entitled to tax exemption as long as they are devoted to carrying out the purposes for which they were organized and describes certain situations which could cause the loss of such exemption. The last proviso of §421(2) states:

> and provided further that such real property shall be exempt from taxation only so long as it or a portion thereof, as the case may be, is devoted to such exempt purpose and so long as any moneys paid for such use do not exceed the amount of the carrying, maintenance and depreciation charges of the property or portion thereof, as the case may be.

In the case at hand, a charitable organization owns real property in a village and leases most of it to other charitable organizations, and the village has inquired as to the tax-exempt status of the property. The mere fact that one charitable organization uses the property of another charitable organization for a similar purpose does not affect the property's exemption from taxation. This is so even though a rental is charged, so long as the rental is not more than a proportionate share of the carrying, maintenance and depreciation charge of the entire property. However, if the rental does exceed such proportionate share, then that portion of the tax-exempt property which is paying such excess rental loses its tax-exempt status and is once again subject to taxation.

The test, then, is whether the rented portion of the tax-exempt property produced more income than permitted under the provision referred to above. If it does, that part of the property becomes subject to taxation.

It should be noted that, effective 4/1/72, §421 divides the many nonprofit private organizations into two main groups. Although both are initially exempt from taxation while devoted to the purposes for which they were organized, one group now becomes subject to loss of tax exemption by the municipality in which it is located if the governing board so determines by local law, ordinance or resolution. The group which may lose its exemption is listed in §421(1)(b). Section 421(1)(a) lists the group which is not subject to such action of the municipality's governing board and includes organizations of a religious, charitable, hospital, educational and cemetery nature.

Conclusion: That portion of tax-exempt property leased to produce an income greater than its proportionate share of carrying, maintenance and depreciation charges loses its tax-exempt status, even though lessor and lessee are both charitable organizations.

April 12, 1972.

OPINION 72-123

Inquiry: May a town adopt a local law providing for post-publication of zoning enactments in digest form rather than the full text thereof?

Statement of Law: The above inquiry stems from two opinions of this Department. In one of them (1969 Op St Compt #69-838 (unreported), we concluded that local laws relating to zoning changes, adopted without post-publication, may be subject to attack as unconstitutional. That opinion did not imply that zoning enactments could not be adopted by local law but suggested that if they were so adopted, then it is entirely possible, in view of *Orangetown (Orange and Rockland Utilities, Inc. v. Town of Orangetown*, Rockland Co Sup Ct Spec Term, 9/21/66, n.o.r.), it would be necessary to post-publish the text in full or at least in digest. Post-publication of local laws is not otherwise required by law.

In the second opinion (26 Op St Compt 35 (1970), our conclusion, with respect to the adoption of town ordinances, was that a town may adopt a local law providing for the publication of the summary of the text of the ordinance as adopted, in lieu of the publication of the entire text thereof. As noted in that opinion, the local law would supersede Town Law § §133, 264 and 265, the latter two sections relating to post-publication in full of zoning ordinances.

In the opinion first cited, the constitutional question relates to due process of law, which may be lacking where there is no post-publication of zoning enactments when adopted as local laws. Such a problem does not arise when the text of the zoning law, whether adopted as an ordinance or as a local law, is post-published in summary or digest form. Accordingly, post-publication in full of the proposed zoning ordinance is unnecessary. It may be published in digest, provided the town adopts a local law superseding Town Law § §133, 264 and 265 to provide for the post-publication of town ordinances in summary or digest form.

Conclusion: A town may adopt a local law to provide for publication of a summary statement of the text of adopted ordinances in lieu of the publication of the entire text thereof.

February 15, 1972.

OPINION 72-127

Inquiry: How does a town board go about accepting dedication of a private road as a town highway so that it may be maintained by the town, thus relieving the adjoining property owners of the burden of snow removal?

Statement of Law: A private road can become a public highway only by dedication and acceptance, public use or condemnation (*Carman et al. v. Hewitt et al.*, 105 NYS2d 239, mod and aff'd 280 AD 866, 114 NYS2d 266, aff'd 305 NY 718, 112 NE2d 785 (1953).

The road has not been in use by the public as a highway for a minimum of 10 years, so it does not qualify as a highway by user under Highway Law §189.

Dedication and acceptance of town highways are governed by Highway Law §171 and Town Law §278. There must be a formal acceptance by the town board of a dedicated private road in order for it to become a town highway (15 Op St Compt 261 (1959). In the instant case, the town board may accept the offer of dedication in the manner provided in Highway Law §171. Of course, if the town board does not wish to accept the offer of dedication, it need not do so.

Conclusion: A town board may accept dedication of a private road as a town highway in the manner provided in Highway Law §171.

February 18, 1972.

OPINION 72-128

Inquiries: (1) May a town enter into a contract for library services with a library system when the library that would service the town's residents is located in a city that is not adjacent to the town?

(2) If the town may enter into such a contract, are the moneys required under the contract for such services to be paid to the library system or to the library that will service the town's residents?

Statement of Law: (1) Education Law §256(1) provides authority for municipalities to enter into contracts for library services. Section 256(1) was amended in 1967 (L 1967 ch 136) to authorize municipalities to enter into contracts with cooperative library systems to provide library services for their residents. Subsequent to this amendment, our opinions have noted that towns and other municipalities may contract for library services with cooperative library systems (23 Op St Compt 387, 537 (1967).

The immediate question before us was recently considered by this Department (1970 Op St Compt #70-502 (unreported). In that opinion, we observed that there is no requirement that the library that is to service a town's residents under a contract be located within the boundaries of the town. We stated, however, that a town may contract for library services to be provided by such a library only if the library be so located that it may be used by the town's residents and the availability of the library to the town's

residents would amount to an improvement in library services available to those people.

In light of the terms of Education Law §256(1) and of the view expressed in the opinion we have cited above, it is our position that a town may enter into a contract for library services with a cooperative library system if the library that is to service the town's residents is so located that it is reasonably accessible to the residents and if its availability would amount to an improvement in the library services available to these people. If the library is not reasonably accessible to town residents or if its availability would provide no benefit to the town in the form of better library service for the town's residents, it is our opinion that the town may not enter into the contract (1970 Op St Compt #70-502 (*supra*).

(2) With regard to payment under a contract for library services, §256(1) directs that the amount agreed to be paid shall be paid directly to the treasurer of the cooperative library system. In the event that a town enters into such a contract, the town would, in light of these provisions of §256(1), pay the contract amount to the treasurer of the cooperative library system rather than to the individual library that is to service the town's residents under the contract.

Conclusions: (1) A town may, under certain circumstances, contract for library services with a cooperative library system in instances where the library that would service the town's residents is located outside the town.

(2) Where a town has entered into a contract for library services with a cooperative library system, the amount to be paid under the contract is to be paid directly to the treasurer of the cooperative library system.

February 14, 1972.

OPINION 72-129

Inquiry: May a village board of trustees establish the office of dog warden, providing an annual salary therefor, with power to enforce a village dog ordinance?

Statement of Law: Agriculture and Markets Law §119(2) provides, in part, as follows:

> the board of trustees of any incorporated village may also create the position of dog warden and appoint one or more persons thereto, to be removable at the pleasure of the appointing power.

Section 119(4) provides, in part, as follows: