office or position, nor terminate the tenure of office or position of the present incumbent, nor does it prevent the application of the Adams fund to the payment of that portion of the salary or compensation provided for in the plan approved by the federal secretary of agriculture.

It is hardly necessary to add that the amount payable from the Adams fund under the present officially approved plan should not be increased without the written approval of the federal secretary of agriculture.

Respectfully,
JOHN G. PRICE,
Attorney-General.

928.

OHIO NATIONAL GUARD—WHEN UNEXPENDED BALANCES OF APPROPRIATIONS MADE BY 82ND GENERAL ASSEMBLY LAPSED—"STATE MILITARY FUND"—SECTIONS 5247 AND 5248 G. C. CONSTRUED.

1. *The unexpended balances of the two appropriations made by the 82nd general assembly for the Ohio national guard* (107 *O. L. p* 232 *and* 308) *lapsed at the close of the respective fiscal years for which the appropriations were made, and became a part of the unappropriated revenues of the state.*

2. *Section* 5248 *G. C., enacted by the* 82*nd general assembly, and providing that the general assembly shall appropriate annually the amount of money authorized by section* 5247 *G. C., and therein designated as the "state military fund", is not binding on the present or subsequent general assemblies.*

COLUMBUS, OHIO, January 12, 1920.

HON. ROY E. LAYTON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relating to appropriations made by the 82nd general assembly for the maintenance and support of the Ohio national guard, and asking the advice of this department on certain questions therein propounded, was duly received and, omitting formal parts, reads as follows:

> "I beg leave to ask your opinion relative to the status of the military funds set aside the past few years for the maintenance and support of the Ohio national guard.
>
> Section 5247 of the General Code of Ohio (formerly section 5265) reads as follows:
>
> 'The auditor of state shall credit to the "state military fund" from the general revenues of the state, a sum equal to ten cents for each person who was a resident of the state, as shown by each last preceding federal census. Such fund shall be a continuous fund and available only for the support of the national guard and naval militia. It shall not be diverted to any other fund or used for any other purpose.'
>
> This section was revised March 30, 1917 (107 O. L. 395), and is the same as the old section excepting the second sentence which in the old section read as follows:
>
> 'Such fund shall be a continuous fund and available only for the support of the organized militia.'

Please note the language used, that such funds shall be credited 'from the general revenues of the state' (not the general revenue fund); also that said fund shall be a 'continuous fund'; also that it shall not be 'diverted to any other fund.' Section 5248 (formerly section 5266) of the General Code reads as follows (107 O. L. 396):

'The general assembly shall appropriate annually, and divide into two funds, the amount authorized by the preceding section. Such funds shall be respectively known as the "state armory fund" and "maintenance Ohio national guard fund."'

The wording is the same as in the old section.

Section 5249 (formerly 5267 and 5286) reads as follows (107 O. L. 396):

'From the "maintenance, Ohio national guard fund" the adjutant general shall pay all expenses incident to the maintenance of the various units of the national guard and Ohio naval militia, except such as are provided for from the "state armory fund." From the "state armory fund" the adjutant general shall provide grounds, armories and other buildings for military purposes by leasing, purchasing or constructing the same.'

The language of the old section is somewhat different but the changes are not material.

The legislature of the state of Ohio appropriated for the fiscal year ending June 30, 1918, for the Ohio national guard, the sum of $426,712.10 (see 107 O. L. 232, 233). The same amount was appropriated for the fiscal year ending June 30, 1919 (see 107 O. L. 308), making a total appropriation for the two years of $853,424.20. (The amount should have been $50,000 more each year according to section 5247 but that is not pertinent just now.) Of this total amount the sum of approximately $628,000.00 was not expended, viz., was saved and apparently remained in the state treasury to the credit of the 'state military fund'. The question is What has become of this money and why is it not available at this time for the use and benefit of the Ohio national guard?

Article II, section 22 of the constitution of Ohio says:

'No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.'

The state auditor's department has ruled, acting perhaps under this section of the constitution, that the balance left in the state military fund at the end of the fiscal year June 30, 1919, has lapsed and can no longer be used, viz., has vanished forever. If so, what is the meaning of the language of section 5247 which says that the state auditor shall credit to the military fund a sum equal to ten cents for each person in the state; also that such fund shall be a continuous fund, and also that it shall not be used for any other purpose. Does this section mean what it says or is it all just pure camouflage—pretending to be something that it is not?

As provided by section 5248 the legislature appropriated and divided these two funds. The next question is, what are the steps necessary to make the balance in the state military fund, which was not used, available to the adjutant general so that the same can be expended for the support of the national guard and naval militia.

I would also like to ask your opinion on another proposition of law, closely connected to the above, but which I desire to keep separate and distinct, as the first proposition set forth above refers to funds appropriated

by the former legislature, and this question refers to appropriations made last year by the present legislature still in session.

I again refer to sections 5247 and 5248 without repeating the same herein.

The population of the state of Ohio according to last federal census (1910) was 4,767,121. A sum equal to ten cents for each person who was a resident of the state as shown by the last preceding federal census would amount to $476,712.10.

The present legislature of the state of Ohio as per appropriation bill passed May 28, 1919 (see pages 782, 783, 864 and 865, Laws of Ohio, Vol. 108, Part I—1919) appropriated the following amounts:

For the fiscal year ending June 30, 1920.....$346,712 10
For the fiscal year ending June 30, 1921..... 476,712 10

It will be noted that the amount appropriated for the present fiscal year ending June 30, 1920, is $130,000 less than the amount required by section 5247. It is true that the legislature by separate appropriation, in the same act, appropriated the sum of $100,000 for the construction of an armory at Youngstown and the sum of $30,000 for the construction of an armory at New Lexington. These appropriations are made for the fiscal year ending June 30, 1921. These funds were apparently taken in part from the 'maintenance Ohio national guard fund' and in part from the 'state armory fund' that should have been set aside for the fiscal year ending June 30, 1920 (not 1921).

The legislature of course has the right to appropriate moneys for the construction of armories wherever it may see fit and I would be glad if they would add a dozen cities to the list as we certainly do need many more armories to take care of and maintain the national guard.

The question is, however, has the legislature complied with section 5248 requiring the general assembly to appropriate annually the amount authorized by section 5247 so that the adjutant general, as provided by section 5249, can expend the money from the respective funds as he may deem wise and necessary. In other words, is it not mandatory upon the general assembly to carry out the provisions of sections 5248 and 5249 or can it ignore these sections of our statutes and appropriate any amount less than that required by section 5247 (as it did in 1917-1918) or subdivide said appropriations into more than two funds as it may see fit."

Reduced to the last analysis, the facts stated in your letter present but two controlling questions, first, whether the unexpended balances of the appropriations made by the 82nd general assembly for the Ohio national guard (107 O. L. 232-308) have lapsed, and second, whether section 5248 G. C. which was enacted by the same general assembly, is binding on subsequent legilsatures.

1. *Unexpended balances of appropriations for Ohio national guard, 107 Ohio Laws, 232 and 308, have lapsed.*

Section 22 of article II of the state constitution provides, as stated in your letter, that:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

The constitutional provision just quoted is the supreme law of the state on the subjects therein mentioned, and it must necessarily follow therefrom that any legislative action purporting to appropriate any part of the money in the state treasury except by specific appropriation, or for a longer period than two years, would be of no force or effect.

Section 5247 G. C., it will be observed, is not a specific appropriation of any part of the general revenues of the state, but a direction or command that the auditor of state shall credit a fund therein called the "state military fund" with a certain sum of money from the general revenues of the state. That the section itself does not make and was not intended to be an appropriation of money, is made clear by section 5248 G. C. which provides that the general assembly shall "appropriate annually" the amount authorized by section 5247 G. C.

Whether or not the provisions of section 5247 that the so-called state military fund

> "shall be a continuous fund and available only for the support of the national guard and naval militia. It shall not be diverted to any other fund or used for any other purpose,"

can be sustained in view of section 22 of article II, or should be construed as operative only during the constitutional life of appropriations specifically made (that is, not longer than two years), are questions whose determination is not necessary to the solution of your inquiry. If the true meaning of section 5247 G. C. be that funds appropriated for the state military fund should be available for a period longer than two years, it would be unconstitutional.

One of the appropriations referred to in your letter was for the fiscal year ending June 30, 1918, and the other for the fiscal year ending June 30, 1919. Since the constitutional life of each appropriation has expired by limitation of time, any unexpended balance in the treasury at the end of each respective fiscal year to the credit of the state military fund immediately lapsed and became unappropriated revenue, notwithstanding the provision of section 5247 G. C. creating the so-called military fund and providing that it should be a continuous fund and not diverted.

It may not be improper to state in this connection that a claim that the amounts appropriated by the 82nd general assembly constitute a permanent and continuous fund, would appear to be inconsistent with the expressed and declared purpose of the general assembly in making the appropriations, viz.: "This arrangement is temporary and is not to be regarded as a precedent or a departure from the principle of specific appropriations." See 107 O. L. pp. 233, 308.

2. Section 5248 G. C. enacted by the 82nd general assembly is not binding on subsequent legislatures.

In response to your second question as to whether or not it is mandatory upon the present and subsequent general assemblies to carry out the provisions of section 5248 G. C. which provides that

> "The general assembly shall appropriate annually and divide into two funds the amount of money authorized by the preceding section,"

I beg to advise that it is fundamental law that one general assembly cannot bind or control the action of another.

In Milan, etc., Plankroad Co. vs. Husted, 3 O. S. 578, 581, the court said:

"The legislature cannot, at one session, by the enactment of a law, in any manner, or to any extent whatever, limit or abridge the legislative power vested in this body, at any subsequent sessions."

In Toledo Bank vs. Bond, 1 O. S. 622, it was said, p. 688, that the legislative authority vested in the general assembly

"must remain the same in the general assembly, at each session. * * * If the legislature could, in the enactment of laws at one session, by contract or otherwise, abridge the legislative authority at a subsequent session, and thus provide against either the repeal or amendment of its enactments in future, this power would soon become absolute and dangerous. * * * The claim that the general assembly can, in the absence of any constitutional provision authorizing it, part with any legislative power, or by contract limit or restrain the future exercise of this high civil function, is, to say the least, grossly absurd."

In Bloom vs. Stolley, 5 McLean, 158, cited and quoted in Cooley's Constitutional Limitations (7 Ed.) p. 174-175, it was said:

"Unlike the decision of a court, a legislative act does not bind a subsequent legislature. Each body possesses the same power and has the same right to exercise the same discretion. * * * If in any line of legislation a permanent character could be given to acts, the most injurious consequences would result to the country. Its policy would become fixed and unchanged on great national (also state) interests, which might retard, if not destroy, the public prosperity. Every legislative body unless restricted by the constitution may modify or abolish the acts of its predecessors; whether it would be wise to do so is a matter for legislative discretion."

See 8 Cyc. 807, and 12 Corpus Juris, 806, which state the law to be that an act of one legislature is not binding upon another, and that one legislature may not restrict or limit the power of its successors, and citing in support thereof decisions of the courts of Florida, Georgia, Indiana, Kansas, Louisiana, New York, Pennsylvania, Texas and Wisconsin.

In Cooley's Constitutional Limitations (7 Ed.) 174, it is, in substance, said that if one legislature has the power to bind a subsequent one by its enactments, it could in the same degree reduce the legislative power of its successors, and that process might be repeated until, one by one, the subject of legislation would be excluded altogether from their control, and the constitutional provision that the legislative power shall be vested in the general assembly would be in a greater or less degree rendered ineffectual.

Applying the doctrine of the foregoing authorities to your present inquiry, the result must be that the direction or command of the 82nd general assembly found in section 5248 G. C. that the general assembly shall appropriate annually the amount of money authorized by section 5247 G. C., is an unenforcible and non-binding obligation upon subsequent general assemblies.

You are therefore advised in answer to your first question that the unexpended balances of the appropriations referred to in your letter, and now in the state treasury, have lapsed and are part of the unappropriated revenues of the state, and in answer to your second question that the provision of section 5248 G. C. that the

general assembly shall appropriate annually the amount authorized by section 5247 G. C. is not binding upon the present or subsequent general assemblies.

Respectfully,
JOHN G. PRICE,
Attorney-General.

920.

MUNICIPAL CORPORATION—WATERWORKS EXTENSIONS OUTSIDE OF MUNICIPALITY—COST WHEN UNREASONABLE PASSED UPON —BONDS MAY NOT BE LEGALLY ISSUED UNDER SECTION 3939 G. C. FOR SAID PURPOSE.

1. *Waterworks extensions outside the municipality may not legally be made at its expense where it is known, or by the exercise of ordinary prudence should be known, to the director of service that the income from water rates for such outside service would be so disproportionately less than the cost of such extension as to constitute a substantial gratuitious service to such users.*

2. *Municipal bonds for extension of waterworks beyond the corporate limits for supplying water to persons outside such limits may not be legally issued under section 3939 G. C.*

COLUMBUS, OHIO, January 12, 1920.

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

GENTLEMEN:—Acknowledgment is made of your recent request for the opinion of this department as follows:

> "We desire to call your attention to sections 3966 to 3970, inclusive, of the General Code, and would say that in cases of this nature the general custom has been that the water mains are laid beyond the corporation while under the supervision of the municipal force in charge, payment therefor is made by the individuals desiring the water until such time as the extension nets the municipality in water rentals a certain percentage of the cost of the extension, whereupon the municipality reimburses the person who made the payment therefor.
>
> However, in a few instances it has been abused, where a municipality has assumed the original expense for one or two water consumers and thereby sustained a heavy loss.
>
> 1. May extensions outside of a municipal corporation under these laws be done at the expense of municipality when it is known that the users therefrom will not justify the cost of the extension?
>
> 2. If a municipality may legally extend water mains beyond the corporate limits and bear the expense thereof, is there any authority of law for the issuance of bonds to cover or include such extensions, whereas, paragraph 11 of section 3939 G. C. authorizes bond issues for waterworks purposes for the 'inhabitants thereof?'"

Sections 3955 to 3988 G. C., section 6 of Article 18 of the constitution, adopted in 1912, and section 3939 G. C., all relating to municipal waterworks, are pertinent to your inquiry.