not be sold for less than par with *accrued* interest. It will be further observed that the interest could not accrue in advance. "Interest is money paid for the use of money," and in the absence of any specific provision the interest on the indebtedness which you describe would be due at the expiration of six months and there is no express authority to pay said interest at any other time. On the other hand, there is an express inhibition against the discounting of the certificates of indebtedness, and the payment of interest in advance, as heretofore stated, constitutes discounting.

It will be further noted that this statute clearly contemplates the payment of the obligations arising on account of the issuance of such certificates of indebtedness out of future collections. Section 3913 appropriates the funds to be collected for such purpose and the entire procedure is taken in anticipation of future collections. It would seem untenable that said interest could be paid before it is earned and before the proper funds have become available for said purpose.

In the case of State ex rel., vs. Pierce, 96 O. S. 44, it is held:

> "In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

In view of the foregoing, in specific reply to your first inquiry, I am compelled to the conclusion that upon the state of facts given by you it was not legal to pay the interest in advance.

In reply to your second inquiry, you are referred to Section 286 of the General Code of Ohio, as amended in 108 O. L. (Pt. 2), page 1115, which, it is believed, in itself furnishes an affirmative answer to your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1503.

DISTRICT BOARD OF HEALTH—HAS AUTHORITY TO ADOPT AND ENFORCE ORDERS AND REGULATIONS TO SAME EXTENT AS FORMER MUNICIPAL BOARDS OF HEALTH—SECTIONS 12600-137 TO 12600-273 G. C. (SANITATION BUILDING CODE) APPLICABLE OUTSIDE OF CITIES—WHEN HEALTH DISTRICT MAY ADOPT SAME—ADVERTISEMENT OF SUCH ORDERS MAY NOT BE ADOPTED BY REFERENCE TO SECTIONAL NUMBERS OF GENRAL CODE.

1. *General health district boards have authority to adopt and enforce the orders and regulations stated in section* 4420 *to the same extent as former municipal boards of health may have done.*

2. *Insofar as sections* 12600-137 *to* 12600-273 (*Sanitation Building Code*) *are applicable outside of cities and to the extent that they have reasonable reference to health conditions there existent, such sections may be adopted by a general health district board as its general orders and regulations.*

3. *If such sections are adopted, the advertisement of such orders and regulations may not be by reference merely to their sectional numbers in the General Code of Ohio.*

COLUMBUS, OHIO, August 19, 1920.

State Department of Health, Columbus, Ohio.

GENTLEMEN;—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

"Under the provisions of section 1261-30 (H. B. 211, 108, Pt. I, p. 236), a district board of health 'shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality.'

Section 4420 G. C. contains the following:

'Except in cities having a building department or otherwise exercising the power to regulate the erection of buildings, the board of health may regulate the location, construction and repair of water closets, privies, cesspools, sinks, plumbing and drains.'

Query: Has the board of health of a general health district authority to adopt and enforce orders and regulations of general application within its jurisdiction regulating the 'location, construction and repair of water closets, privies, cesspools, sinks, plumbing and drains,' and may such a board of health, by apt words of reference, adopt and enforce the provisions of Pt. IV, Sanitation, of the Ohio Building Code (Section 12600-137 to 12600-273 G. C., inclusive) as the general orders and regulations of such board of health, to apply to all classes of buildings to be constructed in such jurisdiction without the necessity of advertising more than the section making reference to such adoption?"

Let us first consider the power of the general health district board to adopt and enforce orders and regulations of the character stated in your letter.

Section 1261-30 in part provides:

"The district board of health hereby created shall exercise all the power and perform all the duties now conferred and imposed by law upon the board of health of a municipality."

What is meant by "the district board of health hereby created?" If this means or includes the general health district board the answer to your first query is comparatively simple.

Section 1261-16 creates two kinds of health districts; city health districts and general health districts. They are both health districts in contemplation of the first sentence of this section which in part provides that "the state shall be divided into health districts." As to the organization and finance, the act treats the two kinds of districts separately, but in the sections relating to powers and duties, the reference is simply to "each district board of health" or "the district board of health" without any distinctions between the two kinds of districts. See sections 1261-26, 1261-27, 1261-28, 1261-29 and 1261-31. These are the sections giving the additional powers to the district boards of health, and there is no other express reference to either kind of a district in these sections. In this respect they are the same as section 1261-30 quoted above. These boards supplant the former township boards, which formerly under section 3394, now repealed, were granted the same powers as municipal health boards in much the same manner as is now provided in section 1261-30.

From these considerations, it must be concluded that general health district boards are included in section 1261-30 and in addition to the powers specifically granted in the later acts, have, and may exercise all the powers imposed by law upon municipal boards of health at the time of the passage of the section. As shown in the quotation of section 4420 in your letter, a board of health has power to regulate the matters therein referred to, and this section having been undisturbed by the Hughes-Griswold Act, no reason is apparent why this grant of power is not within the rather sweeping terms of section 1261-30.

It must be held, therefore, that general health district boards have authority to adopt and enforce the orders and regulations stated in section 4420 to the same extent as former municipal boards of health may have done.

It is noted that you further inquire if such board may adopt and enforce as its general orders and regulations, sections 12600-137 to 12600-273 G. C., being Part IV "Sanitation" of the State Building Code. No reason is apparent why such code, to the extent that its terms are applicable to conditions and persons outside of cities, may not be so adopted. Practically the only limitations on the power granted is the express exemption of cities having a building department or other agency regulating the construction of buildings, and the implied limitation or reservation that the orders of the board must have reasonable reference to the public health. As to the former, it has no present application, as under the new health act each city constitutes a city health district and cannot be included in a general health district. As to the latter, for the purpose of this opinion, the reasonableness and validity of the state building code is assumed, but it is more than probable that some of the sections in the part under present consideration may be peculiarly applicable to plumbing and other sanitary conditions in cities.

Without at this time examining in detail and passing on all of these sections in this respect (there are some hundred and thirty of them in all) it is sufficient to answer your second question in this way and to this extent, that such code may be so adopted insofar as it is applicable outside of cities, and to the extent that it has reasonable reference to the health conditions there existent.

Your third question relates to the method of publishing such regulations if adopted, and particularly to the necessity of publishing the sections in full.

Section 1261-42 fixes the method of adopting and recording and certifying such regulations to be the same as that required for ordinances of municipalities. It is noted that the method of publishing is not so fixed, the terms of the section being that such regulations "shall be adopted, recorded and certified as are ordinances of municipalities." This stops short of saying that the regulations shall be published as such ordinances; in fact, this section does not directly require such publication, for it proceeds:

> "But the advertisement of such orders and regulations shall be by publication in one newspaper published and of general circulation within the general health district."

In section 4413 as to city health districts, the terms are different. An advertisement is provided for as follows:

> "Shall be adopted, *advertised,* recorded and certified"

the same as ordinances.

The purpose of section 1261-42 appears to effect a method of such advertisement different from that provided for municipal ordinances, and it is believed that the intention to require such publication is sufficiently clear. This section fixes its own method of publication, and such regulation not being a municipal ordinance or regulation, is not affected by section 4228 as amended in 106 O. L. 493, so that your request is narrowed down to the interpretation of the phrase "the advertisement of such orders and regulations" contained in section 1261-42. Considering the similarity of purpose of this section and sections 4413 and 4228 it must be concluded that the "advertisement" required by the first is equivalent to that required in the other sections that such regulations "shall be published." See Corpus Juris, Vol. II, p. 284, Note 7.

It must be borne in mind that the violation of such regulations entails liability to criminal prosecution, and that such regulations impose rules of conduct of equal force to municipal ordinances and statutory law. In 28 Cyc. 360, it is said concerning such publication:

> "When the legislature has prescribed the nature and mode of publication none other is sufficient to give validity to the ordinance."

It may be added that the purpose of publication is to advise persons of the requirements made by the board of health in this regard, as it is repugnant to justice that criminal liability attach without an opportunity to know or be advised of the law, and in our theories of government it may be said that there is an aversion to consideration as law that which is not generally known or officially formulated and promulgated. On the other hand, the sections which may be adopted have been enacted by the General Assembly, and the same rule that all persons are presumed to know the law may be held to apply to them in that connection, and knowledge of these sections being already conclusively presumed, it may be argued that the further publication is unnecessary. This presents a question upon which I am unable to find any direct authority in Ohio.

In the case of City of Kop vs. Easterly, 76 Cal., 222; 18 Pac., 253, it was held that in the publication required of improvement specifications, the necessary maps referred to in the specifications need not be included in the publication. In that case the court says:

> "It is contended that the maps and bench books to which the ordinance refers were not published. The argument is that the reference to the maps, etc., makes them a part of the ordinance, and that the requirement as to publication means that the whole ordinance be published * * *. All that is required to be published is the ordinance itself—the thing which is entered in the ordinance books."

However, in the case of Kreulhaus vs. City of Birmingham, 26 L. R. A. (N. S.) 492, the Supreme Court of Alabama held a municipal ordinance to be void for uncertainty which provided that all misdemeanors defined by the statute law or by common law principles, which were punishable in the state of Alabama, were punishable by the municipality. The court in this case did not consider the power to publish by reference, but held that the ordinance was void for uncertainty because some of the matters involved in the criminal statutes of the state were inapplicable to the municipality, and the punishment of them were beyond the powers of the municipality.

Disregarding for the present the general question of the legality of such publication by reference (see opinion No. 1109 directed to your department), I am inclined to think the safer course in this case would be to publish in full, and on the ground raised by the Alabama court, your specific question may be answered without finally deciding the question above mentioned, because certain matters embraced in the sections, the adoption of which is proposed, are beyond the power of the general health district to regulate. To illustrate: Section 12600-231 requiring certain adjoining rooms to have sound-proof partitions is not a health measure, and its subject matter is beyond the power of the health board to regulate, and rather on these grounds, considered in connection with the rule that penal statutes must be strictly construed, I am forced to the conclusion that the general health district board may not effectively adopt the sections referred to in your letter as the general orders and regulations of such board of health by mere reference.

Respectfully,
JOHN G. PRICE,
Attorney-General.