received no benefit, and no personal obligation had been incurred, nor could such debt be imposed prior to the taking effect of the assessing ordinance and at that time the vendor was not the owner of the property. That the statute provides that the lien of the assessment shall attach from the date of the contract is not of importance; it in no way justifies an illegal assessment, or estops the owner to make the question after the assessment ordinance is passed. * * *"

In the case of *Waldschmidt* vs. *Bowland,* 27 O. C. C. 782, it was held that where the recital in a deed assuming the payment of street assessments, does not specify any particular assessment for the improvement of any particular street, it could not be said that the assumption expressed in the deed relates to and covers an assessment for a street improvement, ordered but not assessed at the time of the delivery of the deed; and that such purchaser is not estopped from contesting the assessment on the ground of lack of special benefit.

Here again, however, there is nothing in your communication which requires me to express any categorical opinion upon this particular question. It is enough to say that no reason is apparent to me why you should not if you so desire, insert in the lease the clause here in question obligating the railroad company to pay according to benefits assessments levied against it for public improvements, especially in view of the fact that it has been your consistent policy to require a clause of this kind in railroad leases.

With respect to the other proposed clause above quoted which you say the railroad company desires to have inserted in the lease in the event that the other clause hereinbefore considered is retained, I can say that without regard to any equity that may attend the claim of the railroad company that assessments paid by it for improvements, which effect an increase in the appraised value of the leasehold, should be deducted from the amount of the increase in the appraised value of such leasehold on subsequent revaluation, there is nothing in the law which authorizes a deduction of assessments so paid to be made from any such subsequent appraisement of the leasehold. The appraisement on the leasehold to be made at the expiration of each period of fifteen years in the term of the lease is to be made in the same manner as the original appraisement, (111 O. L. p. 211, sec. 12). That is, at each of said appraisements the leasehold is to be appraised at its true value of money without deductions of any kind.

I am of the opinion therefore, that you are not authorized to insert in said proposed lease to The Toledo and Cincinnati Railroad Company the clause requested by said railroad company.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1741.

COUNTY TREASURER—SHORTAGE IN ACCOUNTS — RIGHTS OF SURETY COMPANY DISCUSSED—AUTHORITY OF STATE TREASURER TO RECEIVE CHECK FROM SURETY COMPANY DISCUSSED

SYLLABUS:

Where it does not appear that a defaulting county treasurer has at any time failed to pay into the state treasury monies ascertained to be due the state in the

manner provided by Sections 2688 and 2693, General Code, the state treasurer is not authorized to accept a certified check of a surety company in discharge, either in whole, or in part, of the liability incurred by it as surety on the official bond of such defaulting county treasurer. In such case the said certified check of the surety company or the money represented thereby could be covered into the county treasury on a pay-in draft of the county auditor in the manner provided by Section 2645, General Code.

COLUMBUS, OHIO, February 21, 1928.

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 with your opinion upon the following question:
>
> In an examination of the County Treasurer's Office of Lawrence County, one of our examiners discovered a shortage in the Treasurer's accounts in the sum of $54,838.06. Immediately after the report of the examiner was officially filed in the offices of the County Auditor and Prosecuting Attorney of Lawrence County, the county commissioners employed attorneys to bring suit against the surety companies on the bond of the treasurer in the amount of the finding made by the examiner plus a penalty of ten per cent thereon. The American Surety Company is tendering to the Treasurer of the State of Ohio a certified check in the sum of $54,838.06 in payment of the examiner's finding.
>
> Question: May the Treasurer of the State of Ohio receive this check, and if so, what disposition should be made of it?"

The liability of the surety company referred to in your communication arises on certain official bonds given by a defaulting county treasurer of Lawrence County, Ohio, on which said company was a surety. The State of Ohio was named as obligee in said official bonds, and clearly any action on the same is required to be brought in the name of the State of Ohio as the plaintiff therein. *Hunter* vs. *Commissioners,* 10 O. S. 515, *Kelley* vs. *State,* etc., 25 O. S. 567.

This rule is of no particular significance with respect to the question presented in your communication; for apparently all actions on official bonds running to the State of Ohio are properly brought in the name of the state, other than those for the assertion of private rights arising on such bonds which, under the provisions of Section 11242, General Code, may be brought in the name of the person asserting such rights.

The case of *Kelley* vs. *The State of Ohio,* etc., supra, was one on the bond of a county treasurer. In this case the action was brought in the name of the State of Ohio, "for the use of the commissioners of Brown County." In ruling on an assignment of error predicated on the refusal of the trial court to strike from the title of the case the words "for the use of the commissioners of Brown County," the Supreme Court in its opinion said:

> "The bond is made payable to the State of Ohio, and the state is a proper party to bring suit. The designation of the 'use' for which the suit is brought does not vitiate. It may be regarded here as mere surplusage. It is a matter between the state and the county, township, and other parties ultimately entitled to the funds, and can in no way prejudice

the rights of the defendants. The money is primarily for the use of the county, for it is to be paid into the county treasury, and thence distributed."

It does not appear that the State of Ohio has suffered any loss in its funds by reason of the shortage of the county treasurer in the monies chargeable to him, nor that said county treasurer has at any time failed to pay into the state treasury money ascertained to be due the state, as he was required to do by the provisions of Sections 2688 and 2693, General Code.

In this connection, it is obvious that if the money represented by the certified check tendered by the surety company in payment of the shortage in the county treasurer's accounts should be covered into the state treasury, there would be no way of getting said money out of the state treasury for the purpose of paying the same to said county, or to any of the political subdivisions or taxing districts therein, without an appropriation for the purpose made by the Legislature.

I am of the opinion therefore, that any money paid by said surety company on said official bonds of the county treasurer should be paid into the county treasury of Lawrence County on a pay-in draft or order of the county auditor in the manner provided by Section 2645, General Code.

By way of specific answer to your question, I am of the opinion that the treasurer of the State of Ohio is not authorized to receive the check mentioned in your communication.

In any event the check of the surety company in the amount therein stated should not be accepted in full settlement of the liability of the surety companies on said official bonds, and that for the reason, as I am advised, the ascertained shortage of the county treasurer is in excess of the amount stated in the check referred to in your communication.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1742.

Y. M. C. A.—DISCUSSION OF EXEMPTION FROM TAXATION.

SYLLABUS:

1. *The amendment of Section 5353, General Code, (110 O. L. 77) does not require a modification in any way of the general conclusions arrived at in the opinion rendered by this department in 1916, Vol. II, page 1640, and such conclusions are still controlling.*

2. *The fact that the rooms in a building owned by the Y. M. C. A. when not occupied by members of said association are rented to the public to the extent that said rooms are not occupied by members of said association, does not classify said rooms as property leased for a profit so as to subject them to taxation.*

3. *The fact that a part of a Y. M. C. A. building owned by said association is devoted to the operation of a restaurant owned and managed directly by the association, but to which the public at large is admitted, and which derives a good part of its revenue from the public, does not classify the room or rooms in which*