county superintendents employed and the amount of their compensation, with the amounts to be apportioned to each district for payment of its share of the salaries of the county superintendent and assistant county superintendent and the local expense of the normal school and the contingent expenses of the county board.

Section 4744-3, General Code, provides:

> "The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the 'county board of education fund.' The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund."

The said sections last mentioned, which are the only provisions of the statutes relating to the payment of expenses of the county board of education, do not in any wise authorize the levying of a tax.

Based upon the foregoing, in answer to your inquiry you are advised that in my opinion Sections 5053 and 5054 of the General Code, which must be construed together, do not require election expenses therein mentioned to be charged against a county board of education.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3131.

LAND—CONVEYANCE WITHOUT RESERVATION TO STATE OF OHIO INCLUDES BUILDINGS THEREON—ORAL EXCEPTIONS OF NO EFFECT—HOW MORAL CLAIM RECOGNIZED.

SYLLABUS:

1. *Where a tract of land is conveyed to the state in fee simple, with full covenants and warranties and without exception or reservation, the state acquires title to the buildings located upon such tract in spite of the contemporaneous oral argument between the grantor and administrative officials of the state whereby title to the buildings was reserved to the grantor.*

2. *In such case there is no legal right to compensation for such building and a claim therefor can only be paid as a moral obligation after proper action on the part of the Sundry Claims Board and the General Assembly.*

COLUMBUS, OHIO, January 12, 1929.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from your department over the signature of Mr. D. O. Thompson, Chief of the Division of Fish and Game, enclosing correspondence received by the department relating to the proposed purchase by the State of certain buildings upon land heretofore conveyed to the State by one George C. Matthes, the former owner of said land and buildings.

From said correspondence and other data at hand it appears that in 1925 said George T. Matthes sold and conveyed to the State that part of water lots 38, 39 and 40 north of Railroad Street in the city of Sandusky, Ohio. On these lands there were located an office building and other buildings, among which was a warehouse which was located partly on the land conveyed to the State and partly on land then retained by Mr. Matthes. Early in the year 1928 Mr. Matthes sold and conveyed to the State all that part of water lot 37 lying north of Railroad Street in said city, and a part of water lot 38 lying north of said street. By this conveyance the State obtained title to the land on which the other part of said warehouse building was located, and both buildings above referred to are located on land now owned by the State.

At the time of the first conveyance and prior thereto the State had an option to purchase the other land and there was at the time of both conveyances a clear and undisputed oral understanding and agreement on the part of all parties concerned that Mr. Matthes was to retain ownership to all buildings on the land, with the privilege of removing such of the same as the State did not thereafter desire to purchase and use. Pursuant to this oral agreement and understanding, Mr. Matthes did remove some of the buildings, but the office building and warehouse were allowed to remain and they have been used ever since by the Fish and Game Division of your department for the storage of equipment. These are the buildings which your department, through the Fish and Game Division, now desires to purchase of Mr. Matthes. The deeds whereby the above mentioned conveyances were made by Mr. Matthes to the State of Ohio were warranty deeds in the ordinary form, conveying said property by appropriate description thereof by fee simple title, with full covenants and warranties, in each of said deeds the habendum clause carried the right to said grantee to have and hold said premises and the privileges and appurtenances thereunto belonging. No exception or reservation with respect to said buildings was noted in the granting clause or the habendum clause of either of said deeds, or anywhere therein.

Likewise, nowhere in the negotiations or other transactions relating to the purchase of this property was there any contract or memorandum in writing prior to or contemporaneous with said conveyances, over the signature of yourself or any other responsible officer or agent of the State, consenting or agreeing to the retention of title to said buildings by Mr. Matthes, or otherwise recognizing his right to the ownership and possession of the same.

Under the facts above stated, the basic question here presented is whether as a matter of law Mr. Matthes or the State now owns said buildings, for obviously you can have no right or authority to expend moneys appropriated for the use of the Fish and Game Division of your department in the purchase of property which the State now owns. That the warranty deeds above referred to were in form effective to convey to the State of Ohio not only the land itself therein described, but the buildings here in question, cannot be doubted. 18 Corpus Juris, 296; *Isham* vs.

Morgan, 9 Conn. 374; *Oesting* vs. *New Bedford*, 210 Mass. 396; *Tharp* vs. *Allen*, 46 Mich. 389; *Leonard* vs. *Clough*, 133 N. Y. 292. There can be as little doubt but that evidence tending to show the oral agreement and understanding on the part of your department and Mr. Matthes that he was to retain title to said buildings and thereafter sell the same to the State if it desired to own and use the same, is wholly inadmissible as against the State.

> "Where the same person owns both the land and buildings, the latter, of course, are a part of the realty and pass under a deed conveying the land. If the grantor desires to retain the title to the building, he must do so by some reservation in the deed, or by an agreement that will comply with the statute of frauds. He cannot show by parol that a building was to be reserved."

2 Devlin on Deeds (Third Edition), Sec. 1220a. See also *Isham* vs. *Morgan*, supra; *Leonard* vs. *Clough*, supra; *Mahaffey* vs. *J. L. Rumbarger Lumber Co.*, 61 W. Va. 571, and *Jones* vs. *Timmons*, 21 O. S. 596.

Applicable to the consideration of the immediate question with respect to the admissibility of parol evidence in the consideration of the question here presented, we encounter not only the statute of frauds above referred to in its application to transactions relating to real property, but also the parol evidence rule in its application to written instruments. In other words, the granting clauses and the habendum clauses in the deeds whereby the State obtained title to this property were operative words conferring by operation of law certain rights to the grantee with respect to this property, including the buildings thereon, and unlike the case of mere recital of fact in a deed, evidence is not admissible under the parol evidence rule to limit or otherwise cut down any legal rights which the grantee in said deeds took by reason of the operative words thereof in the granting and habendum clauses of said deed. *Shehey* vs. *Cunningham*, 81 O. S. 289.

It follows as a matter of law from the conclusions above reached that the legal title to the buildings here in question is now in the State of Ohio. There would obviously be no authority to expend funds appropriated to your department for the purchase of property to which the State already has title. The facts set forth in your communication, of course, suggest that there is a moral claim against the State in an amount equal to the fair value of the buildings located upon the property in question. It is clear that administrative officers of the State cannot recognize a moral claim of this character without thereby waiving the legal right which the State now has to said buildings. It is, however, equally clear that the General Assembly, which, by its act, may require its political subdivisions to recognize moral obligations and levy taxes therefor (*Board of Education* vs. *State*, 51 O. S. 531), may recognize a moral obligation of the character here involved created by the parol agreement under which Mr. Matthes was to retain title to said buildings and appropriate such sum of money as may be necessary to compensate him for the reasonable value thereof. A claim of this character, in order to be recognized by the State, must be presented to the Sundry Claims Board provided by Section 270-6 of the General Code. After proper action by such board and subsequent action by the Legislature, such a claim could be paid.

Respectfully,
EDWARD C. TURNER,
Attorney General.