With said abstract of title there is submitted to me a deed form of a warranty deed to be executed by said Helen K. Hegner, who is an unmarried person. The form of this deed is such that when the same is properly executed and acknowledged by said Helen K. Hegner the same will be sufficient to convey the above described real property to the state of Ohio by fee simple title, free and clear of all incumbrances except the taxes thereon for the year 1930. Care should be taken to see that said deed is properly executed and acknowledged and delivered to you or to the Auditor of State before the warrant is issued by the Auditor of State to pay the purchase price of said property.

Encumbrance estimate No. 2081, which is submitted to me as part of the files relating to the purchase of this property, has been signed by Harry D. Silver, Director of Finance, under date of December 26, 1930. By some inadvertence Mr. Silver's signature appears at a place on said encumbrance estimate or record not reserved for his signature, but reserved for the approval signature of the head of the department issuing said encumbrance record. It is quite evident to my mind, however, that the signature of Mr. Silver was intended as a certificate that the contract price of the above described property is fully covered by unincumbered balances in the appropriation account from which said cost or purchase price is to be paid, and that the amount of said expenditure has been legally appropriated. Entertaining this view, I am of the opinion that said encumbrance record No. 2081, as well as the abstract of title and deed form, above referred to, should be, and the same hereby is, approved.

I am herewith returning to you said abstract of title, deed form and encumbrance record No. 2081.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2873.

SCHOOL LANDS—CONVEYED TO BOARD OF EDUCATION BY GENERAL WARRANTY DEED—NO REVERSION IF ABANDONED FOR SCHOOL PURPOSES WHEN VALUABLE CONSIDERATION GIVEN—SPECIFIC DEED DOES NOT CARRY APPROPRIATE WORDS OF FORFEITURE OR RE-ENTRY.

SYLLABUS:

Where lands are conveyed to the board of education of a school district by a general warranty deed, for a valuable consideration recited in such deed, "in trust for school purposes forever," the title to such land does not revert to the grantor or his heirs upon the abandonment of such lands for school purposes, in the absence from said deed of appropriate words of forfeiture or re-entry.

Where, however, such lands are conveyed to the board of education of a school district exclusively for school purposes without a valuable consideration paid therefor and under circumstances amounting to a dedication of the lands for school purposes, such lands will revert to the grantor or his heirs upon their abandonment for school purposes.

COLUMBUS, OHIO, January 27, 1931.

HON. ROY E. LAYTON, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This is to acknowledge the receipt from you of a communication which reads as follows:

> "On April 19, 1881, one John Doe executed and delivered a Warranty deed to the Board of Education of Union Township, Auglaize County, Ohio, for one acre of land located in the northwest corner of a certain section, for school purposes, and soon thereafter said Board of Education built thereon a country brick schoolhouse, which is still located on the land, although fallen into decay.
>
> This deed to the Board of Education, its successors and assigns, is a warranty deed, regular in form in every respect except as to the following clauses:—
>
> The Granting Clause reads as follows:—
>
> 'Does hereby Grant, Bargain, Sell and Convey to said Board of Education and their successors, *in trust for said School District* of Union Township, *for school purposes forever*, the following described premises, etc.'
>
> The Habendum Clause reads as follows:—
>
> 'To have and to hold the same to the only proper use of the said Board of Education of said Union Township and their successors in office, *in trust for said Township for school purposes forever.*'
>
> Said schoolhouse was abandoned by the Board of Education some nine years ago. About four years ago the School Board advertised the premises for sale but received no bids, owing to the condition of the title, perhaps.
>
> The question is, who owns the premises, based upon the contents of the deed as above set forth? The School Board claims it, the heirs of John Doe claim it, and the adjoining land owner, out of whose farm the one acre was originally taken, claims it. However, as to the last named, the adjoining land owner, neither he nor his predecessor ever had any deed of any kind for this one acre, although John Doe at one time owned the entire forty (40) acres but deeded it away *less* the one acre used for school purposes.
>
> As the original deed for this school ground says nothing as to whom the land shall revert if not used for school purposes, can the Board of Education sell and give a good title to this land notwithstanding the deed says that it is granted to them in trust for school purposes? Of course they will use the money for school purposes. If not, can the Board of Education sell the brick school house, the same as chattel property, and let the heirs of John Doe take possession of the land? This question in similar form has come up a number of times."

The questions presented in your communication are whether the provisions of the deed by which the property in question was conveyed to the board of education in trust for school purposes, imposed a condition upon the use of such property which was violated by the abandonment of the property for school purposes, and whether by reason of the abandonment of such property for school purposes, the title to such property reverted to the heirs of the grantor in said deed.

It may be doubted whether sufficient facts are stated in your communication to enable me to give a categorical answer to the question thus presented. In the consideration of this question it is important to know whether a valuable consideration in any amount for said conveyance was recited in the deed. Assuming from the state-

ment in your communication that the deed here in question, other than the granting and habendum clauses thereof therein quoted, was in the regular form usually taken by warranty deeds, that said deed did recite a valuable consideration in some amount for said conveyance, the question here presented is not one of any particular difficulty.

In the consideration of the question here presented it is to be noted that a declaration or statement in an ordinary deed conveying real property for the purpose for which such conveyance is made, or for which the granted land is to be used, does not render the grant conditional upon the use of the property conveyed for such stated purpose. Or as stated in a manner more immediately applicable to the question at hand, "in general mere statements in the deed that the property is conveyed for school purposes, or is to remain for such purposes, and similar statements, are not construed as conditions or limitations of the grant". In re matter of Copps Chapel Methodist Episcopal Church, 120 O. S. 309, 312; *Watterson* v. *Ury*, 5 O. C. C. 347, affirmed without opinion, 52 O. S. 637; *Methodist Protestant Church* v. *Laws*, 7 O. C. C. 211; *Village of Ashland* v. *Greiner*, 58 O. S. 67; *Taylor* v. *Binford*, 37 O. S. 262; *Rawson* v. *School District*, 7 Allen (Mass.) 125. In such case where the deed recites a valuable consideration for the conveyance, the provision therein stating the purpose for which the property shall be used is construed to be a covenant, in the nature of a trust for the uses and purposes expressed in the deed of conveyance. But in such case, as stated by the court in its opinion in the case of *Village of Ashland* v. *Greiner*, supra, "a breach of the covenant restricting the uses and purposes to which the estate is to be devoted, does not have the legal effect to forfeit the estate and reinvest the title in the grantor, his heirs or assigns. To have such legal effect, there must be words of forfeiture or reentry in the deed". Thus in the case of *Watterson* v. *Ury*, supra, it was held that a grant of real estate, purporting to be upon a valuable consideration, to be held by the "grantee, his heirs and assigns forever as a burial ground for Roman Catholics," and containing a covenant to "forever warrant and defend said premises with the appurtenances against the lawful claims of all persons whomsoever, to be held by such grantee in trust for the Roman Catholics of Columbus, Ohio," but which grant contained no words of forfeiture or re-entry, was not a grant upon condition; and that a discontinuance or diversion of the use contemplated by the grant did not entitle the heirs at law of the grantor to recover the granted premises. In the case of *McElroy* v. *Pope*, 153 Ky. 108, 44 L. R. A. (N. S.) 1220, it was held that where property was sold for a valuable consideration to school trustees authorized to acquire the fee, "to remain in common school grounds forever," without a provision in the deed for a reverter of the title of such property on a discontinuance of its use for school purposes, such property did not revert to the grantor upon abandonment of its use for school purposes and upon its sale by the school trustees to a person other than the grantor. In the case of *Davis* v. *Jernigan*, 71 Ark. 494, it was held that where warranty deed reciting a valuable consideration stated that the grantees were to hold the land thereby conveyed in trust for the purpose of erecting and maintaining an institution of learning thereon, the land did not revert to the grantor on failure of the grantees to maintain such institution. In the case of *Carroll County Academy* v. *Gallatin Academy Company*, 104 Ky. 621, it was held that where the habendum clause in a deed conveying certain lands provided that the grantees therein named were "To have and to hold the same unto the said parties of the second part, their heirs and assigns forever, on condition and in trust that they shall erect and put up a suitable building, or buildings, for a school or seminary of learning, and that same shall always be devoted to school purposes, whether retained by said association or be passed into the hands of others," such provisions created a covenant and not a condition subsequent, the failure to comply with which worked a forfeiture of the estate.

It is apparent from the consideration of authorities above cited that the fact that it is stated in the granting clause and in the habendum clause of the deed here in ques-

tion that the property is conveyed to and is to be held by the school district *in trust* for school purposes does not affect the question here presented, with respect to the claimed right of the heirs of the grantor to recover such property. Touching this feature of the facts upon which the question here presented arises "it is enough to say that, although lands may revert to an owner or his heirs by reason of a breach of a condition, no such result flows from the violation of a trust". *Mackenzie* v. *Trustees*, 67 N. J. Equity 652; 3 L. R. A. (N. S.) 227, 240.

It follows on the considerations above noted that if the conveyance of the property here in question to the board of education was for a valuable consideration, concluded by the fact, if it be so, that such consideration was expressed in the deed (*Watterson* v. *Ury and Davis* v. *Jernigan*, supra,) the grantor in said deed or his heirs can not recover the lands conveyed from either the board of education or its grantee although such lands are abandoned for school purposes.

If, on the other hand, the lands here in question were conveyed to the board of education without consideration under circumstances amounting to a dedication of the lands to the school district for use as a site for a school building, the abandonment of the use of such lands for this purpose would, it seems, cause the title to such lands to revert to the grantor, or to those lawfully claiming under him as heirs or devisees. With respect to the effect of the abandonment of the prescribed use of lands dedicated and accepted for a public purpose, in 18 C. J. at page 126, it is said "In case of an abandonment after acceptance the rights of the public therein fail and a reversion takes place, as the dedication has spent its force when the use ceases. If land is dedicated for school purposes, for a court house or other public buildings, for a park, or for cemeteries or burial purposes, the property so abandoned reverts to the dedicator or his heirs, and this is true whether the dedication is statutory or at common law".

In the case of *Board of Education of the Incorporated Village of Van Wert* v. *Edson*, 18 O. S. 221, it appeared that when said village was laid out in 1835 the proprietors of lands included within said village dedicated two specified lots therein "for school purposes, and on which to erect school-houses". It appeared further that by reason of the subsequent construction and continued operation of a railroad, and the location of a depot in connection therewith, in close proximity to said lots, they were rendered unsuitable to be used as sites for school-houses, and their use for that purpose became dangerous. In this situation, the board of education filed a petition in the common pleas court praying that the court of common pleas order said lots to be sold, and that the board of education be authorized to apply the proceeds of such sale to the purchase of suitable school sites, or to the erection of school-houses on suitable grounds to be procured by the board of education. Affirming the judgment and order of the common pleas court sustaining a demurrer to this petition filed by one claiming under the original dedicators of said lots, the supreme court held "That the dedication was for a specific use, and conferred no power of alienation so as to extinguish the use. That if the use created by the dedication were abandoned, or should be impossible of execution, the premises would revert to the dedicators or their representatives, and that, without their consent, they could not be divested of their contingent right of reversion by an absolute alienation".

In concluding this opinion, it is noted that mention is made in your communication of the fact that the owner or owners of land abutting the school lands here in question are claiming title to the same by reason of their abandonment for school purposes. This claim does not merit any extended discussion. It is obvious from what has been said above that if the title to the lands here in question reverts at all by reason of the abandonment of such lands for school purposes, such reverter is to the grantor or to his heirs or devisees. After the conveyance of these lands for school purposes they were never in the chain of title of the lands owned and held by the abutting owner; and since the owner of such abutting property at no time had any interest in said school

lands not common to the public, such school lands were not appurtenant to the lands of the abutting owner and did not pass to him upon their abandonment for school purposes. *Stevens* v. *Shannon*, 6 O. C. C. 142.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2874.

JUDGMENT—OBTAINED AGAINST MUNICIPALITY FOR WRONGFUL DEATH—MUNICIPAL LIGHT PLANT PROPERTY NOT SUBJECT TO BEING LEVIED UPON.

SYLLABUS:

Where a municipality owns a municipal light plant which is being operated by it, the property so held is not subject to being levied upon in pursuance of a judgment against said municipality for wrongful death.

COLUMBUS, OHIO, January 27, 1931.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

"I wish an opinion as to whether a sheriff has the right to levy on the poles, wires, transformers, meters, and all other electrical appliances and equipment pertaining to and used in connection with a municipally owned electric light plant?

Our local sheriff has received an execution against the Village of Pemberville on a judgment rendered against said village in a wrongful death action. The attorneys for the plaintiff directing him to levy on the electric light fixtures, etc., as hereinbefore described. The sheriff asked me for a written opinion and I replied that it was my opinion that the plaintiff would have to rely on his remedy of mandamus, as provided in *State ex rel Turner* vs. *Village of Bremen*, 117 O. S. 186, and further as the Legislature has provided in Section 2293-13, G. C. for a judgment fund, and Section 5625-8 for the certificate of the fiscal officer to the taxing authority of the subdivision for the amount necessary for the payment of final judgments, and Section 2293-3 provides for the issuance of bonds for the payment of a judgment if such funds are not available.

I further find that Volume 10 R. C. L. page 1222, Section 9, provides as a general rule an execution cannot issue against municipal corporations.

Plaintiff's attorneys rely on 23 Corpus Juris, Page 356, which is in effect that property owned by a municipality in its proprietary, as distinguished from its public or governmental capacity, but for quasi private purposes, is liable to be seized and sold under execution, the same as any other property of an individual or private corporation is seized and sold.

Plaintiff's attorneys further rely on the case of *Travelers Ins. Co.* vs. *Village of Wadsworth*, 109 O. S. 440, which holds that a municipally owned light and power plant in Ohio is a proprietary power and that the City may ex-