

business as a real estate broker. It is specially provided that where a person named in the firm or corporation license shall sever his connection with the licensee and "engage in business on his individual account, or in partnership with another licensee, or another person named in a firm or corporation license," the requirements and privileges provided for cases of change of business location apply and I have heretofore in my previous opinion interpreted this to mean that a new license shall issue without charge on application therefor. This privilege, however, only extends where the applicant (1) engages in business on his individual account, or (2) goes into partnership with another licensee, or another person named in a firm or corporation license. Obviously, the first instance has no application here. As I construe the second instance, it is only applicable where the applicant is going into a partnership either with another licensee or someone theretofore named in a firm or corporation license. Such conclusion negatives the right to have a new license issue without charge and without the ordinary procedure in the case of the formation of a new corporation irrespective of the fact that the members or officers of the corporation may have theretofore been licensed as brokers.

I am accordingly of the opinion that where a partnership composed of three members has heretofore been licensed as a real estate broker and thereafter a corporation is formed by the partners for the purpose of engaging in the real estate brokerage business, the license of the partnership may not be transferred to the new corporation, but application must be made in the ordinary way on behalf of such corporation for a broker's license and the proper fee paid therefor.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1926.

DISAPPROVAL, BONDS OF THE VILLAGE OF NORTH COLLEGE HILL,
HAMILTON COUNTY—\$30,354.48.

COLUMBUS, OHIO, March 31, 1928.

Re: Bonds of the village of North College Hill, Hamilton County—\$30,354.48.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript pertaining to the above bond issue, which is a combined issue, in anticipation of the collection of special assessments on four street improvements, reveals that there was no publication of the notice of filing assessments, as required by Section 3895, General Code.

Section 3895, General Code, provides as follows:

"Before adopting an assessment made as provided in this chapter, the council shall publish notice for three weeks consecutively, in a newspaper of general circulation in the corporation, that such assessment has been made, and that it is on file in the office of the clerk for the inspection and examination of persons interested therein."

In the transcript I find a certificate by the clerk that assessment notices were served on all the property owners abutting on the improvements, with the exception of some twenty-seven persons whose addresses are unknown. The transcript also

contains an affidavit of publication to the effect that a news item, stating that the property owners on the respective improvements would have until October 24th in which to pay cash for street assessments, was published once, in "The Hilltop Weekly," on the 29th of September, 1927.

The provisions of Section 3895, General Code, are mandatory, and unless the same are fully complied with the assessments are, in my opinion, invalid.

In this instance it appears that an attempt was made to serve a notice of the filing of assessments on all property owners personally, but it further appears that some twenty-six or twenty-seven property owners could not be found, and hence were not served. The news item above referred to does not, in my opinion, constitute a notice of the filing of assessments, nor is the publication sufficient in point of time.

For the foregoing reason I am compelled to advise you not to purchase the above issue of bonds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1927.

PARDON—POWER OF GOVERNOR DISCUSSED—DIFFERENCE BETWEEN PARDON AND COMMUTATION—POWER OF OHIO BOARD OF CLEMENCY AFTER COMMUTATION HAS BEEN GRANTED BY GOVERNOR.

SYLLABUS:

1. *By the provisions of Article III, Section 11 of the Constitution of Ohio the Governor has power, after conviction, to grant commutations for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper. While the conditions attached to the granting of a pardon may be either conditions precedent or conditions subsequent, the conditions upon which a commutation may be granted must be conditions precedent. (See Opinion No. 1425, Opinions, Attorney General for 1927, dated December 23, 1927).*

2. *In its legal acceptation, a commutation is a change of punishment from a higher to a lower degree, in the scale of crimes and penalties fixed by the law. As soon as the commutation is made, the new penalty becomes the one fixed by law, and the original penalty cannot be restored.*

3. *Where a commutation or partial pardon has been granted by the Governor to a prisoner convicted of a felony so as to render such prisoner eligible for parole by the Ohio Board of Clemency, upon serving the minimum term provided in such commutation or partial pardon, such person may be paroled by such board the same as though the commuted sentence was originally imposed.*

COLUMBUS, OHIO, April 2, 1928.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

DEAR GOVERNOR:—This will acknowledge your letter dated March 23, 1928, which reads:

"Of late I have commuted minimum sentences of several convicts in the Ohio Penitentiary so as to make them eligible for parole by the Ohio Board of Clemency. In each case the statutory minimum had been served, and the court's minimum was reduced so as to permit early parole.