territory has been detached from one school district and annexed to another by force of said statute, and the original district from which the territory is detached has outstanding indebtedness, no matter for what purpose the indebtedness had been incurred, the district to which the territory is annexed shall be held to pay such proportion of the indebtedness as the tax valuation of the territory detached bears to the tax valuation of the property remaining, regardless of the location of the school buildings and school lots or of any other consideration.

In specific answer to your question, and in the light of the foregoing decision, I am constrained to hold that the Cleveland City School District will, if a part of Brock Park Village is annexed to the City of Cleveland, as petitioned for, be held to pay such proportion of any indebtedness, then existing, of the Berea Village School District as the tax valuation of the territory detached from the Berea Village School District bears to the tax valuation of the property remaining in said district after the annexation becomes effective.

By reason of the decision of the Supreme Court above referred to, the following opinions of this office heretofore rendered should be modified:

An opinion of the Attorney General rendered in 1926, and reported in the Opinions of the Attorney General for that year, at page 424; Opinions reported in Opinions of the Attorney General for 1927, at pages 1311, 1414, 1979 and 2516; and Opinion No. 1946 rendered under date of April 9, 1928, and addressed to the Prosecuting Attorney of Montgomery County, Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3109.

APPROVAL, BONDS OF OTTAWA COUNTY—$15,000.00.

COLUMBUS, OHIO, January 7, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

3110.

AMENDED LEASE—CANAL LANDS—WHAT LANDS INCLUDED IN CONVEYANCE—DETERMINATION OF CREDIT ENTITLED LESSEE UPON SALE BY STATE OF PART OF SUCH LANDS.

SYLLABUS:

1. *By the provisions of the amended lease executed by the Governor of Ohio in* 1915 *conveying to the City of Cincinnati certain canal lands for street and boulevard purposes, made in pursuance to the act of the* 79th *General Assembly* (102 O. L. 168) *and the acts amendatory thereof and supplementary thereto, there were conveyed to said city all the lands comprising the Miami and Erie canal system and used in connection with its operation between the points designated in said lease.*

2. *When any of such lands are sold by the State in pursuance to the act of the* 87th *General Assembly* (112 O. L. 210) *the amount of the proceeds of said sale should be deducted from the principal sum upon which the* 4% *rental is computed for the use of the lands retained by said City of Cincinnati for street and boulevard purposes.*

COLUMBUS, OHIO, January 8, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

"By the terms of Amended Senate Bill No. 123 (O. L. 112, p. 210-214), the City of Cincinnati, Ohio, was authorized to relinquish to the State of Ohio those portions of the Miami and Erie Canal property between Broadway in the City of Cincinnati and a point 1000 feet north of The Baltimore and Ohio Railroad crossing over the said Miami and Erie Canal in the City of St. Bernard, Hamilton County, Ohio, that are held by the said City of Cincinnati by three leases of Miami and Erie Canal lands issued by the State of Ohio to said city under dates of August 29th, 1912, under the provisions of the Act of the General Assembly of Ohio passed May 15, 1911 (O. L. 102, p. 168); also lease dated January 6th, 1917, under act of General Assembly passed May 17, 1915 (O. L. 106, p. 293); also lease dated May 28, 1922, under act of the General Assembly passed April 18th, 1913, and merely extended the former leases from a point 1000 feet north of the Baltimore and Ohio Railroad crossing in St. Bernard.

This Act amended Sections 5 and 6 of the original act of May 15th, 1911 (O. L. 102, p. 168), and authorized the Governor to change and amend the original lease to the City of Cincinnati so as to make its terms more specific as to what the city might or might not do, with reference to the construction of a boulevard upon the surface and a subway beneath the same.

No where in the amended act does it authorize the leasing of additional lands outside the canal proper and its embankments, such as lands purchased by the State upon which to operate water powers, and likewise upon lots or parcels of ground purchased outright upon which to locate an office building, such as the Canal Collector's Office, fronting upon South Canal Street a short distance west of Main Street, being a street about 36 feet in width outside the berme bank of the canal.

The revised lease which virtually supersedes the original lease, however, describes and includes additional lands that are not justified in our judgment by the terms of the act of May 17th, 1915, and for this reason we are of the opinion that the City of Cincinnati is not entitled to a credit upon the appraised value of the canal property as given in the lease at Eight Hundred Thousand Dollars ($800,000.00), when portions of the relinquished canal property are sold.

The following is the text of the clause describing the property included in this amended lease:

'Situated in the City of Cincinnati, County of Hamilton and State of Ohio, and known as and being a part of the Miami and Erie Canal, beginning at a point three hundred feet north of Mitchell Avenue in the City of Cincinnati, and extending down through said city to the east side of Broadway, in said city including all the width thereof, as owned or held by the State of Ohio, together with all the bed of the canal, the berme bank, tow-path and basins, *and all the rights, interests and property of the State in, to, on, under, over, above, along, adjacent to, appurtenant to, and in the neighborhood of*

that part of said Miami and Erie Canal above described, including all property and rights of the State of Ohio acquired or held for canal purposes or as canal property, between said termini, and including the full width of such canal property, whether or not now actually used for canal purposes, including all property shown by the survey of the Miami and Erie Canal, made by the Chief Engineer of Public Works (the plats of which are on file in the office of the Superintendent of Public Works, at Columbus, Ohio):

After examining the text of this description, kindly advise me whether or not, in your opinion, the City of Cincinnati is entitled to a credit on its account when Tracts 1, 2, 3, 4 and 5 are sold, and likewise whether or not a charge shall be made for the tract of canal land between the east side of Broadway and a line 100 feet south of the south line of North Canal Street, which we have designated on the enclosed plats as 'A'.

At the date of the first lease and likewise of the second lease, most of this tract was under lease to the Kilgour Estate, which lease was cancelled a few months ago for nonpayment of the land rental due the State.

This tract was included in the lease granted by the State of Ohio to the City of Cincinnati by lease dated August 29th, 1912, and was included in the amended lease of January 6th, 1917, but was never appraised as required by the terms of the Act of May 15th, 1911. Can the city hold this tract, which is now occupied by the new boulevard known as "Central Parkway" without compensating the State?

This tract occupies a very different position from tracts designated as 1, 2, 3, 4 and 5, as designated upon the print herewith submitted.

The first four tracts were acquired for water power purposes, while Tract 5 was acquired as a site for a Canal Collector's Office, and was separated from the canal by a narrow street known as South Canal Street.

This last tract we have appraised at the net sum of $30,000.00 and have a purchaser for the same.

Kindly advise me whether the City of Cincinnati is entitled to a credit upon its principal for this amount.

I am enclosing a certified copy of the original lease to Thomas Brown and Adolph Wood, which includes this tract along with other lands."

The act of the 79th General Assembly (102 O. L. 168), to which you refer, and which was the original act authorizing the leasing of the Miami and Erie Canal to the City of Cincinnati for street and boulevard purposes, provided, as disclosed in Section 1 of the act:

"Permission shall be given to the city of Cincinnati, in the manner hereinafter provided, to enter upon, improve and occupy forever, as a public street or boulevard, and for sewerage, conduit and if desired for subway purposes, all of that part of the Miami and Erie canal which extends from a point three hundred feet north of Mitchell Avenue to the east side of Broadway in said city, including the width thereof, as owned or held by the State, but such permission shall be granted subject to all outstanding rights or claims, if any, with which it may conflict, and upon the further terms and conditions of this act."

A number of conditions were attached to the granting of such rights which need not be specifically referred to herein.

Section 3 of the act provided for the appointment of three arbitrators.

Section 4 of said act, in part, provided:

"The arbitrators thus selected shall constitute a board of arbitration whose duty it shall be, without reasonable delay, to ascertain and fix the actual value of the property of the state specified in section one hereof. The annual rental to be paid by the City of Cincinnati to the State for the use of such property shall be a sum equal to four (4) per cent of such valuation so ascertained and fixed. Such board of arbitrators shall report the valuation as above provided for in writing to the governor and the council of such city respectively. * * * "

Section 5 of said act, in part, provided:

"Upon approval by resolution of the council of said city of the amount of such valuation as fixed by such board of arbitration or a majority of them, and upon the governor being satisfied that the interests of the state are fully protected and that the valuation placed upon such property is adequate, which fact shall be endorsed upon such lease by the governor, he shall execute and deliver to the city of Cincinnati a lease for ninety-nine years, renewable forever, which lease shall not be assignable, of such canal so to be taken by the said City of Cincinnati for the uses and purposes before mentioned, and upon the terms and conditions specified in this act; * * * "

The section further, among other things, provided that the Attorney General should prepare such lease and the same should contain the provision that if the said City of Cincinnati failed or refused to perform any of the terms and conditions of said lease, etc., the same should become null and void and said city should forfeit all rights under the terms thereof.

Section 6 of the act related to the use of the street, containing many inhibitions in reference to the same, which it is believed unimportant to consider in connection with your inquiry.

The act of the 80th General Assembly (103 O. L. 720), to which you refer, was enacted for the purpose of authorizing the leasing of a further part of the Miami and Erie Canal to the City of Cincinnati for street and boulevard purposes other than that covered in the original act of 1911. Section 1 of said act provided:

"In addition to the lease of parts of the Miami and Erie Canal heretofore made to the City of Cincinnati, permission shall be given to the City of Cincinnati, in the manner hereinafter provided, to enter upon, improve and occupy, as a public street or boulevard or for sewerage, conduit, subway, street railway or electric railway or terminal purposes, or for any combination of such purposes, all that part of the Miami and Erie Canal which extends from a point three hundred feet north of Mitchell Avenue to a point in the City of St. Bernard one thousand (1,000) feet beyond the crossing of the canal by the tracks of the Baltimore and Ohio Southwestern Railroad Company, including the width thereof, as owned or held by the state; but such permission shall be granted subject to all outstanding rights or claims with which it may conflict, and upon the further terms and conditions of this act. No rights by way of appropriation shall be exercised or permitted as against such property."

The amended act contained a number of conditions relative to the character of the use that was to be made of such premises relating to caring for the water rights theretofore granted by the State, etc. Section 4 of said amended act contained practically the same provisions relative to the approval of the valuation fixed by the Board of Arbitration and the granting of the lease by the Governor, which was to be prepared

by the Attorney General, as in the original act provided. It will be observed that Section 4 refers to the premises as "such canal property."

Section 5 of said amended act provided as follows:

> "That Section 6 of the act of May 15, 1911, 'To provide for leasing a part of the Miami and Erie Canal to the City of Cincinnati as a public street or boulevard, and for sewerage and subway purposes,' be and the same is hereby amended so as to read as follows:"

As stated in your communication, Sections 5 and 6 of the act found in 103 O. L. 720, were amended by the 81st General Assembly at its regular session (106 O. L. 293). It is believed that in so far as the question you present is concerned, it is only necessary to consider Section 6 as amended, which provided:

> "That the Governor of the State shall change and amend the lease to the City of Cincinnati of the Miami and Erie Canal property between the east side of Broadway and a point three hundred feet north of Mitchell Avenue so as to conform with Section 5 of the act of April 18, 1913 (103 O. L., 720), as herein amended, and so as to provide for an outlet for the discharge of the water of said canal either at or near a point three hundred feet north of Mitchell Avenue as provided in the act of May 15, 1911, (102 O. L., 168), or at the present spillway south of Mitchell Avenue or if the additional part of the Miami and Erie Canal is acquired by the City of Cincinnati as authorized by said act of April 18, 1913 (103 O. L., 720), to provide for the outlet for the discharge of the water of said canal at or near said point in the City of St. Bernard one thousand feet beyond the crossing of the canal by the tracks of the Baltimore and Ohio Southwestern Railroad Company, and shall accordingly execute and deliver to the City of Cincinnati a new lease."

The act of the 87th General Assembly to which you refer (112 O. L. 210), was an act authorizing the City of Cincinnati to relinquish to the State the portions of the Miami and Erie Canal land in said city which were leased by the State under the terms of the act of May 15, 1911, and all acts amendatory thereof and supplementary thereto. Section 1 of said act provides:

> "Authority and permission are hereby granted to the City of Cincinnati, Hamilton County, Ohio, to relinquish, in the manner hereinafter provided, to the State of Ohio, all those portions of the Miami and Erie Canal lands between Broadway, in the City of Cincinnati, and a point one thousand feet north of the Baltimore and Ohio railroad crossing over said Miami and Erie Canal in the city of St. Bernard, Hamilton County, Ohio, not required for subway or boulevard purposes by said City of Cincinnati, and included in the lease of the State of Ohio to the City of Cincinnati, dated August 29th, 1912, granted under the provisions of the act of the General Assembly of Ohio, passed May 15th, 1911, and the amended lease dated January 6th, 1917, under the provisions of the act of the General Assembly of Ohio, passed May 17th, 1915, and the lease dated March 28th, 1922, under the provisions of the act of the General Assembly of Ohio, passed April 18th, 1913."

Briefly stated, the act further required that the Rapid Transit Commissioners of the City of Cincinnati should adopt resolutions accurately describing those parts of said canal lands which were then under lease to the city mentioned in Section 1 here-

tofore quoted, which were not required either for subway or boulevard purposes. The act then provided for the appraisal of said lands, the details of which it is believed unnecessary to set forth herein.

Section 5 authorized the passage of an ordinance to release to the State of Ohio all the right, title and interest of the City of Cincinnati in and to the tracts of lands, the valuations of which were agreed upon in pursuance to the terms of the act. The form of deed of relinquishment was required to be approved by the Attorney General. I am informed that this deed has been duly executed, accepted by the State, and properly recorded as required by the act.

Section 9 of said act of the 87th General Assembly provides that as soon as such deeds are recorded, the Director of Highways and Superintendent of Public Works of the State of Ohio shall proceed to sell or lease the several tracts thus relinquished in the manner therein provided. The abutting owners of said premises, by the terms of said act, were given the right to purchase said premises at the value as fixed by the Director of Highways and Superintendent of Public Works when agreed to by the Board of Rapid Transit Commissioners of the City of Cincinnati, or the option of leasing such tracts for the term of ninety-nine years, renewable forever, at an annual net rental of six per cent of the value of said tracts, etc. If the abutting owners failed to purchase or lease such tract within three months after the date on which such deeds were recorded, the Director of Highways and Superintendent of Public Works is authorized to sell such tract for the best price obtainable therefor, or lease the same perpetually, subject to the approval of the Governor and the Attorney General; provided that the sale price shall not be less than the appraised value thereof.

Section 10 of the act authorizes the deduction semi-annually from the total valuation of the leases granted by the State of Ohio to the City of Cincinnati of the gross amount of the sales and leases of canal land relinquished to the State, thereby reducing the principal at the end of each six months' period.

Analyzing the foregoing provisions of the acts mentioned in connection with the inquiry submitted, it appears that the sole question is, what lands were conveyed or leased to the City of Cincinnati by virtue of the act of 1911 and the acts amendatory thereof and supplementary thereto.

It is apparent from the clause of the amended lease which you set forth in your communication that all of the tracts of land which you specifically mention were intended to be and were included within the lease. As suggested in your communication, the lease could not convey premises which were not authorized by law to be conveyed, irrespective of the broad terms thereof. However, in considering the decisions with reference to the interpretation of the term "canal lands", it is believed that a liberal construction is justified and required. The language of Section 1 of the original act heretofore set forth mentions "all of that part of the Miami and Erie Canal which extends from a point three hundred feet north of Mitchell Avenue to the east side of Broadway in said city, including the width thereof, as owned or held by the state."

Section 1 of the amended act of 1913, as hereinbefore set forth, refers to "all that part of the Miami and Erie Canal which extends from a point three hundred feet north of Mitchell avenue to a point in the City of St. Bernard one thousand (1,000) feet beyond the crossing of the canal by the tracks of the Baltimore and Ohio Southwestern Railroad Company, including the width thereof, as owned or held by the state."

It is evident from the language used in the description of the lands in the two acts above referred to, that the Legislature intended that more lands were to be included than the lands occupied by the canal. The use of the words "including the width thereof, as owned or held by the state" clearly indicates an intention to include more lands than those occupied by the canal proper.

In the case of *Paige et al.* vs. *Wm. Cherry*, 17 C. C. 579, the court had under consideration an act passed by the 59th General Assembly (68 O. L. 17), authorizing the conveyance to the City of Toledo of whatever interest remained in the State "in the bed of that part of the Miami and Erie Canal" situated between certain designated points. The act, under the decision of the court, "gave to the city the full title not only in the bed of that part of the canal, but also in all the land held by the state for canal purposes within the limits of the Manhattan branch of the canal".

It will be apparent that the above construction is much broader in its terms than it is necessary to make herein, in order to hold that the State, in the language used in the acts hereinbefore referred to, included all of the lands situated in Cincinnati between the points designated in the various acts, that were used for canal purposes, either for the canal proper or incident thereto. It has generally been held by the courts that in the appropriation of lands for canal purposes, all lands that were taken possession of by the State, used for the canal proper and all those lands that were used as an incident in connection with its operation as a part of the canal system were regarded as canal lands appropriated for canal purposes and the title thereto was vested in the State.

In the case of *State* vs. *Tin & Japan Co.*, 66 O. S. 182, it was held as disclosed by the fifth branch of the syllabus that:

> "In an action by the State for the recovery of canal lands, the State must first prove by competent evidence that the lands in question were formerly part of the canal system of the State, and then the burden shifts to the defendant to show that he has in some lawful manner acquired title from the state."

In view of such holdings in favor of the State, it is believed not to be illogical to assume that the same rule would apply when the State authorizes the conveyance of canal lands. In other words, it is a fair assumption to say that when the State mentions canal lands in an act authorizing the conveyance thereof, it means the same thing which was intended when such lands were mentioned when the State was authorized to take possession of the same. In addition to the language above referred to and the rule of construction as hereinbefore set forth, we have the administrative interpretation of the department over a number of years, which under well known rules of construction will not be disturbed unless for cogent reasons. See *State ex rel.* vs. *Hydraulic Co.* 114 O. S. 437.

Of course, in the case last mentioned the departmental interpretation had been acquiesced in for a hundred years, but it is believed that the principle therein announced has some application to the facts under consideration. It is mentioned in your communication that that part of the lands under consideration was not appraised in accordance with the terms of the original act. It is believed that this fact of itself will have no direct bearing on the question of what lands were authorized to be leased. The Board of Appraisers was authorized and required to fix the value of all lands to be conveyed, but the appraisements thereof were to be subject to existing rights. Undoubtedly in many instances very little value would be given to the lands in view of existing leases. It is possible, of course, that no value at all was attached to said land by the appraisers. In any event, it is not believed to be in any wise determinative of what lands were actually transferred by reason of the act of appraisement or failure to appraise.

On the other hand, it will be observed that the act of the 87th General Assembly, found in 112 O. L. 210, expressly authorizes the City of Cincinnati to relinquish to the State of Ohio the lands theretofore conveyed to said city by the State, not required for subway or boulevard purposes, which were "included in the lease of the

State of Ohio to the City of Cincinnati" under the various leases theretofore made. In this phrase last above mentioned there is a recognition on the part of the Legislature that the lands that were described in said leases were conveyed to the City of Cincinnati, which again supports the contention that all of said lands so included were intended to be included under the terms of the act.

Based upon the foregoing, you are specifically advised that in my opinion:

1. The lands to which you refer in your communication, and which were, as you state, included in the amended lease from the State to the City of Cincinnati were authorized to be so conveyed by the act of 1911 and the acts amendatory thereof and supplementary thereto.

2. When such lands are sold by the State of Ohio under the provisions of the act of the 87th General Assembly, found in 112 O. L. 210, the City of Cincinnati, is entitled to have the amount realized from the sale of said lands deducted from the principal sum as fixed by the appraisers upon which the said city pays a rental of four per cent for the use of the lands retained by it for street and boulevard purposes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3111.

ORDINANCE—VILLAGE MAY ENACT AND ENFORCE ORDINANCE CONCERNING TRAFFIC AND POLICE REGULATION—COSTS MUST COMPLY WITH STATUTORY SCHEDULE.

SYLLABUS:

1. *When an ordinance of a village provides a different sum to be taxed as costs for the violation of a traffic ordinance, than is provided by the general statutes, such ordinance is a police regulation in conflict with general law, within the meaning of Section 3, of Article XVIII, of the Ohio Constitution, and the fee schedule provided by the statutes should be followed.*

2. *Such an ordinance will not be invalidated in so far as it defines an offense and prescribes a penalty therefor.*

COLUMBUS, OHIO, January 8, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent letter, the pertinent part of which reads:

> "Council of the Village of ---------- adopted an Ordinance providing in part that persons convicted of the violation of certain traffic regulations 'may be fined not less than $2.00, which amount shall include all costs, nor more than $25.00, which amount shall be in addition to costs.'
>
> QUESTION: In view of the statutory provisions, may the mayor of the village legally assess a fine, including costs, in accordance with the provisions of the ordinance which will be less in fact than the costs authorized by statute?"

I am also in receipt of your supplemental letter enclosing traffic ordinance, which letter reads: