loans for waterworks construction, it will be presumed that the legislative intent has thereby been exhausted and that it was not intended that the city should have any power over the surplus beyond the terms of the power expressly granted. For the purpose of determining the legislative intent the maximum *expressio unius est exclusio alterius* has direct application. That maximum has peculiar application to any statute which in terms limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise. That maxim finds its chief use as an aid in ascertaining the whole scope of a law."

The foregoing case was decided in 1922 prior to the time of the adoption of the Budget Law. I do not, however, find any provisions in the Budget Law which in my view may be said to render inapplicable the foregoing decision.

It should be remembered that when waterworks bonds are authorized, excepting of course mortgage bonds, provision must be made for the levy of a tax to meet their interest and principal requirements. Section II, Article 12, of the Constitution. Such tax is subject to reduction in any year to the extent that funds from the earnings are available for the requirements of such bonds. Obviously, after waterworks bonds have been paid, whether from the earnings of the plant or by general taxation, there is no remaining indebtedness. Therefore, under the exclusive portions of Section 3959, supra, your inquiry must be answered in the negative.

It is, accordingly, my opinion that no part of the surplus in the waterworks fund of a municipally owned waterworks may be used to reimburse the general sinking fund of the municipality, notwithstanding the fact that waterworks bonds may have been paid from such fund prior to the time the waterworks became self-sustaining.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2880.

APPROVAL, ABSTRACT OF TITLE TO LAND OF ALLEN C. KOOP IN ST. MARYS TOWNSHIP, AUGLAIZE COUNTY, OHIO.

COLUMBUS, OHIO, January 29, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from your department, through the division of conservation, submitting for my examination and approval an abstract of title, warranty deed, encumbrance estimate and controlling board certificate relating to the proposed purchase by the state of Ohio of two certain tracts of land owned of record by one Allen C. Koop in St. Marys Township, Auglaize County, Ohio, which tracts of land are more particularly described as follows:

"Tract No. One: Beginning at an iron pipe on the section line between Sections 8 and 17, South 88 deg. and 27′ West, 647.4′ from the intersection of Sections 8, 17, 9 and 16, thence South 1 deg. and 30′ East, 413.89 feet to an iron pipe; thence South 88 deg. and 9′ West, 175′ to an iron pipe; thence

South 1 deg. and 29′ East, 208.56 feet to an iron pipe; thence North 88 deg. and 59′ West, 469.2 feet to an iron pipe, in the East line of a 5.75 acre tract of the Fish and Game Association; thence with said East line, North 14 deg. and 39′ East, 627.7 feet to an iron pipe in the section line between sections 8 and 17; thence continuing with the east line of a 2.38 acre tract now owned by the Fish and Game Association, North 14 deg. and 39′ East, 378.5 feet to a concrete post said post being located South 75 deg. and 21′ East 333 feet from the face of the east concrete revertment wall of the St. Marys Reservoir; thence North 88 deg. and 30′ East, 361.9 feet to an iron pipe; thence South 1 deg. and 30′ East 361.5 feet to the place of beginning, and containing 10.51 acres, more or less, said tract being shown of record in Volume 4, page 42, Auglaize County Surveyor's office.

Tract No. Two: Beginning in the Northeast corner of the above described Tract No. One said beginning point being North 1 deg. and 30′ West, 361.5 feet from an iron pipe located on the West line of Section 8; thence with the north line of tract No. One, South 88 deg. and 30′ West, 361.9 feet to a concrete post heretofore described in Tract No. One; thence North 75 deg. and 21′ West, 150 feet to a stake in the north line of a 2.38 acre tract described in Tract No. one; thence on a line parallel with the concrete revertment wall of Lake St. Marys, north 13 deg. and 45′ East, 2305.3 feet to an iron pipe; said pipe being located North 88 deg. and 15′ east, 180.16 feet from the concrete revertment wall heretofore mentioned; thence North 88 deg. and 15′ East, 283 feet to an iron pipe; thence on a line parallel to the West line heretofore mentioned, South 13 deg. and 45′ West, 1441 feet to an iron pipe; thence South 1 deg. and 30′ East, 886.5 feet to the place of beginning and containing 17.08 acres, more or less, and shown of record in Volume 4, p. 42, Auglaize County Surveyor's Office."

Upon examination of said abstract of title, which is certified by the abstractor under date of September 9, 1930, I find that as of said date Allen C. Koop had a good and indefeasible fee simple title to the above described property, subject only to the following exceptions:

1. On April 26, 1929, said Allen C. Koop, his wife joining with him in conveyance, executed a mortgage deed upon the above described and other property to the Home Banking Company to secure the promissory note of said grantors in the sum of fifty-five hundred dollars, payable to the Home Banking Company six months after the date of said mortgage and of the note thereby secured. It does not appear that this mortgage is canceled of record and the same is a lien upon the above described property to the extent of the amount remaining unpaid upon the note secured by the mortgage.

2. On June 4, 1889, one W. G. Kishler, then the owner of the property here under investigation, executed a certain lease to one Walter E. Gray on a part of the above described property, by which there was leased and demised to said lessee the right to drill for and produce oil and gas upon the property leased for a term of five years "and as much longer as gas and oil is found in paying quantities". This lease, which is now by mesne assignments owned and held by the Ohio Oil Company, is not canceled of record. The abstract of title contains no information as to whether oil and gas, or either of said minerals, were ever produced upon the lands demised by this lease; neither is there any other information contained in the abstract to show whether said lease is now in effect. You should, of course, make inquiry with respect to this matter before closing the transaction for the purchase of the above described property, and if you find that said lease is still in operation and effect by reason of the production of gas and oil or either, under the terms of said lease, it will be a matter for the determi-

nation of your department and of the board of control whether the operations under said lease will interfere with the use that you desire to make of this property.

3. On June 14, 1889, one S. K. Marshall, being then the owner of a part of the property above described, leased and demised the same to Walter E. Gray for oil and gas production purposes. This lease is for a stated term of two years and as much longer as oil and gas is found in paying quantities. Said lease is now owned by the Ohio Oil Company and the same is not canceled of record. The observations may be made with respect to this lease as are made in the exception above noted, and investigation should be made to determine whether said lease is in effect, and if so how the same will interfere with the use that you desire to make of said property.

4. At the date of the certification of said abstract, the taxes on the above described property for the year 1930 were unpaid and were a lien upon said property.

In addition to the specific exceptions above noted it is observed that more than four months elapsed between the date of the certification of the last continuation of the abstract of title and the time of its submission to this office for examination and approval. In this situation, it is suggested that the owner be required to furnish you a further certificate under present date with respect to taxes, mortgages, judgments and other liens and incumbrances that may have attached to said property between the date of the last certification of said abstract and the present time.

Upon examination of the warranty deed tendered by said Allen C. Koop, I find that the same has been properly executed and acknowledged by him and by his wife, Alma C. Koop, and that the form of said deed is such that it is effective to convey the above described property to the state of Ohio by fee simple title, free and clear of the dower right and interest of said Alma C. Koop in and to this property and with a warranty on the part of both of said grantors that said property is free and clear of all incumbrances whatsoever. Said deed is accordingly herewith approved.

Encumbrance estimate No. 1471, which has been submitted as a part of the files relating to the property here under investigation, was properly approved and executed under date of December 23, 1930, and from its provisions there is found that there is an appropriation to cover the purchase price of said property in the sum of five thousand one hundred eighty-seven dollars and seventy-five cents and that there is an unincumbered balance of said appropriation sufficient to make said expenditure.

It further appears that the board of control, acting under the authority conferred upon said board by section 11 of House Bill No. 510 of the 88th General Assembly, released from the appropriation account the money necessary to purchase this property. Said encumbrance estimate is therefore accordingly approved by me.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate No. 1471, controlling board certificate and other files relating to the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.