

2953.

MUNICIPAL UNIVERSITY—TAX LEVIED PURSUANT TO SECTION 7908 G. C.—WHEN PURPOSE IS IN COMPLIANCE WITH SAID SECTION AND HOW SAME EXPENDED.

A tax levy made in pursuance of section 7908 G. C. for the benefit of a municipal university, and for the purpose of an "Observatory and other scientific purposes of the University" is in compliance with said section, and proceeds of such a levy may be expended by the board of directors of the university in a manner deemed applicable by them when limited to the exclusive purposes for which such fund was provided.

COLUMBUS, OHIO, March 28, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

"Section 7908 G. C., relative to tax levies for municipal universities provides in part that council annually may assess and 'levy five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors, and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purposes exclusively.'

The city of Cincinnati in 1922 submitted a budget for 'Observatory and other scientific purposes of the University,' in the following detail:

6B1 Personal service-----	\$33,190 00
6B4 Services other than personal-----	2,820 00
6B5 Supplies and materials-----	790 00
6B6 Equipment -----	700 00
6B7 Fixed charges-----	1,500 00

The last clause of that portion of section 7908 G. C., above quoted provides that 'the proceeds of which shall be applied by the board of directors for such purposes exclusively.' This would seem to indicate that the purposes for which the tax is levied should be clearly defined in the budget, and this they have failed to do in the instance cited.

Question 1. Does the levy made under section 7908 G. C., for observatory and other scientific purposes of the university comply with the provisions of above section?

Question 2. Could the proceeds of a levy made in the manner described be legally expended by the university for any purpose which they might deem applicable to the observatory and other scientific purposes?

Thanking you for an early reply, we remain"

Relative to your first question it may be noted that under the provisions of section 7908 G. C. council is made the levying authority, and it is thought that the levy mentioned by the section may be made in any of three ways, that is to say, the levy may be made "for the establishment and maintenance of an astronomical observatory," or "for the establishment and maintenance of an astronomical observatory or

for other scientific purposes," or it may be made for scientific purposes alone, and such as are disassociated with the purposes of an observatory.

It is observed from your communication that the budget as submitted by the city of Cincinnati in 1922, reads: "for observatory *and* other scientific purposes of the university, etc.," and with the slight deviation in the use of the word "and" instead of "or" the purposes of the levy in question may be said to be in compliance with the literal wording of section 7908 G. C. However in this respect the rules of statutory construction permit of the transmutation of these words when the meaning and context of the construed section may so require. Hence it is concluded, that a levy made by council under the language used "for observatory and other scientific purposes of the university" is substantially within the requirements of section 7908 G. C.

In answer to your second question it is concluded that if the levy indicated has been made in conformity to law, any fund raised thereby may lawfully be expended for the purposes for which it was made. It is obvious therefore, in answer to this question, that the tax levy being legal, expenditures from the fund so raised may lawfully be made by the directors of the university, for purposes which they might deem applicable, provided the same is exclusively limited to those purposes for which the fund was created, and as required by the provisions of section 7908 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2954.

ROADS AND HIGHWAYS—REAL ESTATE LYING WITHIN CORPORATE LIMITS OF CITY SUBJECT TO ASSESSMENT UNDER SECTION 1178 G. C.—WHEN CANAL LAND NOT SUBJECT TO ASSESSMENT FOR HIGHWAY IMPROVEMENT—LEASEHOLD ESTATES ACQUIRED IN CANAL LANDS NOT SUBJECT TO SAID ASSESSMENTS.

1. *Property lying within the corporate limits of a city is subject to assessment for highway improvements made under authority of sections 1178 et seq., G. C.*
2. *Canal property which by act of the General Assembly has been abandoned with the proviso that such property be used by a municipality for street, parking, sewerage and water purposes, is not subject to assessment for highway improvement.*
3. *Leasehold estates acquired in canal lands under authority of sections 13966 G. C. and related sections, are not subject to assessment for highway improvement.*

COLUMBUS, OHIO, March 28, 1922.

HON. W. B. BARTELS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—You have submitted for the opinion of this office several inquiries having reference to a statement of facts substantially as follows:

The state under authority of sections 1178 et seq. G. C. (state highway code) has, upon application by the commissioners of Athens county, improved a certain section or certain sections of a highway within the county. The legislation by the county commissioners provides for an assessment of real estate within one mile of either side of the improvement (section 1214 G. C.) This one mile assessment zone on the north side of the highway in