

thorizes the issuance of deficiency bonds under the conditions therein set forth; Amended Senate Bill 152 and Senate Bill 412 of the 90th General Assembly authorize school boards to issue notes in anticipation of state aid; and Amended Substitute Senate Bill No. 175 of the 90th General Assembly authorizes school districts to issue indebtedness funding bonds; but none of these special provisions whereby bonds or notes may be issued and the proceeds used directly or indirectly for current operating expenses, would appear to properly effectuate the transfer of the funds in question from the bond retirement to the general fund. This office has taken the position that under Section 11, Article XII of the Constitution, when notes are issued, as well as bonds, except in the case of the issuance of notes under Section 2293-4, General Code, provision must be made to meet their interest and principal requirements by general taxation.

Summarizing and in specific answer to your inquiry, it is my opinion that:

1. An unexpended balance remaining in the bond retirement fund may, with the approval of the court of common pleas, be transferred to the general fund of a subdivision when such subdivision has no sinking fund and after all indebtedness, interest and other obligations for the payment of which the bond retirement fund exists have been paid and retired.

2. The approval of the court of common pleas of such transfer should be sought by a written application addressed to the court and filed with the clerk thereof and the court's approval should be evidenced by an entry granting the same.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1394.

APPROVAL, LEASE TO CANAL LAND, IN ROSS COUNTY, CHILLICOTHE, OHIO, FOR GENERAL BUSINESS BUILDING, YARD AND STORAGE PURPOSES—WALTER W. BOULGER.

COLUMBUS, OHIO, August 12, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication of even date herewith, submitting for my examination and approval, a canal land lease in triplicate, executed by you in your official capacity, to Walter W. Boulger of Chillicothe, Ohio.

By this lease, which is one for a stated term of fifteen years, and which provides for an annual rental of \$1500.00, payable in semi-annual installments of \$750.00 each, there is leased and demised to the lessee above named, for General Business Building, Yard and Storage purposes, that portion of the abandoned Ohio Canal property in the city of Chillicothe, Ross County, Ohio, commencing at the westerly line of Mulberry Street, in said city, and extending thence westerly and northerly over and along said abandoned Ohio Canal property, including the full width thereof, a distance of 7,473 feet more or less, to a line thirty feet north-easterly from and parallel to the center line of the main track of The Baltimore and Ohio Southwestern Railroad, where the same crosses over said

abandoned Ohio Canal, said line being approximately the southerly line of a tract of land conveyed by the State of Ohio to Peter J. Blosser, by deed, dated January 8th, 1915.

Upon examination of this lease which, I assume, is one executed under the authority of the Act of June 7, 1911, 102 O. L. 293 and of Sections 13965 et seq. General Code, I find that the same has been properly executed by you and by Walter W. Boulger, the lessee named therein. Upon examination of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity with the above noted and other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1395.

TAX PAYMENTS—LIABILITY OF COUNTY TREASURER BY REASON OF HIS CREDITING TAX PAYMENTS AS IN PAYMENT OF TAX ITEMS OTHER THAN THOSE FOR WHICH PAYMENT WAS RECEIVED—O. A. G. NO. 4781, 1932, FOLLOWED.

**SYLLABUS:**

*Opinion of the Attorney General (1932 O. A. G. No. 4781) concerning the liability of a county treasurer by reason of his crediting tax payments as in payment of tax items other than those for which the payment was received, discussed, approved and followed.*

COLUMBUS, OHIO, August 14, 1933.

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

DEAR SIR:—I am in receipt of your request that I consider the opinion of my predecessor in office, rendered to the Bureau of Inspection and Supervision of Public Offices under date of December 3, 1932, bearing No. 4781. Along with such request you enclose two briefs which have been submitted to you concerning the liability of an officer for loss of funds coming into his official possession.

Inasmuch as you ask my opinion on the statement of facts submitted to my predecessor, forming the basis of such opinion, it might be well to re-state herein such facts. Such facts, in so far as they are material to the questions of law presented, are as follows:

“Our examiners, in their examination of the Treasury of Cuyahoga county as of December 17, 1931 (report released and filed April 11, 1932), charged that there was a cash deficit of \$475,000.00. This amount consisted of 2416 items of tax paid to the treasurer, as evidenced by his records, prior to the date of the examination, which were not reported to the county auditor as taxes collected, and therefore, not included in the