2. That at said time the accused was affiliated with the Democratic party, determined by the fact that he voted the Democratic ticket at the general election held in 1926.

The fact that the accused voted, or attempted to vote, at the Republican primary election in August, 1928, can, of course, be proven by evidence independent of any statements made by the accused. This being so, it would seem under the above quoted language from the syllabus in the Maranda case that this would be sufficient proof of the *corpus delicti* to admit the statements of the accused with respect to his political affiliations at the time he voted, or attempted to vote, at the Republican primary.

However this may be, I am quite clearly of the view that the statement made by the accused to the judges at the primary election at the time he was attempting to cast his ballot at the Republican primary election then held, is admissible either in his favor or against him, without respect to the question of the state of the evidence in the case as to the *corpus delicti*. The statement made by the accused at this time that he had voted the Democratic ticket two years before, or any other statements made by him or other persons present touching the question of his right to vote at said Republican primary election, are competent as part of the *res gestae* of the alleged crime in voting, or attempting to vote, as he did. "The expression '*res gestae*' as applied to a crime, means the complete criminal transaction from its beginning or starting point in the act of the accused until the end is reached. What in any case constitutes the *res gestae* of the crime depends wholly on the character of the crime or the circumstances of the case." *Underhill, Criminal Evidence*, Sec. 160, page 212.

Without multiplying authorities on the question as to the admissibility of statements or declarations made as part of the *res gestae* of an act or transaction, it is sufficient to note the general rule that "declarations which are the immediate accompaniments of an act are admissible as part of the *res gestae*." *State* vs. *Lasecki*, 90 O. S. 10, 14.

The declaration made by the accused as to his party affiliation while he was attempting to vote at said Republican primary being admissible on the independent ground that the same was a part of the *res gestae* of the alleged criminal transaction will afford, together with his act in attempting to vote at the Republican primary, sufficient evidence of both of the elements making up the *corpus delicti* of the offense to authorize the admission of evidence of other statements made by the accused tending to prove that he was affiliated with the Democratic party at the time he attempted to vote at said Republican primary.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2896.

BOARD OF EDUCATION—STADIUM FOR ATHLETICS—MAY ERECT ON CITY OWNED LAND—APPROPRIATION FOR SAME.

SYLLABUS:

1. *Section* 4065-5, *General Code, and related sections, authorize any city, village or county and any school district jointly to equip, operate and maintain playgrounds, playfields, gymnasiums, etc., upon lands set apart for said purpose by the municipality, which said lands are not otherwise dedicated to public use. A stadium for athletic purposes is included within the purposes mentioned in said section.*

2. *A municipality may issue bonds for such purposes within the limitations of The Uniform Bond Act, as enacted in* 112 O. L. 364.

3. *A board of education may appropriate moneys for such purpose and issue bonds within the limitations of said The Uniform Bond Act. Also, a special tax levy may be made to cover the board of education's cost of such an undertaking, if made under the provisions of Sections* 5625-16, 5625-17 *and* 5625-18, *General Code.*

COLUMBUS, OHIO, November 19, 1928.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, which reads:

> "We are in receipt of a letter from the City Solicitor of Canton, Ohio, the pertinent part of which reads:
>
> 'The City of Canton and the Board of Education of the Canton City School District are desirous of cooperating in the construction of a stadium for athletic purposes. They have in mind the joint expenditure of approximately $125,000.00, provided they can do so legally.
>
> I know of no statutes authorizing directly a contract for such purposes, but I call your attention to Sections 4065-5 and 4065-6 G. C. The last paragraph of Section 4065-5 you will note provides that a school district shall have the power to join with a city in equipping, operating and maintaining play grounds, play fields, etc. Section 4065-6 authorizes the city to issue bonds for the purpose of acquiring lands or buildings for play grounds, play fields, etc.
>
> In the instant case the Park Commission is willing to donate land as a site for the stadium. Will you kindly advise me whether or not, under the two sections mentioned, the City Council could authorize a bond issue for its portion and whether the Board of Education could make a special levy or otherwise appropriate money for its share.'
>
> This being a matter of general interest, we will greatly appreciate your views in connection therewith."

Section 4065-5, General Code, to which you refer, provides:

> "Any two or more cities or villages, or any city or village, or any city or village and county, may, jointly acquire property for and operate and maintain any playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers. Any school district shall have power to join with any city, village or county, in equipping, operating and maintaining playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers, and may appropriate money therefor."

At the outset, it may be stated that it has frequently been held that the fact that two subdivisions both have a given power to act in a matter separately, does not authorize such action jointly. In my opinion No. 2843, issued November 7, 1928, it was held:

> "A county and a city may not legally enter into a joint ownership agreement with respect to that portion of a county home farm, not needed for public use, for the purpose of equipping and maintaining an airport."

In an opinion of the Attorney General reported in the Opinions of the Attorney General for the year 1922, page 1082, it was pointed out that there is no authority for school boards to acquire, or jointly acquire, lands for the purposes mentioned in Section 4065-5, supra. However, there is express authority in said section for a school district to join with a city in equipping, operating and maintaining playgrounds, playfields, etc. Said section further authorizes the appropriation of money therefor. The title to the public grounds situated within a municipality is vested in fee in the municipality, for the public use, and no doubt such municipality may permit such lands to be used for any purpose which is not inconsistent with the purposes for which they were dedicated. See Opinion of Attorney General reported in Opinions for the year 1924, p. 262. It would therefore seem by the express and unambiguous language of the last sentence of Section 4065-5, supra, the school district and city may jointly equip, maintain and operate upon the lands of said municipality playgrounds, playfields, etc.

Section 4065-7, General Code, which is appropos, in connection with the question of payment of expenses in the maintenance and operation of such enterprises, provides:

> "All expenses incurred in the operation of such playgrounds, playfields, gymnasiums, swimming pools, public baths, and indoor recreation centers, established as herein provided, shall be payable from the treasury of such city, village, county or school district. The local authorities of such city, village, county or school district, having power to appropriate money therein, may annually appropriate and cause to be raised by taxation an amount for the purpose of maintaining and operating playgrounds, playfields, gymnasiums, public baths, swimming pools and recreation centers."

It will be noted that the above section is limited to "maintenance and operation" and does not include the power to equip. However, Section 4065-5, supra, does authorize the same subdivisions to appropriate money for the purpose of equipping playfields, etc., and, therefore, the fact that the word "equipping" was omitted from Section 4065-7, supra, is of little consequence.

The question which now presents itself is whether a stadium, for athletic purposes, is such an object as is mentioned in Section 4065-5. Undoubtedly, the primary intent of such legislation is to provide a means to the youth of the joint subdivisions to participate in athletics and wholesome recreation.

The character of a modern stadium used for athletic purposes is well known. The modern structures contain football fields and are used for other athletic sports, and there seems to be no doubt but that such structures are playgrounds or playfields, within the meaning of Section 4065-5, supra. It is also probable that a stadium partakes of the nature of a gymnasium, within the meaning of said section, as well as being a playfield or playground.

Section 4065-6, General Code, which relates to the power of a municipality to issue bonds, provides:

> "The city or village council, or the county commissioners, may issue bonds for the purpose of acquiring lands or buildings for playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers, and for the equipment thereof."

It will be observed that the section last quoted does not mention a school district and therefore there is no authority therein authorizing a board of education to issue bonds.

At this point it is believed consideration should be given to the provisions of The Uniform Bond Act as enacted in 112 O. L. 364.

Section 2293-2, General Code, provides in part:

> "The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. * * * "

Section 2293-14, General Code, prescribes the maximum net indebtedness that may be created by a municipality with or without a vote of the people. Such limitations are prescribed for school districts by the provisions of Section 2293-15.

Section 2293-19, General Code, provides in part:

> "The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue. * * * "

Said section further prescribes the method to be pursued by the taxing authority when it desires or is required to submit any bond issue to the electors.

Section 2293-20, General Code, defines the meaning of the phrase "one purpose" as used in said The Uniform Bond Act.

Section 2293-25, General Code, outlines the procedure when it is desired to issue bonds without a vote of the people.

From the foregoing, it is evident that a municipality may issue bonds for the purpose of equipping, maintaining and operating playfields, playgrounds, gymnasiums, etc., as mentioned in Section 4065-5, General Code.

In considering the powers of the board of education, as heretofore pointed out, Section 4065-7 contains no specific authority for such boards to issue bonds. However, Section 7625, General Code, as amended in 112 O. L. 380, provides:

> "The taxing authority of any school district in addition to other powers conferred by law shall have power to purchase, construct, enlarge, extend, complete, improve, equip and furnish buildings and playgrounds for public school purposes, and acquire real estate with or without buildings thereon, and easements, for such purpose."

Construing the section last quoted with Section 2293-2, General Code, heretofore set forth in part, compels the conclusion that a board of education is empowered to issue bonds for such a purpose within the limitations prescribed by said The Uniform Bond Act.

In connection with the authority of the board of education to appropriate moneys for the purposes mentioned in Section 4065-5, General Code, your attention is directed to the provisions of Section 5625-15, General Code, as amended in 112 O. L. 397. This section authorizes the taxing authority, by resolution, to declare the purpose for which it will be necessary to levy taxes in excess of the fifteen mill limitation. The fourth purpose mentioned in said section is as follows:

> "For recreational purposes except in townships, but the total levy for such purpose authorized by vote of the people, shall not exceed two-tenths of a mill."

Section 5625-16, General Code, provides (112 v. 398):

"The taxing authority of any subdivision, except townships, upon the filing of a petition therefor, signed by the qualified electors of such subdivision, equal in number to ten per centum of the votes cast for governor in the last state election, shall submit to the vote of the electors of the subdivision the special levy for recreational purposes which they are authorized to submit under Section 15 of this act.

The proceeds of any recreational levy outside of the fifteen mill limitation shall be used for the purpose of establishing, equipping, operating and maintaining playgrounds, play-fields, gymnasiums and indoor recreational centers and shall be in addition to any revenue for such purpose derived from any tax within the fifteen mill limitation."

It will be noted that the language of the last paragraph of the section last quoted is identical with the language mentioned in Section 4065-5, General Code, which certainly establishes, beyond controversy, the authority of a board of education to appropriate money for the purpose of paying its share of any joint enterprise under said section.

Section 5625-17, General Code (112 v. 398), provides for the submission of the question of such tax to the electors.

Section 5625-18, General Code (112 v. 399), provides:

"If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; in all other years, it shall be included in the annual tax budget that is certified to the county budget commission."

In view of the foregoing, you are specifically advised that:

1. Section 4065-5, General Code, and related sections, authorize any city, village or county and any school district jointly to equip, operate and maintain playgrounds, playfields, gymnasiums, etc., upon lands set apart for said purpose by the municipality, which said lands are not otherwise dedicated to public use. A stadium for athletic purposes is included within the purposes mentioned in said section.

2. A municipality may issue bonds for such purposes within the limitations of The Uniform Bond Act, as enacted in 112 O. L. 364.

3. A board of education may appropriate moneys for such purpose and issue bonds within the limitations of said The Uniform Bond Act. Also, a special tax levy may be made to cover the board of education's cost of such an undertaking, if made under the provisions of Sections 5625-16, 5625-17 and 5625-18, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.