members of which are residents of more than one county, is located in any one county. In other words, it could be said that the location of the society may be distinguishable from the physical situs of its place of holding fairs. Therefore, it could be argued that it may hold a fair in one county and not be located within that county within the meaning of the section.

However, it is my view that in the use of the language used the Legislature has reference to such independent societies which conduct fairs in a county. Therefore, if such a society holds fairs in one county, it is my opinion that the commissioners may make a contribution under the provisions of Section 9894. Again, in connection with this contribution, there seems to be no relation with reference to the prorating of said sums which are to be paid, similar to that provided for prorating the sums to be paid under Section 9880-1 of the General Code.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that:

1. An independent agricultural society organized under the provisions of Section 9880-1 of the General Code, consisting of members residing in more than one county, is entitled to receive contributions from any county in which such society expends not less than one hundred dollars in carrying on junior club work as provided in Section 9880-2. When such work is carried on, each county shall pay the sums therein referred to and there is no provision for apportioning said sums among the counties.

2. When such an independent society is properly organized, the county commissioners in a county in which said society holds fairs may contribute to said society in accordance with the provisions of Section 9894 of the General Code. However, there is no provision made for the apportioning of said sums among other counties.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1425.

APPROVAL, BONDS OF MIAMI TOWNSHIP RURAL SCHOOL DISTRICT, CLERMONT COUNTY—$55,000.00.

COLUMBUS, OHIO, January 16, 1930.

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

1426.

MUNICIPAL WATERWORKS—MAY REQUIRE THAT STATE AGENCY USING WATER COMPLY WITH REGULATIONS.

SYLLABUS:

Where the state uses water furnished by the waterworks department of a municipality, such municipality may require the state to comply with the rules and regula-

tions providing said rules and regulations are reasonable and apply to all consumers similarly situated.

COLUMBUS, OHIO, January 17, 1930.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

> "It is respectfully requested that an opinion be rendered the Adjutant General's Department as to the legality of a cash deposit of $100.00 with the Division of Water and Heat, city of Cleveland.
>
> This demand is made by the above division, stating that if this is not paid within five days, water services will be discontinued."

The power of a municipality to own and operate a waterworks department is clearly defined. Not only the General Code authorizes such an undertaking, but Section 4 of Article XVIII of the Constitution clearly authorizes such.

In the case of *Board of Education* vs. *City of Columbus,* 118 O. S. 295, it was stated in the third branch of the syllabus that:

> "Municipalities derive the right to acquire, construct, own, lease and operate utilities the product of which is to be supplied to the municipality or its inhabitants, from Section 4 of Article XVIII of the Constitution and the legislature is without power to impose restrictions or limitations upon that right. (*Euclid* vs. *Camp Wise Assn.,* 102 Ohio St., 207, 131 N. E., 349, approved and followed.)"

It was further held in said case that that portion of Section 3963 of the General Code which undertakes to prohibit a municipality from charging for supplying water for the use of the public schools or other public buildings in such municipality, is a violation of the rights conferred upon such municipality by the Ohio Constitution.

In the case of *City of Mansfield* vs. *The Humphreys Manufacturing Company,* 82 O. S. 216, it was held as disclosed by the syllabus:

> "1. Municipal corporations in Ohio are authorized to construct waterworks and to supply water to their inhabitants, and to collect money for water supplied, and to make such by-laws and regulations as they may deem necessary for the sale, economic and efficient management and protection of the waterworks. Under this power a regulation providing that if any party shall refuse or neglect to pay the water rent when due, the water shall be turned off and not turned on again until all back rent and damages shall be paid and the further sum of one dollar for turning on and off the water, is a reasonable regulation and may be enforced.
>
> 2. The determination by the proper city officials of the amount due for water supplied is not final, but the consumer who has good grounds for disputing the correctness of the charge made by the city may apply to the courts to determine the amount due and to restrain the enforcement of the rule pending such determination."

From the foregoing it seems clear that a municipality may make proper regulations for the governing of the waterworks department in collecting water rent and so long as said rules and regulations are reasonable the consumer may not complain. However, such rules and regulations must not discriminate against water users.

In the case of *Western Reserve Steel Co.* vs. *Village of Cuyahoga Heights,* 118 O. S. 544, it was stated in the first branch of the syllabus, that:

> "It is the duty of a municipality which undertakes to supply water to its public to do so without discrimination. The duty arises out of such undertaking, regardless of the mode adopted to accomplish such purpose. The municipality cannot absolve itself of such duty by a contract to which the person sought to be discriminated against and to whom it owes the duty is not a party."

For the purposes of this opinion it will be assumed that the requirement of the cash deposit of one hundred dollars is made in pursuance to a proper rule adopted by the officers having the management of the waterworks department. It will further be assumed that said rule applies equally to all water takers who are in the same class as the state would be in connection with its operation of the armory to which you refer. Under such circumstances I do not see any way whereby the state may avoid complying with such a rule. While it is a fact that general statutes do not apply to the state unless it is so expressly stated in the terms thereof, this rule it is believed, has no application here.

Of course, if the municipality undertakes to create a lien for the non-payment of the water rent upon the premises supplied, this angle may run counter to the above rule referred to. That is to say, it is very doubtful whether a municipality could by any procedure establish such a rule or regulation as would operate in the establishment of a lien upon property owned by the state. If such a lien could be created, it is obvious that the same could not be enforced in those instances where it would require a suit against the state.

In any event if the rule requiring the deposit of one hundred dollars as hereinfore stated, applies to all water takers that are similarly situated, it is believed that the state, if it desires to use water from such source, must comply with the provisions of the waterworks department. In other words, it is simply a matter of contract. The state does not need to take the water if it feels that the rules are burdensome. The state, of course, has its option whether it will comply with the rules and regulations or whether it will refrain from using the water from the department.

As heretofore stated, rules and regulations with respect to the sale of water must be reasonable. It would manifestly be unreasonable to require a deposit grossly in excess of any possible bill which might accrue from water use, since the deposit is merely security for payment and any unnecessary burden would, in my opinion, be unreasonable. The rules must also be uniform in that all persons similarly situated should be treated alike. I have neither the rules nor any information concerning the anticipated water consumption in this particular case before me and accordingly it is impossible to answer your question categorically. What I have said should be sufficient to enable you to determine the question for yourself, inasmuch as I assume that you are primarily interested in the question of whether any deposit at all may be required.

In view of the foregoing it is my opinion that where the state uses water furnished by the waterworks department of a municipality, such municipality may require the state to comply with the rules and regulations providing said rules and regulations are reasonable and apply to all consumers similarly situated.

Respectfully,

GILBERT BETTMAN,

Attorney General.