commission, and county auditor in the work of apportioning and segregating the amount that may be retained each half year by the county auditor in settling with these tax subdivisions does not constitute a levy, and that the disbursement of the "district health fund" is taken out of the hands of the township and municipal officers and placed in the hands of the district health board; so that the district health board is not included in section 5649-3a, because, it is not a board "authorized by law to levy taxes," as provided in that section.

That the township and municipal authorities are not obliged to and cannot appropriate the health funds under 5649-3d follows from the fact that these officers have nothing to do with the disbursement of that fund.

It could be argued not without some plausibility that by analogy these sections may be so interpreted as to provide a rule which the district health board must follow in disbursing the health funds, but it is believed that it would require legislation rather than interpretation to reach that result.

In considering the question at hand notice has been taken of section 5 of Article XII of the constitution, which provides:

> "* * * every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

Bear in mind the health tax is one levied for health purposes generally. It can be used only for health purposes, but that is the only limitation except that no more may be issued than the aggregate amount levied. Section 5649-3d General Code, above quoted, designates the time for apportionments.

Therefore, in answer to your question, it is the opinion of this department that there is only one fund provided. Therefore there is no reason for any transfer of funds.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2376.

ROADS AND HIGHWAYS—WHERE COUNTY COMMISSIONERS MAKE APPLICATION FOR STATE AID—ADDITIONAL RIGHT OF WAY REQUIRED—COST BORNE BY COUNTY ALONE.

Where county commissioners make application to the state for aid in improving a highway, and additional right of way is required for the carrying out of the improvement project, the cost of such additional right of way must be borne by the county alone, and is not to be treated as an item of cost and expense either for the purpose of calculating distribution of cost as between state and county or for the purpose of calculating distribution of cost as between county, township and property owners.

COLUMBUS, OHIO, August 26, 1921.

HON. N. E. KIDD, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—You have recently submitted for the opinion of this department the following:

> "In construing section 1213-1; does the expression 'cost and expense of the improvement' take into consideration the cost paid by

the county, in the first instance, as compensation and damages, or must the county pay all such compensation and damages or resort to the remedy provided by section 1214-1? In other words, does the state in paying its proportion of the cost of improvement of state roads pay any part of the compensation and damages for right of way?"

Your inquiry as it is understood by this department really embraces two separate questions,—first, are compensation and damages for right of way to be included as an item in apportioning cost of an improvement as between county and state; and second, are such compensation and damages to be included as an item in calculating the secondary distribution of the county's share of cost as among county, township and property owners? As it happens, it is believed that the same principles will dispose of both of these questions, and they will therefore be considered together.

The statutes involved in a consideration of your inquiry are part of the series governing the activities of the department of highways and public works as to road improvement, and compose part of the particular group of sections in said series beginning with section 1191 G. C. and ending with section 1223 G. C. This last mentioned group of sections deals particularly with those improvement projects undertaken by the state upon the application of county commissioners or township trustees. However, for the purposes of the present discussion, it will be assumed that your inquiry relates to improvement projects undertaken by the state upon the application of county commissioners rather than to those undertaken upon the application of township trustees.

Your letter makes mention of section 1213-1 and 1214-1. It is believed unnecessary to quote the first of these sections in full, or to make other than incidental mention of it in connection with sections 1213 and 1214 G. C.

Section 1213 is a statute of general application, which defines the share of cost which the state may bear in highway improvement projects undertaken upon the application of county commissioners. Section 1214 is also a statute of general application which among other things specifies the share which the county is to bear in state highway improvement projects undertaken upon application of the county commissioners, and which further defines the manner of redistribution among county, township and property owners of the share assumed in the first instance by the county. Section 1213-1 is a supplementary section of limited application inserted by enactment in 107 O. L. 128, subsequent to the enactment of section 1213 G. C. Said section 1213-1 authorizes the state to bear a greater percentage of cost of improvements applied for in counties having a comparatively small tax duplicate, than in counties having a larger tax duplicate. Section 1214-1 is also a supplementary section which was inserted in 108 O. L. Pt. 1, p. 504, and which reads as follows:

"The board of county commissioners of any county or the board of township trustees of any township, authorized to assess all or any part of the compensation, damages, costs and expenses of constructing a road improvement, carried forward by the state highway department or by such board of county commissioners or by such board of township trustees, against the real estate abutting upon said improvement or the real estate situated within one-half mile of either side thereof or the real estate situated within one mile of either side thereof, according to the benefits accruing to

such real estate, may in like manner assess such compensation, damages, costs and expenses against the real estate situated within one and one-half miles of either side of such improvement, according to the benefits accruing to such real estate."

It may be said that nowhere in sections 1213, 1213-1 and 1214 is there any such broad expression as "compensation, damages, costs and expenses." The phraseology most frequently employed in the three sections named is "cost and expense". Section 1214 in the opening sentence employs the expression "all cost and expenses of the improvment." We thus have a strong contrast in wording as used in these several sections and that employed in sections 6919, and 3298-1 G. C. relating respectively to apportionment of cost of county and township road improvements, both of which last mentioned sections use the expression "compensation, damages, costs and expenses of the improvement".

With these observations in mind, we are brought to a section not mentioned in your letter, namely, section 1201 G. C. which is part of the same group of sections as contain sections 1213 and kindred sections. The opening sentence of section 1201 G. C. reads:

"If the line of the proposed improvement deviates from the existing highway, or if it is proposed to change the channel of any stream in the vicinity of such improvement, the county commissioners or township trustees making application for such improvement must provide the requisite right of way."

The remainder of the section deals with the procedure to be followed by the county commissioners or township trustees in procuring right of way. When section 1201 is read with section 1213 and its related sections above noted, and when it is borne in mind that the latter sections contain no such words as "compensation and damages", the conclusion is inevitable that it was the legislative intent that the county alone is to bear the expense of procuring the right of way needed for a road which is to be improved by the state upon the application of the county commissioners. The theory seems to be that when the county applies for state aid it gives an implied guaranty that the proper right of way is or will be made available to the state for the improvement. It may be mentioned in passing that a search of the statutes relating to state aid road improvement discloses no broader expression relating to division of cost among state, county, township and property owners than is found in sections 1213, 1213-1 and 1214, save certain language found in section 1214-1, which will now be briefly discussed.

This latter section has already been quoted, and as will be seen, it relates not only to improvements carried on by the state, but also to those carried on by boards of county commissioners and boards of township trustees.

You refer to section 1214-1 as a remedial section; but the fact is that said section was not enacted for the purpose of permitting compensation and damages to be added as an item for apportionment purposes, but was enacted to enlarge the assessment zone or area of lands which might be treated for assessment purposes as benefited by an improvement. In other words, section 1214-1 merely authorizes such assessment as might be made under laws existing when said section was enacted, to be distributed over a larger area than might have been used for assessment purposes previous to the enactment of said section; and as has been already indicated, the legislature had

not at the time of the enactment of said section, authorized the inclusion of compensation and damages as an item in assessments for state aid projects as contrasted with county and township projects.

For the reasons given, you are advised that where county commissioners make application to the state for aid in improving a highway, and additional right of way is required for the carrying out of the improvement project, the cost of such additional right of way must be borne by the county alone, and is not to be treated as an item of cost and expense either for the purpose of calculating distribution of cost as between state and county or for the purpose of calculating distribution of cost as between county, township and property owners.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2377.

BOND ISSUE—PURPOSE TO COMPLY WITH ORDER OF STATE BOARD OF HEALTH—NOT NECESSARY TO SUBMIT QUESTION OF ISSUANCE OF BONDS TO VOTERS.

It is not necessary to submit the question of the issuance of bonds to the voters when said bonds are issued for the purpose of complying with an order of the state board of health.

COLUMBUS, OHIO, August 26, 1921.

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

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department as follows:

> "By virtue of section 1251 G. C., the state health board ordered the village of Hillsboro, Ohio, to change the source of its water supply in a manner satisfactory to the commissioner of health. Said village has reached the limit of bonded indebtedness under section 3940 of one-half of one per cent. It is estimated that the changes ordered would cost not less than $10,000 for which bonds would have to be issued. Section 1259 G. C. provides in part that:
>
> 'Bonds authorized to be issued for any such purpose or purposes shall not exceed three per cent of the total value of all property in any city or village as listed and assessed for taxation and may be in addition to the total bonded indebtedness of such city or village otherwise permitted by law. The question of the issuance of such bonds shall not be required to be submitted to a vote of the electors.'
>
> In view of the provisions of said section 1259 G. C., may the village of Hillsboro under the conditions above outlined issue bonds without vote of the people in excess of said one-half of one per cent limitation?"

Section 1254 G. C. provides authority for the order of the state board of health issued in the instant case.

Section 1259 G. C. is as follows:

> "Each municipal council, department or officer having jurisdiction