the re-construction of a subway known as Structure No. MI-36-115, Miami County, S. N. 190, Bridge 26 Piqua Crossing.

Finding said agreement in proper legal form, the same is hereby approved as to form and returned herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4949.

APPROPRIATION ACT—DISCUSSION OF SPECIFIC CHARACTER OF APPROPRIATION—O. A. G. 1915, VOL. II, P. 1871, O. A. G. 1934, VOL. I, P. 314 AND O. A. G. 1935, NO. 4503 AFFIRMED.

SYLLABUS:

Opinions of the Attorney General 1915, *Vol. II, page* 1871; *for* 1934. *Vol. I, page* 314, *and Opinion No.* 4503 *rendered August* 3, 1935, *defining the constitutional requirement that appropriations be specific, affirmed.*

COLUMBUS, OHIO, November 30, 1935.

HON. W. H. HERNER, *Chairman, Senate Finance Committee, Columbus, Ohio.*

DEAR SENATOR:—As Chairman of the Finance Committee of the Ohio Senate, and in pursuance of the resolution of said Committee adopted November 19, 1935, you have submitted for my consideration the question as to whether or not certain language if incorporated in a proposed general appropriation act of the 91st General Assembly, would constitute a valid appropriation of the entire amount of money that may be available under the law and not otherwise appropriated for the maintenance and repair of highways and for highway construction purposes.

It is proposed to incorporate in a general appropriation act appropriations to the Department of Highways, as follows:

"DEPARTMENT OF HIGHWAYS

	1935	1936	Biennum
PERSONAL SERVICE—			
A-1 SALARIES			
(Statutory)	$105,920.00	$105,920.00	
Total Personal Service	$105,920.00	$105,920.00	$211,840.00
Appropriated from the Highway Construction Fund			
MAINTENANCE—			
Maintenance and Repair of Highways (including Highway Patrol)—All revenues, not otherwise appropriated, accruing during the period beginning January 1, 1935, and ending December 31, 1936, *under existing law* and apportioned to the 'state maintenance and repair fund' or for the purpose of maintaining, r e p a i r i n g and keeping in passable condition for travel, the roads and highways of the state			
I Rotary—			
Motor Transport Rotary—			
I Rotary—Federal			
To pay when necessary the Federal Government's share of any estimate due contractors on road improvements. To pay the cost of completing all improvements upon which contractors shall have defaulted subsequent to January 1, 1935, or from which said contractors have been removed subsequent to January 1st, 1935.			
I Rotary—			
Grade crossing elimination			
G ADDITIONS AND BETTERMENTS—			

	1935	1936	Biennum
Highway Construction— All revenues, not otherwise appropriated, accruing to the 'highway construction fund,' during the period beginning January 1, 1935, and ending December 31, 1936, and apportioned under the provisions of General Code Section 5541-8, for the purpose of paying the state's share of the cost of constructing, widening and reconstructing the state highways and of eliminating railway grade crossings upon such highways.			
All unexpended balances, in the 'state maintenance and repair fund' and the 'highway construction fund', of moneys received or accrued under previous appropriation acts, or refunds thereto, are hereby expressly appropriated for use during the period beginning January 1, 1935 and ending December 31, 1936. The Director of Highways shall not, in any current year, encumber funds in excess of the total estimated available revenues for that year, as shall be determined from time to time by the Department of Finance, the Director of Highways and the Auditor of State. (All revenues accruing to the gasoline tax excise fund and the highway construction fund, which are by law distributable to the state, the several counties, municipal corporations and			

townships, are hereby appropriated for that purpose, to be distributed to, and expended by, the state and those subdivisions in accordance with law.)"

The question presented is whether or not the language contained in the first paragraph following the word "Maintenance" and that contained in the first paragraph under "G—ADDITIONS AND BETTERMENTS", constitutes valid appropriations. In other words, whether or not the language of these paragraphs constitutes specific appropriations as required by the Constitution of Ohio before money may be drawn from the state treasury, inasmuch as definite amounts of money are not mentioned.

An appropriation in the sense here used, is an authority from the legislature or other lawfully constituted appropriating authority, given at a proper time and in legal form, to the proper officers, to apply sums of money out of that which may be in the public treasury within a certain period of time to specified objects or demands against the state or political subdivision to which the appropriation applies. *Felton* vs. *Hamilton County,* 97 Fed., 823. In *Corpus Juris,* Vol. 4, page 1460 it is said that:

> "Appropriation bills are annual statutes by which the legislative branch of the government regulates the manner in which the public money voted at each session is to be applied to the various objects of expenditure."

No express form of words is necessary to constitute a valid appropriation.

State vs. *LaGrave,* 23 Nev., 25, 41 Pac., 1075;

State vs. *Jorgenson,* 25 N. Dak., 539, 49 L. R. A. (N. S.) 67, 142 N. W., 450;

Menifee vs. *Askew,* 25 Okla., 623, 107 Pac., 159, 27 L. R. A. (N. S.) 537.

In *Ruling Case Law,* Vol. 25, page 396, it is stated:

> "No particular words need be used in making an appropriation of public money; and an appropriation may be implied where the language used reasonably indicates such intention."

It has been expressly held that an act which assigns, allots and sets apart a certain portion of the public moneys and directs the said portion to be paid to particular persons for a given purpose, is an appropriation bill, notwithstanding the word "appropriate" is not used in the body of the act. *State* vs. *Bordelon,* 6 Louisana Annual, 68.

Ordinarily, a statute providing that the proceeds of a certain tax shall be devoted to a certain purpose is merely an act of dedication and not an appropriation.

Bordon vs. *Lawrence State Board of Education,* 168 La., 1005, 123 So., 655.

In the instant case however, no effect could be given to the language in question if it were incorporated in a general appropriation act unless it would be regarded as an appropriation, as the proceeds of certain taxes are by other statutes dedicated to the maintenance and repair of state highways and to highway construction purposes. See Sections 5537, 5541-8 and 6309-2, General Code. This fact, together with the fact that the language in question would be contained in an appropriation bill devoted exclusively to the making of appropriations, would clearly indicate an intention on the part of the legislature that an appropriation was to be thereby made. It has been held that it is sufficient in making appropriations that an intention to make an appropriation is clearly evinced by the language used in a statute or that no effect can be given to the statute unless it is considered as making an appropriation.

Carr vs. *State,* 127 Ind., 204, 26 N. E., 778, 11 L. R. A., 370;

Bosworth vs. *Harp*, 154 Ky., 559, 157 S. W., 1084, 45 L. R. A., (N. S.) 692.

It seems clear that the objective of the legislature in using the language referred to if incorporated in a general appropriation act in the manner suggested, would be to make an appropriation of all funds not otherwise appropriated, which might become available during the life of the said appropriation act from sources which, under the law, are dedicated to the Maintenance and Repair of Highways and highway construction purposes, to be expended by the State Highway Department for the said purposes. To hold otherwise, would be to say that the language would serve no purpose whatever. The only question is whether or not an appropriation made in this manner is "specific" so as to meet the requirements of the Constitution of Ohio, as contained in Article II, Section 22 thereof, which provides that:

> "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law; and no appropriation shall be made for a longer period than two years."

It will be observed that if the language suggested, when incorporated in a general appropriation act, constitutes an appropriation, it is not itemized as to its distribution; that is to say, it does not provide a definite amount or a definite proportion that is to be expended for material, supplies, labor or equipment. Nor does it state a definite total amount that is to be used for the maintenance and repair of highways or for highway construction purposes.

This raises two questions: First, is it necessary that the purposes be itemized? Second, is it necessary that definite amounts of money be named?

As to the first question, it was held in the case of *State ex rel. Griswold,* 35 O. App., 354, that an appropriation of this kind need not necessarily be itemized as to its distribution. In that case there was under consideration an appropriation made by the 88th General Assembly in its General Appropriation Act (H. B. 203). The appropriation in question, read as follows:

"INSTITUTION FOR FEEBLE-MINDED—APPLE CREEK

For development of the Institution of the Feeble-Minded at Apple Creek .....$764,489.77"

In deciding the case, Judge Hornbeck, after referring to and quoting the provisions of Section 22, Article II of the Constitution of Ohio which provides that no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, said:

> "Without extended discussion, suffice to say that we are of opinion that the appropriation under consideration as it appears in House Bill No. 203 is not in violation of the State Constitution, that it is a specific appropriation, and that the purpose is sufficiently defined. The power of the Legislature to reappropriate is as broad as it is to appropriate originally.
>
> The fact that the money set apart had, by the former Legislature, been itemized as to its distribution, was not compelling upon the General Assembly in the act of reappropriation. The history incident to this legislation establishes that the General Assembly acted with knowledge when it took from House Bill No. 203 the items theretofore appearing in the former appropriation. The form of appropriation under consideration has many times during a period covering a number of years been accepted as proper procedure, and, while this is not controlling, it is to be weighed in judicial determination.
>
> This court, in the case of *Long* vs. *Board of Trustees of Ohio State University,* 24 Ohio App. 261, 157 N. E., 395, had under consideration a somewhat analogous act, which was sustained."

The second question has been passed upon by this office upon several former occasions, and it has been held in each instance that language similar to that here under consideration when used in an act of appropriation by the General Assembly constitutes a "specific" appropriation and is a valid appropriation.

In *Opinions of the Attorney General for* 1915, Vol. 2, page 1871, there

was under consideration an act of the General Assembly providing for the appointment of a commission to investigate the office requirements of state officers, departments and commissions. The specific language considered was contained in Section 7 of said act, and was as follows:

> "For the purpose of providing a fund for carrying this act into effect, there is hereby appropriated from the money in the state treasury, not otherwise appropriated; a sum equal to the amount of money paid out of the state treasury as rentals for state offices, departments and commissions for a period of two years next prior to the date on which this act becomes effective, and in addition a sum not otherwise appropriated equal to such amount of money as may be received into the state treasury as interest accruing on state funds for and during the period of two years from and after the date on which this act becomes effective. Only so much of the fund hereby appropriated shall be used as may be necessary to carry out the provisions of this act and any unexpended balance thereof shall revert into the state treasury to the credit of the general revenue fund."

The then Attorney General stated with respect thereto:

> "In short, section 7 differs from an ordinary appropriation of 'receipts and balances,' formerly so usual in this state, in that it appropriates now a sum of money the amount of which will ultimately become certain, but which at the present time can only be estimated; while an appropriation of receipts does not appropriate anything until the receipts themselves come into the treasury. Section 7, then, is fully effective at the present time to an extent which may be estimated but not exactly ascertained at present; whereas an appropriation of receipts seizes upon the income from a designated source of revenue as it comes into the treasury, and nothing is appropriated until it is received. It seems to have been the deliberate purpose of the general assembly to make this distinction, and I know of no constitutional or other principle which will prevent this purpose from being carried into effect. The constitution requires that an appropriation shall be 'specific.' The appropriation now under consideration is specific, because that may be regarded as certain which may be made certain."

The same question was presented to this office in 1934 and was the subject of an opinion which will be found in the *Opinions of the Attorney General* for that year, Volume I, page 314. The specific question there con-

sidered related to the provisions of Amended Senate Bill No. 43 of the 90th General Assembly, with respect to the reimbursement for hospitals on account of expenses incurred for indigent persons injured in motor vehicle accidents, and read as follows:

> "The following sums for the purposes hereinafter stated are hereby appropriated out of any moneys in the state treasury to the credit of 'the state maintenance and repair fund' for the purpose of carrying out and enforcing the provisions of the act passed by the General Assembly, June 8, 1933, and known as House Bill No. 80, to provide reimbursement for hospitals on account of expenses incurred for indigent persons injured in motor vehicle accidents. The sums hereby appropriated may be expended to pay obligations lawfully incurred on and after the date when said act shall become effective, to-wit:
>
> REGISTRAR OF MOTOR VEHICLES
>
> Personal service $3,000.00
> Supplies and Maintenance 500.00
> Reimbursement for hospitals. The balance of a sum equal to 19c for each motor vehicle registered in the state for the years 1933, 1934 and 1935, prior to March 1, 1935."

It was there held:

> "1. The appropriation contained in Amended Senate Bill No. 43 for reimbursement of hospitals for the purpose of carrying out the provisions of House Bill No. 80 of the 90th General Assembly, is a specific appropriation within the meaning of the term as used in Article II, Section 22 of the Ohio Constitution."

See also Opinion No. 4503, addressed to Hon. L. Wooddell, Conservation Commissioner, under date of August 3, 1935.

In the case of *Riley* vs. *Johnson,* 219 Calif., 513, 27 Pacific, 2nd, 760, 92 A. L. R., 1292, decided in 1933, it is held:

> "An appropriation bill is not void for uncertainty in not specifying a stated amount if it fixes the extent to which the treasury may be drawn upon."

As stated by the Attorney General in the 1915 opinion referred to above, it had been the practice for many years prior to that time to make appropriations by appropriating "receipts and balances" to certain specified funds. An example of this will be found in the General Appropriation Act passed in

1925 (Amended House Bill No. 517) page 42. See also General Appropriation Act of the 89th General Assembly (House Bill No. 624), pages 47, 73, 120, 124, 131, 133 and 182; and the Appropriation Act of the 90th General Assembly (House Bill 699), pages 57, 58, 65, 82, 126, 128, 130, 132, 136, 138, 140 and 176. In fact in practically every general appropriation act passed by the legislature in the past thirty years, and perhaps longer, appropriations were made wherein the purpose of the appropriation was made certain and the amount was not certain but was readily ascertainable.

I am therefore of the opinion that the language here under consideration, if incorporated in a general appropriation act passed by the General Assembly of Ohio, in the manner suggested, would constitute a valid appropriation of all revenues not otherwise appropriated coming into the state treasury during the period beginning January 1, 1935 and ending December 31, 1936, and which are dedicated under existing law to the maintenance and repair of highways (including highway patrol) and to highway construction purposes as defined by law for expenditure by the state highway department during said period for the uses and purposes mentioned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4950.

INSPECTION—DUTIES OF DIRECTOR OF AGRICULTURE AS TO WEIGHTS AND MEASURES OF COAL AND COKE UNDER H. B. NO. 330.

SYLLABUS:

Discussion of various questions relative to House Bill No. 330. (116 *O. L.* 333).

COLUMBUS, OHIO, December 2, 1935.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion on a number of questions pertaining to House Bill No. 330, enacted at the recent session of the legislature (116 O. L. 333). The questions are as follows:

> "1. Who is the administrative agent authorized by law to enforce sections 6420 and 6420-1?