That holding was affirmed by the Circuit Court, as shown in a note appended to the report of the case. There would seem to be no doubt as to the correctness of the conclusion when reference is had to the previous case of State ex rel. vs. Board of Public Works, 36 O. S. 409.

No doubt it was with this holding in mind that the General Assembly amended Sec. 1208 in 107 O. L. 126 by inserting the sentence:

> "The provisions of Section 8324 of the General Code and the succeeding sections in favor of sub-contractors, material men, laborers and mechanics shall apply to contracts let under the provisions of the preceding sections as fully and to the same extent as in the case of counties."

Then in 109 O. L. page 159, the General Assembly again amended Sec. 1208 by striking therefrom the sentence just quoted.

In an opinion of this Department (No. 3770), dated November 28, 1922, directed to the Department of Highways and Public Works, a copy of which is enclosed, the view was expressed that under Sec. 1212 and related sections of the state highway code, money appropriated by the county and held in the county treasury subject to paying the county's share of the cost of a state aid highway improvement is to be considered as a fund of the State. That being true, it follows with the last-noted amendment of Sec. 1208 in 109 O. L., the right to obtain a lien on any funds appropriated and applicable to state aid highway contracts, whether such funds be in the state treasury or county treasury, ceased to exist as to any contract entered into after that amendment became effective on August 5, 1921.

For the sake of completeness, it should be mentioned that the amendment of Sec. 1208 in 109 O. L. was made applicable to pending proceedings (see Sec. 6 of amendatory Act, 109 O. L. 171). Therefore, on its face, the amendment would seem to be applicable to highway improvement contracts of the State which were uncompleted when the amendment took effect. Whether the amendment could constitutionally apply to all such uncompleted contracts, as, for instance, to cases where credit had been extended to the contractor before the amendment took effect is a question which need not be discussed here; because it clearly appears that the two contracts of the State which you describe were entered into by the State and the principal contractor *after* the amendment took effect.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3861.

SCHOOL AND MINISTERIAL LANDS—ADMINISTRATIVE POLICY RELATIVE TO RESERVATION OF COAL, OIL, GAS, ETC. IN SAID LANDS—HOW LEASED.

1. *For the purpose of establishing an administrative policy relative to the reservation of coal, oil, gas and other minerals contained in and upon school and ministerial lands held under a ninety-nine year lease renewable forever, it is suggested that the reservations required by section* 3203-13 *and* 3184 *G. C. be made by the state in the conveyance of the fee simple title of said lands.*

2. Under the provisions of section 3209-1 G. C., the state auditor is authorized to lease the coal, oil, gas and other mineral rights contained in school and ministerial lands, held under permanent leases from the original townships.

COLUMBUS, OHIO, January 4, 1923.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

"Mr. John Jones holds a ninety-nine year lease, renewal forever on school lands which he desires, in the near future, to purchase. (See copy of lease attached.)

QUESTIONS:

(1) Should the State make reservation of oil, gas and coal (Section 3203-13) in deed for said land?

(2) Can the State give an oil and gas lease on said land while under said ninety-nine year lease?"

Following is a copy of the lease submitted:

TRUSTEES OF SCHOOL SECTION

SIXTEEN

TO

EZEKIEL BLAIR

Lease.

KNOW ALL MEN BY THESE PRESENTS, That we Levan Okey, Nathan Hollister and Elias Jeffers of Monroe County and State of Ohio, Trustees of School Section Number Sixteen with the original Surveyed Township Number Four, Range No. 15 in the District of Land, offered for sale at Marietta, Ohio Now Be It Remembered that we, the said Trustees for and in consideration of six percentum of the appraised value of a lot of land hereinafter described being annually paid to the treasurer of the township aforesaid by Ezekiel Blair of Monroe County and he or his heirs conforming to the act passed January 27th, 1817, for leasing certain school lands with said Trustees. Being thereby empowered have executed to lease and by these presents do lease unto the said Ezekiel Blair, his heirs and assigns one certain piece or parcel of land as follows: being the Northeast quarter of Section Number Sixteen in Township and Range aforesaid containing one hundred and sixty acres of land be the same more or less, together with all and singular the appurtenances thereto belonging for the term of ninety-nine years from the 11th day of December one thousand eight hundred and nineteen renewable forever. Conditioned that, if the aforesaid Ezekiel Blair, his heirs or assigns shall well and truly pay six per centum of the appraised value annually of the lands aforesaid and con-

forming in all respects to the act passed January 27th, 1817, for leasing of certain school lands, then this indenture to be released, otherwise, to be void and of no effect.

Given under our hands and seals this 11th day of December A. D., one thousand eight hundred and nineteen in presence of

William Johnson.
Daniel Dye, Jr.

Levin Okey (Seal)
Nathan Hollister (Seal)
Elias Jeffers (Seal)"

In view of the terms of the lease above quoted your first question inquires if the state should make reservation of oil, gas and coal (Section 3203-13) in deed for said land. Pertinent to such question the provisions of Section 3203-13 as amended in 109 O. L. page 41, are quoted:

"Sec. 3203-13. Each conveyance of the fee simple title, except when such school or ministerial lands are located within the corporate limits of a city, shall contain reservations of all oil, gas, coal and other minerals, and, where the land abuts a flowing stream, or such a stream flows through such land, the enjoyment of such stream for fishing and fowling and the right of egress and ingress over such land to and from such stream when the same is or may become necessary for such enjoyment and to all rights and easement granted or hereafter granted under the provisions of law providing for the leasing of such lands for gas, oil, coal, iron and other minerals."

It is to be noted that the section quoted, provides clearly that the state shall make reservations of all oil, gas, coal and other minerals in *each conveyance* of the fee simple title of school and ministerial lands except when the same are located within the limits of a city. Although this section makes no particular reference to ninety-nine year leases, it does, however, definitely provide that *each conveyance* of the fee simple title to such lands shall contain the said reservations.

In similar vein Section 3184 G. C. provides:

"It is declared to be the policy of the state to conserve the timber and mineral resources of the trust, and to this end the state reserves all timber, and all gas, oil, coal, iron and other minerals that may be upon or under the said school and ministerial lands, subject to such uses as may be by law provided, also reserving for the citizens of the state the use of all streams flowing through or abutting upon such lands for fishing and fowling, and so much of the bank thereof as may be necessary for such enjoyment and protection of such stream from erosion, contamination or deposit of sediment."

It is evident that Sections 3184 and 3203-13 G. C., definitely conclude the policy of the State of Ohio, as to the subject of the reservation of the coal, oil, gas and other minerals contained in and upon the school and ministerial lands held in trust by the State, requiring in the leasing and sale of said lands the reservation by the State of the mineral rights mentioned in the above quoted sections. Considering the

history of these sections, it is to be noted that they appear for the first time as Ohio law upon the subject, by reason of the enactment of House Bill No. 192, passed by the legislature, March 20th, 1917, and entitled "an act to provide for the better administration of the school and ministerial lands held in trust by the State of Ohio, to codify the laws relating thereto, to safeguard both the trust and the rights of the citizens of Ohio holding leasehold or fee simple titles in or to said lands, and make more certain the rights and obligations of the State and the lessees of said lands."

Thus it would seem that the State's policy of reserving the mineral interests in said lands first definitely obtains with the enactment of said House Bill 192, passed by the General Assembly March 20, 1917, and it is to be significantly noted that previous to this date, the statutes are silent upon the subject of said reservations.

It may also be noted that previous to the enactment of House Bill 192, Section 3221 G. C., was in full force and effect, and provided for the surrender of such permanent leases by the lessee and the acquiring of the fee simple title irrespective of any reservations of said mineral products in or upon such lands. A similar provision was also made by Section 1427 R. S., which authorized permanent leases for such lands for the term of ninety-nine years renewable forever. Thus it appears to have been the policy of the State in respect to such leases up and until the time of the enactment of said House Bill 192, passed March 20th, 1917, of holding out to the lessees of these particular permanent terms, the privilege of purchasing upon certain conditions the fee simple title to such lands unlimited by any reservations whatsoever. That is to say, a lessee holding under a ninety-nine year lease, renewable forever, up and until the time of the enactment of House Bill 192, as passed March 20, 1917, could upon the fulfillment of his contract, and the payment of the appraised value of his land require the conveyance of the fee simple title thereto, from the State, in the manner provided by law, and free from limitations or reservation by the State ,of the coal, oil, gas, minerals, etc. Thus it would seem that if the requirements of Section 3203-13, are to be now applied to these old permanent leases and reservations of the mineral products of said lands are to be made by the State in conveyance of the fee simple title, in those instances wherein the State has previously contracted to convey said fee simple title unlimited by reservations, it is not unreasonable to conclude, that former vested rights accruing to the lessee by reason of the State's policy previous to March 20th, 1917, might be seriously disturbed.

On the other hand it may be pointed out that under the form of these old permanent leases, it is anything but clear that the State in the first instance conveyed any interests to the lessee of the coal and mineral products contained in said lands since the purposes for which said leases were made is not even remotely referred to in the instruments themselves, or the act pursuant to which they were drawn.

Owing therefore, to the doubtful status of the law relative to the rights of the state and the lessee in respect to the mineral rights contained under the form of such a lease as submitted, as well as the doubtful construction of the law, occasioned by the apparent change of the state's policy as to the reservations in the conveyance of the fee simple title thereto, it would seem that your first question becomes justiciable rather than academic. It would seem desirable therefore for the sake of the future administrative policy of the State in respect to such leases that a court precedent be established, and to such an end it is suggested that the State follow the requirements of Section 3203-13 G. C., in the conveyance of the fee simple title to the school and ministerial land held under

such a lease as that submitted, reserving therein, as provided by this section, all interests in the coal, oil, gas and other minerals contained in or upon said lands. Such action it is believed will leave the way open for the lessee in the event he is not satisfied with the procedure of the State to appeal to the Courts for a decision in the matter. Hence, for the purposes of administrative policy your first question may be answered in the affirmative.

Pertinent to your second question it would seem that the same difficulty may obtain which arises in your first question, since under the terms of such a lease as that submitted it is difficult to determine the respective rights of the State and the lessee in the coal, oil, gas and other minerals in the lands covered by the said ninety-nine year lease. However, since the legislature has seen fit to enact Section 3209-1, and to provide a recourse to the lessee in the event he is damaged by reason of the State leasing said lands for oil, gas or other mineral privileges, it would seem that this difficulty is at least minimized. Without quoting this lengthy section it may be briefly noted that the auditor of State is by the terms thereof authorized to lease for oil, gas, coal or other minerals any unsold portions of sections sixteen and twenty-nine, or other lands granted in lieu thereof, of the original surveyed townships, for the support of schools and religion, to any person, persons, partnership or corporation, upon such terms and for such time as will be for the best interests of the beneficiaries thereof, provided that such lease shall require the lessee to pay all damages to the holder of the lease holding under a lease from the trustees of the original township.

It is believed then in conclusion, that in so far as the administrative policy of the State is concerned the section cited directly answers your second question in the affirmative and furnishes authority in the State Auditor to lease the coal, oil, gas and other mineral privileges contained in the school and ministerial lands held under the ninety-nine year lease mentioned.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3862.

MUNICIPAL CORPORATIONS—PUBLIC SERVICE CORPORATION—WHEN GRANT FOR USE OF STREETS NOT EXCLUSIVE—WHEN BONDS MAY BE ISSUED TO PAY COST OF APPRAISEMENT OF MUNICIPAL WATER WORKS.

1. *Where a public service corporation has received a grant of the right to construct its works and to use and occupy the streets of the corporation in connection therewith, and which grant is not expressly stipulated to be exclusive, it acquires thereby no exclusive franchise or right which would prevent any other corporation or the municipality itself from exercising similar privileges.*

2. *Under the provisions of section* 3916 *G. C. the council of a village may issue bonds for the purpose of paying the cost of the appraisement of a municipal water works which the corporation sought to purchase, provided the indebtedness*