From what has been said, it is my opinion that:

1. Section 12906, General Code, being a criminal statute, must be strictly construed. A pupil of the public schools who organizes, joins or belongs to a fraternity, sorority or other like society composed or made up of, in whole or in part, persons other than pupils of the public schools, cannot be subjected to the penalty imposed by the statute.

2. Boards of education are empowered to make such reasonable disciplinary rules as they may deem necessary to curb the evils attendant upon, or growing out of, the affiliation with fraternities or secret societies, of pupils attending the public schools under their jurisdiction, and enforce the same by the same penalties as might be inflicted for the violation of any other proper disciplinary rule or regulation, including suspension from school or from certain school activities, provided of course, that such fraternities or societies or the activities of such fraternities or societies are so connected with or related to the public schools, or the pupils attending the same, as to be subject to control or regulation by such boards of education.

3. The words fraternity, sorority or other like society, as used in Section 12906, General Code, should be held to mean only such organizations whose deliberations and activities are secret.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1134.

MUNICIPALITY—REDUCTION OF STREET IMPROVEMENT ASSESSMENTS, DISCUSSED.

SYLLABUS:

1. *The legislative body of a municipality may not lawfully reduce the assessments made against abutting property for a street improvement, after bonds have been sold for such improvement in anticipation of the collection of such assessments and supply the deficit created in the sinking fund caused by such a reduction in the amount of the assessments by transferring thereto funds received under the provisions of Section* 6309-2 *and Section* 5537 *of the General Code.*

COLUMBUS, OHIO, October 10, 1927.

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

GENTLEMEN:—Receipt is acknowledged of your communication of recent date, requesting my opinion, as follows:

> "Main Street in the City of Lima, is a continuation of an intercounty highway. This highway is eighteen feet wide outside of the corporation and forty feet within the corporation. It was resurfaced in the city limits during the year 1923 and a substantial part of the old foundation used as the subsurface of the new improvement. The county did not assume any part of the re-construction costs; the work being done on a petition of the property owners who assumed the entire cost and expense, they having reason to believe that such cost would not exceed $7.00 a front foot. When completed the cost was assessed against the abutting property in the amount of $12.00 a front foot.

It now develops that such property owners are unable to pay the full assessment and in some instances the values of the properties are less than the amount of the assessments.

The city commission wishes to reduce such assessment to 22-40ths of the original cost, on the theory that eighteen feet of the improvement could have been constructed by the county commissioners. To meet the bonds issued in anticipation of this collection of special assessments said commission desires to transfer sufficient moneys each year from the gasoline tax receipts to the sinking fund.

QUESTION: In view of these facts may transfers be made to the sinking fund from either the motor vehicle license tax or gasoline tax receipts?"

From the facts set forth in your letter, it appears that the street in question was re-surfaced at a time when Section 6309-2 of the General Code was in effect, but previous to the enactment of Section 5537 of the General Code providing for a gasoline tax excise fund; Section 6309-2 having been enacted in 1919 as a part of House Bill No. 573 entitled "An Act providing for the levy and collection of a tax on the operation of motor vehicles on the public roads and highways of this state," (108 v. Pt. II, 1083).

It appears from the facts stated in your communication that the proceedings for the re-surfacing of Main Street in the city of Lima, Ohio, were instituted by a petition being filed containing the names of abutting property owners who agreed to pay the entire cost of such improvement. The legislation of council, such as the resolution of necessity and the ordinance determining to proceed with said improvement, was the result of, and was based upon the petition of the abutting property owners.

An assessing ordinance was passed pursuant to the provisions of Section 3812, General Code, assessing the entire cost of said improvement against property abutting upon said improvement and it does not appear from your communication that any complaint was made as to the amount of the assessment by any abutting property owner. Bonds have been issued and sold in anticipation of the collection of assessments against the abutting property and these assessments have been paid to the county treasurer since the year 1923 for the purpose of retiring said bonds.

There is no question but that the proper legislative authority of the city of Lima could have used part of the funds received under the provisions of Section 6309-2 in paying part, or all of the cost of the improvement at the time it was made. Section 6309-2 of the General Code in part provides:

"The revenue collected under the provisions of this chapter shall be distributed as follows:

(1) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district or registration as provided in this chapter. The portion of such money due the municipal corporations shall be paid into the treasuries of such municipal corporations on the first business day of each month, and the remainder retained in the county treasury. In the treasuries of such municipal corporations and counties, such monies shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose and shall not be subject to transfer to any other fund.

'Maintenance and repair' as used in this section, includes all work done upon any public road or highway, or upon any street, in which the existing foundation thereof is used as the subsurface of the improvement thereof, in whole or in substantial part."

However, no action was taken to expend part of this fund for the purpose of said improvement and in spite of the existence of the provisions of Section 6309-2 of the General Code the property owners when petitioning for the improvement elected to pay the entire cost thereof.

In an opinion of this department found in Opinions, Attorney General, 1922, Vol. I, page 70, it was held:

> "In re-surfacing streets upon the assessment plan provided for by Section 3812 et seq. of the General Code municipalities in providing for their share of the cost, may make use of the funds accruing to them under the provisions of Section 6309-2, General Code."

It will be observed from the language of Section 6309-2, supra, that re-surfacing is considered as maintenance and repair providing the existing foundation of the street is used as a subsurface for such re-surfacing in whole or substantial part, and it was so held in the opinion above quoted from.

The question presented is whether the proper legislative authority of the city of Lima, Ohio, may now, some four years after such improvement has been completed by ordinance, reduce the assessments against abutting property and provide for the deficit that will be created in the sinking fund by such reduction of assessments, by transferrring during each year so much of the fund received under the provisions of Section 6309-2 and Section 5537 of the General Code, to the Sinking Fund for the purpose of taking care of such deficit and retiring the bonds issued for such improvement as they fall due.

Section 5537, General Code, was not enacted and did not become a law until the year 1923. This section provides in part as follows:

> "* * * Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation.
>
> Wherever a municipal corporation is on the line of an inter-county highway or main market road, one-sixth of the amount so paid to any municipal corporation shall be used by such municipal corporation for the sole purpose of maintaining and repairing such streets and roads within such municipal corporation, as may be designated by the director of highways and public works as extensions or continuances of inter-county highways or main market roads. * * *"

At the time of the improvement none of the funds received from the gasoline tax excise fund were available for the purpose of paying all or any of the cost of re-surfacing the street in question.

Although, as hereinbefore pointed out, funds were available under the provisions of section 6309-2 at the time such improvement was made, no provision was made for the expenditure of these funds for this purpose.

The bonds referred to in your letter were issued in anticipation of the collection of assessments against the abutting property. They were purchased by the holders thereof with that understanding. These purchasers at the time of the sale, as do the holders of the bonds now, had the right to look to the collection of the assessments on the abutting property as made in the ordinance making such assessments, as the

source of sufficient funds to pay the principal and interest when due. Any action attempting to reduce these assessments would impair the obligation of the contract and legal duty of the property owners to pay for said improvement.

Answering your question specifically, it is my opinion that the legislative body of a municipality may not lawfully reduce the assessments made against abutting property for a street improvement after bonds have been sold for such improvement in anticipation of the collection of such assessment and supply the deficit created in the sinking fund caused by such a reduction of assessments, by transferring thereto the funds received under the provisions of Sections 6309-2 and 5537 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1135.

VILLAGE SCHOOL DISTRICT, DISCUSSED—MEMBERS OF BOARD OF EDUCATION OF SUCH DISTRICTS NOT ENTITLED TO PAY FOR SERVICES.

SYLLABUS:

1. *A village which when incorporated, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, does not constitute a village school district.*

2. *Since there is no statute providing pay or compensation for members of a village school district board of education, such members, whether de jure or de facto, are not entitled to any pay for their services.*

COLUMBUS, OHIO, October 11, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication of recent date which reads:

> "You are respectfully requested to furnish this department your written opinion upon the following:
>
> The Village of San Toy in Perry County was incorporated by vote taken on September 14, 1913. The plat and transcript were recorded October 4, 1913, and it would appear that the village was an incorporated village from the latter date. At the time of its incorporation or rather on the tax duplicate of 1914 when it first appears as a separate taxing district the tax valuation was $129,900.00. Upon the failure of the village to elect members of the board of education, the county commissioners under date of May 18, 1914, appointed five persons to act as such board for the so-called Village of San Toy School District. Afterwards the board of education petitioned the Probate Court to make a division of the funds between Bearfield and Monroe Township Districts and San Toy Village school district. The territory within the incorporated village of San Toy has since that time been considered to be a school district and a board of education has been elected from time to time according to law.