authorized or directed for such purpose, and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employe, commissioners, council, body or board, or the chief clerk thereof."

While there may be some question as to whether it is necessary under Section 5660 to have the certificate therein provided prior to the employment of public officers by reason of the decision in the case of *Youngstown* vs. *National Bank*, 106 O. S. 563, wherein the Supreme Court held that the Burns Law does not apply to the payment of salaries or compensation of its public officers, whether such officers are elected or appointed, it is believed that Section 5660 as last enacted, does make it mandatory that such certificate be made before any payment or expenditure of money is made in any case. This it is believed, is due to a change in the context of Section 5660, wherein it provides that no order for the payment or expenditure of money may be approved by the commissioners, council or by any body, board, officer or employe unless such certificate is made. The intent and purpose of this part of Section 5660 is to make all the subdivisions stay within the appropriations or levies made for the use of the subdivision, this regardless of whether the officers and employes of the subdivision have a compensation which is fixed on a yearly or monthly basis.

It is therefore my opinion that a certificate as provided under Section 5660 of the General Code should be made before any order is issued for the payment or expenditure of money for the salaries of officers or employes.

Your second question is whether such certificate would be a sufficient compliance with the law if it was issued at the beginning of the period for which the officers and employes are paid. Due to the fact that so many of the subdivisions depend upon the fee fund or other sources of income than tax levies, it is believed that it would be impossible at the beginning of the year to make a certificate which would cover the salaries of all officers and employes with any certainty.

It is my understanding that some municipalities make no levy at all for current operating expenses and are dependent upon fees and fines for the payment of the salaries of most of the municipal officers. As these sources of funds are doubtful at times it would make it impossible to certify as required by Section 5660 of the General Code, at the beginning of each fiscal year.

It is my opinion that a certificate under Section 5660 of the General Code for the salaries of officers and employes of a municipality would be sufficient if the same is made at the beginning of a period for which the officers and employes are to be paid.

Respectfully,
C. C. CRABBE,
Attorney General.

2994.

INSURANCE LAW—SUPERINTENDENT OF INSURANCE HAS AUTHORITY TO ASSESS SAME FEE AGAINST A FOREIGN INSURANCE COMPANY AS MAY BE ASSESSED AGAINST AN OHIO COMPANY FOR SIMILAR BUSINESS BY THE HOME STATE OF SUCH COMPANY.

SYLLABUS:

Under the provision of the retaliatory Ohio insurance law as contained in section 658 *G. C., the superintendent of insurance of Ohio is authorized to assess the same fees*

against a foreign insurance company as may be assessed against an Ohio company for similar business by the home state of such foreign company.

COLUMBUS, OHIO, December 9, 1925.

HON. HARRY L. CONN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "The Southern Home Insurance Company is chartered under the laws of South Carolina to transact the business of fire and marine insurance and is licensed by this department to transact its appropriate business in Ohio.
>
> "An annual license fee of $200.00 is levied by the State of South Carolina against foreign insurance companies licensed to do business in that state. Under the provision of the retaliatory section we have made a charge of like amount to this company for a license. The company claims exemption from this fee because the business transacted in this state is a reinsurance business only and under the South Carolina law companies are not required to be licensed to accept reinsurance from companies doing business in that state.
>
> "The Ohio law makes no distinction regarding the admission of a foreign insurance company for the writing of a direct or reinsurance business.
>
> "May we have your legal opinion as to whether this department is justified in invoking the retaliatory provision of the Ohio law in this state of facts?"

The retaliatory provision of the Ohio insurance laws is section 658 G. C., which provides as follows:

> "When by the laws of any other state, district, territory or nation, any taxes, fines, penalties, license fees, deposits of money, securities, or other obligations, or prohibitions are imposed on insurance companies of this state doing business in such state, district, territory or nation, or upon their agent therein, the same obligations and prohibitions shall be imposed upon insurance companies of such other state, district or nation doing business in this state and upon their agents."

You state in your letter:

> "The company claims exemption from this fee because the business transacted in this state is a reinsurance business only and under the South Carolina law companies are not required to be licensed to accept reinsurance from companies doing business in that state.
>
> "The Ohio law makes no distinction regarding the admission of a foreign insurance company for the writing of a direct or reinsurance business."

From the facts stated, it would appear that a foreign company licensed in Ohio for the purpose of "reinsurance" may also write, under the same license, a "direct" business. And when the license is so issued under our practice in Ohio, it is in effect the same kind of a license to the South Carolina Company, permitting it to do the same kinds of business in Ohio, as would be received by an Ohio company licensed in South Carolina, and for which the Ohio company is required to pay a license fee of $200.00 in South Carolina.

In the case of State ex rel. vs. Insurance Company, 49 O. S., page 444, the Court says:

"Reciprocity expresses the act of an interchange of favors between persons or nations; retaliation, that of returning evil for evil, or disfavors for disfavors. Accurately speaking, we reciprocate favors and retaliate disfavors. This then is a retaliatory statute. It treats the companies of other states as Ohio companies are treated in those states; but the moment it is made to appear that Ohio companies are not treated with the same favor in another state, that companies of that state are treated in Ohio, a case is made for the application of its provisions, and retaliation follows as a result.

"It is true that the ultimate object of the statute is to secure reciprocity; but what we have now to do with, is not its ultimate, but its immediate object, and that is to retaliate on the companies of a given state, disfavors shown to Ohio companies in the same state."

It is therefore my opinion that you are justified in invoking the retaliatory provision of the Ohio Insurance Law upon the state of facts mentioned in your letter.

Respectfully,
C. C. CRABBE,
Attorney General

2995.

AUTHORITY OF DISTRICT BOARD OF HEALTH TO PURCHASE AUTOMOBILE FOR USE OF EMPLOYES.

SYLLABUS:

There is no express authority authorizing a district board of health to purchase an automobile for the use of its employes. However, where conditions are such that the successful, economical and efficient performance of the board's duties, which are expressly imposed by statute, requires such a purchase, the authority is reasonably implied. Whether or not such a condition exists is a question of fact to be determined in each case, in the discretion of the board.

COLUMBUS, OHIO, December 9, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"You are respectfully requested to furnish this department your written opinion on the following:

"Question: May a district board of health legally use the funds under its control for the purchase of an automobile for the use of the health commissioner or nurse employed by such board?"

It is believed that the statutes now in force essential to consider relating to the duties and powers of a district board of health are as follows:

"Sec. 1261-19. * * * The district board of health shall appoint a district health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote