Hughes bill, and especially where the deduction so made will leave the townships bankrupt for other necessary funds."

In an opinion under date of September 9, 1919 (No. 610), to Hon. John L. Cable, prosecuting attorney, Lima, Ohio, this department construed section 25 of the Hughes act, which as section 1261-40 in the Griswold act, contains in the matters involved in your inquiry, practically the same provisions. A copy of this opinion is herewith enclosed and it will not be necessary to quote or discuss at length section 1261-40 as it now stands.

One sentence may be quoted:

> "The county auditor, when making his semi-annual apportionment of funds, *shall* retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality."

The succeeding sentence provides that such money "shall" be placed in a separate fund. In addition to what has been said of this section in the former opinion, it may be pointed out that in this act the county auditor, as such, has nothing to do with the determination of the amount to be raised or expended for health purposes and that his duties in retaining and segregating the health funds are ministerial. The evident legislative care exercised in this section to insure the availability of funds for health purposes, taken in connection with the mandatory "shall" which occurs repeatedly in this section, in connection with defining the auditor's duties therein, leads to a conclusion which may be stated in practically the language of the statute itself, to-wit:

County auditors, when making their semi-annual apportionment of funds, shall retain at each such semi-annual apportionment one-half the amount of the estimate for health purposes apportioned to each township and municipality, as provided in section 1261-40 G. C. (Griswold act) from the general funds due to such township and municipality.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1061.

REAPPRAISEMENT OF REAL ESTATE—EXPENSES, HOW DEFRAYED—WHEN OFFICIAL DETERMINATION OF REAPPRAISEMENT SHALL BE MADE—MAY INITIATE WORK ONE YEAR AND MAKE RETURNS ON JULY 1ST IN SUCCEEDING YEAR.

The expense of a reappraisement of real estate in the county or in any subdivision thereof under section 5548 G. C. is a charge on the general revenue fund of the county, and may be defrayed out of appropriations therefrom, though no specific levy has been made for the purpose of such reappraisement.

In the event that the commissioners are unable to make an appropriation sufficient in amount to defray such expense out of the general revenue fund, application may be made to the tax commission by the county auditor; such allowance for the hire of clerks and other assistants as the commission may make becomes a charge on the general revenue fund of the county, whether an appropriation is made or not. In that event, should the general revenue fund provide insufficient to pay the charges as they accrue and to provide for the other needs of the county, money may be borrowed under section 5656 G. C. by the county commissioners to pay such charges.

The official determination to reappraise the property in any subdivision must be made at stated times annually, and the returns of property reappraised must be made on July 1st annually, this provision being directory as to the exact time of making returns; but there is no express or implied requirement that a reappraisement so initiated in any year shall be completed so as to be returned in the same year; and if the county commissioners or the tax commission in making an allowance for the expense of such reappraisement so specify, the work may be commenced in the spring of the year in which it is initiated and the return need not be made until July in the succeeding year.

COLUMBUS, OHIO, March 6, 1920.

HON. ISAAC C. BAKER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—In your letter of recent date you state that a reappraisement of the real estate in Butler county is contemplated and has been determined upon by the county commissioners and the county auditor. You request answers to the following questions in connection with this matter:

> "How will it be possible for Butler county to raise the money to pay for the expenditure of a reappraisement in the county when no appropriation has been made and where the funds for the same are not available at this time?
>
> Provided that a reappraisement was deemed necessary by the commissioners and provided you could suggest a means to obtain the necessary funds, would it then be possible for the reappraisement to be started during the year 1920 and finished in the year 1921 so that the values would appear upon the 1921 tax duplicate instead of the 1920 tax duplicate?"

The first contingency of which you speak is cared for in section 5548 as amended 108 Ohio Laws, part I, pp. 557, 558. This section, after providing for various ways in which the reappraisement of the real property in any county or any taxing district in the county may be initiated, empowers the county auditor to appoint and employ such employes as he may deem necessary for the performance of the duty which is therein cast upon him, viz., to make the reappraisement. Further provisions of the section applicable to your question are as follows:

> "the amount to be expended in the payment of their compensation to be fixed and determined by the county commissioners. If, in the opinion of the county auditor the county commissioners shall fail to provide a sufficient amount for their compensation, he may make application to the tax commission of Ohio for an additional allowance, and the additional amount of compensation allowable by such commission, if any, shall be duly certified to the board of county commissioners, and the same shall be final; provided, however, that if the assessment is ordered by the tax commission of Ohio such commission shall in such order prescribe the number of experts, deputies, clerks or employes to be appointed by the county auditor for the purpose of making such assessment, and fix their compensation. The salaries and compensation of such experts, deputies, clerks and employes shall be paid, upon the warrant of the auditor, out of the general fund of the county; and in case the same are, in whole or in part, fixed by the tax commission, they shall constitute a charge against the county, regardless of the amount of money in the county treasury levied or appropriated for such purposes."

In the light of this section your questions may be discussed upon two hypotheses, as follows:

(1) Let it be supposed that in the general fund of the county (which is the fund from which the expense of the reappraisement must be paid) there is or will be a sufficient amount of money, so that the county can afford to pay the cost of the reappraisement out of the general revenues. You refer to the fact that no money has been expressly levied for this purpose and that no money is now appropriated and available at this time.

Attention is called to the fact that under previous rulings of this department the fiscal year of the county for which appropriations are to be made under section 5649-3d of the General Code begins March 1st. Accordingly, on March 1st next the commissioners will face the necessity of making appropriations for the first half of the fiscal year beginning at that time. The fact that no money has been specifically levied, i. e., included as an express item in the budget of the commissioners made up in the year 1919, for the purpose of defraying the expense of the reappraisement is immaterial, because the expense is a general county fund charge; so that a levy for the general county fund can be lawfully appropriated and when appropriated lawfully expended for this, among other purposes comprised within the scope of such fund and the levy therefor. On March 1st, then, the commissioners will have to consider whether or not they can afford to make an appropriation for the purpose under discussion out of the proceeds of the general county fund. This will depend upon other fixed charges and anticipated current expenses properly payable from that fund. If the commissioners can see their way clear to make such an appropriation at this time, they may safely and can lawfully make the allowance of which section 5548 speaks and provide for it (so far as the first half of the year is concerned) by means of such appropriation In that event the problem will be solved, as the commissioners will have merely to make the allowance at the present time and the appropriation on March 1st. The period between the present time and March 1st is probably not important enough to be considered.

(2) But it may be that the commissioners fell that the amount of money which they can afford to appropriate for this purpose will not equal the requirements of the task, or even that they can not afford to appropriate from the general revenue fund of the county any money for this purpose. In that event, lacking the means to make the payment from current revenues, the commissioners under the present law have no recourse but to make an inadequate allowance or refuse altogether to make any. In this respect the section under consideration has been changed, though perhaps not materially as affecting the present year.

The same section as amended in 1917 authorized the commissioners to make an allowance, and in the event of the insufficiency of funds in the treasury "for the year 1917, the county commissioners may borrow the amount so required, and issue certificates of indebtedness therefor, payable not later than three years from the date thereof." This temporary provision has been quite appropriately removed from the law. In lieu of it we find the provision authorizing an appeal to the tax commission, which must be made by the county auditor. The commission then has the power to make the allowance itself, and in the event it acts it must go further and specify the number of employes and the conpensation of each. When the commission has acted the amount determined upon by it becomes a charge against the county fund, regardless of the existence of moneys in the treasury or appropriations for such purposes out of moneys in the treasury. In that event, the commissioners would have to provide for the payment of the accruing obligations under the order of the tax commission as they would provide for the payment of any other fixed and paramount charge for which ready money was not available in the treasury. This could be done by action under section 5656 G. C., authorizing the borrowing of money or the issuance of bonds to fund or renew any legal obligation which the county from its limits of taxation is unable to pay at maturity. For it is clear that if the commissioners do not provide otherwise for the payment of the accruing obligations under the order of the tax commission, action would

lie against the county; so that such obligations constitute legal, valid and binding obligations of the county.

The procedure last described is applicable whether the commissioners fail to make any allowance at all or merely fail to make an adequate allowance.

A complete answer to your question, then, is that an allowance by the commissioners is payable from the general revenue fund of the county, so that there need be no specific levy of taxes for the purpose of providing for the expenses of a reappraisement of property under section 5548 G. C. The commissioners may therefore lawfully appropriate the necessary money to defray the expenses which may be incurred by virtue of their allowance from the general revenue fund, if they feel able to do so from that fund. If, however, the commissioners are unable to make any allowance, to be followed by an appropriation, from the general revenue fund because of the insufficiency of the general revenue fund itself, it would be their duty to decline to make the allowance on that ground or to make it for smaller sum than the requirements of the case would otherwise suggest. In either of these events, if the auditor desires to proceed with the appraisement on his own motion he must apply to the tax commission of Ohio. If the commission acts favorably upon his application it will make the allowance, specifying the number and salaries of the employes who are to undertake the work of the reappraisement. When the allowance is so made by the commission it becomes a charge on the county and on the general fund therein, regardless of the existence of any levy or appropriation for that purpose. For the payment of such lawful charges the commissioners, if by reason of the making of transfers from one fund to another or otherwise they are unable to defray the expense, may borrow the money in the manner suggested.

In connection with the statement last made it is suggested that though mention has been made in this opinion of borrowing money in the event of action by the commission, such a contingency would not necessarily arise and should be avoided if possible. The commissioners may under-estimate the current needs of the county payable from the general revenue fund in making their appropriations; or they may under estimate the income of the general revenue fund during the half-yearly period in arriving at their decision. In either event if by such subsequent developments it appears that the charges imposed by the action of the tax commission upon the revenue fund of the county can be met without overdrawing that fund, the necessity for borrowing would not arise.

Another way of stating the same thing is to say that the action of the tax commission has the same legal effect as an appropriation out of the general revenue fund of the county, except that it is valid as such appropriation notwithstanding the fact that there may not be in the treasury at the time sufficient funds to meet the appropriation as required by section 5649-3d G. C. Notwithstanding the excess of appropriations over moneys in the treasury on March 1st which would thus ensue, the end of the fiscal half-year might find the general revenue fund unimpared by reason of the happening of either of the two kinds of events above referred to, viz., the accrual of additional revenue to the general revenue fund during the half-year period, and the failure of the commissioners fully to expend the other appropriations that they might have made at the beginning of that period. If such should turn out to be the case the necessity for borrowing might not arise.

Your second question invokes consideration of the following sections of the General Code, in addition to those previously mentioned:

Section 5605 G. C., as amended 107 O. L., 43, provides in part that:

> "On the first Monday of July, annually, the county auditor shall lay before the county board of revision the returns of his assessment of any real property for the current year, and such board shall forthwith proceed to revise the assessment and returns of such real property. * * * The county auditor

shall not make up his tax list and duplicate, * * * until the board of revision has completed its work under this section * * *."

Succeeding sections provide for further revision by the tax commission of Ohio of assessments as made by the county auditor and equalized by the board of revision. It is clear that any reappraisement which is to go on the duplicate of the year 1920 must be completed on the first Monday of July. To be sure, this date is probably merely directory, but in the broad sense at least there must be completion of the assessment now initiated during the summer of this year if the appraisement is to be effective on the 1920 duplicate.

If, however, the work of reappraisement should start, say, in March, 1920, and should not be completed for the district covered by the reappraisement until too late to have it equalized and reviewed and placed on the duplicate for the year 1920, there is no provision of statute which would require that the fruits of such labor should be entirely discarded. There is no reason why the appraisement should not proceed until it is completed, in which event it would go before the board of revision for equalization purposes in the year 1921, and take its due course, ripening into a final appraisement affecting the duplicate of that year. It is true that a reappraisement covering a considerable period of time might produce some inequalities because of the failure of the assessors to exercise their judgment on the various tracts of real estate covered by the reappraisement on or as of the same date. It will be presumed, however, that the county auditor, who in legal theory makes all the assessments, will correct such inequalities before finally making his returns to the board of revision; and it will be further presumed that the board of revision in making its equalization will act upon the conditions as they exist at the time of its action, or at least no further back than the lien date of the year of the duplicate which will be affected by its action. At all events, unless the conclusion can be arrived at that it is illegal to do any work prior to July of any year upon an appraisement which is not to be completed until the next year, no difficulty is encountered. As stated, there is no provision of statute which required this conclusion to be reached. The present statutes are simply silent on the subject. It may not be inappropriate, however, to refer to the law supplanted by the present system. This law, which was passed in 1909 (100 O. L. 82), and known as the quadrennial appraisement law, provided for the election of real estate assessors and boards of assessors in the year 1909 and each fourth year thereafter. These assessors were to "begin the valuation of the real property" in their districts "on or before the fifteenth day of January after * * * election and * * * complete such valuation on or before July first following," (section 5547 General Code of 1910); they were to make their returns "on or before the first Monday of July, one thousand nine hundred and ten, and every four years thereafter" (section 5569 General Code 1910); these returns were to be laid before the quadrennial county board of equalization on the third Monday of July every four years (section 5594 General Code 1910); this board of equalization was given until the first Monday in October to complete its work (section 5595 General Code 1910); after equalization there came the process of revision on complaint for which time was given until the fourth Monday of September next following (section 5599 General Code 1910). Meanwhile, however, the equalized returns were laid before the tax commission for its equalization among taxing districts. This work was supposed to be done by the commission on or before the first day of April following the certification to it in November (sections 5542-8 and 5542-9 G. C., as enacted in 102 O. L. 228 and 224).

It is quite apparent that the work of quadrennial reappraisement under the scheme of things which preceded the present system consumed over a year and a half and that the process commenced in January of one year did not take effect upon a duplicate until October of the next year. Thus, the so-called 1910 general appraisement affected the duplicates made up in the year 1911.

Between the system which exists at the present time and the system just described came what was known as the Warnes law (103 O. L. 786). This act did away with the quadrennial reappraisement. The theory of this law was that there was to be an annual reappraisement of all property. However, the law was perfectly silent, as is the present law, with respect to the exact time at which anything should be done, excepting the date of the official return which was to be made in July, as at present.

We have it, then, that under the old system the first step in the periodical reappraisement had to be made within specified dates, directory no doubt, yet indicating that an appraisement could not begin in one year and last indefinitely. Now we have the authority in section 5548 to initiate an appraisement at any time afetr certain specified dates in a given year. These dates may come as late as the first Monday in March; and if the tax commission initiates the assessment there is no time limit at all. It is, of course, possible that a general appraisement can not practicably be made between the first of March and the first of July. This possibility must be taken into account and, in the absence of the express provision which the old law made, furnishes a reason for giving to the new law the necessary elasticity to enable it to function practicably.

As a result of the historical study above outlined, it is the opinion of this department that under the present law an appraisement initiated in the year 1920, if not completed for the district for which contemplated in time to be promulgated and equalized and reviewed so as to take effect with respect to the duplicate made up in the fall of that year, may be continued beyond the time of making returns, in which event return thereof should be made at the next annual period, viz., July, 1921, and the succeeding steps taken so as to make the appraisement effectual with respact to the duplicate made up in the year 1921.

Of course, another way of arriving at the same result would be to hold that if the appraisement is not completed in time to make return in the year 1920 it might be regarded as abandoned for that year ;then in the year 1921 the auditor would have the right to repeat his determination that an appraisement was necessary and upon application being granted he might use the result of work done in the year 1920 in arriving at his returns for the year 1921. The conclusion of this opinion, however, is not placed upon this ground, for it is believed that it is legal to pay for services rendered in the appraisement of real estate by the assistants, etc., employed by the county auditor for that purpose after the return date in a given year. In other words, what might be called the real estate department of the auditor's office, consisting of the corps of employes authorized by the action of the county commissioners or the tax commission to be employed, does not become abolished by operation of law in July of any year, but having been lawfully created the department may continue until the actual necessity for its services is dispensed with.

It is the opinion of this department, therefore, that if it is not possible to finish an appraisement started in the year 1920 within the first half of that year, the appraisement may be continued until it is finished and may be officially promulgated in the year 1921.

However, it must be borne in mind that the question last discussed is one which must be answered finally by the county commissioners or by the tax commission in making their respective allowances. The auditor could not lawfully employ persons to do this work whose compensation had not been provided for in one of the two ways described in this opinion. If, therefore, the commissioners in fixing the amount of the allowance, or the tax commission in fixing the amount of the allowance and the number of persons to be employed and the compensation of each, so act as practically or in legal effect to limit the auditor to such activity as could be terminated this year, it would be the auditor's duty, of course, to act within the scope of the authority thus conferred upon him. It would be a violation of such duty, in the opinion of this department, for the auditor to deliberately leave uncompleted work which it was con-

templated should be finished so as to ripen into a reappraisement effective in 1920. The extent of the work, the number of persons to be employed and, obviously, the time required to complete the reappraisement are all matters which the auditor must take into account in making his original application, and which the commissioners or the tax commission must take into account in acting upon that application. Hence it follows, as above stated, that although it is legal to extend the process of reappraisement from a time previous to the first of July to a time considerably subsequent to that date, and to postpone the making of returns until the succeeding first of July, such course must be determined upon by the board making the allowance and the auditor must be governed thereby, in the sense that it would not be lawful nor perhaps even possible for him to expend public moneys for this purpose in excess of any limitation fixed in such manner on his application, which must be made once for all, for and on account of a given reappraisement and cannot be renewed later to piece out such reappraisement.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1062.

SUNDRY APPROPRIATION ACT—HOUSE BILL NO. 558, SECTION 2 CONSTRUED—POWERS OF SPECIAL AUDITING COMMITTEE.

The powers of the special auditing committee provided for in section 2 of house bill No. 558 are as follows:

1. *To require as a condition of payment, and if deemed necessary by the committee, the production of such books, papers, statements and other evidence as will exhibit to the committee the amount claimed by each claimant, the nature of the transaction giving rise to the claim, and such itemization thereof as is possible in the nature of the case and which will tend to enable the committee to correct the items and the totals where they are capable of correction; and to pay on the basis of such corrections but not in excess, of course, of the amount appropriated.*

2. *On the basis of such investigation to identify the claims presented to the committee in all legal respects with the claim approved by the legislature, not only in amount but also in substance, as to each detail of each transaction which is capable of separate consideration; and to pay only on the basis of such separable transactions as represent the transactions which the legislature has approved and thus stamped as valid and just.*

COLUMBUS, OHIO, March 9, 1920

HON. J. E. HARPER, *Budget Commissioner, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date requests the advice of this department as to the powers of the special auditing committee designated by section 2 of house bill No. 558.

The section in question is as follows:

> "The monies herein appropriated shall be paid upon the approval of a special auditing committee consisting of the major appointee authorized by section 270-5 of the General Code, commonly known as the budget commissioner, the attorney-general, the auditor of state, the chairman of the finance committee of the senate and the chairman of the finance committee