

3187.

STATE OFFICE BUILDING COMMISSION—EXTENT OF FUNDS AVAILABLE FOR THEIR USES AND PURPOSES UNDER TERMS OF THE ACTS OF THE LEGISLATURE FOUND IN 111 OHIO LAWS, 475 ET SEQ., AND 113 OHIO LAWS, 59 ET SEQ.

SYLLABUS:

1. *The State Office Building Commission, under present appropriations, is limited in its expenditures in connection with the state office building to the sum of five million dollars, as appropriated by the 88th General Assembly out of the general revenue fund of the state.*

2. *When an appropriation is made by the legislature of such part of the proceeds of the tax levies provided for in section 9 of the state office building act as remains after the reimbursement therefrom of the payments made from and the obligations incurred against the five million dollar appropriation made by section 11 of said act, such remaining proceeds of such tax levies will be available for expenditure by the State Office Building Commission in connection with the construction of said building. When an appropriation is made by the legislature of the proceeds of the sale of the Wyandotte Building and of the ninety-nine year lease on the Hartman Hotel Building, the State Office Building Commission may likewise use the proceeds of said sales for such purpose.*

COLUMBUS, OHIO, April 28, 1931.

HON. C. J. ANDERSON, *Chairman of State Office Building Investigation Committee, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which reads as follows:

“Senate Resolution No. 32 of the 89th General Assembly creates a Senate Committee to investigate the status of the present state office building program. The legislation looking to the erection and construction of the state office building is found in the Ohio Laws of 1925 and 1929. The legislation of 1925 is found in Amended Senate Bill No. 300. The Senate Committee is desirous of having your opinion upon the question of what sums of money are available for the uses and purposes of the State Office Building Commission.

Section 9 of the Act provides for a two-year levy of two-tenths of one mill upon the grand duplicate for the erection of the state office building.

Section 10 of said Amended Senate Bill 300 provides that the proceeds of the sale of the Wyandotte Office Building and the lease on the Hartman Hotel Building are to be credited to the general revenue fund for the uses and purposes of the State Office Building Commission.

Section 11 of the Act appropriates the sum of five million dollars for the uses and purposes of the State Office Building Commission in carrying out the provisions of the Act.

As chairman of the Senate Committee I am asking you to render an opinion, interpreting the three sections above referred to and to advise us as to the extent of the funds available for the uses and purposes of

the State Office Building Commission. It might be well for the purposes of clarity to enumerate the questions that we desire you to answer.

- 1st: Is the Building Commission limited in its expenditures to the sum of the five million dollars appropriated?
- 2nd: May the State Office Building Commission, in addition to the said five million dollars, rely upon the anticipated proceeds of the Wyandotte Building and the Hartman lease?
- 3rd: May the State Office Building Commission, in its program, legally expend or encumber to the extent of the total income of the levy created in the Act?
- 4th: In short, what inhibitions are there in the Act upon the State Office Building Commission in the expenditure of state funds in the state office building program?"

As noted in your communication, the appointment and qualification of the members of the State Office Building Commission, and the erection of a state office building by and under the supervision of the State Office Building Commission, are provided for by an act passed by the 86th General Assembly under date of April 17, 1925 (111 O. L. 475), and an act amending said former act which was passed by the General Assembly under date of March 14, 1929, and which went into effect on the seventh day of July, 1929.

It appears from your communication that you are familiar with the provisions of the acts of the legislature above referred to; and, in view of this fact, I shall in this opinion note only those provisions of said acts as are pertinent in the consideration of the particular questions presented in your communication.

The questions stated by you are with reference to the moneys available for the construction and equipment of the state office building.

In the act of the 86th General Assembly, above referred to, it was contemplated that the State Office Building Commission, therein provided for, should erect such state office building and, if necessary, acquire a site therefor, out of funds not to exceed the sum of four million dollars, advanced and invested for the purpose by the Industrial Commission out of the state insurance fund and out of the proceeds of the sale of the Wyandotte Office Building and the ninety-nine year lease on the Hartman Hotel Building owned and held by the state. It was in said act further provided that if the Industrial Commission was unable to carry out the provisions of said act with respect to the advancement of moneys out of the state insurance fund for the purpose of erecting the state office building, the sum of four million dollars should be paid for the purpose out of the general revenue fund of the state, which amount of money was therein appropriated for this purpose.

Section 8 of said former act, which was not repealed or amended in the later act and is in full force and effect, provides, so far as pertinent to the questions here presented, as follows:

"The commission is hereby authorized to sell, upon such terms as the governor may approve, the Wyandotte building on West Broad street and the ninety-nine year lease on the Hartman Hotel building, located on the northwest corner of Main and Fourth streets, both of which are owned by the state, and the proceeds paid into the general revenue fund of the state."

Section 10 of said former act provided:

"There is hereby appropriated out of any moneys in the state treasury, to the credit of the general revenue fund, the proceeds of the sale of the Wyandotte office building and the ninety-nine year lease on the Hartman Hotel building, for the uses and purposes of the state office building commission."

Said act of the 86th General Assembly, above noted, went into effect on the twenty-third day of July, 1925. Inasmuch as the appropriations made by said act from the general revenue fund of the state and of the proceeds of the contemplated sale of the Wyandotte Office Building and the ninety-nine year lease on the Hartman Hotel Building have lapsed by force of the provisions of section 22 of article II of the state constitution, and since no moneys were advanced by the State Industrial Commission out of state insurance funds for the purpose of erecting the state office building, we are remitted to a consideration of the provisions of the act of the 88th General Assembly, above referred to. With respect to the questions stated in your communication, sections 9 and 11 of the original act, as amended by the act of the 88th General Assembly, now under consideration, provide as follows:

Sec. 9. "There shall be levied outside of all limitations on the tax rate on all taxable property subject to taxation on the 1929 and 1930 grand tax list a tax of two-tenths of one mill on each dollar of valuation of such taxable property to be collected in the same manner as other taxes and the proceeds of which, together with the moneys appropriated in section 10 of an act entitled 'an act providing for the creation of a state building commission', passed April 17, 1925, filed in the office of the secretary of state, April 24, 1925, 111 O. L. 475, shall constitute a state office building fund. The auditor of state shall certify the levies herein authorized to the auditor of each county, who shall extend the same on the 1929 and 1930 tax list of such county and place them for collection on the 1929 and 1930 tax duplicates to be collected at the same time and in the same manner as other taxes. Any portion of such taxes that becomes delinquent shall be subject to the same penalty as is prescribed by law for delinquent taxes. The tax herein authorized shall be a lien upon real estate in the same manner as prescribed by law for other tax levies."

Sec. 11. "There is hereby appropriated out of any moneys in the state treasury, to the credit of the general revenue fund, and not otherwise appropriated, the sum of five million dollars for the uses and purposes of the state office building commission in carrying out the provisions of this act.

There is further appropriated out of any moneys in the state treasury to the credit of the general revenue fund the sum of \$10,000 to be used for the purpose of hiring such clerical and other assistants as may be necessary until the appropriations hereinbefore made become available.

The state office building fund shall reimburse the general revenue fund to the extent of all payments made therefrom and appropriation from the state office building fund is made therefor."

Section 12 of said former act, as amended in the later act, provides:

"The moneys appropriated herein from the general revenue fund of

the state shall be paid out for the acquisition of the state office building site and from time to time during the progress of construction for the state office building * * *, on the warrant of the auditor of state, upon vouchers approved by the state office building commission and the director of finance."

Under section 8 of the act of the 86th General Assembly, above referred to, which section is still in full force and effect, the State Office Building Commission is authorized to sell, upon such terms as the governor may approve, the Wyandotte Building on West Broad Street and the ninety-nine year lease on the Hartman Hotel Building. Under section 9 of said act, as amended by the later act enacted by the 88th General Assembly, and above quoted, the proceeds of the sale of said properties, together with the proceeds of the tax levies on the grand tax list of the state provided for in said section, constitute the primary fund out of which the cost and expenses for the construction of the state office building are to be paid.

However, by the provisions of section 11, as amended, there is to be first paid from the proceeds of the tax levies provided for in section 9 into the general revenue fund of the state by way of reimbursement an amount of money sufficient to cover all payments made from the general revenue fund for the acquisition of a site for and for the construction of said state office building pursuant to the appropriation therefor out of the general revenue fund of the state made by said section 11, as amended in the act of the 88th General Assembly.

It therefore appears that the only funds remaining for the use of the State Office Building Commission for the purpose of carrying out the provisions of said acts relating to the acquisition of a site for and the erection of a state office building, in addition to such part of the five million dollar appropriation out of the general revenue fund of the state as may have been paid out or legally encumbered, are the balances of the proceeds of the tax levies provided for in section 9 remaining after the reimbursement of the general revenue fund of the state as provided for in section 11, above noted, together with the proceeds of the sale of the Wyandotte Building and of the ninety-nine year lease on the Hartman Hotel Building now owned by the state.

It is to be noted, however, in this connection, that the provisions of section 9, above quoted, setting up the proceeds of the tax levies therein provided for and the proceeds of said state properties as a fund for the erection of the state office building, do not constitute an appropriation of such proceeds or of any part thereof for this purpose. For, if the provisions of said section 9 should be considered to be an appropriation of the proceeds therein provided for, such appropriation, by force of the provisions of section 22 of article II of the state constitution, would lapse before any settlement can be made on the collection of the taxes for the last half of the year 1930 therein provided for and the payment of the same into the state treasury. And in this view there would be a serious doubt as to the constitutionality of the provisions of section 9, above noted. *State ex rel vs. Edmondson, County Auditor*, 89 O. S. 93, 101.

However, in my opinion, the provisions of said section 9 do nothing more than to provide for a state office building fund; and the duty of appropriating the funds so raised, or such part thereof as may be necessary for the purpose of erecting said state office building, is a duty which still devolves upon the General Assembly of the state. *State ex rel vs. Edmondson, County Auditor*, supra.

Upon the considerations above noted and by way of specific answer to the first question presented in your communication, I am of the opinion that the State

Office Building Commission, under present appropriations, is limited in its expenditures in connection with the state office building to the sum of five million dollars, as appropriated by the 88th General Assembly out of the general revenue fund of the state.

By way of answer to your second question, I am of the opinion that when an appropriation is made by the legislature of such part of the proceeds of the tax levies provided for in section 9, as amended in the act of the 88th General Assembly, as remains after the reimbursement therefrom of the payments made from and obligations incurred against the five million dollar appropriation made by section 11 of said act, such remaining proceeds of said tax levies will be available for expenditure by the State Office Building Commission in connection with the construction of said building; and that when an appropriation is made by the legislature of the proceeds of the sale of the Wyandotte Building and of the ninety-nine year lease on the Hartman Hotel Building said Commission may likewise use the proceeds of said sales for this purpose.

What has been said in this opinion applicable to the first and second questions presented in your communication, is, I believe, a sufficient answer to your third and fourth questions.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3188.

APPROVAL, ABSTRACT OF TITLE TO LAND OF VOLNEY S. TAYLOR
AND CARL W. MILLER IN NILE TOWNSHIP, SCIOTO COUNTY,
OHIO.

COLUMBUS, OHIO, April 28, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter submitting for my examination and approval an abstract of title, copy of real estate option, authority of controlling board, encumbrance estimate No. 819 and warranty deed, relating to the proposed purchase of approximately 100 acres of land situated in Nile Township, Scioto County, Ohio, from Volney S. Taylor and Carl W. Miller, said land being known as Lot F in a subdivision of a larger tract formerly belonging to George K. Flower.

An examination of the abstract of title submitted indicates that Volney S. Taylor and Carl W. Miller have a good and marketable fee simple title to said land, and that it is free and clear of all encumbrances with the exception of the taxes for 1930 and 1931. The original abstract, certified under date of December 26, 1930, indicates that there was a judgment against Volney S. Taylor in the Municipal Court of Portsmouth, Ohio, for the sum of ninety-five dollars and eight cents. However, a subsequent certificate signed by the abstracter on February 10, 1931, indicates that said judgment has been paid and that there have been no other changes in the records since the date of the original certificate to the abstract.

In order to obviate any question which might arise in case the state of Ohio should desire to sell this land in the future, I deem it advisable to point out a deed