

"The provisions of such code require the administration of the affairs of that department by the Director of Industrial Relations and provide for the keeping within the department such records and journals as are necessary to exhibit his official acts and proceedings. A letter addressed to the board of education, signed only by the chief of the division of factory inspection, giving notice that the use of the school building is prohibited unless designated changes are made by a specified time, there being no record of any official action by the department with reference to such matter, and showing no authority conferred upon the chief of the division of factory inspection relative thereto, is not an order of the department whereon may be predicated action of a board of education to issue and sell bonds of the district for the erection of a new school building, pursuant to the provisions of section 7630-1, General Code."

It will therefore be observed that the foregoing issue of bonds could not be predicated upon the order signed and directed only by a chief deputy. You are therefore advised that these bonds have not been legally issued and are not valid obligations of the school district, and you are therefore advised not to accept said bonds.

Respectfully,

C. C. CRABBE,

Attorney General.

3098.

APPROVAL, BONDS OF MONROE TOWNSHIP RURAL SCHOOL DISTRICT, MADISON COUNTY, \$3,500.00.

COLUMBUS, OHIO, January 26, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3099.

CITY BOARD OF HEALTH— HAS AUTHORITY TO INCUR OBLIGATIONS IN CASE OF AN EPIDEMIC WITHOUT OBTAINING CERTIFICATE FROM FISCAL OFFICER.

SYLLABUS:

In case of an epidemic a city board of health may incur obligations under section 4450 of the General Code without having first obtained a certificate of the fiscal officer and before funds are actually available or in process of collection.

COLUMBUS, OHIO, January 27, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"Sections 4450 and 4451, General Code, relate to the payment of expenses incurred in case of epidemic or threatened epidemic in cities. Section 5660 G. C., 111 O. L. 375, provides that no contract, agreement or other obli-

gation requiring the expenditure of public funds shall be made or assumed unless the chief fiscal officer first certifies that the money to meet such obligation is in the fund or in process of collection and has been properly appropriated.

“Question: In case of epidemic, may a city board of health incur obligations without having first obtained certificate of the fiscal officer and before funds are actually available or in process of collection?”

Section 4450 of the General Code of Ohio provides as follows:

“In case of epidemic or threatened epidemic or during the unusual prevalence of a dangerous communicable disease, if funds are not otherwise available, the council of a municipality may borrow any sum of money that the local board of health deems necessary to defray the expenses necessary to prevent the spread of such disease. Such money may be borrowed until the next levy and collection of taxes is made, at a rate of interest not to exceed six per cent per annum. Thereupon the board may expend the amount so authorized to be borrowed, which amount, or so much thereof as is expended, shall be a valid claim against the municipality from the fund so created.”

This section authorizes the council of a municipality to borrow any sum of money that the local health board deems necessary to defray the expenses in case of an epidemic or threatened epidemic, or during the unusual prevalence or a dangerous disease and authorizes the board of health to expend the amount so authorized to be borrowed and makes the same a valid claim against the municipality.

Section 4451 of the General Code provides as follows:

“When expenses are incurred by the board of health under the provisions of this chapter, upon application and certificate from such board, the council shall pass the necessary appropriation ordinances to pay the expenses so incurred and certified. The council may levy and set apart the necessary sum to pay such expenses and to carry into effect the provisions of this chapter. Such levy, shall, however, be subject to the restrictions contained in this title.”

This section provides that when expenses are incurred under this chapter upon application and certificate of the board council shall pass the necessary appropriation ordinances to pay the expenses so incurred.

Section 5660 of the General Code, 111 Ohio Laws, page 371, provides that no contract, agreement or other obligation calling for or requiring for its performance expenditure of public fund shall be made or assumed by any authority, officer or employe of a political subdivision or taxing district, nor shall an order for the payment or expenditure of money be approved by any body, board, officer or employe of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certified that the money required to meet such contract, agreement or obligation, or to make such payment or expenditure, have been lawfully appropriated or authorized or directed for such purpose, and is in the treasury or in the process of collection.

This section would seem to be in apparent conflict with section 4450 of the General Code. Section 4450 was not repealed in Amended Substitute Senate Bill No. 94, which contains section 5660. Repeals by implication are not favored by the courts unless the same is necessary or unless the conflicting sections cannot be harmonized.

It seems impossible to harmonize section 4450 and section 5660 in such a way that section 4450 would be subservient to section 5660. The former section is a section empowering municipalities to do certain things in cases of emergencies, and if this section is subject to section 5660 it would make it impossible for a municipality to operate under section 4450, as this section is only applicable when there are no funds available to be used in the case of an epidemic or a threatened epidemic.

The health of a municipality and its citizens is one of vital interest not only to the municipality but to the state at large and therefore if it is any way possible we must harmonize the two sections so as to give intendment to both sections if possible.

Section 4450 being a special section and a section which relates to an emergency, it is believed is not repealed by implication by section 5660. This section which is part of the Vorys Budget Bill, is intended primarily to place a check upon the expenditure of political subdivisions in the ordinary course of events and not in the cases of extreme emergencies.

It is therefore my opinion that in case of an epidemic a city board of health may incur obligations under section 4450 of the General Code without having first obtained a certificate of the fiscal office and before funds are actually available or in process of collection.

Respectfully,
C. C. CRABBE,
Attorney General.

3100.

CORPORATION FOR PROFIT—DETERMINATION OF THE FEES
CHARGEABLE TO A BANKRUPT CORPORATION IS A DUTY TO BE
EXERCISED BY AUDITOR OF STATE—MINIMUM FEE.

SYLLABUS:

1. *The determination of the proportion of fees chargeable to a corporation for profit that has been adjudicated a bankrupt, or a receiver has been appointed therefor, or a general assignment has been made for the benefit of creditors, is a duty to be exercised by the Auditor of State.*

2. *Under the provisions of section 5499 as amended in 109 O. L., a minimum fee of \$15.00 must be charged by the Auditor of State, even though the certification of the Tax Commission indicates that there is no fair value of the capital stock on an asset basis.*

COLUMBUS, OHIO, January 27, 1926.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion on the following:

“In determining the proportions of fees chargeable to corporations under section 1 of section 5495 G. C., that have been adjudicated a bankrupt, or a receiver has been appointed therefor, or a general assignment having been made for the benefit of creditors, should this proportion be based on the number of days or full months which such corporations had the power to exercise its corporate franchise unimpaired, and is it the duty of the Tax Commission or the Auditor of State to determine this appor-