

tion of which is vested in justices of the peace or in other courts inferior to the Common Pleas. \* \* \* "

Section 13424 and that part of Section 13425, quoted herein, have been carried into a recent Act passed by the 88th General Assembly revising and codifying the Code of Criminal Procedure of Ohio.

In view of the foregoing discussion, and in specific answer to your inquiry, I am of the opinion:

1. The Municipal Court of Mansfield, Ohio, has jurisdiction to try misdemeanors committed within the township of Madison, and all violations of city ordinances within the city of Mansfield, and has no jurisdiction to try misdemeanors committed in Richland County outside the township of Madison, except violations under Sections 6212-13, General Code, to 6212-20, inclusive, generally known as the Crabbe Act.

2. The Municipal Court of Mansfield, Ohio, has jurisdiction to try violations under Sections 6212-13, General Code, to 6212-20, General Code, inclusive, generally known as the Crabbe Act, committed in Richland County, by virtue of the provisions of Section 6212-17f of the General Code.

3. The Municipal Court of Mansfield, Ohio, has no jurisdiction to try quasi-criminal proceedings.

4. The Municipal Court of Mansfield, Ohio, has jurisdiction to conduct a preliminary examination, and either discharge the accused or recognize him to appear before the proper court in felony cases committed in Richland County, Ohio.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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877.

APPROVAL, BONDS OF MAHONING COUNTY—\$164,500.00.

COLUMBUS, OHIO, September 17, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

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878.

DISAPPROVAL, REIMBURSEMENT FOR PURCHASE OF LAND FOR  
SCHOENBRUNN MEMORIAL.

COLUMBUS, OHIO, September 17, 1929.

THE SCHOENBRUNN COMMITTEE, *c/o Ohio State Archaeological and Historical Society, Columbus, Ohio.*

GENTLEMEN:—There has been submitted to this department, apparently for my examination and approval, an abstract of title relating to a certain tract of six and eighty-seven hundredths acres of land conveyed to the State of Ohio for the purpose of the Schoenbrunn Memorial by a special warranty deed executed by the Baltimore

and Ohio Railroad Company under date of February 4, 1929, and filed for record in the office of the recorder of Tuscarawas County, February 14, 1929. This abstract of title and deed were not submitted for my examination and approval before the acceptance of said deed by the Schoenbrunn Committee. Neither was said tract of land paid for out of any appropriation therefor made by the General Assembly. In this connection I am advised that the consideration named in said deed, to-wit, five hundred dollars, was paid from other funds at the disposal of the Schoenbrunn Committee, and said abstract and deed are now submitted to this department in connection with the request of said committee for reimbursement from moneys appropriated by the General Assembly for the use of said committee.

An examination of the abstract of title submitted shows that at the time of the execution and delivery of the deed above referred to, conveying this property to the State of Ohio, the Baltimore and Ohio Railroad Company had a good and indefeasible fee simple title to said property, subject only to certain corporate mortgages that had been placed on said tract of land, together with other railroad properties by said Baltimore and Ohio Railroad Company and by its predecessor, The Cleveland, Lorain and Wheeling Railway Company. And in this connection it is noted that the deed of the Baltimore and Ohio Railroad Company to the State of Ohio is not one of general warranty, but is one of special warranty only, in which said Baltimore and Ohio Railroad Company covenants that said property is free and clear of all encumbrances whatsoever "except certain corporate mortgages of The Cleveland, Lorain and Wheeling Railway Company, the former owner of the property, and of the Grantor, as to each and all of which the Grantor, for itself, its successors and assigns specially covenants with the Grantee, its successors and assigns, that it will obtain from the Trustee under each of said mortgages due and lawful documents releasing the property above described from the operation of said mortgages, and that it will warrant and defend said premises, with the appurtenances thereunto belonging, to the said Grantee, its successors and assigns, against all lawful claims and demands whatsoever."

It is apparent from what has been stated above, neither the title of the Baltimore and Ohio Railroad Company to this land, nor the deed by which the same was conveyed to the State of Ohio measure up to the requirements uniformly recognized by this department as governing in the acquisition of land by the State of Ohio. It has been uniformly held by this department under statutory provisions authorizing the acquisition of land by the State of Ohio for various purposes, that the only title that the state is authorized to acquire is one in fee simple free and clear of all encumbrances and that the only kind of a deed that any officer, board or committee is authorized to accept on behalf of the State is a general warranty deed.

There is no disposition upon my part to question the good faith of the Baltimore and Ohio Railroad Company with respect to the covenant and promise made in said deed to secure a release of said mortgages with respect to this tract of land, and probably there was and is, very little moral risk taken in accepting the deed here in question. However, it is not a transaction that this office can approve consistent with its uniform policy with respect to lands acquired on behalf of the state by the various officers and boards thereof.

As above noted, said abstract of title and deed have been submitted to this department for examination and approval in connection with a request made by the Schoenbrunn Committee for reimbursement out of public moneys appropriated by the General Assembly for the uses of the Schoenbrunn Committee, to the extent of the amount paid by said committee or the members thereof as the purchase price of said property. The only appropriations now available for the uses of the Schoenbrunn Committee are those made to said Committee by House Bill No. 513 passed by the 88th General Assembly. Said appropriations are as follows:

"Maintenance -----	\$5,000 00	
Total Operation and Maintenance-----		\$5,000 00
Additions and Betterments—		
20 Cabins -----	15,000 00	
First Unit of Museum Building-----	5,000 00	
Total Additions and Betterments-----		20,000 00"

Section 2 of said House Bill No. 513 provides:

"The provisions of Sections 3 to 13, both inclusive, of House Bill No. 510, 88th General Assembly, entitled 'An act to make general appropriations,' insofar as they may be applicable, shall apply to and govern the appropriations made herein with the same force and effect as to the appropriations made in said original act hereinbefore cited."

Section 4 of House Bill No. 510, passed by the 88th General Assembly, which section is included within the reference made in Section 2 of House Bill No. 513 above noted, provides for the designation of a controlling committee, and further provides among other things that said controlling board shall have power:

"(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in Section 1 or 2 of this act, to expend the moneys so appropriated otherwise than in accordance with the details therein set forth, and for such purpose to authorize transfers of funds between the items entitled 'Personal Service' and 'Maintenance' and between items in the appropriation for 'Total Additions and Betterments' within the department, division or agency for which such an appropriation is made.

\* \* \*

(f) To allot from any funds appropriated for the maintenance of such controlling board to any department, board, institution, or other agency of the state such amounts for operation and/or maintenance of such agency as may be shown to the satisfaction of such controlling board to be necessary or expedient."

In the situation here presented, it is apparent that in the absence of an express appropriation for the purpose of reimbursing the Schoenbrunn Committee or the members thereof for the expenditure made in the purchase of the property here in question, no such reimbursement can be made out of public funds unless the same may be legally done by allotment or transfer of funds by the controlling board under the authority of Section 4 of House Bill No. 510 as above noted.

It is obvious from the provisions of paragraph (a) of said Section 4 above noted, that no transfer can be made from the appropriations made under the heading of maintenance for the purpose of acquiring real property and it likewise appears that inasmuch as both items of the appropriation under the heading of additions and betterments are for purposes other than for the acquisition of real estate and inasmuch as the controlling board under this heading is limited to the transfer of funds from one appropriation item to the other, no transfer of funds can be made from either of said appropriation items to a fund for the acquisition of real estate. The controlling board having no authority to make a transfer of funds from this appropriation for the purpose of acquiring real estate, said board could not *a fortiori* transfer funds from said appropriation items for the purpose of reimbursing the Schoenbrunn Committee or the members thereof for expenditures already made in acquiring this property.

The authority of the controlling board under paragraph (f) of Section 4 above quoted, is to allot from any funds appropriated by the Legislature for the maintenance of such controlling board, such amounts to any department, board or institution or other agency of the state for *operation or maintenance* of such agency if it be shown to the satisfaction of such controlling board that such allotment is necessary or expedient.

Appropriations were made to the controlling board under the heading of maintenance for the several purposes therein stated. But no appropriation was made to said board for the purpose here in question, and with respect to the question here presented, it is sufficient to note that under the provisions of paragraph (f) above noted, the controlling board has no authority to allot any of its funds to any department, board or institution of the state other than for the purposes of operation and maintenance. This does not include the acquisition of real property by any such department, board, institution or other agency on behalf of the state.

I am therefore of the opinion that the only way in which the Schoenbrunn Committee, or the members thereof, can be reimbursed for the money expended in the acquisition of the property here in question is by special appropriation on the part of the Legislature pursuant to action of the sundry claims board.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

879.

DISAPPROVAL, BONDS OF CITY OF KENT, PORTAGE COUNTY—  
\$10,909.48.

COLUMBUS, OHIO, September 17, 1929.

Re: Bonds of City of Kent, Portage County, Ohio, \$10,909.48.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The above bonds purchased by your commission consist of a part of two issues of bonds of the city of Kent for the improvement of Rockwell Street and Earl Avenue. The transcript relative to the Earl Avenue improvement discloses that, pursuant to the provisions of Section 3835, General Code, resolution was passed by three-fourths of the members elected to council, declaring the necessity of the improvement, on June 7, 1926, no petition having been filed. This resolution provided that the whole cost of the improvement, less one-fiftieth and the cost of intersections shall be assessed by the front foot upon all lots and lands bounding and abutting upon the proposed improvement, which provision complied with Section 3820, General Code, this section being as follows:

“The corporation shall pay such part of the cost and expense of improvements for which special assessments are levied as council deems just, which part shall be not less than one-fiftieth of all such cost and expense, and in addition thereto, the corporation shall pay the cost of intersections.”

On April 18, 1927, the council passed Ordinance No. 451, determining to proceed with the improvement, which ordinance provided that the whole cost of the improvement, including the cost of intersections, shall be assessed by the front foot upon