the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and the Parker Electric Company of Cleveland, Ohio. This contract covers the construction and completion of Contract for Electrical Work for a project known as T. B. Cottage, Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio, in accordance with Item No. 4 of the form of proposal dated April 23, 1935. Said contract calls for an expenditure of five thousand nine hundred and sixty-five dollars ($5,965.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board showing that such board has released funds for this project in accordance with section 1 of House Bill No. 69 of the second special session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the Hartford Accident and Indemnity Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4469.

PUPIL—AFTER SEPTEMBER 5, 1935, DRIVERS OF PUBLIC SCHOOL BUSSES SHOULD BE AT LEAST 21 YEARS OF AGE.

SYLLABUS:

1. *All contracts for the transportation of school children in city, rural and village school districts, whenever made, are subject to the provisions of Section 7731-3 General Code as enacted in House Bill 232 of the 91st General Assembly.*

2. *On and after September 5, 1935 all drivers of conveyances for the transportation of school children to and from public schools or public school functions, should be at least 21 years of age.*

COLUMBUS, OHIO, July 27, 1935.

HON. PAUL T. KLAPP, *Prosecuting Attorney, Troy, Ohio.*

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

> "Will you kindly give me your opinion upon the following statement of facts.
>
> Several of the School Board of Miami County, Ohio, have already entered into contracts with persons in several school districts for the transportation of pupils of said school districts to and from school. In some cases these contracts name as the driver of the bus individuals who have not yet attained the age of 21 years. This provision for the driver is contained and becomes, as I understand it, an essential part of the contract between the Board and the contractor.
>
> General Code Section 7731-3, recently enacted by the Legislature and effective September 5, 1935, provides that no one shall be employed as a driver of a school wagon or motor van unless said driver is at least 21 years of age.
>
> I have been requested by the County Superintendent of Schools to present this matter to you for your opinion as to whether or not these contracts, already entered into, will be affected by the Section of the General Code above referred to."

Section 7731-3 General Code, as enacted in House Bill 232 of the 91st General Assembly, effective September 5, 1935, reads as follows:

> "When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least * * * twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position. * * * The local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for the employment; said board or superintendent shall choose the examining physician; and, said examination shall be the only one necessary for a driver to pass. Any certificate may be revoked by the authority granting the same on proof that the holder thereof has been guilty of improper conduct

> or of neglect of duty and the said driver's contract shall be thereby terminated and rendered null and void."

Section 7731-3 General Code, supra, was enacted by the legislature in pursuance of its general legislative police power and was designed to promote the safety of the transportation of school children, in that the driver of conveyances for the purpose should be qualified as provided therein.

No doubt, prior to the effective date of this statute and perhaps prior to its passage, many contracts for school transportation extending beyond September 5, 1935, have been entered into by boards of education wherein drivers have been employed or the employment of drivers authorized, who were not 21 years old, as the law has not heretofore required them to be that old.

The question, therefore, is presented as to the effect on such contracts of the passage of this statute.

Speaking generally, the inviolability of contracts in so far as they may be affected by subsequent legislation enacted by the legislative authorities of several states, is protected by Section 10 of Article 1 of the Constitution of the United States, which provides that "No State shall * * * pass any * * * law impairing the obligation of contracts".

Police power, however, is something that is inherent in all governments and extends to the protection of the lives, limbs, health, comfort and quiet of all its subjects and the protection of all property within its realm. *Shields* vs. *Ohio,* 95 U. S. 319, 24 Law Ed. 357. An exact definition of police power, though often attempted, is impossible. From its very nature, the police power is something that the legislature can neither contract away nor authorize any agents of the State or any public corporation so to do, and it is even clearer that individuals cannot do collaterally by their private contracts what the government cannot do directly. The corollary of this proposition is that all contracts by whomsoever made, whether by public corporations or individuals, are subject to the police power of the government and may be rendered legally impossible of performence by future legislation enacted in pursuance of police power, without violating the injunction of Section 10 of Article 1 of the Constitution of the United States designed to protect the obligations of contracts from impairment by subsequent legislation. This principle is well stated in the case of *Chicago* vs. *Washingtonian Home,* 289, Ill., 206, 124 N. E. 416, as follows:

> "The police power is the power of the State co-extensive with self protection and has been termed, not inaptly, 'the law of overruling necessity'. Such power is not prohibited by that clause of the Constitution of the United States which forbids the passage of laws impairing the obligations of contracts."

See also *State ex rel* vs *Ins. Co.* 50 O. S. 252; *State ex rel Medical College* vs. *Coleman,* 64 O. S. 377; *State ex rel* vs. *Rendigs,* 98 O. S. 251; *State ex rel* vs. *Savings Co.* 110 O. S. 320.

Considerable difficulty is encountered in the application of this principle, as it is impossible to lay down a definite rule fixing the limits of police power. To quote from the Supreme Court of Indiana in the case of *Champer* vs. *Greencastle,* 138 Indiana, 339, 351; 24 L. R. A. 768:

> "The police power of the State so far, has not received a full and complete definition. It may be said, however, to be the right of the State or State functionary, to prescribe regulations for the good order, peace, health, protection, comfort, convenience and morals of the community which do not encroach on a like power vested in Congress by the Federal Constitution or which do not violate any of the provisions of the organic law. Of this power it may be said that it is known when and where it begins, but not when and where it terminates."

The Supreme Court of the United States in the case of *Noble State Bank* vs. *Haskell,* 219 U. S. 104, 55 Law Ed. 112, stated:

> "With regard to the police power, as elsewhere in law, lines are pricked out by the gradual approach and contact of decisions on the opposite sides."

There would seem to be no room for argument as to the provisions of Section 7731-3 General Code being police regulations, enacted in pursuance of the broad police power of the State and designed for the safety of school children who are being transported to and from school, and the inevitable conclusion must be that contracts made for the transportation of school children extending beyond September 5, 1935, are subject to the provisions of the statute.

In Page on Contracts, Second Edition, Section 2697, it is stated:

> "Impossibility of performance, which is created by a subsequent valid act of domestic law, operates as a discharge of a contract. Subsequent legislation, which impairs the obligations of a contract, is oridinarily unconstitutional. Under the exercise of the police power, however, the legislature may make illegal the performance of contracts already entered into. Such a change of law operates as a discharge of prior contracts, which are those made illegal; since otherwise the law would enforce a penalty against the promisor, if he performed, and award damages against him if he did not."

One of the exceptions to the general rule, that where one contracts absolutely and unequivocably to do something possible to be done, he must make his promise good, is where subsequent impossibility of performance is imposed by law. See Ohio Jurisprudence, Vol. 9, Page 550. In the same volume, page 556 it is stated:

> "Where laws subsequently enacted and which could not reasonably have been contemplated, render the performance thereunder unlawful, the contract is at an end because its performance is forbidden and both parties thereto are released from their obligations."

I am, therefore, of the opinion, in specific answer to your question:

1. All contracts for the transportation of school children in city, rural and village school districts, whenever made, are subject to the provisions of Section 7731-3 General Code as enacted in House Bill 232 of the 91st General Assembly.

2. On and after September 5, 1935 all drivers of conveyances for the transportation of school children to and from public schools or public school functions, should be at least 21 years of age.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4470.

DISAPPROVAL, BONDS OF SALISBURY TOWNSHIP RURAL SCHOOL DISTRICT, MEIGS COUNTY, OHIO, $1,992.00.

COLUMBUS, OHIO, July 27, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—

RE: Bonds of Salisbury Township Rural School District, Meigs County, Ohio, $1,992.00.

I have examined the transcript of the proceedings relating to the above bond issue. These bonds are proposed to be issued under the provisions of House Bill No. 11 of the third special session as amended by Amended House Bill No. 140 of the second special session of the 90th General Assembly. The purpose of this bond issue is to pay the net floating indebtedness of the school district as of July 1, 1934, as certified by the State Auditor. The proceeds, of course, can be used only for paying such indebtedness.