

suming as I do, that no application for the lease of this canal land has been made by any person or corporation entitled to prior rights with respect to the lease of the above described parcel of Ohio Canal land, I find that you are authorized to execute this lease to Goshen Brick & Clay Corporation, the lessee therein named.

Upon examination of this lease I find that the same has been properly executed by you, acting for and in the name of the State of Ohio, and by the hand of M. S. Russell, Secretary of Goshen Brick & Clay Corporation, as authorized by resolution of the Board of Directors, a copy of said resolution being attached to the lease. I further find upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of the act above referred to, and with those of other statutory enactments relating to leases of this kind. I am accordingly approving this lease as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1112.

DEPARTMENT OF FINANCE — TRANSFER — FUNCTIONS FORMERLY POSSESSED BY STATE AUDITOR AND SECRETARY OF STATE — SECTION 196-13 G. C. — DEPARTMENT OF HIGHWAYS — MACHINERY, TOOLS, EQUIPMENT, NOT NEEDED OR WORN OUT — PURCHASE PRINTED MATTER — RELEASE — SECTION 196-6 G. C. — DEPARTMENT OF FINANCE SHOULD FURNISH STATE AUDITOR COPIES BIDS, PURCHASE ORDERS AND PURCHASE RELEASES.

*SYLLABUS:*

1. *The functions formerly possessed by the Secretary of State and the Auditor of State as provided in Section 196-13, General Code, have been transferred to the Department of Finance and neither the Auditor of State nor the Secretary of State has any duties or powers in connection therewith.*

2. *The disposal of machinery, tools or equipment of the Highway Department which is no longer needed by that department or which is worn out, is solely within the jurisdiction of the Department of Highways, and the Department of Finance has no function or duty in connection therewith.*

3. *The Department of Finance has exclusive authority to purchase printed matter required for the use of the Department of Highways unless*

*the Department of Finance issues a release and permit to the Department of Highways pursuant to the provisions of Section 196-6, General Code.*

4. *The Department of Finance should furnish to the Auditor of State copies of bids, purchase orders and purchase releases issued by said department.*

COLUMBUS, OHIO, August 30, 1939.

HON. C. J. STARK, *Superintendent of Purchases and Printing, State House, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date in which you state that there has been set up within the Division of Purchases and Printing of the Department of Finance a State Salvage Department to handle and dispose of waste material or scrap produced by the various departments and institutions of the State. You also state that with the Salvage Department has been joined the Exchange Department, whereby usable furniture, equipment, etc., are transferred from one department to another or sold on the open market. You ask (1) whether the jurisdiction of the Division of Purchases and Printing of the Department of Finance over waste material and scrap and usable furniture, equipment, etc., not required for use in the department possessing same, is exclusive; (2) whether any responsibilities and duties in this connection are possessed by the Auditor of State and the Secretary of State; and (3) whether the disposal of waste material produced by the Department of Highways is within the control of the Division of Purchases and Printing of the Department of Finance. You also ask whether the Division of Purchases and Printing of the Department of Finance has exclusive authority to purchase for the Department of Highways the printed matter required by such department.

The office of State Purchasing Agent was created by an act entitled "To provide for a state purchasing department and to amend Sections 1846 and 1847 of the General Code," which was passed in 1917 and is found in 107 O. L., 422. Sections 1, 2 and 3 of the act respectively provided for the establishment of the office of State Purchasing Agent, his appointment by the Secretary of State and his bond. These three sections were respectively codified as Sections 196-1, 196-2 and 196-3, General Code. In the Reorganization Act of 1921 these sections were repealed and the office of State Purchasing Agent was abolished and the functions formerly exercised by him were by the provisions of Section 154-37, General Code, transferred to the Department of Finance.

Sections 196-4 to 196-11, inclusive, General Code, are also part of the act creating the State Purchasing Department and provide in detail how and by whom the purchases of supplies and equipment shall be made for the use and maintenance of the state departments and the elective and appointive officers, boards and commissions other than the boards of state supervisors and boards of state inspectors and supervisors of elections, the

courts of common pleas, the courts of appeals and the Supreme Court, the institutions under the direction of the State Board of Administration, the Ohio National Guard and the agricultural experiment stations of the state. It was provided that the State Purchasing Agent should cause to be printed and furnished to each elective and appointive officer, board and commission lists of the supplies which the State Purchasing Agent was prepared to furnish and that it should be unlawful for any such officer, board or commission, other than those excepted from the provisions of the act, to procure any such supplies or equipment from any source other than the State Purchasing Department. It was further provided that the Secretary of State and the Auditor of State should meet with the State Purchasing Agent to determine what supplies and equipment should be purchased through the State Purchasing Department. Elaborate provisions were made for competitive bidding and for notice of the proposed purchase.

Sections 196-12 and 196-13, General Code, which are also part of said act creating the State Purchasing Department, provide as follows:

Sec. 196-12, G. C.

“The state purchasing agent shall establish a state exchange department. Whenever any supplies or equipment in any department of the state are not required for use in such department, or whenever any property of the state is to be abandoned, or whenever any department of the state is abolished or discontinued, the officer in charge of such department or property shall notify the state purchasing agent thereof. The state purchasing agent shall take possession of such supplies or equipment not required for use, or property to be abandoned, and all supplies, equipment, records, books and papers of such abolished or discontinued department. He shall inventory and appraise such property, supplies and equipment, and turn over to the auditor of state such records, papers and books and a copy of such inventory and appraisal. The state purchasing agent shall give the officer, board or commission, from whom he receives any supplies or equipment not required for use in a department, credit upon his account for such appraised value. The state purchasing agent may have such supplies or equipment, as may come into his hands, repaired and placed in as good condition as good management would justify.”

Sec. 196-13, G. C.

“The secretary of state and the auditor of state shall from time to time inspect the property, supplies and equipment on hand in the exchange department and determine what property, supplies or equipment shall be sold on the open market, and shall

determine the conditions and terms of such sale and the manner in which the same shall be advertised. Thereupon it shall be the duty of the state purchasing agent to sell such property, supplies and equipment in the manner so directed. The proceeds of such sale shall be paid into the state treasury upon the draft of the auditor of state to the credit of the state purchasing agent, except that the proceeds of abandoned property shall be credited to the general revenue fund of the state."

Standing alone, Section 196-13, General Code, very definitely authorizes the Secretary of State and the Auditor of State to inspect the property, supplies and equipment on hand in the Exchange Department and determined what portion thereof shall be sold on the open market and the terms of such sale and the manner in which the same shall be advertised. However, Section 154-37, General Code, which is part of the Reorganization Act of 1921, provides in part as follows:

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The department of finance shall succeed to and exercise all powers of the state purchasing agent in the office of the secretary of state, and the secretary of state and auditor of state with respect to the purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions, the commissioners of public printing and the supervisor of public printing, and shall exercise all powers and perform all duties as to purchases heretofore vested in the Ohio board of administration under the provisions of section one thousand eight hundred and forty-nine of the General Code.

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Undoubtedly, by reason of the provisions of this section above quoted, the Department of Finance has succeeded to and is now invested with all the powers formerly possessed by the Secretary of State and the Auditor of State with respect to the purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions and there can now be no question as to the power of the Department of Finance to exercise the powers formerly possessed by the State Purchasing Agent, the Secretary of State and the Auditor of State with respect to such purchases. With respect to the functions and duties of the Secretary of State and the Auditor of State provided in Section 196-13, supra, the applicability of the above quoted provisions of Section 154-37, supra, is not so clear. The inspection of supplies and equipment not required for the use of a department or of property of the State which is to be abandoned and the determination of what part thereof shall be sold on the open market and the terms and conditions of such sale and the manner

in which the sale should be advertised are not literally powers "with respect to the purchase of supplies and equipment," but certainly in a broad sense relate thereto. The legislature obviously intended to transfer all the powers formerly exercised by the State Purchasing Agent, and the Secretary of State and the Auditor of State with respect to the State Purchasing Department, to the Department of Finance. The Exchange Department was a part of the State Purchasing Department and it is hardly conceivable that the legislature would have transferred to the Department of Finance all the powers with respect to purchases of supplies and equipment formerly exercised by the Secretary of State and the Auditor of State without transferring also the powers of such officers with respect to abandoned property or property no longer required to be used in the department possessing same. The Reorganization Act of 1921 accomplished many sweeping and far-reaching changes in the functions, duties and authority of the various state officers, boards and commissions and it is entirely consistent with the spirit of that act that these functions of the Secretary of State and the Auditor of State should be regarded as transferred to the Department of Finance.

In Volume II of the Opinions of the Attorney General for 1921, at page 939, I find the following statement:

"In passing it may be stated that the function of inspection and condemnation reposed by section 196-13 in the secretary of state and auditor of state is now transferred to the department of finance."

In this statement I concur and you are accordingly advised that the functions, authority and duty formerly possessed by the Auditor of State and the Secretary of State by reason of the provisions of Section 196-13, General Code, have been transferred to the Department of Finance and are now to be exercised by that department through one of its divisions.

You also ask what authority, if any, the Department of Finance has with respect to the disposal of worn-out machinery, tools and equipment of the Department of Highways or of machinery, tools and equipment which are not required by the Department. In this connection, I direct your attention to Section 1226, General Code, which provides as follows:

"The director, after notice as hereinafter provided with respect to purchase, is hereby authorized to sell any machinery, tools or equipment not required by the department or that through wear have become unfit for use. The proceeds of such sale shall be paid into the state treasury to the credit of the state highway construction fund. The director is also authorized to exchange such machinery, tools and equipment for new equipment in the manner hereinafter provided and pay the balance of the cost of such new equipment from any funds available for that purpose."

This section is analogous and similar to former Section 1231, General Code. In 1918 the power of the State Highway Commissioner (whose functions are now largely exercised by the Department of Highways) to dispose of worn-out tools and machinery was questioned and the then Attorney General ruled that this power was to be exercised pursuant to Section 1231 of the General Code and not under Section 196-12, General Code. The opinion is found in Volume I of the Opinions of the Attorney General for 1918, at page 209. It was reasoned in that opinion that Section 196-12, General Code, was a general statute applying to the disposition and sale of property generally, while Section 1231, General Code, dealt only with the disposal of property of the Department of Highways and was therefore special in its nature. Attention was called to several authorities which held that a special act must be construed as an exception to the general, and the conclusion was accordingly reached that the provisions of the highway act controlled with respect to the disposal of the property of the Highway Department. I concur both in the reasoning and the conclusion of this opinion and therefore advise you that the Department of Finance has no function, power or authority with respect to the disposal of machinery, tools or equipment not required by the Department of Highways or which has become unfit for use through wear.

You also inquire as to the right of the Department of Highways to purchase its own printed matter. In my Opinion No. 81 rendered to the Department of Liquor Control on February 4, 1939, I reached the conclusion that the Department of Liquor Control had no authority to purchase printed matter and forms used by it, unless the Department of Finance issued a release and permit as provided in Section 196-6, General Code. The reasoning contained in that opinion is equally applicable to the situation which you now present and I am of the opinion that the Department of Highways has no power or authority to purchase printed matter except through the Department of Finance unless it first obtains from the Department of Finance a release and permit as provided in Section 196-6, General Code.

In reaching this conclusion I have not been unmindful of Sections 1185 and 1226-1 of the General Code. Section 1185, General Code, provides inter alia that the "director may prepare, publish and distribute such maps, plans, blue prints, bulletins and reports as he may deem advisable." Section 1226-1, General Code, provides the manner in which purchases of machinery, materials, supplies or other articles which the State Highway Director or the Department of Highways may be authorized to make, shall be made. It does not purport to grant authority to purchase supplies but merely provides the manner of so doing where authority is possessed. The provisions of Section 1185, General Code, do grant to the Director of Highways authority to prepare, publish and distribute maps, plans, bulletins and reports. However, this section must be read in connection with Section 754 and that part of Section 154-37 hereinbefore quoted.

Section 754, General Code, provides for the various classes of state printing and the sections following immediately thereafter provide how the contracts for printing shall be let. The functions formerly exercised by the Supervisor of Public Printing and the Commissioners of Public Printing have been transferred to the Department of Finance and it is therefore necessary for the Department of Highways to cause its printing to be done through the Department of Finance unless the Department of Finance issues the release and permit.

Finally, you ask whether the Auditor of State is entitled to copies of bids, orders placed by the Division of Purchases and Printing, and purchase releases. As has been hereinbefore indicated, all the functions formerly possessed by the Auditor of State under Sections 196-1, et seq., General Code, have been transferred to the Department of Finance, but it by no means follows that the Auditor of State is not entitled to copies of bids, orders and purchase releases. By reason of the provisions of Section 242, General Code, no money may be drawn from the State Treasury except on the warrant of the Auditor of State, and Section 243, General Code, requires him to examine every voucher and claim presented to him to determine if it is a valid claim against the State and if all requirements of law with respect thereto have been complied with before he issues his warrant thereon. It would be difficult, if not impossible, for the Auditor of State to determine whether the requirements of law have been complied with unless he is furnished with copies of the bids, orders and purchase releases, and I am of the opinion that he is entitled to have this information in order that he may properly perform the duties imposed upon him by law.

You are therefore advised, in specific answer to your questions, that :

1. The functions formerly possessed by the Secretary of State and the Auditor of State as provided in Section 196-13, General Code, have been transferred to the Department of Finance and neither the Auditor of State nor the Secretary of State has any duties or powers in connection therewith.

2. The disposal of machinery, tools or equipment of the Highway Department which is no longer needed by that department or which is worn out, is solely within the jurisdiction of the Department of Highways, and the Department of Finance has no function or duty in connection therewith.

3. The Department of Finance has exclusive authority to purchase printed matter required for the use of the Department of Highways unless the Department of Finance issues a release and permit to the Department of Highways pursuant to the provisions of Section 196-6, General Code.

4. The Department of Finance should furnish to the Auditor of

State copies of bids, purchase orders and purchase releases issued by said department.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1113.

EASEMENTS—PUBLIC FISHING GROUNDS, STATE WITH WAYNE L. RUSSELL AND JAMES A. MCGEE, DESIGNATED LAND, WAYNE AND WASHINGTON TOWNSHIPS, BELMONT COUNTY.

COLUMBUS, OHIO, August 30, 1939.

HON. DON G. WATERS, *Commissioner, Division of Conservation and Natural Resources, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval two grants of easement, Nos. 2919 and 2920, executed to the State of Ohio by Wayne L. Russell and James A. McGee, respectively, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in Wayne and Washington Townships, Belmont County, Ohio.

By the above grants there are conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, which are herewith returned.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*