I am advised that the opinion of 1914, above quoted in part has been followed by all subsequent Attorneys General, and has been generally adhered to by probate judges throughout the state. In view of these facts and the fact that, since the date of the rendition of this opinion of June 29, 1914, the Legislature has not seen fit to amend the sections here involved, I feel constrained to adhere to the opinions of my predecessors in office.

Specifically answering your question, therefore, it is my opinion that a woman, who legally adopts a child is not as to such child a "mother" within the meaning of Sections 1683-2 and 1693-3, General Code, providing for mothers' pensions, even though the facts are such that the other requirements of these sections of the General Code are met.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2251.

TAX AND TAXATION—AUDITOR OF STATE MAY PAY ASSESSMENTS AGAINST LEASED SCHOOL LANDS FOR ROAD IMPROVEMENT OUT OF RENTALS TO EXTENT OF BENEFIT BY IMPROVEMENTS—CONSTITUTIONALITY OF SECTION 5330, GENERAL CODE, QUESTIONED.

SYLLABUS:

Although by reason of the trust relation under which the State of Ohio holds title to Section 16, School Lands, arising by reason of the compact between the United States and the State with respect to such lands, grave doubt exists as to the constitutionality of the provisions of Section 5330, General Code, permitting the assessment of such lands for public improvements when the same are held on short time leases and providing for the payment of such assessments out of the rentals of such lands, the Auditor of State, as State Supervisor of school and ministerial lands, until the same is declared unconstitutional by a court of competent jurisdiction, is warranted in assuming the validity of said statutory provisions and in paying out of the rentals of said lands assessments against the same to the extent that they are benefited by the improvements for which the assessments are levied.

COLUMBUS, OHIO, June 18, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, which reads as follows:

> "I enclose herewith resolutions adopted by the Boards of Education of Marion Township, Hardin County, Ohio, interested in the proceeds of 640-acre tract of agricultural lands comprising Section 16, school lands in said township, requesting that a sufficient amount of rentals of said Section 16 be applied on meeting the cost of a contemplated road improvement extending along the south side of said tract one mile.
>
> Question: Can such rentals be used in paying road assessment improvements as contemplated in said resolutions? If not, we would assume that a

sufficient amount of said rentals might be expended by the Auditor of State, as Supervisor of School Lands under contract, made by him as such supervisor, with the contractor in an amount that would be just and equitable, proceeding in a manner similar to that of a recent ditch improvement affecting the same school lands."

The questions submitted in your communication relate to Section 16 school lands in an original surveyed township.

Section 3189, General Code, provides that the Auditor of State, by virtue of his office, shall be the state supervisor of school lands, and, as such, shall have general charge and supervision over the lands appropriated by congress for the support of schools.

By Section 3203-4, General Code, it is provided that, except when the same have been withdrawn from sale or lease, the supervisor is authorized and empowered to lease school lands and to execute and deliver written leases therefor, sign the same as Auditor of State, acting as state supervisor of school and ministerial lands, and affixing the seal of the Auditor of State.

Section 3203-6, General Code, provides for the term of years for which such leases may be executed as follows:

" * * *

2. Lands for agricultural purposes may be leased, if unimproved, for any term not exceeding twenty years, or if improved for any term not exceeding ten years."

The rentals on such leases are collected by the clerk of the township, and by the township treasurer paid over to the State Auditor, or if an agent has been appointed by the county auditor to take over the duties of the township officers, the rentals on such leases may be collected by such agent and paid over to the Auditor of State. In either event the Auditor of State holds such rentals subject to the provisions of Section 3196, General Code, which provides that "the same shall be by the Auditor of State carried to the credit of the original surveyed township or other district of country for which such lands were appropriated, and by the Auditor of State paid into the State Treasury to be carried in special accounts to be known, * * * as the School Land Rental Fund and the Ministerial Trust Rental Fund."

I am advised by your office that the leases on the school lands referred to in your communication are short-term leases, running from three to five years. In this situation the following provisions in Section 5330, General Code, as amended (108 O. L. Part 1, p. 612), are applicable in the consideration of the first question here presented:

" * * *

Whenever such school or ministerial lands are held under lease for terms of years renewable forever, whether subject to revaluation or not, such lands shall for all purposes of special assessment for improvements benefiting such land be considered as the property of the lessee. Whenever such lands are held on leases for terms not renewable forever, such lands shall be subject to special assessments benefiting such lands, which shall be paid out of the annual rents accruing to the trust.

* * * "

Prior to the enactment of the above quoted provisions of Section 5330, General Code, it was uniformly held by the courts and by this department that Section 16

school lands were not subject to special assessments for public improvements benefiting such lands. These rulings were predicated upon the trust relation in which the state stands with respect to said lands, by reason of its compact with the United States with relation thereto.

In the case of *Poock, Treasurer,* vs. *Ely, et al., Trustee,* 4 O. C. C. 41, the court in its opinion said:

> "The question presented by the demurrer is whether lands donated by Congress to the State of Ohio, for the benefit of common schools, can be lawfully assessed for the expense of the construction of free turnpike roads.
>
> This involves an examination of the action of Congress and of the Legislature in respect to these lands.
>
> By Section Seven of an act approved April 30, 1802, (1 Chase St. 72) Congress offered to the convention of the eastern state of the territory northwest of the river Ohio, a proposition for 'its full acceptance or rejection'; which if accepted was to be obligatory upon the United States: *'First:* That the section number sixteen, in every township, and where such section has been sold, granted, or otherwise disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, *for the use of schools.'*
>
> On the 29th day of November, 1802, the convention resolved to accept said proposition, provided that like donations of unlocated lands in the United States Military tract and other government lands should be made for the support of schools in such other territory; and that 'all lands before mentioned to be appropriated by the United States for the support of public schools should be vested in the Legislature, in trust for said purpose.' (1 Chase 74).
>
> This modification of the proposition was assented to by Congress by the act of March 3, 1803, (1 Chase 72) which enacted that all said lands should be 'vested in the Legislature * * * in trust for the use aforesaid, and for *no other use, intent, or purpose, whatever.'*
>
> This action constituted a compact between congress and the people of Ohio, whereby the object of the grant was clearly defined, and limited to the support of public schools in this state; and the state can not in good faith divert the subject of the trust to any other use."

In the case of *Trustees, et al.* vs. *Campbell, et al.,* 16 O. S. 11, the court in its opinion said:

> "By the ordinance and resolution passed by the convention of Ohio, November 29, 1802, modifying the propositions made by Congress, in the act of April 30 of the same year, it was required that all lands to be appropriated by the United States for the support of schools should be vested in the Legislature of this state, in trust for said purpose. 1 Chase's Stat. 74. Congress by act approved March 3, 1803, confirmed its propositions to the requirements of the ordinance, and declared that Section 16, and the other lands appropriated for the use of schools in the State of Ohio, should be vested in the Legislature of the State, in trust for the use of schools, and for no other use, intent, or purpose whatever. * * * The vesting of these lands, by the act of Congress, in the Legislature, in pursuance of the ordinance of this state, is the same, in legal effect, as if the title had been vested in the state *eo nomine.* * * * They thereby became the property of the state, in trust for the townships or districts for which they were designed. * * * "

In the case of *Bentley* vs. *Barton,* 41 O. S. 413, it was said:

> "The lands were appropriated by the United States to the inhabitants of each township for the use of schools, and the title thereto was vested in the Legislature of the state 'for the use aforesaid, and for no other use, intent or purpose,' and were accepted by the state 'upon the trust aforesaid.' * * * "

For a similar declaration of the effect of said legislation, see *Coombs* vs. *Lane,* 4 O. S. 112.

In an opinion of this department under date of January 21, Annual Report of the Attorney General, 1911, page 1034, directed to the Prosecuting Attorney of Hardin County, with respect to a proposed assessment for a road improvement, on the identical lands involved in your communication, it was held:

> "Section 16 of school lands in Marion Township was vested in the state in trust for school purposes, by act of Congress. There is no special statutory provision making such lands amenable to assessments for pike improvements and such an assessment would furthermore be a violation of the trust defined by agreement between the state and the United States.
>
> Nor are the trustees of said township authorized to give any power to consent to such an assessment."

In an opinion of this department under date of March 17th, Opinions of the Attorney General, 1915, Vol. I, page 274, it was held:

> "Township trustees are not authorized under Section 3197, General Code, to pay a proportionate share of the cost of establishing a county ditch, through, and which is of benefit to, school lands in Section 16 of the originally surveyed township."

The above quoted provisions of Section 5330, General Code, expressly provide that school or ministerial lands held under leases, for terms not renewable forever, shall be subject to special assessments, which shall be paid out of the annual rents accruing to the trust on which such lands are held. Assuming the validity of said statutory provisions, they afford full warrant to you to pay out of the rentals of the lands referred to in your communication any assessment levied against such lands for the proposed road improvement therein mentioned, to the extent that such lands will be benefited by the improvement.

By reason of the peculiar status of Section 16 school lands and the trust relation under which the state holds the same, it is to be recognized that there is a question here presented with respect to the validity of the above quoted provisions of Section 5330, General Code, authorizing assessments to be made against such lands and providing for the payment of the same out of rentals. And in this connection it is to be noted that the fact that assessments for public improvements may now, by the decision of the Supreme Court in the case of *Jackson, Trustee* vs. *Board of Education,* 115 O. S. 368, be levied against property belonging to a board of education and used for school purposes, does not offer any help in the consideration of the question as to whether an assessment can be levied for public improvements against Section 16 school lands, which, as above noted, are held by the state itself in trust for school purposes. The only provisions of the state constitution which are applicable in the consideration of the question here made, with respect to the validity of the above quoted provisions

of Section 5330, General Code, are Sections 1 and 2 of Article VI of the State Constitution, which provide as follows:

1. "The principal of all funds, arising from the sale or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations."

2. "The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state."

Speaking with respect to the policy manifested in the adoption of Section 1 of Article VI of the State Constitution, the court in the case of *Poock* vs. *Ely,* supra, says:

"The policy seems to be to preserve the integrity of the trust, applying the revenue to school purposes; and if the lands are sold, the proceeds must be held as a substitute therefor, and preserved 'inviolate and undiminished.'

It was not necessary, in view of the plain terms of the compact between Congress and the State, to provide in the organic law for the preservation and application of the lands granted. There was propriety in a constitutional prohibition upon the diversion of the funds arising from the sale, although, as we think, it was unnecessary."

In the case of *Edgerton* vs. *The Huntington School Township,* 126 Ind. 261, it was held that Congressional school lands in the state were not subject to assessment in aid of the construction of public ditches or drains. The court in its opinion in this case says:

"If, therefore, the assessments against the land described in the complaint constitute a lien thereon, such lien is to be enforced by an advertisement and sale of the land for such sum as it will bring at public auction, as other lands are sold for delinquent taxes.

Can the Congressional township land be sold in that mode and for that purpose?

A proper solution of the question renders necessary an inquiry into the history of these lands.

An act of Congresss, passed on the 19th day of April, 1816, to enable the people of Indiana Territory to form a Constitution, etc., contained a grant or reservation to the inhabitants of each township for the use of schools, the sixteenth section of land in such township, and where such section had been sold, granted or disposed of, other land equivalent thereto and most contiguous to such Section Sixteen.

By another act of Congress, passed in the year 1827, the Legislature of the State of Indiana was granted permission to sell and convey, in fee simple, any or all the lands in the State reserved or granted for school purposes, but it was expressly provided in that act that the proceeds of such sales should be invested in some productive fund which should be invested in some productive fund which should be forever applied, under the direction of the Legislature, for the use and support of schools within the several townships for which they

were originally reserved and set apart, and for no other purpose whatever. It has sometimes been asserted that it was the intention at the time these lands were reserved that they should never be sold, but that they should be leased, and the rents and profits applied to school purposes. If such was the original purpose it has long since been abandoned, but the purpose to retain the proceeds arising from the sale of such land, is made to appear beyond question. *State* vs. *Springfield Township,* etc., 6 Ind. 83.

Section 2, Article 8, of our Constitution, provides that the common school fund shall consist in part of the Congressional township fund, and the lands belonging thereto.

Section 3 provides 'That the principal of the common school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever.'

It will thus be seen that these lands came to us as a sacred trust, to be applied exclusively to school purposes, and that the people, by their fundamental law, have placed it beyond the power of even the Legislature of the State to make any provision by which the principal of the funds arising from such lands shall be diminished.

The State has no power to tax such lands, for if it were permitted to do so, it could tax them out of existence, and divert them to the use of the State in the payment of ordinary expenses. So, if they could be assessed for local improvements and exposed to sale at public auction, and sold to the highest bidder, they might be totally absorbed and diverted from the common school fund to a purpose never contemplated when they were reserved.

The argument that the lands are benefited to an amount equal to the assessments does not meet the question, for while it is true in theory, and is, perhaps, true in fact, in many cases, that such lands are benefited by public improvements, it does not follow that when exposed to sale for the payment of such assessments, some person will bid enough to cover the enhanced value of the land."

The case of *The People ex rel.* vs. *Trustees of Schools,* 118 Ill. 52, was before the court upon an application by the county tax collector of Lee County, in said state, against Section 16 school lands in one of the townships of said county, for a special drainage assessment claimed to be due thereon and delinquent. The court held that such school lands, held in trust for school purposes, were exempt from general assessments as well as from general taxation. The court in its opinion in this case said:

" * * * Such school land stands upon a different ground than other public property of the State or municipalities.

By the sixth section of the act of Congress enabling the People of Illinois to form a State constitution, it was enacted that 'the section numbered 16, in every township, * * * shall be granted to the State for the use of the inhabitants of such township, for the use of schools.' Article 8, Section 2, of the constitution of 1870, provides that 'all land, moneys, or other property donated, granted or received for school, college, seminary or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made.'

From the above, this court in *City of Chicago* vs. *The People,* 80 Ill. 384, deduced the conclusion that this property, school Section 16, could not be sub-

jected to taxation by the General Assembly. This was not put upon the ground of any direct exemption, otherwise, of such property from taxation, but upon the use for which the property was granted, and the constitutional provision that the land granted for school purposes should be faithfully applied to the objects for which the grant was made; that this prohibited the Legislature from directly appropriating this property to State or municipal purposes, and it could not do so by the indirect means of taxation; that so much as would be taken from the fund by taxation, would be an unconstitutional perversion of the fund to that extent. It was said, the State was the real owner of the fund, to be held in trust for the purposes of the grant. This same reason, which would exempt the property from taxation, must be held to exempt it from special assessment. The fund would be liable to be misappropriated in the latter mode, as well as in the former. It does not meet the objection to a special assessment to say, that it takes nothing from the property, and the assessment is only to the extent of the benefit conferred upon it by the improvement. This may be so in theory, but not in certainty. The property should be held sacred for the use to which it has been appropriated. It may be sold, or it may be rented for school purposes, but no authority of law is conferred upon any one to improve it. It should not be exposed to the danger of being improved away, by being made to pay for supposed benefits conferred upon it by improvements.

It is said the purpose is not to have sale made of the land to pay the assessment, but to obtain judgment, which may be paid out of any moneys unappropriated, of the township, or there may be the remedy by *mandamus,* requiring the board of trustees to levy a tax for the payment of the judgment. But any payment so to be obtained would come from school moneys, and there would be equally involved a perversion of the school fund as if the property itself should be sold to satisfy the judgment.

We are of opinion this school property should be held exempt from the special assessment, and the judgment of the county court will be affirmed."

In the case of *Erickson, et al.* vs. *Cass County, et al.,* 11 N. Dak. 494, it was held:

"Lands granted by the United States to the state for school purposes are held in trust, and are not subject to taxation or assessment for benefits arising from the construction of drains."

In the opinion of the court in this case it is said:

"Neither does the fact that school Section No. 16, Wiser Township, which lies adjacent to the drain in question, and concededly is benefited by it, was not assessed, furnish any legal ground for complaint. Being school land, it was not assessable, under Sections 153, 158 and 163 of the state constitution. This tract is a portion of the lands granted by the United States to the state in trust for school purposes. The provisions of the grant and its acceptance forbid the imposition of assessments."

In the case of *Lake Arthur Drainage District* vs. *Field,* 27 N. Mex. 183, the court had under consideration an act of the Legislature of the State of New Mexico, which authorized and directed the commissioner of public lands to issue proper vouchers, payable out of the income fund derived from lands granted and confirmed by Congress to said state, for the benefit of the common schools and certain educational and other

state institutions, to pay assessments against such lands for certain drainage improvements provided for in said act. The validity of the claim of the drainage district against the defendant, as state commissioner of public lands, was challenged on the ground that the drainage act, in so far as such state lands were concerned, was in contravention of the Enabling Act of Congress, by which said lands were confirmed to the state for school purposes, and which act was ratified and accepted by the Constitution of the state. With respect to said school lands there in question, Section 10 of the Enabling Act of Congress provides:

> "That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in the manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions * * * ."

By Section 9 of Article XXI of the Constitution of said state, the trust was accepted by the state in the following language:

> "This state and its people consent to all and singular the provisions of the said act of Congress, approved June twentieth, nineteen hundred and ten, concerning the lands by said act granted or confirmed to this state, the terms and conditions upon which said grants and confirmations were made and the means and manner of enforcing such terms and conditions, all in every respect and particular as in said act provided."

With respect to the effect of this legislation, the court in its opinion says:

> "And as this provision was accepted by the constitutional convention, it thereby became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution."

The decision of the court, as phrased in paragraph 2 of its syllabus in the report of said case, was as follows:

> " * * *
>
> 2. "Chapter 69, Laws 1917, as amended by Chapter 87, Laws 1919, which made the provisions of the drainage act (Sections 1877 to 1958, Code 1915) specifically applicable to lands owned by the State of New Mexico, and directed the commissioner of public lands to issue proper vouchers, payable out of the income fund derived from lands of the class benefited, for the payment of the assessment made, is unconstitutional, because under the terms of the Enabling Act, as accepted and confirmed by the Constitution of the state, the state has no power to improve the granted lands and charge the expense of the improvements against said lands, or funds derived from lands belonging to the class benefited."

The court in its opinion in this case, referring to the contention made by the drainage district that the original act granting these lands to the then territory of New Mexico authorized the payment of the necessary costs and expenses incurred in the management and protection of said lands, said:

> " * * * But even if it be assumed that the original granting act was not affected in any manner by the Enabling Act and the constitutional pro-

vision further than the acceptance of the grant and an agreement in the Constitution to comply with the original granting act, appellee would be in no better position, for it requires no argument to demonstrate that the state would have the power to protect the grant of lands and to charge the expense of such protection to the trust fund. But the charges sought to be imposed upon the trust estate in this case, so far as the record discloses at least, were not incurred for the protection of the land. The drainage law, the act which authorizes the state to pay its proportionate cost of drainage, proceeds upon the theory of benefits or rather improvement of the property and a promotion of agricultural interests.

The decree of the court in this case permitting the assessment finds, not that the assessment was necessary for the protection of the property, but that it was beneficial to the property and that agricultural interests would be promoted thereby. Neither the language of the Enabling Act, nor the granting act of 1898, authorizes the state to improve the granted property. By carefully chosen language the rights and duties of the state are defined and strict limitations are imposed upon the exercise of the power. The money in this case, it is true, was not payable out of the permanent fund, but was to be paid out of the income fund; but this cannot alter the rights of the parties, because the income from the lands was impressed with the same trust as the land itself. That is to say, it could only be used for the support and maintenance of the common schools or the institutions to which it was granted."

In view of the specific trust upon which the State of Ohio holds the lands here in question, as evidenced not only by the act of the state accepting said lands through the constitutional convention of 1802, but also in the adoption of Sections 1 and 2, Article 6, of the Constitution of 1851, a grave question is here presented with respect to the constitutionality of the amendatory provisions of Section 5330, General Code, above quoted, which, as above noted, in express terms authorizes the assessment of such lands and the payment of such assessments out of the income thereof. However, this department does not assume to hold any laws of this state to be unconstitutional except in very plain cases where it appears to be the manifest duty of this department to decide the question thus presented. In the present instance I do not feel it necessary to determine the question as to the constitutional validity of the statutory provisions here in question, although in this connection I note that my predecessor in an opinion under date of April 13, 1923, Opinions of the Attorney General, 1923, Vol. I, page 179, after giving due consideration to the provisions of Section 5330, General Code, above noted, held as stated in the syllabus of said opinion:

"Lands granted by the United States to the State of Ohio for school purposes are held in trust, and are not subject to taxation by the state, and are not liable to assessment for benefits arising from the construction of drains."

In said opinion, however, my predecessor did nothing more than to express his doubts with respect to the constitutionality of said statutory provisions found in Section 5330, General Code, and to advise you that you were justified in withholding payment of assessments out of the rentals of said lands until authorized to make such payment by a court of competent jurisdiction.

In view of the policy which prevents this department from finally passing upon the constitutionality of laws enacted by the General Assembly, it becomes a question of considerable importance to know that your attitude towards this law should be in the absence of a decision upon the constitutionality of said law by a court of competent

jurisdiction. This question in itself is one of considerable difficulty by reason of the conflicting views expressed by the Supreme Court with respect to the effect to be given to a statute which is afterwards declared to be unconstitutional. In some of the cases decided by the Supreme Court the view is reflected in the opinion that, except as to cases of estoppel and reliance upon former adjudication, an unconstitutional law is in legal contemplation inoperative as though it had never been passed; that its character as an unconstitutional law had been fixed from the time it was enacted and that the only effect of an adjudication that the act was unconstitutional was to find and declare that such was its character. *State ex rel.* vs. *Vail,* 84 O. S. 399, 404, 406; *City of Findlay* vs. *Pendleton,* 62 O. S. 80; *Lewis, Auditor,* vs. *Symmes,* 61 O. S. 471. However, in the opinion of the court in the case of *State* vs. *Gardner,* 54 O. S. 47, it is said:

> " * * * All legislative authority is vested in our General Assembly. That body enacts the laws. It is just as much its duty to observe the Constitution as it is the duty of any other branch of the government. The presumption is, as declared in *Railroad* vs. *Commissioners,* 1 Ohio St., 77, and no where disputed, that in the enactment of laws they heed that duty. To say, then, that a statute which, by all presumptions, is valid and constitutional until set aside as invalid by judicial authority, cannot, in the meantime, confer any right, impose any duty, afford any protection, but is as inoperative as though it had never been passed, is at least startling. To say that a statute which purports to create a constitutional office, duly enacted by our General Assembly, and duly promulgated, enjoins no duty of respect or obedience by the people, and affords no corresponding right or protection, and that all who undertake to enforce its demands do so at their peril, and at the risk of being deemed trespassers and usurpers, in case it shall be finally decided to be unconstitutional, by a bare majority, perhaps, of the court of last resort, no matter what public necessities existed for its enforcement, nor what public approval and acquiescence there may have been, nor for how long a term of years, and no matter how many holdings of intermediate courts there may have been sustaining its constitutionality, is to invite riot, turmoil and chaos. It is not the law in Ohio."

Later, the Supreme Court in the case of *State, ex rel. McNamara* vs. *Campbell,* 94 O. S. 403, having under consideration the provisions of Section 2101-1, General Code, which authorized the Ohio Board of Administration to appoint a chief matron to the Girls' Industrial School, prior to the adoption of Section 4, Article XV making women eligible for appointment as members of boards, or to offices or positions in departments and institutions established by the state or any political subdivision thereof, involving the interest or care of women or children, or both, said:

> "The answer admits that relatrix was appointed on the 1st day of August, 1913. It is to be presumed that in the enactment of Section 2101-1, General Code, which authorized her appointment as chief matron, there was a valid and constitutional exercise of legislative power. The statute was valid until there was a judicial determination to the contrary."

In this situation with respect to diverse views of the Supreme Court, in its opinion touching the question it is difficult to say what your attitude towards the law here in question should be, in view of the possibility that the courts may, at some future time, hold this law to be unconstitutional and invalid. I am, however, inclined to the view that until said law is declared unconstitutional you are warranted in as-

suming its validity and in paying out of the rentals of the lands here in question assessments against such lands, to the extent that the same are benefited by improvements for which the assessments are levied.

The answer here given to your first question makes any discussion of the second question presented in your communication unnecessary further than to say that inasmuch as said proposed road improvement is not in and upon the school lands here in question but simply abuts upon the same, you would not be authorized to make any contracts for the construction or improvement of said road under Sections 3194, 3198 or any other section of the statutes relating to the improvement of school and ministerial lands.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2252.

CANAL LANDS—APPROVAL OF SALE BY GOVERNOR AND ATTORNEY GENERAL—MIAMI AND ERIE CANAL.

SYLLABUS:

Though the sales to abutting property owners and others of parcels of abandoned Miami and Erie canal lands, heretofore held by the city of Cincinnati under lease and by said city relinquished to the State of Ohio under the act of April 20, 1927 (112 O. L. 210), require the written approval of the Governor and the Attorney General, the approval of said officers to such sales may be properly evidenced by written endorsements on the deeds by which conveyances of such parcels of land to the purchasers are effected.

COLUMBUS, OHIO, June 18, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, which is as follows:

> "By an act of the 87th General Assembly of Ohio passed April 20th, 1927, and approved by the Governor on the 2nd of May, 1927, the city of Cincinnati was authorized to relinquish to the State of Ohio the surplus portions of the abandoned Miami and Erie Canal which it holds by three (3) separate leases, and which are not required by the city of Cincinnati, nor by the Board of Rapid Transit Commissioners of said city for street, boulevard and sewer purposes.
>
> In compliance with the provisions of this act, the Superintendent of Public Works authorized the Board of Rapid Transit Commissioners to make surveys and plats of these surplus portions of the canal not required for municipal purposes. The plats of this survey show each separate tract and the adjacent private property with the names of the owners of said property.
>
> These surplus tracts were subdivided into some two hundred (200) separate tracts which have been duly appraised by the Superintendent of Public Works, and said appraisements have been agreed to by resolution of the Board of Rapid Transit Commissioners, as provided for in the act authorizing the city of Cincinnati to relinquish the same to the State of Ohio.