the same with all convenient speed, such suit may be brought at the instance of any other resident of this state, but in no case shall the party bringing such suit, be required to give security or be liable for costs. * * * "

It will be noted that this part of Section 6319 provides only a penalty for violation of Section 6312. However, the last sentence of Section 6319 provides a penalty for violation of any other provision of the chapter (which contains Section 6311 of the General Code), and therefore provides a penalty for a violation of Section 6311.

The portion of Section 6319 of the General Code which provides a penalty for the violation of Section 6311, is as follows:

"A person, co-partnership or corporation violating any other provision of this chapter shall be liable to a penalty of one hundred dollars, to be recovered, with costs of suit, in a civil action in the name of the state, in the county in which the act was committed or omitted. Such suit may be brought at the instance of a resident of this state without security or liability for costs."

Therefore, in specific answer to your inquiry, I am of the opinion that:

1. By virtue of the provisions of Section 973 of the General Code, the use of the flood method for producing oil in the coal bearing or coal producing townships is prohibited, and by virtue of the provisions of Sections 6311 and 6312, General Code, the flood method used for the production of oil is prohibited as to oil wells outside of the coal bearing or coal producing townships.

2. By virtue of the provisions of Section 914 of the General Code, the chief oil inspector may issue any instructions and regulations to deputy oil inspectors to prevent and stop the use of the flood method for the recovery of oil from oil wells in coal bearing and coal producing townships, and may institute criminal prosecutions for the violation of the provisions of Section 973 of the General Code.

3. The Department of Industrial Relations, Division of Mines, may cause to be instituted, under the provisions of Section 6319 of the General Code, a civil suit for the recovery of a penalty of one thousand dollars by a resident of the state, for violation of Section 6312 of the General Code, when a person, co-partnership or corporation owning the land or lease upon which the flood method is used, or who is the owner or lessee of land adjoining or adjacent to the land on which such well is located, or is the lessee of any such land under a lease for oil or gas, fails to bring a suit within a reasonable time and to prosecute such suit with all convenient speed, and under the provisions of Section 6319 of the General Code the Department of Industrial Relations, Division of Mines, may cause to be instituted by a resident of the state a civil suit for the recovery of a penalty of one hundred dollars for violation of Section 6311 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2062.

COUNTY EMPLOYE—SALARY MAY NOT BE GARNISHEED.

SYLLABUS:

County officials are not proper parties as garnishees in proceedings in aid of execution to attach money in their hands due a county employe.

COLUMBUS, OHIO, July 7, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*
DEAR SIR:—Your communication of recent date is as follows:

"One E. M. is employed in the County Highway Department, under the supervision of the county engineer, and in the Municipal Court of Ashtabula, Ohio, a judgment was obtained against him by one D. R. M. The plaintiff having obtained the judgment, now seeks by proceedings in aid of execution to attach money in the hands of the county engineer and county auditor to apply on said judgment.

I have a letter from Attorney General Crabbe, under date of December 15, 1924, in which he held that garnishment would not apply to an employe of the state, inasmuch as there was no authority for making the state a party to the action.

I would appreciate your opinion as to whether or not the county officials should comply with this order."

As you indicate in your communication, the salary of an employe of the State of Ohio may not be garnisheed for the reason that the enforcement of any order against the garnishee would necessitate bringing suit against the state and there is no provision in the statutes authorizing such suits. It is true that Article I, Section 16, of the Ohio Constitution provides that "suits may be brought against the state, in such courts and in such manner, as may be provided by law." However, in the case of *Raudabaugh* vs. *State of Ohio,* 96 O. S. 513, it was held in the syllabus:

"1. A state is not subject to suit in its own courts without its express consent.

2. The provision of the Ohio Constitution, Article I, Section 16, as amended September 3, 1912, that 'Suits may be brought against the state, in such courts, and in such manner, as may be provided by law,' is not self-executing; and statutory authority is required as a prerequisite to the bringing of suits against the state."

There have been several opinions of this office holding categorically that the salary of a state employe may not be garnisheed. See Opinions of the Attorney General of Ohio for 1888-1900, Volume 4, pages 383, 466 (February 17, 1891, and August 17, 1892, respectively); Annual Report of the Attorney General for 1906, page 197 (June 8, 1906); Opinions of the Attorney General for 1916, Volume 1, page 348 (February 29, 1916); and Opinions of the Attorney General for 1927, Volume 1, page 356.

From the facts in your communication, it appears that the employe whose salary the judgment creditor is seeking to attach is not a state employe but rather a county employe. Nevertheless, the same rule is applicable to a county employe. The only opinion of this office which I can find that discussed the possibility of garnisheeing the salary of a county employe was one of the opinions above mentioned, viz., Opinions of the Attorney General of Ohio, 1888-1900, Volume 4, p. 383. In the course of that opinion the then Attorney General, David K. Watson, stated:

"In the tenth edition of Swan's Treatise, page 405, the author, in a foot note, says: 'Whether a claim of the defendant upon public moneys in the hands of a fiscal officer, such as the treasurer of a county, or state, or the like, is subject to garnishment, has not been decided by the Supreme Court. Probably, such officers cannot be garnisheed.' Howard, U. S., 20."

Further in the opinion it is stated that Mechem on Public Officers, Section 876, sets forth practically the same rule.

An examination of the 26th Edition of Swan's Treatise, 1926, at page 395, discloses the following statement:

"A claim of a defendant upon public moneys in the hands of a fiscal officer, such as the treasurer of the county, or the like, is not, probably, subject to attachment."

However, in Volume 4, Ohio Jurisprudence, Section 91, the following statement is made:

"Contrary to the general rule, the salary earned by a public official is subject to garnishment, in Ohio except where the salary has not been earned."

In support of the above statement, the commentator cites the cases of *Newark* vs. *Funk*, 15 O. S. 462, and *Cooper* vs. *Schooley*, 26 App, 313. An examination of these cases discloses that a municipal officer was involved in each case. It is to be here noted that Section 11760, General Code, provides in part that when a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any money, goods or effects which he has in possession of any person, or body politic or corporate, shall be subject to payment of the judgment by action. Moreover, Section 3615 of the General Code specifically provides that a municipality is a body politic and corporate and may sue and be sued. A perusal of the Ohio statutes discloses that there is no similar statute making a county a body corporate and authorizing it to sue and be sued. On the contrary, it has been held that a county is a mere subordinate political subdivision of the state. Therefore, I do not believe that the commentator's statement in Ohio Jurisprudence, as above noted, is applicable to counties.

A recent case of the Hamilton County Court of Appeals is directly in point. I refer to the case of *Southern Ohio Finance Corporation* vs. *Wahl, Jr.*, 34 O. A. R. 518, decided April 29, 1929, and reported in the June 17, 1930, issue of the Ohio Bar. The first two paragraphs of the syllabus of that case read:

"1. A county auditor is not a proper party garnishee in proceedings in aid of execution to attach salary due from county to judgment debtor.

2. A county is not subject to attachment, in proceedings in aid of execution, for a debt due to judgment debtor under Section 11760, General Code."

In the course of the opinion the court said:

"The salary of the defendant in error was a debt of the county of Hamilton, and the auditor was merely the superior of the defendant in error, but the auditor did not owe the defendant in error anything so far as the record shows. Therefore, the auditor, not being the employer of the defendant in error, was not a proper party as garnishee; and, if, in his representative capacity, it is attempted to make the county of Hamilton garnishee, we know of no authority permitting such action. Counties are the subdivisions and agencies of the state, provided for by the Constitution of the State of Ohio. They are constituent parts of the scheme of the permanent organization of the government of the state. *State ex rel Godfrey* vs. *O'Brien, Treas.*, 95 Ohio St., 166, 173, 115 N. E., 25; *State, ex rel. Guilbert, Aud.*, vs. *Yates, Aud.*, 66 Ohio St. 546, at page 551, 64 N. E. 570. Section 5, Article X, of the Consti-

tution of Ohio, provides: 'No money shall be drawn from any county or township treasury, except by authority of law.'

It may be urged that the language of Section 11760, General Code, authorizes garnishment in the instant case by virtue of the words 'money, goods, or effects * * * in the possession of any person, or body politic or corporate * * * .' The county is not a 'body politic.' *Board of County Commrs. of Portage County* vs. *Gates,* 83 Ohio St., 19, at page 30, 93 N. E., 255, 259.

'Now, a county is not a body corporate, but rather a subordinate political division, an instrumentality of government, clothed with such powers and such only as are given by statute, and liable to such extent and such only as the statutes prescribe.'

'A body politic * * * is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.' *Munn* vs. *Illinois,* 94 U. S. 113, 124, 24 L. Ed., 77."

In view of the express holding of the above case, I am of the opinion that county officials are not proper parties as garnishees in proceedings in aid of execution to attach money in their hands due a county employe.

Inasmuch as you indicate in your communication that the court has made an order requiring the county auditor and engineer to appear in the proceeding, said court's order should not be ignored. However, action should be taken to vacate the court's order by proper legal methods.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2063.

PURCHASE OF REAL ESTATE—BY SUPERINTENDENT OF PUBLIC WORKS—PROVISION FOR STATE'S PAYMENT OF TAXES WHICH ARE A LIEN ON THE PROPERTY VALID.

SYLLABUS:

The Superintendent of Public Works as director of said department, in purchasing real estate for the State under the authority of Section 154-40, *General Code, may, as a part of the terms of the contract for the purchase of such property, provide for the payment of taxes that are a lien upon such property.*

COLUMBUS, OHIO, July 8, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication requesting my opinion with respect to your authority as Superintendent of Public Works and as director of said department, to provide for the payment of certain taxes amounting to the sum of forty-seven dollars and seventeen cents ($47.17) assessed for the year 1929 upon a parcel of real property at Carthage in the city of Cincinnati, Ohio, owned by one Louise C. Phillips, which property the State of Ohio thereafter, on or about September 23, 1929, acquired by warranty deed from said Louise C. Phillips for use in connection with certain improvements to be erected and constructed at Longview Hospital in said city.