duties of the local authorities previously supervising such matters as playgrounds, etc,. to the board of recreation provided by Sec. 4065-3 G. C. That is to say that relative to such matters, the board of recreation was to have the same supervisory control over said playgrounds, etc., as that exercised by the director of public service under Sec. 4325 G. C., and the board of park commissioners under Sec. 4057 G. C., and to possess the same powers and duties relative to the subject of playgrounds as these local authorities. Since, however, the powers and duties of said local authorities are merely supervisory in nature, such authority when transferred to the board of recreation as provided by Sec. 4065-3 G. C., could not vest in said board the power to directly purchase land and buildings since this power is not vested in such local authorities in the first instance. Thus it would seem that the said board of recreation under Sec. 4065-3 is clothed with no power in this respect. This view is thought to be strengthened by the legislative intention expressed in the specific provisions for the purpose of lands and buildings for such purposes provided by Secs. 4065-1, and 4065-6 G. C. Thus it would seem that the authority to lease lands and to provide buildings for the purposes of said act, is a power delegated to council and not to said board of recreation, and from this conclusion it must follow that your first question should be answered in the negative.

Pertinent to your second question, Sec. 4065-3 G. C., confers no authority upon the board of recreation to levy taxes or appropriate money for the purposes of said act, hence this inquiry is obviously answered in the negative.

For similar reasons a negative answer must be returned to your third question, since the board of recreation, by the provisions of the act in question is not clothed with the power to acquire lands, buildings or to issue bonds, such powers being by the provisions of Sec. 4065-1, and 4065-6 G. C., specifically delegated to the city council.

Relative to your fourth question, Sec. 4065-1 G. C., provides that council may designate and set apart for such recreation purposes any lands or buildings owned by such city when not dedicated or devoted to other public use. It would seem then that since the city does not own public school lands, and since public school lands are dedicated to public use, it would follow that public school grounds could not be equipped for playgrounds under the authority of this act. For similar reasons it follows that there is no authority in the city to equip for such purposes private school lands, or such as are not owned by the city, hence a negative answer is returned to your fourth question.

In answer to your fifth question, it is thought that the amount of money which can be raised by a tax levy for the purpose mentioned in Sec. 4065-7 G. C., is subject to the general tax limitations in such case as are prescribed by law, such as Secs. 5649-1 et seq. of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3860.

MECHANICS LIEN LAW—WHEN FUNDS IN COUNTY TREASURY SUBJECT TO SAID LAW—WHEN STATE AID HIGHWAY CONTRACTS NOT SUBJECT TO SAID LIEN LAW.

1. *Funds in the county treasury appropriated for and applicable to contracts entered into by the county for highway improvement are subject to the provisions*

of sections 8324 *to* 8331 *G. C., allowing liens in favor of sub-contractors, laborers, material-men and mechanics.*

2. *By reason of the amendment of section* 1208 *G. C., in* 109 *O. L.* 159, *contracts entered into by the state under the state aid highway laws (sections* 1178 *to* 1231-7 *G. C.) subsequent to the going into effect of said amendment, are not subject to lien under the provisions of sections* 8324 *to* 8331 *G. C., or otherwise, either as to funds in the state treasury or in the county treasury applicable to such contracts.*

COLUMBUS, OHIO, January 4, 1923.

HON. ROBERT S. PARKS, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—Under recent date, you have advised this office that certain verified statements have been filed with your county officials, with the object of establishing in favor of laborers and material men, liens on moneys in the county treasury applicable to payment for certain highway improvement contracts. Your statement indicates that two of the contracts in question were entered into by the State through its Department of Highway and Public Works under the state aid highway laws, said two contracts bearing dates respectively March 27, 1922, and May 3rd, 1922, and providing for highway improvement in Geauga county. It is assumed from the tenor of your letter that these contracts grow out of applications for state aid made by your county, and that the county is bearing a part of the cost. The third contract you describe was entered into in May, 1922, by your board of county commissioners, and the State is not a party to it. What you desire to know is, whether moneys in the county treasury applicable to these several contracts, are subject to lien in favor of laborers, etc.

So far as concerns the contract entered into by the county, and not signed by the State, your inquiry may be disposed of by reference to Sections 8324 to 8331, G. C. Those sections, briefly described, provide that sub-contractors, laborers, material men and mechanics who furnish material or perform labor for or on a road improvement, etc., "or other public improvement, or public buildings," may, by taking the appropriate steps specified in said statutes, obtain a lien on the public funds applicable to the contract to the extent of any balance due the principal contractor. In view of the broad terms of Sec. 8324, it is plain that road improvement contracts *entered into by the county* are subject to its terms.

A slightly more complicated situation arises as to contract entered into *by the State* under the highway laws. As a background for considering that situation, heed should be given to the principle announced in State ex rel. Merritt, vs. Morrow, 10 O. N. P. (N. S.), 279, a case which deals with Secs. 8324, et seq., and in which the Court held:

> "The mechanic lien law, although general in its nature, and the language in the code broad enough to include public improvements of the state, does not apply to any public improvement made by the state. And any steps taken pursuant to the mechanic lien act to establish a lien or claim against funds in the hands of the state set apart for any public improvements have no effect in law and afford no ground for action either in law or equity against the state."

That holding was affirmed by the Circuit Court, as shown in a note appended to the report of the case. There would seem to be no doubt as to the correctness of the conclusion when reference is had to the previous case of State ex rel. vs. Board of Public Works, 36 O. S. 409.

No doubt it was with this holding in mind that the General Assembly amended Sec. 1208 in 107 O. L. 126 by inserting the sentence:

> "The provisions of Section 8324 of the General Code and the succeeding sections in favor of sub-contractors, material men, laborers and mechanics shall apply to contracts let under the provisions of the preceding sections as fully and to the same extent as in the case of counties."

Then in 109 O. L. page 159, the General Assembly again amended Sec. 1208 by striking therefrom the sentence just quoted.

In an opinion of this Department (No. 3770), dated November 28, 1922, directed to the Department of Highways and Public Works, a copy of which is enclosed, the view was expressed that under Sec. 1212 and related sections of the state highway code, money appropriated by the county and held in the county treasury subject to paying the county's share of the cost of a state aid highway improvement is to be considered as a fund of the State. That being true, it follows with the last-noted amendment of Sec. 1208 in 109 O. L., the right to obtain a lien on any funds appropriated and applicable to state aid highway contracts, whether such funds be in the state treasury or county treasury, ceased to exist as to any contract entered into after that amendment became effective on August 5, 1921.

For the sake of completeness, it should be mentioned that the amendment of Sec. 1208 in 109 O. L. was made applicable to pending proceedings (see Sec. 6 of amendatory Act, 109 O. L. 171). Therefore, on its face, the amendment would seem to be applicable to highway improvement contracts of the State which were uncompleted when the amendment took effect. Whether the amendment could constitutionally apply to all such uncompleted contracts, as, for instance, to cases where credit had been extended to the contractor before the amendment took effect is a question which need not be discussed here; because it clearly appears that the two contracts of the State which you describe were entered into by the State and the principal contractor *after* the amendment took effect.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3861.

SCHOOL AND MINISTERIAL LANDS—ADMINISTRATIVE POLICY RELATIVE TO RESERVATION OF COAL, OIL, GAS, ETC. IN SAID LANDS—HOW LEASED.

1. *For the purpose of establishing an administrative policy relative to the reservation of coal, oil, gas and other minerals contained in and upon school and ministerial lands held under a ninety-nine year lease renewable forever, it is suggested that the reservations required by section* 3203-13 *and* 3184 *G. C. be made by the state in the conveyance of the fee simple title of said lands.*