

therein is six per cent upon the appraised valuation of the parcel of land leased, which is the sum of \$300.00.

Upon examination of said lease, I find that the same has been properly executed by the state of Ohio acting by and through the conservation commissioner, and by the lessee named therein.

The terms and provisions of said lease, as well as the conditions and reservations therein contained, are in conformity with section 471 and other sections of the general code relating to the execution of leases of this kind.

Said lease is accordingly approved by me as to legality and form; and my approval is endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3404.

ENCUMBRANCE CERTIFICATE—MADE BY STATE DIRECTOR OF
FINANCE—WHEN CANCELLABLE.

SYLLABUS:

1. *A certification made by the Director of Finance by authority of Section 2288-2, General Code, to the effect that there exists a sufficient balance in a certain appropriation to meet a proposed expenditure therefrom, not otherwise obligated to meet precedent obligations, may be cancelled, and the appropriation treated as though the certificate had never been made, when the project involving the proposed expenditure is abandoned without incurring any obligation in pursuance thereof.*

2. *Likewise, when a proposed expenditure or obligation involving an expenditure of money from a certain appropriation has been lessened by the board, officer or commission proposing to make the expenditure or incur the obligation, a certificate which may have been made by the Director of Finance in pursuance thereof may be cancelled and a new certificate issued in conformity with the changed situation.*

3. *When a certificate issued by the Director of Finance in pursuance of Section 2288-2, General Code, has been cancelled for a proper reason, the records of the Director of Finance should show that fact, and the original certificate and all copies and duplicates thereof should be taken up and destroyed or marked to show that they have been cancelled.*

COLUMBUS, OHIO, July 6, 1931.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

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

“Will you kindly advise me whether and under what circumstances this office can legally cancel all or a part of an encumbrance set up on our records.”

The statute which directs the Director of Finance to certify that there is a

balance in a given appropriation, if in fact there is such a balance, when a proposed expenditure is to be made from the said appropriation is Section 2288-2 of the General Code of Ohio which reads as follows:

“It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations”

So that the Director of Finance may know at all times the extent of balances in each appropriation, to enable him to certify at any time whether or not there is, in any particular appropriation, a sufficient balance to meet a proposed expenditure therefrom, it is necessary that he keep a record of the original amount of the appropriation and of all certifications covering proposed expenditures from the appropriation.

There is no particular method provided by statute for the keeping of this record. The method of keeping the record is left entirely to the Director himself. Neither does the statute prescribe to whom a certification made by the Director of Finance is to be addressed. In practice, I understand, the certification is directed to the officer, board or commission which seeks to enter into a contract, agreement or obligation involving the proposed expenditure or is about to pass a resolution or give an order for the expenditure of money. For convenience, a copy of the certificate is filed with the Auditor of State and frequently duplicates are made for contractors and others.

When such a certification is made, the appropriation involved is said to be “encumbered” to that extent. This “encumbrance”, if it may properly be called an encumbrance, is not so fixed or permanent that it may not be removed in the same manner it was created. The mere certification itself does not act directly on the appropriation or the fund which it represents. For instance, if a certification were to be made by mistake it would not affect the real balance in the fund and the Director of Finance is required to certify that balances exist in an appropriation if in fact they do so exist. The Director of Finance is a mere ministerial officer in so far as his duty with reference to making this certification is concerned. In the case of *State ex rel v. Baker*, 112 O. S. 356, the Supreme Court of Ohio held as stated in the third branch of the syllabus thereof:

“By virtue of Section 2288-2, General Code, no public improvement constructed by the expenditure of state funds can lawfully proceed unless the director of finance shall first certify that there is a balance in the appropriation not otherwise appropriated to pay precedent obligations. In the event the money is in fact in the fund, it is the ministerial duty of the director of finance to make the required certificate, and the discharge of this duty may be compelled by mandamus.”

It will be observed from the terms of the statute that the certification which the Director of Finance is directed to make is to the effect that there is a balance in a certain appropriation pursuant to which a proposed expenditure or obligation is required to be paid “not otherwise obligated to pay precedent obligations.” The mere certification that a balance is in an appropriation to meet a proposed expenditure or obligation is not spending the money, nor is it obligating an expenditure.

The obligation is made by the officer, board or commission proposing to obligate or spend the money, and if the money is not obligated or spent the Director may certify that it is still there "not otherwise obligated to pay precedent obligations."

I know of no reason why, if the Director of Finance is assured that a proposed expenditure, for which a certificate previously has been made, and thereby the appropriation from which the proposed expenditure was to be made is encumbered for the purposes of that particular expenditure, is entirely abandoned, he may not disregard the previous certificate and treat the appropriation as though the certificate had never been made.

Of course so long as the certificate is extant, it enables the officer, board or commission to whom it is directed to reduce the real balance in the appropriation to the extent of the amount certified, by obligating it or expending it. Until it is obligated by the making of a contract or expended by the drawing and issuing of warrants against it, it may, in my opinion, be made available for certification as a balance in the appropriation by the abandonment of the former proposed expenditure or obligation, and the canceling of the former certificate.

The project involving an expenditure or an obligation for which a certificate is made must be abandoned in fact before it may be certified that the amount of the proposed expenditure or obligation is "not otherwise obligated to pay precedent obligations", and the Director of Finance must be assured of that fact before he is justified in treating the appropriation as not having been encumbered on account of the previous certificate. A contract made in pursuance of a certification must be in fact cancelled, and the Director of Finance should be fully satisfied that no liability whatever has been incurred in reliance upon a certification of a balance in an appropriation made by him, before he is justified in considering the certification as cancelled and the balance covered by it as still being in the appropriation and available for future certification purposes. When he is so satisfied and it appears as a matter of fact that the purposes for which the former certification has been made have been abandoned and no liability whatever incurred in pursuance of the certification the Director may cancel the certification and treat the appropriation as though it had not been made. It will be necessary for him to make the proper notation on his records and out of an abundance of caution the original certification and all copies and duplicates thereof should be taken up and their cancellation noted thereon.

The same reasoning is pertinent, as I view it, in case an officer, board or commission should determine to lessen the amount of a proposed expenditure or obligation in pursuance of which the Director of Finance had certified that there existed a sufficient balance in a proper appropriation to meet the proposed expenditure or obligation not otherwise obligated to pay precedent obligations. Under those circumstances the Director of Finance may lawfully, in my opinion, note the facts pertinent to the changed situation on his records and treat the appropriation accordingly.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3405.

CONTRACT—BETWEEN THE STATE OF OHIO AND A BOARD OF COUNTY COMMISSIONERS FOR WATER SUPPLY FOR STATE INSTITUTION FROM LINES OF SUCH COUNTY'S SEWER AND