Such language is self-operating. The statute itself creates the district for the purposes of the tax levy without any action on the part of the board of county commissioners. Such language specifically gives to the board of county commissioners the authority to levy a tax for poor relief throughout the special taxing unit therein provided.

Specifically answering your inquiries, it is my opinion that:

1. Under the authority of Amended Substitute Senate Bill No. 40 enacted by the Ninety-third General Assembly, the automobile license tax funds collected by authority of Sections 6291, et seq., General Code, prior to the effective date of such act, may not be transferred by way of loan to the poor relief distributing fund prescribed in paragraph 3a of Section 6309, General Code.

2. Motor vehicle license taxes collected after the effective date of such Amended Substitute Senate Bill No. 40 may be loaned to the poor relief distributing fund under authority of paragraph 3a of Section 6309-2 of the General Code.

3. Section 2 of House Bill No. 675 of the Ninety-third General Assembly creates a special taxing unit out of that part of the county outside of municipalities located therein and authorizes the county commissioners to levy a tax for poor relief upon the taxable property within such special taxing district.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

831.

AUDITOR OF STATE — INTERPRETATION TERM "PRE-AUDITS" AS USED IN HOUSE BILL 675, SECTION 6, 93rd GENERAL ASSEMBLY—EXAMINATION, CLAIMS FOR POOR RELIEF—CHARGE AGAINST POOR RELIEF AREAS —EXPENSES AND COMPENSATION OF EXAMINERS— SUCH ACT DOES NOT TAKE FROM AUDITOR DUTIES AND COMPENSATION PROVIDED BY SECTIONS 284, 287, 288 G. C.

SYLLABUS:

1. The term "pre-audits," as used in Section 6 of House Bill No. 675 of the Ninety-third General Assembly, means examinations of claims for poor relief under authority of such act, and the determination of the amount thereof legally payable thereon by the local relief area.

2. Such Section 6 does not constitute a specific appropriation of funds for the purpose of pre-audits by the Auditor of State, but rather

authorizes a charge to be made by him against poor relief areas within the limitations therein set forth.

3. The expenses and compensation of examiners of the Auditor of State for services performed in connection with the administration of such House Bill No. 675 are limited by and are payable only as set forth in Section 6 of such act.

4. The Auditor of State is not entitled to compensation for any services performed by him under authority of such House Bill No. 675, except as provided in Section 6 of such act.

5. House Bill No. 675 does not take from the Auditor of State the duties imposed upon his office by virtue of Section 284, General Code, compensation for which is provided in Sections 287 and 288, General Code.

COLUMBUS, OHIO, June 29, 1939.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: Your request for an opinion reads as follows:

> "It becomes necessary to request a formal opinion regarding Section 6, Substitute House Bill No. 675, on the basis of the following questions:
>
> 1. Does the limitation of the total cost of examinations conducted by pre-audit examiners in a local relief area under the direction of the state auditor include a specific appropriation of an amount for such purpose; or, if so, does such appropriation by this provision violate the provisions of the State Constitution?
> 2. If the *'mandatory'* provision of this section requires a *'continuous'* pre-audit within a *'limitation of cost'* in each local area, can there be a division of the *'required services'* of these examiners under the *entire act,* in order to certify *'completed reports'* to the state director and local relief authorities?
> 3. If duties are imposed upon the state auditor other than those which come within the term *'pre-audit'* as used in this act, against which fund in the local relief areas should the state auditor make charges for the cost of such services?
> 4. Does the limitation imposed herein prohibit the auditor of state from making a charge back against the local relief area for such additional services rendered outside of pre-audit examinations?"

Such request necessitates an interpretation of the language of Section 6 of House Bill No. 675 as enacted by the Ninety-third General Assembly. Such section reads:

"It shall be the duty of the auditor of state to make continuous pre-audits of the poor relief expenditures of each local relief area, and file with the state director and each local relief authority affected thereby a certified copy of such audits.

The cost of the pre-audit represented by the compensation and expense of the examiner or examiners conducting such pre-audit shall be a direct charge against the poor relief funds of the local relief area audited, but shall not be included within the limitations on administrative costs set forth in this act. Such examiners shall be compensated and receive expenses at the rate set forth in section 276 of the General Code. In local relief areas where a full time examiner is not necessary, the state auditor shall combine a number of local relief areas into a single poor relief pre-audit district, and each local relief area in such district shall bear a proportionate share of the cost of the examiner.

The total cost of such pre-audits within a local relief area shall not exceed three-quarters of one per centum of the amount of contributions by the state to such local relief area from appropriations to the department of public welfare for poor relief."

In order to answer your inquiries, it is important to know the legislative meaning of the word "pre-audits." An examination of available general and legal dictionaries fails to disclose any assigned meaning for such term. Similarly, an examination of text-books on accounting fails to disclose any assigned meaning for such term. However, a statute may not be held invalid if any reasonable and practical construction can be given to its language. Mere difficulty in determining such meaning will not render it nugatory. Eastman v. State, 131 O. S., 1. It is a general rule of statutory interpretation that if the legislature uses a word having a technical meaning only, such technical meaning shall be given to the word in its interpretation. Industrial Commission v. Roth, 98 O. S., 34; Schario v. State, 105 O. S., 535. However, if no ordinary or technical meaning is to be found for the word, resort should be made to the context in which the word is found for the purpose of determining its meaning. In Webster's New International Dictionary, I find the following definition of the prefix "pre-": "A prefix denoting priority (of time, place, or rank) occurring, especially in verbs, in words from the Latin, and also freely combined with English words of Latin and other origin." If the prefix "pre-" attached to the term audit was used by the legislature in the sense of designating priority of time, it would appear that the term meant to require the Auditor of State to do some act prior to an audit. However, such interpretation is inconsistent with the last clause of the same paragraph: "and file with the state director and each local relief authority affected thereby a certified copy of such audits." From such clause it is evident that the word "pre-audit", as used by the legis-

lature, includes the making of some sort of audit rather than the doing of work preliminary to an audit.

In Section 4 of Amended Senate Bill No. 465 of the Ninety-second General Assembly (117 O. L., 881) the legislature required the Auditor of State to make pre-audits "of the financial records and relief expenditure records in the several counties" and file "a certified copy of such complete audit * * *" Such act further authorized the Auditor of State to make outside investigations of relief clients throughout the state, and to purchase credit reports for the relief director. The total cost to the Auditor "for examinations, reports and services" should not exceed one per centum of the relief funds apportioned by the state.

In Section 4 of Amended Substitute House Bill No. 99 of the Ninety-third General Assembly the same language is contained as was used in such Amended Senate Bill No. 465. When House Bill No. 675 was introduced in the legislature, it contained the following language: "It shall be the duty of the auditor of state to make continuous pre-audits and statistical analysis of the financial records and relief expenditures of the several counties" and "file * * * a certified copy of such completed audits and analysis * * * and further provided that the cost of said services "shall not exceed ½ of one per centum of the relief funds encumbered by each of the counties of the state respectively." Before such bill was enacted, it was subjected to numerous amendments which included the deletion of the language which required the Auditor of State to make a statistical analysis of the financial records and relief expenditures of the several counties; and deleted the language which required the Auditor to make a continuous pre-audit of the financial records of the several counties. Neither of such acts numbered 91 and 675 required the State Auditor to investigate the eligibility of relief recipients throughout the state.

From my examination of the administrative practice, it would appear that the officials upon whom the duty of enforcement of the former acts using the term "pre-audit" have construed such term to mean an audit made from the records and vouchers prior to the making of the expenditures. While such interpretation is not binding upon the courts, if the administrative interpretation is uniform and over a continuous period of time, it is entitled to consideration and should not be disturbed unless clearly erroneous. State, ex rel. Gallinger, v. Smith, 71 O. S., 13; State v. Evans, 21 O. App., 168. Since the term "pre-audit" as used in such Section 6 is clearly ambiguous, I am not disposed to disregard such administrative interpretation except in so far as the legislature has modified it by a specific provision of the act.

The act under consideration has limited the matters of which the pre-audit is to be made, namely, relief expenditures. The Auditor is no longer required to make a pre-audit of the financial records nor of the relief expenditure records. In other words, it appears that the legislature has used the term "audit" in its more restricted sense of an audit of a bill or

obligation, which includes the examination of the account, its adjustment or allowance, disallowance or rejection, and the determination of the amount legally payable thereon, if any. Such meaning of the term "audit" has been given by the courts, when the term is used under similar circumstances to that under consideration. See People, ex rel. Myers. v. Brown, 114 N. Y., 317, 323; State, ex rel. Langer, v. Kositzky, 38 N. Dak., 616, 626; Deemer v. National Surety Company, 132 Ia., 549, 558.

It would, therefore, appear that under authority of Section 6 of House Bill No. 675 the Auditor of State has no duty other than to make a continuous audit of proposed relief expenditures, which audit is to be made prior to the expenditures of the funds by the subdivision, and to file copies of such audit with the officials designated in the act. This section provides that his examiners may be paid at the rate specified in Section 276, General Code, which cost is payable by the local relief district or area, but "the total cost of such pre-audits within a local relief area shall not exceed three-quarters of one per centum of the amount of contributions by the state to such local relief area from appropriations to the department of public welfare for poor relief."

In your first question, you inquire whether the language just quoted constitutes a specific appropriation of three-fourths of one per centum of the contribution of the state to local relief areas to the State Auditor for the purposes of such section. The language of the section negatives any legislative intent that it be considered as an appropriation. The language of the act is that "the cost of the pre-audit * * * shall be a direct charge against the poor relief funds of the local relief area audited." The language of the last paragraph merely puts a maximum limit upon the amount of the charge. The legislature has in other acts appropriated the sum to be paid to the local relief areas for poor relief under the restrictions contained in House Bill No. 675. Since the legislature has expressed a plain meaning in its language, it is not within the province of an interpreter to read into the language any other meaning than so expressed, even though he may be of the opinion that some other meaning was intended by the legislature. The justice or wisdom of the statute may not be considered. Cincinnati Street Railroad Company v. Horstman, 72 O. S., 93; Hayner v. State, 83 O. S., 178. I, therefore, must answer your first inquiry in the negative.

Your second inquiry for similar reasons requires a negative answer, for the language of the act is that "the total cost of such pre-audits * * * shall not exceed three-quarters of one per centum of the amount * * *."

The whole of Section 6 of House Bill No. 675 concerns the duties of the Auditor of State with reference to pre-audits and the method of compensating for such service, and no other matter. In enacting such section the legislature deleted the language which authorized the Auditor to make a statistical analysis and eliminated from such section the lan-

guage contained in prior acts requiring the Auditor to make an outside examination concerning persons eligible for relief. It would, therefore, appear that whatever services may be performed by the Auditor under authority of such section must be pre-auditing duties and are chargeable to local relief areas subject to the limitation as to the amount set forth in such section. From an examination of the entire act it appears that the duties imposed upon the Auditor of State by such act are, first, of a member of the poor relief board of appeals (Section 5 of act); second, of making a continuous pre-audit of poor relief expenditures of each local relief area (Section 6 of act); and, third, of issuing warrants on the Treasurer of State in accordance with the vouchers issued by the state director (Section 12 of act). I am unable to find in the act any provision requiring any duties to be performed by examiners other than those of making the pre-audits. There is no provision in the act for additional compensation to the State Auditor for the additional duties imposed upon him thereby.

I do not take the view that the Bureau of Inspection and Supervision of Public Offices may not have duties in connection with the examination of the offices and accounts of the local relief authorities under authority of Section 284, General Code, which requires the Auditor to determine whether a claim "is a valid claim against the state and legally due and that there is money in the state treasury duly appropriated to pay it and that all requirements of law have been complied with." State v. Tracy, 129 O. S., 550. You are already familiar with the provisions of Sections 287 and 288 of the General Code which provide for the compensation of the examiners of the Bureau and services rendered under authority of Section 284, General Code.

Specifically answering your inquiries, it is my opinion that:

1. The term "pre-audits," as used in Section 6 of House Bill No. 675 of the Ninety-third General Assembly, means examinations of claims for poor relief under authority of such act, and the determination of the amount thereof legally payable thereon by the local relief area.

2. Such Section 6 does not constitute a specific appropriation of funds for the purpose of pre-audits by the Auditor of State, but rather authorizes a charge to be made by him against poor relief areas within the limitations therein set forth.

3. The expenses and compensation of examiners of the Auditor of State for services performed in connection with the administration of such House Bill No. 675 are limited by and are payable only as set forth in Section 6 of such act.

4. The auditor of State is not entitled to compensation for any services performed by him under authority of such House Bill No. 675, except as provided in Section 6 of such act.

5. House Bill No. 675 does not take from the Auditor of State the

duties imposed upon his office by virtue of Section 284, General Code, compensation for which is provided in Sections 287 and 288, General Code.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

832.

PUBLIC EMPLOYEES RETIREMENT SYSTEM — MEMBERSHIP—EXEMPTION—WHERE ORIGINAL MEMBER DESIRES EXEMPTION—MUST FILE WRITTEN APPLICATION WITHIN THREE MONTHS AFTER ACT WENT INTO EFFECT—SECTION 486-33 G. C.—LITIGATION—CLAIM WRONGFUL DISCHARGE OR POSITION ABOLISHED—DOES NOT RELIEVE FROM NECESSITY OF FILING SUCH APPLICATION.

SYLLABUS:

1. By the express terms of the first proviso of Section 486-33, General Code, when a public employee, who is an original member of the public employees retirement system, desires to be exempted from membership, he must have filed a written application for such exemption with the retirement board within three months after the act in which said section was enacted went into effect.

2. The fact that such a member was engaged in litigation during said three months period, for the purpose of determining whether he had been wrongfully discharged from his position as a public employee, or determining whether or not his position had been unlawfully abolished, does not relieve him from the necessity of filing a written application for exemption from membership with the retirement board within three months after the effective date of the act in case he desires to be exempted, nor does such fact extend the three months period fixed by the Legislature within which such written application for exemption must have been filed with the retirement board.

COLUMBUS, OHIO, June 29, 1939.

MR. WILSON E. HOGE, *Secretary, Public Employes Retirement System, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

> "When the various employe groups were granted eligibility to membership in the Public Employes Retirement System, the law provided that every employe in the service at that time could claim exemption from participation in the Retirement System if