In specific answer to your inquiry, I am of the opinion that the Governor of the State of Ohio has no authority to issue commissions to persons to act as policemen upon the application of companies or associations unless the application is made by a bank or building and loan association, association of banks or building and loan associations, or a company owning or operating a railroad, street railroad, suburban or interurban railroad in this state.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1545.

APPROVAL, NOTES OF COVINGTON VILLAGE SCHOOL DISTRICT, MIAMI COUNTY—$150,000.00.

COLUMBUS, OHIO, February 21, 1930.

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

1546.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN HOLMES COUNTY.

COLUMBUS, OHIO, February 21, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1547.

ELECTION LAW—INITIATIVE AND REFERENDUM PROVISIONS APPLY TO MUNICIPALITIES—IMPLIED REPEAL OF INCONSISTENT PROVISIONS IN SECTIONS 4227-1 TO 4227-13, GENERAL CODE.

SYLLABUS:

Sections 4227-1 to 4227-13, inclusive, General Code, are not in their entirety repealed by the Election Laws of the State of Ohio as enacted by the 88th General Assembly, but such provisions as contained in these sections of the old law relating to

the initiative and referendum as to municipalities as are inconsistent with the new law are repealed by implication.

COLUMBUS, OHIO, February 21, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Sections 175 to 183, inclusive, of Amended Substitute Senate Bill No. 2, known as the Election Laws of Ohio, deal with the Initiative and Referendum, and set out the procedure to be followed in the state under the authority granted by the Constitution in matters of Initiative and Referendum.

Section 183 provides for Initiative and Referendum in municipalities and cities that 'The provisions of this act shall apply in every municipality to the legislative acts of the council, unless otherwise provided for by the charter or legislative authority of such municipality.'

This provision of Section 183 evidently provides that all of the provisions of the Initiative and Referendum chapter of the new Code from Section 175 to 183 applies to municipalities as well as to other political subdivisions of the state.

Section 182 of this Act provides that 'The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor in the case of state, county or municipal referendum, at the last preceding election therefor.'

In passing the new Election Code, the Legislature failed or neglected, either purposely or unintentionally, to repeal Sections 4227-1 of the General Code to Section 4227-13 of the General Code which appears in the law under the title 'Initiative and Referendum Provisions' relative to municipalities.

It will be noted in many particulars the new law conflicts with the old. For instance Section 4227-4 relative to Initiative and Referendum in municipalities provides that 'The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of mayor at the last preceding election therefor.'

Will you, therefore, kindly give me your official opinion as to whether or not the provisions of the new code, which conflict with the provisions of 4227-1 to 4227-13 shall be followed or whether or not the old law, which remains in effect, still takes precedence.

In other words, please advise whether or not this office and Boards of Elections are to follow the provisions of the new election code in reference to Initiative and Referendum in municipalities or whether the provisions of Sections 4227-1 to 4227-13 shall be followed in their entirety.

Wish you would further advise if both provisions of law are to be followed, the method to be followed in determining when and how to proceed under the new law and when and how to proceed under the old law."

As stated in your letter, Sections 4227-1 to 4227-13, inclusive, General Code, relating to the initiative and referendum as applicable to municipalities, have not been either amended or expressly repealed by the 88th General Assembly which enacted "The Election Laws of the State of Ohio." These sections were enacted pursuant to Section 1f, Article II of the Constitution of Ohio, which provides:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

Before considering the principles of statutory construction applicable to a situation of this kind, the most salient conflicts now existing in the law upon this subject should be commented upon.

Section 4227-1, General Code, provides, among other things, that when an initiative petition is filed with the city auditor of a city or the village clerk of a village, such auditor or clerk shall, after ten days, certify the petition to the board of deputy state supervisors of elections of the county wherein such municipality is located. The new election law provides that initiative petitions involving questions to be submitted to the electors of the state shall be filed with the Secretary of State. Section 4785-183, General Code, provides that "The duties required of the Secretary of State by this act as to state legislation shall be performed as to such municipal legislation by the clerk of the council." This last mentioned section further provides that "The provisions of this act shall apply in every municipality to the legislative acts of the council, unless otherwise provided for by the charter or legislative authority of such municipality."

The new election law further has abolished boards of deputy state supervisors of elections and provided that the functions of such boards shall be performed by boards of elections as therein defined. Section 4785-3(n). If the provisions of the new law shall govern in so far as inconsistent with the old law, it would appear that under Section 4227-1, General Code, petitions therein referred to should be filed hereafter with the clerks of council of the various municipalities and later certified to the boards of elections of the counties.

Section 4227-3, General Code, contains the same reference to city auditors and village clerks, and deputy state supervisors of elections.

Section 4227-4, General Code, provides the basis for determining the required number of petitioners as set forth in your letter, whereas a different basis for such determination is provided in the portion of Section 4785-182, which you quote.

Section 4227-6, General Code, provides solely that whoever seeks to circulate an initiative or referendum petition, shall file copy thereof with the city auditor or village clerk. If the provisions of Section 4785-183, hereinabove commented upon as to this matter, shall control, then Section 4227-6 is repealed by implication in its entirety.

Section 4227-7 provides what shall be printed at the top of each page of an initiative or referendum petition, which is at variance with the provisions of Section 4785-176 on this subject. As hereinabove commented upon, Section 4785-183 of the new election law provides that that law shall apply in every municipality to the legislative acts of the council unless otherwise provided by the charter or legislative authority of such municipality. It was manifestly intended that the sections of the new election law relating to initiative and referendum petitions should be in so far as consistent applicable to municipalities.

Section 4227-8 contains several references which are in conflict with the new law and which have been hereinabove commented upon with one additional inconsistency. This section provides that the petitioners may designate in the initiative or referendum petition a committee of not less than three of their number who shall be regarded as filing the petition. Section 4785-180, General Code, provides "The petitioners shall designate in any initiative, referendum or supplementary petition and on each of the several parts of such petition a committee not less than three nor more than five of their number who shall represent them in all matters relating to such petitions."

Section 4227-9 relates solely to the sworn itemized statement to be filed by the circulator of an initiative or referendum petition or his agent. This matter, with some variation, is included within the provisions of Section 4785-188 of the new election law.

Sections 4227-10 and 4227-11 prohibit certain practices relative to initiative and referendum petitions. The new election law also prohibits certain practices with reference to such petitions, but contains no detailed statement of such practices as are

enumerated in Sections 4227-10 and 4227-11, and it would, therefore, appear that there are perhaps no express provisions in the new law inconsistent with these two sections.

As hereinbefore indicated, the sole question presented in your communication is whether or not the parts of provisions of the old law such as are inconsistent and irreconcilable with the express provisions of the new law are repealed by implication. The well-established rule on this subject is stated in Lewis' Sutherland "Statutory Construction," Vol. I, p. 463-465, wherein the following language is used:

> "Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand together. The intention to repeal, however, will not be presumed, nor the effect of repeal admitted, unless the inconsistency is unavoidable, and only to the extent of the repugnance.
>
> In *Winslow* vs. *Morton* the court sums up the general principles touching implied repeals in the form of rules which it formulates as follows:
>
> (1) 'That the law does not favor a repeal of an older statute by a later one by mere implication.'
>
> (2) 'The implication, in order to be operative, must be necessary, and if it arises out of repugnancy between the two acts, the later abrogates the older only to the extent that it is inconsistent and irreconcilable with it. A later and an older statute will, if it is possible and reasonable to do so, be always construed together, so as to give effect not only to the distinct parts of provisions of the latter, not inconsistent with the new law, but to give effect to the older law as a whole, subject only to restrictions or modifications of its meaning, when such seems to have been the legislative purpose. A law will not be deemed repealed because some of its provisions are repeated in a subsequent statute, except in so far as the latter plainly appears to have been intended by the legislature as a substitute.'

The foregoing principles were followed by the Supreme Court of Ohio in the case of *Goff, et al.* vs. *Gates, et al.*, 87 O. S. 142, the first branch of the syllabus being as follows:

> "An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revises the whole subject-matter of the former act and is evidently intended as a substitute for it."

The new election law has not revised the entire subject matter of Sections 4227-1 to 4227-13, inclusive, General Code, since there are many provisions in these sections as to detailed procedure in the conduct of initiative and referendum proceedings as applicable to municipalities which are apparently not covered in the new election law. It is well recognized that the intention to repeal will not be presumed unless the inconsistency is unavoidable and then only to the extent of the repugnance.

In calling attention to a number of inconsistencies existing, I have not sought exhaustively to determine each instance in which a provision of the old law is repealed by the new. It is believed that a statement of the legal principles applicable to the situation is responsive to your inquiry. In the event you have a question as to any specific provision of the old law being repealed, it is suggested that you submit a request for an opinion thereon.

It is, accordingly, my opinion that Sections 4227-1 to 4227-13, inclusive, General

Code, are not in their entirety repealed by the Election Laws of the State of Ohio as enacted by the 88th General Assembly, but such provisions as contained in these sections of the old law relating to the initiative and referendum as to municipalities as are inconsistent with the new law are repealed by implication.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1548.

AGRICULTURAL SEEDS—SAMPLES IMPROPERLY LABELED—WHAT CONSTITUTES SEIZURE BY AGRICULTURAL DIRECTOR—VENDOR'S SIGNATURE TO SEIZURE BLANK UNNECESSARY.

SYLLABUS:

1. *In order to constitute a valid seizure under the provisions of Section* 5805-9, *there must be an open, visible possession claimed and authority exercised by the officer over the seizure. However, it is not necessary to actually dispossess the person selling or offering for sale seeds not properly labeled, if the person upon notice submits to the order of the Department of Agriculture by removing the seeds so that they will not be sold or offered for sale.*

2. *The acceptance of service of notice by the vendor of seeds in violation of law is for the purpose of providing proof that the vendor actually received notice and the failure to secure his signature on the notice will not invalidate such notice.*

COLUMBUS, OHIO, February 21, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

> "I am requesting an interpretation of Section 5805-9 of the General Code of Ohio, particularly that part contained in the last sentence relating to the placing of seizures.
>
> In your opinion what does this sentence really mean? What procedure is legal and can the seizure be considered valid when it is legal rather than physical. I am enclosing one of our seizure blanks that has been used in the past. Our procedure has been when samples were found not properly labeled to fill out a seizure blank, asking the proprietor or some representative of his to sign the acceptance at the bottom, handing him a copy and require him to withdraw the seed from sale. We have considered this as completed when he has removed the sacks to a back or store room.
>
> The prosecuting attorney of ---------- County holds that these seizures to be legal must be physical. In other words, the seeds must be taken from the premises of the dealer and held until proper labeling has been effected. I would very much appreciate clearing up this matter. Also, is it necessary for us to secure the signature of the owner or his agent to the seizure blank? We, of course, should leave a copy with him, but is it necessary to have his signature and acceptance?"

Sections 5805-1 to 5805-14, inclusive, of the General Code, provide for the regula-