restrain or enjoin the subdivider from further division of land by the sale of lots (§268(2). Indeed, any three taxpayers of the town residing in the district where the violation occurred who are aggrieved by the violation may institute an injunction proceeding, if the town refuses to do so within 10 days after a written request by a resident taxpayer of the town.

The town may also deny building permits to the subdivider on the remaining lots, assuming the existence of local legislation authorizing that remedy.

Statutory remedies imposed by other governmental authorities against the subdivider may assist the town's enforcement of its subdivision regulations. Real Property Law §334 authorizes the Attorney General to sue to recover a $25 penalty for each lot sold by a subdivider without filing a subdivision map in the office of the county clerk. Also, the Commissioner of the State Health Department may bring an action to recover a civil penalty up to $1,000 for a violation of subdivision regulations in Public Health Law §§1115 *et seq.* (see §12 of that law).

(2) The question whether the town has remedies against persons who purchased lots from the guilty subdivider is a more difficult problem. As this Department stated in an earlier opinion (22 Op St Compt 41 (1966), we believe that the provisions of Town Law §§268, 276 and 277, relating to the enforcement of subdivision regulations, were intended to apply to subdividers themselves and not to individual purchasers from the subdivider, particularly good faith purchasers for value. On the other hand, this Department is of the opinion that purchasers who are in collusion with the subdivider or who participate in a scheme by the subdivider, such as "checkerboarding," to circumvent subdivision regulations, may be subject to some of the same penalties applicable to the subdivider, as discussed above.

Court decisions in New York are inconclusive on the question of whether a municipality may deny a building permit to, or impose other sanctions upon, a person who purchases a lot from a noncomplying subdivider (*Adams v. Incorporated Village of Westhampton Beach,* 71 M2d 579, 336 NYS2d 662 (1972) — building permit denied; *In re Schwartz,* N.Y.L.J., 5 Oct., 1964, p. 20, col. 8 — building permit granted; see also *Fullam v. Kronman,* 51 M2d 1079, 275 NYS2d 44, aff'd 31 AD2d 947, 298 NYS2d 865, aff'd 26 NY2d 725, 308 NYS2d 880 (1970). Language in the *Adams* case cited above tends to support the imposition of sanctions against individual purchasers. But other jurisdictions have held that innocent purchasers for value may obtain a building permit (*Keizer v. Adams,* 2 Cal2d 976, 471 P2d 983, 3 Cal Rptr 183 (1970); *State ex rel Craven v. City of Tacoma,* 385 P2d 372 (Wash Sup Ct, 1963); see Rathkopf, the Law of Planning and Zoning, Vol. 3, pp. 71-121 – 71-129).

(3) A town is not authorized to bring an action against the county clerk to remove from the record deeds from a noncomplying subdivider to individual purchasers. A purchaser may be able to rescind a lot sale if there was fraud or misrepresentation by the subdivider. But we are not aware of any statute

authorizing a town to sue to compel the county clerk to expunge the record.

(4) With respect to future preventive actions, the town may adopt the penalties or remedies discussed in section 1 above. This Department has previously expressed the opinion that a town may not require all deeds of land within the town to be submitted to a town official for stamping prior to their recording in the office of the county clerk (1974 Op St Compt #74-1060 (unreported). The discussion in Rathkopf, cited above, may suggest other possible remedies.

Conclusions: (1) A town may, by ordinance, enforce its subdivision regulations against a subdivider, who sells lots without obtaining plat approval, by imposing a civil or criminal penalty or by denying building permits on remaining lots. A town may also enjoin the subdivider from selling additional lots.

(2) It is doubtful that a town may deny a building permit to, or impose other sanctions against, an innocent purchaser for value of a lot from a noncomplying subdivider.

(3) When a subdivider conveys a lot without first obtaining approval of the subdivision, a town may not bring an action against the county clerk to remove the deed of record.

(4) A town may not require all deeds of land within the town to be submitted to a town official for stamping prior to their recording in the county clerk's office.

April 14, 1977.

OPINION 77-125

Inquiry: May a member of a board of trustees of a public library be appointed library treasurer?

Statement of Law: The library board of trustees, of course, has the power to appoint library officers and employees (Educ L §226(7). However, we point out that it would be improper for the board of trustees to appoint one of their number as an officer or employee of the library (18 Op St Compt 34 (1962).

In *Wood v. Town of Whitehall* (120 M 124, 197 NYS 789, aff'd 206 AD 786, 201 NYS 959 (1923), the Supreme Court, Washington County, held that where a town board was vested with the power to appoint a police justice, the appointment by the board of one of its own members was illegal. The court stated in part:

> An appointing board cannot absolve itself from the charge of ulterior motives when it appoints one of its own members to an office . . . .

The opportunity improperly to influence the other members of the board is there. No one can say in a given case that the opportunity is or is not exercised.

Accordingly, this Department is of the opinion that a trustee of a public library may not be appointed library treasurer.

Conclusion: A member of a board of trustees of a public library may not be appointed library treasurer.

March 8, 1977.

OPINION 77-128

Inquiry: May surplus funds of a part-county health district which has been dissolved and has no outstanding liabilities be transferred to the county general fund?

Statement of Law: Title 3 of Article 3 of the Public Health Law (§§340-357) contains the provisions of law applicable to county and part-county health districts. Section 346(2) provides that the board of supervisors shall levy a tax upon *the taxable property within the part-county health district* to the extent necessary to provide funds to meet appropriations for such health district.

Public Health Law §355 contains the provisions of law governing the dissolution of a county or part-county health district. However, the said section does not provide for the manner in which a surplus in a part-county health district should be handled.

Inasmuch as an appropriation for a part-county health district is raised from a different tax base than the appropriation for county general fund purposes, it would be inappropriate to transfer surplus funds of such district to the county general fund. It is our opinion that any such surplus should be credited to the taxpayers within the area which had comprised the part-county health district. This is accomplished by crediting the surplus to the account for towns and cities (Account No. 430 in the Uniform System of Accounts for Counties Manual).

Conclusion: Surplus funds of a part-county health district which has been dissolved and has no outstanding liabilities may not be transferred to the county general fund.

March 21, 1977.

OPINION 77-133

Inquiry: May a county contract with a private collection agency for the collection of amounts due the county mental health department and the county public health department?

Statement of Law: Counties are authorized to enter into contracts for lawful county purposes (see County L §215(2) and may appropriate county funds therefor. If the county board of supervisors determines that it would serve the best interests of the county to contract with a collection agency for the collection of past accounts due and owing the county, then it may by resolution, ordinance or local law (Mun HRL §10(1)(i) authorize the appropriate county officer to enter into a contract with such a collection agency. If the amount to be paid pursuant to said contract exceeds the sum of $3,500, or if such amount is to be contingent upon the moneys collected and is anticipated to exceed the said sum, then, in either event, the contract should be let only after competitive bidding (Gen Mun L §103(1); 1973 Op St Compt #73-890 (unreported); see also 1976 Op St Compt #76-854 (unreported).

We note that the use of such a collection agency should be more or less a device of the last resort. The usual efforts to enforce collection should first be made by the appropriate county officers and/or employees so that the county does not place itself in the position of paying additional moneys for services normally performed by its own personnel. This is, of course, a matter to be determined by the county board of supervisors, in the exercise of its discretion (1976 Op St Compt #76-854 (*supra*).

Conclusion: Subject to competitive bidding requirements, a county may enter into a contract with a private collection agency for the collection of amounts due the county.

March 30, 1977.

OPINION 77-137

Inquiry: Does the tax exemption provided by Real Property Tax Law §485-b include special assessments, water rents and sewer rents?

Statement of Law: Laws of 1976 chapter 278 added a new §485-b to the Real Property Tax Law to provide a partial exemption (the "business investment exemption") from real property taxes for owners of commercial and industrial properties who undertake new construction or alter existing improvements on such properties. Section 485-b(1) provides as follows: