provement than is necessary to pay the county's portion of the cost of such improvement.

While the statute contains no express provision authorizing an amendment of the certificate required by Section 5625-33, there is no requirement to the effect that the certificate attached to the contract must be for an amount greater than is necessary to meet the contract. After the county commissioners and the state have contracted as to the proportion of the estimated cost of a road improvement that the county will bear, the execution of a contract for the construction of the road for an amount less than the estimated cost, results in the contract between the county and the state being reduced and I see no reason why, under such circumstances, the certificate required by Section 5625-33 should not be amended when the money has been appropriated from the general fund.

In view of the foregoing and in specific answer to your question, it is my opinion that when a board of county commissioners has entered into a contract with the State, agreeing to pay a portion of the cost of a state highway improvement, to which there is attached a certificate of the county auditor as provided by Section 5625-33, General Code, based upon the estimated cost of such improvement, such certificate may be amended so as to cover the county's portion of the actual cost after the State has entered into a contract for the construction of such improvement, and the actual cost has been determined to be an amount less than the estimated cost; provided, however, that the county's portion of the cost of the improvement is not being paid out of a specific permanent improvement fund.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2134.

APPROVAL, ARTICLES OF INCORPORATION OF THE STATE AUTOMOBILE INSURANCE ASSOCIATION OF COLUMBUS, OHIO.

COLUMBUS, OHIO, July 23, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning herewith, approved, certificate of amendment to the Articles of Incorporation of the State Automobile Insurance Association of Columbus, Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2135.

COUNTY AUDITOR—DUTY TO REAPPRAISE ALL REALTY OTHER THAN THAT OF PUBLIC UTILITIES IN 1931, MANDATORY.

SYLLABUS:

The duty imposed on the county auditor by the provisions of Section 5548, *General Code, as amended by the act of April* 21, 1925, 111 *O. L.* 418, *to assess for the purpose*

of taxation all the real estate situated in the county other than that owned by public utilities otherwise assessed every sixth year after the year 1925 *is mandatory.*

COLUMBUS, OHIO, July 23, 1930.

HON. NELSON SCHWAB, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from your office over the signature of Clifford F. Cordes, Assistant Prosecuting Attorney, which communication reads as follows:

> "The county commissioners of Hamilton County referred to this office a communication from the county auditor relative to the reappraisal of property in the county in 1931, pursuant to the provisions of General Code Section 5548, and directed that we request from your department an opinion as to whether the provision—'In the year 1925, and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situate in the county;'—is mandatory or in the discretion of the auditor."

As noted in said communication, the question therein presented calls for a consideration and construction of certain provisions of Section 5548, General Code, as amended in 1925 by the 86th General Assembly (111 O. L. 418). This section of the General Code, so far as the same is pertinent in the consideration of the question here presented, reads as follows:

> "Each county is made the unit for assessing real estate for taxation purposes. The county auditor, in addition to his other duties, shall be the assessor for all the real estate in his county for purposes of taxation, provided that nothing herein shall affect the power conferred upon the tax commission of Ohio in the matter of the valuation and assessment of the property of any public utility.
>
> In the year 1925, and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situated in the county; provided, that if the real property in any county or subdivision thereof has been reappraised in the years 1922, 1923 or 1924, and upon application of the county auditor of said county the tax commission of Ohio finds that the real property in said county or subdivision thereof is appraised at its true value in money, then there shall be no general reassessment of property in said county or subdivision in the year 1925. The tax commission of Ohio may upon application of the auditor of any county and for good cause shown extend the time in which the reassessment required to be made in the year 1925 shall be completed in said county.
>
> The county auditor shall cause to be made the necessary abstracts from books in his office, containing such description of real estate in such county, together with plat books and lists of transfers of title to land as the county auditor deems necessary in the performance of his duties in valuing such property for taxation. Such abstracts, plat books and lists shall be in such form and detail as the Tax Commission of Ohio may prescribe."

It is noted that said section provides that in every sixth year after the year 1925, "it shall be the duty of the county auditor to assess all the real estate situated in the county."

With respect to the mandatory or directory and discretionary nature of statutory provisions as affected by the use therein of the word "shall" rather than the word "may", it has been held that "the literal meaning of the words 'may' and 'shall' is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other when that is required to give effect to other language found in the statute or to carry out the purpose of the Legislature as it may appear from a general view of the statute under consideration." *State ex rel* vs. *Board of Education,* 95 O. S. 367; *State ex rel* vs. *Barnell,* 109 O. S. 256. It is to be observed, however, that these terms are presumed to have been used in their natural and primary signification and they should not be interpreted otherwise unless on consideration of the statute as a whole it is found necessary to do so in order to carry out the manifest purpose of the Legislature.

Touching this question, the Supreme Court of this state in its opinion in the case of *State ex rel* vs. *Board of County Commissioners,* 94 O. S. 296, said:

> "Courts should be slow to import any other than the natural and commonly understood meaning to terms employed in the framing of our statutes.
>
> *You shall* and *you shall not* should be construed as imposing imperative duties or prohibitions, unless the manifest intention of the Legislature suggests a weakened sense of meaning."

Also, in the case of *Devine* vs. *The State ex rel Tucker,* 105 O. S., 288, it was held:

> "An act of the General Assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such discretionary character clearly appears from the entire text of the act."

The statutory provision here under consideration has reference to the time when the county auditor, as a public officer, is to perform a designated act, to-wit, that of assessing the real property of the county for purposes of taxation. It was doubtless this fact which suggested the question as to whether the statutory provision is mandatory or directory. In this connection it is noted that where a time limitation is imposed wih respect to a designated act performed by a public officer merely with a view to a prompt and orderly conduct of the business of his office, the statutory provision imposing such limitation as to time is, as a general rule, to be considered as directory and not mandatory. *State ex rel* vs. *Barnell, supra;* Spencer's Appeal, 78 Conn. 301. I am inclined to the view, however, that the statutory provision here under consideration was enacted for a purpose other than that of securing the orderly and punctual performance of official duties by the county auditor.

Section 5548, General Code, prior to its amendment by the act of the 86th General Assembly, above noted, authorized and required the county auditor to make an assessment of the real property within any assessment district or subdivision of the county, when required to do so by an order of the board of county commissioners made on a consideration of the findings of the county auditor as to whether the real estate in such subdivision was on the tax duplicate at its true value in money, or when such assessment was petitioned for by not less than twenty-five freeholders in such subdivision.

It is observed that under the provisions of said section of the General Code prior to its amendment, the question whether the real estate in any subdivision of the county was to be assessed for purposes of taxation in any particular year, other than in those cases where such assessment was petitioned for by the required number of freeholders, was a matter determined by the judgment and official discretion of the

county auditor and the county commissioners. In the light of this effect to be given to the provisions of this section of the General Code prior to its amendment, it is quite clear that the Legislature, in amending said section so as to provide that in the year 1925, and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situated in the county, other than real estate owned by public utilities otherwise assessed, thereby intended to remove the question as to when the real estate in the county should be assessed for taxation from the judgment and discretion of the county auditor and the county commissioners, and to prescribe the specific times when such assessment should be made.

In the case of *State ex rel Tax Commission of Ohio* vs. *Faust, Auditor,* 113 O. S. 365, it was held that the duty imposed upon the county auditor by the provisions of Section 5548, General Code, above quoted, requiring him to assess in the year 1925 all of the real estate in the county which had not been reappraised in the years 1922, 1923 and 1924, other than the real estate of public utilities, the assessment of which is otherwise provided for, was a mandatory duty enforcible by an action in mandamus. No reason is suggested as to why the duty imposed upon the county auditor by the further provision of said section, to assess the real estate in the county every sixth year after the year 1925, is not equally mandatory; and by way of specific answer to the question presented in your communication, I am of the opinion that such duty is mandatory, and is not one which as to the time of its performance lies in the discretion of the county auditor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2136.

APPROVAL, ABSTRACT OF TITLE TO LAND OF ANNA ROESSLER, IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 23, 1930.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There have been submitted for my examination and approval abstracts of title relating to a certain parcel of land off of the west end of inlot 114 in the city of Columbus, Ohio, which is owned of record by one Anna Roessler and which is more particularly described as follows:

> Being part of inlot No. 114 in the city of Columbus, Ohio, as the same is numbered and delineated upon the recorded plat thereof of record in deed book F, page 332, recorder's office, Franklin County, Ohio, and being more particularly described as follows:
>
> Beginning at the northwest corner of said lot; thence eastwardly on the north line of said lot 18 feet, more or less, to the west line of a parcel of land out of said lot recently conveyed to the State of Ohio by one Anna Binder; thence southwardly on a line at right angles to the north line of said lot (said line being the west line of the Binder and Isaly parcels recently purchased by the state), 62½ feet to the south line of said lot; thence westwardly with said south line 38 feet, more or less, to the southwest corner of said lot 114; thence northeastwardly along the west line of said lot 65.46 feet, more or less, to the place of beginning. The property hereby conveyed being all