county surveyor, notary public, mayor or justice of the peace, *who shall certify the acknowledgment on the same sheet on which the instrument is written or printed*, and subscribe his name thereto.

You will note that the two copies of Lease No. 1104 are not acknowledged on the same sheet on which the instrument is written or printed. In other words such copies do not comply with the provisions of Section 8510, supra.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2551.

APPROVAL, BONDS OF THE VILLAGE OF WORTHINGTON, FRANKLIN COUNTY—$12,400.00.

COLUMBUS, OHIO, September 6, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2552.

CITIZENSHIP—ADOPTION OUTSIDE OF UNITED STATES BY AMERICAN OF ALIEN MINOR—IS NOT CITIZEN.

SYLLABUS:

An alien minor adopted abroad by a citizen of the United States would not be recognized in Ohio as an American citizen.

COLUMBUS, OHIO, September 7, 1928.

HON. VICTOR F. J. TLACH, *Consul for Austria, 1260 West 4th Street, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion, as follows:

> "The question has been raised whether the State of Ohio would recognize as an American citizen, a child adopted by an American citizen, domiciled in the State of Ohio, but who adopted the child abroad.
>
> The question whether such an adopted child could emigrate to the U. S. A. is already decided to that extent that such a party could not immigrate except by the due process prescribed by the Immigration Law, which provides no preference for a child adopted by an American citizen abroad.
>
> But the question per se is whether the State of Ohio would recognize a child for instance adopted in Vienna by an American citizen."

By the use of the term "American Citizen" in your inquiry, I take it you mean a citizen of the United States of America. The status of persons with respect to their

being citizens of the United States is fixed by Section 1 of Article XIV of Amendments to the Federal Constitution adopted in 1868 and the several acts of Congress enacted in pursuance thereof. Said Section 1 of Article XIV of Amendments to the Federal Constitution reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Prior to the adoption of the 14th Amendment containing the language above quoted, there was a difference of opinion as to whether or not there could be citizenship of the United States independent of citizenship of a constituent state.

Mr. Justice Miller of the United States Supreme Court in rendering the opinion of the court in the Slaughter-house Cases, 83 U. S. 36, commented on this fact on page 72 of the opinion as follows:

> "The 1st section of the 14th article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by Act of Congress. It had been the occasion of much discussion in the courts, by the executive departments and in the public journals. It had been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the States composing the Union."

Thus, upon the adoption of the 14th Amendment to the Federal Constitution, for the first time by either constitutional provision or statutory enactment, recognition is made of United States citizenship and a definition thereof given. Whether such citizenship existed prior to the adoption of this amendment is immaterial. If it had existed prior thereto, the adoption of the amendment changed the origin and character of American citizenship. It at least removed all doubt of its existence thereafter. Instead of a man's being a citizen of one of the states, he was thereby made a citizen of any state in which he might choose to reside because he was antecedently a citizen of the United States. The states are without power to abridge, enlarge or modify the definition of United States citizenship thus fixed by the Constitution of the United States.

Adoption is defined by Webster as the voluntary acceptance of a child of other parents to be the same as one's own child. Legal adoption consists of more than the mere acceptance by one person of a child of another to be the same as his own, but requires in addition thereto a juridical act in accordance with the law of the place of adoption and creates between the person thus adopting a child and the child so adopted, certain relations, purely civil, of paternity and filiation. The procedure for adoption and its effect on the civil rights of the parties is controlled by statute in the several states of the United States and varies in these several jurisdictions.

In no jurisdiction, so far as I am aware, do the statutes assume to control the relationship of an adopted child to the state as such so as to change or affect the citizenship of the child adopted; at least, not in Ohio. In fact, if any attempt were made to do so by statute its only effect would be to fix the citizenship in the state and not the citizenship of the United States. The relationship of the child adopted and the

person so adopting the child, effected by adoption, as provided by the statutes of Ohio, has reference to the paternal and filial relationship between the parties as this relationship bears on rights and obligations of control, maintenance, right of inheritance and similar rights and obligations.

The general rule with reference to foreign adoption is stated in Vol. I of Corpus Juris, page 1402 as follows:

> "Foreign adoption statutes have no extra-territorial effect. But it is generally held that the status created by an adoption in one state will be recognized by the courts of another state, to such extent at least as is not inconsistent with the law and policy of the latter. This general rule is subject, however, to the qualification that the courts of a particular state will not permit a statute of a foreign state to extend any further than the local statute upon the same subject, nor to confer any greater rights, and there is also authority to the effect that where the local statute of adoption confers greater rights than the foreign statute under which the child was adopted, the rights of the child will not be enlarged so as to be commensurate with those conferred by the local statute."

In the only reported decision of a court in Ohio wherein questions growing out of foreign adoption (using the word "foreign" in the sense that one state of the United States is foreign to another) are discussed by the court, is the case of *Simpson* vs. *Simpson,* 9 O. C. C. (N. S.) 137. It was there expressly held that a child adopted in Iowa by a woman who was then domiciled in that state might inherit as her heir her real property in Ohio. The court after explaining the English cases which hold otherwise, pointed out that the policy of Ohio, as indicated by the statutes providing for the adoption of children, is to give such adopted children, even as to their capacity to inherit, substantially the same rights as are possessed by children born in lawful wedlock, and hence the reason which underlies the English rule excluding children legitimated from the benefit of the inheritance laws is inapplicable to the conditions in Ohio.

There has never been a reported decision of any court in Ohio wherein questions growing out of adoption effected in countries foreign to the United States of America, were decided. In my opinion the same reasoning would apply in such cases as was applied by the court in the case of *Simpson* vs. *Simpson,* supra, and that a status created by an adoption consummated in a foreign country will be recognized by the courts of Ohio to such an extent at least as it is not inconsistent with the laws and policies of the state.

Your inquiry is not clear as to whether the child about whom you inquire was born in the United States or abroad, or whether such child was the natural child of parents who were citizens of the United States by reason of nativity or naturalization and who had later gone abroad. In any event, the citizenship of the child will be determined in accordance with the definition of citizenship as contained in the 14th Amendment to the Constitution quoted above and the laws enacted by Congress in pursuance thereto.

If the child was not born in the United States, or is not a citizen of the United States by reason of the nativity or naturalization of its natural parents, it remains to determine whether or not the fact of adoption abroad by native born or naturalized American citizens has the effect of naturalization of the child so adopted.

While the naturalization laws of the United States contain no provision as to the effect of adoption by an American citizen on the status of an alien minor, the

question has on several occasions been the subject of consideration by the State Department, and in each case it was held that citizenship cannot be conferred upon an alien child by adoption.

On February 26, 1870, Secretary Fish held that the only mode of adoption by which a private person can confer citizenship upon an alien is that of marrying a female of foreign birth. Under the present law, however, citizenship cannot be thus conferred by marriage.

Again, in 1872, Secretary Fish held that a citizen of the United States cannot by adopting a child of foreign nativity confer on such child the privileges of citizenship in the United States.

Secretary Frelinghuysen in 1884 expressed the view that a child born of foreign parents is not by an act of adoption under a state law brought within any of the provisions of the laws of the United States prescribing United States citizenship. In this case the act of adoption took place in America.

Secretary Bayard in 1886 declined to grant a passport to a Chinese woman who had been adopted in China by an American citizen and who desired to go to Japan as a medical missionary in the service of an American missionary society. See Moore's Digest of International Law, Vol. 3, pages 484 and 485.

I am therefore of the opinion that an alien minor adopted abroad by a citizen of the United States would not be recognized in Ohio as an American citizen.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2553.

APPROVAL, BONDS OF THE VILLAGE OF RICHMOND, LAKE COUNTY, OHIO—$21,000.00.

COLUMBUS, OHIO, September 7, 1928.

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

2554.

MAYOR—ASSUMING VILLAGE OFFICE AFTER JULY 25, 1927—COUNCIL CANNOT INCREASE COMPENSATION DURING TERM.

SYLLABUS:

A village council is without authority to enact an ordinance attempting to provide for an increase of compensation for a mayor who assumed office subsequent to July 25, 1927, the effective date of House Bill No. 99, which ordinance purports to provide compensation, in the way of a fixed sum and not dependent on conviction, for the trial of each ordinance case and such compensation to be paid in addition to the salary fixed by such council for such office. Such a mayor is without lawful authority to receive such compensation so provided.