Philosophers agree that without obedience to its laws no government can long survive.

Montesquieu in his Spirit of the Laws said:

> "There is no great share of probity necessary to support a monarchical or despotic government. The force of laws in one, and the prince's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, namely, virtue."

Walter Bagehot, in his work on the English Constitution, published in 1893, said:

> "The Americans now extol their institutions, and so defraud themselves of their due praise. But if they had not a genius for politics; if they had not a moderation in action singularly curious where superficial speech is so violent; *if they had not a regard for law, such as no great people have yet evinced, and infinitely surpassing ours,*—the multiplicity of authorities in the American Constitution would long ago have brought it to a bad end."

While a tremendous change has come over the people of this country since Mr. Bagehot wrote, due perhaps to the law's invasion of the field of morals, yet the duty of all officials is clear—to uphold the laws of the land until changed by due legislative authority.

Pages might be written demonstrating that a film which is brought into this state in defiance of law is neither of a moral, educational, amusing nor harmless character.

Specifically answering your question. I am of the opinion that it would constitute a clear abuse of your discretion to pass a motion picture film which has been brought into this state in violation of Section 6454 of the United States Compiled Statutes (Section 405 of the Code of Laws of the U. S. A.).

Respectfully,
EDWARD C. TURNER,
Attorney General.

840.

SANITARY DISTRICT ACT—MAY MAKE LEVY OUTSIDE 15 MILL LIMITATION—PROCEDURE AND LEVY EXEMPT FROM HOUSE BILL NO. 80, 87TH GENERAL ASSEMBLY, IF LEVY WAS TAKEN PRIOR TO FILING OF SAID BILL.

SYLLABUS:

Under the provisions of the Sanitary District Act (Sections 6602-34 to 6602-106, General Code) a levy may be made outside the 15 mill limitation; and when procedure for said levy was taken prior to the filing of House Bill No. 80 in the office

of the Secretary of State, Section 39 of said Bill expressly exempts said procedure and levy from the provisions of said Bill.

COLUMBUS, OHIO, August 8, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

DEAR SIRS:— This will acknowledge receipt of your recent communication which reads:

> "On February 2, 1926, the Mahoning Valley Sanitary District was established as a political subdivision under the sanitary act of Ohio (Section 6602-34 et seq., of the General Code.) The district comprises all of the territory within the corporate limits of the cities of Youngstown and Niles and was established for the purpose of providing a new water supply for the inhabitants of those municipalities.
>
> Under the plan of procedure followed by the directors of the district and to avoid the enormous cost and labor of appraising the benefits to, and levying the proper assessments against, each and every tract of land in the cities named above, each municipality is treated as a unit and assessment made against it as a whole. In order to pay this assessment which will run during the life of certain bonds which have been issued in anticipation thereof, each municipality by its legally constituted authorities is required to assess a tax on all of the property subject to tax therein, this levy being made under authority of Section 6602-87. In 1926 when the matter was called to the attention of this commission it held that by reason of the provisions of Section 6602-104 any levy so made was outside the fifteen mill limitation at that time incorporated in the statute.
>
> The question now presents itself as to whether or not the same levy can be made outside the fifteen mill limitation contained in the Jones Act of the recent session of the legislature (H. B. 80). Assuming that the commission was right in its former holding it would seem that there is nothing in the Jones Act which would bring the tax within the fifteen mill limit. But the matter is of great importance to the people of Youngstown and Niles and before acting the commission desires to submit it to you for your opinion. You will, therefore, please advise us if the levy to be made by the cities of Niles and Youngstown under Section 6602-87 of the General Code is subject to the limitation of fifteen mills prescribed by the Jones Act."

The Mahoning Valley Sanitary District was established, and bonds issued and sold, and a tax levied outside the fifteen mill limitation, said levy being made under authority of Section 6602-87, General Code. Said section reads as follows:

> "Whenever under the provisions of this act (G. C., Sections 6602-34 to 6602-106), an assessment is made or a tax levied against a county, city, village, or township, it shall be the duty of the governing or taxing body of such political subdivision, upon receipt of the order of the court which established the district, confirming the appraisal of benefits and the assessments based thereon to receive and file the said order, and to immediately take on the legal and necessary steps to collect the same. It shall be the duty of said governing or taxing body or persons to levy and assess a tax, by uniform rate upon all the taxable property within the political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose

duty it shall be to receive the same, certify the same for collection to the treasurer of the county, whose duty it shall be to collect the same for the benefit of the sanitary district, all of said officers above named being authorized and directed to take on the necessary steps for the levying, collection and distribution of such tax. * * * In the event of any dissolution or disincorporation of any sanitary district organized pursuant to the provisions of this act, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of this act, or the liability of any land or lands in such district to the levy of any future assessments for the purpose of paying the principal and interest of any bonds issued hereunder, * * * ."

Your commission held in 1926 that by reason of the provisions of Section 6602-104, General Code, said levy was outside the fifteen mill limitation at that time incorporated in the statute. Section 6602-104 of the General Code reads as follows:

"All acts or parts of acts conflicting in any way with any of the provisions of this act, (G. C. Sections 6602-34 to 6602-106), in regard to improvements of this or a similar character or regulating or limiting power of taxation or assessment, or otherwise interfering with the execution of this law according to its terms, are hereby declared inoperative and ineffective as to this act, as if they did not exist, but all such laws and parts of laws shall not be in any other way affected by this law. * * * "

The Commission approved the levying of this tax outside of the fifteen mill limitation. Upon examining said act (G. C. Sections 6602-34 to 6602-106), it is noted that all of the benefits of said sanitary district were appraised to the cities of Youngstown and Niles rather than against specific pieces of property therein.

Section 25 of the act creating the sanitary district which is Section 6602-58 of the General Code, provides for the appointing of three appraisers for the district, and the following Section 6602-59, requires them to appraise the benefits. This section specifically provides that said board of appraisers shall also appraise benefits to cities as political entities.

Section 39 of the act which is Section 6602-72 of the General Code, refers to subsequent appraisals, and also permits the assigning of such subsequent appraisal of benefits to any municipality or other political subdivision. Hence it would appear that subject to the right of hearing provided for by Section 29 and following of the act (Section 6602-62, G. C.) the appraisers were authorized to assign all benefits to the municipalities involved rather than to specific pieces of property therein.

The question arises as to the method of raising funds by the cities in order to pay the appraisal of benefits assigned to the cities. The law contemplates the levying of an assessment for benefits against cities found to be especially benefited. Hence so far as the district itself is concerned it does not levy a general tax but levies a special tax or assessment.

Section 6602-87 of the General Code which is Section 54 of the act, provides that a political subdivision against which such an assessment is made shall proceed to collect the same by levying a general tax by uniform rate upon all the taxable property within the political subdivision. So far as the city is concerned, therefore, the tax is a general tax, since the city's revenue is ordinarily produced by the levy of a general tax.

The section last referred to makes it mandatory upon the proper taxing authorities to levy a tax sufficient to meet the assessment levied by the district

against the city, and the question at once arises whether this tax is subject to either the ten or fifteen mill limitation or outside of all limitations. *Prima facie* such tax would be subject to the ten mill limitation and thereby reduce the amount available to the cities for ordinary operating expenses, since the Supreme Court in the case of *State ex rel. vs. Zangerle, Auditor,* 95 O. S. 1, in the first paragraph of the syllabus and at page 6 and following of the opinion lays down the following rule:

> "In view of the legislative policy declared by the enactment of the so-called Smith 1% Law (Sections 5649-2 to 5649-5b of the General Code), the manifest purpose of which is to restrict the power of levying taxes and thus limit expenditure by administrative officers, statutes purporting to permit departure from that general policy and authorizing exemption therefrom will be strictly construed."

The next question to be met therefore, is whether any section of the act clearly authorizes the levy of such a tax by the city outside of limitations when interpreted strictly.

Section 72 of the act (Section 6602-104 G. C.) would seem to accomplish this purpose. It provides that:

> "All acts or parts of acts conflicting in any way with any of the provisions of this act, (G. C. Sections 6602-34 to 6602-106) in regard to improvements of this or a similar character or regulating or limiting power of taxation or assessment, or otherwise interfering with the execution of this law according to its terms, are hereby declared inoperative and ineffective as to this act, as if they did not exist, but all such laws and parts of laws shall not be in any other way affected by this law."

The act as a whole is a sanitary measure and grants extraordinary powers. Laws for the preservation of public health are ordinarily liberally construed. The question of water supply as essential to health is from day to day becoming more important.

Section 8 of the act of the Ohio Legislature creating a state highway improvement fund (103 Ohio Laws 155) contains a provision similar to Section 76 of the Conservancy Act and Section 104 of the Sanitary District Act. This section of the state highway improvement act although since repealed was construed in *State ex rel. vs. Edmondson,* 89 O. S. 93, where it was stated that such a levy was specifically exempt from the operation of the statutes limiting the amount of taxes that may be levied in any taxing district.

Both the sanitary district act and the conservancy act show specific intention of the legislature to

> "provide that all levies authorized by those sections should be made irrespective of the limitation of the Smith 1% law."

I am therefore of the opinion that the Tax Commission was justified in its ruling that said levy could be made outside the fifteen mill limitation, and the courts would probably so construe the power of levying taxes under Section 6602-87, General Code, as a power to levy such taxes freed from the sections of the code which otherwise limit such power of taxation by enacting the ten and fifteen mill limits.

I am informed by an officer of the Mahoning Valley Sanitary District that the work of said district has been carried forward during the past year in accordance with the procedure of financing approved by said order of the commission.

A plan for the district water supply was prepared and hearing on said plan was held by the board of directors. The board of appraisers has almost completed its work in appraising benefits, damages, and values of land to be acquired. In appraisal of benefits the board has considered only the benefits to the cities of Youngstown and Niles in accordance with the procedure outlined in the previous presentation of the plan to the commission, June 1, 1926. The procedure followed by the Board of Directors of the sanitary district is outlined as follows:

1—Appraisal of benefits (by the Board of Appraisers) to the cities of Youngstown and Niles. (Section 6602-59 G. C.) No benefits would be appraised against any individual properties within these cities.

2—Court hearing and decree on appraisals. (Sections 6602-64 and 6602-65 G. C.)

3—Levy of total assessments against cities of Youngstown and Niles (Section 6602-77 G. C.)

4—Issuance of Bonds by District Directors. (Section 6602-79 G. C.)

5—Levy of annual assessment against cities of Youngstown and Niles. (Section 6602-82 G. C.)

6—Levy of tax annually by local taxing authorities to produce funds sufficient to pay annual assessment. (Section 6602-87 G. C.) This tax would be levied against the property in Youngstown and Niles respectively and the respective rates in these two cities would be fixed by the respective county Budget Commissions. The tax levies would be placed outside the 15 mill limitation and so reported to the Tax Commission. This exemption is permitted by Section 6602-104, G. C., which removes the limitations of taxation and a assessment, otherwise imposed by law.

The board of directors followed the procedure adopted in financing the improvements of the Miami Conservancy District which procedure was similar to that above outlined. In that instance, tax levies in the municipalities of the district were exempted in accordance with Section 6628-76, G. C., which is identical in its terms with Section 6602-104, G. C., which exempts tax levies for sanitary districts.

On June 10, 1926, the Tax Commission made the order following:

> "In the matter of a levy for the purpose of providing a domestic water supply for the Mahoning Valley Sanitary District.
>
> The commission coming on to consider the matter of a levy for the Mahoning Valley Sanitary District to be made by the municipalities of Youngstown and Niles for the purpose of meeting the assessments to produce funds sufficient to provide a new domestic water supply for such municipalities, find that this levy may be made outside of the 15 mill limitation provided by law."

The commission's question now is as to whether or not the same levy can be made by the cities of Youngstown and Niles outside the fifteen mill limitation contained in the Jones Act (H. B. No. 80) of the 87th General Assembly of Ohio.

House Bill No. 80, enacted by the 87th General Assembly entitled:

> "An act providing for levying of taxes by local subdivisions and their method of budget procedure, and repealing sections * * * "

did not repeal or amend Sections 6602-104. Section 39 of said House Bill No. 80 provides as follows:

> "That any act or proceeding taken prior to the date this act is filed with the Secretary of State authorizing any tax or debt charge to be levied, or any contract or expenditure to be made, shall be in no manner affected by this act, but such act or proceeding shall be completed, and the tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if this act had not been passed; and if such tax or debt charge is authorized by such act or proceeding to be levied outside of the combined maximun tax rate prescribed by Section 5649-5b of the General Code such tax or debt charge shall be levied during the period and for the purpose so authorized outside of the 15 mill limitation established by this act."

The provisions of this section are expressly applicable to the procedure taken in the Mahoning Valley Sanitary District, for the reasons following:

(a) The action of the board of directors was "an act or proceeding taken prior to the date of the filing" of H. B. No. 80, with the Secretary of State.

(b) The proceeding authorized a tax or debt charge to be levied, and a contract or expenditure to be made.

Under these conditions, House Bill No. 80, in "no manner affected" said procedure of the levy made thereunder.

Said enacted bill also provides that:

> "The tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if this act had not been passed."

House Bill No. 80 also expressly provides that if said tax or debt charge is authorized by such act or proceeding to be levied outside of the combined maximun rate:

> "Such tax or debt charge shall be levied during the period and for the purpose so authorized outside of the 15 mill limitation established by this act."

I am therefore of the opinion that said levy may be made outside the 15 mill limitation, and being a proceeding pending at the time House Bill No. 80 was filed in the office of the Secretary of State, Section 39 of said House Bill No. 80, expressly exempts said levy from the provisions of said Bill.

Respectfully,
EDWARD C. TURNER,
Attorney General.

841.

PHYSICIANS FEES—FOR SERVICES RENDERED TO INDIGENTS—LIABILITY OF TOWNSHIP TRUSTEES AND MUNICIPAL OFFICERS.

SYLLABUS:

By the terms of Section 3480, General Code, a physician or surgeon rendering