structures, improvements, and fixtures of whatever kind thereon, and all rights and privileges belonging, or appertaining thereto."

The statutes regulating the sale of delinquent lands for taxes are sections 5713, et seq., General Code. An examination of these sections, as well as previous sections of the General Code, relative to the publication of delinquent land lists, leads to the conclusion that personal property may not be sold for the payment of delinquent real estate taxes. In fact, the opposite is indicated by section 2658, General Code. This section reads as follows:

> "When taxes, *other than those upon real estate specifically as such,* are past due and unpaid, the county treasurer may distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued. He shall immediately advertise in three public places in the township where the property was taken the time and place it will be sold. If the taxes and costs accrued thereon are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much thereof as will pay such taxes and the costs." (Italics the writer's.)

I am herein expressing no opinion upon the question of whether or not the machinery and equipment in question may or may not be sold in order to satisfy an unpaid personal property tax, if the same had been assessed as such.

In view of the above, and in specific answer to your question, it is my opinion that machinery and equipment which have been assessed for taxation purposes as real estate, but which as a matter of law are not fixtures, may not be sold by the state for delinquent real estate taxes.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1597.

LIQUIDATED CLAIM—UNDER H. B. NO. 94 INCLUDES BONDS ISSUED BY SUBDIVISION IN ACCORDANCE WITH UNIFORM BOND ACT WHEN.

SYLLABUS:

The term "liquidated claims" as defined in sub-section (b) of Section 2 of House Bill No. 94 enacted by the 90th General Assembly, includes bonds issued by a subdivision in accordance with the provisions of the Uniform Bond Act, due and payable prior to January 1, 1933 when in the hands of the person to whom originally issued or in the hands of a holder who acquired title thereto prior to January 1, 1933.

COLUMBUS, OHIO, September 21, 1933.

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

GENTLEMEN:—You request my opinion on the following question, which you quote from a village solicitor's letter, as follows:

> "I have a request to the clerk of the Village of Independence that the clerk certify the amount due under a defaulted bond of the municipality, the holder thereof intending after getting such certificate to use the bond in payment of taxes under House Bill No. 94, entitled 'An act providing for the payment of taxes with liquidated claims against subdivisions and to declare an emergency.'
>
> Under the definition of 'liquidated claims', paragraph (b) will be found the following:
>
> 'Any sum of money that was due and payable January 1, 1933, upon a written contractual obligation duly executed between the subdivision and the taxpayer prior to such date.'
>
> A defaulted bond of a municipality falls in this category and it would appear to me probable that the clerk would be required to certify that the amount of the bond and interest is due, and that thereafter the holder of the bond might use the same in payment of taxes.
>
> Question 1. Does the term 'liquidated claims' as defined in subsection (b) of section two of House Bill No. 94, include a bond issued by a subdivision in accordance with the provisions of the Uniform Bond Act?"

Section 1 of House Bill No. 94, enacted by the 90th General Assembly, reads:

> "A taxpayer may, subject to the provisions of this act, use in the payment of his taxes any liquidated claim which such taxpayer or the husband or wife of such taxpayer has against any subdivision which is to derive benefit from the tax collection."

The act, itself, defines what shall constitute a "liquidated claim", within the meaning of this act, as follows:

> "'Liquidated claim' shall mean (a) any sum of money that was due and payable January first, 1933, upon a judgment founded upon a contractual obligation rendered against the subdivision prior to such date by a court of competent jurisdiction and constituting a final order and decree; (b) any sum of money that was due and payable January first, 1933, upon a written contractual obligation duly executed between the subdivision and the taxpayer prior to such date; (c) any sum of money that was due and payable January first, 1933, for poor relief furnished to or in behalf of a subdivision prior to such date, provided that such claim is recognized by a resolution or ordinance of the legislative body of such subdivision, which resolution or ordinance may be passed subsequent to January first, 1933."

The claim referred to in the solicitor's letter is not a sum of money founded on a judgment and could, therefore, not come within the description contained in clause (a) of the above quoted definition; nor is it a claim of the

nature referred to in clause (c) of such definition. For the purposes of this opinion, I am assuming that the defaulted bond is one of the general bonds rather than a mortgage bond of the municipality and am limiting this opinion specifically to a consideration of the question as to whether a bond is an obligation of the nature referred to in clause (b) above quoted.

The term "bond" is not defined in "The Uniform Bond Act" (§§2293-1 et seq. G. C.), which limits and defines the authority to issue, and the characteristics of the so-called "municipal bonds." An examination of such act discloses that the term "bond" is used in such act with the connotation that is usually given it in ordinary commercial usage. In other words, it refers to ordinary negotiable municipal bonds.

Technically, a negotiable bond is a writing *under seal,* binding the obligor to pay to the payee or to his order, or to bearer, a sum certain in money at a definite or determinable future time. However, in Ohio, the effect of a private seal has been nullified by the enactment of Section 32, General Code. It would appear that the effect of a seal attached to such obligation is not sufficient to change its nomenclature from a promissory note to a bond. It would seem that in ordinary business usage a bond is, in legal effect, the same as an ordinary promissory note; it may or may not be more ornate in appearance than a note; it may or may not have interest coupons attached thereto, nevertheless, each of the instruments is executed solely by the obligor or maker and not by the obligee or payee.

The question therefore arises as to whether a bond signed only by the subdivision is "a written obligation duly executed between the subdivision and the taxpayer prior to" January first, 1933.

As stated by Van, J., in *Brown* vs. *Greenwich,* 144 N. Y. 514: "Duly, in legal parlance, means according to law. It does not relate to form merely, but includes form and substance both."

The ordinary meaning of "executed" when applied to written obligations is that such acts are performed, as are required by law to give validity thereto; as signing and delivery. (See Webster's New International Dictionary). Thus, a promissory note or bond may be said to be executed when signed by the maker and delivered with the intent to issue it. A promissory bond might be said to be duly executed when it has been made legal in form, has been validly signed and has been issued. However, your inquiry arises from the fact that there is no requirement of law that the payee sign such instrument in order to give it validity. The only signature required to be affixed thereto is that of the maker.

As above pointed out the execution of a municipal bond contains the following elements on the part of the issuer:

1. Laws authorizing its issuance.
2. A compliance with such laws by the municipality with reference to the issuance and sale of the bonds.
3. The legal signature of the municipality must be affixed.
4. The delivery of the bonds with intent to issue the same with a copy of the transcript of proceedings. (See §2293-30 G. C.) and on the part of the owner, the following elements:
1. He must be the legal purchaser.
2. He must accept the bonds.

A bond, in its nature, is similar to a deed poll. In such deed the grantor only, signs the deed by the acceptance of the delivery of such deed; the grantee assents to its terms and conditions without affixing his signature thereto. *Lloyd*

vs. *Giddings,* 7 Oh. Pt. 2, p. 50. As stated by Birehard, J., in *Tiernan* vs. *Fenmore,* 17 Oh. 545, 552:

> "In a legal sense the word 'execution' implies *signing, sealing and delivering.* It is the delivery which completes the execution and gives validity to a deed."

It might likewise be said that in a legal sense the execution of a bond includes the signing and delivering of the bond; that duly executing means signing and delivering in a manner sufficient in law to amount to an actual issuance of the bond. Such meaning, I believe, is that intended by the legislature in the enactment of the section in question. If such deduction be correct, it would naturally follow that the execution would be between the municipality and the purchaser at the time of issuance.

Another question arises when the person seeking to present the bond as a voucher for the payment of taxes was not the purchaser at the time of issuance, but was a subsequent purchaser. The legislature does not use the language "due upon a written obligation duly executed", but uses the further language as to what legal obligations may be so used *"between the subdivision and the taxpayer."* If it were not for such added language any holder of a bond, by whatever manner he may have acquired the same, might use the bond in payment of his taxes and, if he was not a taxpayer, might sell his bond to a taxpayer who could so use it.

There is a rule of interpretation of statutes that a meaning must be given to all the language of the legislature if possible and that courts have no right to omit language used if possible to give it some effect. *State ex rel. Spira* vs. *Commissioners,* 32 O. App. 382; *Stanton* vs. *Realty Co.,* 117 O. S. 345, 349; *Slingluff* vs. *Weaver,* 119 O. S., 101, 103. Effect must be given to all of the language of a section. The language of a municipal bond payable "to bearer" is not to pay a sum certain in money to the purchaser, but to any person who may become the legal owner of such bond. Likewise, when the bond is payable to a particular person named therein, or his order the contract is not merely between the issuer and the person specifically named therein, but likewise between any person to whom it may legally be endorsed. The statute contains further limitations, that is, the contract must have been executed between the subdivision and the taxpayer prior to January 1, 1933 and the money must have become due and payable prior to such date. It appears to me that when it is held that any person to whom such bond is negotiated prior to January 1, 1933, is a party to the contract (the bond) full effect can be given to all the language contained in such clause. I am therefore of the opinion that:

The term "liquidated claims" as defined in sub-section (b) of Section 2 of House Bill No. 94, enacted by the 90th General Assembly, includes bonds issued by a subdivision in accordance with the provisions of the Uniform Bond Act, due and payable prior to January 1, 1933 when in the hands of the person to whom originally issued or in the hands of a holder who acquired title thereto prior to January 1, 1933.

Respectfully,
JOHN W. BRICKER,
Attorney General.