lands, the following two courses; North 20 degrees, 27 minutes East 73.2 feet and North 10 degrees, 37 minutes East 12.0 feet to the point of beginning, containing 0.43 of an acre."

Upon examination of said lease I find that the same has been executed by the parties thereto in the manner required by law, and that the provisions of said lease are in conformity with Sections 13965, et seq., General Code, and with other statutory enactments relating to leases of this kind.

Said lease is accordingly approved by me as to legality and form, as is evidenced by my endorsed approval upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2838.

DISAPPROVAL, BONDS OF VILLAGE OF COVINGTON, MIAMI COUNTY, OHIO—$4,200.00.

COLUMBUS, OHIO, January 17, 1931.

Industrial Commission, Columbus, Ohio.

2839.

STATE TAXES—TAXES THAT COME WITHIN SUCH DEFINITION DISCUSSED—LANDS OF MIAMI UNIVERSITY NOW HELD BY LESSEES ARE EXEMPT FROM LEVY CREATING COMMON SCHOOL FUND.

SYLLABUS:

1. *The* 2.65 *mill tax levy provided for by Section* 7575, *General Code, is a state tax, within the comprehension of the term "state taxes" as used in the act establishing Miami University* (7 O. L., 184), *by the terms of which act certain lands thereby vested in "The president and trustees of Miami University", were exempted from the payment of "state taxes" so long as said lands remained so vested in said corporation.*

2. *The Auditor of Butler County is not authorized to extend, on the tax duplicate of Butler County, the* 2.65 *mill tax levy provided for school purposes by Section* 7575, *General Code, as against lands vested in the president and trustees of Miami University by virtue of an act of the legislature establishing said university, which lands were by the terms of the act exempted from the payment of "state taxes" so long as they remained vested in said corporation, and the said tax may not be collected from the immediate lessees of said lands.*

COLUMBUS, OHIO, January 17, 1931.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "In Butler County there are several tracts of land known as 'College lands', comprising practically all of Oxford Township, two sections of Milford Township and one-half section of Hanover Township. The income from these lands is paid to Miami University.
>
> Under Section 13 of the Charter of Miami University, a provision is made that when contracts are made with lessees of aforesaid College Lands, the contract must contain the following clause:
>
> 'That the lands appropriated and vested in the corporation * * * "and, also the dwelling house and other buildings which may be built and erected on the lands, shall be exempt from ALL STATE TAXES." '
>
> A number of the lessees of the aforesaid lands have made the complaint to the Auditor of State, that the County Auditor of Butler County levies a tax provided by Section 7575, General Code, of 2.65 mills, school levy on such lands, and that such levy should not be made, as the County Auditor does not levy the state tax for the World War Compensation, nor the state tax for the new State Office Building, against such lands, but insists upon levying the 2.65 mills.
>
> Is the 2.65 mill levy, provided by Section 7575, General Code, a state levy, which would come under the provisions of the exemptions contained in that part of Section 13 of the charter of Miami University, above quoted."

By an act of the Legislature passed February 17, 1809 (7 O. L., 184) there was established and instituted an university within that part of the country known by the name of John Cleves Symmes' purchase, which University was to be designated by the name and style of the Miami University. The president and trustees of the Miami University were thereby created a body politic and corporate by the name of "The president and trustees of the Miami University."

By force of Section 10 of said Act certain lands were vested in said corporation for the sole use, benefit and support of the said University, to be holden by the said corporation, in its corporate capacity. The lands so vested in the said trustees of the Miami University are now included within the townships of Oxford, Milford and Hanover in Butler County, Ohio. Section 13 of the said Act above referred to, provides as follows:

> "BE IT FURTHER ENACTED, That the lands appropriated and vested in the corporation, with the buildings which may be erected thereon for the accommodation of the president, professors and other officers, students and servents of the University, and any buildings appertaining thereto; and also the dwelling house and other buildings which may be built and erected on the lands, shall be exempt from all state taxes."

By later amendment to the said act establishing Miami University, the said trustees were authorized to lease the lands which theretofore had been vested in them for the use and benefit of the University.

Some years before this there had been established by Act of the Legislature (2 O. L., 193) an university in the town of Athens, Ohio to be known as "Ohio University."

Similar provisions were contained in the said act creating Ohio University as in the act creating Miami University with reference to the vesting of the president and trustees of the said university with certain lands, and with reference to the exemption of said lands from all state taxes. Subsequently, thereto, there was enacted an act of the legislature levying a state tax on the said lands. The question of the legality of the state tax so levied, came before the Supreme Court in the case of *Matheny et al* v. *Golden*, Treasurer of Athens County, 5 O. S., 361. It was there held:

> "Where the state, by an act incorporating the Ohio University, vested in that institution two townships of land for the support of the university and instruction of youth, and in the same act authorized the university to lease said lands for ninety-nine years, renewable forever, and provided that lands thus to be leased, should forever thereafter be exempt from all state taxes: HELD, that the acceptance of such leases at a fixed rent or rate of purchase by the lessees, constitutes a binding contract between the state and the lessees.
>
> A subsequent act of the legislature, levying a state tax on such lands, is a 'law impairing the obligation of contracts,' within the purview of the 10th section of the 1st article of the constitution of the United States, and is therefore, pro tanto, null and void."

This case was followed by a similar case relating to the levying of state taxes on lands vested in the trustees of *Miami University*, *Kumler et al* v. *Traber*, Treasurer of Butler County. In this latter case Judge Brinkerhoff said:

> "This case, arising out of a grant to, and a leasing of lands by, the Miami University, resting, as it does, on a similar state of facts and pleadings, and involving the same questions as the preceding case of *Matheny* v. *Golden*, there will be a like decree for complainants." 5 O. S., 442.

In the light of these cases your question resolves itself into a determination of whether or not the 2.65 mills tax levy, commonly known as the State Common School Levy made by Section 7575, of the General Code, is a state tax within the meaning of the term "state taxes" as used in the act creating *Miami University*, above referred to. The term "state taxes", as used in the act creating *Miami University* from which the lands vested in the trustees of said university are exempt, is not in any wise limited, but includes all state taxes, and therefore if the tax levied by force of Section 7575, General Code, is a state tax, it must necessarily be included within the term "state taxes" as used in the act creating Miami University and the lands invested in the trustees of said university by the act above referred to must be held to be exempt from the levy so long as the title to those lands remains in the said trustees. Said Section 7575, General Code, now reads as follows:

> "For the purpose of affording the advantages of a free education to all youth of the state, there shall be levied annually a tax of two and sixty-five hundredths mills, the proceeds of which shall be retained in the several counties for the support of the schools therein. In addition thereto there shall be an 'educational equalization fund' which shall consist of such sums as the General Assembly may appropriate from the general revenue fund."

This section providing for the creation of a state common school fund and the levying of a tax therefor was first enacted in 1873, (70 O. L., 195, Section 126), and read as follows:

> "For the purpose of affording the advantages of a free education to all the youth of this state, the state common school fund shall hereafter consist of such sum as will be produced by the annual levy and assessment of one mill upon the dollar valuation, on the grand list of the taxable property of the state; and there is hereby levied and assessed annually, in addition to the revenues required for general purposes, the said one mill upon the dollar valuation as aforesaid; and the amount so levied and assessed, shall be collected in the same manner as other state taxes, and when so collected shall be annually distributed to the several counties of the state, in proportion to the enumeration of youth of school age, and be applied exclusively to the support of public or common schools."

That the one mill levy authorized by the section of law quoted above is a state tax, is too clear to admit of discussion. The statute providing for the levy and collection of a state tax for common school purposes has been amended a great many times since it was first enacted in 1873. Most of these changes related to the amount of the tax. At times the statute provided that a certain levy should be made, the proceeds of which should constitute a "state common school fund" and an additional tax of a certain amount be levied, the proceeds of which should be retained in the several counties for the support of the schools. At present, it will be observed that the statute makes no provision for the levying of any tax to be credited to the state common school fund but provides that the entire tax so levied shall be retained in the several counties for the support of the schools therein. The pertinent question is whether or not the tax which is to be retained in the counties is a state tax, even though it is general over the state and is levied, by force of the statute, by the legislature, instead of being levied by the taxing authority of the several counties.

This question was discussed to some extent by a former attorney general in an opinion reported in Opinions of the Attorney General for 1920, p. 709, but he did not definitely pass on the question. At that time the statute read as follows:

> "For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied annually a tax of one and eight-tenths mills on the grand list of the taxable property of the state, to be collected as are other state taxes and the proceeds of which shall constitute 'the state common school fund' and an additional tax of one mill the proceeds of which shall be retained in the several counties for the support of the schools therein."

With respect to the latter part of said Section 7575, General Code, as then in force, the Attorney General said that it was not necessary for him at that time to decide whether or not this tax was a state tax. He said, however, in the syllabus of the opinion: "Such levy is a state levy in the same sense that it is made directly by the General Assembly and is mandatory."

The question before the Attorney General at that time was whether or not it was the duty of the State Auditor to give notice to each county auditor of the one mill rate spoken of in Section 7575, General Code, in compliance with Section 5626, General Code. In the course of the opinion, he said:

> "The auditor of state is doubtless perfectly correct in his statement that it would make for confusion to extend the one mill rate on the duplicate in the column denominated 'state taxes,' inasmuch as the proceeds of this levy are not to be settled for with the state auditor but are to be retained in the county. On the other hand, you are correct in your statement that in contemplation of law this levy is a state levy as it is uniform on every dollar's worth of taxable

> property in the state, so that the state is the taxing district though the distribution is by counties. * * *
>
> There is one additional sense in which the levy in question is clearly a state levy, that is, that it is made directly by law. Section 7575 is not a law authorizing the making of tax levies, it is a law making tax levies. The general assembly is the levying body in the same sense in which county commissioners, for example, are the levying body for county taxes. The clerical work of extending the levy must be done by the county auditor in the one case the same as in the other, but the levying power proper is exerted by the legislative body of the state in the one case and by the administrative authority of the county in the other."

Even the purpose of the tax is not a county purpose or a county school district purpose; it is a state purpose. In that sense, of course, all school taxes may be said to be for a state purpose, but local school taxes are levied by local school authorities for the purposes of their respective school districts, whereas this tax is levied by the state, to be distributed by a civil subdivision of the state, or rather retained in the civil subdivisions of the state known as counties, which are not subdivisions devoted strictly to school administration.

For myself, I can see little, if any difference between a levy made by the state for state common school purposes and a levy made by the state, to be retained in the several counties for the support of the schools therein for the purpose of affording the advantages of a free education to all the youth of the state, and I am accordingly of the opinion that this tax is a state tax and that the lands vested in the board of trustees of Miami University by authority of the act of the legislature creating said university and vesting certain lands in the trustees of said university for the use of the university are exempt from the levy of 2.65 mills, provided for by Section 7575, General Code, and that the Auditor of Butler County is not authorized to levy and collect this tax from the lessees of these lands.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2840.

JURISDICTION OF COURTS—WHEN A FEMALE CONTRIBUTES TO THE DELINQUENCY OF A MINOR—WHETHER SUCH VIOLATION CONSTITUTES A FELONY OR MISDEMEANOR—INCARCERATION OF SUCH PRISONER AFTER BEING SENTENCED.

SYLLABUS:

1. A court exercising jurisdiction as a "juvenile court" does not have authority to try and sentence a female charged with a felony and therefore can not lawfully sentence a female to the Ohio Reformatory for Women.

2. Contributing to delinquency of a minor, as defined in Section 1654, *of the General Code, is a misdemeanor and a person found guilty of a violation of its provisions can not lawfully be sentenced to the Ohio Reformatory for Women.*

3. The court of common pleas, by virtue of the provisions of Section 13422-5 *of the General Code, has final jurisdiction in felony cases and may try and sentence a female for a violation of Section* 13008, *which is a felony, to the Ohio Reformatory for Women.*