

ment, maintenance and repair of a highway under the provisions of this act shall be paid by the treasurer of state upon the warrant of the auditor of state. The warrant of the auditor shall be issued upon the requisition of the director and be paid from any appropriation or funds available to carry out the provisions of this act."

I am unable to find any provision in the statutes appropriating funds to recoup the village and property owners for any portion of the cost of an improvement of a street which has been designated as a part of the state highway route through a village. It is manifest the improvement of the street was not made in pursuance of the provisions of Section 1189-2, General Code, supra. From the provisions of the statute on the subject, it is clear the Director of Highways can only lawfully share the cost of improvements of streets designated as a state highway in municipalities and villages, when he has prepared the necessary surveys, plans, profiles, cross-sections, estimates and specifications for such work, and filed copies thereof with the legislative authority of the municipality. On the approval thereof by the council and after the council has provided the funds necessary to meet the portion of the cost of the work assumed by it, the law requires the entering into a contract with the State of Ohio, approved by the Attorney General, providing for the payment by the village of its agreed portion of the cost. The statute requires all those various things to be done before the Director shall advertise for bids.

The improvement of the street mentioned, not having been made in accordance with the statutes on the subject, I am of the opinion the State Highway Director would have no authority to now pay any portion of the cost of the improved street now a part of the state highway system.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2855.

APPROVAL, QUIT CLAIM DEED CONVEYING TO OHIO STATE ARCHAEOLOGICAL AND HISTORICAL SOCIETY, AS A GIFT, LAND IN LEBANON TOWNSHIP, MEIGS COUNTY, OHIO—NORMA C. PEOPLES—C. E. PEOPLES.

COLUMBUS, OHIO, January 23, 1931.

The Ohio State Archaeological and Historical Society, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain quit claim deed therewith enclosed, by which Norma C. Peoples and C. E. Peoples, her husband, have conveyed to the Ohio State Archaeological and Historical Society, as a gift, a certain parcel of real estate situated in Lebanon Township, Meigs County, Ohio, which parcel of land is more particularly described as follows:

"Situated in Section 12, Town 2, Range 11 in 100 acre Lot No. 156. Beginning at a stake 1633 feet west of the center line of the Portland road, on the south line of the Norma Calkins 25 acre tract; thence west along the

south line of the Norma Calkins south line 430 feet to a stake; thence north 152 feet to the south line of the Nellie Girffith and B. F. Price 25 acre tract; thence east along the south line of the Nellie Griffith and B. F. Price 25 acre tract 430 feet to a stake; thence south 152 feet to the place of beginning, containing $1\frac{1}{2}$ acres."

The conveyance of the above described parcel of land effected by said deed is subject to the reservation that oil, gas and other minerals shall remain the property of the grantors with the right in them to mine and remove such minerals.

Said conveyance is further subject to the condition that the property conveyed is for its use as a state park on which there is to be erected a monument commemorating the Battle of Buffington Island, and that said property is to revert to the grantors, their heirs and assigns, when said property ceases to be used for said purpose.

The conveyance of the above described real property was accepted by you under the authority of House Bill No. 273, enacted as a law by the 88th General Assembly under date of April 5, 1929, 113 O. L. 622. Section 1 of said act provides in part as follows:

"That the board of trustees of the Ohio state archaeological and historical society is hereby authorized to receive by gift a site at Portland, Meigs county, Ohio, and to erect thereon an appropriate monument in honor of the Union soldiers who, in the battle of Buffington Island, July 20, 1863, turned back the Morgan Raiders in their effort to escape across the Ohio river."

Section 2 of said act provides that said site and the plans for said monument shall be approved by the governor and the attorney general of the state before they are accepted; and that said site, when accepted, and said monument, when completed and accepted, shall be conveyed to the state of Ohio and a deed for the same shall be duly recorded and deposited with the auditor of state.

Section 3 of said act provides that the care and control of said site and the monument erected thereon shall be vested in the board of trustees of the Ohio state archaeological and historical society, who shall hold the same for the state subject to such use as the General Assembly may by law direct.

By Section 4 of said act there is appropriated out of any moneys in the state treasury, to the credit of the general revenue fund and not otherwise appropriated, a sum not to exceed three thousand dollars for the purposes of erecting said monument.

There is nothing in the provisions of the act of the legislature above referred to and quoted which, in terms authorizes your society to accept a deed of conveyance of this property as a site for said monument, with the conditions and reservations contained in the deed here in question. However, with respect to this question, the provisions of this act should be read in connection with those of Section 18, General Code, which provide, among other things, that a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, lands or other properties, for their benefit, and hold the same according to the terms and conditions of the gift; and that such gift of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.

I assume that before you accepted the deed here in question and had the same transferred and recorded, your society, through its board of trustees and other officers, gave adequate consideration to the reservation contained in said deed by which the grantors retain the property in the minerals contained in the parcel of land conveyed with the right to remove the same, and that it was concluded and determined by the

trustees and officers of your society that the exercise of said reservation would not interfere in any manner with the purpose for which said property was obtained. This is a question to be determined in the first instance by your society; and although, under the terms of the act of the legislature above referred to, said site is required to be approved by the governor and the attorney general before it is accepted, I do not feel that your determination with respect to the acceptance of the above described property as a site for said monument under the terms and conditions set out in said deed, should be disturbed by me in the absence of facts showing that the site obtained by you is not a proper one for the purpose, or that the reservation contained in the deed will defeat the purpose for which the land was conveyed to your society.

Entertaining these views and finding that said deed has been properly executed and acknowledged by the grantors in the manner required by law, said deed is hereby approved.

In order that there may be a compliance with the provisions of Section 2 of the act of the General Assembly above referred to, the property here in question should be conveyed by your society to the state of Ohio as soon as the monument to be erected upon this property has been completed.

I am herewith returning said deed with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General,

2856.

CENSUS—SALARIES—COUNTY OFFICERS ELECTED ON NOVEMBER 4,
1931, RECEIVE COMPENSATION BASED ON 1930 CENSUS.

SYLLABUS:

The salaries of those county officers whose compensation is based on population and who were elected on November 4, 1930, will be based on the 1930 federal census.

COLUMBUS, OHIO, January 23, 1931.

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

GENTLEMEN:—This acknowledges receipt of your letter of recent date which reads:

“Referring to the opinion of Hon. Timothy S. Hogan, rendered February 4, 1911, (1911-1912 Report, Volume 2, page 1035) reversing opinion of Hon. U. G. Denman, (1910-1911 Report, page 449) and to your opinion No. 2779 of July 31, 1930, the question arises whether county officers' salaries under the provisions of Sections 2990 et seq., of the General Code, which provide that such salaries shall be based upon the population of the county as shown by the last Federal Census next preceding their election are to be based upon the census of 1920 or the census of 1930, when such officers were elected at the November election, 1930.

Will you kindly render this department your written opinion upon this question?

It would seem that the official census was not published until after the election in November, 1930.”