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 obligtion, 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

WATER DISTRICT—COMMISSIONERS' RIGHT TO DEMAND CASH PAYMENT EVEN THOUGH COUNTY OWES STATE A GREATER AMOUNT.

SYLLABUS:

When the State desires to contract with a board of county commissioners for water supply from water supply lines serving a county sewer and water district, for a State institution lying outside of such district, the board of county commissioners may require that moneys received for such service be paid in cash, notwithstanding the fact that the county may owe the State a greater amount.

COLUMBUS, OHIO, July 6, 1931.

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

DEAR SIR: This is to acknowledge receipt of your request for my opinion, as Chairman of the Controlling Board, which request is as follows:

> "By unanimous action the Board of Control is referring the enclosed matter to you for your consideration and legal advice.
>
> The Board understands that Cuyahoga County owes the sum of $1,000,000.00 or more to the State of Ohio and asks your advice as to whether the assessments amounting to $2,000.00 can be legally set off against the amount owing from the County.
>
> We would also like to refer for your consideration the question as to whether a mandamus action would lie to compel the Village of Brecksville to issue a permit to connect the lines going to Hawthornden Farm with the water main through Brecksville."

Attached to your letter is the following communication from the Assistant Director of Welfare addressed to the Controlling Board:

> "Senate Bill No. 8, passed at the regular session of the 89th General Assembly, and declared an emergency by that body, carries an appropriation item amounting to $25,000.00 for this Department, under the title of 'Completing Water System at Hawthornden Farm', which farm is an adjunct of the Cleveland State Hospital.
>
> Under date of April 13, 1931, your Board released from this appropriation the sum of $1,100.00 for payment of engineering services on this project, and on May 19, 1931, released an additional $18,900.00 for the purpose of letting contract for this work, making a total of $20,000.00 released.
>
> We are enclosing a copy of letter from the Sanitary Engineer of Cuyahoga County to the Jennings-Lawrence Company, Columbus, Ohio, who were the engineers retained on this project, the letter advising that assessments amounting to $2,000.00 would be required, to permit tapping of the water supply mains of this county.
>
> These assessments are, of course, foreign to the actual construction work, but are necessary in order to complete this water system, and to provide for payment we respectfully request that $2,000.00 additional be released from the above mentioned appropriation."

The water supply mains to which it is desired to connect are, I am informed, mains of a county water supply system which has been established and constructed

under the provisions of Sections 6602-17, et seq, of the General Code. I am further advised that Hawthornden Farm is outside of this county water district.

Authority to contract to supply water to a public institution so situated is contained in Section 6602-32, General Code, which section provides in part as follows:

> "At any time after the formation of any sewer district, the board of county commissioners, when deemed expedient, may, on application by a corporation, individual or public institution, outside of any sewer district, contract with such corporation, individual or public institution for supplyng water to their premises on such terms and conditions as shall be by such board of county commisioners deemed equitable, but the amount to be paid shall in no case be less than the original assessment for similar property within the district, and such board of county commisioners, in any such case, shall appropriate any moneys received for such service to and for the use and benefit of such sewer district; provided, however, that whenever the board of county commissioners deem it necessary to contract with a corporation, individual or public institution outside of any sewer district for supplying water to their premises from water supply lines constructed or to be constructed to serve such district, they shall so determine by resolution and may collect said amount in cash, or the same may be assessed against said lots or parcels of land, and the method and manner of making such assessment, together with the notice thereof, shall be the same as provided herein for the original assessment.
>
> *."

These assessments in the amount of $2,000.00 are for the purpose of equalizing the cost of the construction of the mains, to which it is desired to connect, among the taxpayers within the water district who have borne in a large part this expense. The foregoing section expressly requires that the commissioners "shall appropriate any moneys received for such service to and for the use and benefit of such sewer district." There is no doubt, therefore, but that the item of $2,000.00, which I understand has been determined as the amount of assessments the State is to pay in cash for the privilege of connecting with the mains of the water district in question, must be paid into the fund of that water district for the benefit of the taxpayers and water users therein. The legislature has obviously provided that before a water improvement which has been paid for largely by a certain group of taxpayers within a water district may be made available to serve territory outside of that district, the cost must be equalized among these specially benefited.

You ask whether or not this assessment in the amount of $2,000.00 may be legally set off against the amount of approximately $1,000,000 which the county owes the State. Section 11319, General Code, defines "set-off" as follows:

> "A set-off is a cause of action existing in favor of a defendant against a plaintiff between whom a several judgment might be had in the action, and arising on contract or ascertained by the decision of a court. It can be pleaded only in an action founded on contract."

Section 6602-32, supra, authorizes the county commissioners, on application by a public institution outside of a sewer district "when deemed expedient", to contract for supplying water to their premises "on such terms and conditions as shall be by such board of county commissioners deemed equitable." Because of this

language of Section 6602-32, I am inclined to think that the board of county commissioners would be justified in taking the position that the terms and conditions upon which the State may connect with this water supply, shall be the payment of $2,000.00 in cash, regardless of the fact that the county may owe the State a greater sum. I take this view especially on account of the fact that the property owners within the district are, under the law, entitled to have this money appropriated to their district fund. It follows, therefore, that this is not a case for an application of the principle of set-off.

It is, accordingly, my opinion that when the State desires to contract with a board of county commissioners for water supply from water supply lines serving a county sewer and water district, for a State institution lying outside of such district, the board of county commissioners may require that moneys received for such service be paid in cash notwithstanding the fact that the county may owe the State a greater amount.

Regarding your second question, I am advised that no objection is being raised by the village of Brecksville, to the State connecting with the mains within the village in the event the assessment is paid by the State. In view of my opinion upon your first question, it is, therefore, unnecessary to further comment upon your second question.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3406.

LEGAL COUNSEL—EMPLOYED UNDER SECTION 2412, GENERAL CODE, TO REPRESENT COUNTY TREASURER IN ACTION TO ENJOIN COLLECTION OF TAXES—NO PORTION OF SUCH COUNSEL'S COMPENSATION CHARGEABLE TO STATE OR POLITICAL SUBDIVISIONS OF COUNTY.

SYLLABUS:

No part of the compensation allowed by the county commissioners and paid out of the county treasury to legal counsel employed under the provisions of Section 2412, General Code, to defend the county treasurer in an action to enjoin the collection of taxes, may be charged back to the state or to any political subdivision or subdivisions of the county.

COLUMBUS, OHIO, July 6, 1931.

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

GENTLEMEN: This is to acknowledge receipt of your recent communication which reads as follows:

> "You are respectfully requested to furnish this department your written opinion upon the following:
>
> When under the provisions of section 2412, General Code, an attorney is employed to defend the county treasurer in an action to enjoin the collection of certain taxes, may the amount of the compensation of such attorney be apportioned ratably by the county auditor among all of the