

governor, may transfer to the penitentiary a prisoner, who, subsequent to his committal, shall be shown to have been more than thirty years of age at the time of his conviction or to have been previously convicted of crime. The Ohio board of administration may so transfer an apparently incorrigible prisoner whose presence in the reformatory appears to be seriously detrimental to the well-being of the institution."

A question similar to the one contained in your letter was passed upon by the Court of Appeals of Cuyahoga County in the case of *Russell vs. State*, 7 O. L. Abs. 5. The court, by Williams, Judge, at page 6, said:

"The principal contention of counsel for plaintiff in error is that the sentences were erroneous in that the plaintiff in error was only twenty years of age at the time and could only be sentenced to the Ohio State Reformatory and not to the penitentiary, under General Code, Section 2131.

There is no question that the Ohio State Reformatory at Mansfield is a state prison. Under Section 2131 General Code the superintendent is required to receive all male criminals between sixteen and thirty years, lawfully sentenced to the reformatory, providing they have not been 'previously sentenced to a state prison,' and the court pronouncing sentence has no power to impose a sentence to the Ohio State Reformatory where the convicted person has been previously sentenced to the Ohio State Reformatory. If a convicted person between sixteen and twenty-one has not been previously sentenced to a state prison, the court shall sentence him to the Ohio State Reformatory, but if he is between twenty-one and thirty years and has not previously been sentenced to a state prison, the court may sentence him to the reformatory if amenable to reformatory methods, otherwise to the penitentiary."

It is therefore my opinion that a male person twenty years of age who previously had been convicted and sentenced to the Ohio State Reformatory, must be sentenced to the Ohio Penitentiary on being convicted and sentenced for a subsequent felony.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2693.

COUNTY BUDGET COMMISSION—UNDER SECTION 5625-27, GENERAL CODE, FISCAL OFFICER MAY CERTIFY ADDITIONAL SOURCES OF ESTIMATED REVENUE WHEN—AUTHORITY OF COUNTY BUDGET COMMISSION WITH RESPECT THERETO.

SYLLABUS:

1. *Subsequent to the issuance by a county budget commission, on or about*

the beginning of each fiscal year, of its revised and amended official certificate of estimated resources for the several subdivisions and taxing units within the county, as provided for by Section 5625-27, General Code, the fiscal officer of each such subdivision or taxing unit may in the ensuing fiscal year, certify to the county auditor that revenues available for the uses of the said subdivision or taxing unit during the current fiscal year have been collected from a new source, or that actual balances and receipts in any of its funds exceed the certified estimate, if, in fact, such collections have been made or such receipts and balances exist. Such a certificate by a fiscal officer is unauthorized unless actual collections of revenues from new sources have been made or actual balances and receipts in certain of its funds exist.

2. *Upon receipt by a county auditor of a certificate of the fiscal officer of a subdivision or taxing unit during a fiscal year, that revenues from new sources have been collected since the former certificate of estimated resources had been made, or that actual balances and receipts exceeding the former estimate exist in certain funds of the subdivision or taxing unit, it is the duty of the budget commission of the county, forthwith, to issue an amended certificate of estimated resources including the same.*

3. *Such a certificate of the fiscal officer of a subdivision or taxing unit during a fiscal year, based upon anticipated collections or balances or receipts is not authorized and may be regarded as void.*

4. *A county budget commission is not required to issue an amended certificate of estimated resources for a subdivision or taxing unit during a fiscal year and after the original amended certificate of estimated resources issued by it at the beginning of the fiscal year had been made, and may refuse to do so upon the receipt by the auditor of a certificate of the fiscal officer of a subdivision or taxing unit based upon anticipated collections or revenue from new sources or anticipated excess balances and receipts in certain funds, regardless of how sure the fiscal officer or other officers of the taxing unit may be that such collections will be made or that such excess balances and receipts will exist.*

COLUMBUS, OHIO, May 21, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“When a taxing subdivision has definite knowledge that additional revenue will be received during the current year in excess of the estimated resources as contained in the amended official certificate of the budget commission, must the budget commission certify an amended official certificate including same, or can the budget commission refuse the amended certificate until such time as the additional revenue is actually collected and in the treasury of the subdivision?”

The annual appropriations of a taxing subdivision made under sections 5625-20 et seq., in accordance with official certificates of estimated resources, are based entirely on estimated revenue, while in appropriating additional revenue during the current year not included in the original certificate, section 5625-27 reads in part as follows:

* * In the event that the subdivision collects revenue available for the purposes of such fiscal year from a new source which is not

included in an official certificate or that the actual balances and receipts in any fund exceed the certified estimate, then forthwith upon the certification by the fiscal officer of the subdivision of the amount of said additional or excess balances and receipts, the budget commission shall certify an amended official certificate including the same. * * *

The question contained herein is asked so that an interpretation of the foregoing section may be obtained."

It will be noted upon a reading of that portion of Section 5625-27, General Code, quoted in your letter, that it is the duty of a county budget commission to certify an amended official certificate of estimated resources for a subdivision when, there is certified to it by the fiscal officer of the subdivision the amount of additional or excess balances or receipts existing in the treasury of the subdivision either by reason of the collection of revenue available for the purposes of the subdivision for the fiscal year from a new source, or when, because of oversight or otherwise, the actual balances and receipts in any fund are greater than were shown by the original certified estimate made by authority of Section 5625-20, General Code. No authority exists for the budget commission to certify an amended certificate of estimated resources until the fiscal officer's certificate of additional receipts and revenues is received, as stated above.

If a true certificate of such excess revenues is received by a budget commission from the fiscal officer of a subdivision, I am of the opinion that it is the mandatory duty of the budget commission to certify an amended official certificate of estimated resources for the subdivision. If the certificate is false or unauthorized, the budget commission could not be required to issue an official amended certificate, and if it is known to the budget commission that a fiscal officer's certification is made without authority the commission is justified in refusing to issue its certificate.

By the plain terms of the statute, Section 5625-27, General Code, it is only when the subdivision "collects" revenue available for its purposes from a new source which is not included in the original certificate of estimated resources or when there are "actual balances and receipts in any fund" in excess of those originally certified, that a fiscal officer is authorized to make a certificate of additional or excess balances or receipts for the purposes of procuring from the budget commission an amended certificate of estimated resources.

The mere knowledge of some of the officers of a subdivision that additional revenues will be received during a fiscal year, in excess of those included within the original certificate of estimated resources, regardless of how definite that knowledge may be, does not create an actual balance in a fund. It is not a "receipt" nor is it an "actual balance." Actual and definite knowledge that moneys will be received does not constitute a collection of those moneys. The legislature, by the use of the terms "collects" and also "actual balances" and "receipts" in Section 5625-27, General Code, obviously meant that actual revenue must be on hand and not merely the prospect of receiving these revenues, before a fiscal officer should be authorized to certify its existence to the budget commission.

I am therefore of the opinion, in specific answer to your questions:

1. Subsequent to the issuance by a county budget commission, on or about the beginning of each fiscal year of its revised and amended official certi-

ificate of estimated resources for the several subdivisions and taxing units within the county as provided for by Section 5625-27, General Code, the fiscal officer of each such subdivision or taxing unit may in the ensuing fiscal year, certify to the county auditor that revenues available for the uses of the said subdivision or taxing unit during the current fiscal year have been collected from a new source, or that actual balances and receipts in any of its funds exceed the certified estimate, if, in fact, such collections have been made or such receipts and balances exist. Such a certificate by a fiscal officer is unauthorized unless actual collections of revenues from new sources have been made or actual balances and receipts in certain of its funds exist.

2. Upon receipt by a county auditor of a certificate of the fiscal officer of a subdivision or taxing unit during a fiscal year, that revenues from new sources have been collected since the former certificate of estimated resources had been made, or that actual balances and receipts exceeding the former estimate exist in certain funds of the subdivision or taxing unit, it is the duty of the budget commission of the county, forthwith, to issue an amended certificate of estimated resources including the same.

3. Such a certificate of the fiscal officer of a subdivision or taxing unit during a fiscal year, based upon anticipated collections or balances or receipts is not authorized and may be regarded as void.

4. A county budget commission is not required to issue an amended certificate of estimated resources for a subdivision or taxing unit during a fiscal year and after the original amended certificate of estimated resources issued by it at the beginning of the fiscal year had been made, and may refuse to do so upon the receipt by the auditor of a certificate of the fiscal officer of a subdivision or taxing unit based upon anticipated collections or revenue from new sources or anticipated excess balances and receipts in certain funds, regardless of how sure the fiscal officer or other officers of the taxing unit may be that such collections will be made or that such excess balances and receipts will exist.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2694.

APPROVAL—SUPPLEMENTAL RESOLUTION COVERING EXTRA WORK
ON SECTION "ST. MARYS BR.", S. H. NO. 165, AUGLAIZE COUNTY,
OHIO.

COLUMBUS, OHIO, May 21, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted Supplemental Resolution covering extra work on Section "St. Marys Br.", S. H. No. 165, Auglaize County, Ohio.