mentioned herein." As to this, however, it seems that the word "renewal" in and of itself imports a new lease on the same terms and for the same length of time as that in which it is contained, but without any covenant for a further extension. *Gardella* vs. *Greenburg*, 242 Mass. 405. I am of the opinion, therefore, that the renewal clause of this lease secures for the State of Ohio, at its option, the right to a renewal of said lease for a period of six months, commencing July 1, 1929, upon the same terms and conditions provided for in this lease, but without any right upon the part of the State of Ohio to any further renewal thereof. If it is your desire, therefore, to have continued renewals of said lease for terms of six months each, at the option of the state, through its proper representatives, provision therefor should be made in this lease; as the lease as now drawn only secures for the state the right to one renewal.

Finding said lease to be otherwise in proper form and properly executed, the same is hereby approved subject to the questions above suggested and discussed.

Said lease in triplicate is herewith enclosed; if it is your desire to secure for the State of Ohio, the right of one renewal of said lease only, at its option, said lease should be returned to this department in order to secure my formal endorsement of approval on said lease and the copies thereof; otherwise said lease will have to be rewritten in order to provide for the right to subsequent renewals.

Respectfully,
GILBERT BETTMAN,
Attorney General.

33.

CONTRACT—ADDITIONS TO PUBLIC BUILDINGS—LIABILITY ATTACHES UPON APPROVAL OF ATTORNEY GENERAL—WHEN APPROPRIATIONS OF 87TH GENERAL ASSEMBLY LAPSED.

SYLLABUS:

1. *The appropriations by the 87th General Assembly, House Bill No. 502, for additions and betterments to the Department of Public Welfare, by reason of the provisions of Section 1 of said Appropriation Bill, may not be expended for liabilities incurred subsequent to December 31, 1928.*

2. *No valid contract for such improvement, the aggregate cost of which exceeds three thousand dollars, can be lawfully entered into until the Attorney General, under the provisions of Section 2319 of the General Code, has certified his approval on the contract and bond. It follows that no liability is incurred under said contract until such approval is made.*

COLUMBUS, OHIO, January 28, 1929.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You recently submitted two communications in reference to the availability of funds appropriated for additions and betterments to the Department of Public Welfare by the 87th General Assembly. The first of said communications reads:

"The 87th General Assembly by H. B. 502 made certain appropriations for various institutions under the control of this Department. In each case

plans were prepared and approved by this Department, the Department of Public Works was authorized to enter into contract for the several improvements, advertisement for bids was made as provided by law, bids were received and in each case awarded to the lowest bidder. Contracts were prepared and signed by the bidders, encumbrance estimates prepared by the Department of Public Welfare and submitted to the Director of Finance. The Director of Finance in each case made a certificate that these funds were available, but the contracts had not been approved by your Department prior to January 1, 1929.

Kindly advise this department as to whether under this state of fact, the appropriations in question lapsed, or may they be considered as having been encumbered?"

The other communication which you submitted reads as follows:

"The 87th General Assembly in H. B. 502 appropriated certain sums for the erection of buildings for an institution for the feeble-minded at Apple Creek. Plans were submitted and approved by the Director of Welfare and the Department of Public Works was authorized to enter into contracts for the erection of such buildings. Advertisments for bids were made, as provided by law and bids were submitted and contracts were awarded to the low bidders. These contracts were signed by the bidders, encumbrance estimates were made in the Department of Welfare and transmitted to the Director of Finance.

All of these acts were done prior to December 31, 1928, and the Director of Finance took no action on these encumbrance estimates, and the status of the matter remains now what it was on December 31, 1928.

Will you kindly advise this Department whether under this state of fact, the appropriations provided by H. B. 502 are lapsed or may they be considered as having been encumbered?"

Section 22 of Article II of the Ohio Constitution provides:

"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."

Inasmuch as House Bill No. 502 of the 87th General Assembly was filed in the office of the Secretary of State on May 11, 1927, and due to the fact that the expenditures which you mention are for purposes other than current expenses for the operation of the State Government, the appropriations therein for such purposes did not become effective until August 9, 1927. Opinions of the Attorney General, 1927, page 1242. The second branch of the syllabus of said opinion reads:

"An appropriation made by the General Assembly or the unexpended balance of such an appropriation lapses at the end of two years from the date when such an appropriation became effective, whether or not such appropriation or balance of an appropriation has been duly encumbered according to law."

From the foregoing, it will be obvious that the questions you present do not involve a consideration of Section 22 of Article II, supra, but rather must be determined from the provisions of the Appropriation Bill itself.

Section 1 of the Appropriation Act under consideration, among other things, provides:

> " * * * The sums herein appropriated in the column designated 'Six Months', or in the column designated 'Eighteen Months' shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1927, or incurred subsequent to December 31, 1928; those appropriated in the column designated 'Year' shall not be expended prior to January 1, 1928, nor to pay liabilities incurred subsequent to December 31, 1928."

By reason of the provisions of the Appropriation Act, as above set forth, the sole question presented by your communications is whether or not the action taken in each of the cases which you present can be regarded as liabilities incurred, within the meaning of said Appropriation Act.

In an opinion of my predecessor, being No. 2958 issued December 1, 1928, consideration was given to the question as to what constitutes the incurring of a liability under the provisions of the Appropriation Act above mentioned, with reference to the entering into contracts by the Director of Highways. The syllabus of said opinion reads:

> "Where, prior to January 1, 1929, a definite contract was entered into between the State of Ohio and a board of county commissioners, for the improvement of a state road, pursuant to the provisions of Section 1200, General Code, a liability upon the part of the state has been incurred and consequently moneys appropriated for such purpose by the 87th General Assembly may be expended for such improvement after December 31, 1928.
>
> In a road improvement proceeding under provisions of law in effect prior to the adoption of the Norton-Edwards act, no liability upon the part of the state is incurred until the contract for the improvement is executed and, accordingly, unless such contract be executed prior to January 1, 1929, the appropriation lapses.
>
> Where the Director of Highways is undertaking the improvement of a state road without the cooperation of any subdivision of the state the contract for such improvement must be entered into on or before December 31, 1928, in order that the moneys appropriated for such purposes by the 87th General Assembly may be available therefor."

The following is quoted from the body of said opinion:

> "It is sufficient to say that I am unable to discover any definite commitment on the part of the state until the contract for the improvement has actually been let pursuant to the usual procedure. The mere advertisement for bids is not controlling, since you have the right to reject any or all bids. I accordingly feel that there is no liability on the part of the state in this character of an improvement so as to prevent the lapsing of an appropriation therefor until a contract for the improvement has been properly entered into by you in accordance with law. I am aware of the fact that Section 1206 of the General Code, which authorizes and directs you to award the contract to the lowest responsible bidder, also extends to the bidder the right to enter into the contract and furnish the bond within ten days after notification that he has been awarded the contract. I do not feel, however, that the mere award of the contract without the contract being actually entered into would

create such a liability as would prevent the lapse of the appropriation. In my opinion the definite commitment does not occur until the contract is made."

Applying the conclusions reached by my predecessor, with which I agree, funds are encumbered and liability is incurred in connection with the building projects under consideration when the contract between the officers of the State and the bidder is properly executed according to law.

Sections 2314 to 2352, inclusive, of the General Code, prescribe the method of procedure with reference to the improvements of the character which you describe. Section 2314, in substance, provides that when any building or structure for the use of the State or any institution supported in whole or in part by the State is to be constructed, or when additions, alterations or improvements are to be made and the aggregate cost thereof exceeds $3,000, the owner shall cause to be made full and accurate plans, etc. The architect is further required to prepare accurate estimates of each item of expense and of the aggregate cost thereof. Section 2315, General Code, among other things, provides that the plans required in the preceding section shall be approved by the State Building Commission, which powers, by virtue of the provisions of the Administrative Code, are exercised by the Superintendent of Public Works. Section 2316, General Code, in substance, prescribes the form of bond. Sections 2317 and 2318, General Code, provide for the publication of notice to bidders which shall be for four consecutive weeks, the last publication to be at least eight days next preceding the day for opening the bids. Said sections last mentioned also provide for the filing of copies of the plans and specifications for the examination of prospective bidders and others interested. Section 2319, General Code, which is especially pertinent in connection with your inquiries, provides:

"On the day and at the place named in the notice, such owner shall open the proposals, and shall publicly, with the assistance of the architect, or engineer, immediately proceed to tabulate the bids upon triplicate sheets, one of which shall be filed with the Auditor of State. A proposal shall be invalid and not considered unless a bond, in the form approved by the State Building Commission, with sufficient sureties, in a sum equal to the total sum of the proposal, is filed with such proposal, nor unless such proposal and bond are filed in one sealed envelope. After investigation which shall be completed within thirty days, the contract shall be awarded by such owner to the lowest bidder, or bidders.

No contract shall be entered into until the Industrial Commission of Ohio has certified that the corporation, partnership, or person so awarded the contract has complied with each and every condition of the act of February 26, 1913, and of all acts amendatory and supplementary thereto, known as the Workmen's Compensation Law, and until, if the bidder so awarded the contract is a foreign corporation, the Secretary of State has authorized to do business in this state, and until, if the bidder so awarded the contract is a person or partnership non-resident of this state, such person or partnership has filed with the Secretary of State a power of attorney designating the Secretary of State as his or its agent for the purpose of accepting service of summons in any action brought under the provisions of Section 2316 of the General Code or under the provisions of the workmen's compensation law; and until the contract and bond shall be submitted to the Attorney General and his approval certified thereon."

Section 2288-2, General Code, which relates to the certificate of the Director of Finance, provides:

"It shall be unlawful for any officer, board or commission of the state

to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the Director of Finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations."

From the statements in your communications it appears that all of the necessary steps outlined in the sections of the Code hereinbefore discussed have been complied with excepting in the first instance being considered the Attorney General had not certified his approval on the contract and bond provided under Section 2319, supra. In the other case being considered it appears that the Attorney General had not certified his approval upon the contract and bond. It further appears in the second instance that the Director of Finance did not certify as to the availability of the funds under the provisions of Section 2288-2, supra.

It must be conceded that Section 2319, supra, in certain and unambiguous language provides, among other things, that no contract shall be entered into "until the contract and bond shall be submitted to the Attorney General and his approval certified thereon." In the case you mention it appears that the contract was signed, which is the usual practice in connection with the execution of such contracts. However, the law contemplates that the approval of said bond and contract shall be made and certified thereon by the Attorney General prior to the signing of the contract. Undoubtedly the signing of the contract prior to such approval would not invalidate the same if the approval is eventually obtained. However, inasmuch as such approval is one of the material steps necessary to be taken, as a matter of law, before a contract can be entered into, it must be concluded that where no such approval has been made, there can be no valid contract. I do not find any specific decisions under this particular section dealing with a question where the Attorney General has failed to approve. However, the Supreme Court of Ohio in the case of *State ex rel.* vs. *Tracy,* 102 O. S. 694, construed the provisions of Section 2288-2, General Code, which it is believed by analogy applies to the question herein under consideration. In that case the Board of Administration had entered into a contract in pursuance to a specific appropriation to purchase a large tract of land to be used by the State. The section hereinbefore mentioned which requires the Director of Finance to certify as to the availability of funds at that time required the Auditor of State to make such a certificate and no such certificate had been made at the time the contract was entered into. The court in its per curiam opinion stated in the body thereof:

"And this court is of the opinion that compliance with the requirements of that section is a condition precedent to the authority of the board to enter into the contract referred to."

From the foregoing, it appears that the courts have conclusively determined that no valid contract can be entered into without the certificate of the Director of Finance. The law is just as positive and certain in its requirements that the approval of the contract and bond shall first be made by the Attorney General before a valid contract can be entered into. Therefore, it must be concluded that, in the absence of either action by the Director of Finance or the Attorney General, a valid contract can not be made. Inasmuch as no valid contract was entered into in the case which you present prior to January 1, 1929, it logically follows that no liability was incurred within the meaning of Section 1 of the Appropriation Bill.

Based upon the foregoing, and in specific answer to your first inquiry, you are advised:

First, that the appropriation by the 87th General Assembly, House Bill No. 502,

for additions and betterments to the Department of Public Welfare, by reason of the provisions of Section 1 of said Appropriation Bill, may not be expended for liabilities incurred subsequent to December 31, 1928.

Second, no valid contract for such improvements, the aggregate cost of which exceeds three thousand dollars, can be lawfully entered into until the Attorney General, under the provisions of Section 2319 of the General Code, has certified his approval on the contract and bond. It follows that no liability is incurred under said contract until such approval is made.

In view of the conclusions I have reached in reference to the first inquiry under consideration, it will be unnecessary specifically to answer your second inquiry, since neither the approval of the Attorney General nor the certificate of the Director of Finance was had with respect to the contracts under consideration prior to January 1, 1929.

Respectfully,
GILBERT BETTMAN,
Attorney General.

34.

APPROVAL, BONDS OF FREEPORT VILLAGE SCHOOL DISTRICT, HARRISON COUNTY—$32,000.00.

COLUMBUS, OHIO, January 29, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

35.

APPROVAL, BONDS OF VILLAGE OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—WATER WORKS BONDS—$3,000.00.

COLUMBUS, OHIO, January 29, 1929.

Industrial Commission of Ohio, Columbus, Ohio.