certain grants of easement executed to the State of Ohio, by several property owners in Delaware, Allen and Clermont Counties, Ohio, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in said counties.

The grants of easement here in question, designated with respect to the number of the instrument, the location of land by township and county, and the name of the grantor, are as follows:

Number	Township	County	Name
1103	Liberty	Delaware	Cora and Clifford Leibold
1117	Marion	Allen	
1121	Marion	Allen	Ella Miller
1127	Stone Lick	Clermont	Edward Stuhlmueller

By the above grants there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the respective grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1328.

GENERAL OR CITY HEALTH DISTRICT—SEPARATE AND DISTINCT POLITICAL SUBDIVISION—EMPLOYES NOT GENERALLY IN CATEGORY OF STATE EMPLOYES—WHERE PERSONNEL RECEIVE STATE FUNDS—STATE EMPLOYES AND MAY PARTICIPATE IN STATE EMPLOYES' RETIREMENT ACT.

SYLLABUS:

1. *A general or city health district is a separate and distinct political subdivision and employes of such districts are not generally in the category of state employes.*

2. *District health commissioners, public health nurses and clerks of general or city health districts which receive state funds pursuant to appropriation by the General Assembly in accordance with and under the circumstances provided by Section* 1261-39, *General Code, are "state employes" within the meaning of the term as used in the State Employes' Retirement Act during such years as such districts receive state aid.*

COLUMBUS, OHIO, October 19, 1937.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date in which you request my opinion as to whether the employes of city and general health districts should be classified as state employes, and if so, whether these employes are entitled to membership in the State Employes' Retirement System.

For the purpose of more efficiently administering local health work throughout the state, Section 1261-16, General Code, created a new system of health districts. This statute provides that each city shall constitute a health district to be known as a "City Health District". Further provision is made for combining townships and villages into a health district to be known as a "General Health District". Furthermore two general health districts may be combined, or there may be a union of a general health district and a city health district.

In the creation of city health districts and general health districts it seems perfectly clear that the legislature intended to bring into existence two new political subdivisions, separate and distinct from the cities, villages and townships with which they are coterminous. This difference in political entities is announced in an opinion appearing in Opinions of the Attorney General for 1933, Vol. III, page 1679, as follows:

> "It clearly appears from the terms of Section 1261-16, General Code, supra, that the health districts thereby created are separate and distinct political subdivisions from other subdivisions of the state. A city health district and a city, although they embrace precisely the same territory, are separate entities. So also are general health districts and counties."

A further distinction between health districts and other political subdivisions is made in the case of *State, ex rel. Hanna* vs. *Spitler,* 47 O. App. 114, the second branch of the syllabus of which reads as follows:

> "2. Board of health of city health district is governmental agency separate and distinct from municipality and not subject

to its jurisdiction (Sections 1261-16, 1261-30 and 4413, General Code.)"

As a logical consequence of the separation of health districts from the other political subdivisions of the state, the courts have announced that the employes of a city health district are not municipal employes. In the case of *Board of Health* vs. *State, ex rel.*, 40 O. App. 77, at page 83 it is stated:

> "The fact that a city through taxation must pay employees of its district board of health cannot make them municipal employees, for a city must pay its portion of the cost of its health administration, and it is not inequitable that it should pay for that from which it in the first instance receives the most direct benefit; * * *"

Another case differentiating the status of an employe of a board of health of a city health district from a municipal employe is *State, ex rel. R. W. Burns* vs. *Christopher Clark, et al.*, 30 N. P. (n.s.) 243, in which case it is held:

> "A sanitary policeman and plumbing inspector is not an employe of the city but an employe of the Board of Health of the city, which is a distinct political subdivision of the state made so by the Hughes and Griswold (108 Ohio Laws 236, 1085) Acts independent of the city, and the Board has absolute control over its employes and may summarily discharge them."

Inasmuch as city health districts and general health districts are political subdivisions separate and distinct from the cities, villages and townships with which they are territorially identical, and since the employes of these health districts cannot be classified as municipal, village or township employes, it necessarily follows that they are employes of the political subdivisions under which they serve. In other words, the persons herein considered must be classified as "City Health District Employes" and "General Health District Employes".

This classification is indirectly announced in the case of *State, ex rel. R. W. Burns* vs. *Christopher Clark, et al.*, supra, in that the court held that the Sanitary policeman and plumbing inspector was an employe of the board of health which is a distinct political subdivision of the state. It is my opinion, therefore, that city health district employes and general health district employes enjoy precisely the status that these terms mean and consequently cannot be classified as state employes.

Regarding your question as to the eligibility of employes of health districts for membership in the State Employes' Retirement System, I find that Section 486-33, General Code, provides for the creation of a State Employes' Retirement System for the employes of the State of Ohio; and the term "state employe" is defined in Section 486-32, subsection 4, General Code, which reads in part as follows:

> "That the following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:
>
> * * * * * * * * *
>
> 4. 'State employe' shall mean any person holding a state office, not elective, under the State of Ohio, and/or employed and/or paid in whole or in part by the State of Ohio, * * *."

As indicated hereinbefore the employes of the health districts are employed by and hold their positions under a political subdivision of the state separate and distinct from the state itself. However, a "state employe" within the meaning of the term as used in the State Employes' Retirement Act is not confined to those holding employment under the State of Ohio, but includes any person who is paid in whole or in part by the State of Ohio. It accordingly becomes necessary to determine what, if any, of the employes of a board of health are paid in part by the State of Ohio so as to constitute them "state employes" within the meaning of the term as defined in Section 486-32, supra.

Section 1261-39, General Code, provides as follows:

> "When any general or city health district has been duly organized as provided by this act and had employed for whole or part time service a health commissioner, the chairman of the board of health, or the principal executive officer of the department of health as the case may be shall semi-annually, on the first day of January and of July, certify such fact to the state commissioner of health, stating the salary paid such health commissioner, and to the public health nurse and clerk, if any, during the preceding six months. If such board of health or health department has complied with the orders and regulations of the state department of health and has truly and faithfully complied with the provisions of this act, the state commissioner of health shall endorse such facts on the certificate and shall transmit the certificate to the auditor of state, who shall thereupon draw a voucher on the treasurer of state to the order of the custodian of the funds of such health district

payable out of the general revenue fund, in amount equal to one-half of the amount paid by the district board of health or health department to such health commissioner, public health nurse, and clerk, during such semi-annual period. Provided, that if the amount paid by such district board of health or health department during any six months is in excess of two thousand dollars, the amount to be paid by the auditor of state shall be one thousand dollars and no more, and no payment shall be made unless the certificate of the district board of health or health department shall have been endorsed by the state commissioner of health as herein provided."

There is nothing in the foregoing section to indicate that in such districts as receive state funds under the conditions therein set forth, the health commissioner, public health nurse and clerk are paid their salaries in part by the state. A reading of this section standing alone would indicate that the salaries paid to these three employes of the board are merely used as a yardstick to measure the amount of state aid which may be furnished under the circumstances therein set forth. However, Section 1261-40, General Code, which relates to making up the annual budgets of the various boards of health, provides inter alia as follows:

"* * * The district board of health shall certify to the county auditor the amount due from the state as its share of the salaries of the district health commissioner and public health nurse and clerk, if employed, for the next fiscal year which shall be deducted from the total of such estimate before an apportionment is made. * * *"

The foregoing language clearly indicates that in the enactment of these sections in 1919, the legislature contemplated that contributions made by the state to such district boards shall be used to pay a portion of the salaries of the district health commissioner, public health nurse and clerk of general or city health districts which meet the requirements set forth in Section 1261-39, supra.

It is apparent that as to any other employes of local health districts there is no provision authorizing the payment of their salaries in part by the state, so that your question narrows down to a consideration of whether or not the three employes hereinabove mentioned may be said to be state employes within the meaning of Section 486-32, supra.

The question then may not be answered by a consideration of the language of Section 1261-40, supra, without regard to appropriation acts

of the General Assembly. Section 1261-39, supra, cannot result in the state paying any portion of anyone's salary in the absence of an appropriation act and an appropriation act is a law of equal dignity during its existence with all other laws of the state. Opinions of the Attorney General for 1927, Vol. I, page 718. It is clear that such Section 1261-39, providing that the Auditor of State "shall thereupon draw a voucher on the treasurer of state to the order of the custodian of the funds of such health district payable out of the general revenue fund," probably did not at the time of its enactment constitute an appropriation any more than Sections 2248 et seq., of the General Code, providing the salaries of certain state officers may be said to have been enacted as appropriations. In any event it is not now necessary to pass upon this point since under the provisions of Article II, Section 22 of the Constitution "no appropriation shall be made for a longer period than two years."

The general appropriation acts have not been consistent in the appropriation of state moneys to carry out the legislative policy set forth in Sections 1261-39 and 1261-40, supra. For instance, House Bill No. 699 of the 90th General Assembly appropriated one hundred fifty thousand ($150,000) dollars for each of the years 1933 and 1934 under the classification "Department of Health—Maintenance—H-8—State's Contribution to salaries of district health commissioners, public health nurses and clerks". In an opinion considering that appropriation appearing in Opinions of the Attorney General for 1933, Vol. III, page 1677, this office recognized that the three named employes of district boards of health were paid their salaries in part by the state. The syllabus of the opinion reads as follows:

> "Funds for the reimbursement of health districts within the State of Ohio, for a portion of the salaries of health commissioners, public health nurses and clerks, to be borne from state funds as provided by Section 1261-39, General Code may not be withheld for the reason that the county of which the health district is a part is indebted to the State of Ohio."

The current General Appropriation Act for the biennium is couched in different language than that of the 90th General Assembly supra. The Appropriation Act for such purpose under the heading "Department of Health" merely reads:

> "H-8 Contributions $150,000.00."

for each of the years 1937 and 1938. Notwithstanding the fact that the General Assembly in the passage of the current general appropriation

act, did not see fit to ear-mark the appropriations as the state's contribution to these specific salaries, it is my judgment that these moneys are nevertheless so ear-marked in view of the language of Section 1261-40, supra. It is well established that full effect will be given to all acts of the legislature in so far as they may be possibly reconciled. I find no inconsistency between the language of Section 1261-40, supra, and the language of the current General Appropriations Act hereinabove referred to.

I am aware of the fact that these state moneys so appropriated are payable into the general district health fund and there is no authority to subdivide such funds. It was held in an opinion appearing in Opinions of the Attorney General for 1921, Vol. I, page 779, as set forth in the syllabus:

> "Health funds are not divided according to the itemized statement submitted by the district board of health, as provided in Section 1261-40, but such funds are regarded as a general health fund and may be expended in whole or in part for any of the purposes mentioned in said itemized statement."

It is also recognized that the appropriations made by the General Assembly during recent bienniums have been insufficient to give full effect to the provisions of Section 1261-39, supra, as to the amount which the state should contribute, such appropriations being in amounts to but partially carry out the provisions of such section. In my judgment however, neither the extent to which the state contributes to an employe's salary nor the fact that such contributions is placed in one general fund has any bearing upon the substantive question of whether or not the state is in fact so contributing during the years for which said appropriation therefor is made.

It might be contended that the General Assembly in providing a State Employes' Retirement System contemplated in the definition of "state employe" hereinabove set forth that there should be included not only those employes of the state but employes of quasi-state institutions, institutions supported in part by the state, whose salaries are paid in part by the state and that the General Assembly did not contemplate including employes of local subdivisions. As to this it is observed that had the legislature seen fit to so limit the definition of "state employe" apt words could have been used to indicate such intent. The language of Section 486-32, supra, is clear and unambiguous in including within the definition of the term "state employe" any employe paid in part by the State of Ohio. The language is not qualified as to such employe being an employe of a state institution, a quasi-state institution, a local subdivision or other-

wise. It is presumed that the legislature knows the meaning of the words which it uses and the ordinary rules of grammar. *Nussdorfer* vs. *State, ex rel.* 8 App. 127.

It must also be remembered that the General Assembly is presumed to know the law as in force and effect at the time of the passage of an act. *Charles* vs. *Fawley,* 71 O. S. 50. This presumption has particular force in the instant case because this same General Assembly which saw fit to include any or all employes, without limitation as to by whom or by what authority employed, whose salaries are paid in part by the state, appropriated in the enactment of the General Appropriation Act state moneys to the Department of Health under the item H-8 Contributions as hereinabove shown. It may not be contended in the face of that appropriation that the General Assembly was unaware of the language of Section 1261-40, supra, wherein reference is made to the state's "share of the salaries of the district health commissioner, public health nurse and clerk". It is my judgment that the definitive language of the State Employes' Retirement Act here under consideration may well be said to be in pari materia with the language of Section 1261-40, supra. Statutes which relate to the same thing or the same class of persons or things may be regarded as in pari materia. 37 O. J. 599. Such statutes may be in pari materia and even though they contain no reference to each other, regardless of whether they were enacted at the same session of the legislature or at different times. See *City of Dayton* vs. *Jacobs,* 120 O. S. 225; 25 R. C. L. 1067; 37 O. J. 601.

Whatever may be said as to the policy or wisdom in the inclusion of certain employes of local health districts within the definition of "state employes" as the term is used in the State Employes' Retirement Act, particularly in view of the fact that such employes might receive part of their salary from the state one year and because of failure of the local board of health to comply with the regulations of the State Department of Health, fail to receive any part of their salary the next year and thereby be unable to continue as members of the State Employes' Retirement System, such a question of policy is entirely one for the General Assembly. In view of the unambiguous language of Section 486-32, supra, it is my judgment that this is a consideration with which the courts have nothing whatsoever to do. As stated in *Railway Co.* vs. *Hortsman,* 72 O. S. 93 at page 107:

> "The legislative authority of this state is vested in the general assembly in the broadest terms, by Section 1 of Article I of the constitution, subject only to the limitations elsewhere found in the constitution. It is therefore not within the province of any court to declare void, and annul, a statute by reason of a

supposed violation of the principles of justice and common reason, if it be within the bounds of constitutional power. The courts have nothing whatever to do with the policy, the justice, or the wisdom of a statute so long as it cannot be said that it contravenes some constitutional provision."

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. A general or city health district is a separate and distinct political subdivision and employes of such districts are not generally in the category of state employes.

2. District health commissioners, public health nurses and clerks of general or city health districts which receive state funds pursuant to appropriation by the General Assembly in accordance with and under the circumstances provided by Section 1261-39, General Code, are "state employes" within the meaning of the term as used in the State Employes' Retirement Act during such years as such districts receive such state aid.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1329.

APPROVAL — CONTRACT BY AND BETWEEN THE W. E. CALDWELL COMPANY OF LOUISVILLE, KENTUCKY, AND THE STATE OF OHIO FOR ERECTION OF A STEEL WATER TOWER, ETC., AT AN EXPENDITURE OF $5,426.00.

COLUMBUS, OHIO, October 19, 1937.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: You have submitted for my approval a contract by and between W. E. Caldwell Company of Louisville, Ky., and the State of Ohio, acting by the Department of Public Welfare, Margaret M. Allman, Director, for the erection of a Steel Water Tower, plus Alternate A and Alternate B, which contract calls for a total expenditure of five thousand four hundred and twenty-six dollars ($5,426.00).

You have also submitted encumbrance estimate No. 28, a form of proposal signed by the W. E. Caldwell Company by the Secretary thereof,