erned by the same rules in reference to obtaining liability and property damage insurance on motor vehicles owned and operated by them as heretofore set forth with reference to the powers of boards of education and county commissioners.

You further inquire, if such insurance can be carried, out of what funds the premiums should be paid. Without undertaking to discuss the status of the various funds at the disposal of the subdivisions about which you inquire, it is believed sufficient to state that in most instances, if not all, such expenditures which arise by reason of the operation and maintenance of a motor vehicle, should properly be paid out of any funds available for the maintenance of such vehicle. In other words, if there are funds available to maintain such a vehicle, the payment of such a premium would be for the same purpose.

Based upon the foregoing, it is my opinion that:

1. County commissioners and boards of education may not lawfully carry public liability and property damage insurance payable to others on account of damages growing out of the operation of motor vehicles by such boards in connection with their official duties, for the reason that when acting in such capacity they are performing a governmental function and that no liability arises under such circumstances.

2. By reason of the liability created by Section 3298-17 of the General Code, in cases where boards of township trustees are negligent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance.

3. Municipal officers when not acting in a proprietary capacity, such as when operating a public utility, are limited in the acquiring of such insurance in the same manner as boards of education and township trustees.

4. Such boards and officers may legally contract for fire or collision insurance to protect automobiles owned and operated by them from loss to the property itself.

5. Premiums for such insurance may properly be paid out of any fund of the subdivision operating and maintaining the same which is available for the purpose of maintenance of such vehicles.

Respectfully,
GILBERT BETTMAN,
Attorney General.

674.

SCHOOL DISTRICT—CREDITOR OBTAINING JUDGMENT FOR COST OF TRANSPORTATION OF SCHOOL CHILDREN—HOW CLAIMS SATISFIED—DISTRIBUTION OF STATE EDUCATIONAL EQUALIZATION FUND.

SYLLABUS:

1. *When a proposition to levy taxes, above the fifteen mill limitation, for the purpose, as it appears on the ballot, "for the better maintenance of the school," is submitted to the electors of a school district at a regular November election in any year, and the proposition carries, the taxes collected and paid into the school district treasury, the board of education of the school district may lawfully expend the proceeds of such levy for current expenses of the school district, including the cost of transportation of pupils and the payment of judgments based on claims for the transportation of pupils.*

2. *Judgment creditors of a school district may not lawfully levy execution for*

the payment of their judgments against the property, real or personal, of such school district. Such creditors do, however, have the right, and may enforce that right by an action in mandamus, to have the amount necessary to provide for the payment of their final judgments certified to the board of education of the school district by its fiscal officer, and the further right to have that amount placed in the next annual appropriation measure for the full amount certified, regardless of the requirements of the district for other current expenses. Creditors of a school district who have not reduced their claims to judgment cannot enforce the payment of such claims from the current funds of the school district, if said funds are needed for the payment of current operating expenses in the maintenance of the schools, according to law.

3. *There is no authority for a board of education to issue bonds for the payment of judgments against its school district, except such judgments as are based upon non-contractual obligations.*

4. *Judgments against a school district, based upon claims for the transportation of pupils are not judgments for non-contractual obligations, as the term is used in Section 2293-3, General Code.*

5. *Consideration of matters relating to the distribution of the State Educational Equalization Fund, authorized by Section 7595, General Code.*

COLUMBUS, OHIO, July 26, 1929.

HON. JAY S. MCDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

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

> "Under the old law as it existed a few years ago, there have been instituted in this county numerous suits for money for the transportation of school children of high school age. As a result there are two townships in this county with judgments against the school boards totalling in the neighborhood of seven thousand dollars each. It so happens that both of these townships are what you might term very poor financially and they have reached their limit of taxation for carrying on current expenses. One of the townships on several different occasions submitted a three mill levy for the purpose of paying these transportation bills but in each case it was defeated badly. At the last election, the board of education of one of the townships worded the question on the ballot in such way that it read in substance, 'for the better maintenance of schools,' and the measure passed. There are several questions which present themselves and I am unable to answer them.
>
> First. Can the money raised as the result of a three mill levy worded as above stated be used for the purpose of paying off matters of transportation which have been reduced to judgments?
>
> Second. If these judgments are not paid, can the plaintiffs levy execution against the school funds which are set aside for the maintenance of schools for the coming year, or in other words, can the plaintiffs by execution cause the schools to be closed by tying up said money for the payment of said judgments? This last question is a vital one because the school boards are at sea to know whether they should contract the teachers for the coming year in view of the fact that their funds might be levied upon.
>
> Third. I understand that there is a provision made by statute where bonds can be issued by the school board for the payment of judgments and the question is whether that would apply to this case and if so, is that the correct way to handle the situation?
>
> Fourth. Are there any requirements or preceding steps necessary before state aid can be granted a township and if so, what are those prerequisites?"

By the terms of Section 5625-15, General Code, the taxing authority of any subdivision is authorized to submit to the voters the question of levying taxes, outside the fifteen mill limitation, for certain enumerated purposes. These enumerated purposes set forth in the statute are "for current expenses of the subdivision," for the payment of certain debt claims, for recreational purposes, for a municipal university, for the construction or acquisition of any specific improvement and for the general construction, reconstruction, resurfacing and repair of roads and bridges in counties.

There is no authority to submit to the voters of a school district a proposition to levy taxes in excess of the fifteen mill limitation for the specific purpose of paying the cost of transporting pupils or "for the better maintenance of schools" only as such cost may be included within the term "current expenses of the subdivision."

However, if a proposition to levy additional taxes "for the better maintenance of the schools" were submitted to the voters of a school district, and the proposition carried, and the taxes collected, and the proceeds thereof are in the treasury, the school authorities would no doubt be authorized to expend these revenues for current expenses, including the cost of transporting pupils.

The power of the "taxing authority" or "bond issuing authority" of a subdivision to issue bonds or incur indebtedness by borrowing money and issuing notes for its repayment, is contained in Sections 2293-1 et seq. of the General Code of Ohio. Section 2293-2, General Code, specifically provides that:

> " * * * no subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in Sections 2293-3, 2293-4, 2293-7 and 2293-24 of the General Code."

By the terms of said Sections 2293-3, 2293-4, 2293-7 and 2293-24, General Code, authority is given to issue bonds to pay final judgments for personal injuries or judgments based on other non-contractural obligations and, with the consent of the Tax Commission of Ohio, to issue bonds to defray the expenses which are necessary to prevent the spread of dangerous communicable diseases in cases of an epidemic, threatened epidemic, or during an unusual prevalence of such diseases, or to provide temporary facilities for bridges, road, school or building purposes in case of the destruction by fire, flood or extraordinary catastrophe of any such bridge, road, school or public building.

There is no authority for the "taxing authority" of a school district to issue bonds, or to borrow money and issue notes, for the payment of such current operating expenses as the cost of the transportation of pupils, or for the payment of judgments based on such claims. Transportation costs may or may not be strictly contractual; in any event however, if no contract exists for the transportation, a claim therefor is quasi-contractual and is not in my opinion included within the term "non-contractual", as the word is used in Section 2293-3, of the General Code. The cost of transporting pupils in a school district, is an operating expense included within the terms "expenses of school operation" and "current expenses of the subdivision" and if not paid at the time when incurred, from current funds, and later reduced to judgment, the payment therefor should be made from any current expense revenues then available.

In Opinion No. 65, rendered by me under date of February 5, 1929, it was held, as stated in the third branch of the syllabus:

> "All legal and enforceable claims against a school district must eventually be paid from the then current appropriations, even though the liability for such claims had been incurred in prior years."

It is well settled by many authorities that, in the absence of statute, no execution

can be issued on a judgment against a municipal corporation or a school district. School districts are created for public purposes, and for the good of the citizens in their aggregate or public capacity. The property and revenue of a school district are essential to carry out its public purpose and properly to discharge its public functions. It is very clear that none of the property of the school district, whether real or personal, necessary for the accomplishment of the governmental purposes for which the district was called into existence, could be seized and sold without impeding, and in many instances, practically destroying the purposes of the corporation, even if the usual process for collecting a judgment could issue against such corporation. It is stated in *Monaghan* vs. *Philadelphia,* 28 Pa. St., 207, that:

> "The theory of the law is that no claim should exist against a municipal corporation other than such as could be readily met through the power of taxation."

The only means a school district has for the payment of its liabilities, is the power of taxation; and to this power must its creditors look for payment rather than to the real or personal property of the corporation which it may possess.

In this state, the property of a school district is specifically exempted from sale on execution by Section 4759, General Code, which reads as follows:

> "Real or personal porperty vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

As stated in the Pennsylvania case, supra, theoretically, the Legislature has endowed each political subdivision with the means of accomplishing the purpose for which it exists. It is intended, when duties are imposed on a political subdivision, to provide reciprocal means of carrying out those duties, and the measure of the means is the limit of the duties imposed. Actually, in some instances, because of inadvertence, oversight, or unforseen contingencies, the duties imposed and the liabilities therefor may be greater than the means of accomplishing them, but such exceptional instances do not serve to destroy the rule.

The primary purpose of the existence of school districts is to conduct the schools of the district in accordance with law, so that the inhabitants thereof will have the school advantages provided by law. To this end, school authorities are specifically enjoined, among other things, to provide for the youth of school age within the district, such school privileges as will permit their attendance at school for at least thirty-two weeks in each school year, and under certain circumstances, to provide transportation for such pupils. For this purpose, means are provided by taxation and other methods to accumulate necessary school property and raise revenues for operating expenses. Persons dealing with such a school district in any capacity, as creditors or otherwise, are not permitted to interfere with this primary purpose, by seizing the real or personal property of the district, vested in its board of education. This does not mean, however, that liabilities which, for any reason, were not paid from current funds at the time they arose, may not be taken care of at a later time.

Although judgment creditors do not have the right to interfere with the proper functioning of a school district by seizing its property, they do have the right to demand that the district exercise its full powers of taxation, and exhaust all other methods of raising revenues, to the end that the judgment creditors' claims may be paid, as well as the schools of the district maintained. The powers of taxation and the power of resorting to other means of raising revenues must be exercised according to law, and within the limitation allowed by law.

While a judgment creditor may require school district authorities to include within their budget, provisions for tax levies to provide revenues for the payment of judgments, and mandamus will lie to compel such action, yet any levies so made must be made within the fifteen mill limitation fixed by law unless, by vote of the electors, a levy outside the fifteen mill limitation is authorized, according to law.

Mandamus is the proper remedy to compel a public corporation to subject its funds to the payment of its liabilities, and to require it to exercise its powers of taxation for that purpose. *Gorgas* vs. *Blackburn,* 14 O. S., 252; *State ex rel Moron Brothers* vs. *Commissioners of Clinton County,* 6 O. S., 280; *State ex rel Garrett* vs. *Van Horn,* 7 O. S., 327; *State ex rel Robertson* vs. *Board of Education of Perrysburg Township,* 27 O. S., 96; *State* vs. *Commissioners,* 37 O. S., 526; *Rabe et al* vs. *Board of Education of Canton School District,* 88 O. S., 401; *State ex rel. Heald* vs. *Zangerle, Auditor, et al.,* 94 O. S., 447.

It is stated in Cooley on Taxation, Fourth Edition, Section 1602, in speaking of compelling municipal corporations to levy taxes to pay judgments by actions in mandamus:

> "It is customary to make express provision by statute for such cases, and when the statute requires the levy of a tax the case is clear. When the statute does not expressly require it, the duty may perhaps be equally plain if the municipality has been clothed with the requisite power; for in contracting a debt a municipality impliedly contracts with the creditor that the taxing powers conferred upon it by the state shall be employed for the satisfaction of the obligation."

See also McQuillin on Municipal Corporations, Second Edition, Sections 2720, et seq., Corpus Juris, Volume 38, page 776.

It has been stated that a public corporation cannot be required by an action in mandamus to subject public revenues to the payment of judgments, if those revenues are necessary to pay the current expenses of administration. Likewise, it has been held that if all the revenues that can be raised by taxation, within the limits allowed by law, or permitted by law, are necessary for current needs in the economical administration of the governmental affairs of the subdivision, mandamus will not lie to compel a special levy of taxes for the payment of a judgment.

In R. C. L., Volume 18, Title "Mandamus," Section 153, et seq., it is said:

> "The Federal Supreme Court said in *U. S.* vs. *Macon County,* 99 U. S. 582, that a judgment against a county has the effect of a judicial determination of the validity of the demand and of the amount that is due, but it gives the judgment creditor no new rights in respect to the means of payment. * * *
>
> The Federal courts after a judgment therein has been rendered against a municipality may in aid of execution, issue a writ of mandamus to compel or enforce the payment of the judgment though such courts have no general original jurisdiction to issue writs of mandamus. * * * The court, however, cannot require the municipality to use its general funds for the payment of the judgment if it does not have, and cannot raise funds in excess of what is necessary to pay the current expenses of administration."

In support of the text above quoted, there is cited *City of East St. Louis, et al.* vs. *United States, et al.,* 110 U. S. 321; *United States ex rel.* vs. *Thoman,* 156 U. S. 353. As will later appear, the observations of the commentator, quoted above, and the three federal cases cited, do not take into consideration the effect of pertinent statutory provisions that may exist.

In Beach on Public Corporations, Volume 2, page 1421, it is said:

"When the public interests conflict with private interests, the latter must yield. So that if the entire fund which can be raised by taxation is required to meet the necessary expenses of the municipal government, economically administered, and none can be diverted without serious detriment to the public none ought to be appropriated to pay debts. The municipal officers cannot be compelled to levy a tax in excess of the legal limitations. It is always the duty of a prospective municipal debtor to ascertain the powers which the municipality has, and if he fails to do so he cannot by mandamus compel the municipal officers to exceed their power."

Citing among other similar cases, the three federal cases above referred to. In McQuillin on Municipal Corporations, Second Edition, Section 2664, it is said:

"While ordinarily, mandamus will lie to compel the proper municipal authorities to levy and assess taxes for the payment of a judgment against the city, the extent of this power to tax is limited by the provisions of the constitution and statutes, and only the surplus of the revenues over and above the amount necessary for the operation and conduct of the city government can be applied to this purpose. *Clarendon* vs. *Betts,* (Texas) 174 S. W. 958. * * * "

In Cooley on Taxation, Volume 4, page 2301, where this question is discussed, it is said:

"And the writ will not be employed to compel the payment of judgments or other demands to an extent that would deprive the municipality of means for ordinary and necessary municipal purposes."

Citing in support thereof, a number of cases similar to those noted above, among which is the case of *City of Cleveland, Tenn.,* vs. *U. S.,* 111 Fed., 341, wherein it is held, as stated in the seventh branch of the headnotes:

"A court in a procceding for a writ in mandamus to compel a city to pay a judgment in favor of a relator has no power to control the discretion of the city authorities in making appropriations from the taxes collected for current municipal expenses, although it may compel the application of any surplus remaining after the payment of such expenses upon relator's judgments, rather than upon other debts previously contracted."

In Abbott on Public Securities, Section 414, it is said:

"A judgment has the effect of a judicial determination of the validity of a demand and of the amount that is due but ordinarily it gives the judgment creditor no additional rights of taxation which he did not have before he secured his judgment. It gives him no new rights in respect to the means of payment, but where statutes have been passed conferring powers and imposing duties on public officials to levy taxes to pay judgments they supersede statutory powers in respect to the levy of taxes less extensive in their character existing at the time when the latter legislation was passed." *United States* vs. *Saunders,* 124 Fed. 124.

Whatever may be the rule in other jurisdictions, it is certain that in Ohio, in so far as the statutes require tax levies to be made to pay judgments against political

subdivisions, that duty may be enforced by an action in mandamus, regardless of the needs of the subdivision for current expenses of administration.

In the case of *State ex rel. Heald* vs. *Zangerle, Auditor, et al.,* 94 O. S. 447, it is held:

> "Under the provisions of Section 4513, General Code, it is the duty of the trustees of the sinking fund to certify to council the rate of tax necessary to provide for sinking fund and interest purposes, and the amount so certified must be placed in the taxing ordinance by the council, before and in preference to any other item and for the full amount thereof.
>
> The provision of Section 5649-1, General Code, that the taxing authorities in each taxing district of the state shall levy a tax sufficient to provide for sinking fund and interest purposes, requires the county budget commissioners to certify to the county auditor a tax sufficient for such purposes, regardless of other needs of the taxing district. (*Rabe et al.* vs. *Board of Education,* 88 Ohio St., 403, approved and followed.)"

In the case of *Village of Kent et al.* vs. *United States, ex rel. Dana,* 113 Federal, 232, decided by the United States Circuit Court of Appeals of the Sixth Circuit, at the same term of court at which was decided the case of *City of Cleveland, Tenn.,* vs. *U. S., supra,* it was held:

> "Rev. St. Ohio, Sec. 2685, provides that a village council 'may levy taxes annually, * * * (subdivision 22) to pay interest on the public debt of the corporation and to provide a sinking fund therefor a sum sufficient to satisfy the interest as it accrues annually, to be applied to no other purpose.' Subdivision 24 provides that 'the council shall determine the amount to be levied for each of the purposes herein specified,' and Section 2689a limits the total levy to eight mills. HELD, that the word 'may,' as used in Section 2683, must be read 'shall,' so far as it relates to subdivision 22, and that the council had no discretion, as against a holder of valid bonds of the village, to refuse to levy the amount required to pay the annual interest thereon, not exceeding eight mills, nor to divert any part of such amount to other purposes, notwithstanding the fact that the remainder of the levy might be insufficient to pay the current municipal expenses of the village.
>
> It is no defense to an action for a writ of mandamus to compel a village to apply so much of such levy as is necessary to pay a judgment recovered against it on interest coupons that such application would leave the village without sufficient funds for ordinary municipal purposes, in view of Rev. St. Ohio, Sec. 2687, which authorizes the levy of an unlimited tax by the village for any authorized purpose by a vote of its electors at a special election which the council is empowered to call."

In both the Zangerle and Village of Kent cases, supra, the obligation, for the payment of which mandamus was sought, was for sinking fund and interest purposes, for issued and outstanding bonds. That was also the subject of controversy in the case of *Rabe et al.* vs. *Board of Education,* which case was approved and followed in the Zangerle case. In each instance there was in force a statute directing each taxing district in Ohio specifically to levy a tax sufficient to provide for interest and sinking fund purposes for its outstanding bonded indebtedness. It was held in each case that this tax must be levied and the revenues derived therefrom applied to the purposes for which the levies were made, regardless of other needs of the subdivision.

Although there is no statute now in force in Ohio directing that a special levy be made for the payment of judgments based on other than sinking fund and interest needs for bonded indebtedness, yet there is in force a statute directing the payment of such judgments, and while the language of that statute enjoining the payment of such judgments is not so clear and specific as was the language of Section 4513, General Code, at the time of the decision of the Zangerle case, it to my mind is no less imperative. Section 5625-8, General Code, reads as follows:

> "On or before the first Monday in May of each year, the fiscal officer of each subdivision shall certify to the taxing authority thereof the amount necessary to provide for the payment of final judgments against the subdivision, except in condemnation of property cases; and said taxing authority shall place such amount in each budget and in the annual appropriation measure for the full amount certified."

The injunction contained in the above statute, to the effect that the amount necessary to pay final judgments shall be placed in the annual appropriation measure "for the full amount certified," certainly means that those judgments shall be paid, regardless of other needs, just as clearly as though the provision had been "before and in preference to any other item and for the full amount thereof" as it was in Section 4513, General Code, when under consideration in the Zangerle case.

As before stated, the statutes do not provide that a *special* levy be made to raise revenues to pay judgments. The levy should be made as a part of the general levy for current expenses, as stated in Section 5625-5, General Code, which reads in part, as follows:

> "The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements *and the payment of judgments,* * * * " (Italics mine).

Any levy for current expenses, however, must be made within the fifteen mill limitation, except as it may be made outside by authority of popular vote, and before any levy is made for current expenses at all, there must be levied within the fifteen mill limitation, first, "all levies for debt charges not provided for by levies outside of the fifteen mill limitation, including levies necessary to pay notes issued for emergency purposes," and second, "the levy prescribed by Section 7575 of the General Code, or any other school equalization levy which may be authorized," (Section 5625-23, General Code.)

A different question presents itself with reference to the payment of past due claims against a school district which have not been reduced to judgment. I believe the correct rule with reference to claims against municipalities, which by analogy would apply to school districts, in the absence of any statutory provisions with reference to the same, is stated in McQuillin in his work on municipal corporations, Second Edition, paragraph 2720, as follows:

> "Ordinarily one is not entitled to mandamus to compel the municipality to pay an indebtedness which has not been reduced to judgment and for which no warrant or order has been issued. But when a municipal or other public

officer has funds in his hands, subject to proper order and applicable to its payment, the payment thereof upon such order is a ministerial duty which he may be compelled by mandamus to perform."

There is no statute in Ohio which definitely directs the payment of such claims as in the case of judgments. Without doubt, if a claim is liquidated, and definite in amount, and a proper order has been made for its payment, the payment thereof would become a mere ministerial duty on the part of the fiscal officer of a school district, and if there was money in his hands applicable to the payment of the claim he no doubt could be required by mandamus to make payment thereon. However, in my judgment, he could not be required to pay such claims if the moneys in his hands were necessary for current needs of the district in the maintenance of its schools, according to law, and especially not if said moneys had been appropriated for any purpose. I believe the principles announced by the Supreme Court of the United States, with reference to this subject, in the cases hereinbefore referred to, would be applicable to such a situation.

Rural and village school districts may, under certain conditions, and when necessary, be permitted to participate in the state educational equalization fund for the equalization of educational advantages throughout the state, provided for by Sections 7595, et seq., of the General Code, of Ohio. Such participation is commonly called State Aid. The state educational equalization fund is administered by the Director of Education, subject to restrictions of law.

The entire amount of the state educational equalization fund available for allotment to the several school districts needing aid, and complying with the requirements of the law for such aid, is limited to the amount appropriated therefor by the Legislature. Extreme care is necessary in the disbursement of the fund so that the limited amount available will reach to the places where it is most needed.

Heretofore, the Director of Education has had wide discretion in distributing the funds, the statutory direction therefor, being somewhat indefinite. Practically the only limitation on the right of the Director of Education to extend state aid to a rural village school district, within the limits of the funds available therefor, is contained in present existing Sections 7595, 7595-1, 7596, 7596-1 and 7597 of the General Code. These sections provide, in substance, that state aid may not be extended to a school district until after the taxable property of the district has been subjected to taxation at certain specified rates, and more funds than the proceeds of these taxes are necessary for the maintenance of the schools of the district according to law.

Section 7596-1, General Code, wherein it is provided that in case a local board of education has failed to put to a vote a proposition to levy additional taxes above certain tax limitations in order that the levy may meet the requirements for the district to share in the state educational equalization fund, or if the district has voted upon such proposition and has failed to give it the necessary majority, the Director of Education, upon ascertaining such action to be necessary to enable the district to receive the sum from the state educational equalization fund necessary to maintain the schools for eight months in the year, shall direct the county board of education to levy the additional taxes on the property of the village or rural school district necessary for such purpose, and the county board of education shall be empowered to levy such additional taxes, contains the further provision:

"The expression 'maintain the schools' shall mean to discharge the obligations incident thereto, provided no cost of transportation of high school pupils to school outside of the district shall be included."

In the case of *State ex rel. Weaver* vs. *Board of Education,* 26 O. N. P. (N. S.)

page 4, the court, in speaking of the tax levy made by the county board of education upon the order of the Director of Education by authority of Section 7596, supra, held:

> "No part of the tax so levied shall be used to pay the cost of transportation of high school pupils."

However, my predecessor, in an opinion reported in Opinions of the Attorney General for 1927, at page 2437, said on page 2440:

> "The Supreme Court has by its decision of the Beamer and Sommers cases, supra, definitely made the furnishing of high school privileges, including transportation when authorized and directed by law, an obligation of school districts of equal standing and importance to that of their other obligations, and it makes no difference, so far as I am able to determine, whether obligations arising for the furnishing of high school transportation are met from this particular levy and the amount thereafter brought into the district's treasury from other sources, or whether high school transportation obligations are met from the district's funds in the first instance and the funds thereby depleted to such an extent that the extra three mill levy and state aid are made necessary to 'maintain the schools.' Clearly, a tax levy could not be made by the county board of education upon the order of the Director of Education, by virtue of Section 5695-1, General Code, for the express purpose of providing funds to pay high school transportation charges. However, these charges must be paid, and if by paying them the funds are so depleted as to require state aid, the levy may then be made. In the last analysis it narrows down to a matter of bookkeeping."

Sections 7595, 7595-1, 7596, 7596-1 and 7596-2, General Code, have all been amended in House Bill No. 244 of the 88th General Assembly, effective July 21, 1929. Very little change has been made in these amendments, except as to Section 7596-2, General Code, which is amended to read as follows:

> Sec. 7596-2. "The director of education, with the advice and consent of the controlling board, shall issue formulas and regulations for determining the educational need of districts for current expense, and in determining the amounts necessary, for current expense purposes, in the operation of Section 7597, he shall be governed by these formulas and regulations.
>
> Before drawing vouchers for the distribution of the educational equalization fund applicable to current expense for the period of the current appropriation, he shall submit to the controlling board complete estimates of the needs of districts in accordance with the adopted formulas and regulations. The controlling board shall approve or modify these estimates, in accordance with equitable principles defined by the board, and shall set aside ten per cent of the balance at that time in the educational equalization fund applicable to current expense as a reserve fund for unforeseen contingencies. The director of education shall thereafter be empowered to draw vouchers on the fund according to the estimates so approved or modified.
>
> Distribution of the reserve fund thus created, of any further balance in the educational equalization fund, and of any part of the equalization fund appropriated for rehabilitation of school districts, shall be on presentation of needs made to the controlling board by the director of education, and the consent of the controlling board shall be required for each item of allotment for such needs. Upon such approval, the director of education may draw vouchers on the Auditor of State for the respective amounts."

Coming now to a consideration of your specific questions, in their order, I am of the opinion:

First, the proceeds of the tax levy spoken of may lawfully be used for the purpose of paying operating expenses for the maintenance of the schools of the district, including the cost of the transportation of pupils, and may lawfully be expended in the payment of judgments against the district for such transportation.

Second, judgment creditors of a school district may not lawfully levy execution for the payment of their judgments against the property, real or personal, of such school district. Such creditors do, however, have the right, and may enforce that right by an action in mandamus, to have the amount necessary to provide for the payment of their final judgments certified to the board of education of the school district by its fiscal officer, and the further right to have that amount placed in the next annual appropriation measure for the full amount certified, regardless of the requirements of the district for other current expenses. Creditors of a school district who have not reduced their claims to judgment cannot enforce the payment of such claims from the current funds of the school district if said funds are needed for the pyament of current operating expenses in the maintenance of the schools, according to law.

Third, bonds may not lawfully be issued by a board of education for the payment of judgments against the district other than those for non-contractual obligations. Judgments for claims for transportation of pupils are not for non-contractual obligations.

Fourth, in answer to your fourth question, your attention is directed to the terms of Sections 7595 et seq., of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

675.

PRISONER—INDICTED UNDER OHIO LAWS BUT TRIED AND CONVICTED IN FEDERAL DISTRICT COURT—GOVERNOR MAY PARDON OR COMMUTE SENTENCE.

SYLLABUS:

Where a person is indicted on a charge of manslaughter under the laws of the State of Ohio and the prosecution is removed to the District Court of the United States before trial, by virtue of the provisions of Section 33 of the Judicial Code of the United States, and said person after conviction is sentenced by the federal court to the Ohio penitentiary, such person may be granted a pardon or commutation of sentence by the Governor of the State of Ohio.

COLUMBUS, OHIO, July 26, 1929.

HON. HAL H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which is as follows:

"A man was indicted by the grand jury of Cuyahoga County for the crime of manslaughter. He next was removed for trial to the District Court