was acquired, or is maintained, and if there be no such fund it shall be deposited in the general fund. If the property was acquired by an issue of bonds the whole or a part of which issue is still outstanding, unpaid and unprovided for, such money, after deducting therefrom the cost of maintenance and administration of the property, shall on warrant of the city auditor be transferred to the trustees of the sinking fund to be applied in the payment of the principal of the bond issue.'

"Instances have come to the attention of this department and requests for advice, when the sale of property produces a sum of money in excess of bonds outstanding, unpaid and unprovided for and the interest thereon. *"QUESTION:* Under such conditions would it be legal to limit the amount of such transfer to the trustees of the sinking fund to an amount necessary to provide for all outstanding bonds and interest and to retain or transfer the balance to the general fund of the corporation?"

The latter part of the section quoted in your inquiry indicates that if the premises sold was acquired by a bond issue, *the whole or part of which* is still outstanding, the money arising from such sale shall be transferred to the sinking fund to be applied in the payment of the principal of the bond issue.

The use of the words "whole or part of the issue of bonds" would indicate that the legislature recognized the probability that in some instances (as where the issue of bonds are nearly paid) the sum required for the needs of the sinking fund would be small and would not consume the entire sum arising from such sale; however, the section is not clear as to the disposition of the surplus above the needs of the sinking fund.

The first part of the section provides that the money arising from such sale shall be deposited first in the particular fund by which such property was acquired or is maintained, and if there be no such fund, it shall be deposited in the general fund. Your question seems to eliminate the possibility of depositing the money arising from such sale in the "fund by which such property was acquired, or is maintained." Therefore, it would seem the excess over the requirements of the sinking fund should go to the general fund.

Any excess realized would be in the nature of a profit or savings and it is not believed any violence would result from paying same into the general fund. I find no other section of the General Code which would be violated.

Therefore you are advised that under the conditions you state it would be legal to limit the amount of such transfer to the trustees of the sinking fund to an amount necessary to provide for all outstanding bonds and interest, and to retain or transfer the balance to the general fund of the corporation.

Respectfully,
C. C. CRABBE,
Attorney General.

200.

BOARD OF HEALTH—OFFICES INCOMPATIBLE—COUNTY COMMISSIONER—MEMBER DISTRICT BOARD OF HEALTH—REMOVAL FROM ONE SUBDIVISION OF DISTRICT TO ANOTHER OF SAME DISTRICT DOES NOT DISQUALIFY MEMBER FROM HOLDING OFFICE—IT IS MANDATORY THAT ONE MEMBER OF BOARD BE A PHYSICIAN.

SYLLABUS:

1. *The offices of member of District Board of Health and of County Commissioner are incompatible and cannot be held by the same person.*

2. *The removal of a member of the District Board of Health from one of the subdivisions of said district to another subdivision of the same district would not disqualify said member from holding his office.*

3. *It is mandatory that one of the members of the District Board of Health be a physician.*

COLUMBUS, OHIO, March 29, 1923.

HON. GEORGE B. NYE, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—We are in receipt of your letter of recent date, as follows:

"I wish your opinion on the following proposition:-

1. A member of the District Board of Health was elected County Commissioner at the last election; are the two offices incompatible?

2. Another member of the District Board of Health has moved into Waverly, where a member of the board already resides. Does this disqualify either, because of section 1261-18 of the Code providing for equal distribution over the district?

3. Is it mandatory or merely directory that a physician be a member of the District Board of Health?

In your first question you ask whether a member of the District Board of Health who has been elected County Commissioner at the last election may still remain a member of the District Board of Health and at the same time act as County Commissioner.

Section 1261-26 of the General Code reads as follows:

"* * * The District Board of Health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal disease, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries and other charitable, benevolent, correctional institutions. * * *"

Section 2419 of the General Code relates to the duties of County Commissioners and is as follows:

"A courthouse, jail, public comfort station, offices for county officers and an infirmary shall be provided by the Commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the Commissioners determine. They shall also provide all the equipment, stationery and postage, as the County Commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar proof vaults and safes and other means of security in the office of the County Treasurer, necessary for the protection of public moneys and property therein."

It is the general rule of law that a person may not hold two offices which are incompatible with one another. 29 CYC., page 1381, reads as follows:

"But at common law two offices whose functions are inconsistent are regarded as incompatible. The inconsistency which at common law makes offices incompatible does not consist in the physical impossibility to discharge the duties of both offices; but rather in the conflict of interests. * * *"

In State ex rel v. Gebert, 12 O. C. C. (n. s.) 274, the Court says as follows:

"Offices are considered incompatible when one is subordinate to, or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both."

It will be seen by a reading of the above quoted sections of the General Code that the office of County Commissioner and a member of the District Board of Health are incompatible, for the reason that the one is a check upon the other. The duties of the County Commissioners require that they furnish jails, workhouses, county infirmaries and other public buildings which are under their control and direction. The duty of inspection of such buildings is imposed upon the District Board of Health and it would place a member of the District Board of Health who was also County Commissioner in the position of passing upon the conditions in these public buildings which were of his own creation, and in that way the duties of the two offices would be incompatible.

In answer to your first question, it is the opinion of this department that a member of the District Board of Health who was elected County Commissioner and who accepted that office thereby automatically relinquished his claim as a member of said District Board of Health.

In the second question you ask whether a member of the District Board of Health who has moved out of one of the subdivisions of said district into another subdivision, where there is already living a member of such board, would automatically disqualify either of such members from holding their office.

The member of the board who was originally appointed from Waverly would not be disqualified from holding his office by reason of another who moved into his district. As to whether this would automatically disqualify the member moving into the district which already has a member on said board, would depend upon the particular facts in the case. Section 1261-18 of the General Code of Ohio provides as follows:

"* * *The District Advisory Council shall proceed to select and appoint a District Board of Health as hereinbefore provided, having due regard to the equal representation of all parts of the district. Where the population of any municipality represented on such District Advisory Council exceeds one-fifth of the total population of the district, as determined by the last preceding federal census, such municipality shall be entitled to one representative on the District Board of Health for each fifth of the population of such municipality."

Your letter does not disclose in this regard as to whether Waverly would be entitled to more than one representative on the District Board or not, and your second inquiry would probably be determined by this fact. If the population of Waverly is such as to entitle them to more than one member of the District Board, then his removal from the district in which he lives to Waverly would not automatically disqualify him as such member.

Your third question as to whether the statute in regard to one of the members of the District Board of Health being a physician is mandatory or not.

Section 1261-18 of the General Code of Ohio says as follows:

" * * * Of the members of the District Board of Health, one shall be a physician. * * *"

35 CYC., 451, is as follows:

"In common parlance, 'shall' is a term which it is said has always had a compulsory meaning and in its common and ordinary usage, unless accompanied by qualifying words which show a contrary intent, always refers to the future; but it may be used in the broad sense of 'must,' of which it is a synonym. As used in the statutes, the word is generally mandatory; * * *"

By a reading of the above statute, we find that there are no words qualifying the word "shall" in this instance, and since there are no qualifying words or any other reference to these in the sections relating to the District Board of Health, this would be taken as mandatory.

It is the opinion of this department that it is mandatory that one of the members of the District Board of Health shall be a physician.

Respectfully,
C. C. CRABBE,
Attorney General.

201.

SECRETARY OF STATE—AUTHORITY TO ESTABLISH AGENCIES THROUGHOUT STATE FOR REGISTRATION OF MOTOR VEHICLES TERMINATED JANUARY 2, 1920—ACCOUNT TO STATE FOR LICENSE TAXES PAID SELF-APPOINTED AGENTS BY REGISTRANTS —LIABLE ON OFFICIAL BOND.

SYLLABUS:

1. *The authority conferred upon the Secretary of State by the act passed March* 21, 1917 (107 *O. L.* 545) *to establish agencies throughout the state to receive applications for the registration of motor vehicles and to collect license taxes from registrants, terminated on January* 2, 1920, *the effective date of the act passed December* 16, 1919 (108 *O. L,. p.* 1081).

2. *The Secretary of State is liable on his official bond to account to the state for motor vehicle license taxes paid to his self constituted and appointed agents for the use of the state maintenance and repair fund on and after January* 2,.1920, *and appropriated by such agents to their own use.*

COLUMBUS, OHIO, March 29, 1923.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the authority of the Secretary of State to establish branch agencies outside of Columbus, for the purpose of receiving applications for registration and collecting annual license taxes under the motor vehicle registration act, and also his liability to account to the state for license taxes paid and collected at such agencies for the "State maintenance and repair fund," was duly received.

1. In 1912 Annual Report of the Attorney General, Vol. 1, p. 80, it was held in an opinion dated December 7, 1912, and addressed to the Secretary of State, that: