to destroy or mutilate the bonds. Such resolution should, of course, omit any recision or repeal of the legislation authorizing the bond issue. In the event of the destruction of the bonds, it would perhaps be well to have a committee of the board attend and witness the destruction and certify to that effect on the minutes of the board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2353.

ORDINANCE—SUSPENSION OF RULES—ONE CONSIDERATION DISCUSSED.

SYLLABUS:

Where an ordinance is introduced at a meeting of a village council, the rules properly suspended, and the ordinance lost by reason of the failure to receive a majority vote of all the members elected thereto, the ordinance cannot again be brought before council at a subsequent meeting in the absence of a motion to reconsider. In the absence of such a motion, the subsequent presentation of such an ordinance must be treated as the introduction of a new ordinance and, in order that it may be legally passed, such ordinance must either be read on three different days or the rule suspended by the adoption of a motion to that effect by a three-fourths vote of all the members elected to council.

COLUMBUS, OHIO, July 16, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication as follows:

> "A member of the Council of the Village of Barnesville, on June 1, 1927, introduced an Ordinance increasing the salary of the Mayor. A motion to suspend the rules requiring readings on three different days was carried by a vote of five. The vote on the passage of the Ordinance was three yeas and two nays and the Ordinance was declared lost.
>
> On July 5, 1927, the Ordinance was again brought before Council and a motion to suspend the rules and requiring readings on three different days received four yeas and two nays. The vote on the passage of the Ordinance was four yeas and two nays.
>
> QUESTION: Was the Ordinance in question legally adopted?"

While you state that the ordinance in question was again brought before Council on July 5, 1927, it having been defeated by a vote of three yeas and two nays on June 1, 1927, it occurs to me that the answer to your question hinges upon whether the ordinance was, in fact, the same ordinance or must be treated as an entirely new ordinance.

Section 4224, General Code, provides as follows:

> "The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal, but this shall not apply to the ordering

of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No by-law, ordinance, or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto."

The ordinance in this instance, when first introduced on June 1st, was lost because of the failure to secure the concurrence of the majority of all the members of council. The council of the village consists of six members and the vote of three in the affirmative accordingly did not constitute a majority. The suspension of the rules with respect to the ordinance was, however, on that date accomplished in the method provided by law, namely, by a three-fourths vote of all the members, since five members voted for the motion.

While I am inclined to believe that it would be proper to suspend the rules at one meeting and then defer final action upon an ordinance until a subsequent meeting, in this case such a course was apparently not adopted. That is to say, had the vote upon the passage of the ordinance not occurred at the June meeting, the subsequent vote upon the passage at the July meeting, resulting in an affirmative vote of a majority of the members, would be sufficient to accomplish the legal passage of the ordinance and the motion to suspend the rules, had at the July meeting, could be disregarded as surplusage. In my opinion, however, the vote upon the passage taken at the June meeting is decisive of the question you present.

It is an elementary rule of parliamentary procedure that, when a measure is once submitted for final vote, the same measure cannot be again presented to that body, except in pursuance of the adoption of a motion to reconsider. In this instance no such motion to reconsider was presented to council, or at least your inquiry does not so disclose. It may be suggested that the motion to suspend the rules may be treated as the equivalent of a motion to reconsider. Such a suggestion is met by a consideration of the rules governing the making of such a motion. That subject was under consideration in the case of *Adkins* vs. *City of Toledo*, 6 C. C. (N.S.) 433, where, on page 441, is found the following:

"Now with respect to the reconsideration of a vote taken by the council, the legislative bodies of the city have adopted a rule, which is rule No. 18, found in a book entitled, 'Manual of the Common Council and the Municipal Government of the City of Toledo,' under the title, 'Rules and Regulations for the Government of the Boards of Alderman and Councilmen of the City of Toledo, 1898–1899,' which rule reads as follows:

'Rule XVIII. When a question has been taken it shall be in order for any member voting on the side which prevails to move a reconsideration thereof at the same or the succeeding meeting, or, if no regular meeting be held, then at the next meeting thereafter unless in the meantime the matter under consideration shall have become a law.'

That rule, as we understand it, does not go beyond the ordinary rules and settled practice and law upon this subject, but rather restricts and qualifies them. It is generally true that a motion for reconsideration must be made by a person voting on the side prevailing, but, under the authorities, there seems to be some exceptions even to that rule. As a general rule, in

the absence of any special rule upon the subject of the particular legislative body acting, a vote upon a reconsideration, as we understand it, need not be at the same meeting, nor at the next succeeding meeting, but it may be taken at any time before rights have vested in pursuance of the vote taken, or before the status quo is changed, and it will be irregular."

The rule quoted by the court is substantially that in effect generally with respect to legislative bodies. As the court suggests, however, no definite time limitation in the absence of a specific rule can be placed upon the right to make the motion to reconsider so that any consideration of an intervening meeting in this instance may be disregarded. You will observe, however, that it is generally true that the motion must be made by a person voting on the side prevailing at the previous vote. In this instance the ordinance was originally lost by a vote of three yeas and two nays. It is a reasonable assumption that the two negative votes in this instance were the same members who voted originally in the negative at the June meeting and consequently that the motion to suspend the rules was not made by either of these members. Consequently, I assume that the motion was not made by a member who voted with the prevailing side on the original vote. While the court in the quotation above recognizes some exceptions to the rule requiring a member vo ng with the prevailing side to make the motion, I believe the rule would be that this right is only extended to other members where the original vote was taken *viva voce* and not by yeas and nays recorded in the journal. Since the vote upon ordinances must, under the provisions of Section 4224, supra, be taken by yeas and nays and entered upon the journal, I assume this was followed in this instance. Accordingly, an essential element to the validity of the motion, considered as a motion to reconsider, is lacking. Since, as I have heretofore stated, the original ordinance can only be revived by a motion to reconsider, and there is no theory upon which the motion to suspend may be treated as a motion to reconsider, it logically follows that, in bringing the ordinance again before council at the July meeting, the introduction of an entirely new ordinance was accomplished. The provisions of Section 4224 with respect to suspension of the rules thereupon became mandatory and it was necessary, in order that the reading of the ordinance on three different days be dispensed with, that the motion to dispense with the rule be passed by a three-fourths vote of all members elected to council. In this instance the motion having received four yeas and two nays the necessary three-fourths vote was not received. Accordingly the suspension of the rules was not lawfully accomplished and the following vote upon the passage of the ordinance was a nullity.

In accordance with the foregoing views, I am of the opinion that the ordinance in question was not legally adopted.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2354.

BOARDS OF EDUCATION—UNITING OF TWO DISTRICTS FOR HIGH SCHOOL PURPOSES—TIE VOTE DISCUSSED.

SYLLABUS:

When the boards of education of two school districts unite the two districts for high school purposes, establish a joint high school for such districts and create a committee consisting of two members of each board for the management of said high school, and there-