

apparent that an employing board of education is required to make its payments under such acts only upon those teachers "who are contributors," and in section 7896-1 the section defining the meaning of certain words says:

"'Contributor' shall mean any person who has an account in the teachers' saving fund."

It is therefore apparent that a teacher who was not a member of the state retirement system would not be a contributor, as used in the various sections of the act, and the board of education, as the employer, could not be compelled to make payments required of it for teachers who are not contributors; that is to say, members of the state retirement system.

Coming to your second question, you desire to know whether the board of education employing teachers who are not members of the retirement system, and who have requested exemption for themselves, could claim exemption from the payment to the deficiency contribution provided for in section 7896-44. The answer to this is the same as the answer to the first question propounded as to the requirements for the "normal contribution," for the section says that the employers who are to pay to the employers' accumulation fund shall be the employers of teachers *who are members of the retirement system*. The teachers for whom the board would not have to contribute would be those teachers who are non-members of the retirement system of the state, that is, those who have been properly exempted under the provisions of section 7896-22 of such act.

Based upon the sections of the statutes herein quoted, it is therefore the opinion of the attorney-general that under the provisions of section 7896-44, boards of education are required to pay to the employers' accumulation fund of the state teachers' retirement system, both the normal contribution and the deficiency contribution mentioned in such section only upon those teachers who are members of the retirement system and come within the class defined as "contributors" to such system.

Respectfully,
 JOHN G. PRICE, ©
 Attorney-General.

1291.

MUNICIPAL CORPORATIONS—WITHOUT AUTHORITY TO INCLUDE
 IN COST OF SEWER SYSTEM, COST OF SEWAGE DISPOSAL PLANT,
 FOR ASSESSMENT PURPOSES.

Municipal corporations are without authority to include, for assessment purposes, in the cost of a sewer system, the cost of a sewage disposal plant proposed to be erected in connection with the construction of such system, even though the sewer system may not be put into operation in the absence of such plant.

COLUMBUS, OHIO, May 28, 1920.

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

GENTLEMEN:—You have submitted for the consideration and opinion of this department a communication sent to you by the solicitor of the village of Grafton, reading in part :

"The village of Grafton has no sewer facilities whatever at the present time and the proposed sewer improvements which include sanitary and trunk sewers and a sewage treatment plant call for a total estimated expenditure of \$56,001.53, and of this amount the sewage treatment plant will cost \$11,279.00. The sewage treatment plant is a necessary part of the sewage system as there is no other means of disposing of the sewage, and the plans for the same have been approved by the state board of health as provided by law. It is proposed to pay for all of the cost of the installation of the sanitary sewer system, less the two (2%) per cent required to be paid by the village by statute, by special assessment against the properties benefited and the question I desire to submit to you is whether or not the cost of erecting the sewage disposal plant may be included in the total cost of the sewer improvements and paid for by special assessment against the properties benefited in the village of Grafton."

In addition to the foregoing, the solicitor states, in substance, that every piece of real estate within the corporate limits of the village will benefit by the proposed sewage disposal plant; that because of outstanding waterworks bonds and other bonds, it is doubtful whether the debt limitations of the village will permit of the issue by the village of bonds payable out of general taxation in sufficient amount to procure money for the construction of the sewage treatment plant in question; and that a search for authority in connection with the question which the solicitor has in mind discloses nothing directly on the subject, the nearest approach being the case of the inclusion within the cost for assessment of a sewer pumping station built as a part of a sewer system.

In arriving at an answer to the question submitted a principle of construction established by statute must not be overlooked. Section 3911 G. C. reads:

"Proceedings with respect to improvements shall be liberally construed by the councils and courts, to secure a speedy completion of the work, at reasonable cost, and the speedy collection of the assessment after the time has elapsed for its payment, and merely formal objections shall be disregarded, but the proceedings shall be strictly construed in favor of the owner of the property assessed or injured, as to the limitations on assessment of private property, and compensation for damages sustained."

Our supreme court in connection with a citation of the statute just quoted has this to say in the case of *City of Cincinnati vs. Connor*, 55 O. S. 82, at page 91:

"The rule generally prevails that, independent of any legislative requirement on the subject, statutes imposing taxes and public burdens of that nature are to be strictly construed; and where there is ambiguity which raises a doubt as to the legislative intent, that doubt must be resolved in favor of the subject or citizen on whom the burden is sought to be imposed."

So far as concerns the authority of a municipality to erect a sewage treatment plant, the statutes, generally speaking, confer the authority in connection with the power to construct sewers. By section 3647 G. C. part of the general powers conferred on municipalities is

"to open, construct and keep in repair sewage disposal works, sewers, drains and ditches * * *."

Very similar language is found in subdivision 10 of section 3677 in respect to

appropriation of property; likewise, in subdivision 14 of section 3939 authorizing municipalities to issue bonds for various specific purposes.

On the other hand, when reference is had to section 3812 G. C. (107 O. L. 629) which sets forth generally the purposes for which assessments may be made against benefited property, no specific mention is to be found of sewage treatment plants or sewage disposal plants, the language of the statute being in part:

“Section 3812. Each municipal corporation shall have special power to levy and collect special assessments to be exercised in the manner provided by law. The council of any municipal corporation may assess upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the corporation, any part of the entire cost and expense connected with the improvement of any street, alley * * * public road * * * by * * * constructing * * * sewers, drains, watercourses * * *.”

Similarly, when we turn to sections 3871 et seq. and to section 3882, relating respectively to the construction of a sewer system after the adoption of a general plan, and to the construction of sewers without first adopting a general plan, and in either case, assessing the cost against benefited property, we find no reference whatever to sewage treatment plants, save that in section 3891 the following provisions are found:

“A municipal corporation may purchase and hold land outside of the corporate limits, to be used as a sewerage farm, to construct and maintain thereon all the necessary appliances for the proper disposition of the sewage of such corporation, under such rules and regulations as shall be prescribed by council and approved by the state board of health”

no mention being made in this latter statute of assessing the cost against benefited lands. Further reference to sewage disposal plants is made in sections 4467 et seq. and in sections 1249 et seq. authorizing the construction of such plants by municipalities and prescribing certain duties of the state board of health with reference thereto. No mention is made in any of these sections as to assessing the cost.

Applying to the situation disclosed by the foregoing brief review of pertinent statutes, the rule of strict construction referred to above, the conclusion follows that a negative answer must be given to the solicitor's question; for on the one hand there is a lack of statutory authority for the making of an assessment to pay the cost of erecting a sewage treatment plant, or for including in the cost of a sewer or sewer system for assessment purposes, the cost of such plant; and on the other hand, such indication of view as has been given by the general assembly, as shown by the statutes noted, tends in the direction that it considers a sewage treatment plant to be an enterprise separate and distinct from the construction of a sewer.

No doubt the reference of the solicitor to the matter of pumping stations is based on the case of *King vs. City of Dayton*, 10 O. C. C. (N. S.), 522; 20 O. C. D. 480, affirming *King vs. Dayton*, 6 O. N. P. (N. S.), 369; 18 O. D. N. P. 567. Both the common pleas and circuit courts held that the assessment for a sewer improvement might include the cost arising from the construction of a pumping station built in connection with the sewer. The higher court as its reason for such holding contents itself with the statement

“There was no excess in the amount assessed for the main sewer. The pumping station was a necessary part of the equipment”;

but the lower court, on the other hand, after finding as a fact that the pumping sta-

tion was *necessary for the proper construction of the sewer*, and that the cost of the sewer was not in excess of that of an ordinary sewer of the same character, made reference to a statute which the court evidently believed to confer authority on council to include the pumping station in the assessment cost, namely, what is now section 3890, reading:

"The councils of municipal corporations, in accordance with the provisions of this title, may provide for the construction and maintenance of such sewer pumping stations, and equip them with necessary machinery and apparatus and provide the necessary buildings therefor, as the council deems necessary."

While the case cited presents a situation somewhat similar to that with which we are now dealing, it is not to be accepted as furnishing a rule for cases wherein statutory authority for an assessment is clearly lacking.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1292.

STATE REGISTRAR OF AUTOMOBILES—MAY REGISTER MOTOR VEHICLES OWNED BY THE AMERICAN NATIONAL RED CROSS SOCIETY WITHOUT CHARGE.

The American National Red Cross is a body politic and corporate functioning as an agency of the government of the United States in times of peace as well as in times of war. The state registrar of automobiles should register motor vehicles owned by the American Red Cross without charge.

COLUMBUS, OHIO, May 28, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The registrar of automobiles has requested an opinion from this department, as follows:

"Please advise the automobile department with a ruling on the following: Section 6920, House Bill 573—Motor Vehicles.

Under this chapter are vehicles owned by the county or state chapters of the American Red Cross Society exempted from the payment of vehicle license tax?"

It is believed that section 6295 G. C. contains a material provision to be considered in connection with your question, as follows:

"Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto. The secretary of state shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government."