I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of deficiency bonds dated December 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1705.

POWER OF STATE TO CONTRACT DEBTS—LEGISLATIVE PREROGATIVE — REQUIRES EXPRESS LEGISLATIVE AUTHORITY—SALARIES CERTAIN DISTRICT HEALTH COMMISSIONERS, PUBLIC HEALTH NURSES, CLERKS—SEE SECTION 1261-39 G. C.—CERTIFICATE—SALARIES REGULAR EMPLOYES LOCAL HEALTH DISTRICT.

SYLLABUS:

1. *The power of the state to contract debts is circumscribed by Article VIII of the State Constitution. Such power is a legislative prerogative and may not be exercised by any state officer without express legislative authority.*

2. *Section* 1261-39, *General Code, prescribing how much the state shall contribute to the salaries of certain district health commissioners, public health nurses and clerks, does not authorize the incurring of any debt on the part of the state, but is declarative of the legislative policy of the General Assembly which enacted such section and is not binding on subsequent general assemblies. Accordingly, the difference between the amount necessary to fully carry out the provisions of such section and any amount appropriated therefor does not constitute a debt or obligation of the state.*

3. *No certificate provided by paragraph (d) of Section* 5625-33, *General Code, is required in the payment of salaries of regular salaried*

employes of a local health district (Opinions of the Attorney General for 1932, *Vol. II, page* 830, *followed).*

COLUMBUS, OHIO, January 4, 1938.

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

GENTLEMEN: Your letter of recent date is as follows:

"Section 1261-40, General Code, provides that the District Board of Health shall prepare an estimate of the amount needed for its current expenses for the fiscal year, and certify the same, together with the amount due from the State, to the county auditor.

This estimate is submitted to the Budget Commission, and by it approved entirely, or in such amount as the Commission may deem necessary.

From the amount so approved by the budget commission is deducted the sum due from the State, and the balance is apportioned by the county auditor among the townships and municipalities comprising the Health District.

Section 1261-39, General Code, provides that the State shall pay to the Health District one-half of the compensation paid by such district to the Health Commissioner, nurse and clerk, except that the portion to be paid by the state shall not exceed One Thousand Dollars for each six months' period.

Section 1261-38, General Code, makes the auditor of the county the auditor of the Health District, and by the provisions of Section 5625-1, General Code, he is the fiscal officer of such district.

Section 5625-33, General Code, provides that the fiscal officer is required to certify that money for a proposed expenditure has been properly appropriated, and is in the treasury or in the process of collection.

Due to the fact that sufficient funds have not been appropriated by the Legislature to pay the state's portion of the salaries of the Health Districts, we respectfully request your opinion upon the following questions:

1. Does Section 1261-39, General Code, create an obligation of the state that is definitely fixed by statute; and if so, is it mandatory that such obligation be included in the Governors' budget?

2. Does the fiscal officer of the Health District have authority to issue certificates, as provided in Section 5625-33, General

Code, for the full amount allowed to the Health District board when it is obvious that the full amount of the state's share will not be received by the Health District?"

I understand, as stated in your letter, that the current general appropriation act does not contain an appropriation of an amount sufficient to fully carry out the provisions of Section 1261-39, General Code, to which you refer, having appropriated but $150,000.00 for each year of this biennium. It might be observed, however, that this same situation has prevailed through several immediately preceding bienniums. I am advised that during recent years the Department of Health has prorated among the various counties entitled thereto the amount appropriated even though such amount is less than the amount provided by such Section 1261-39 as the state's contribution to the salaries of district health commissioners, public health nurses and clerks of general or city health districts.

In your first question you ask as to whether or not the difference between the amount which the various counties would be entitled to receive under the permanent statute and the amount prorated by virtue of insufficient appropriations constitutes an obligation of the state. I am informed that you use the term "obligations" in the sense of debts since the contention is made that such shortages constitute debts of the state due the various counties.

The power of the state to incur debts is circumscribed by Article VIII of the Constitution. Section 1 of such article provides that the state may contract debts to supply casual deficits or failures in revenues or meet expenses not otherwise provided for, but that the aggregate amount of such debts shall never exceed $750,000. Section 2 thereof provides that in addition to such limited power the state may contract debts to repel invasion, suppress insurrection, defend the state in war or redeem present outstanding indebtedness. Section 3 of such article provides that "Except the debts above specified in Sections 1 and 2 of this article, no debt whatever shall hereafter be created by or on behalf of the state." The other section particularly pertinent to a determination of your question is Section 22 of Article II of the Constitution, which provides that "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

These foregoing constitutional provisions were considered at length in the early case of *State* vs. *Medbery, et al.,* 7 O. S. 522. There was before the court in this case the question of the power of the board of public works to enter into a contract pursuant to a statute passed in 1845 for keeping in repair the canals of the state for a term of five years. The court held that no officers of the state can enter into any contract

whereby the General Assembly will, two years after, be bound to make appropriations either for a particular object or a fixed amount and that such power and discretion in general devolved upon each biennial General Assembly for the period of two years. At page 529, the court said after quoting the pertinent provisions of Articles VIII and II of the Constitution:

> "Before proceeding to state the scope and operation of these provisions of the constitution, it may be proper to allude to the general working of the financial system of the state, in respect of the payment of current expenses, and the creation of a debt.
>
> The sole power of making appropriations of the public revenue is vested in the general assembly. It is the setting apart and appropriating by law a specific amount of the revenue for the payment of liabilities which may accrue or have accrued. No claim against the state can be paid, no matter how just or how long it may have remained overdue, unless there has been a specific appropriation made by law to meet it. Article 2, Section 22."

At page 537, the following pertinent language is used:

> "It is said that the obligation of the state to pay expenses inherent in, and inseparable from, the operations of the government, are not debts in the sense of the inhibitions of Article 8, inasmuch as the obligation to pay such expenses exists with equal force and to the same extent, without, as with, a contract by the state to pay them.
>
> But the expenses provided for by the contracts before us, are not inherent in and inseparable from the operations of the government, as is claimed.
>
> If the board of public works is not a permanent department of the government, like that of the executive and judicial, but may be dispensed with, and if the expenses of the repairs of the public works are not, like the salaries of executive and judicial officers, devolved on the state as a permanent expenditure, the position taken can not be sustained, and future expenses for the repair of the canals are not constitutional obligations, inherent in the government, but subject to the discretion of the general assembly."

In the instant case, it should be noted that the question of how much, if any, the state will contribute toward the payment of salaries of

certain local health officers is, as stated by the Supreme Court, "subject to the discretion of the general assembly," and it is fundamental that no general assembly can bind subsequent general assemblies in such regard.

It must be further noted that Section 1261-39, here under consideration, does not by its language even purport to authorize the creation of a debt nor to authorize any officer of the state to contract for the state. The third branch of the syllabus of an opinion appearing in Opinions of the Attorney General for 1933, Vol. I, Page 675, is as follows:

> "The power of the state to contract is a legislative prerogative, and no executive officer of the state can contract for it without legislative or constitutional authority."

Such Section 1261-39 is obviously but a declaration of policy subject to such modification or repeal as any subsequent general assembly may see fit to enact. The section of itself appropriates nothing. As stated in my Opinion No. 1328, rendered October 19, 1937, to the Director of Health:

> "Section 1261-39, supra, cannot result in the state paying any portion of anyone's salary in the absence of an appropriation act and an appropriation act is a law of equal dignity during its existence with all other laws of the state. Opinions of the Attorney General for 1927, Vol. I, page 718. It is clear that such Section 1261-39, providing that the Auditor of State 'shall thereupon draw a voucher on the treasurer of state to the order of the custodian of the funds of such health district payable out of the general revenue fund,' probably did not at the time of its enactment constitute an appropriation any more than Sections 2248, et seq., of the General Code, providing the salaries of certain state officers may be said to have been enacted as appropriations."

The conclusion is inescapable that should the General Assembly appropriate no funds whatsoever for the purpose of contributing to the payment of local health officers' salaries, the effect of such failure to appropriate would but constitute a suspension of the provisions of such Section 1261-39, the power to suspend a law being vested in the General Assembly by Article I, Section 18 of the Constitution. An appropriation of an insufficient amount to fully carry out the provisions of this permanent section of the General Code in my opinion, under the canon of statutory construction that a later act inconsistent with an earlier act must be

held to amend the earlier act to the extent of such inconsistency, must have the effect of reducing the legislative provision as to the amount of such contribution which shall be made by the state.

It is unnecessary to consider the remaining portion of your first question as to whether or not the Governor is under any mandatory duty with respect to what shall be included in his budget under Section 154-34, General Code, since this question is predicated upon a conclusion that the failure of the legislature to appropriate a sufficient amount to fully carry out the provisions of this section results in a debt being incurred on the part of the state.

In your second question you ask as to whether or not the fiscal officer of a health district has authority to issue certificates as to availability of funds as provided in Section 3625-33 for the full amount allowed to the board of health when it is obvious that the full amount of the state's share will not be received by the health district on account of insufficient appropriations therefor.

In my Opinion No. 1328, hereinabove referred to, I held as set forth in the second branch of the syllabus:

> "District health commissioners, public health nurses and clerks of general or city health districts which receive state funds pursuant to appropriation by the General Assembly in accordance with and under the circumstances provided by Section 1261-39, General Code, are 'state employes' within the meaning of the term as used in the State Employes' Retirement Act during such years as such districts receive state aid."

The foregoing conclusion was predicated upon the fact that such local health officers as therein referred to are paid a part of their salaries by the state. Section 5625-33, General Code, requires no certificate of the fiscal officer in case of the payment of salaries. Paragraph (d) of such section, providing that such certificates shall be attached to certain contracts, provides as follows:

> "The term 'contract' as used in this section, shall be construed as exclusive of current payrolls of regular employes and officers."

The third and fourth branches of the syllabus of an opinion appearing in Opinions of the Attorney General for 1932, Vol. II, page 830, read as follows:

"3. When the board of education of a rural school district employs a supervisor, whom they style 'superintendent of schools,' for a term of three years, his contract of employment need not bear the certificate of the fiscal officer provided in Section 5625-33.

4. The term 'current salary' as used in the exception in paragraph D, Section 5625-33, applies to the entire salary of a regular employe, even though his contract of employment runs for more than one year."

In view of the foregoing, it is apparent that Section 5625-33, General Code, has nothing whatsoever to do with the subject matter of your inquiry.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1706.

BOARD OF EDUCATION—WHERE REAL PROPERTY CONVEYED—CONDITION SUBSEQUENT—PREMISES TO BE USED SOLELY FOR PUBLIC SCHOOL—IF ABANDONED THREE YEARS OR MORE—REVERTER CLAUSE—TITLE REVERTS—POSSESSION BY ENTRY OR THROUGH COURT DECREE OF FORFEITURE AND RECONVEYANCE.

SYLLABUS:

Where real property is conveyed to a board of education by warranty deed and the habendum clause in the deed contains a condition to the effect that the premises are to be used solely for the purpose of conducting a public school or schools thereon, and in the event that said premises should be abandoned for school purposes, for three years or more, then said premises shall immediately revert and pass to the grantor, his heirs or assigns and thereafter, the board of education abandons the premises for school purposes for three years or more, thereupon, the title reverts to the grantor if the grantor in his lifetime, or those in privity of blood with him after his decease, enters the premises and takes possession