Inasmuch as I am unable to find any statutory officer or agent of the state designated to accept federal money on behalf of the state for the purpose of aiding crippled children, it appears that such money should be accepted by act of the Legislature.

Moreover, even if the federal government saw fit to allot funds to the Department of Public Welfare of the State of Ohio or the Division of Charities therein, by virtue of Section 24 of the General Code of Ohio, such funds would have to be deposited in the State Treasury and it would then be necessary for the General Assembly to appropriate such funds to the Division of Charities within the Department of Public Welfare, before they could be used for the purpose of aiding crippled children in Ohio.

However, in specific answer to your inquiry, it is my opinion that:

1. The present laws of Ohio authorize the furnishing of aid to crippled children through "a state agency", namely, the Department of Public Welfare of the State of Ohio.

2. Although such agency under the present law is unauthorized to accept federal aid to accomplish the purpose of aiding crippled children in Ohio, the General Assembly may by legislative act accept such federal aid.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5167.

BOARD OF HEALTH—MANDATORY ON BOARD OF HEALTH TO CONDUCT HEALTH EXAMINATIONS IN SCHOOLS WHERE THEY HAVE NOT APPOINTED SCHOOL PHYSICIAN.

SYLLABUS:

1. Where the board of education of a school district has not employed a school physician, it is the mandatory duty of the board of health for the health district in which the school district is located to conduct health examinations of all school children in said district and to report the findings of such examination and to make such recommendations to the parents or guardians as are deemed necessary for the correction of such defects as may need correction, as provided by Section 7721-2 of the General Code of Ohio.

2. Where a statute is amended and the former corresponding statute expressly repealed at the same time, such provisions of the original statute

as are reenacted in the same or substantially the same language will not be regarded as having been repealed and again reenacted, but will be deemed as having been continued in force subject to such construction and limitations as existed at the time said action was taken.

3. A later statutory provision which is merely a reenactment of a former one in the same or substantially the same language and enacted at the same time the former statutory provision is repealed does not repeal an intermediate statutory provision which has qualified or limited the first one, but such intermediate statutory provision will be deemed to remain in force and to qualify or modify the new provision in the same manner as it did the former one.

COLUMBUS, OHIO, February 17, 1936.

HON. WALTER H. HARTUNG, M. D., *Director of Health, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Section 7692, Amended, P. H. M., p. 363, last paragraph, states as follows:
>
> 'Such board *may* delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the preventing of epidemics (113 v. 51). Effective July 7, 1929.'
>
> The above section seems to be in conflict with Section 7721-2, which states:
>
> 'Where the board of education has not employed a school physician, the board of health *shall* conduct the health examination of all school children in the health district and shall report the findings of such examination and make such recommendations to the parents or guardians as are deemed necessary for the correction of such defects as may need correction.'
>
> We would like to have your opinion as to whether, in view of these conflictions, it is mandatory on the part of the board of health to conduct health examinations in schools where they have not appointed a school physician."

Section 7692, General Code, was last amended in 1929 (113 O. L., 51) and at that time the then existing Section 7692, General Code, was

repealed. As then amended, and as now in force, said Section 7692, reads as follows:

> "Each and every board of education in this state may appoint at least one school physician *and at least one school dentist;* provided two or more school districts may unite and employ one such physician *and at least one such dentist* whose duties shall be such as are prescribed in this act. Said school physician shall hold a license to practice medicine in Ohio, *and each such school dentist shall be duly licensed to practice in this state.* School physicians *and dentists* may be discharged at any time by the appointing power whether the same be a board of education or *board* of health or health * * * *commissioner,* as herein provided. School physicians *and dentists* shall serve one year and until their successors are appointed, and shall receive such compensation as the appointing board may determine. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. *The school dentists shall make such examinations and diagnoses and render such remedial or corrective treatment for the school children as may be prescribed by the board of education; provided that all such remedial or corrective treatment shall be limited to the children whose parents cannot otherwise provide for same, and then only with the written consent of the parents or guardians of such children. School dentists may also conduct such oral hygiene educational work as may be authorized by the board of education.*
>
> Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the preventing of epidemics." (Italics the writer's.)

The italicized portions of the statute were inserted in the statute at the time of its last amendment. Without these italicized portions of the statute, it would read as it had existed from the time of its last prior amendment in 1913 (103 O. L., 864, 897). It will be observed that the statute as now in force, and as it was previous to the last amendment, leaves to the discretion of boards of education the matter of appointing a school physician or school physicians. The present existing statute likewise makes the appointment of a school dentist or dentists discretionary with the board of education. That is to say, such physician or dentist may be appointed by a board of education but their appointment

is not required. Under the terms of this statute, the duties prescribed for school physicians and dentists, if none such are appointed by a board of education, may be delegated to the Board of Health or officer performing the functions of a board of health in the school district, if such board or officer is willing to assume the same.

In 1923, Section 7721-2, General Code, referred to in your letter, was enacted, containing the provision that where a board of education does not employ a school physician the board of health shall conduct the health examinations of all school children in the health district and shall report the findings of such examinations and make such recommendations as are deemed necessary for the corrections of such defects. See 110 O. L., 18, 19. This statute has not since been changed.

The effect of the enactment of Section 7721-2, General Code, was to repeal by implication that portion of the then existing Section 7692, General Code, which gave to boards of health and health officers the right to refuse to make examinations of school children in the event of the delegation of those duties to them by a board of education which did not employ a physician. By the terms of Section 7721-2, General Code, the duty of a board of health or health officers was made mandatory.

While repeals by implication are not favored, it is well settled that the earlier of two statutory provisions, to the extent that those provisions are utterly irreconcilable, is repealed by implication. State ex rel. Attorney General v. Morris, 63 O. S., 496; Rogers ex rel. v. Lewis, 129 O. S., 108.

The result was that at the time of the amendment of Section 7692, General Code, in 1929, the duty of a board of health or health officer to conduct health examinations of all school children in the health district and make reports and recommendations with respect thereto, where the board of education did not employ a school physician to do this work, was mandatory as provided by Section 7721-2, General Code.

The substantial legal question here presented is, what effect did the amendment of Section 7692, General Code, in 1929, and the repeal of the then existing section, have upon the provisions of Section 7721-2, General Code?

It will be observed that the last paragraph of Section 7692, General Code, was carried into the statute as amended in 1929, in precisely the same language as had been in the statute previously. It is this provision which had been impliedly repealed by Section 7721-2, General Code. The question is, does its incorporation in the amended statute in this manner amount to its reenactment, so as to make it later in point of time to the provisions of Section 7721-2, General Code? I think not.

In the case of State v. Hornham, 72 O. S., 358, it is said:

"Where two statutes contain conflicting provisions and one of said statutes has been amended but not with respect to the conflicting provisions, it is not correct to assume that it thereby becomes a later statute."

In Lewis' Sutherland Statutory Construction, 2nd Edition, Section 238, it is said:

"Where there is an express repeal of an existing statute and a reenactment of it at the same time or a repeal and a reenactment of a portion of it, the reenactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the reenactment takes effect at the same time."

See also Sections 237 and 273, Lewis' Sutherland Statutory Construction, 2nd Edition.

In the case of In re Allen, 91 O. S., 315, the Supreme Court of Ohio held:

"Where there is reenacted in an amendatory act provisions of the original statute in the same or substantially the same language and the original statute is repealed in compliance with Section 16, of Article II of the Constitution, such provisions will not be considered as repealed and again reenacted, but will be regarded as having been continuous and undisturbed by the amendatory act."

To the same effect is State ex rel. v. Cowan, 96 O. S., 277, at page 282.

It will be noted that the duty imposed upon health officers to make examinations by the provisions of Section 7721-2, General Code, is mandatory only in cases where a board of education has not employed a school physician. No mention is made in the statutes of the non-employment by a board of education of school dentists. If a board of education employs a school physician but does not employ a school dentist, it is not the mandatory duty of the board of health under the terms of Section 7721-2, General Code, to conduct examinations which would normally be made by a school dentist even though the board of education does not employ a school dentist.

In the light of what has been said, I am of the opinion that the provisions of Section 7721-2, General Code, with respect to the duty of the board of health to conduct health examinations of school children, where a school physician is not employed by a board of education, are now in force and effect and, that it is the mandatory duty of a board of helath to conduct examinations of all school children in the health district and to

report the findings of such examinations and make such recommendations to the parents or guardians of said children as are deemed necessary for the correction of such defects as may need correction, where the board of education of the school district has not employed a school physician.

Respectfully,

JOHN W. BRICKER,

Attorney General.

5168.

APPROVAL—BONDS OF JEFFERSONVILLE VILLAGE SCHOOL DISTRICT, FAYETTE COUNTY, OHIO, $15,000.00.

COLUMBUS, OHIO, February 17, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5169.

APPROVAL—BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO, $10,000.00.

COLUMBUS, OHIO, February 17, 1936.

State Employes Retirement Board, Columbus, Ohio.

5170.

APPROVAL—CONTRACT FOR GRADE CROSSING ELIMINATION ON SHELBY-MANSFIELD ROAD, RICHLAND COUNTY, OHIO.

COLUMBUS, OHIO, February 17, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted a cooperative contract by and between the Director of Highways and the Commissioners of Richland County, covering grade crossing elimination on State Highway No. 436, State Route No. 39, Shelby-Mansfield Road, Sections J-2 (Part) and J-3 (Part), which is a U. S. Works Grade Crossing Program Project No. Ohio WPGS 940-A.