

for other scientific purposes," or it may be made for scientific purposes alone, and such as are disassociated with the purposes of an observatory.

It is observed from your communication that the budget as submitted by the city of Cincinnati in 1922, reads: "for observatory *and* other scientific purposes of the university, etc.," and with the slight deviation in the use of the word "and" instead of "or" the purposes of the levy in question may be said to be in compliance with the literal wording of section 7908 G. C. However in this respect the rules of statutory construction permit of the transmutation of these words when the meaning and context of the construed section may so require. Hence it is concluded, that a levy made by council under the language used "for observatory and other scientific purposes of the university" is substantially within the requirements of section 7908 G. C.

In answer to your second question it is concluded that if the levy indicated has been made in conformity to law, any fund raised thereby may lawfully be expended for the purposes for which it was made. It is obvious therefore, in answer to this question, that the tax levy being legal, expenditures from the fund so raised may lawfully be made by the directors of the university, for purposes which they might deem applicable, provided the same is exclusively limited to those purposes for which the fund was created, and as required by the provisions of section 7908 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2954.

ROADS AND HIGHWAYS—REAL ESTATE LYING WITHIN CORPORATE LIMITS OF CITY SUBJECT TO ASSESSMENT UNDER SECTION 1178 G. C.—WHEN CANAL LAND NOT SUBJECT TO ASSESSMENT FOR HIGHWAY IMPROVEMENT—LEASEHOLD ESTATES ACQUIRED IN CANAL LANDS NOT SUBJECT TO SAID ASSESSMENTS.

1. *Property lying within the corporate limits of a city is subject to assessment for highway improvements made under authority of sections 1178 et seq., G. C.*
2. *Canal property which by act of the General Assembly has been abandoned with the proviso that such property be used by a municipality for street, parking, sewerage and water purposes, is not subject to assessment for highway improvement.*
3. *Leasehold estates acquired in canal lands under authority of sections 13966 G. C. and related sections, are not subject to assessment for highway improvement.*

COLUMBUS, OHIO, March 28, 1922.

HON. W. B. BARTELS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—You have submitted for the opinion of this office several inquiries having reference to a statement of facts substantially as follows:

The state under authority of sections 1178 et seq. G. C. (state highway code) has, upon application by the commissioners of Athens county, improved a certain section or certain sections of a highway within the county. The legislation by the county commissioners provides for an assessment of real estate within one mile of either side of the improvement (section 1214 G. C.) This one mile assessment zone on the north side of the highway in

question includes land within Hocking county. The one mile zone on the south side of the improvement includes lands within the corporate limits of the city of Nelsonville. Further south than the corporate limits of Nelsonville and separated from the improvement by the city of Nelsonville, is property belonging to a township. Said township property is within the one mile zone. The township as such is bearing a part of the cost of the improvement (section 1214 G. C.). Again, within the one mile zone are certain canal lands which are described in an act entitled "An act to authorize the city of Nelsonville, Athens county, Ohio, to enter upon, improve and occupy a portion of the Hocking canal as a public highway and for sewerage and water purposes," which act appears in 108 O. L., 691. Said act was passed on May 8, 1919. On May 7, 1920, the board of county commissioners in the course of proceedings pending before them, passed a resolution whereby certain territory theretofore within the corporate limits of the city of Nelsonville was detached from said city. The territory so detached adjoins the road improvement in question, and includes the canal property described in said act of the general assembly. The road improvement in question was constructed subsequent to the time of the adoption of the resolution by the county commissioners ordering the detachment of territory. Neither the city of Nelsonville, nor the township within which the detached territory lies, has taken any action with reference to laying out a street or selling any of the property forming part of said canal.

Your several questions growing out of the foregoing statement of facts will be stated and discussed in their order.

(1) May property lying within Hocking county be assessed on account of the improvement? An affirmative answer to this question is furnished by section 1216-1 G. C., enacted 108 O. L. Pt. 2, p. 1178. By that statute special proceedings are provided for the case of property within the assessment zone but in another county than that in which the improvement is located.

(2) Is property within the corporate limits of the city of Nelsonville subject to assessment? An affirmative answer to this question is in principle furnished by an opinion of this department, No. 2914, dated March 9, 1922, directed to Hon. C. A. Maxwell, prosecuting attorney, Zanesville, Ohio, a copy of which opinion is enclosed for your information. The opinion deals primarily with property lying in a village; but the principle applies equally to property lying within a city.

(3) Is property belonging to a township subject to assessment on account of the improvement? The answer is in the affirmative. See opinion of this office appearing in 1921 Opinions, page 561, being Opinion No. 2202, dated June 28, 1921, and directed to Hon. C. A. Maxwell, prosecuting attorney, Zanesville, Ohio. A copy of that opinion is enclosed.

It is to be observed generally in connection with your questions numbers 2 and 3, that the matter of benefits enters into the situation. While all property within the assessment zone is subject to assessment (except property inherently exempt, such, for instance, as state lands), yet the assessable amount is to be distributed proportionately in accordance with benefits.

(4) Is the canal property in question subject to assessment?

A proper discussion of this question requires that the act of the General Assembly referred to in the statement of facts be quoted in full. It reads:

"Section 1. That the portion of the Hocking canal situate within the corporate limits of the city of Nelsonville, Athens county, Ohio, be, and the same is hereby, vacated and abandoned for canal purposes.

Section 2. That there is hereby granted to said city of Nelsonville, the authority and permission to enter upon, improve and occupy forever as a public highway and for sewerage and water purposes, that portion of the Hocking canal situate within the corporate limits of said city.

Provided, however, said city shall have the right to dispose of the width of any portion of the canal in excess of sixty feet, the street to be defined by straight lines as nearly as possible, and that no portion of the canal property in the sixty feet reserved for street purposes herein described, shall ever be used for any purpose or purposes other than for streets and avenues, parking purposes, sewerage and water purposes, and provided further that any portion of the said abandoned canal property that is not so occupied and used at the end of ten years from the date of the passage of this act, shall immediately revert to the state of Ohio; and provided further that if at any time the state of Ohio shall have an opportunity to lease a right-of-way over the abandoned Hocking canal property between Lancaster and Nelsonville, it may include a right-of-way over the canal property herein conveyed, even though the same is improved as a street or highway.

Section 3. That whatever title and interest remains to the state of Ohio in that part of the Hocking canal vacated and abandoned by section 1 of this act, are hereby relinquished and transferred to said city of Nelsonville."

There is no difficulty in solving your question so far as it relates to the strip sixty feet in width, which the General Assembly has provided is to be used as a street.

The rule in Ohio is clearly that property belonging to the state is not subject to assessment. In Page and Jones on Taxation by Assessment there is to be found in section 581, a general discussion of the subject of the assessment of state property. The authors lay down the general rule that the legislature has power to authorize the assessment of state property. They add that where specific authority is not given by statute, two views have prevailed: (1) That the general power granted to local authorities to make an assessment includes state property unless such property is specifically exempted; and (2) That unless the statutes clearly include state property, then such property is to be excluded. The latter view is undoubtedly the correct one as applied to Ohio, although the precise point does not seem to have been passed upon by the courts. But see *State ex rel. Parrott vs. Board of Public Works*, 36 O. S., 409, holding, among other things, that

"The state is not bound by the terms of a general statute, unless it be so expressly enacted."

This doctrine is affirmed in *State ex rel. Attorney-General vs. Railway Company*, 37 O. S., 157, 176.

That the General Assembly has treated canal property in particular as not being subject to assessment is shown by section 1215 G. C. dealing with assessments for highway improvements made by the state. Said section reads as follows:

"Where property is separated from a road improvement by a canal, street railway or interurban railway, steam railway or any other similar manner, such property shall be regarded for the purposes of assessment under the provisions of this chapter as property bounding and abutting upon said improvement, and both such strip of land owned or occupied by such street railway, interurban railway or steam railway and the land lying back thereof shall be assessed on account of said improvement as provided herein."

It will be observed that while this section on its face permits of the assessment of land occupied by the street railway, interurban railway or a steam railway, and the land lying back thereof, it omits canal lands as being subject to assessment.

For statutes similar to section 1215, see sections 6920, 3298-14 and 3298-39 dealing respectively with assessments for improvements made by counties, townships and township road districts.

On the other hand, if we treat the 60 foot strip as not belonging to the state, but as being dedicated to street purposes, said strip is not subject to assessment. See *State ex rel. City of Columbus vs. Mitchell*, 31 O. S., 592 (third syllabus and page 606 of the opinion) holding that under the act there in question providing an assessment per front foot abutting the improvement, an assessment could not be made against streets, alleys and highways intersecting the street that was improved.

Referring next to that part of the canal property which lies outside of the 60 foot strip:

It is understood upon inquiry at the Department of Highways and Public Works that the canal property in question is at least 80 feet wide for most of its length, and perhaps wider in places. It is also understood that a small part of the property is under lease by the state to private individuals. The act of the General Assembly purporting to vacate the property contains an inconsistency. Section 1 recites a vacation and abandonment for canal purposes. Section 3 recites a relinquishment and transfer to the city of Nelsonville of whatever title and interest remains in the state in that part of the canal abandoned by section 1. But section 2, after reciting in the first proviso clause that the city shall have the right to dispose of the width of any portion of the canal in excess of 60 feet, goes on to stipulate in the second proviso clause

“that any portion of said abandoned canal property that is not so occupied and used at the end of ten years from the date of the passage, of this act, shall immediately revert to the state of Ohio.”

The use and occupation referred to is for street, avenue, parking, sewerage and water purposes. There would seem to be no way of reconciling these several provisions; for even though the city within the ten year period makes use of all or a part of the 60 foot width, the land remaining outside of the 60 foot width would revert to the state, notwithstanding the purported transfer of the residuary interest to, and purported power of sale in, the city of Nelsonville. The inconsistency is further complicated by the fact that the city now seems to have indicated an intention to abandon the whole street improvement project by permitting the detachment from its corporate limits of territory including the canal lands. Whether such transfer and detachment has the effect of vesting in the township such rights as the city may have acquired by the act in question is a matter that offers an interesting field of discussion, but need not be here passed upon. In short, the terms of the act in question seem to leave no option except to treat the whole abandoned tract as either belonging to the state on the one hand, or as being subject in part to street uses on the other, in either of which cases, the property is not subject to assessment for reasons already given.

Nor is there believed to be any statutory authority for levying an assessment upon the leasehold interest of individual leases of said canal tract which may now be under lease. Such leases are for fifteen-year periods, and are made under authority of section 13966 G. C. and related sections, dealing with canal lands. Such leases do not come within the purview of section 5330 G. C.

And see *North American Lumber Co. vs. City of Blaine*, 81 Washington, 13; 42 Pac. 438, holding that in the absence of express statutory authority, an assess-

ment on account of a local improvement could not be levied against a leasehold interest in harbor area owned by the state (the leases in this case being authorized by statutes providing for thirty-year terms).

Respectfully,
JOHN G. PRICE,
Attorney-General.

2955.

APPROVAL, LEASE TO SUSAN CULL, COLUMBUS, COTTAGE SITE AND LANDING, BUCKEYE LAKE.

COLUMBUS, OHIO, March 28, 1922.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—Your letter of March 9, 1922, was duly received transmitting for my approval the following lease among others:

To Susan Cull, Columbus, Ohio, cottage site, landing and general business purposes, that is included in the west half of lot No. 55-A of embankment lots on the north shore of Buckeye Lake east of Sayre's boat house, value \$2,500.00.

I have examined said lease and find the same in all respects legal, and I am therefore returning it with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2956.

APPROVAL, BONDS OF WESTERVILLE VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, IN AMOUNT OF \$145,000.

COLUMBUS, OHIO, March 30, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2957.

APPROVAL, ABSTRACT OF TITLE, PREMISES SITUATE IN CITY OF ATHENS, ATHENS COUNTY, PROPERTY KNOWN AS THE MASONIC TEMPLE COMPANY.

COLUMBUS, OHIO, March 30, 1922.

Board of Trustees, Ohio University, Athens, Ohio.

GENTLEMEN:—You have submitted an abstract certified to by W. E. Peters, attorney at law and abstracter, January 23, 1922, requesting my opinion as to the