

In the opinion of the court in the case of *State, ex rel., vs. Barnell*, 109 O. S. 246, 255, it is said:

"Whether a statute is mandatory or directory is to be ascertained from a consideration of the entire act, its nature, its object, and the consequences which would result from construing it one way or the other. 36 Cyc., 1157.

Where the instructions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, the provisions may generally be regarded as directory. *Hurford vs. City of Omaha*, 4 Neb., 336-350.

A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory merely, unless the nature of the act to be performed or the phraseology of the statute or of other statutes relating to the same subject-matter is such that the designation of time must be considered a limitation upon the power of the officer. 36 Cyc., 1160."

There is nothing in the provisions of section 5625-20, General Code, or in any other statute relating to this matter which in terms negatives the authority of the taxing officials of a subdivision to adopt such tax budget after the time designated in section 5625-20, General Code; and upon the principles noted by the Supreme Court in the cases above cited, I am of the opinion that in the case presented in your communication the county commissioners had authority to adopt a tax budget for the county on July 20.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4190.

APPROVAL, CONDITIONALLY, QUIT CLAIM DEED EXECUTED BY  
THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY,  
CONVEYING LAND IN VILLAGE OF NORTHFIELD, SUMMIT  
COUNTY, OHIO, TO STATE OF OHIO.

COLUMBUS, OHIO, March 28, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you, enclosing a quit claim deed to be executed by The American Steel and Wire Company of New Jersey, conveying to the State of Ohio four certain parcels of land situated in the Village of Northfield, Summit County, Ohio, and aggregating in extent about 26 acres of land.

You request me to approve this deed form before the same is executed for the purpose above indicated.

Apparently, the property here in question is to be conveyed to the State of Ohio as a part of the consideration for the execution of a lease executed by the State of Ohio under date of December 22, 1931, by which there was leased and demised to The American Steel and Wire Company of New Jersey

approximately 13 miles of Ohio canal lands south of the City of Cleveland, Ohio, and the use of the surplus water in this section of said canal.

It seems that the only question in your mind with respect to the efficacy of the proposed deed as an instrument for the conveyance of this property to the State of Ohio by full fee simple title, arises out of the fact that the habendum clause of the proposed deed contains a provision that the grantee, the State of Ohio, is to have and hold the premises described in the deed "for canal purposes only." However, in this connection, it is noted that the deed contains no terms providing for a forfeiture of the title to this property in case the same is used by the State or by its successors in title for other than canal purposes, and neither does said deed contain any provision giving to the grantor any right to re-enter said premises in case the use of this property for canal purposes is discontinued, and other uses made of the same.

In this situation, it is quite probable that the title of the State of Ohio upon conveyance to it of the property by the deed here in question would be absolute with respect to the use which the State or its successors may desire to make of this property.

As above noted, this property is not being conveyed to the State as a donation from The American Steel and Wire Company, but is being conveyed as a part of the consideration for the execution of the lease above referred to. Touching the question here presented, it may be stated that the general rule is that where lands are conveyed upon a valuable consideration with a provision in the deed that the same are to be used by the grantee for a certain specified purpose, the title to such land will not, in the absence of express stipulation to that end, re-vest in the grantor because the land may be subsequently used for other purposes. *Village of Ashland vs. Greiner*, 58 O. S. 67; *Cleveland Terminal & Valley R. R. Co. vs. State*, 85 O. S. 251; *In Re Copps Chapel Methodist Episcopal Church*, 120 O. S. 309, 315.

Although, as above indicated, I do not believe that the presence in this deed of words indicating the purpose for which this property is conveyed to the State will affect the validity of the title to this property which the State will receive under this deed, I see no purpose in the use of these limiting words in the deed and I enclose herewith a suggested deed form which I think should be used in the conveyance of this property to the State.

There is one other question in connection with this transaction which has given me some concern. That is the question whether you, as Superintendent of Public Works, have authority to accept this deed when executed, for and on behalf of the State of Ohio, grantee named therein. I am inclined to the view, however, that the following provisions of Section 412-1, General Code, are sufficient to authorize you to accept a conveyance of this property for the purpose for which you intend to use this property after the same is acquired. So far as this section is pertinent to the question here presented, the same provides as follows:

"Said superintendent may, subject to the written approval of the governor of the state, acquire by gift, purchase or by appropriation proceedings, in the name of and on behalf of the state of Ohio, such real and personal property, rights, privileges and appurtenances as may be necessary in his judgment for the construction of such reservoirs, dams, storage basins, dikes, canals, raceways and other improvements, or for the alteration, enlargement or maintenance of such existing reservoirs, dams and other improvements, together with such rights

of way, drives and roadways as may be necessary for convenient access thereto."

I understand that your purpose in acquiring these lands is that the same may be used as a place upon which dredgings from the canal at this point may be deposited; and the same will, therefore, to this extent be an improvement of the canal.

Inasmuch however, as above indicated, as this transaction is in substance and in effect a purchase of this property by the State rather than a donation of the same by The American Steel and Wire Company, it is suggested that you obtain the approval of the Board of Control for the purchase of this property for a nominal consideration.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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4191.

APPROVAL, BONDS OF HOLMES COUNTY, OHIO—\$1,800.00.

COLUMBUS, OHIO, March 28, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4192.

APPROVAL, BONDS OF LOWELLVILLE VILLAGE SCHOOL DISTRICT,  
 MAHONING COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, March 28, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4193.

APPROVAL, BONDS OF HOLMES COUNTY, OHIO—\$3,020.00.

COLUMBUS, OHIO, March 28, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*