

Following the above 1926 opinion, it would seem that your first question should be answered in the negative.

Your second question with reference to what fees the recorder should charge for recording such plat is answered by the above 1934 opinion. In other words, the recorder should charge the fees provided in section 2779, General Code. This section reads as follows:

“For recording assignment or satisfaction of mortgage or discharge of a soldier, twenty-five cents; for each search of the record, without copy, fifteen cents; for recording any plat not exceeding six lines, one dollar; and for each additional line, ten cents.”

In view of the above, it is my opinion, in specific answer to your inquiries:

1. A county recorder is unauthorized to record a lease which contains a map or a plat describing the property in such lease by merely pasting the plat on the record.

2. It is the duty of the county recorder to charge the fees prescribed in Section 2779, General Code, for recording a map or plat describing the property in a lease.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5651.

TRANSFER OF FUNDS—CONSERVATION FUNDS SPENT FOR
PARKS AND LAKES MAY NOT BE RECOVERED FROM
GENERAL FUND.

SYLLABUS:

1. *In the absence of legislative authority therefor, moneys may not be transferred or appropriated from the general fund of the state to the uses and purposes fund of the Division of Conservation to replace moneys which were expended during the life of House Bill 531 of the 91st General Assembly pursuant to appropriations therein contained for the Bureau of Lakes and Parks from the uses and purposes fund of such division.*

2. *Obligations of the Bureau of Lakes and Parks of the Division of Conservation which were duly contracted during the life of such House Bill 531 are payable from the uses and purposes fund of such division after the effective date of the repeal of the appropriations contained in*

such House Bill 531; but the mere existence of encumbrances of moneys in the uses and purposes fund for the Bureau of Lakes and Parks does not authorize expenditures pursuant to such encumbrances after the effective date of the repeal of such House Bill 531 unless obligations were duly contracted prior thereto.

COLUMBUS, OHIO, May 29, 1936.

HON. L. WOODDELL, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“Under the provisions of Section 1, House Bill 531 (General Appropriation Bill for the biennium beginning January 1, 1935 and ending December 31, 1936) the appropriations made to the Bureau of Lakes and Parks, Division of Conservation, amounting to \$227,350.00 were appropriated from the balance in the Uses and Purposes Fund of this Division. Therefore, in accordance with this provision the Department of Finance and the Auditor of State charged out of our Uses and Purposes Fund the 1935 appropriations for the Bureau of Lakes and Parks.

However, upon the enactment of Amended Senate Bill 401 a portion of Section 1 with reference to our appropriations was amended as follows:

‘The appropriations made to the Bureau of Lakes and Parks, amounting to \$372,600.00 are hereby appropriated out of any moneys in the state treasury to the credit of general revenue fund, not otherwise appropriated.’

Senate Bill 401 became effective February 7, 1936. Shortly thereafter we requested that the Division of Budget of the Department of Finance credit our Uses and Purposes Fund with the sum in the amount of \$180,161.53, which was the total of the appropriations which had been transferred to the Bureau of Lakes and Parks. To date this credit has not been given our Uses and Purposes Fund and we have been verbally advised by the Division of Budget that inasmuch as Senate Bill 401 does not repeal House Bill 531, but only amends certain sections thereof that it is their opinion that all expenditures and obligations encumbered from the funds of the Bureau of Lakes and Parks during the year 1935 and prior to February 7, 1936 should be appropriated from our Uses and Purposes Fund.

These expenditures and encumbrances for the year 1935 are as follows:

Personal Service	\$33,459.31
Maintenance	10,877.56
Additions & Betterments	19,603.22
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Total.....	\$63,940.09

For the period January 1, 1936 to February 7, 1936, expenditures and encumbrances amounting to approximately \$5,-118.16 have been made from the appropriations of the Bureau of Lakes and Parks.

It is our opinion that it is the intent and purposes of Section 1, Senate Bill 401 that the above stated expenditures and encumbrances should be appropriated from the General Revenue Fund. However, we will kindly request that you render your interpretation of this portion of the General Appropriation Act."

House Bill 531, containing appropriations to the Division of Conservation, Bureau of Lakes and Parks, in the total amount of \$386,150.00, provided at page 76 as follows:

"Appropriated from Hunting, Fishing and Lake Erie License Fees. The appropriations made to the Bureau of Lakes and Parks, amounting to \$386,150.00, are hereby appropriated from the balance in the Uses and Purposes Fund of the Division of Conservation."

This act was filed in the office of the Secretary of State June 18, 1935.

Amended Senate Bill No. 401, filed in the office of the Secretary of State February 7, 1936, which act repealed Section 1 of House Bill 531 containing the appropriation hereinabove mentioned to the Division of Conservation, Bureau of Lakes and Parks, appropriates to that bureau a total of \$391,600.00 for the present biennium. This figure is set forth in the act at page 79 as follows:

"Total Bureau Lakes and Parks (for
general revenue fund).....\$391,600.00."

The language appearing at the end of the appropriation items for the Division of Conservation at page 79 of the act is as follows:

"The appropriations made to the Bureau of Lakes and Parks, amounting to \$372,600.00 are hereby appropriated out

of any moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated.”

No reason is seen why there should be a variation in the figures in which the total designated as “for general revenue fund” is set forth at \$391,600.00 and subsequently the appropriations to the Bureau of Lakes and Parks are set forth as \$372,600.00. In any event, it is obvious that the legislature intended that the appropriations contained in Amended Senate Bill 401 to this bureau should be made from the general revenue fund and not from the uses and purposes fund as was provided in House Bill 531.

In your letter you state that during the period between the effective date of the first general appropriation act, House Bill 531, and February 7, 1936, the date when the second general appropriation act, Amended Senate Bill 401, was signed by the Governor and filed in the office of the Secretary of State, the total expenditures and encumbrances made under such bill for the Bureau of Lakes and Parks amounts to \$69,058.25. You do not advise how much of this total has been actually expended from the uses and purposes fund and how much was obligated pursuant to encumbrances and how much was encumbered but not obligated. It is necessary to break down the total of expenditures and encumbrances and consider these amounts separately.

With respect to any amounts actually expended under House Bill 531 pursuant to appropriations for the Bureau of Lakes and Parks out of the uses and purposes fund, I know of no authority whereby moneys may be drawn from the general fund to the credit of the uses and purposes fund to replace such expenditures. Neither the Controlling Board nor any other authority has been granted power to effect a transfer of such moneys from the general fund to the uses and purposes fund. Unless and until the legislature appropriates such moneys from the general fund or makes provision for such transfers, it is clear that the authority to recoup these expenditures which have been made from the uses and purposes fund must be denied.

Coming to the matter of the status of moneys in the uses and purposes fund which were duly encumbered under House Bill 531 pursuant to appropriations for the Bureau of Lakes and Parks from such fund but which moneys were not spent during the life of House Bill 531, a more difficult question is presented. Incidentally, it should be noted that you seem to assume that all appropriations to the Bureau of Lakes and Parks contained in House Bill 531 were repealed on February 7, 1936, the date when Amended Senate Bill 401 was signed by the Governor and filed in the office of the Secretary of State. As to this, Amended Senate Bill 401 was not passed as an emergency measure and although appropri-

ations for personal service and maintenance items made to the Bureau of Lakes and Parks were probably appropriations for current expenses of the state government and its institutions within the meaning of the phrase as used in Article II, Section 1d of the Constitution and therefore not subject to referendum, the appropriations to the Bureau of Lakes and Parks as contained in Amended Senate Bill 401 under the head of "Additions and Betterments" amounting to \$286,360.00 could hardly be said to be appropriations for current expenses and such last mentioned appropriations accordingly did not go into effect until ninety days after the act was filed in the office of the Secretary of State. It is apparent that many of the items of appropriation contained in House Bill 531 to the Bureau of Lakes and Parks from the uses and purposes fund were not repealed until ninety days after February 7, 1936.

With respect to funds which were duly encumbered under appropriations made to the Bureau of Lakes and Parks by House Bill 531 from the uses and purposes fund, these funds must be divided into two classifications: those against which obligations have been incurred and those which were merely encumbered but not obligated to be paid by contract or otherwise.

As to moneys obligated pursuant to encumbrances made under House Bill 531 during the life of such act, Opinion No. 5188, rendered February 26, 1936, is pertinent. The third branch of the syllabus is as follows:

"The veto of an item of appropriation does not render void obligations of the state duly contracted prior to such veto which are payable from such item."

The foregoing opinion quotes at length from an opinion of this office appearing in Opinions of the Attorney General for 1931, Vol. II, page 933, which clearly distinguishes a situation where moneys are encumbered and the certificate of the Director of Finance issued under Section 2288-2, General Code, but no obligation incurred pursuant to such encumbrance, and a situation where the state has entered into obligations or contracts pursuant to such encumbrance certificate. Section 2288-2, General Code, provides as follows:

"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."

The syllabus of the above mentioned 1931 opinion reads :

“1. A certification made by the Director of Finance by authority of Section 2288-2, General Code, to the effect that there exists a sufficient balance in a certain appropriation to meet a proposed expenditure therefrom, not otherwise obligated to meet precedent obligations, may be cancelled, and the appropriation treated as though the certificate had never been made, when the project invoking the proposed expenditure is abandoned without incurring any obligation in pursuance thereof.

2. Likewise, when a proposed expenditure or obligation involving an expenditure of money from a certain appropriation has been lessened by the board, officer or commission proposing to make the expenditure or incur the obligation, a certificate which may have been made by the Director of Finance in pursuance thereof may be cancelled and a new certificate issued in conformity with the changed situation.

3. When a certificate issued by the Director of Finance in pursuance of Section 2288-2, General Code, has been cancelled for a proper reason, the records of the Director of Finance should show that fact, and the original certificate and all copies and duplicates thereof should be taken up and destroyed or marked to show that they have been cancelled.”

At page 935 it was recognized that there was no authority vested in the Director of Finance to cancel an encumbrance after obligations had been incurred pursuant thereto. The language is as follows :

“Until it is obligated by the making of a contract or expended by the drawing and issuing of warrants against it, it may, in my opinion, be made available for certification as a balance in the appropriation by the abandonment of the former proposed expenditure or obligation, and the canceling of the former certificate.

The project involving an expenditure or an obligation for which a certificate is made must be abandoned in fact before it may be certified that the amount of the proposed expenditure or obligation is ‘not otherwise obligated to pay precedent obligations,’ and the Director of Finance must be assured of that fact before he is justified in treating the appropriation as not having been encumbered on account of the previous certificate. A contract made in pursuance of a certification must be in fact cancelled, and the Director of Finance should be fully satisfied

that no liability whatever has been incurred in reliance upon a certification of a balance in an appropriation made by him, before he is justified in considering the certification as cancelled and the balance covered by it as still being in the appropriation and available for future certification purposes.”

Undoubtedly it was within the legislative power in the enactment of Amended Senate Bill 401 to have provided that upon the effective date of the act all obligated encumbrances of moneys in the uses and purposes fund for the Bureau of Lakes and Parks should be transferred to the general fund. An examination of the provisions of the act, however, fails to disclose provision for such transfers of obligated encumbrances. To effectuate such transfers the Director of Finance would be compelled to cancel encumbrances of moneys in the uses and purposes fund obligated for the payment of specific contracts and issue new encumbrances to cover such obligations against the general revenue fund. The 1931 opinion, *supra*, expressly held that the authority to cancel an encumbrance was limited to cases where no obligations had been incurred pursuant thereto. It follows in my judgment that obligations duly entered into during the life of House Bill 531 pursuant to appropriations therein contained for the Bureau of Lakes and Parks for the payment of which moneys were encumbered in the uses and purposes fund should be discharged from the uses and purposes fund, and in the absence of specific authority therefor the Director of Finance has no authority to alter such encumbrance certificates issued under Section 2288-2, General Code, so that moneys in the general fund shall be encumbered to meet such obligations.

Considering finally the matter of moneys which were encumbered in the uses and purposes fund during the life of House Bill 531 for the Bureau of Lakes and Parks but which were not obligated on the effective date of the repeal of the appropriations so encumbered, it is my opinion that the encumbrances ceased to be of legal effect and it became the duty of the Director of Finance to issue new encumbrances against the general revenue fund for the payment of such items.

Summarizing, it is my opinion that :

1. In the absence of legislative authority therefor, moneys may not be transferred or appropriated from the general fund of the state to the uses and purposes fund of the Division of Conservation to replace moneys which were expended during the life of House Bill 531 of the 91st General Assembly pursuant to appropriations therein contained for the Bureau of Lakes and Parks from the uses and purposes fund of such division.

2. Obligations of the Bureau of Lakes and Parks of the Division of Conservation which were duly contracted during the life of such House Bill 531 are payable from the uses and purposes fund of such division after the effective date of the repeal of the appropriations contained in such House Bill 531; but the mere existence of encumbrances of moneys in the uses and purposes fund for the Bureau of Lakes and Parks does not authorize expenditures pursuant to such encumbrances after the effective date of the repeal of such House Bill 531 unless obligations were duly contracted prior thereto.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5652.

FOREIGN CORPORATION—OFFICE IN OHIO WHERE RENTALS FROM LEASES RECEIVED—FRANCHISE REPORT NEED NOT INCLUDE SUCH.

SYLLABUS:

A foreign corporation maintains a business office in Ohio, where its books of account and corporation records are kept and where occasional meetings of stockholders and directors are held and at which office the company receives rentals derived from the leasing of tank car equipment pursuant to written leases, all of which are executed and delivered outside of the state of Ohio; HELD:

For the purpose of the report required under section 8625-7, General Code, no part of the above business is business done in Ohio of said corporation.

COLUMBUS, OHIO, May 29, 1936.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

“Your opinion is respectfully requested with respect to the measure of Ohio business for the purpose of a report required under G. C. 8625-7 under the following statement of facts:

‘The Canton Tank Car Company is a Delaware corporation, with its principal office in the State of Delaware. It formerly maintained a business office in Chicago, but such office has since