.
>
> Early in 1931 it was learned that this bonding company was being dissolved by the Insurance Department of the State of New York and that they were probably insolvent. Notice was received that all claims against them would be unrecognized.
>
> Under the above set of facts, I respectfully request your opinion upon the following questions:
>
> Should the state require a new bond of the contractor or should we allow him to proceed under the old bond?
>
> What action should be taken in regard to labor and material claims should any come up which neither the contractor or the surety company are able to meet?"

Your first inquiry has been ruled upon by my predecessor in title, in an opinion rendered under date of November 29, 1918, found in Opinions of the Attorney General for 1918, Volume II, page 1449, the syllabus of which reads as follows:

> "1. There is no provision in law whereby the state highway com-