be published once only, yet it would seem clear from the language of the Friedlander case that such specific insertion was not essential to establish the intent of the General Assembly.

Under section 5713, General Code, as it has been pointed out, service by construction notice was complete on the date of the sixth publication, that is, the 35th day after the date of the first publication. See *Core* vs. *Oil and Oil Land Co.*, 40 O. S. 636. Under section 5718-3, General Code, service by constructive notice would appear to be complete on the expiration of the 21st day after the one and only publication. Obviously, the intention of the legislature was to disturb the former set-up only in so far as the shortening of the time necessary for complete service by constructive notice, and the reduction in the costs of foreclosure through limiting the advertisement to a minimum. From examination of the law prior to the enactment of section 5718-3, General Code, with the language of the Friedlander case in mind, it would appear to be clear that the legislature did not intend by section 5718-3, General Code, to make any distinction in the requirement for length of advertisement between known and unknown necessary parties defendant, in so far as service of summons by constructive notice is concerned.

I am therefore of the opinion, in specific answer to your question, that where it is necessary to make unknown heirs, executors, administrators, devisees and legatees parties defendant in a proceeding on a delinquent land tax certificate to foreclose the lien of the State, publication is required but one time, under the provisions of section 5718-3, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5003.

BOARD OF EDUCATION — MAY COMPEL STUDENTS TO SALUTE FLAG AND TAKE OATH OF ALLEGIANCE IF PROPER RULE HAS BEEN ADOPTED BY IT.

SYLLABUS:

1. *In the absence of any statute on the subject, a rule of a board of education in this state requiring pupils in the public schools under its jurisdiction to salute the American Flag and pledge allegiance thereto, and otherwise participate in patriotic exercises conducted in the school, is not subversive of the "liberty" protected by the "due process" clause nor the "privileges and immunities" clause nor the "equal protection" clause of the 14th Amendment to the Federal Constitution, nor does it constitute an invasion of one's rights*

to worship Almighty God according to the dictates of one's conscience nor interfere with the rights of conscience, as guaranteed by Section 7 of Article I of the Constitution of Ohio.

2. *A board of education in this state may in the exercise of its lawful discretion, promulgate and enforce a rule requiring pupils in the public schools under its jurisdiction, to salute the American Flag and pledge allegiance thereto, and otherwise participate in patriotic exercises conducted in the school.*

3. *Pupils refusing to comply with such a rule may be punished in any proper manner, as for the infraction of any other proper rule of discipline, by being denied the right to participate in assembly exercises or other school activities except regular classroom work conducted in pursuance of courses of study in branches embraced within the regular curriculum which is suited to their age and state of advancement, or be expelled from school subject to the restrictions contained in Section* 7685, *General Code.*

COLUMBUS, OHIO, December 16, 1935.

HON. E. L. BOWSHER, *Director of Education, Columbus, Ohio.*

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

> "Within the past few days we have had requests from local school officials for a formal opinion from your office relative to the authority of a board of education to enforce a regulation requiring the salute and the pledge of allegiance to the American Flag. In order that we may advise local school officials relative to their legal rights, powers and duties where such problems arise, we should appreciate your formal opinion on the following questions:
>
> 1. In the absence of a state law expressly requiring the salute and pledge of allegiance to the American Flag is a board of education legally justified in promulgating a regulation requiring each child to salute and pledge allegiance to the Flag?
>
> 2. When the board of education has officially promulgated a regulation requiring the salute and pledge of allegiance to the Flag, is it legally justified in expelling those pupils refusing to conform with the regulations?
>
> 3. May a board of education segregate pupils refusing to salute and pledge allegiance to the Flag by placing them in a separate classroom and denying them the privilege of participating in assembly exercises or other school activities with the exception of the regular classroom work suited to their age and academic achievements?"

By force of Section 7690, General Code, each city, village or rural board of education is vested with the management and control of all the public schools of whatever name or character in their respective districts. Section 4750, General Code, empowers boards of education to make rules and regulations for their government and the government of the pupils in their schools in the following language:

> "The board of education shall make such rules and regulations as it deems necessary for its government and for the government of its employes and the pupils of the schools."

A board of education would no doubt be held to have this power even if it were not expressly conferred by statute. In *Ruling Case Law,* Vol. 24, pages 574 and 575, it is stated with reference to such rules:

> "These rules are administrative provisions, the right to enact which for purposes of its existence is inherent in every corporation. They are analogous to by-laws and ordinances and are tested by the same general principles. * *
>
> All rules and regulations must be suitably adapted to the purposes of the existence of the board, and cannot be either inconsistent with the law nor unreasonable or oppressive. * * The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of discretion or a violation of law. So the courts are usually disinclined to interfere with the regulations adopted by school boards, and they will not consider whether the regulations are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the board. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order and discipline of the schools and the rules required to produce these conditions. The presumption is always in favor of the reasonableness and propriety of a rule or regulation duly made. The reasonableness of regulations is a question of law for the courts."

The non-interference by the courts with the enforcement of reasonable and proper rules of a board of education is illustrated by several reported cases in Ohio. Thus, it has been held that a resolution passed by a school board prohibiting the reading of the Bible, and prayer or other religious instruction in the schools cannot be reviewed by the courts. *Board of Education* vs. *Paul,* 7 O. N. P. (N. S.) 58; *Board of Education* vs. *Minor,* 23 O. S., 211. In the case of *Nessle* vs. *Hunn,* 1 N. P., 140, it was held that the courts have no

authority to interfere with the regulations adopted by a school board requiring the reading of the Bible as an opening exercise in school. See also *Board of Education* vs. *Wickham,* 80 O. S., 133.

Of course, the right to make regulations for the government of pupils in a school carries with it the reciprocal right to enforce these regulations and to punish the pupils for failure to comply with them. The force and extent of the punishment is a matter to be determined by the school authorities. They, of course, must, in administering punishment for violation of rules of discipline or anything else, keep within the law and not exceed the limits of reasonableness. I have no doubt a pupil might be deprived of the right to participate in assembly exercises or other school activities as a punishment for indiscretion, insubordination or failure to comply with proper rules of discipline, and if the school board should see fit, a pupil may be suspended from school when the occasion for punishment arises. This is a matter left by law entirely to the discretion of the school authorities in charge of the school. The right to suspend pupils is recognized by Section 7685, General Code, which reads as follows:

> "No pupil shall be suspended from school by a superintendent or teacher except for such time as is necessary to convene the board of education, nor shall one be expelled except by a vote of two-thirds of such board, and after the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against it. No pupil shall be suspended or expelled from any school beyond the current term thereof."

A pupil cannot be expelled from school except in strict compliance with the statutory provisions governing the subject; but when the procedure of the board is in compliance with such statutory provisions, and the reason for expulsion is not unreasonably arbitrary or unlawful, the court will not interfere with the sound discretion of the school authorities. *Brown* vs. *Board of Education,* 6 N. P., 411. It has been held that under some circumstances an action for damages may be maintained for the unlawful expulsion of a child from school. *Roe* vs. *Deming,* 21 O. S., 666. In the case of *Sewell* vs. *Board of Education,* 29 O. S., 89, it was held:

> "1. Boards of education are authorized by law to adopt and enforce necessary rules and regulations for the government of the schools under their management and control.
>
> 2. Where instruction in rhetoric was given in any grade or department of such schools, and one of the rules adopted by the board for the government of the pupils therein provided that if any pupil should fail to be prepared with a rhetorical exercise, at the

time appointed therefor, he or she would, unless excused on account of sickness or other reasonable cause, be immediately suspended from such department: Held, that such rule was reasonable.

3. Where the teacher of such department, with the consent of the board, for a failure to comply with the rule, or to offer any excuse therefor, suspended a pupil, until he should comply with the rule, or offer a reasonable excuse for his non-compliance, neither the board of education nor the teacher is liable in damages therefor."

See also 42 A. L. R., 764, note.

Of course, school pupils are not subject to unreasonable or unlawful rules or to excessive or malicious punishment or to any punishment for violation of a rule that is unreasonable or unlawful. School pupils and their parents like all other members of a community, have legal rights that cannot lawfully be invaded. The question is therefore presented by your inquiry as to the reasonableness or lawfulness of a rule of a board of education requiring pupils to participate in exercises involving the saluting of the American Flag and the pledging of allegiance by the pupil to the American Flag and what it represents.

The ostensible object of such exercises is to teach patriotism and to inculcate in the minds of the participants patriotic thoughts and feelings toward the country which the flag symbolizes.

The law of Ohio does not in express terms require the teaching of patriotism as such in the public schools but that fact does not in and of itself signify that such teaching may not be lawfully extended in compliance with the rules and regulations adopted by school authorities in charge of the particular school. In a sense, the legislature has recognized the need of such teaching and indirectly at least provided for it or for the teaching of subjects and the displaying of the American Flag, a natural result of which would be to lead the pupil to have respect for his country and for the flag by which it is represented. In Section 7645, General Code, it is provided that courses of study shall include "American government and citizenship in the seventh and eighth grades". Section 7648, General Code, provides: "History of the United States including civil government" shall be included in the curriculum of all elementary schools. Similar provision with respect to high schools is made in Section 7652-1, General Code. Section 7621, General Code, provides that all boards of education, all proprietors or principals of private schools and all authorities in control of parochial schools or other educational institutions shall display the United States national flag, not less than five feet in length, over or within all school-houses under their control, during each day such schools are in session. Section 7621-1, General Code, provides that it shall be the special duty of the county superintendent of schools to see that the provisions of Section 7621 are in force and that he shall promptly report all violations

thereof to the prosecuting attorney of the county whose duty it shall be to institute prosecutions against all persons violating the provisions of Section 7621, General Code, in his county. Section 12906-1, General Code, makes it a misdemeanor punishable by a fine for anyone who has control of a schoolhouse or other educational institution to neglect or refuse to carry out the provisions of Section 7621, General Code.

By reason of the statutory law of Ohio empowering boards of education to make rules for the government of the pupils in its schools, and the recognition in this law of the American Flag and the necessity of displaying the flag, and thereby impliedly teaching respect therefor in connection with the schools, I am clearly of the opinion that a rule such as is here involved is not an unreasonable rule if it is lawful. The question of its lawfulness involves the consideration of certain constitutional guaranties.

I am advised that your inquiry is prompted by the fact that a certain board of education had adopted a rule requiring school pupils to participate in certain school exercises which included the saluting of the American Flag and the pledging of allegiance to the country symbolized by that flag. Objection was made by some parents, on the ground that the religion in which they believed included the doctrine that obeisance to any earthly authority or government is wrong and contrary to the principles of that religious doctrine. The only conceivable legal basis for such an objection is that the saluting of the flag and the pledging of allegiance as required by the rule of the board of education is an interference with the natural and indefeasible right of every citizen of Ohio to worship Almighty God according to the dictates of his own conscience and is an interference with the rights of conscience both of which are guaranteed by Section 7 of Article I of the Constitution of Ohio, or it is an interference with the liberty of every citizen of the United States protected by the 14th Amendment of the Federal Constitution.

The right to attend the public schools is not a private right held by an individual separately from the community at large, but is a political right held in common. *Leacock* vs. *Putnam,* 111 Mass., 499. It is not a privilege appertaining to a citizen of the United States, as such, and therefore, no person can lawfully demand admission to the public schools as a pupil because of the mere status of citizenship. *Ward* vs. *Flood,* 38 Calif., 36; *People* vs. *Gallagher,* 93 N. Y., 438. It is merely a privilege created by a state for its own citizens. *Lehew* vs. *Brummell,* 103 Mo., 546. The 14th Amendment to the Constitution of the United States, however, forbids a state to "deny to any person within its jurisdiction the equal protection of the laws", and consequently no child residing within a state can be arbitrarily denied school privileges. *Ward* vs. *Flood,* supra. But such privileges are to be enjoyed upon such reasonable conditions and restrictions as the lawmaking power within constitutional limits may see fit to impose; and within those limits the question of what terms and restrictions will best subserve the end sought in the

establishment and maintenance of the public schools, is a question solely for the legislature and not for the courts. *Bissell* vs. *Davidson,* 65 Conn., 183, 32 Atl., 348.

"The last duty of parents to their children," says Blackstone, "is that of giving them an education suitable to their station in life; a duty pointed out by reason and by far the greatest importance of all." Yet in Blackstone's time there were few, if any laws in existence by which a parent might be compelled to perform this duty. There was no action known to the common law to compel a parent to educate his children. Peck, *Domestic Relations,* Section 109. In those times, there were very few free schools. In most cases parents had to pay directly for the education of their children if they received any education, and what few such schools as were available, were of a very poor type. Later, it became recognized that the welfare of society and the stability of government demanded that some measure of education, at least, be afforded for each and all of the children upon whose shoulders the security and welfare of the social state and burdens of government would later rest. To that end, provision was made by law for the establishment and maintenance of free public schools at the expense of the taxpayers as a whole. Still later it became manifest that some laws were necessary to compel parents to provide suitable education for their children in some manner. What are commonly termed "compulsory school laws" were enacted, by the terms of which parents were compelled under penalty to see that their children attended the public schools or that they otherwise provided for the furnishing for their children an education substantially equal to that afforded by the public schools of their respective districts. Under the Ohio Compulsory School Law (Secs. 7762, et seq., of the General Code of Ohio), a parent is not required to have his children attend the public schools, but if he does not, he is required to afford them the substantial equivalent of an education which they might receive in the public schools of his district, by having them attend an approved private school or have them instructed at home. (Sec. 7763, General Code.)

The fact that a person is a conscientious objector to some of the exercises or instruction given in the public schools where his children should attend, does not excuse him from compliance with the compulsory school law in some manner. In the case of *Troyer* vs. *State,* 21 O. N. P. (N. S.), 121, decided by the Common Pleas Court of Logan County in 1918, it appeared that a parent whose religion led him to oppose the defense of his country in time of war, had instructed his child not to salute the flag or pledge allegiance to the country, or otherwise participate in patriotic exercises required of the pupils of the school, thereby causing the child to be sent home each day for disobedience of rules. This continued for some time and the parent took no steps to change his instructions to his child or to provide education for the child in any other proper manner as provided by law. It was held that he was subject to prosecution under the compulsory school law.

Of course, this case was decided under the fervor and excitement attendant upon the war, but I cannot see that that fact made any difference nor was the question of the reasonableness or unreasonableness or the lawfulness or unlawfulness of the rule of the school requiring the saluting of the flag and the pledging of allegiance to the country which the flag represented discussed to any great extent in the opinion of the court, and probably these questions were not urged, but certainly they were involved, and if they had been raised, there is little doubt as to how they would have been disposed of, in the light of the remarks of the court contained in his opinion at page 124, where he said:

> "What would have been the result had plaintiff in error instructed the child to salute the flag and to participate in the school exercises? There can be but one answer. What would have been the result had the little girl received no instruction on this point from defendant below? Every one knows that the result would have been cheerful compliance. There is no instinct in the heart of the native-born American child to show disrespect, disloyalty and rebellion against the beautiful banner which symbolizes American independence, its free institutions and the glory of this great nation. The child was told by defendant below not to salute the flag in the school exercise, which exercise was required by proper officials of one of the best of our free institutions, the public school, and this instruction was given by the foster father in the time of war, at a time when the rich blood of the free men is being shed, that our nation may remain free and its institutions may be preserved; and to manifest this spirit of rebellion, the child was deprived of its right to attend school and receive proper instruction and education.
>
> Such conduct on the part of our citizens is not conscionable, for conscience would lead to respect for government and to its defense, especially in time of war, but rather it is the forerunner of disloyalty and treason. All true Americans are conscientiously opposed to war, but when war is upon us, we will fight and fight until the victory over our enemy is won."

Neither the courts of this state nor those of any other state, so far as I know, have ever held that the making and enforcement of a regulation of the kind here under consideration, or of any similar regulation founded on principles of public policy and in the interests of what men with practical unanimity consider to be in furtherance of the public good, is in violation of Section 7 of Article I of the Constitution of Ohio or any similar constitutional provision found in the Constitutions of other states or of the United States. See generally, *Bloom* vs. *Richards,* 2 O. S., 387; *McGatrick* vs. *Wayson,* 4 O. S.,

566; *State* vs. *Marble,* 72 O. S., 21; *Reynolds* vs. *United States,* 95 U. S., 145, 164.

On the contrary, the Supreme Court of the United States and state courts of last resort have in numerous cases held affirmatively that regulations requiring citizens to aid in the defense of their country in time of war involving indirectly loyalty to one's country and respect for its flag are not contrary to law.

In the recent case of *Hamilton* vs. *University of California,* 55 Sup. Ct., 197, 79 L. Ed., 159, while recognizing that the "liberty" protected by the due process clause of the 14th Amendment includes the right to entertain the belief and to teach the doctrine that war, training for war and military training are immoral, wrong and contrary to the precepts of Christianity, or any other religious belief as exemplified by the cases of *Meyer* vs. *Nebraska,* 262 U. S., 390; *Pierce* vs. *Society of Sisters,* 260 U. S., 510; *Stromberg* vs. *Calif.,* 283 U. S., 359; *Near* vs. *Minnesota,* 283 U. S., 697, yet it was held that every state has authority to train its able bodied male citizens of suitable age appropriately to develop fitness, should any such duty be laid upon them to serve in the United States Army or in the state militia, and so long as its action is within retained powers and not inconsistent with any exertion of authority of the national government and transgresses no right safeguarded to the citizens by the Federal Constitution, is the sole judge of the means to be employed and the amount of training to be exacted for the effective accomplishment of those ends. It was held categorically, in the above case:

> "The enforcement of an order of the board of regents of a state university prescribing instruction in military science and tactics as a required course does not unconstitutionally abridge the privileges or immunities of citizens of the United States or deprive any person of liberty without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.
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> * * * *
>
> Every citizen owes the duty, according to his capacity, to support and defend the government, Federal and state, against all enemies."

See also, *University of Maryland* vs. *Coale,* 165 Md., 224, 167 Atl., 54.

In *United States* vs. *Schwimmer,* 279 U. S., 644, 73 L. Ed., 889, there was involved a petition for naturalization by one opposed to bearing arms in defense of country. In holding the applicant not entitled to citizenship, the Supreme Court said:

> "That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises, is a funda-

> mental principle of the Constitution. * * Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the government."

To the same effect is a later naturalization case decided by the Supreme Court of the United States — *United States* vs. *MacIntosh,* 283 U. S., 605, 75 L. Ed., 1302.

Mr. Justice Cardozo, in a concurring opinion in the Hamilton case, supra, after stating his concurrence and citing a number of authorities in support thereof, stated:

> "Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

Cases involving the enforcement of regulations of a school board over the objection of parents, where the regulation might reasonably be said to affect parental authority along lines looking to the building up of personal character and the advancement of the public welfare of the children or their moral well being are to be distinguished from cases of the kind here under consideration. This is illustrated by the case of *Hardwick* vs. *Board of School Trustees,* decided by the Supreme Court of California in 1921, 205 Pac., 49. In that case there was involved the enforcement of a regulation of a school board requiring school children to participate in certain forms of dancing which were offensive to the parents of some of the children. The court, recognizing the principle that neither the state nor a school board has the right to enact a law or regulation, the effect of which is to alienate school children from parental authority along lines looking to the building up of the personal character and the advancement of the personal welfare of the children where the views of the parents are not offensive to the moral well being of the children nor inconsistent with the best interest of society, held that the rule of the school board requiring children to participate in certain forms of dancing which were offensive and against the wishes of the parents of the children, was an unreasonable regulation, and could not be enforced. The case was not decided on the basis of any religious belief or doctrine. This

fact was pointed out by the court in language which has a direct bearing on the question here under consideration. In the course of the court's opinion it was said:

> "But the district attorney undertakes to establish an analogy between the proposition involved in this discussion and the circumstance, which occurred a few weeks ago in Solono County and which is reported in the daily press, of the expulsion of children of a certain citizen of said county from one of the public schools thereof, because they refused to salute the flag of this country. The ground of the objection of the parent to the practice of saluting the flag in the public schools was that it was against his Bible teaching, that it is wrong to teach patriotism for the reason that such teaching leads to militarism. There is obviously no force to such objection. It is indeed repugnant to every idea and to every consideration of the loyalty and love for our government and political institutions so essential to the maintenance thereof. No government could long survive in the absence of patriotism in the people living under it, and one of the first or pressing duties not only of the public schools but of every other educational institution is to inculcate in those who attend them the principles of patriotism. The flag of our country symbolizes the principles of our government and we can conceive of no more appropriate act or practice which could be followed in our public schools, or which could go further in developing in the young a high order of citizenship, than the requirement that the pupils thereof shall at every session of said school salute the flag or otherwise give some demonstration of their love for the great principles which it represents. And we can conceive of no just or reasonable interpretation of the Bible, or any part thereof, which could in the remotest way, inspire the thought that the teaching of patriotism or love of country is in any wise or in any degree or measure contrary to its teachings."

It is my opinion, in the light of the principles discussed and the authorities cited herein, that a board of education in this state may, in the exercise of its lawful discretion, promulgate and enforce a rule requiring pupils in the public schools under its jurisdiction to salute the American Flag and pledge allegiance thereto, and otherwise participate in patriotic exercises conducted in the school.

Pupils refusing to comply with such a rule may be punished in any proper manner as for the infraction of any other proper rule of discipline, by being denied the right to participate in assembly exercises or other school activities except regular classroom work conducted in pursuance of courses

of study in branches embraced within the regular curriculum which is suited to their age and state of advancement, or be expelled from school, subject to the restrictions contained in Section 7685, General Code.

In the absence of any statute on the subject, a rule of a board of education in this state requiring pupils in the public schools under its jurisdiction to participate in patriotic exercises conducted in the school, involving the saluting of the American Flag and the pledging of allegiance thereto, is not subversive of the "liberty" protected by the "due process" clause nor the "privileges and immunities" clause nor the "equal protection" clause of the 14th Amendment to the Federal Constitution, nor does it constitute an invasion of a citizen's right to worship Almighty God according to the dictates of his own conscience nor to interfere with the right of conscience, as guaranteed by Section 7 of Article I, of the Constitution of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5004.

DRIVERS' FINANCIAL RESPONSIBILITY LAW—TWO TYPES OF LIABILITY POLICIES—VEHICLE RESPONSIBILITY—DRIVERS' RESPONSIBILITY—SURETY BONDS.

SYLLABUS:

1. *Section* 6298-7, *General Code, defining "Motor vehicle Liability Policies" as "ability to respond in damages" provides two types of liability policies, one a vehicle type of liability and the other a drivers' type of liability policy. In the vehicle type of policy the insurance company is liable for judgments which result from the ownership, maintenance, use, or operation of the particular motor vehicles described in the policy by the insured or by any person using such vehicles with the consent of the insured. Under the drivers' type of liability policy the insurance company is liable for judgments resulting from the maintenance, operation, or use by the insured of any motor vehicle except such vehicles as are registered in the name of the insured.*

2. *Under surety bonds or other evidence of ability to respond in damages in lieu of a motor vehicle liability policy defined in Section* 6298-7, *General Code, the liability of the obligor is for judgments rendered against the principal on account of his ownership, maintenance, use or operation of any motor vehicle.*

3. *Section* 6298-7, *General Code, defining motor vehicle liability policies is not in conflict with Section* 6298-5, *General Code, nor with the*