those authorized to make such a purchase. Inasmuch as section 4821 above quoted provided that such expenses shall be paid as other county expenses are paid, it is essential to consider how such other expenses are paid.

Section 2460 G. C. which is in *para materia* with the section above quoted, provides as follows:

> "No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

It is clear from this provision that no claims may be properly paid by the county auditor unless they are first allowed by the county commissioners, excepting those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal.

In considering the provisions of law relative to the furnishing of supplies for election boards, it would seem that no provision has been made authorizing the board of elections to fix such amounts. In the case of State vs. Ratterman, 3 C. C. 626, it was held:

> "If the amount of the claim is not fixed by law such as a claim for ballot boxes, such claim cannot be paid on a warrant issued by the auditor without the sanction of the commissioners."

In view of the foregoing, it is apparent that such a claim as that to which you refer cannot legally be paid by the county unless approved by the county commissioners. It is a well settled rule of law that where discretion is given to a board, mandamus will not lie unless there has been a clear abuse of such discretion. Whether or not an adding machine is a necessary expense is a question that must be determined in the first instance by the county commissioners.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3752.

COUNTY BOARD OF EDUCATION—TIME DIRECTORY AS TO RESOLUTION FOR TEACHERS' INSTITUTE—WHEN EXPENSES LEGAL.

The provision appearing in section 7868 G. C., that the county board of education shall decide by formal resolution, prior to February 1st, whether a county institute shall be held in the county during the current year, is directory only and if such resolution was passed after the first of February by the county board of

education and a teachers' institute thereafter held in that county during the current year, the expenses of such teachers' institute could be legally paid from the county board of education fund.

COLUMBUS, OHIO, November 25, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following:

"Section 7868 G. C. is as follows:

'The teachers' institutes of each county shall be under the supervision of the county board of education. Such boards shall decide by formal resolution at any regular or special meeting held prior to February 1st of each year whether a county institute shall be held in the county during the current year.'

Question: Is the requirement that this resolution be passed prior to February 1st of each year directory or mandatory and if such a resolution is passed after the first of February, may an institute be legally held and the expenses thereof be legally paid?"

Your question is whether it is absolutely necessary for a county board of education to pass a resolution relative to holding a county institute prior to a certain date, in order that the same might be legal and the obligations made be legally paid, or, on the other hand, if the county teachers' institute was arranged for after February 1st, would this fact cause the teachers' institute to be one illegal in the degree that expenses incurred could not be legally paid.

Bearing upon the use of the words "may" and "shall", it was held in the case of State ex rel. Meyers vs. Board of Education, 95 O. S., 367, as follows:

"The literal meaning of the words 'may' and 'shall' is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other when that is required to give effect to other language found in the statute, or to carry out the purpose of the legislature as it may appear from a general view of the statute under consideration."

See also State of Ohio vs. Budd, 65 O. S., 1.

"What they (public officers) are employed to do for a third person, the law requires shall be done. The power is given not for their benefit but for his." (71 U. S., 435.)

A general view of the statutes upon teachers' institutes shows that the general purpose of the legislature was that a teachers' institute should be held in each county each year. Thus it was held in opinion 342, appearing at page 912, Vol. 1, Opinions of the Attorney General for 1917, as follows:

"The county board of education is authorized to order but one institute held in the county during any one year and such institute must be

held during some one certain week. If other institutes are held the expense thereof cannot be paid from the county board of education fund."

An examination of the opinions of this department shows that no opinion has ever been issued on whether it is mandatory that the resolution of the county board of education be passed prior to February 1st, but on the other hand a case which is largely parallel as to whether an act to be performed by a board of education on or prior to a certain date is mandatory or directory only, is that covered in opinion 29, appearing at page 40, Vol. 1, Opinions of the Attorney General for 1917, the first branch of the syllabus of which reads:

"Boards of education which fail to organize on the first Monday of January next after the election of members of such board, should organize under the provisions of section 4747 G. C., as soon as the matter of their failure to organize is called to their attention."

Section 4747 G. C., which was construed in Opinion 29, provided that:

"The board of education *** shall organize on the first Monday of January after the election of members of such board."

It will be noted that this section is largely similar to section 7868 G. C. upon teachers' institutes, which you quote in your inquiry. In the body of opinion No. 29, bearing upon the question of the board being mandatorily required to organize on the first Monday of January, the then Attorney General said:

"I do not understand, however, that the language as to the organization of said board is mandatory. It is a well settled principle of law that the provisions regarding the duties of public officers, and specifying the time of their performance, are, in that regard, generally directory, 'though a statute directs a thing to be done at a particular time, it does not necessarily follow that it cannot be done afterwards.'

Sutherland on Statutory Construction, Sec. 612.

As stated by the author just named, the designation of the power in this instance is not a limitation on the power of the board to act, and since the duty is enjoined by law, even though it be delayed beyond the particular time designated in the statute, it can be legally performed at a later date."

The opinion of the Attorney General in 1917, upon the question as to whether it was mandatory that a board of education should organize on the first Monday in January, where the statute used the word "shall" as regards that date, was in agreement with an opinion of the Attorney General (147) appearing in Vol. 1 of the Attorney General's Reports for 1911-1912.

As a rule teachers' institutes are held during the vacation period of the school year, frequently in August, and it is the right of the teachers to conduct the institute under the supervision of the county board of education that the law desires to protect. It would hardly seem the intent of the law that the teachers' institute should fail to be held in any county in any year simply because the county board of education had failed to pass the resolution providing for such teachers' institute prior to February 1st of that year. The expense of the teachers' institute is paid

from the county board of education fund and is usually in that fund at the time that contracts are made with speakers and instructors for the institute. The cost outside of this item in conducting a teachers' institute is quite small. The teachers' institute to be held during the vacation period ought not to fail because of the dereliction of the members of the county board of education in not passing a certain resolution prior to a specific date.

You are therefore advised that the provision appearing in section 7868 G. C., that the county board of education shall decide by formal resolution, prior to February 1st, whether a county institute shall be held in the county during the current year, is directory only and if such resolution was passed after the first of February by the county board of education and a teachers' institute thereafter held in that county during the current year, the expenses of such teachers' institute could be legally paid from the county board of education fund.

Very respectfully,
JOHN G. PRICE,
Attorney-General.

3753.

VILLAGES—WITHOUT AUTHORITY TO ELECT HEALTH OFFICER UNDER CHARTER TO ENFORCE STATE HEALTH REGULATIONS.

A health officer elected under a village charter providing therefor is without legal right to act in the enforcing of state health regulations, as such provision would be in conflict with the general law.

COLUMBUS, OHIO, November 25, 1922.

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

GENTLEMEN:—Your request of recent date for an opinion received, in which you quote a letter received by you from the village solicitor of Cuyahoga Heights, Ohio. The answer to your inquiry is based on the solicitor's letter, which is as follows:

> "Sometime ago, about December 15th, the village of Cuyahoga Heights had before the Supreme Court of Ohio, the question as to whether the Hughes and Griswold laws were constitutional; the Supreme Court held that they were, and that the village even by the adoption of a charter form of government was not in a position to form its own health regulations. Our health officer insists that by reason of a provision of the charter that provides for the election of a health officer, he may hold office and draw his salary for his services. Please advise me if he has a legal right to act as health officer?"

The sections of the General Code pertinent to the question at hand are as follows:

> "Sec. 1261-16. For the purposes of local health administration the