counties in order that an investigation may be made, I know of no statutory inhibition to prevent such a course of action. In those cases where the claimant resides on or near a county line the normal requirements of investigation of such claims would often necessitate the county dog warden or deputies to go into the adjoining county or counties properly to perform their duties as prescribed by law.

Answering your question specifically it is my opinion that inasmuch as Section 5652-7, General Code, imposes the duty on county dog wardens and deputies to investigate all claims for damages to live stock inflicted by dogs such officers may go into an adjoining county or counties in furtherance of such duty.

I know of no printed pamphlets that contain the laws pertaining to the duties of a county dog warden other than the loose leaf copies of House Bill No. 164 of the 87th General Assembly. Copies thereof may be obtained from the office of the Secretary of State.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1133.

FRATERNITY—DEFINITION UNDER SECTION 12906, GENERAL CODE—BOARD OF EDUCATION EMPOWERED TO MAKE DISCIPLINARY RULES.

SYLLABUS:

1. *Section* 12906, *General Code, being a criminal statute, must be strictly construed. A pupil of the public schools who organizes, joins or belongs to a fraternity, sorority or other like society composed or made up, in whole or in part, of persons other than pupils of the public schools, cannot be subjected to the penalty imposed by the statute.*

2. *Boards of education are empowered to make such reasonable disciplinary rules as they may deem necessary to curb the evils attendant upon, or growing out of, the affiliation with fraternities or secret societies, of pupils attending the public schools under their jurisdiction, and enforce the same by the same penalties as might be inflicted for the violation of any other proper disciplinary rule or regulation, including suspension from school or from certain school activities, provided, of course, that such fraternities or societies or the activities of such fraternities or societies are so connected with or related to the public schools, or the pupils attending the same, as to be subject to control or regulation by such boards of education.*

3. *The words fraternity, sorority or other like society, as used in Section 12906, General Code, should be held to mean only such organizations whose deliberations and activities are secret.*

COLUMBUS, OHIO, October 10, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

> "The question frequently arises and we would be glad to have an opinion whether a pupil who joins, or is a member of, a fraternity or sorority which includes persons who are not in high school as well as pupils in high school,

is violating Section 12906, and whether Sections 12907, 12908, and 12909 apply to such cases. We should comment that in some cases nearly all members of a fraternity or sorority are persons not attending school and that only a few high school pupils belong to them.

We would also ask your opinion whether in case the above sections do not apply to a pupil who is a member of a fraternity or sorority composed partly, or mostly, of pupils not in school, the board of education may pass a rule forbidding membership in such a fraternity or sorority and might discipline a pupil disobeying such a rule after it is established. Could a board of education suspend a pupil for disobedience to such a rule if the fraternity meetings, initiations, etc., are held outside of school hours and away from school property? I might comment that the existence and policies of a fraternity, even under these conditions, might affect the relationships of pupils in school and also that any fraternity or sorority covered by the statutes would most probably meet and have its distinctive activities outside and away from school property."

Section 12906, General Code, provides as follows:

"Whoever, being a pupil in the public schools, organizes, joins or belongs to a fraternity, sorority or other like society composed of or made up of pupils of the public schools, shall be fined not less than ten dollars nor more than twentyfive dollars for each offense."

Sections 12907 and 12908, General Code, provide for the imposition of a penalty upon teachers, principals, superintendents of schools and members of boards of education who fail to enforce the provisions of Section 12906, supra.

Similar statutes in other states have been upheld by the courts. *University vs. Waugh*, 105 Miss. 653; *Bradford vs. Board of Education*, 18 Cal. App. 121. The case of *University vs. Waugh*, supra, upon its being carried to the Supreme Court of the United States was sustained, *Waugh vs. Board of Trustees of the University of Mississippi*, 237 U S 589.

The holding of the Supreme Court in this case is set out in the fifth and sixth branches of the headnotes, as follows:

"A state may establish the rule that students in its educational institutions shall not affiliate with fraternities, and even though such fraternities may be moral and beneficial in themselves, the prohibition is a matter within the wisdom of the state legislature and does not offend the due process provision of the fourteenth amendment.

The statute of Mississippi of 1912 prohibiting Greek-letter fraternities and other societies in the educational institutions of the state is not unconstitutional under the fourteenth amendment, either as denying students due process of law or as denying some of them the equal protection of the law by reason of its permitting those students already members of such societies to continue their membership under specified conditions."

It will be noted that Section 12906, supra, makes it a penal offense either to organize, join or belong to "a fraternity, sorority or other like society comprised of or made up of pupils of the public schools." To my mind, there is some question whether the provision "belong to" such an organization, could in a strict sense be upheld, that is to say, whether it could be held to apply in cases where students coming from other states not having such a prohibitory statute, had previously joined such an institution

whose organization is such that the principle "once a member always a member" applies. It is doubtful if such a person could be subjected to the penalty imposed by the statute upon becoming a student in the public schools of this state. However, that question is not before me and I do not desire to be understood as passing upon it.

The statute is not definite as to what is meant by "fraternity, sorority or other like society." It should be construed, however, in the light of the evils to be remedied thereby. The first Greek-letter society in a school of a lower grade than a college, was Alpha Phi, a literary society which became part of a so-called fraternity in 1876. Subsequently, secret societies sprang into existence in high schools all over the country. Educators soon became convinced that whatever good might be claimed for such societies among mature college students was not shared by such societies formed among students in the lower grades of schools, whose characters are in the formative stage. It was felt that such societies tended to engender an undemocratic spirit of caste, to promote cliques and foster contempt for school authority. To curb what was thought to be the evil effects of such societies in public schools, rules were adopted by many school authorities and in a number of states statutes were enacted, similar to those in Ohio, either absolutely forbidding such societies or placing them under control.

The evils, if any, growing out of membership in such societies cannot be said to be incident to membership in such societies as debating clubs, athletic associations and perhaps many purely social groups.

In an opinion rendered by this department, found in Opinions of the Attorney General for 1923, at page 649, it was said:

> "An organization which uses Greek letters in the designation of its name, which has initiation ceremonies which pledges students to membership and which holds secret meetings, constitutes a fraternity or sorority as contemplated by Section 12906, G. C."

In the course of the opinion above referred to, the Attorney General quoted the definition of fraternity, as given by Webster to be,

> "a body of men associated for their common interest, business or pleasure, a company, a brotherhood, a society, a community of men of the same class, profession, occupation or character."

Corpus Juris, Vol. 26, page 1049, defines Greek-letter fraternities as follows:

> "A college literary or social organization shown by the initial letter of a Greek motto or the like and consisting usually of affiliated chapters."

It should be observed, however, that the mere fact that a society uses Greek letters in the designation of its name, or has initiation ceremonies, or pledges students to membership does not necessarily make it such a society as is contemplated by the statute. Nor would the fact that it does not use Greek letters in the designation of its name necessarily place it beyond the evils intended to be remedied by the statute.

In my opinion, the element of secrecy surrounding the activities of a society is of more significance in determining whether the society is such a one as comes within the inhibition of the statute, than any other one thing. In my opinion, the words "fraternity, sorority and other like society" should be held to mean such Greek-letter fraternities or similar societies, whose meetings and activities are secret.

It will be observed that Section 12906, General Code, applies to a pupil in the public school who "organizes, joins or belongs to a fraternity, sorority or other like society *composed of or made up of pupils of the public schools.*" Sections 12907 and

12909 contain the same language as to the character of the society. In each of them the language "composed of and made up of the pupils of the public schools" is used.

These provisions do not apply to the fraternities themselves, but to the pupils in the public schools, and therefore as these statutes are criminal in their nature, and must be strictly construed, it follows that unless the fraternity, sorority or other like society is composed of, or made up of pupils of the public schools, the sections would not apply. That is to say, if the fraternities, sororities, or like societies are composed of, or made up in whole or in part, of persons other than pupils of the public schools, a pupil joining such a society would not be subject to the penalty provided by the statutes.

However, in the absence of a statute on the subject, regulations by school authorities prohibiting the connection of students with Greek-letter fraternities and similar institutions, or denying certain privileges to such members have been uniformly upheld as proper disciplinary regulations pertaining to the government of the schools and the pupils attending the same.

Boards of education are empowered by virtue of Section 4750, General Code, to make necessary rules and regulations for the conduct of the schools under their supervision and the government of the pupils therein and so long as such rules are not arbitrary or unreasonable the exercise of the board's authority in making such rules will be upheld. Membership in, or affiliation with, Greek-letter fraternities or similar societies is recognized as being attendent with such evils as to be a proper subject for regulation by rules promulgated by school authorities. The only question is whether the rules adopted to remedy or prevent the supposed evil is a reasonable exercise of the power and discretion of the board.

In the case of *Wilson vs. Board of Education*, 233 Ill. 464, wherein a rule of the board of education of Chicago requiring teachers to refuse to give recognition to secret societies, to refuse to allow their meetings to be held in the school building or to allow the name of any school to be used by the organization, or to allow a member of a fraternity to represent the school in any literary or athletic contest or in any public capacity, was upheld, the court said:

> "It was the judgment of the superintendent of schools of the City of Chicago as well as the board of education that membership in Greek-letter fraternities was detrimental to the best interest of the school. Whether the judgment was sound and well-founded is not subject to review by the courts. The only question for determination is whether the rule adopted was a reasonable exercise of the power and discretion of the board."

Many similar cases might be cited.
In Ruling Case Law, Vol. 24, page 629, it is said:

> "Even in the absence of a statute on the subject, regulations of school authorities prohibiting the connection of students with Greek-letter fraternities or denying certain privileges to such members have been uniformly upheld as proper disciplinary regulations, * * * though a distinction has been recognized in the case of persons already members of such fraternities before applying for admission to the institution with the prohibitory rule, and so much of the regulation as imposed disabilities on such persons because of their prior membership or required a renunciation thereof was held unreasonable and therefore void. But even as to the existing members it has been declared that the school authorities may properly prohibit active connection with their fraternities so long as they are students. There is some authority, however, to the effect that public school authorities cannot exclude pupils on this ground. * * *"

From what has been said, it is my opinion that:

1. Section 12906, General Code, being a criminal statute, must be strictly construed. A pupil of the public schools who organizes, joins or belongs to a fraternity, sorority or other like society composed or made up of, in whole or in part, persons other than pupils of the public schools, cannot be subjected to the penalty imposed by the statute.

2. Boards of education are empowered to make such reasonable disciplinary rules as they may deem necessary to curb the evils attendant upon, or growing out of, the affiliation with fraternities or secret societies, of pupils attending the public schools under their jurisdiction, and enforce the same by the same penalties as might be inflicted for the violation of any other proper disciplinary rule or regulation, including suspension from school or from certain school activities, provided of course, that such fraternities or societies or the activities of such fraternities or societies are so connected with or related to the public schools, or the pupils attending the same, as to be subject to control or regulation by such boards of education.

3. The words fraternity, sorority or other like society, as used in Section 12906, General Code, should be held to mean only such organizations whose deliberations and activities are secret.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1134.

MUNICIPALITY—REDUCTION OF STREET IMPROVEMENT ASSESSMENTS, DISCUSSED.

SYLLABUS:

1. *The legislative body of a municipality may not lawfully reduce the assessments made against abutting property for a street improvement, after bonds have been sold for such improvement in anticipation of the collection of such assessments and supply the deficit created in the sinking fund caused by such a reduction in the amount of the assessments by transferring thereto funds received under the provisions of Section* 6309-2 *and Section* 5537 *of the General Code.*

COLUMBUS, OHIO, October 10, 1927.

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

GENTLEMEN:—Receipt is acknowledged of your communication of recent date, requesting my opinion, as follows:

> "Main Street in the City of Lima, is a continuation of an intercounty highway. This highway is eighteen feet wide outside of the corporation and forty feet within the corporation. It was resurfaced in the city limits during the year 1923 and a substantial part of the old foundation used as the subsurface of the new improvement. The county did not assume any part of the re-construction costs; the work being done on a petition of the property owners who assumed the entire cost and expense, they having reason to believe that such cost would not exceed $7.00 a front foot. When completed the cost was assessed against the abutting property in the amount of $12.00 a front foot.