

for sale, buys, or offers to buy, negotiates the purchase or sale or exchange of real estate, or leases, or offers to lease, rents, or offers for rent, any real estate, interest therein or improvement thereon, for others.

* * * * *

One act for a compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell, or exchange real estate or leasing, or renting, or offering to rent real estate, except as herein specifically excepted shall constitute the person, firm or corporation, performing, offering, or attempting to perform any of the acts enumerated herein, a real estate broker or a real estate salesman within the meaning of this act."

It seems to me that section 6373-42, subsection 5, would apply in all cases where a real estate broker or salesman retained money which did not rightfully belong to him by reason of a real estate transaction. The provisions of that section are not limited solely to cases where a broker or salesman has obtained money while acting as agent for another. In other words, the provisions of subsection 5 are broad enough to require a real estate broker or salesman to account for or remit money obtained by him while acting either as an agent for another or for persons who are not his principals but with whom such real estate broker or salesman has had dealings involving real estate. The primary purpose of the real estate act was to regulate the conduct of real estate brokers and salesmen in respect to their relations with the public.

It is therefore my opinion that the State Board of Real Estate Examiners has authority, by virtue of section 6373-42, sub-section 5, General Code, to suspend or revoke a license of any real estate broker who fails or refuses to remit money deposited with said broker as security for rent under a lease which the broker had no authority to make in his own name as lessor.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3705.

APPROVAL, BONDS OF GUYAN TOWNSHIP RURAL SCHOOL DISTRICT, GALLIA COUNTY, OHIO—\$1,300.00.

COLUMBUS, OHIO, October 28, 1931.

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

3706.

INDIAN LAKE—APPROPRIATION HOUSE BILL NO. 596 FOR CONSTRUCTION OF SANITARY SEWER—ABSOLUTE CONTRIBUTION BY STATE WITHOUT REFERENCE TO BENEFITS ACCRUING TO STATE LANDS.

SYLLABUS:

The appropriation of the sum of \$72,000.00 made to the Controlling Board by the 89th General Assembly, in and by House Bill No. 596, approved by the Gov-

ernor on April 6, 1931, as "State's contribution toward construction of sanitary sewer at Indian Lake", was intended by the legislature as an absolute contribution to the Logan County sewer district project and improvement without reference to the question of whether the benefits accruing to lands owned by the state in said county sewer district will be equal to the amount of said appropriation or not.

COLUMBUS, OHIO, October 28, 1931.

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

DEAR SIR:—This is to acknowledge receipt of your communication in which you request my opinion with respect to the nature and character of an appropriation made by the 89th General Assembly in and by House Bill No. 596, which appropriation is one of the sum of \$72,000.00 to the Board of Control in connection with the construction of a county sewer district improvement at Indian Lake projected and carried on by the Board of County Commissioners of Logan County under the provisions of sections 6602-1, et seq., General Code.

It appears that in House Bill No. 513, passed by the 88th General Assembly under date of April 6, 1929, which went into effect on the 26th day of July, 1929, which bill was enacted as an act to make supplemental appropriations for the biennium beginning January 1, 1929, an appropriation was made in the following words and figures:

"CONTROLLING BOARD

State's contribution toward construction of sanitary sewer at	
Indian Lake	\$30,000.00"

It further appears that thereafter on October 6, 1930, a further sum of \$42,000.00 was allotted by the Emergency Board for and in connection with said Indian Lake sewer district improvement. As stated in your communication, the action of the Emergency Board in this matter is evidenced by the minutes of said board, which are as follows:

"The matter of additional funds for the sanitary sewer improvement, at Indian Lake was again presented to the Board, by the Board of County Commissioners of Bellefontaine, Ohio, (Logan County.) It was moved by Mr. Kumler, seconded by Mr. Tracy that the Emergency Board appropriate the sum of \$42,000.00 to supplement the \$30,000.00 already appropriated by the General Assembly to meet the State's equitable assessment in the sanitary sewer improvement, at Indian Lake, the entire appropriation to be utilized in the payment of the State's share of this improvement in proportion to the benefits derived therefrom, this to be in accordance with H. B. No. 510, (Emergency Board,) the appropriation of \$30,000.00 for Indian Lake being in accordance with H. B. 510. Said motion was carried by the following vote: Kumler—aye; Wendt—aye; Tracy—aye; Silver—aye."

It does not appear that any moneys were released for the purpose or expended out of either the appropriation made by the 88th General Assembly in House Bill No. 513, above referred to, or out of the additional funds allotted by the Emergency Board, as above stated.

In this situation, the 89th General Assembly on March 26, 1931, passed House

Bill No. 596, which was an act to make re-appropriation of funds appropriated by the 88th General Assembly or theretofore allotted by the Board of Control and by the Emergency Board. This act, which as an emergency measure, went into effect on the approval thereof by the Governor on April 6, 1931, provided in section 1, as follows:

"The sums hereinafter set forth, which are unencumbered balances as of December 31, 1930, of appropriations made by the 88th General Assembly, or allotments granted by the controlling or emergency boards, are hereby re-appropriated from the funds from which they were originally appropriated or allotted, and made available for the purpose designated in the original appropriation, as hereinafter listed.

In event of any discrepancy between the actual unencumbered balance in any of the appropriation accounts hereinafter listed and the sums herein set forth, the amount reappropriated shall not exceed the actual unencumbered balance.

The sums herein appropriated may be expended in the payment of obligations incurred by said departments and institutions prior to January 1, 1931, and obligations incurred after January 1, 1931.

* * * * *

CONTROLLING BOARD

State's contribution toward construction of sanitary sewer at Indian Lake
(H. B. 510)\$72,000.00"

The specific question presented in your communication is whether the appropriation in the sum of \$72,000.00 made as above indicated is to be considered as an absolute contribution to the Logan County sewer district project and improvement without reference to the amount of the benefits accruing to lands owned by the state in said county sewer district, or whether said appropriation, on the other hand, is to be treated as an authorization to the Board of Control to pay therefrom such amount of money as represents the benefits accruing to lands owned by the state in a sewer district, as determined by said board, within the amount of said appropriation.

Touching the question here presented, it is noted that in the case of *State, ex rel. Monger, vs. the Board of County Commissioners of Fairfield County*, 119 O. S. 93, decided by the Supreme Court of this state under date of June 13, 1928, it was held that the imposing of an assessment for the entire expense of a county sewer district improvement upon the privately owned lands in the sewer district was illegal where a part of the lands in such sewer district which would be benefited by the improvement were state reservoir lands owned by the state in its proprietary capacity, for the reason that such assessment would amount to an imposition on the sewer district of a burden that belongs in part to the state, and which as to such part should be borne by the state at large. The court further in this case referring to the provisions of section 6602-33c, which in terms empowered the county commissioners to assess state lands benefited by a county sewer district improvement, held that the legislature is without authority to delegate to a board of county commissioners the legislative power to levy and collect an assessment against the state.

The appropriation of \$30,000.00 made by the 88th General Assembly toward the construction of the Logan County sewer district project at Indian Lake was doubtless made in the light of this decision by the Supreme Court of this state

that no assessment could be made by the board of county commissioners of said county against state lands in the sewer district for benefits accruing to such lands by reason of the improvements. In this view, it would seem to follow that although said appropriation made by the 88th General Assembly, above noted, was made by the legislature in recognition of the fact that property of the state in said county sewer district would be benefited by the proposed improvement, said appropriation was not a measure of determined benefits from the improvement, but was what it purported to be, a contribution by the state towards the construction of said improvement whether the actual benefits to the property of the state in the sewer district were equal to the amount of said contribution or not.

The additional \$42,000.00 allotted by the Emergency Board under date of October 6, 1930, appears to have been so allotted as a supplement to the \$30,000.00 theretofore appropriated by the General Assembly, for the stated purpose of paying the state's equitable assessment for said sewer district improvement, with the provision that the entire appropriation was to be utilized in the payment of the state's share of this improvement in proportion to the benefits derived therefrom. Although it was not competent for the Emergency Board in the action taken by it on this occasion to give to the appropriation theretofore made by the legislature a character other than that intended by the legislature itself, it appears that with respect to the money allotted by the Emergency Board said board intended that such money should be expended to make payment toward the cost of the construction of said improvement in proportion to the benefits accruing to the state from the improvement.

However this may be, it appears that no expenditures of money were made for the purposes above indicated out of the appropriation made by the 88th General Assembly or out of the additional funds allotted by the Emergency Board; and the question made in your communication is to be determined primarily from the construction to be placed upon the language used by the 89th General Assembly in the appropriation made by it for the purposes of said county sewer district improvement in House Bill No. 596, above noted. Quite clearly the appropriation of \$72,000.00 made by this act, as a reappropriation, was intended to cover both the \$30,000.00 appropriation made by the 88th General Assembly for the purpose of said county sewer district improvement and the allotment in the sum of \$42,000.00 made by the Emergency Board for said purpose. Standing alone the appropriation made by said act to the "Controlling Board" as "State's contribution toward construction of sanitary sewer at Indian Lake * * * \$72,000.00", would seem to indicate that said appropriation was intended to be a contribution towards the cost and expense of said sewer district improvement whether the benefits accruing to lands owned by the state by reason of the proposed improvement would be equal to the amount of said contribution or not. As above noted, the \$30,000.00 appropriation made by the 88th General Assembly was made as a contribution of the state to the cost and expense of the improvement here in question rather than as a maximum measure of the benefits accruing to the property of the state from the improvement. And, I believe, the same character should, without question, be ascribed to the appropriation made by the 89th General Assembly, above noted, in so far as the same is a reappropriation of the \$30,000.00 originally appropriated by the 88th General Assembly for said county sewer district purpose.

The only question in my mind touching the appropriation here in question is with respect to the sum of \$42,000.00 originally allotted by the Emergency Board and included therein as a reappropriation. As to this, it might be argued from the general language used in section 1 of House Bill No. 596, above noted

that the only authority of the Board of Control to release or expend said allotted moneys reappropriated by said act would be to make payments towards the cost and expense of the construction of said county sewer district improvement in proportion to, and to the extent of, the benefits accruing to state property by reason of the improvement. However, the appropriation made by the 89th General Assembly in and by House Bill No. 596 for the purpose of said county sewer district improvement, is an entirety; and it is not easily seen how a different character can be ascribed to a part of the moneys appropriated by said act from that to be ascribed to the balance of the appropriation. And in this view, I am of the opinion that the whole of said appropriation is to be considered a contribution made by the state towards the cost and expense of said county sewer district improvement whether the actual benefits to state property in the sewer district are determined by the Board of Control to be equal to the amount of said appropriation, or not.

The conclusion reached by me on the question submitted in your communication, as above stated, is supported in some measure by the fact that Indian Lake, like other state lakes and reservoirs, is dedicated to the use of the public as a park and pleasure resort (secs. 469 and 470, G. C.); and the appropriation here in question was doubtless made in recognition of the fact that benefits would accrue to the public by reason of this improvement apart from and in addition to that which would accrue to the lands owned and held by the state in its proprietary capacity within the county sewer district. The proportionate amount of the benefits accruing to the public as distinguished from those referable to the ownership of property in the sewer district is a thing that can not be determined with any degree of accuracy; and this consideration leads to the view that the appropriation in question, as the language thereof indicates, was intended to be a lump sum appropriation towards the cost and expense of the construction of said improvement.

With respect to the further question made in your communication, I am advised that a part of the moneys covered by the appropriation here in question has been released by the Board of Control and paid over to the Treasurer of Logan County for the use of said county sewer district. If the balance of the money covered by said appropriation is now available, the same should be released by proper action by the Board of Control, vouchered by the president of said board to the Treasurer of Logan County for the benefit of said county sewer district, and paid out in like manner on the warrant of the Auditor of State.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3707.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$21,000.00.

COLUMBUS, OHIO, October 29, 1931.

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