

the memorial trail on or about the 150th anniversary of the battle of Piqua. This commission, of course, will have a legal status, but apparently has no connection with The George Rogers Clark Memorial Commission to which you refer, although the powers granted to the one may in some respects relate to some of the purposes in which the other is interested.

From the foregoing it will appear that the only action of the Legislature which was actually taken relating to such commission was the item in the appropriation bill hereinbefore set forth.

Of course, the Legislature speaks in appropriation bills as well as in any other legislation that is passed, and if the language used were such as to create a commission, undoubtedly it could be done in the appropriation bill as well as in any other measure. From the language used, however, there is no indication that the Legislature intended to give such commission any official status by making the appropriation. It has been the custom of the Legislature to appropriate money for the use and benefit of various enterprises the officials of which do not have the status of state officers. The Ohio Archaeological and Historical Society is an example.

It must be concluded that the commission to which you refer has no legal status and, in its operations, would not be limited as commissions properly created by statute would be limited. In other words, it is a general rule of law that a public official has only such powers as are expressly granted to him by statute, and such other powers as are necessary and essential to carry into effect the express powers granted.

If the commission to which you refer were a state commission in the technical sense any moneys which it receives from any source must be turned into the State treasury as provided in Section 24, General Code, unless it is expressly authorized to make a different use of such funds, and the only moneys which such commission could expend from the public treasury would be those specifically appropriated by the Legislature.

As hereinbefore indicated, the commission to which you refer, not being created by the Legislature, would not be bound by such limitation and could, therefore, do practically anything with respect to carrying out its activities that a private person could do. However, in such undertaking it would in no wise represent the State and could incur no obligations against the State. It may be, however, that as a matter of law, the members of such commission would be an entity somewhat like a partnership and the individual members might be liable for any debts and obligations incurred on behalf of the commission.

In view of the foregoing, and in specific answer to your inquiry, I see nothing in the laws of Ohio to prevent The George Rogers Clark Memorial Commission from printing and selling a map, if it chooses to do so.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1067.

APPROVAL, AGREEMENT FOR SWITCH TRACK AT WILBERFORCE
UNIVERSITY, WILBERFORCE, OHIO.

COLUMBUS, OHIO, October 18, 1929.

HON. ROBERT B. BARCUS, *President, Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University, Wilberforce, Ohio.*

DEAR SIR:—This is to advise you of the receipt from the State Architect and Engineer of a switch track agreement, in duplicate, prepared and presented by the

Pennsylvania Railroad Company, providing for the construction by said railroad company of an extension of its side track No. 3, at Wilberforce, for a distance of 700 feet, to serve as a switch-back track from which a side or switch-back connection will be made to the new Power House of Wilberforce University. By said agreement said railroad is to furnish the labor, materials, tools, appliances and supervision necessary for the construction of said side track extension and of that part of the additional side or switch track from the switch point or take-off on said side track extension to the right of way line of the Columbus and Xenia Railroad, now operated by party of the first part. This work is to be done at the expense of the Combined Normal and Industrial Department of Wilberforce University out of Maintenance 6-a appropriation, provided in House Bill No. 510, and for which the Controlling Board has released the sum of \$5,000. The agreement provides for a refund by the railroad company on the amount paid to it for the construction of said side track and switch track the sum of \$2.50 per car on carload shipments to or from said side track made within five years subsequent to the date of the contract, upon which the road haul revenue accruing to the Pennsylvania Railroad Company, or to any company or companies forming a part of the Pennsylvania Railroad Company system, amounts to \$15.00 or more per car.

The switch track agreement presented for your signature is for the most part the standard switch track agreement used by the Pennsylvania Railroad Company and by other railroad companies generally for the construction of side tracks to serve industries located along the line of the railroad, and there are a number of provisions in the printed part of said agreement that cannot have any operation or effect when applied to the construction of a side track or a switch track for the purpose of serving a state institution. In making this observation, I refer more particularly to such provisions as are found in the 8th paragraph in the printed form of said contract. The provisions of this contract might be open to the construction that in executing this contract the State of Ohio is agreeing to indemnify the railroad company against loss or damage to property on the premises of the institution, caused by the negligence of the railroad company, whether such property belongs to the institution or is property of third persons lawfully on the premises of the institution. It is needless to say that no officer in the service of the State of Ohio, or in any of its institutions or departments, has any authority to bind the state by an agreement of this kind. However, I apprehend that the limitation on your authority to bind the state by an agreement such as that above indicated is well understood by the railroad company, and if provisions of this kind in the contract will be ineffective for the reason that, as to such provisions, you have no power to bind the state, such provision in the contract will not affect the validity of the other provisions thereof, which may be and hereby are approved.

You will observe that the construction of the railroad company's side track No. 3, provided for in this contract, will require an extension of the same across Nash road, which I assume is a county road. Under the provisions of the contract it is made your duty to secure whatever consent may be necessary to the extension of this side track across said highway. Inasmuch as this extension will be that of a side track only, it will not be necessary to obtain consent of the common pleas court to the extension of said tracks across the highway at grade, as is provided for in cases of main track construction under Sections 8898 et seq., General Code. Under the provisions of Section 8902, General Code, the consent of the common pleas court is not required where the only construction involved is that of additional tracks at previously existing crossings, where such construction is of switches, sidings and branch lines for the purpose of serving mills, factories, manufacturing establishments, etc. Inasmuch as the extension of this side track across Nash road will involve the taking of public property for said purpose, the

consent of the county commissioners to such extension should be secured. This consent, I apprehend, can be secured with little difficulty.

It is noted that this agreement, as presented for your signature, is one between the Pennsylvania Railroad Company, operating the Columbus and Xenia Railroad Company, and Wilberforce University. As I understand it, the agreement to be made is one between the Pennsylvania Railroad Company and the Combined Normal and Industrial Department of Wilberforce University, which is a state educational institution, having available monies with which to pay the railroad company for constructing said side track and switch track. It is suggested, therefore, that you sign said contract as president of the board of trustees of the Combined Normal and Industrial Department of Wilberforce University.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1068.

MEMORANDUM CORRECTION TO OPINION NO. 1010 IN REGARD TO
ABSTRACT OF TITLE TO LAND OF GEORGE W. HARDIMAN, CITY
OF COLUMBUS, FRANKLIN COUNTY.

COLUMBUS, OHIO, October 18, 1929.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—In Opinion No. 1010, of this department, directed to Hon. Carl E. Steeb, Business Manager, Ohio State University, relating to the title of Lot No. 8 of Critchfield and Warden's Subdivision of the south half of the north half of Lot No. 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, I referred to a mortgage executed by John G. Tate and Amanda Tate, then the owners of said lot under date of December 14, 1926. In my reference to this mortgage, which was executed and delivered to one B. F. Hughes, said mortgage was described as one for the sum of \$600.00. In thus describing said mortgage I find on further examination of the abstract of title that I was in error, as the mortgage in question was and is for the sum of \$300.00 only.

This memorandum opinion is submitted to you as a correction of the former opinion of this department above referred to.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1069.

APPROVAL, ABSTRACT OF TITLE TO LAND OF MARY CATHERINE
SHANAHAN IN THE CITY OF COLUMBUS, FRANKLIN COUNTY.

COLUMBUS, OHIO, October 18, 1929.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed form, encumbrance estimate No. 5672 and controlling