visions of the Act of June 7, 1911, 102 Ohio Laws, 293. In any view as to this particular question, I am of the opinion that the execution of this lease is within the authority conferred upon you by law.

Upon examination of this lease, I find that the same has been executed by you as Superintendent of Public Works and as Director of said Department on behalf of the State of Ohio and by said Stanley Ankrom in the manner provided by law. I am, therefore, approving this lease, as is evidenced by my approval endorsed thereon, and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1390.

PRE-AUDIT EXPENSE—AUDITOR OF STATE NOT AUTHORIZED BY SECTION 3391-5 G. C. TO CHARGE OR RECEIVE FROM "LOCAL RELIEF AREA" AMOUNT IN EXCESS OF THREE-FOURTHS OF ONE PER CENTUM OF AMOUNT CONTRIBUTIONS STATE HAS MADE TO RELIEF AREA —LOCAL RELIEF AREA HAS NO AUTHORITY TO PAY IN EXCESS FROM "POOR RELIEF FUNDS"—WHEN DIRECTOR PUBLIC WELFARE DELIVERS TO STATE AUDITOR PROPER VOUCHER FOR PAYMENT STATES' CONTRIBUTION — AUDITOR HAS NO AUTHORITY TO WITHHOLD ISSUANCE OF WARRANT ON TREASURER OF STATE—STATUS WHERE ALLEGED DEFAULT, PAYMENT CHARGES FOR PRE-AUDIT EXPENSE—SECTIONS 3391-11, 3391-12 G. C.

SYLLABUS:

1. The Auditor of State is not authorized by Section 3391-5, General Code, or any other section of the General Code, to charge or receive from a local relief area, for "pre-audit" expense in excess of three-fourths of one per centum of the amount of the contributions which the State has made to such relief area under authority of Section 3391-12, General Code, and the local relief authority is not authorized by such section to pay in excess of such amount from "poor relief funds."

2. When the Auditor of State has received from the Director of Public Welfare a proper voucher for the payment of the State's contribution to a local relief area under authority of Section 3391-11, General Code, such Auditor has no authority to withhold the issuance of a proper warrant on the Treasurer of State, even though the local relief

authority in whose favor it is to be drawn may allegedly be in default in payment of charges for pre-audit expense.

COLUMBUS, OHIO, November 6, 1939.

HON. CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion concerning the amount which the Auditor of State may charge a local relief area monthly for "pre-audit" duties in connection with the administration of poor relief under the authority of House Bill No. 675, as enacted by the present General Assembly. To put the question differently, your inquiry is: What is the maximum amount which may be paid monthly from the poor relief funds of a local area to the Auditor of State as compensation for pre-audit duties in connection with the dispensing of poor relief funds?

I have received a similar request from the Prosecuting Attorney of Knox County; and, with your permission, I will herein combine my discussion of such requests for opinion.

Section 3391-5, General Code, which defines the duties of the Auditor of State with reference to "pre-audits" and which prescribes and limits the compensation which may be paid for the performance of such duties from the poor relief funds of a local relief authority, reads:

> "It shall be the duty of the auditor of state to make continuous pre-audits of the poor relief expenditures of each local relief area, and file with the state director and each local relief authority affected thereby a certified copy of such audits.
>
> The cost of the pre-audit represented by the compensation and expense of the examiner or examiners conducting such pre-audit shall be a direct charge against the poor relief funds of the local relief area audited, but shall not be included within the limitations on administrative costs set forth in this act. Such examiners shall be compensated and receive expenses at the rate set forth in section 276 of the General Code. In local relief areas where a full time examiner is not necessary, the state auditor shall combine a number of local relief areas into a single poor relief pre-audit district, and each local relief area in such district shall bear a proportionate share of the cost of the examiner.
>
> The total cost of such pre-audits within a local relief area shall not exceed three-quarters of one per centum of the amount of contributions by the state to such local relief area from appropriations to the department of public welfare for poor relief."

From the enclosures which have been delivered to me in connection with such requests, it appears that it is the practice of the Auditor of State to keep a record of the time expended by pre-audit examiners employed by him, and to bill each local relief authority for that portion of the time of the examiner which is purported to have been expended in the pre-auditing of bills in the particular local relief area, at the rates scheduled in Section 276, General Code, and to ignore the limitation contained in the last paragraph of Section 3391-5, General Code.

To illustrate, I am informed that the aggregate amount which the Auditor of State billed to all local relief authorities for pre-audit duties for the month of July, 1939, was $10,956.73, while three-fourths of one per centum of the amount of contributions by the State to all local relief areas would amount to $5,625; and that during the month of August, 1939, the aggregate amount of the charges made by the Auditor of State to local relief areas for pre-audit expense was $10,994.55, while three-fourths of one per centum of the contributions by the State to such areas was $5,625.

I am informed that in one local relief area the total expenditures for poor relief during the months of July, August and September, 1939, were $1,985.16, $1,692.34 and $2,204.72, respectively; that the State's contributions during such months were $859.00, $626.04 and $641.25, respectively; that to such area the Auditor of State sent an invoice of $16.11 for services in pre-auditing the July bills, which invoice was paid; and that for the months of August and September invoices were sent in the amounts of $23.21 and $24.48, respectively. I am informed by the Prosecuting Attorney for the county in which such area is located that the relief authority mailed to the Auditor of State a voucher for the month of August in the sum of $11.47, which such authority assumed to be the maximum amount that could be paid for such month from poor relief funds; and that such voucher was returned by the Auditor of State as being incorrect in amount, with a letter containing the following paragraph:

> "The Auditor of State's interpretation of Section 6 of H. B. No. 675 has been that ¾ of 1 per cent of the state allocation is not confined to a monthly distribution, a semi-annual distribution or an annual distribution, but in respect to the total appropriation of the act itself, namely, $15,000,000 for the period of July 1st, 1939 to December 31st, 1940."

It is difficult to believe that such language is a correct quotation from the letter of the Auditor of State, for on several occasions the deputies of such Auditor have consulted with my office concerning the amount of pre-audit expense which may be charged to and payable from the

poor relief funds of an area, and have each time been advised as herein ruled.

I am not unmindful of that rule which has been adopted by the courts that they will not disrupt an interpretation of an administrative officer, whose duty it is to administer the law, upon an ambiguous statute, when such practical interpretation has been long adhered to, except for cogent reasons. Such hesitancy on the part of the courts exists only when the following elements concur:

1. The statute is ambiguous.
2. The practical interpretation has been placed thereon by the officer whose duty it is to administer the law.
3. The practical interpretation has been uniformly followed by those officers whose duty it has been to enforce it.
4. The practical interpretation must have been long continued.

Since the statute in question has been in effect only since July 1, 1939, we can scarcely say that any practice with reference thereto has been long continued.

I am not informed that the interpretation stated in the language purporting to be quoted from the Auditor's letter has been either adopted or followed by those persons who are authorized to administer poor relief under such House Bill No. 675. In fact, it is in direct conflict with my opinion to such Auditor under date of June 29, 1939 (No. 831). As I pointed out in such opinion, the Auditor of State has no duties with reference to the administration of poor relief other than that of "pre-auditing" payments for poor relief (§3391-5, G. C.), as a member of the poor relief board of appeals (§3391-4, G. C.), and the issuing of vouchers on the Treasurer of State for the payment of the State's contribution (§3391-5, G. C.) and the regular check made by the Bureau of Inspection and Supervision of Public Offices. It would therefore seem that the interpretation questioned is not one of an officer whose duty it is to administer the Poor Relief Law.

Let us examine Section 3391-5, General Code, for the purpose of determining whether such statute is ambiguous and whether the interpretation purported to have been placed thereon is consistent with the language used. For if the practical interpretation is inconsistent with the language used in the statute, it cannot prevail.

United States v. Missouri Pacific Railway Co., 278 U. S., 269;
United States v. Temple, 105 U. S., 97;
United States v. Graham, 110 U. S., 219;
Solomon v. Arthur, 102 U. S., 208.

Such section prescribes: first, that the examiners making the pre-audits shall be paid the per diem rates and mileage as prescribed in Section 276,

General Code; second, if one relief area does not require the full time services of an examiner, several areas may be combined for the purpose of pre-audit and the compensation and the expense prorated among such areas; third, that "the total cost of the pre-audits within a local relief area *shall not* exceed three-quarters of one per centum of the amount of contributions by the state *to such local relief area,"* etc. (Emphasis the writer's.) In such Section 3391-5, General Code, there are two limitations upon the cost of the pre-audit; that is, the rate of pay for the examiner is definitely fixed; likewise, the cost of the pre-audit expense that may be charged against the local area is definitely limited. In my opinion dated June 29, 1939, bearing number 831, I ruled, as stated in the third and fourth paragraphs of the syllabus:

> "3. The expenses and compensation of examiners of the Auditor of State for services performed in connection with the administration of such House Bill No. 675 are limited by and are payable only as set forth in Section 6 of such Act.
>
> 4. The Auditor of State is not entitled to compensation for any services performed by him under authority of such House Bill No. 675, except as provided in Section 6 of such Act."

I have again reviewed such opinion and see no reason to depart from my conclusion as therein expressed. In the purported interpretation of the Auditor of State it is inferred that the limitation contained in the last paragraph of Section 3391-5, General Code, is to three-fourths of one per centum of the amount appropriated by the General Assembly to the Department of Public Welfare for distribution to local relief areas pursuant to Section 3391-11, General Code.

It must be borne in mind that the true object and purpose of interpretation of statutes is to ascertain the intent of the legislative body which enacted it. Slingluff v. Weaver, 66 O. S., 621. The first and foremost rule of statutory construction is that the intent of the legislature must be determined from the language used by such enacting body and not invented by the interpreter. State, ex rel. Harness v. Roney, 82 O. S., 376, Syl. 1; United States v. Goldenberg, 168 U. S., 95, 102, 103; McCluskey v. Cromwell, 11 N. Y., 593, 602; Stanton v. Realty Company, 117 O. S., 345, 349.

The language of the statute expressly limits the "total cost" of the pre-audits *within* a local relief area to three-fourths of one per centum "of the amount of contributions by the state to such local relief area." No language could be more nearly clear and unambiguous. It is not within the realm of possibility that the $15,000,000 mentioned in the purported quotation from the Auditor of State's letter, could be contributed to *a* local relief area in which the examiner might be making a pre-audit. How, then, could such sum be the measure of maximum

charge for any particular area? Likewise, there is no authority to prorate expense of pre-audit among areas unless none of such areas require the full time services of an examiner.

There is another reason which will not permit the interpretation purported to have been made by the Auditor of State. The total contributions made by the State to all local relief areas for the month of July, 1939, were $750,000. Three-fourths of one per centum of this amount would be $5,625, yet his charges, as billed to the local relief areas, aggregated, for this period, the sum of $10,956.73, or 1.43+% of the total contributions for such month. The express provision of Section 3391-5, General Code, is that the percentage is of the contributions made by the State, not of those which possibly may at some future time be made. I am therefore of the opinion that even though there were an ambiguity in the last paragraph of Section 3391-5, General Code, such language will not bear the interpretation purported to be placed thereon by the Auditor of State.

It is not permissible, in the interpretation of a statute, to read language into or out of a statute when it does not there appear, when the language actually contained in the statute is susceptible of a meaning without such addition and subtraction, even though the interpreter may be convinced that the meaning as expressed by the language actually used is not that which the legislators sought to enact. It is to be presumed that the legislature knows the ordinary meaning of the English language and that it used each word for a specific purpose. Refling v. Burnet, 47 Fed. (2d), 859. As stated in 25 R. C. L., page 961, Section 217:

> "The intention and meaning of the legislature must primarily be determined from the language of the statute itself, and not from conjecture aliunde. When the language of a statute is plain and unambiguous, and conveys a definite meaning, there is no occasion to resort to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. This principle is to be adhered to notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact. The current of authority at the present day is in favor of reading statutes according to the natural and most obvious import of the language without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation. If the words of the act are plain and the legislative purpose manifest, a contrary conception of it, however produced, cannot legitimately be permitted to create an obscurity to be cleared up by construction, influenced by the history of the legislative labors which con-

structed the law. No motive, purpose, or intent can be imputed to the legislature in the enactment of the law other than such as are apparent upon the face and to be gathered from the terms of the law itself. A secret intention of the lawmaking body cannot be legally interpreted into a statute which is plain and unambiguous, and which does not express or imply it. Seeking hidden meanings at variance with the language used is a perilous undertaking which is quite as apt to lead to an amendment of a law by judicial construction as it is to arrive at the actual thought in the legislative mind."

The reported decisions of our Supreme Court are replete with similar statements.

D. T. Woodbury & Co. v. Berry, 18 O. S., 456, Syl. 1;
State, ex rel., v. Forney, 108 O. S., 463, 466;
Stanton v. Realty Co., 117 O. S., 345, 349;
Smith v. Bock, 119 O. S., 101, 103;
Village of Elmwood Place v. Schanzle, 91 O. S., 354.

Applying the plain language of Section 3391-5, General Code, to the example contained in the letter of the Prosecuting Attorney of Knox County, for the month of July the contribution of the State to such area was $859.60, the statute limits the expenditure from poor relief funds of this area to three-fourths of one per centum of such sum, or $6.447; for the month of August the State's contribution was $626.04, the maximum pre-audit expense that could be charged would be three-fourths of one per centum, or $4.6953; for the month of September the State's contribution was $641.25, the maximum compensation for pre-audit expense would be $4.71. If such be true, it is evident that the Auditor of State, upon payment of the voucher issued in payment for his first charge, will have received an amount in excess of that which he is legally permitted to charge for the three months in question.

You further inquire whether the Auditor of State may refuse to issue warrants on the Treasurer of State for the disbursement of the State's contribution to a poor relief area, as ordered by the Director of Public Welfare under authority of Section 3391-11, General Code, in the event that a poor relief authority by reason of dispute over the amount due, has refused to pay to the Auditor of State the amount claimed to be due to him for pre-audit expense.

It is a fundamental rule of law that a public official has such powers and such only as are granted him by the statutes creating his office and defining its duties.

Elder v. Smith, Auditor, 103 O. S., 369;
Peter v. Parkinson, 83 O. S., 36.

An examination of the statutes with reference to the powers and duties of the Auditor of State as to the payment of such contribution of the State to local poor relief authorities are: first, he shall make the pre-audit (§3391-5, G. C.); second, to serve as member of the poor relief board of appeals (§3391-4, G. C.); third, to issue warrants "in accordance with the vouchers issued by the state director" (§3391-11, G. C.). I find no authority in the so-called "poor relief act" granting the Auditor of State the power to withhold the issuance of such warrant when he has received a proper voucher issued by the Director of Public Welfare for such purpose. It is hardly to be suspicioned that an Auditor of State would attempt or threaten to assume a power not granted him by statute for the purpose of collecting a disputed claim from a subdivision, however much he may be convinced such claim may be a valid one. He would resort to legal remedies through the courts rather than subject himself to a writ in mandamus or a mandatory injunction.

Specifically answering your inquiries, it is my opinion that:

1. The Auditor of State is not authorized by Section 3391-5, General Code, or any other section of the General Code, to charge or receive from a local relief area, for "pre-audit" expense in excess of three-fourths of one per centum of the amount of the contributions which the State has made to such relief area under authority of Section 3391-12, General Code, and the local relief authority is not authorized by such section to pay in excess of such amount from "poor relief funds."

2. When the Auditor of State has received from the Director of Public Welfare a proper voucher for the payment of the State's contribution to a local relief area under authority of Section 3391-11, General Code, such Auditor has no authority to withhold the issuance of a proper warrant on the Treasurer of State, even though the local relief authority in whose favor it is to be drawn may allegedly be in default in payment of charges for pre-audit expense.

Respectfully,

THOMAS J. HERBERT,

Attorney General.