

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.

The property above referred to was purchased by your predecessor, Hon. R. T. Wisda, under and pursuant to the terms of an option in writing executed and delivered by said Louise C. Phillips to R. T. Wisda, as Director of Public Works, under date of May 13, 1929, which option and the terms thereof were later accepted by him. Under the provisions of Section 5671, General Code, the lien of the state for the taxes here in question attached to said property as of the day preceding the second Monday in April, 1929, and said lien was, therefore, in effect at the time of the purchase of this property by the Director of Public Works. In this connection it is to be noted that the lien on this property for the taxes here in question was the lien of the state and not of Hamilton County or of any political subdivision entitled to a distributive share of the taxes assessed upon said property. *Wasteneys vs. Schott*, 58 O. S. 410, 415. It follows from this premise that when the state acquired the fee simple title to this property by warranty deed from Louise C. Phillips the lien of the state for the taxes on said property became merged and lost in the larger title so acquired by the state. *Reid vs. State*, 74 Ind. 252; *Smith vs. Santa Monica*, 162 Calif. 221; *Foster vs. City of Duluth*, 121 Minn. 484. Touching this question this office in an opinion directed to the Auditor of State under date of June 16, 1917, Opinions of the Attorney General, 1917, Vol. II, page 1024, held:

"The lien imposed by Section 5671 G. C. upon real property for taxes thereon is that of the state, and when thereafter the state acquires the fee simple title to such property the lien for such taxes is merged in the larger title of the state and thereby becomes lost."

Although the lien of the state on this property, for the taxes here in question, was merged and lost upon the state's acquisition of the fee simple title to said property, said taxes were a personal debt of said Louise C. Phillips, the payment of which under the provisions of Section 5671, General Code, can be enforced by the seizure and sale of any personal property which she may own. *Kreps vs. Baird*, 3 O. S. 277; *Loomis, trustee, vs. Von Phul*, 2 N. P. (N. S.) 423.

This leads to a consideration of the question as to whether in the purchase of said property of Louise C. Phillips it was understood and agreed that the state was to pay the taxes here in question and thus relieve said Louise C. Phillips from the obligation and duty of paying the same. Under the provisions of Section 154-40, General Code, the Superintendent of Public Works as director of said department is authorized, among other things, "to purchase all real estate required by the state government, or any department, office or institution thereof". In the exercise of this power, Mr. Wisda, as Director of Public Works, was authorized to enter into an agreement with the owner of this property with respect to the terms of the purchase of the same. As above noted, the purchase of this property was made by the acceptance by the Director of Public Works of an option executed and delivered to him by said Louise C. Phillips. This option contained the following provision: "Conveyance to be made by deed of general warranty, in fee simple, and title to be good and marketable, free, clear and unincumbered; except as to taxes due and payable in December, 1929, and thereafter". It thus appears, under the terms of the purchase of this property, that said Louise C. Phillips was not to pay the taxes on the property for the year 1929. Inasmuch, however, as at the time of the purchase of this property these taxes, as between the taxing authorities and Louise C. Phillips, were not only a lien upon said property but were a personal debt and obligation of said Louise C. Phillips, the option given to the Director of Public Works under and by the terms which this property was purchased by him on behalf of the State of Ohio should be construed so as to provide for the payment of said taxes; and since by the terms of said option said Louise C. Phillips was not to pay the taxes for the year 1929, I am

of the opinion that it was understood and agreed by the Director of Public Works in the acceptance of said option that the same should be paid by the state as a part of the purchase price of said property.

I am accordingly of the opinion that in your capacity as Superintendent of Public Works and as director of said department you are authorized to make provision for the payment of these taxes out of any appropriation made to the Department of Public Welfare for the purpose of acquiring said property.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2064.

APPROVAL, ABSTRACT OF TITLE AND WARRANTY DEED TO LANDS OF ARTHUR F. MILLER, CHARLOTTE E. PUNGS, FLORENCE A. LEGG AND GRACE MILLER IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 8, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—Under date of June 23, 1930, I directed to you Opinion No. 2019 of this office relating to the title of Arthur F. Miller, Charles E. Pungs, Florence A. Legg and Grace Miller in and to Lots Nos. 22 and 23 of Critchfield and Warden's Subdivision of the south half of the north half of R. P. Woodruff's Agricultural College Addition to the city of Columbus, which lots are more particularly described in said opinion.

In the former opinion of this office above referred to, I found that the above named persons had a good and indefeasible fee simple title to the property here in question, subject to the lien of certain delinquent taxes, as well as the taxes for the last half of the year 1929 and the undetermined taxes for the year 1930.

With said abstract of title there was submitted a warranty deed form of the deed to be executed by the above named persons as the owners of said property and by their respective spouses. In said former opinion it was found that said deed as to form was sufficient to convey to the State of Ohio a fee simple title to said property when the same was properly executed and acknowledged.

The warranty deed above referred to has now been submitted to me fully executed by Florence A. Legg and Carl W. Legg, her husband, Charlotte E. Pungs and Samuel G. Pungs, her husband, Arthur F. Miller and Eleanor Miller, his wife, and by Grace Miller, who is unmarried. All of the above named persons signed and acknowledged said deed in states other than the State of Ohio, but each execution and acknowledgment was made in accordance with the laws of this state.

Said warranty deed is accordingly hereby approved and the same is herewith returned to you, together with said abstract of title and the former opinion of this office above referred to.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*