

agency that can act as a deterrent to this dishonest practice.

I must respectfully decline to suggest any form of partnership agreement that your Board would require as being in accordance with the laws governing the State Board of Architects. You can readily appreciate that partnership agreements vary in each case and the preparation of these agreements is probably the work of private counsel. Furthermore, there is nothing in the statutes regulating the practice of architecture that would require any extraordinary consideration in drawing an agreement for the formation of an architectural firm.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

584.

COUNTY AUDITOR—REAPPRAISAL OF REAL PROPERTY—
CLERKS AND EXPERT EMPLOYES—EXPENSE BY COUN-
TY COMMISSIONERS—APPLICATION TO TAX COMMIS-
SION, WHEN—BINDING ON COUNTY COMMISSIONERS,
WHEN.

SYLLABUS:

The provisions of Section 5548, General Code, relating to the compensation of deputies, clerks, experts or other employes appointed or employed by the county auditor in making the appraisal of real property in the county, as provided for by said section, are not repealed or otherwise affected by the later provisions of the present Budget Law (Secs. 5625-26 to 5625-33, inclusive, G. C.); and if the county auditor finds that the county commissioners have failed to provide a sufficient amount of money to pay the compensation of the necessary deputies, clerks, experts or other employes appointed or employed by him for this purpose, he may make application to the Tax Commission of Ohio for an additional allowance of money for this purpose, and such additional amount of money allowed by the Tax Commission for the payment of such compensation will on the certification thereof by the Tax Commission to the board of county commissioners of the county be final as against said county, and be a sufficient warrant for the payment of the compensation of such appointees or employes out of the general fund of the county whether the money necessary to pay such compensation has been appropriated by the county commissioners for this purpose or not.

COLUMBUS, OHIO, May 12, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

This is to acknowledge the receipt of your recent communication in which you refer to Section 5548, General Code, relating generally to the appraisal for tax purposes of the real property in the several counties of the state and the taxing districts thereof, and in connection with which you submit for my consideration and opinion certain questions which are stated in your communication as follows:

“Question No. 1. If the county commissioners fail or refuse to include a sufficient amount of money in their tax budget and/or fail or refuse to appropriate a sufficient amount of money in the appropriation resolution to enable the county auditor to assess all real estate, as required by Section 5548, can the Tax Commission, upon application of the county auditor when the county commissioners have failed to provide a sufficient amount of money for such purpose, order and direct the county commissioners to provide the necessary funds by certifying their action to the board of county commissioners?”

Question No. 2. Is the provision in Section 5548, authorizing the Tax Commission to certify to the board of county commissioners the amount to be expended in payment for the compensation of experts, deputies, and clerks, or other employes employed by the county auditor, in making a re-assessment of real estate, in conflict with the provisions of the Uniform Tax Law, particularly Sections 5625-20, 5625-21, 5625-29, 5625-30, 5625-33 and 5625-37?”

Section 5548, General Code, which was enacted in its present form by an act of the 85th General Assembly passed under date of April 17, 1925, effective July 21, 1925, provides that in the year 1925 and in every sixth year thereafter it shall be the duty of the county auditor to assess all the real estate in the county, subject to certain provisos with respect to the first appraisal to be made under the act which are in no way pertinent in the consideration of the questions here presented. In connection with the general appraisal from time to time of the real property in the county as required by this section, it is provided therein that the county auditor shall cause to be made the necessary abstracts from books of his office, containing such description of real estate in the county, together with such plat books and lists of transfers of title to land as the county auditor deems necessary in the performance of his duties

in valuing such property for taxation; and that such abstracts, plat books and lists shall be in such form and detail as the Tax Commission of Ohio may prescribe.

More immediately pertinent to the questions here presented, this section of the General Code further provides as follows:

“The county auditor upon the approval of the tax commission of Ohio, is empowered to appoint and employ such experts, deputies and clerks, or other employes, as he may deem necessary to the performance of such duties as such assessor; the amount to be expended in the payment of their compensation to be fixed and determined by the county commissioners. If, in the opinion of the county auditor the county commissioners shall fail to provide a sufficient amount for their compensation, he may make application to the tax commission of Ohio for an additional allowance, and the additional amount of compensation allowed by such commission, if any, shall be duly certified to the board of county commissioners, and the same shall be final. The salaries and compensation of such experts, deputies, clerks and employes shall be paid, upon the warrant of the auditor, out of the general fund of the county; and in case the same are, in whole or in part, fixed by the tax commission, they shall constitute a charge against the county, regardless of the amount of money in the county treasury levied or appropriated for such purposes.

Such experts, deputies, clerks and other employes, in addition to their other duties, shall perform such services as the county auditors may direct in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and such other circumstances reflecting upon the value of such real estate, as will aid the county auditor in fixing its true value in money. Said county auditor may also, if he deem it necessary or advisable, summon and examine any person under oath in respect to any matter pertaining to the value of any real property within the county.”

It is obvious that the above quoted provisions of section 5548, General Code, require a categorical answer in the affirmative to the first question presented in your communication unless the answer to this question is otherwise controlled by the pertinent provisions of the Budget Law, so-called, referred to in the second question set out in your communication. Inasmuch as the questions presented by you relate in part to the appointment and employment by the county auditor of deputies,

clerks and other employes for the purpose of assisting him in making the appraisal of real estate provided for by Section 5548, General Code, it is, perhaps, pertinent to note the provisions of Section 2981, General Code, which provides, generally, for the appointment of deputies, assistants, clerks and other employes of county officers, before making further note of any of the sections of the Budget Law referred to in the statement of your second question. The provisions of this section, so far as they are pertinent, read as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semimonthly from the county treasury, upon the warrant of the county auditor.

The provisions in Section 2981, General Code, above quoted, that the compensation of the deputies, assistants, clerks and other employes of the county officers shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office, refers to the appropriation made by the county commissioners for the purpose as to the several county offices, as provided for by the Budget Law. This fact in connection with the questions presented in your communication requires a consideration of the pertinent provisions of this law which were enacted in their present general form by an act passed by the legislature under date of April 13, 1927, 112 O. L., 391, and which have been carried into the General Code as Sections 5625-1 to 5625-39, inclusive. This law as to many of the sections thereof has been amended from time to time and so far as the same are applicable to the questions here presented these sections of the Budget Law will be here noted. In this connection, it is not necessary, perhaps, to note the provisions of all the sections of this law which are referred to in your communication. For the purposes of this opinion it is sufficient to note the applicable provisions of Sections 5625-26, 5625-27, 5625-29, 5625-30, 5625-32 and 5625-33, General Code. By Section 5625-26, General Code, it is provided that the Budget Commission on consideration of the budgets of the county and of the taxing districts therein and from other information available to it shall issue to each of these taxing districts or political subdivisions an “official certificate of estimated resources,”

which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. By Section 5625-27, General Code, provision is made for the amendment of such official certificate as to any such political subdivision; and this section further provides that "The total of appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof certified prior to the making of the appropriation or supplemental appropriation." Section 5625-29, General Code, provides that on or about the first day of each year, the taxing authority of each subdivision or taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the tax budget and the official certificate of estimated resources or amendments thereof. As a consideration pertinent to the questions here presented this section further provides that "Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services." By Section 5625-32, General Code, provision is made for amending or supplementing the appropriation thus made by the taxing authority of the political subdivision. This section contains the following provision which may be of some significance in the consideration of the questions at hand:

"The annual appropriation measure or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure."

Section 5625-33, General Code, provides in part as follows:

"No subdivision or taxing unit shall:

(a) Make any appropriation of money except as provided in this act; * * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

(c) Make any expenditure of money except by a proper

warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon."

In this connection, it is noted that this section further provides that the term "contract" as used in this section, "shall be construed as exclusive of current payrolls of regular employes and officers."

It is not necessary to recapitulate the above noted provisions of the Budget Law; it is sufficient to note that they limit the appropriation or appropriations which the taxing authority of a political subdivision may make for any purpose during the fiscal year of the subdivision to the amount of the estimated resources of the appropriate fund or funds indicated by the certificate provided therefor, and likewise limit the expenditures which the political subdivision may make for any purpose or purposes during the fiscal year to the amount or amounts appropriated therefor.

Looking to the above quoted provisions of Section 5548, General Code, here in question, it is noted that there is an apparent conflict between these provisions and the applicable provisions of the Budget Law and of Section 2981, General Code. By Section 5548, General Code, it is provided that if, in the opinion of the county auditor, the county commissioners shall fail to provide a sufficient amount of money for the compensation of experts, deputies, clerks and other employes of the county auditor in the performance of his duties in making the assessment of real estate in the county as required by this section, he may make application to the Tax Commission of Ohio for an additional allowance of money for this purpose; and it is therein further provided that the additional amount of compensation allowed by the Tax Commission shall be duly certified to the board of county commissioners, "and the same shall be final." In other words, in such case, the allowance made by the Tax Commission is in itself an appropriation, so to speak, of county funds for this purpose. Again, it is provided by this section that if the salaries and compensation of such experts, deputies,

clerks and employes are fixed in whole or in part by the Tax Commission, "they shall constitute a charge against the county, regardless of the amount of money in the county treasury levied or appropriated for such purposes."

In this situation, the question here presented is whether these provisions of Section 5548, General Code, are repealed by implication, either in whole or in part, by the later provisions of the Budget Law in their present form or whether, on the other hand, conformable to well known rules of statutory construction, the provisions of Section 5548, General Code, are excepted from the more general provisions of the Budget Law and of Section 2981, General Code, above noted. In this connection, it may be observed that the above noted provisions of the present Budget Law likewise appeared in other appropriate language in the so-called Vorys Budget Law enacted by the 86th General Assembly, 111 O. L., 371, which act was finally passed by the legislature over the objections of the Governor on April 17, 1925, the same day that the act enacting Section 5548, General Code, in its present form was finally passed by the legislature likewise over the objections of the Governor. Both acts were filed in the office of the Secretary of State on April 21, 1925, and both acts, therefore, became effective on the same day, to wit, July 21, 1925. By Section 5 of the Vorys Act which was carried into the General Code as an amendment of Section 5649-3g, General Code, it was provided that at the beginning of each fiscal year, the county commissioners of every county, and the designated taxing authorities of every political subdivision or taxing district therein named, should make appropriations classified for the several purposes for which expenditures were to be made for and during the fiscal year, from the funds of the county or other political subdivision or taxing district. By this section it was likewise provided that the aggregate of all appropriations of or from the funds of any county or other political subdivision or taxing district for any fiscal year should not exceed the amount of the official estimate of revenues and balances of such political subdivisions or taxing districts as made by the Budget Commission and that no appropriation should become effective until there should be filed with the appropriating authority by the county auditor a certificate that the appropriation, taken together with all other outstanding appropriations, did not exceed said official estimate. Section 6 of said act, which became effective as Section 5649-3h, General Code, made provision for amending or supplementing appropriations theretofore made. And by Section 7 of the act, which was an amendment of Section 5660, General Code it was provided generally that no expenditure should be made unless authorized by appropriation both as regards purpose and amount, and that no contract, agreement or other obligation calling for or

requiring for its performance the expenditure of public funds from whatsoever source derived, should be made or assumed by any authority, officer or employe of any county or political subdivision or taxing district, nor should any order for the payment or expenditure of money be approved by the county commissioners or by any body, board, officer or employe of any subdivision or taxing district, unless the auditor or chief fiscal officer first certifies that the money required to meet such contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated.

Later, as above noted, these provisions of the Vorys Act were carried into the more comprehensive Budget Law enacted by the 87th General Assmebly, 112 O. L., 391. As was the case with respect to the Vorys Act, the present Budget Law in the provisions above referred to make general provision for the expenditure of public funds by the counties and other political subdivisions and limit such expenditures in the manner therein directed; and standing alone the provisions of the Budget Law would undoubtedly govern and limit the expenditure of county funds in the payment of the compensation of deputies, clerks, experts and other employes appointed or employed by the county auditor in performing his duties in making his appraisal of real property in the county, under Section 5548, General Code, and as therein provided. In this situation, it might be urged that the above noted provisions of the Budget Law were intended to cover the whole field relating to the expenditure of public funds by counties and other political subdivisions except as otherwise provided in said act with the result that the conflicting provisions of Section 5548, General Code, above quoted, should be considered to have been repealed by implication by the later and more comprehensive provisions of the present Budget Law. On the other hand, it may well be argued that effect should be given to the special provisions of Section 5548, General Code, here in question, as against the more general provisions of the Budget Law, and that the provisions of Section 5548, General Code, to the extent that they are in conflict with the provisions of the Budget Law, should be considered as an exception to the provisions of the Budget Law. As to this, it is noted that in the case of *City of Cincinnati vs. Connor*, 55 O. S., 82, it was said:

“We recognize it to be a well settled rule of statutory interpretation that: ‘Where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intension shall be considered an exception to the general one;’ and hence ‘if there are two acts, or two provisions in the same act, of which one is

special and particular, and clearly includes the matter in controversy, whilst the other is general, and would, if standing alone, include it also; and if, reading the general provision side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.' Endlich on Inter. Stat., Section 216; Sedwick on Stat. and Const. Law, Section 652. Maxwell on Inter. of Stat., p. 202, Second Ed."

In the case of *Doll vs. Barr*, 58 O. S., 115, the court in its opinion, quoting Endlich on the Interpretation of Statutes, said:

"In Endlich on the Interpretation of Statutes, Section 216, the rule is stated to be that: 'Where there are in one act, specific provisions relating to a particular subject, they must govern in respect to that subject, as against general provisions in other parts of the statute, although the latter, standing alone would be broad enough to include the subject to which the more particular relate.' And, 'if there are two acts, or two provisions of the same act, of which one is special and particular, and clearly includes the matter in controversy, whilst the other is general and would, if standing alone, include it also, and if reading the general provisions side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.'"

Further on this question, the following is noted in the opinion of the court in the case of *State, ex rel., vs. Cleveland*, 115 O. S., 484, 488:

"In the case of *City of Cincinnati vs. Holmes*, 56 Ohio St., 104, No. 46 N.E., 514, Judge Minshall, at page 115 (46 N.E., 516), adverts to the following rule of construction in such cases:

'I know of no rule of construction of statutes of more uniform application than that later or more specific statutes do, as a general rule, supersede former and more general statutes, so far as the new and specific provisions go.'

The general rule upon the subject is stated thus:

'Where there is one statute dealing with a subject in general comprehensive terms and another dealing with a

part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute.' 36 Cyc. 1151."

In the case of *State, ex rel., vs. Connor, Superintendent of Public Works*, 123 O. S., 310, it was held:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

Moreover, as to the thought or suggestion that the conflicting provisions of Section 5548, General Code, were repealed by the more general provisions of the Budget Law, it is pertinent to again note that the applicable provisions of the present Budget Law likewise appeared in the Vorys Act which was passed by the legislature at the same time that Section 5548, General Code, in its present form, was enacted. In this situation the decision of the Supreme Court of this State in the case of *State, ex rel., vs. State Office Building Commission*, 123 O. S., 70, should be noted. In this case it was held that "the presumption against the repeal of statutes by implication is stronger where provisions claimed to be in conflict were passed at nearly the same time."

Giving effect to the applicable rules of statutory construction above noted, I am of the opinion that effect should be given to the above quoted provisions of Section 5548, General Code, as against the more general provisions of the sections of the Budget Law referred to in your communication. What has been said above is a sufficient answer to your second question. And specifically answering your first questions, I am of the opinion that if the county auditor finds that the county commissioners have failed to provide a sufficient amount of money to pay the compensation of the necessary deputies, clerks, experts or other employes appointed or employed by him in making the appraisal of real property in the county, as provided for by Section 5548, General Code, the county auditor may make application to the Tax Commission of Ohio for an additional allowance of money for this purpose, and that such additional amount of money allowed by the Tax Commission for this purpose will on the certification thereof by the Tax Commission to the board of county commissioners

of the county be final as against said county and be sufficient warrant for the payment of the compensation of such appointees or employes out of the general fund of the county whether the money necessary to pay said compensation has been appropriated by the county commissioners for this purpose or not.

As a consideration supporting the conclusion which I have reached on this question, it is pertinent to note that the provisions of Section 5548, General Code, requiring an appraisal of the real estate in the several counties of the state in the year 1925 and every six years thereafter, are mandatory. It was so held by the Supreme Court of this State in the case of *State, ex rel., Tax Commission of Ohio, vs. Faust, Auditor*, 113 O. S., 365. The question presented to the court in this case was with respect to the appraisal which was required to be made in the year 1925. Later, under date of July 23, 1930, this office, giving effect to the decision of the Supreme Court in the case of *State, ex rel., Tax Commission of Ohio, vs. Faust, Auditor, supra*, held in an opinion directed to the Prosecuting Attorney of Hamilton County, that "the duty imposed upon the county auditor by the provisions of Section 5548, General Code, as amended by the act of April 21, 1925, 111 O.L., 418, to assess for the purpose of taxation all the real estate situated in the county other than that owned by public utilities otherwise assessed every sixth year after the year 1925, is mandatory."

For this reason and on the other considerations herein discussed, my opinion on the questions presented in your communication is that above stated.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

585.

PUBLIC OFFICER—FALSE IMPRISONMENT—EXPENSE RE-
IMBURSEMENT BY CITY.

SYLLABUS:

When a police officer of a city, in the discharge of his duty detains a person, is sued by such person for false imprisonment and on trial a verdict in his favor is returned by the jury, the city is under a moral obligation to reimburse such officer in the sum of \$100.00 expended by him for attorney fee and \$15.00 for stenographic service in connection