

704.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE F. TAYLOR,
GREENVILLE, DARKE COUNTY, OHIO.

COLUMBUS, OHIO, August 2, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my examination and approval an abstract of title and a proposed lease relating to a certain parcel and tract of land in Darke County, Ohio, the same being Out-lot No. 1 in the Commercial Club Addition to the city of Greenville, Ohio, and containing 2.03 acres of land.

Careful examination of the abstract of title submitted shows that George F. Taylor, the record owner of said property has a good, indefeasible, fee simple title to the same, free and clear of all encumbrances except the taxes on said property for the last half of the year 1928 amounting to the sum of \$64.96, and except the undetermined taxes on said property for the year 1929.

I have also examined the proposed lease above referred to by the terms of which said George F. Taylor leases and demises to the State of Ohio the above described property with the appurtenances thereunto belonging for the term of five years beginning on the first day of August, 1929. This lease does not in terms state the purpose for which the property is to be used by the lessee, but from other information received by me, I am advised that the property is to be used for the purpose of housing and storing automobiles, motor trucks and other road building machinery and equipment, and that accordingly, this lease is one you are authorized to take under the provisions of Section 1190-1, General Code. As above noted, this lease is one for a term of five years, and the rental therein provided for is the sum of \$120.00 per month payable at the end of each month during said term. This lease being one for a period of five years and assuming by its terms to impose upon the lessee an obligation to pay to the lessor the sum of \$120.00 a month during said term, is in my opinion invalid for the reason that under the Constitution you do not have any power to bind either your department or the State of Ohio by a contract which imposes a present obligation extending beyond the present biennium period for which appropriations have been made to your Department. *State vs. Medbery*, 7 O. S. 522.

To avoid this objection as well as to exempt yourself from any personal liability under this lease in case the Legislature does not make appropriations covering the rent for the subsequent years of the term of the lease, said lease should contain a provision substantially as follows:

“This lease is made subject to appropriation made by the state legislature and the State of Ohio and the Director of Highways are relieved of all liability for the payment of rent, if such appropriation by the legislature is not made.”

See *State ex rel Ross vs. Donahey*, 93 O. S. 414.

This lease when put in proper form should be signed by you in the presence of two witnesses and acknowledged before a notary public. In this connection, if the lease is acknowledged by you before the notary public whose signature appears to the acknowledgment on this lease, there should be stricken from said acknowledgment the words “The State of Ohio,” and in place thereof your own name should be inserted.

When said lease has been re-written and executed to conform to the above suggestions, the same should be again submitted to this Department with an encum-

brance estimate covering available moneys to pay the rent provided for in this lease appropriated by the last General Assembly.

By the provisions of said lease there is granted to the State of Ohio option and privilege of purchasing the above described property at a purchase price of \$10,000.00, if said option and privilege is exercised before August 1, 1930. If this option and privilege is exercised and said property is purchased, the abstract should be brought down to date and again submitted to this Department for approval before the transaction relating to the purchase of said property is closed.

I am herewith returning to you said abstract of title and lease.

Respectfully,

GILBERT BETTMAN,
Attorney General.

705.

CORPORATION—DOMESTIC AND FOREIGN—PROVISIONS OF AMENDED SECTION 5506, GENERAL CODE, 88TH GENERAL ASSEMBLY IN-APPLICABLE TO 1929 FRANCHISE TAX.

SYLLABUS:

Provisions of Section 5506, as contained in House Bill Number 264 of the 88th General Assembly are not applicable to the 1929 franchise tax.

COLUMBUS, OHIO, August 3, 1929.

HON. H. ROSS AKE, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge your communication of recent date, which reads as follows:

“House Bill No. 264 entitled ‘An act to amend Sections Nos. 5506, 5509, 5511, 5512 and 5513 of the General Code of Ohio’ relating to the franchise tax on domestic and foreign corporations, we are advised, becomes effective July 28, 1929.

This act, in Section 5506, contains the following provision:

Upon failure of such public utility or corporation to pay such tax on the day fixed for payment, the treasurer of state shall thereupon notify the tax commission and the tax commission shall file in the office of the recorder of the county in which the principal place of business of the public utility or corporation in this state is located (for which filing no fee shall be charged), notice of such lien and such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor whose rights have attached prior to the time such notice is so filed.

The ‘day fixed for payment’ is apparently set forth in Section 5499 of the General Code which reads as follows:

‘Such fee shall be payable to the treasurer of state on or before the 15th day of the following July.’

The matter concerning which we will be pleased to have your opinion is:

Does the provision of this act, requiring the certification of delinquent list to the tax commission which in turn shall be certified by such commission to the recorders of the various counties, apply to the 1929 tax, the statutory