under investigation, and that said trustees have been duly authorized by proper proceedings in the Court of Common Pleas of Richland County to sell this property to the State of Ohio for the proposed purchase price, to-wit the sum of $400.00.

An examination of the warranty deed tendered by said trustees shows that the same has been signed and otherwise properly executed and acknowledged by them, and that said deed is in form sufficient to convey to the State of Ohio a fee simple title to said property free and clear of all encumbrances whatsoever.

An examination of the encumbrance estimate above referred to shows that the same has been properly executed and shows that there is a sufficient balance in a proper appropriation account to pay the purchase price of this property. I also note in the file presented a certificate over the signature of Harry D. Silver, president of the emergency board, reciting that said board had granted your request to expend said sum of $400.00 for the purchase of this property.

Said abstract of title, warranty deed, encumbrance estimate and other files and proceedings relating to the purchase of this property are accordingly hereby approved and returned to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1482.

WORKMEN'S COMPENSATION LAW—INDUSTRIAL COMMISSION'S DUTY TO COMPENSATE PUBLIC EMPLOYES—FAILURE OF PREMIUMS PAID BY POLITICAL SUBDIVISION TO COVER CLAIMS—TEMPORARY REMEDY.

SYLLABUS:

The Industrial Commission of Ohio is charged by law with the duty of making payment of compensation because of injuries received by public employes, or the death of such public employes, in the event that the political subdivision constituting the employer has made payment into the state insurance fund of the premiums provided by law. The fact that, because of statutory limitations upon contributions, the particular subdivision constituting the employer has not paid into the fund an amount equal to the disbursements made on behalf of such subdivision, does not relieve the commission of its duty to make payment from the state insurance fund to beneficiaries whose rights accrue by reason of employment by such subdivision, so long as there exists money in the state insurance fund contributed by public employers.

COLUMBUS, OHIO, February 1, 1930.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—My opinion has been requested as to whether there is any legal way by which the conditions resulting from your recent order, effective January 27th, 1930, may be alleviated. That order stopped payments on all claims of beneficiaries because of injuries to, or death of, public employes in those counties of the state which have not paid into the state insurance fund an amount of money equal to the amount that has already been disbursed from that fund.

The action of the commission was predicated upon a situation arising by reason

of the hard and fast limits placed by the provisions of the Workmen's Compensation Act upon the contributions of public employers and because of the decision of the Supreme Court in the case of *State ex rel* vs. *Casey,* 119 O. S. 403, which required the commission to use a different basis for its calculations in determining whether or not a county could be required to contribute its proportions of the state insurance fund as provided in Sections 1465-63, 1465-64 and 1465-65, General Code. Prior to that time, the commission had considered that contributions from all counties should be required in any year where there was not sufficient money in the fund, contributed to by all counties, to "provide for the payment of compensation" necessary because of injuries received by public employes in all such counties at the time the levy was made and for the ensuing year; if the commission found that the amount was not sufficient, a demand was made upon each county for its share of the state insurance fund for that year. The Supreme Court, however, held that that was not a proper basis and that the commission should consider whether or not there was sufficient money to the credit of the individual county to meet the probable disbursements on behalf of that county alone to injured public employes or their dependents during the ensuing year, and if there was sufficient money to the credit of the county to meet these disbursements it was the duty of the commission to certify to the Auditor of State that it was not necessary to make a demand upon such county for payment into the state insurance fund. This required a change in the method of computation by the commission and as a result thereof there is money in the state insurance fund to the credit of several counties, over and above the amount which will be needed to take care of the disbursements in those counties during this year.

I am advised by you that such credits are of sufficient amount to more than meet the payments required in the counties which do not have sufficient to their credit to meet the obligations for the ensuing year, so that the same might be expended by the commission without impairing the credit to any county.

The commission itself is unable to require the counties to make up deficiencies because Section 1465-63, General Code, fixes maximum percentages of the annual pay rolls of counties and their subdivisions beyond which the commission may not go in specifying the amount of contributions necessary from public employers. The actual disbursements upon claims in many counties accordingly aggregate in excess of their respective contributions. The inadequacy of funds flowing from the arbitrary limit on contributions of the several counties decreed by the act itself must be made up elsewhere than from the contributions from these counties if the payment of claims in such counties is to be continued. In this situation there is danger of eventual insolvency of the fund so far as the contribution of public employers is concerned.

The public employe fund is often spoken of as though it were a separate and distinct fund under the control of the Industrial Commission. As a matter of law this is not correct. There is only one fund and that is the state insurance fund. The Workmen's Compensation Law provides how the amount of the premiums which private employers must pay into the state insurance fund shall be determined. Sections 1465-63, 1465-64 and 1465-65 provide for payment by the state and its political subdivisions into such fund. The provisions relate to the "amount of money to be contributed by the state itself, etc.," and the contributions are to the state insurance fund. The statute requires the commission to keep a separate account of the moneys paid in by the state and its various political subdivisions and the amount expended for compensation to employes of the state and its various subdivisions. So as a matter of practice there is a book-keeping "public employes fund", but the money is commingled with, and becomes a part of, the state insurance fund.

The General Assembly in Section 1465-60, General Code, has defined the term "employer". Paragraph (1) of that section makes the state and its various political subdivisions employers within the meaning of the act. In the application of the law these are designated as public employers.

The term "employe" is also defined, and in Section 1465-61, General Code, any person in the service of the state or its various political subdivisions is made an employe within the meaning of the act. In practice these persons are known as public employes.

Section 1465-68, General Code, provides in part as follows:

> "Every employe mentioned in Section 1465-61, who is injured, and the dependents of such as are killed in the course of employment * * * shall be paid such compensation out of the state insurance fund for loss sustained on account of such injury or death * * * "

We also find in the same section the following provision:

> "Every employe mentioned in Section 1465-61, who is injured, and the dependents of such as are killed in the course of employment, * * * shall be entitled to receive, * * * from the state insurance fund, such compensation for loss sustained on account of such injury or death, * * * "

as may be provided by law.

We have, therefore, in that section the provision that every employe mentioned in Section 1465-61, (which includes public employes), shall be paid compensation from the state insurance fund for loss sustained on account of injury, or in case death results to such employe by reason of such injury then his dependents shall be paid compensation from the state insurance fund. We also have the provision that such employes, including public employes, and their dependents are entitled to receive compensation from the state insurance fund. This is limited to a certain extent by Section 1465-72, which reads in part as follows:

> "The state liability board of awards (now the Industrial Commission of Ohio) shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment * * * or to their dependents in case death has ensued."

These two sections refer to all classes of employers and to all classes of employes, and in substance provide that employes of employers who have paid the proper premiums into the state insurance fund are entitled to receive compensation for injuries received by them, and that their dependents shall receive compensation in case the injury results in the death of the employe.

The employers of these public employes affected by the situation under consideration have paid into the state insurance fund the proper premiums as provided by law, in spite of the fact that payments on allowed claims in these counties exceed the amount of their respective contributions. These two sections are therefore applicable and these public employes have the right to receive the awards and the commission has the corresponding duty to pay unless, of course, there is no money which may lawfully be paid to them.

In the decision of the Supreme Court heretofore referred to, the court held, as already pointed out, that the Industrial Commission was without authority to

demand contributions from a county as long as, according to its books, there was sufficient money to the credit of such county to pay the probable disbursements for injury or death of public employes in that county during the ensuing year. The court did not, however, say that if there was money to the credit of that county which would not be needed for the disbursements during that year, such money could not be used to pay other claims from the state insurance fund.

According to the provisions of the law at this time we have, therefore, the Industrial Commission charged with the duty of disbursing money to employes of public employers from the state insurance fund, but because of the limitations placed upon the state and the political subdivisions paying into the state insurance fund, (Section 1465-63, General Code) several of the counties have not paid in sufficient to cover the disbursements already made from the state insurance fund on account of the injuries sustained in such counties. It is, therefore, quite apparent that there is urgent need of legislation to prevent the ultimate insolvency of the fund. However, the fact that the Legislature has not made sufficient provision for the payment of money into the state insurance fund does not affect the right of claimants to receive money from the fund so long as there is any money available in such fund which may be used for that purpose.

The Industrial Commission was entirely justified in taking the action it did relative to public employes of these counties, for the reason that the commission was confronted with a condition, as the result of the Supreme Court's decision and the statutory limitations applicable, which would inevitably result in the total insolvency of the fund so far as the contributions thereto by political subdivisions are concerned. The very logical deduction from the Supreme Court decision was reached that each county's contribution must be kept entirely separate and distinct and the commission accordingly was doubtful, in view of its position as virtually a trustee, whether it might rightfully pay out money contributed by one county to beneficiaries of another.

It must be confessed that the problem is a perplexing one. The inference from the statute is that each county's contribution is separate and to be used for its beneficiaries alone and this is fortified by the Supreme Court's decision—at least to the extent that the status of a single county is determinative of its liability to make further payments. On the other hand, nowhere is there reference to more than one fund—the state insurance fund—and the duty of the commission to pay approved claims from that fund is plain. Under the circumstances the choice of the proper course is difficult.

As I have heretofore pointed out, however, the Industrial Commission has a duty to perform with respect to beneficiaries as much mandatory as the duty which it owes with respect to contributions. It is charged by law with the duty of disbursing money from the state insurance fund to employes of public employers, and I am of the opinion, in the absence of a categorical court decision to the contrary, that the fulfillment of this statutory obligation by the continuance of payments at this time is legal and cannot impose a personal liability upon the commissioners. That such a course will lead to the insolvency of the fund contributed by public employers reflects upon the wisdom of the legislation limiting the contributions of such employers, but could not, in my opinion, have the effect of charging the commissioners with responsibility beyond their statutory duty.

I have heretofore stated that, according to statistics you have furnished me, there is sufficient cash now in the state insurance fund contributed by public employers so that, together with the anticipated receipts of this year, all estimated liabilities chargeable to public employment for the current year can be paid. It is evident that legislative relief permitting the proper apportionment of risks is

imperative if payments are to be continued indefinitely, and it is my suggestion that the situation be called forthwith to the attention of the next Legislature.

Summarizing what has been said, I am of the opinion that the Industrial Commission, because of its statutory duty to make payments from the state insurance fund to beneficiaries, may legally continue payments so long as there is cash to make them without incurring any personal liability for such action. It follows that the order of the commission should be rescinded and payments continued at least until such time as there remains no cash in the state insurance fund contributed by public employers. The need of remedial legislation, however, cannot be overemphasized.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1483.

DELINQUENT LANDS—HOW COSTS OF SERVICE BY PUBLICATION IN FORECLOSING STATE'S LIEN FOR TAXES PAID—HOW TITLE TO REALITY ACCEPTED BY STATE—STATE'S FEE SIMPLE TITLE TO FORFEITED LANDS SUBJECT TO CONDITIONS.

SYLLABUS:

1. *The expense of securing service by publication upon necessary party defendants in an action to foreclose the state's lien for delinquent taxes under the provisions of Section* 5718, *General Code, may be paid out of the proceeds of the sale of the property as a part of the costs in the action; or such expense may be paid out of the general county fund subject to appropriation therefor by the county commissioners and included in the judgment against the property owner against whom such delinquent taxes have been assessed.*

2. *Under the provisions of Section* 18, *General Code, as well as independent thereof, the state as a sovereign has authority to receive title to property given to it; but unless some officer or agent of the state has been designated to accept the real property on behalf of the state, such property can be accepted only by act of the Legislature.*

3. *Under the provisions of Section* 5744, *General Code, lands forfeited to the state for the reason that after offer for sale they cannot be sold as delinquent lands vest in the state by full fee simple title, subject to the right of the former owner to redeem the same in the manner provided for by Section* 5746, *General Code, and subject to the requirement that such lands shall be sold in the manner required by Sections* 5748, *et seq., General Code.*

COLUMBUS, OHIO, February 3, 1930.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication over the signature of George S. Tenesy, Assistant Prosecuting Attorney of Cuyahoga County, which communication reads as follows:

"Will you kindly furnish us with an opinion upon the following points:

(1) Referring to foreclosure actions under G. C., Section 5718, (Sale