

annual rental to be paid thereunder in such amount as might be agreed upon by and between yourself and said lessee.

Upon examination of the supplemental agreement above referred to, I find the same to be in the proper form and in accordance with the former opinion of this office above mentioned; and no reason is seen why the same should not be approved by me so far as the legality and form of this agreement is concerned.

In this connection, it is observed that the original lease was not approved by either the Governor or the Attorney General and there is nothing in the form of said lease or otherwise to indicate that the lease was submitted to either of these officers for his approval. In view of the fact that section 3 of the Act of April 2, 1906, 98 O. L., 304, 306, which was then in effect, required all land leases executed by the Board of Public Works to be approved in writing by the Governor and the Attorney General, I assume that this lease was not submitted to the Governor and the Attorney General for approval on the view that this lease was one executed under special statutory provisions providing therefor, and was not primarily a land lease but was a lease of the use of water from the Miami and Erie Canal and that the land therein described was included only as an incident to the main purpose of the lease and to effectuate such purpose.

However this may be, I am not at this late date passing on the question whether the lease which is modified by this supplemental agreement, required the approval of the Governor and the Attorney General to make the same effective; but assuming that this lease was valid as executed, I am approving this supplemental agreement as to the legality and form of the same, as is evidenced by my approval endorsed thereon and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6182.

STATE RELIEF COMMISSION—PROVISIONS OF VARIOUS
HOUSE BILLS RELATIVE TO REPAYMENT OF AD-
VANCED FUNDS BY COUNTIES TO STATE RELIEF COM-
MISSION DISCUSSED.

SYLLABUS:

Under Section 13 of House Bill 663 of the first special session of the 91st General Assembly, counties that have, subsequent to January 1,

1936, issued bonds or notes under the provisions of Section 2 of House Bill 501 of the 91st General Assembly, as amended, or shall issue such bonds after the passage of such act, are required to repay to the State Relief Commission such proportion of the funds advanced by said commission to said counties under Section 6b of House Bill 627 of said special session, as equals the amount such counties could have expended under the provisions of House Bill 627 if such bonds had been issued prior to January 1, 1936. In the event of any failure of any county to make such reimbursement, no advance, distribution or allocation under any of the provisions of said House Bill 663 can be granted by the State Relief Commission to such counties until such reimbursement is made.

COLUMBUS, OHIO, October 15, 1936.

State Relief Commission, Columbus, Ohio.

GENTLEMEN: This acknowledges receipt of your recent request for my opinion, which reads as follows:

"The State Relief Commission desires the opinion of your department as to the construction of Section 13, of House Bill No. 663, relative to the wording:

*'Counties that have, subsequent to January 1, 1936, issued bonds or notes under the provisions of Section 2 of House Bill No. 501, as amended by Senate Bill No. 377, or shall hereafter issue such bonds, or shall receive the equivalent proceeds of such bonds or notes * * * shall repay * * * for such a proportion of the funds advanced * * * as equals the amount such county could have expended under the provisions of House Bill No. 627 * * * if such bonds had been issued * * * and no * * * distribution * * * until such reimbursement is made * * *.'*

The desired interpretation relates to the italicized words (italicizing not contained in the act).

The particular question involved is as to what funds the wording refers; based upon the interpretation of the Commission, during the operation of House Bill No. 627, that allocations to the several counties were made primarily on the basis of need; whether the wording refers to the expenditure of the Carey bond funds that could have been made during that period."

You ask as to what the word "funds" as used in House Bill 663 of the first special session of the 91st General Assembly, refers.

Section 13 of said House Bill No. 663 reads as follows:

“Counties that have, subsequent to January 1, 1936, issued bonds or notes under the provisions of Section 2 of House Bill 501, as amended by Senate Bill 377, or shall hereafter issue such bonds, or shall receive the equivalent proceeds of such bonds or notes under any of the provisions of this act, or any legislation subsequent thereto, shall, upon receipt of such proceeds, repay and reimburse the state relief commission for such proportion of the funds advanced by said commission to such county for the months of January, February, March, April, May and June, 1936, as equals the amount such county could have expended under the provisions of House Bill No. 627, passed January 23, 1936, approved January 30, 1936, and filed in the office of the secretary of state February 1, 1936, if such bonds had been issued, and no advance, distribution or allocation under any of the provisions of this act shall be granted to such counties until such reimbursement is made. All such reimbursements shall be paid into the general revenue fund.”

Section 6 of House Bill 627 of said special session appropriated four and one-half million dollars for relief purposes to be known as the state relief fund, which the State Relief Commission was authorized and directed to allocate and distribute to the various counties in the manner set forth in Section 4 of House Bill 501 of the 91st General Assembly, as amended by Amended Senate Bill 377 of said special session.

Section 6a of said House Bill 627 appropriated two million dollars to the State Relief Commission, which was to be allocated and distributed in the same manner as provided in Section 6.

Section 6c appropriated to the State Relief Commission two million dollars to be known as the state supplemental fund which was to be allocated and distributed to each county in the ratio of all expenditures for poor relief as defined in Section 2 of Amended Senate Bill No. 4 of the first special session of the 89th General Assembly and amendments thereto, made in the county during the period commencing on January 1, 1933, and ending on June 30, 1933, to the aggregate expenditures for said purpose made in said period for all counties.

Section 6b of said House Bill 627, as amended by Amended Senate Bill No. 436 of the first special session of the 91st General Assembly, appropriated to the State Relief Commission three million dollars to be known as the state relief rotary fund, and the various counties of the state which had not issued bonds under Section 2 of said House Bill 501 and which counties were not authorized to issue bonds without a vote of

the people and counties which had theretofore issued only a portion of the bonds authorized by said Section 2 of House Bill 501, were authorized to obtain certain advances from said rotary fund. Said section contained provision for the repayment to the State Relief Commission of the amounts advanced to the counties from said fund.

Said Section 6*b* is the only section of said House Bill 627 which authorized advances or loans to be made by the State Relief Commission. There is no provision requiring counties to repay to the State Relief Commission any of the funds which they may have received from the money appropriated in Sections 6, 6*a* or 6*c*. Repayment is required only of money advanced under the provisions of Section 6*b*.

Consequently, I am of the view that the repayment required by Section 13 of said House Bill 663 of "funds advanced by said commission for the months of January, February, March, April, May and June, 1936," refers to funds advanced under Section 6*b*.

You also inquire as to whether the wording "the amount such county could have expended under the provisions of House Bill 627 * * * if such bonds had been issued", refers to the expenditure of the Carey bond funds that could have been made during that period.

Said House Bill 627 provided that it should be interpreted and applied as being effective from and as running from January 1, 1936. Under Section 6*b* of said house bill, therefore, counties which had not issued bonds prior to said date under Section 2 of said House Bill 501 and were not authorized to issue such bonds without a vote of the people and those counties which had issued only a portion of such bonds prior to said date which they were authorized to issue, were entitled to advances.

Section 13 provides in substance that counties that have, subsequent to January 1, 1936, issued bonds or notes under Section 2 of said House Bill 501, as amended, or shall, after the passage of said act, issue such bonds, or shall receive the equivalent proceeds of such bonds or notes, shall upon receipt of such proceeds repay the State Relief Commission for such portion of the funds advanced by it to said counties for the months of January to June, 1936, both inclusive, as equals the amount such county could have expended under the provisions of said House Bill 627 "if such bonds had been issued". The quoted clause apparently means "if such bonds had been issued prior to January 1, 1936."

No question has been made as to the meaning of the words "equivalent proceeds of such bonds or notes", and consequently no reference is made thereto.

If a county had issued bonds prior to January 1, 1936, the amount it could have expended under said House Bill 627 would be the unexpended and unencumbered portion of the proceeds of such bonds remaining on January 1, 1936, plus the amount that would have been allotted to it by

the State Relief Commission under said house bill. The allocations made to a county by the State Relief Commission under House Bill 627 could be expended only under the provisions of that act. Likewise, Section 4 of said house bill required each county to transfer the unexpended or unencumbered balance of any moneys in its emergency poor relief fund or in its county poor relief excise fund to the county relief fund and provided that all such moneys shall be used for poor relief according to the provisions of said house bill and not otherwise.

Of course, the amount of such allocations which would have been made to such counties which had not issued bonds prior to January 1, 1936 or which had not issued all they were authorized to issue, would not necessarily be the amount computed by the methods contained in Sections 6, 6a and 6c, nor would it necessarily be the amount which has actually been allocated to such counties by the State Relief Commission. Since allocations were made by the State Relief Commission on the basis of need and since the Supreme Court in the case of *State, ex rel. v. Wildermuth*, 131 O. S., 457, held that notwithstanding the mandatory language of Sections 6, 6a and 6c the State Relief Commission was vested with discretion in determining the amounts to be allocated to the counties, the amount which could have been expended by a county would be the amount which would have been allocated to it by the State Relief Commission under Sections 6, 6a and 6c, had such bonds been issued prior to January 1, 1936, plus the amount of the proceeds of such bonds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6183.

APPROVAL—CONTRACT FOR HIGHWAY IMPROVEMENT IN
SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, October 15, 1936.

HON. JOHN JASTER, JR., *Director, Department of Highways, Columbus, Ohio.*