

Coming now to a consideration of your specific questions, in their order, I am of the opinion:

First, the proceeds of the tax levy spoken of may lawfully be used for the purpose of paying operating expenses for the maintenance of the schools of the district, including the cost of the transportation of pupils, and may lawfully be expended in the payment of judgments against the district for such transportation.

Second, judgment creditors of a school district may not lawfully levy execution for the payment of their judgments against the property, real or personal, of such school district. Such creditors do, however, have the right, and may enforce that right by an action in mandamus, to have the amount necessary to provide for the payment of their final judgments certified to the board of education of the school district by its fiscal officer, and the further right to have that amount placed in the next annual appropriation measure for the full amount certified, regardless of the requirements of the district for other current expenses. Creditors of a school district who have not reduced their claims to judgment cannot enforce the payment of such claims from the current funds of the school district if said funds are needed for the payment of current operating expenses in the maintenance of the schools, according to law.

Third, bonds may not lawfully be issued by a board of education for the payment of judgments against the district other than those for non-contractual obligations. Judgments for claims for transportation of pupils are not for non-contractual obligations.

Fourth, in answer to your fourth question, your attention is directed to the terms of Sections 7595 et seq., of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

675.

PRISONER—INDICTED UNDER OHIO LAWS BUT TRIED AND CONVICTED IN FEDERAL DISTRICT COURT—GOVERNOR MAY PARDON OR COMMUTE SENTENCE.

**SYLLABUS:**

*Where a person is indicted on a charge of manslaughter under the laws of the State of Ohio and the prosecution is removed to the District Court of the United States before trial, by virtue of the provisions of Section 33 of the Judicial Code of the United States, and said person after conviction is sentenced by the federal court to the Ohio penitentiary, such person may be granted a pardon or commutation of sentence by the Governor of the State of Ohio.*

COLUMBUS, OHIO, July 26, 1929.

HON. HAL H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which is as follows:

“A man was indicted by the grand jury of Cuyahoga County for the crime of manslaughter. He next was removed for trial to the District Court

of the United States for the Northern District, under Section 33 of the Judicial Code of the United States, and was tried before that court. The sentence of the court was as follows:

"This day came again the prosecuting attorney of Cuyahoga County, State of Ohio, and also the defendant accompanied by counsel at the bar of court; said defendant having heretofore been found guilty of manslaughter by a jury duly empanelled and sworn and the court having inquired of said defendant whether he had anything to say before sentence was pronounced and receiving defendant's reply it is ordered that said defendant, Albert Collins, be imprisoned in the Ohio State Penitentiary at Columbus, Ohio, for a period of not less than five (5) years nor more than twenty (20) years, and that the United States marshal of this district turn over the said Albert Collins to Edward J. Hanratty, the duly qualified sheriff of Cuyahoga County, State of Ohio, and said sheriff is ordered to convey the said Albert Collins to the Ohio State Penitentiary at Columbus, Ohio, therein to be imprisoned in conformity with the sentence imposed by this court."

Does the Governor have the same authority to grant pardon or commutation in this case as he would have had had the prisoner been sentenced by the state court? I shall appreciate receiving your opinion on this question as soon as possible."

Section 33 of the Judicial Code of the United States, in so far as it is pertinent to your inquiry, reads as follows:

"When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title or authority claimed by such officer or other person under any such law, or is commenced against any person holding property or estate by title derived from any such officer and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer, or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty in executing any order of such House, the said suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court next to be holden in the district where the same is pending upon the petition of such defendant to said district court and in the following manner: \* \* \* "

This section was passed in consequence of an attempt by one of the states to make penal the collections by United States officers within the state of duties under the tariff laws. *Tenn. vs. Davis*, 100 U. S. 257. The purpose of Section 33 of the Judicial Code of the United States is to protect certain officers of the federal government in the line of their official duties and those who are employed to act under them in the performance of their duties. In order to effect the purpose of this section, Congress saw fit to provide that these officers of the United States, charged with a violation of a state law while in the performance of their duties, should be tried by the federal courts rather than by the state courts.

The defendant whose case is removed to the federal court, is tried for an offense against the state laws, and if he is convicted, he is sentenced by the federal court in

accordance with the provisions of the state laws, and he is delivered by the United States marshal to the proper state officers to be conveyed to a penal institution of the state. The United States government, by the provisions of Section 33 of the Judicial Code of the United States, does not attempt to deprive the state governments of jurisdiction over the prisoner after he is tried, for the federal government, after conviction and sentence, returns the prisoner to the state authorities. The purpose of the provisions of Section 33 of the Judicial Code to protect the officer in the line of his duties, is accomplished by the removal and trial of the officer by the federal court, and thereafter the defendant stands in the same position as any other person convicted of a violation of the state laws.

Under the provisions of Article III, Section 11 of the Constitution of the State of Ohio, the Governor has the power, after conviction, to grant reprieves, commutations and pardons, for all crimes and offenses against the State of Ohio, except treason and cases of impeachment, and I am of the opinion that where a person is indicted on a charge of manslaughter under the laws of the State of Ohio and the prosecution is removed to the District Court of the United States before trial, by virtue of the provisions of Section 33 of the Judicial Code of the United States, and said person after conviction is sentenced by the federal court to the Ohio penitentiary, such person may be granted a pardon or commutation of sentence by the Governor of the State of Ohio.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

676.

APPROVAL, LEASES TO MIAMI AND ERIE CANAL LANDS IN ALLEN  
AND AUGLAIZE COUNTIES.

COLUMBUS, OHIO, July 26, 1929.

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

DEAR SIR:—You recently submitted to this department for examination and approval, three certain leases in triplicate, by which the State of Ohio through you as Superintendent of Public Works, has leased and demised to the respective lessees therein named, for terms of fifteen years each, certain parcels of abandoned Miami and Erie canal lands. The leases here in question which call for an annual rental of six per cent upon the appraised valuation of the parcel of land leased and demised, are:

<i>Lessee</i>	<i>Location of Property</i>	<i>Valuation</i>
The Commercial Banking Company,	Delphos, Allen County-----	\$500.00
F. F. Fortman and F. J. Fortman,	St. Marys, Auglaize County-----	500.00
Wm. F. Limbacher and Amanda L. Stubbs,	St. Marys, Auglaize County -----	666.67

An examination of said leases shows that the execution of the same is within the authority conferred upon you by Sections 13965, et seq., General Code, applicable to the leasing of canal lands generally in this state, and is likewise within the authority of later statutory provisions relating to the execution of leases of abandoned Miami and Erie canal lands. It further appears that said leases as to form, have been executed in accordance with the requirement of such statutory provision.