

1067.

APPROVAL — BONDS OF FRANKLIN COUNTY, OHIO,
\$75,000.00.

COLUMBUS, OHIO, August 26, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

IN RE: Bonds of Franklin County, Ohio, \$75,000.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise part of an issue of "addition to Tuberculosis Hospital Bonds," in the aggregate amount of \$660,000, dated March 15, 1937, bearing interest at the rate of 2½% per annum. Unlimited.

From this examination in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said county.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1068.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, August 26, 1937.

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

GENTLEMEN :

IN RE: Bonds of the City of Cleveland, Cuyahoga County,
Ohio, \$10,000.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise part of an issue of "Park Bonds" in the aggregate amount of \$345,000, dated December 1, 1928, bearing interest at the rate of 4½% per annum. Limited.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1069.

GOVERNMENTAL FUNCTIONS DEFINED — PROPRIETARY
FUNCTIONS DEFINED—SUPREME COURT.

SYLLABUS:

The Supreme Court of Ohio defined and distinguished governmental and proprietary functions of municipalities in the case of Wooster vs. Arbenz, 116 O. S., 281, viz: "In performing those duties which are imposed upon the state as obligations of sovereignty, such as protection from crime or fire, or contagion, or preserving the peace and health of citizens and protecting their property, it is settled that the function is governmental, and if the municipality undertakes the performance of those functions, whether voluntarily or by legislative imposition, the municipality becomes an arm of sovereignty and a governmental agency and is entitled to that immunity from liability which is enjoyed by the state itself. If on the other hand there is no obligation on the part of the municipality to perform them, but it does in fact do so for the comfort and convenience of its citizens, for which the city is directly compensated by levying assessments on property, or when it is directly benefited by growth and prosperity of the city and its inhabitants, and the city has an election to do or omit to do those acts, the function is private and proprietary.

Another familiar test is whether the act is for the common good of all the people of the state or whether it relates to special corporate benefit or profit. In the former class may be mentioned the police, fire and health departments, and in the latter class utilities to supply water, light and public markets."

So long as this opinion of the Court of last resort remains unreversed and unmodified, it must be accepted as the definition of and dis-