

fact that the certificate of the Director of Finance should be obtained to the effect that there are unencumbered appropriations available for the period covered by said lease ending March 1, 1927.

The leases are being returned herewith.

Respectfully,
C. C. CRABBE,
Attorney General.

3822.

APPROVAL, LEASE TO STATE OF OHIO ENTIRE NINTH FLOOR OF THE OHIO SAVINGS ASSOCIATION BUILDING, COLUMBUS, OHIO, FOR USE OF THE STATE TEACHERS RETIREMENT SYSTEM, AT ANNUAL RENTAL OF \$6,000.00.

COLUMBUS, OHIO, November 19, 1926.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a form of lease in triplicate whereby the State Savings Association grants to the State of Ohio, for the use of the Retirement Board of the State Teachers' Retirement System, the entire ninth floor of the Ohio Savings Association building in the city of Columbus, for the term of three years beginning on the first day of March, 1927.

According to the terms of the lease, a rental of \$6,000.00 per annum is to be paid in semi-annual installments of \$3,000.00, in advance.

It is believed that the said lease is in proper legal form and sufficient for the purposes intended, when the same is properly executed and delivered.

The lease is enclosed herewith.

Respectfully,
C. C. CRABBE,
Attorney General.

3823.

MUNICIPALITY—MONEYS DERIVED FROM SALE OF RUBBISH MUST BE APPROPRIATED BY COUNCIL BEFORE BEING EXPENDED AS PROVIDED IN SECTION 3706 G. C.

SYLLABUS:

Moneys derived from the sale of refuse, street scrapings, ashes and personal property of the Street Cleaning Department, may not be expended as provided in section 3706 of the General Code, but must be appropriated by the city council for such purposes.

COLUMBUS, OHIO, November 19, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“Sections 3705 and 3706 G. C. provide for the sale of rubbish, street scraping, etc., and for the disposition of any money arising therefrom. The last sentence of section 3706 G. C. reads:

'Such money shall not be considered a source of revenue subject to appropriation by council, and may be expended as herein provided without having been appropriated by council.'

Amended sub-senate bill No. 94, 111 O. L. 371, Sec. 3, provides for the adoption of an annual budget by council which shall include detailed estimates of all balances and of all revenues to be received from every source during the year. Sec. 5 of the act provides that council shall make annual appropriations and Sec. 7 provides that no expenditure excepting from the proceeds of bonds shall be made unless authorized by appropriation both as regards purpose and amount.

Question: In view of the provisions of amended sub-senate bill No. 94, may moneys derived from the sale of refuse, street scraping, ashes and personal property of the street cleaning department, be expended as provided in section 3706 G. C.?"

Section 3706 of the General Code provides as follows:

"Money arising from a sale under the next preceding section shall be deposited in the treasury in the street cleaning fund and shall be immediately available, in addition to the appropriations by council, for the current expenses of the street cleaning department, and may be withdrawn from the treasury upon the warrant of the city auditor or clerk for such purpose. Such money shall not be considered a source of revenue subject to appropriation by council, and may be expended as herein provided without having been appropriated by council."

By this section money derived from the sale of rubbish and street scrapings, etc., is not considered a source of revenue and subject to appropriation by council and may be expended as herein provided without the appropriation of council. This section first appears in 98 Ohio Laws, page 43, and by its wording is taken without the operation of section 3797 as it existed at that time. Section 3797 at that time provided for the appropriation of all revenues by council prior to its expenditure.

Section 3797 was repealed in 111 Ohio Laws, page 371, and in its place was substituted Amended Substitute Senate Bill No. 94, found in 111 Ohio Laws, page 371. Section 3 of the above act being section 5649-3d, provides for the adoption of a budget by a municipality and in part provides as follows:

"Such budget shall include detailed estimates of all balances that will be available at the beginning of said fiscal year for the purposes of such year, and of all revenues to be received for such fiscal year including all general and special taxes, fees, costs, percentages, penalties, allowances, perquisites and all other types or classes of revenue."

Section 5649-3g, a part of the same act, in part provides as follows:

"At the beginning of each fiscal year, * * * the council or other legislative authority of every municipal corporation, including charter municipalities, * * * shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such * * * municipal corporation, * * * ."

Section 5660, a part of the same act, in part provides:

"No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation, both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized and directed."

While the above act does not in so many words repeal section 3706 of the General Code, the same must be considered as a repeal by implication inasmuch as the various sections of Amended Substitute Senate Bill No. 94 are in direct conflict with section 3706.

The policy of the legislature with relation to the expenditure of public funds is shown by the enactment of Amended Substitute Senate Bill No. 94, in that it intends to cover the expenditure of revenue from whatever source derived.

It is believed the proper rule to apply in this case is the rule as laid down in the case of *Goff vs. Gates*, 87 Ohio St., page 142, which is as follows:

"An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revises the whole subject-matter of the former act and is evidently intended as a substitute for it."

The latter part of section 3706 is an exception to the original statutes providing for an appropriation prior to the expenditure of any revenue by a municipality and therefore must be considered as in pari materia with the section relating to appropriation by the council of a municipality.

Amended Substitute Senate Bill No. 94 is an attempt by the legislature to revise the whole subject matter of appropriations by the various political subdivisions, and was intended as a substitution of the section to which section 3706 was an exception.

As shown by the various sections of Amended Substitute Senate Bill No. 94, it was the intent of the legislature to bring within the operation of this act all expenditures by political subdivisions.

You are therefore advised that moneys derived from the sale of refuse, street scrapings, ashes and personal property of the Street Cleaning Department, may not be expended as provided in section 3706 of the General Code, but must be appropriated by the city council for such purposes.

Respectfully,

C. C. CRABBE,
Attorney General.