

It is obvious that the foregoing opinion is no authority for the contention that Section 5541-8, General Code, authorizes the expenditure of these funds for the purpose of acquiring property in opening or extending streets, as distinguished from the widening of streets. The opening or extension of a street may not under any circumstances in my opinion be included within the terms "constructing, maintaining, widening and reconstructing". This position is fortified by a consideration of the fact that Section 5541-8, General Code, contains express provision for the expenditure of the state's portion of this gasoline tax by the Director of Highways upon extensions of state highways within municipal corporations. The sixth paragraph of the section reads as follows:

"The director of highways shall have authority to expend portions of the tax, herein imposed, upon extensions of state highways within municipal corporations or upon portions of state highways within municipal corporations, as is or may be provided by law."

It follows that had the legislature seen fit to authorize the expenditure of these funds for acquiring property for new streets to be opened up or extended as to length, as distinguished from width, it could well have so provided, but in the absence of such provision, your inquiry must be answered in the negative.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

269.

ACT OPERATIVE ON GOVERNOR'S DECLARATION AND  
INOPERATIVE ON GOVERNOR'S DECLARATION,  
AMOUNTS TO AN APPROVAL—VIOLATIVE OF SECTION  
26, ARTICLE II, CONSTITUTION OF OHIO.

*SYLLABUS:*

*An act of the General Assembly of Ohio which provides that the law shall become operative upon the declaration of the governor and remain operative until the governor declares it to be inoperative amounts to an approval of the act. Such act, having no relation to public schools, is violative of Section 26 of Article II of the Constitution of Ohio.*

COLUMBUS, OHIO, March 17, 1937.

HON. RICHARD M. MARLOW, *Chairman, Committee on Public Welfare, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting an opinion of this office as to the constitutionality of House Bill No. 166, which reads as follows:

“Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. At any time during or in anticipation of an impending crisis affecting a substantial number of the citizens of this state resulting from acts of God, labor disputes or any other causes, the governor may declare that a state of emergency exists for a particularly defined area of this state.

SECTION 2. From and after the declaration of said emergency and until the governor declares that said emergency has ceased to exist, no vendor of food, clothing or other articles comprising the necessities of life shall increase the prices of said articles above the average prices thereof during the thirty days immediately preceding the date of issuing said declaration.

SECTION 3. This act is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the state of Ohio. The reason for this emergency lies in the fact that there are flood conditions in this state at the present time which demand that action be taken immediately to prevent profiteering on the necessities of life at the expense of the flood refugees and other inhabitants in the flood area.”

Suffice it to say, that there is no delegation of legislative authority in this bill. It simply constitutes the governor a fact finder. When he finds certain facts to exist, he so declares, and the law therein provided for becomes operative. In other words, the law cannot become operative except upon the approval of the governor, and that necessarily brings about the death of the bill under Section 26, Article II, of the Constitution of Ohio, viz:—

“All laws of a general nature, shall have a uniform operation throughout the State; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution.”

This bill does not relate to public schools and there is no other provision in the Constitution of Ohio to the effect that a law may become operative upon the approval of the governor, other than his veto power. The trouble here lies in the fact that in this bill the approval of the governor comes after he has exercised his power to veto or sign.

The bill may be passed and signed, or it may be vetoed and passed over the governor's head by the General Assembly. In either event, it goes to sleep until it is awakened by the declaration of the Governor to the effect that he has found the facts in actual existence to make the enactment operative.

I am therefore of opinion that the proposed bill is violative of Section 26, Article II, of the Constitution of Ohio.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

270.

APPROVAL, LEASE OF CANAL LANDS IN HAMILTON TOWNSHIP, FRANKLIN COUNTY, OHIO—CLARENCE LLOYD.

COLUMBUS, OHIO, March 17, 1937.

HON. CARL G. WAHL, *Director Department of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to one Clarence Lloyd of Columbus, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$16.00, there is leased and demised to said lessee the right to occupy and use for residence and agricultural purposes that portion of the abandoned Ohio Canal including the full width of the bed and banks thereof located in Hamilton Township, Franklin County, Ohio, and described as follows:

Beginning at station 2270+08.5, of W. J. Slavin's survey of said canal and running thence westerly with the lines of said canal property sixteen hundred thirty-eight (1638') feet to