

authorizing the trial court in a case of this kind to allow the payment of costs out of the state treasury. The election contest case above mentioned was pending in the Court of Appeals in Montgomery County while the 88th General Assembly was in session and, although, perhaps, it is not proper to say that a judgment of that court in this case with respect to the payment of court costs therein was a matter that the General Assembly should have contemplated, yet, it is clear that the act of the court in directing the payment of the costs in the case out of the state treasury rather than in some other manner, does not present any case of emergency within any accepted definition of that term as used in Section 2313, General Code.

Moreover, with respect to this question, it will be noted that under the provisions of Section 2313, General Code, the action of the Emergency Board is invoked by an application made to such Emergency Board by the trustees, managers, director or superintendent of some state institution or by some officer or commission or some department of the state government. With respect to the question here presented, it cannot be said that any officer, board or commission of the state government could be called upon to make application to the Emergency Board for authority to expend moneys in payment of the court costs specified in the judgment entry of the Court of Appeals; and further, in this connection, it does not appear what state officer, board or commission would issue vouchers for the payment of such costs if such payment were authorized by the Emergency Board.

Upon the considerations above noted, I am led to the conclusion that the only way that the items specified in the judgment entry of the Court of Appeals and therein allowed by the court as costs to be paid out of the state treasury, can be so paid will be by an appropriation made by the Legislature for that purpose.

Respectfully,

GILBERT BETTMAN,

Attorney General.

780.

APPROVAL, ENCUMBRANCE ESTIMATE TO LAND OF PHILIP MORTON
IN CARTHAGE, CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, August 21, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of even date herewith, submitting for my examination and approval encumbrance estimate No. 5267 and Controlling Board's certificate relating to the proposed purchase by the State of Ohio of a perpetual easement in and over a tract of land in Carthage, Cincinnati, Ohio, owned of record by one Phillip Morton, and which tract or parcel of land is more particularly described in Opinion No. 691 of this department recently directed to you.

An examination of encumbrance estimate No. 5267 shows that the same is in all respects properly executed and that there are sufficient balances in a proper appropriation account to pay the purchase price of the easement which the State purposes to secure in and upon said tract of land.

The Controlling Board's certificate executed under date of September 8, 1927, shows a release of the sum of \$25,000 in the appropriation account for the purchase of a water filtration system which, I assume, covers the purpose for which this easement is to be secured. Said encumbrance estimate and Controlling Board's certificate relating to the purchase of the easement here in question are accordingly hereby approved.

As appears from Opinion No. 691, of this department, above referred to, the title to the property here in question was approved, subject only to the exceptions therein noted with respect to the taxes on said property for the last half of the year 1928, amounting to \$5.40, and the undetermined taxes for the year 1929, all of which taxes are a lien upon said property.

As noted in said former opinion, no warranty deed was tendered by said Phillip Morton, with the abstract of title and other files relating to the purchase of the casement in the property therein described, but only a typewritten copy of said deed. Said original deed, properly executed by said Phillip Morton and wife, should of course be tendered before, or at the time the warrant for the purchase of this property is issued by the Auditor of State.

I am herewith returning said encumbrance estimate, Controlling Board's certificate and other files relating to this transaction.

Respectfully,
GILBERT BETTMAN,
Attorney General.

781.

MUNICIPALITY—POWER TO ACQUIRE LANDS WITHOUT ITS LIMITS
AS OUTLET FOR SEWERS.

SYLLABUS:

A municipality may legally acquire lands outside its corporate limits and construct a storm water sewer, the outlet of which is located upon said lands outside of such corporate limits.

COLUMBUS, OHIO, August 21, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads:

“The city of _____ contemplates the construction of a storm sewer inside the corporation and construction of an outlet outside of the corporation.

Question: May a city legally construct a storm water sewer and outlet outside of the corporation limits, such construction being necessary to drainage of an area within the city limits?”

It is a cardinal rule of construction that a municipality has such powers as are expressly granted to it by the constitution and statutes of Ohio, and such implied power as is necessary to carry into effect the express powers so granted.

One of the important questions your inquiry presents is whether a municipality may acquire real estate for such purposes outside of the municipal corporation. Obviously, as a sewer is to be constructed, some real estate rights will be involved in such an undertaking.

Section 3631 of the General Code is found under chapter 1, which deals with the enumerated powers of municipalities, which chapter is found in division 2 of the General Code. Said section provides as follows: