

Miller or against their predecessors in title which are a lien on said several tracts of land;

5. That there are no mechanics' liens on any of said tracts of land;

6. The taxes, if any, for the year 1928 or previous years that may be due and unpaid and a lien on said tracts of land or any of them;

7. The approximate amount of the taxes for the year 1929 on said several tracts of land as nearly as the same can be ascertained.

In addition to the above, said certificate should show that the granting and habendum clauses in the deeds in the chain of title to each of said several tracts of land ran to the respective grantees therein named and to their heirs and assigns; that is, that said deeds contain words of inheritances or perpetuity such as was necessary at that time to convey a fee simple title to lands in this state.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate and controlling board certificate, with the request that you forward to the owners said abstract of title for the additional certificate above mentioned. When this certificate has been secured and made a part of the abstract, said corrected abstract, warranty deed, encumbrance estimate and controlling board certificate should again be submitted to this department for examination and approval.

Respectfully,

GILBERT BETTMAN,

Attorney General.

327.

HOUSE BILL NO. 17—PROVIDING FOR STATE OFFICE BUILDING—
SECTION 9 EFFECTIVE WHEN GOVERNOR APPROVED ACT—
OTHER SECTIONS IN EFFECT JULY 7, 1929.

SYLLABUS:

None of the sections of the act of April 17, 1925, as amended in House Bill No. 17, passed by the 88th General Assembly, other than Section 9 therein, are exempted from the referendum reserved and provided for in Sections 1 and 1c of Article II of the constitution; and aside from Section 9, as amended in said act, which went into immediate effect on approval of the said act by the governor, the several sections of the act of April 17, 1925, as amended in said House Bill No. 17, do not go into effect until ninety days from the date said act was filed in the office of the Secretary of State.

COLUMBUS, OHIO, April 20, 1929.

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

"I bring to your attention House Bill No. 17, which provides for a new state office building.

I desire your opinion as to whether or not, inasmuch as this bill contains the provision for raising revenue, it is not now in effect, without regard to the usual constitutional limit of ninety days."

House Bill No. 17 referred to in your communication is an act passed by the 88th General Assembly, approved April 6, 1929, and filed in the office of the Secretary of State, April 8, 1929. As enacted said House Bill No. 17 is an act "to repeal Section 2

and to amend Sections 1, 3, 4, 9, 11, 12 and 13 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, and to provide for the acquisition of a site and the construction thereon of a state office building, and the incidental procedure of such commission."

Said House Bill No. 17 in itself is a bill of only three sections.

Section 1 of said act provides for the repeal of Section 2 of an act providing for the creation of a state office building commission, passed April 17, 1925, and further provides for the amendment of Sections 1, 3, 4, 9, 11, 12 and 13 of said former act, so as to read as in said Section 1 of this act.

Section 2 of the act here under consideration provides that existing Sections 1, 2, 3, 4, 9, 11, 12 and 13 of said former act, passed April 17, 1925, be repealed.

Section 3 of said House Bill No. 17 provides that each section and each subdivision of any section of this act, as well as Sections 5, 6, 7, 8 and 10 of the act of April 17, 1925, are declared to be independent and that "the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision."

This department in an opinion under date of July 18, 1919, Opinions of the Attorney General, 1919, Volume I, page 802, held that "an act which amends several sections of the General Code is subject to the referendum by the General Code sections so amended, rather than by the formal sections of the act itself."

This rule obviously applies as well to an act of the General Assembly which amends the several sections of a former act, which sections by reason of the fact that they were not of a general or permanent nature were not given a place in the General Code.

The question here presented therefore is whether House Bill No. 17 as a whole or any of Sections 1, 3, 4, 9, 11, 12 and 13 of the act of April 17, 1925, as amended in said House Bill No. 17 as enacted are subject to referendum under the provisions of Sections 1, 1c and 1d of Article II of the State Constitution.

Section 1 of the act of April 17, 1925, as amended in said House Bill No. 17, provides for the creation of a state office building commission consisting of five persons to be appointed by the Governor and to serve at his pleasure. By Section 3, as amended, the commission so appointed is empowered to acquire a site for a state office building directly opposite the state house grounds on Broad Street, Third Street, State Street or High Street, or it may acquire a site outside of the area above set forth but conveniently located near the state capital in the city of Columbus.

By Section 4, as amended, the commission is required to erect on the site selected a state office building in which to house the various offices, departments, boards and commissions of the state which cannot be housed in the state capital and annex, or said commission may purchase a building for said purpose in the event a suitable building is found available for purchase.

Sections 9 and 11, as amended by said House Bill No. 17, 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 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 become 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, as amended by said House Bill No. 17, 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 or for the purchase of a state office building if a suitable building is found available, on the warrant of the Auditor of State, upon vouchers approval by the state office building commission and the director of finance."

Section 13, as amended by this act, provides that the commission shall prepare a report to the 89th General Assembly of the work done by it under said act, making recommendations for a permanent state building plan and for the administration of the same.

Section 1 of Article II of the Constitution of Ohio provides in part as follows :

"The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose * * * laws * * * and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided."

Section 1c of Article II of the Constitution provides :

"The second aforesaid power reserved by the people is designated the referendum, and the signatures of six percentum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the General Assembly. No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the Governor in the office of the Secretary of State, except as herein provided. When a petition, signed by six percentum of the electors of the state and verified as herein provided, shall have been filed with

the Secretary of State within ninety days after any law shall have been filed by the Governor in the office of the Secretary of State, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the Secretary of State shall submit to the electors of the state for their approval or rejection, such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect."

Section 1d of Article II of the Constitution, so far as the same is pertinent to the consideration of the question here presented, provides as follows:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, * * * shall go into immediate effect. * * * "

Section 9 of the act of April 17, 1925, as amended by the enactment of House Bill No. 17, is clearly an act providing for a tax levy within the provisions of Section 1d of Article II of the Constitution, and as such it is exempted from the referendum provisions of Section 1c of said Article II, and it became effective immediately when said House Bill No. 17 was approved and signed by the Governor.

In the case of *State ex rel. vs. Roose*, 90 O. S. 345, the Supreme Court had under consideration an act passed April 8, 1913, as amended in part by an act passed April 16, 1913 (103 O. L. 155-158; 103 O. L. 863), providing for a levy of taxes on all of the taxable property of the state for the creation of a fund for the purposes provided in an act passed May 31, 1911, entitled "an act creating a state highway department, defining the duties thereof, and providing aid in the construction and maintenance of highways." The court in its opinion in this case said:

"While perhaps some of the sections of this act may have been subject to the referendum provisions of Section 1c of Article II of the Constitution, yet Section 1d of Article II expressly exempts laws providing for tax levies from the operation of the preceding provision of the Constitution. Therefore Section 1 of this act, providing for a tax levy of one-half of one mill on all taxable property within the state, went into immediate operation when approved and signed by the Governor.

The contention of counsel that an act containing some sections subject to the referendum will take effect only as a whole after the expiration of ninety days from the date it is filed in the office of the Secretary of State, is not sustained by the provisions of Section 1c of Article II of the Constitution. That section of the Constitution expressly authorizes a referendum upon any section of a law or any item of a law appropriating money. It follows that such sections of a law as are not subject to the referendum will go into immediate effect notwithstanding other sections or other items may be subject to the delay incident to a referendum or the right to petition therefor."

Section 9 of the act of April 17, 1925, as amended in said House Bill No. 17, being a law providing for a tax levy, and therefore exempt from the referendum provisions of Section 1c of Article II of the Constitution, the effect of this section is to prevent said House Bill No. 17 from being submitted to a referendum as a whole.

Touching this point, the Supreme Court in the case of *State ex rel. vs. Forney*, 108 O. S. 463, 471, speaking of the so-called Taft Act of April 30, 1923, to revise and codify the laws relating to the levy of taxes, the issuing of bonds by taxing subdivisions and to establish a budget system for local expenditures, said :

“Something has been said that certain sections of the act are admittedly subject to the referendum, but that the act as a whole is not subject to the referendum, because certain sections do ‘provide for tax levies,’ and those sections save the entire act from being submitted as a whole to a referendum. If there were any sections of the Taft Act actually ‘providing for a tax levy,’ then we would agree with this contention.”

Although for the reasons above stated House Bill No. 17 as an entire act cannot be submitted to the referendum provided by Sections 1 and 1c of Article II of the Constitution, it remains to be determined whether the several sections, other than Section 9, as amended in said act, are exempted from said referendum. In this connection it will be observed that by the provisions of Section 1 and 1c of Article II of the Constitution the right to a referendum is reserved as to “any law, section of any law or any item of any law appropriating money passed by the General Assembly,” except as is otherwise provided in Section 1d of Article II of the Constitution.

With respect to the construction to be given to Section 1d of Article II of the Constitution, it was held in the case of *State ex rel. vs. Forney*, supra, that exceptions to the operation of laws, whether statutory or constitutional, should receive strict but reasonable construction, and that the language of Section 1d of Article II of the Constitution, expressly enumerating certain exceptions to the people’s right of referendum upon acts of the General Assembly, must be construed and followed with reference to this rule.

Looking to the sections of the act of April 17, 1925, as amended in House Bill No. 17, it will be noted that other than Section 9, above quoted, none of said sections provide for tax levies. Section 11, as amended in said act, however, provides for appropriations of money in the state treasury to the credit of the general revenue fund. One appropriation item contained in said section is for the sum of \$5,000,000.00 for the uses and purposes of the state office building commission in carrying out the provisions of the act in acquiring a site for and erecting said office building, or for purchasing a building for said purpose in the event a suitable building is found available for purchase. The other appropriation item contained in said Section 11 is for the sum of \$10,000.00 to be used for the purpose of hiring such clerical and other assistants as may be necessary until appropriations made in the first item become available.

Under the provisions of Section 1d of Article II of the Constitution the only appropriations that are exempt from the referendum reserved and provided for by Sections 1 and 1c of Article II of the Constitution are appropriations for the current expenses of the state government and state institutions. It is quite clear that the first appropriation item is not one for current expenses of the state government.

In an opinion of this department under date of May 16, 1919, Opinions of the Attorney General, 1919, Volume I, page 519, it was held “an appropriation for a new building is not one ‘for current expenses of the state government or state institutions;’ it is therefore subject to the referendum and does not go into effect until ninety days after the law making it is filed in the office of the Secretary of State.”

The conclusion reached in the former opinion of this department above referred to is supported by the following cases holding that tax levies and expenditures for buildings and other like permanent structures are not to be classed as current expenses :

State ex rel. vs. Marion County, 21 Kan. 419;
Railway Co. vs. Cloud County, 104 Kan. 324, 327;
Thompson vs. Mayo, 135 Ark. 143;
State of Washington ex rel. vs. Harvey, 108 Wash. 48.

With respect to the character of the second item of appropriation made in Section 11, as amended in House Bill No. 17, it is noted that in the case of *State ex rel. vs. Brown*, 112 O. S. 591, it was held that "the phrase 'current expenses' as used in Section 1d of Article II of the Constitution in addition to including the expenses incident to the officering and maintaining of the state government, includes the expense of keeping in repair and maintaining the property of the state government." This definition of the term "current expenses" was probably not intended to be exclusive. If the clerical and other assistants provided for by said Section 11 were now installed in position, or if their employment was otherwise provided by law, the appropriation item here in question would properly be one for current expenses within the meaning of the constitutional provision under consideration. Inasmuch, however, as no provision is made for hiring clerical and other assistants until the provision of the act for the appointment of the state office building commission goes into effect, I am inclined to the view that no effect can be given to the appropriation for the purpose of paying compensation to such assistants until the effective date of Section 1 of the act of April 17, 1925, as amended in House Bill No. 17.

It follows from what has been said above that none of the sections of the act of April 17, 1925, as amended in House Bill No. 17, other than Section 9 therein, are exempted from the referendum reserved and provided for in Sections 1 and 1c of Article II of the Constitution; and that aside from Section 9, as amended in said act, which went into immediate effect on approval of said act by the Governor, the several sections of the act of April 17, 1925, as amended in said House Bill No. 17, do not go into effect until ninety days from the time said act was filed in the office of the Secretary of State.

In reaching the conclusions above stated, I have not been entirely free from doubt as to the proper construction to be placed upon the provisions of Section 1d of Article II of the Constitution. I realize that something might be said, in favor of the view that under said constitutional provision an act of the General Assembly which in one or more of its sections provides for a tax levy is a "law providing for a tax levy" within the meaning of this provision of the Constitution, and that such act and all of its sections go into immediate effect, with the exception of the sections or items thereof appropriating money for purposes other than current expenses. Thus in the case of *State ex rel. vs. Brown*, supra, it was held that "House Bill No. 44 (III O. L. 294)," an act to provide for the maintenance of public highways or streets of the state, "is a law providing for a tax levy and comes within the provisions of Section 1d of Article II of the Constitution of Ohio, 'laws providing for tax levies * * * shall not be subject to the referendum.'"

The above quoted language was used by the court in the syllabus of the report of said case notwithstanding the fact that there were some sections in said act which had nothing to do with tax levies. In this case, however, the relator's action was predicated on certain sections of the General Code providing for tax levies and the question presented was whether said sections were in effect in their original or in their amended form. On the other hand, it was held in the case of *State ex rel. vs. Roose*, supra, that a section of an act which provided for tax levies "is a law providing for tax levies, and, by the provisions of Section 1d of Article II of the Constitution, is expressly exempted from the referendum provisions of Section 1c of Article II of the Constitution of Ohio."

In the opinion of the court in this case, as above noted, the view was distinctly

expressed that where a section of an act provided for a tax levy such section would go into effect immediately, although other sections of the act not exempt from the referendum would not go into effect until after the lapse of the referendum period.

In view of the position taken by the Supreme Court in the case of *State ex rel. vs. Rose*, supra, and the rule that the provisions of Section 1d of Article II as exceptions to the general right of referendum to any law, section or appropriation item reserved and granted by the provisions of Sections 1 and 1c of Article II of the Constitution, are to be strictly construed, I do not believe that any conclusions can be safely reached with respect to the question presented in your communication other than those above stated, to-wit: that Section 9, as amended in House Bill No. 17, providing for a levy of taxes, went into immediate effect on approval of said act by the governor, and, that the other sections of the act of April 17, 1925, as amended in said House Bill No. 17, do not go into effect until ninety days from the time said act was filed in the office of the Secretary of State.

Respectfully,

GILBERT BETTMAN,
Attorney General.

328.

COUNTY AUDITOR—DUTY TO PUBLISH FINANCIAL REPORT THOUGH
UNABLE TO MAKE CERTIFICATE OF AVAILABILITY OF FUNDS—
PROCEDURE WHEN COUNTY COMMISSIONERS MAKE NO APPROPRIATION.

SYLLABUS:

1. *It is the duty of the county auditor to publish his financial report under the provisions of Section 2507, of the General Code, notwithstanding he may not be able to make the certificate required by Section 5625-33, of the General Code.*

2. *In the event such report is published and no appropriation has theretofore been made by the county commissioners, Section 2510 of the General Code, authorizes any person interested to apply to a Court of Common Pleas for an allowance to cover the expenses of such publication, and the court shall issue an order instructing the county auditor to issue his warrant for such purpose.*

COLUMBUS, OHIO, April 22, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“You are respectfully requested to render this department your written opinion upon the following:

Sections 2507 to 2510, G. C., inclusive, as enacted in 112 O. L. 355, relate to the publication of the annual financial report of the county auditor.

Section 5625-33, G. C., 112 O. L. 406, provides that no taxing unit may make any contract or give any order involving an expenditure of money unless there is attached thereto a certificate of the fiscal officer that the amount required to meet the same has been lawfully appropriated for such purpose and