law providing for such payment by the state and the enactment of the new election code, be paid by the counties in which such amendments are published.

I express no opinion on the policy of the legislature in repealing Sections 5123-3 and 5123-4, supra, and in placing upon the counties the duty of paying for these publications. The duty of the Attorney General is to construe the acts of the legislature in accordance with the established rules of statutory construction.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3626.

CHARTER MUNICIPALITY—ELECTORS MAY VOTE ON TWO CONFLICTING AMENDMENTS AND MAY VOTE IN AFFIRMATIVE ON BOTH AMENDMENTS—AMENDMENT RECEIVING HIGHEST VOTE PREVAILS.

SYLLABUS:

1. *In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of government under Sections 7 and 8 of Article XVIII of the Constitution of Ohio, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary.*

2. *A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.*

COLUMBUS, OHIO, October 2, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "We have today received the following statement and inquiries from the Board of Elections of Lucas County, in reference to the right of electors to vote upon two separate charter amendment questions and the proper procedure in counting votes under certain circumstances.
>
> 'At the coming election we are submitting two charter plans both of which are in the form of an amendment to the charter of the City of Toledo, and both of which are submitted by the City Council to the voters under the city charter provision and the provisions of the Constitution of the State of Ohio. The one plan provides for a city manager with a small council of nine members elected from districts and at large, and the other plan for a city manager with a large council, one elected from each of the twenty-one wards. The small council plan provides for the election of a mayor by the council, while the large council plan provides for the election of a mayor by the voters. These are the only essential differences between the two plans.
>
> Obviously, both plans provide for the city manager form of government and in that respect are consistent, but the two plans are incon-

sistent in the manner in which they are put into operation. Since only a majority is required to adopt an amendment to our City Charter, if both plans carry neither would become operative, even though one should carry by a large majority and the other by a small majority.

We, therefore, submit to you the following question upon which we trust you will be able to get an opinion from the Attorney General at an early date, since it is necessary for us to have the opinion in order to instruct our precinct officials how the vote should be counted and tallied.

May a voter vote yes on both of these plans and should his vote be counted in each case?

Obviously, a voter may vote yes on one plan and no on the other and obviously a voter may vote no on both plans. Since the plans appear to be inconsistent and if both were carried, would defeat each other, it would seem that a vote cast for both plans should not be counted by the precinct election officials any more than it should be counted for two opposing candidates where a voter votes for both of them. On the other hand it is argued by some that a voter may consistently say that he is in favor of the city manager plan and desires to vote for it, so that his vote will be counted for either plan. In other words, that he is in favor of the city manager plan with either of the methods of representation in Council.

We are attaching hereto a copy of the propositions as they will be submitted, and we trust that you will get this opinion from the Attorney General at an early date so that we can prepare our instructions to the precinct election officials.'

We are also inclosing for your information, copies of the propositions that will be submitted on the ballot.

We will appreciate it very much if you will give an official opinion on the questions raised in this communication at your earliest opportunity."

First, I shall consider the statement to the effect that since the two charter plans to be submitted in the form of an amendment are inconsistent, if they both carry, neither would become operative.

It is assumed that the charter of the City of Toledo contains no provision covering the submission of two conflicting amendments at the same election, and this opinion is predicated upon that assumption.

Authority to amend a Home-rule charter is contained in Article XVIII, Section 9 of the Constitution, which reads as follows:

"Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the

municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote."

It is unnecessary to consider any sections of the General Code with respect to your inquiry because, under the decision of the Supreme Court in *Switzer* v. *State, ex rel.,* 103 O. S. 306, the entire matter is controlled by the Constitution. The first and second branches of the syllabus of this case are as follows:

"1. Constitutions, whether state, federal or municipal, can be changed or amended only as provided in such constitutions.

2. The provisions of such constitutions as to change or amendment in government are mandatory and exclusive, unless the contrary clearly appears. (*State, ex rel. Greenlund,* v. *Fulton, Secy. of State,* 99 Ohio St., 168, approved and followed.)"

That the constitutional provisions are exclusive in matters of this nature is further substantiated by the language of the court appearing on pp. 314, 315:

"Now this court, relative to the state constitution and amendments thereto, has laid down the doctrine that the provisions relating to such amendments are mandatory, and must be substantially complied with. The doctrine is well settled in *State, ex rel. Greenlund,* v. *Fulton, Secy. of State,* 99 Ohio St., 168. The last paragraph of the syllabus is as follows:

'The provisions of Sections 1a et seq., Article II of the Constitution, for the filing of petitions for proposed amendments to the Constitution, for copies, arguments and explanations thereof, and for preparation of ballots so as to permit an affirmative or negative vote upon each law, section of law or proposed law, or proposed amendment to the constitution, are mandatory. A submission of a proposed amendment to the constitution without substantial compliance with the provisions of the sections of the constitution referred to is invalid.'

If these constitutional provisions relating to amendments to the state constitution are mandatory, before the right to a referendum exists, then for equally good reasons the constitutional provisions relating to amendments to the municipal constitutions, the charters, are likewise equally mandatory.

These provisions are not only mandatory, but they are also exclusive, that is, they are controlling as against any statutory enactment or departure therefrom.

Now, after a municipality has adopted a charter, the state constitution itself expressly and therefore exclusively provides for a change in such municipal constitution or charter, that is by amendment, in Section 9 of municipal Article XVIII, the first part of which reads: * * * *."

The power to amend a charter pursuant to a two-thirds vote of the legislative authority being vested in the people, such power is obviously the power of the referendum, and it is so designated in Section 9 of Article XVIII. Although this section of the Constitution refers to Section 8, Article XVIII, containing some provisions with reference to the submission of such a question, the detailed

steps are not set forth in Article XVIII to the same extent as they are in Article II of the Constitution. The question arises, therefore, whether or not there is authority to look to Article II for such detailed provisions with respect to the referendum as may be applicable to the situation which you present.

A similar question, and one which I think is directly in point, was before the Supreme Court in the case of *Shryock* v. *Zanesville,* 92 O. S. 375. Here there was a question as to whether or not Article II, Section 1f, reserving to the people of municipalities the initiative and referendum powers, was to be construed in connection with the other sections of the Constitution defining those powers. The court said at pp. 384, 385:

> "It is urged by plaintiff in error that the clause 'Such powers shall be exercised in the manner now or hereafter provided by law' must be limited to such matters as fixing the per centum of signers and their qualifications, the form of the petition and the method of its circulation, filing, protests, etc., and that it cannot be enlarged into the embracing of the subject of emergency laws.
>
> However this may be, the court finds a clear and unmistakable meaning to be given to Section 1f which will grant to municipal legislative bodies the same power (but subject to the same limitations) of exempting certain classes of laws from the operation of the referendum, provided the legislature but provides the method and the laws so to be exempted comply as to their character to the provisions of Section 1d of Article II.
>
> It will be seen that Section 1 of Article II vests all power of legislation in the legislature except such as is reserved to the people. Sections 1a and 1c of Article II relate to the powers reserved to the people. 'The first aforestated power reserved by the people is designated the initiative, * * * the second * * * is designated the referendum.'
>
> When we encounter the 'initiative and referendum' powers in Section 1f of Artcile II of the Constitution, we are compelled (by rules of interpretation which are well settled) to look to the part of the constitution where the phrase is 'defined, limited and explained.' A resort to that source, the very foundation of definition and authority as to the meaning and extent of the term, discloses the fact that the people explicitly defined the limit of the powers; that is to say, Section 1, Article II, provides that the referendum is reserved 'except as hereinafter provided.' Section 1d, Article II, expressly provides that the power shall not be exercised as to emergency laws, etc. The conclusion, then, is, inevitable that the referendum powers reserved to the people of municipalities is that power as defined and limited by the constitution.
>
> While Section 1f provides that the powers stated are reserved to the people of the municipalities on all questions which the municipality may now or hereafter be authorized by law to control by legislative action, it must be by the 'referendum'—the power, right and privilege of referendum, as defined by the constitution."

Considering then this power to amend the charter of a municipality as the referendum power and looking to the constitutional definition of that right, it becomes necessary to refer to Article II, Section 1b of the Constitution, which provides inter alia:

"If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution."

This, in my view, is dispositive of what I shall consider to be your first question.

I come then to the question of whether or not an elector may be permitted to vote in the affirmative on both of these plans and whether or not in the event of such vote, it should be counted in each case. Article II, section 1g of the Constitution contains detailed steps for the submission to the electors of questions under the initiative and referendum. It is contemplated that several questions may be submitted to the electors at the same election, that ballots shall be printed "as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution." I find nothing in this section to prohibit a voter from voting upon each question so submitted in any manner in which he may desire. Nor does section 1b of Article II, supra, contain such inhibition. The only effect of an affirmative vote upon each of two such measures which are conflicting would be to cause one more vote for each measure to be counted, thereby assisting in the approval of each measure. By counting such votes, the will of the voter is obviously given effect.

It is, accordingly, my opinion in specific answer to your questions that:

1. In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of government under Sections 7 and 8 of Article XVIII of the Constitution of Ohio, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary.

2. A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3627.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HAROLD R. HUKILL AND RUTH L. HUKILL, IN ROSS COUNTY, OHIO.

COLUMBUS, OHIO, October 3, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Under date of May 11, 1931, Opinion No. 3215 was rendered to you analyzing the status of title of 439 acres of land in Ross County proposed