2. The order of the Tax Commission fixing January 27, 1935, as the date when the sales tax shall be operative, is void.

3. The Tax Commission has no authority to differentiate between sales involving the immediate transfer of the property sold, and sales involving a subsequent transfer of such property, as to their taxability.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3893.

CITY—MAY BY ORDINANCE OR REGULATION OF BOARD OF HEALTH PROVIDE FOR INSPECTION OF ANIMALS TO BE SLAUGHTERED FOR FOOD.

SYLLABUS:

1. *A City operating without a city charter may, by ordinance of the city council, require the inspection of animals to be slaughtered for food, and for the inspection of the carcasses thereof.*

2. *Such requirement may also be by regulation of the board of health of such city in the absence of or independent of any ordinance of the city council.*

COLUMBUS, OHIO, February 1, 1935.

HON. W. D. LEECH, *Chief, Division of Foods and Dairies, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> "We have the following questions asked us by a city in the state:
>
> 'Can a city operating without a city charter require meat inspection, either Federal or Municipal, at the time of killing in slaughter houses or packing plants?
>
> Can this be done by ordinance of the City Council delegating the enforcement and supervision to the District Board of Health?
>
> Or should this be done by a regulation adopted by the District Board of Health?
>
> Can this be done in either of the above ways independent of the other?"

Article 18, section 3 of the Constitution of Ohio, reads as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

In the case of *City of Bucyrus* vs. *State Department of Health, et al.,* 120 O. S. 426, the first branch of the syllabus reads as follows:

> "The provisions of Article XVIII of the Constitution of Ohio do not deprive the state of any sovereignty over municipalities in respect to sanitation

for the promotion or preservation of the public health which it elects to exercise by general laws."

And at pages 427 and 428, it is stated:

"The surrender of the sovereignty of the state to the municipalities by Article XVIII was a partial surrender only, and, with reference to sanitary regulations, was expressly limited to such sovereignty as the state itself had not or thereafter has not exercised by the enactment of general laws. With respect, then, to local sanitary regulations, the municipalities are in no different situation since the adoption of that article than they were before, except that before the adoption of that article they had such power to adopt local sanitary regulations as had been conferred upon them by the Legislature of the state, and since the adoption of that article they have such power to adopt local sanitary regulations as has not been taken away from them by the Legislature in the enactment of general laws. Therefore that article, instead of being a limitation upon the power of the Legislature to enact general legislation upon the subject of sanitation, is a reservation of such power to the Legislature. In other words, the grant of power in that respect to the municipality by the Constitution is made subject to the limitation of general laws theretofore or thereafter enacted by the Legislature.

The effect of the constitutional provision granting to municipalities the power to adopt local sanitary regulations is therefore no different than though the power had been conferred by legislative enactment instead of constitutional provision; for if conferred by legislative enactment, the act would be subject at all times to revision or repeal by the Legislature. The constitutional provision, conferring the power with the limitation that the municipal regulation must not be in conflict with general laws, operates to bestow upon the legislature the same power to control sanitation by general laws that it had prior to the adoption of that article. The power conferred by that article is conditioned upon the Legislature not having enacted general laws with which the local sanitary regulations of the municipality conflict."

From the above, it is seen that municipalities, whether charter cities or not, have the power to make regulations to safeguard the health of their inhabitants; unless such power has been taken away from them by the legislature in the enactment of general laws. The statutes of Ohio bearing on the subject in question are as follows:

"Section 3616.

All municipal corporations shall have the general powers mentioned in this chapter, and council may provide by ordinance or resolution for the exercise and enforcement of them."

"Section 3652.

To provide for the inspection of spirits, oils, milk, breadstuffs, meats, fish, cattle, milk cows, sheep, hogs, goats, poultry, game, vegetable and all food products."

Section 1261-16 reads in part as follows:

"For the purpose of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district."

Section 1261-26 reads in part as follows:

"The district board of health may also provide for the inspection of dairies, stores restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort and may take such steps as are necessary to protect the public health and to prevent disease."

Section 4413 reads as follows:

"The board of health of a city may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public shall be adopted, advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given, in all courts of the state, the same force and effect as is given such ordinances. Provided, however, that in cases of emergency caused by epidemic of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying."

Legislation designed to preserve and protect the public health falls directly within the police power of the state. In fact, public health is one of the most vital subjects for the exercise of police power. Public health is the very heart of public happiness. The constitutional guaranties of life, liberty and the pursuit of happiness is of little avail unless there be clearly implied therefrom the further guaranty of safeguard of the public health in order that life, liberty and the pursuit of happiness be made practical and plenary.

Duties relating to the preservation of public health devolve principally upon the state as a sovereign power. The power to determine what laws are necessary to promote public health rests primarily with the General Assembly, therefore the General Assembly possesses general authority to pass such laws as it is believed will protect and preserve public health, and the power to make all such provisions as may be reasonable, necessary and appropriate for such purpose. The authority of the state to enact health measures and to delegate such powers to various state agencies, is no longer open to question. It is stated in Ohio Jurisprudence, Volume 20, page 537, as follows:

"The power of the state to preserve the public health may be delegated to public corporations such as municipalities, townships, etc. It may also be delegated to state and municipal boards of health, giving to them the power to

enact sanitary regulations and ordinances having the force of law within the districts over which their jurisdiction extends. The power of the legislature to authorize administrative authority on the part of boards of health and other subdivisions of the state and to authorize the adoption by such instruments of its choice of rules and regulations affecting the public, including the power to detain and quarantine, has been upheld. The power granted to administrative boards of the nature of boards of health to adopt rules, by-laws and regulations reasonably adapted to carry out the purpose or object for which they are created is generally held not to be a delegation of legislative authority in violation of the usual constitutional prohibition."

The following cases are cited in support of the above text:

Marion Twp. Bd. of Health vs. *Columbus,* 12 O. D. N. P. 553;
Ex parte Company, 106 O. S. 50;
Stass vs. *State,* 15 O. C. C. (N. S.) 189, 33 O. C. C. 159, affirmed without opinion in 81 O. S. 497.

In the case of *Walton* vs. *City of Toledo,* 3 O. C. C. (N. S.) page 295, the court in its opinion declared:

"It is needless to say that the powers of the board of health are very large. If you read the whole statutes of the state of Ohio on the subject you will find that the powers that are given to the various boards of health and the laws enacted for the purpose of protecting the people of the state from contagious diseases, and from the sale of diseased or impure articles, are about as broad as language can make them; they extend into every relation of life and the protection of health is one of the most important departments that the Legislature has to deal with, or that the city council has to deal with under the powers conferred upon it by the Legislature of the state in carrying out the general police powers of the state."

In dealing with your question of whether or not a municipal corporation may require federal inspection, it becomes imperative that federal legislation on the subject be considered. Section 71 of Title 21 of the United States Code reads in part as follows:

"For the purpose of preventing the use in interstate or foreign commerce of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food, the Secretary of Agriculture, at his discretion may cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in interstate or foreign commerce."

Section 72 of Title 21 reads in part as follows:

"For the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose a post mortem

examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats to be prepared for human consumption at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia for transportation or sale as articles of interstate or foreign commerce."

From the above statutes it would therefore appear that the inspection of animals and meats at slaughter houses by the federal government is for the purpose of preventing interstate traffic in diseased or unwholesome meats, and consequently there could be no inspection of such slaughtering establishments by federal authorities unless the scope of the business of such establishments embraces the slaughtering of animals, the meat of which is to be shipped without the state.

It is therefore my opinion that:

1. A city operating without a city charter may, by ordinance of the city council, require the inspection of animals to be slaughtered for food, and for the inspection of the carcasses thereof.

2. Such requirement may also be by regulation of the board of health of such city in the absence of or independent of any ordinance of the city council.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3894.

BOARD OF HEALTH—MAY DECLARE QUARANTINE OF ALL DOGS NOT IMMUNIZED AGAINST RABIES WHEN.

SYLLABUS:

A board of health may under the provisions of sections 1261-42, *and* 5652-16, *General Code, declare a quarantine of all dogs which have not been immunized against rabies, within the territory under its jurisdiction or part thereof, whenever in its judgment rabies shall be declared to be prevalent and such step is deemed necessary for the prevention or restriction of disease.*

COLUMBUS, OHIO, February 1, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"For the past several years we have had an epidemic of rabies among dogs and other animals in this county which has required the county to spend several thousand dollars each year in the purchase and administration of rabies serum. The Board of Health of the general county district desires to place a quarantine for a period of six months or a year on all dogs not immunized against rabies in the district over which it has jurisdiction. Can they do so? I would like to have your official opinion as to whether they have authority to do so."

Section 5652-16 of the General Code reads as follows: