

above described property to the State of Ohio by fee simple title, free and clear of all encumbrances whatsoever. This warrant in said deed imposes upon said Marcella Tripp the legal obligation of paying the 1930 taxes on said property above referred to.

Encumbrance Estimate No. 787, which has been submitted to me as a part of the files relating to the purchase of the above described property, has been properly executed and the same shows that there is a sufficient balance in the proper appropriation account to pay the purchase price of said property, which is the sum of \$1,901.25.

I also find in the files submitted to me a copy of a certificate executed by the Board of Control under date of November 4, 1929, in which it is recited that on said date said Board of Control approved the purchase of said property and released the money necessary to pay the purchase price of the same.

I am herewith returning to you with my approval, said abstract of title, warranty deed, encumbrance estimate No. 787 and Controlling Board's certificate. You will also find enclosed herewith a copy of the option under which this property was purchased, and certain plats of the same made by the Division of Forestry.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2577.

FEDERAL FUNDS—MONEYS ALLOTTED TO STATE OF OHIO THROUGH FEDERAL VOCATIONAL ACT AND FEDERAL VOCATIONAL REHABILITATION ACT— STATE TREASURER IS CUSTODIAN—SUCH FUNDS SHOULD BE DEPOSITED IN A PUBLIC DEPOSITORY WHERE A HIGH RATE OF INTEREST MAY BE EARNED—INTEREST REVERTS TO FEDERAL AUTHORITIES.

SYLLABUS:

1. *Moneys allotted by the United States to the State of Ohio by force of the Federal Vocational Education Act, and the Federal Vocational Rehabilitation Act, are held by the Treasurer of the State of Ohio in the capacity of custodian for the State of Ohio as bailee of said funds.*

2. *The said funds should not be deposited by said custodian in the State treasury, but held by him as a separate fund subject to the order of the State Board of Vocational Education, and until paid out by said custodian upon proper warrants for the purpose for which they were intended, title thereto remains in the United States, and any interest earned on the fund during the custodianship of the State Treasurer belongs to the United States, in accordance with the decision of the Comptroller of the United States Treasury, of January 17, 1918.*

3. *The State Treasurer, as custodian of said funds, is impliedly authorized and directed to deposit said funds in a public depository, where the highest rate of interest consistent with their availability for the purposes for which they are intended, may be earned.*

4. *All interest earned on said funds when collected, should be remitted by said custodian to the proper federal authorities.*

COLUMBUS, OHIO, November 24, 1930.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

"The federal government requires that interest at the rate of three per cent be paid on daily balances of all federal Smith-Hughes and George-Reed vocational education funds deposited in the state treasury provided that this money be lent by the state at a rate at least equal to that mentioned. In the past this interest has been paid from state funds appropriated to match George-Reed and Smith-Hughes federal funds. The interest is then returned to the vocational education budget through a sundry claims appropriation. An inquiry to the Federal Board for Vocational Education discloses that Ohio's procedure is different from that of all other states. Other states ascertain the actual amount of interest received from the lending of federal funds in the treasury and deposit this amount to the credit of the vocational education fund.

We respectfully request your opinion as to the legality and equity of the procedure whereby the actual interest on the federal funds mentioned be deposited to the credit of the vocational education fund."

The so-called Smith-Hughes law, which is the source of the Federal Smith-Hughes funds referred to in your letter, is an act of Congress, enacted in 1917 (U. S. C., Title 20, Section 11 et seq., page 609) which is entitled:

"AN ACT

To provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure."

By the terms of the act, the Federal Board of Vocational Education was created, which board was authorized to make studies, investigations, and reports with particular reference to their use in aiding the several states of the United States in the establishment of vocational schools and classes for the giving of instructions in agriculture, trades and industry, commerce and commercial pursuits and home economics. The act appropriated funds from the federal treasury and made allotment thereof among the several states for the purpose of cooperating with the respective states in paying the salaries of teachers, supervisors and directors of agricultural subjects and teachers of trade, home economics and industrial subjects and in the preparation of teachers for the teaching of agricultural, trade, industrial and home economics subjects.

It was provided by said act that, in order that any state might receive the benefits of the appropriation so made, the state should, through its legislative authority accept the provisions of the act and designate or create a state board, consisting of not less than three members, with the necessary power to cooperate with the Federal Board for Vocational Education in the administration of the law as provided by the act. It was further provided that, for a state to receive the benefits of the appropriation for the salaries of teachers, the state board above mentioned, must provide, in its plan for trade, home economics and industrial education, that the teaching of those subjects shall be in schools or classes under public supervision and control.

Thereafter, the Legislature of Ohio accepted the provisions of the act of Congress above referred to by an act of the Legislature which was carried into the Code as Sections 367-1, et seq. This act created a State Board of Education, consisting of seven members, and vested in it full power to cooperate with the Federal Board of Vocational Education in the administration of the aforesaid act of Congress and the

fund thereby appropriated and allotted to the State of Ohio for the promotion of vocational education, together with full power to administer all laws enacted and funds provided by the legislature of Ohio for the same purpose. The powers and duties of the State Board of Education have since been transferred to the State Board of Vocational Education. Section 154-49, General Code.

The said act of Congress, by its terms, limited the expenditures of the moneys, allotted to the states by authority of the act, to certain purposes set forth somewhat in detail in the act, and provided that whenever any portion of the funds annually allotted to any state had not been expended for the purpose provided for in the act, a sum equal to such portion should be deducted by the Federal board from the next succeeding annual allotment from such fund to said state. It was further provided that the Federal Board of Vocational Education may withhold the allotment of moneys to any state whenever it should be determined that such moneys are not being expended for the purposes and under the conditions of the act. Federal inspectors check up the expenditures from these funds and rigidly hold those expenditures within the limits for which the appropriations are made.

It is also provided in Section 9 of said act (U. S. C., Title 20, Section 19), as follows:

“The moneys expended under the provisions of this act, in co-operation with the states, for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, shall be conditioned that for each dollar of federal money expended for such salaries the state or local community, or both, shall expend an equal amount for such salaries; and that appropriations for the training of teachers of vocational subjects, as herein provided, shall be conditioned that such moneys be expended for maintenance of such training and that for each dollar of federal money so expended for maintenance, the state or local community, or both, shall expend an equal amount for the maintenance of such training.”

Similar provisions to those above referred to, with reference to the Smith-Hughes moneys, are made by federal law with reference to the George-Reed moneys referred to in your inquiry.

Federal inspectors and examiners are diligent in seeing that the provisions of the law last above quoted are strictly complied with.

It is also provided with reference to the Smith-Hughes moneys and the George-Reed moneys that each state to which allotments are made, shall, through the legislative authority thereof, appoint, as custodians for the said appropriations, its state treasurer who shall receive and provide for the proper custody and disbursement of all moneys paid to the state from said appropriation. See Section 13, of the Vocational Education Act.

An examination of the said Federal Vocational Education Act indicates that the sums allotted to the various states are not absolute gifts but are gifts conditioned on the disbursement of the sums in accordance with the provisions of the act and the regulation of the Federal Board of Vocational Education, and that the State Treasurer is merely the custodian of the funds, upon consideration of which it has been held by the Comptroller of the Treasury that title to the funds remains in the United States until disbursements therefrom are made in accordance with the requirements of the act. The act provides in Section 17 thereof:

“That if any portion of the moneys received by the custodian for vocational education of any state under this act, for any given purpose named in this act, shall, by any action or contingency, be diminished or lost, it shall

be replaced by such state, and until so replaced no subsequent appropriation for such education shall be paid to such state."

By reason of the provisions of the act above referred to, the Comptroller of the Federal Treasury was prompted to render his decision of January 17, 1918, as follows:

"Since title is still in the United States during the period in which the state treasurer has custody of the funds, it follows that any interest earned on the fund belongs to the United States and should be covered into the treasury as miscellaneous receipts."

Inasmuch as the act provides that all expenditures of federal funds allotted to the State must be met or matched with equal moneys, either appropriated from the general State funds or from local school district treasuries, it has been the practice to match or meet the federal appropriations partially from each of the sources above named. Each year the state legislature appropriates a certain amount to the State Board of Vocational Education, which sum is supplemented by local moneys, where trade and agricultural schools are established, by a sufficient amount to equal the amount expended from the federal appropriation.

I am informed it has been the practice in Ohio to place the moneys received from the federal government, by virtue of the vocational educational act in the general revenue fund whereby those moneys become commingled with the other moneys in said fund. By reason thereof, it has at all times been impossible to determine exactly the amount of interest which these particular funds earn between the time they were received by the State Treasurer, as custodian, and the time they had been drawn on by proper warrants, for the reason that the general revenue fund is deposited in different banks, at varying rates of interest. An estimate, however, has been made, based on an average rate, and settlement made for this interest with the federal government on the basis of a 3% interest rate. This interest which, from time to time is due the federal government, has each time since the law has been in force been met by the State Board of Vocational Education by drawing its warrant against the fund created by the appropriation of the state legislature to the State Board of Vocational Education and in favor of the federal treasury. The actual interest earned on these moneys accrued to the benefit of the general revenue fund. It will readily be seen that this practice resulted in cutting down the amount of the appropriation of the state legislature which was made to the State Board of Vocational Education and deprived the board of the use of a portion of the appropriation which the legislature apparently intended to allot to it for the promotion of vocational education and the matching of federal moneys for that purpose. This necessitated the making up of this loss by appropriations from local sources, in order to make the moneys derived from state and local sources equal to those received from the federal government.

Unless the Legislature took into consideration the fact that the amount of the appropriation made to the Board of Vocational Education would eventually be reduced by the amount of interest payments, which in reality accrued to the general revenue fund, then the practice outlined above, was clearly contrary to the intention of the Legislature and the spirit of the appropriations to the State Board of Vocational Education.

We have no assurance that these facts were before the legislature at the time of making the biennial appropriations since 1917. Apparently, the 88th General Assembly, in 1929, recognized the fact that the appropriation which had been made to the State Board of Vocational Education by the previous General Assembly, had been invaded for the purpose of making the interest payments referred to above, and reimbursed the fund by the making of a Sundry Claims appropriation in an

amount equivalent to the amount expended from the previous appropriation for the payment of interest. In this way, the Federal Board of Vocational Education did not suffer, but it is the first time, I am informed, since 1917, when the law went into effect, that the board has been reimbursed by a Sundry claims appropriation. To say the least, this is a clumsy way to handle the matter if the actual interest earned on these funds could be determined and remitted to the federal government either directly by the custodian of the fund or by crediting the said interest to the State Vocational Education Fund and remitting to the federal government from said funds.

If the moneys received from the federal government, by virtue of the Federal Vocational Education Act, may be carried as a separate fund by the State Treasurer, as custodian, and the actual interest earned by said moneys be remitted to the federal government by the said custodian or credited to the State Vocational Education Fund and remitted by the State Board of Vocational Education without these moneys reaching the state treasury proper, your question becomes merely a question of book-keeping. If, however, the interest earned on these federal moneys reaches the state treasury, they may not be paid out therefrom without a specific appropriation. Article II, Section 22 of the Constitution of Ohio, provides :

“No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law ; and no appropriation shall be made for a longer period than two years.”

If the federal moneys allotted to the state by virtue of the acts in question are covered into the state treasury there is no way they may be drawn therefrom except in pursuance of a specific appropriation as provided by the constitutional provision quoted above, nor is there any way to pay out the interest they may earn while in the state treasury, except in pursuance of a specific appropriation therefor. Heretofore, these federal funds have not been appropriated by the state legislature nor has any specific appropriation been made for the payment of interest on these funds to the federal government.

It will be observed from the opinion of the comptroller of the treasury, with reference to the payment of interest, quoted above, that that opinion is based on the theory that the title to these moneys is still in the United States during the period in which the state treasurer has custody of the funds, that is, until the funds are met with state and local funds and disbursed for the purposes of vocational education, as prescribed by the federal act. If the comptroller is correct (and we are in no position to disagree with him) and the title to the moneys in question is in the United States while held by the state treasurer as custodian, then clearly, these moneys should not, and cannot lawfully be placed in the state treasury. The Treasurer of State holds them merely as agent for the state, who is a mere bailee for the purposes of the Federal Vocational Act.

There is no direct authority for the treasurer to deposit these moneys at interest, however, it seems that the federal government expects this to be done and in fact insists that it be done. In view of this fact and the customary rule that public funds be deposited at interest, when possible, I am of the opinion that the State Treasurer as the custodian of these funds, has implied authority to deposit them where they will draw the most interest consistent with their availability at all times for the purposes for which they were intended, and that when that interest is collected the same should be remitted by the said custodian to the United States government.

It probably makes little difference who actually makes the remittance of this interest but the custodian is the logical person in my opinion to make it. This interest should not be credited to the state vocational fund with the idea of having the State Vocational Board remit the interest to the federal government, as it immediately,

upon being credited to this fund would become a part of a state fund and be in the state treasury and could not be gotten out without a specific appropriation therefor. The current appropriations to the State Board of Vocational Education, as made in House Bill No. 502 of the 88th General Assembly, being for "maintenance" and "cooperation," does not in my opinion permit this fund as appropriated, to be drawn on for the payment to the United States government of an amount equivalent to the interest earned on federal funds held by the state treasurer as custodian.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2578.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
FAIRFIELD COUNTY.

COLUMBUS, OHIO, November 24, 1930.

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

2579.

APPROVAL, LEASE TO RESERVOIR LAND IN LOGAN COUNTY, OHIO—
HARRY B. HULL.

COLUMBUS, OHIO, November 24, 1930.

HON. PERRY L. GREEN, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval certain reservoir land leases in triplicate, executed by the Conservation Commissioner, by which there is leased to one Harry B. Hull, of Bellefontaine, Ohio, for a term of fifteen years, a certain parcel of state reservoir land, being the south half of Section 36, Town 6, south, Range 8, east, Logan County, Ohio, and being more particularly described by metes and bounds in said lease.

This lease, which calls for an annual rental of six per cent upon the appraised valuation of said parcel of land, which valuation is the sum of \$1500.00, has been properly executed. The provisions of said lease and the terms thereof are in conformity with Section 47, General Code, and with other statutory enactments relating to 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.

Respectfully,

GILBERT BETTMAN,
Attorney General.