3094.

APPROVAL, BONDS OF COLUMBIANA COUNTY—$91,000.00.

COLUMBUS, OHIO, January 4, 1929.

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

3095.

APPROVAL, ARTICLES OF INCORPORATION OF THE AUTO MUTUAL CASUALTY COMPANY.

COLUMBUS, OHIO, January 4, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the Articles of Incorporation of The Auto Mutual Casualty Company with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3096.

INSURANCE—PERSONAL PROPERTY—OHIO RESIDENT CAN CONTRACT FOR POLICY OUTSIDE STATE—CONSTITUTIONAL RIGHT DISCUSSED.

SYLLABUS:

Under the provision of the fourteenth amendment of the Federal Constitution as interpreted in the Allgeyer Case, 165 U. S. 578, a resident of Ohio who bought an automobile in this State and journeyed to New York City and there obtained insurance on his automobile, was not transacting any insurance business in Ohio and was therefore not violating any of the insurance laws of this state in so doing.

COLUMBUS, OHIO, January 5, 1929.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"I am not certain whether it is proper to submit to you a question of a hypothetical nature, but the problem upon which we respectfully request your opinion has to do with the provisions of Sections 644-2 and 5438, General Code of Ohio, relating to non-resident insurance brokers.

A resident of Ohio who has purchased an automobile in this state, journeys to New York City, and there obtains insurance on his automobile. Does the purchase of insurance upon movable property from an insurance agent outside of Ohio, the said property being temporarily located outside of Ohio, conflict with any provision of the law relating to non-resident insurance brokers? Is the counter-signature of an Ohio insurance agent necessary under the law?"

Section 5438, General Code of Ohio, to which you refer, is as follows:

"An insurance company or agent legally authorized to transact insurance business in this state shall not write, place or cause to be written or placed, a policy, renewal of policy or contract for insurance upon property, situated or located in this state, except through a legally authorized agent in this state, who shall countersign all policies so issued and enter the payment of the premium upon his record. The writing, renewal, placing or causing to be written or placed of a policy of insurance, in any other manner or form is a violation of the law providing for the payment of taxes by foreign insurance companies doing business in the State of Ohio, as set out and provided in this chapter. Provided, that any authorized agent of an insurance company duly authorized to transact business in this state may procure the insurance of risks or parts of in other like companies duly authorized to transact business in this state, and may pay a commission thereon to such agent. But such insurance shall be consummated through a duly licensed resident agent only of the company taking the risk. Provided further, that any authorized agent of an insurance company duly authorized to transact business in this state may accept business from such insurance brokers only as duly authorized and licensed as provided in Section 644-2, and such agent may pay a commission thereon to such broker."

Section 644-2, General Code, as amended by the 87th General Assembly, appearing in 112 Ohio Laws, 92, is as follows:

"The superintendent of insurance may upon the payment of ten dollars issue to any suitable natural person resident in any other state, who has been licensed to solicit or place insurance other than life insurance by the proper insurance authority in the state of which said person is a resident, a foreign broker's license to place insurance other than life insurance in this state, with any qualified domestic insurance company in this state, or its agent in this state, or with the licensed agent in this state of any foreign insurance company duly admitted to do business in this state and not otherwise and upon the further following conditions: The applicant for such a license shall file with the superintendent of insurance an application which shall be in writing upon a form to be provided by the superintendent, and shall be executed by the applicant under oath and kept on file by the superintendent of insurance. Such application shall state the name, age, residence, place of business and occupation of the applicant at the time of making application, occupation for the five years next preceding

the date of filing the application, that the applicant has read and is familiar with the insurance laws of this state, and shall state that the applicant intends to hold himself out and carry on business in good faith as an insurance broker, and furnish the information if the applicant has ever been refused a license to transact insurance business in any state of the United States, if the license of the applicant to do insurance business has ever been revoked or suspended in any state of the United States, if the applicant has any direct or indirect financial interest in any insurance agency, agent or solicitor licensed in this state, if the applicant has any direct, indirect, exclusive, special, partial or other interest in or control or management of any agency, agent or solicitor licensed to transact insurance business in this state, and such other information as the superintendent may request, so that the superintendent may determine the trustworthiness, competency and suitability of the applicant to act as an insurance broker as herein provided for. The application shall be accompanied by a certified copy of the insurance license issued to the applicant by the insurance authority of the state in which the applicant is a resident, and a statement upon a blank furnished by the superintendent of insurance as to the trustworthiness and competency of the applicant, signed by at least three reputable citizens of this state who are authorized to engage in the insurance business in this state. If the superintendent of insurance is satisfied that the applicant is trustworthy, competent and suitable according to the provisions hereof and intends to hold himself out and carry on business in good faith as an insurance broker according to the provisions hereof he shall issue the license to the applicant, but no license shall be issued hereunder to any applicant who has any direct or indirect financial interest in any insurance agency, agent or solicitor licensed in this state, nor to any applicant who has any direct, indirect, exclusive, special, partial or other interest in or control or management of any agency, agent or solicitor licensed to transact insurance business in this state. The licensee shall not solicit insurance directly or indirectly in this state or by or through a representative in this state, and is only authorized to place insurance in this state which the licensee has directly procured from the assured outside of this state. The superintendent may at any time after the granting of a broker's license, for cause shown, and after a hearing, determine that the licensee has not complied with the requirements hereof or with the insurance laws of this state, or is not trustworthy or competent, or is not holding himself out and actually carrying on the insurance business as an insurance broker, or is not a suitable person to act as such broker, or has solicited insurance directly or indirectly in this state, or by or through a representative in this state, or has placed insurance in this state which the licensee did not directly procure from an assured outside of this state, and shall thereupon revoke the license of such broker. Such broker's license shall expire on the last day of February next after its issue, unless sooner revoked by the superintendent of insurance."

From the statement contained in your letter, it appears that a resident of Ohio, who had purchased an automobile in this State, journeyed to New York City and there obtained insurance on his automobile. In other words, the transaction, so far as insurance is concerned, took place entirely outside the State of Ohio.

In the case of *Allgeyer et al.* vs. *State of Louisiana*, decided March 1, 1897, by the Supreme Court of the United States, 165 U. S. 578, the head notes read as follows:

1. "Liberty," as used in the provision of the fourteenth amendment to the federal constitution, forbidding the states to deprive any person of life, liberty, or property without due process of law, includes, it seems, not merely the right of a person to be free from physical restraint, but to be free in the enjoyment of all his faculties in all lawful ways: to live and work where he will: to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to carrying out the purposes above mentioned.

2. A state statute which as construed by the highest state court, prohibits a citizen of the state, under an open policy of marine insurance, effected outside the state, in a foreign insurance company which has not complied with the state laws, from sending by mail or telegraph, while in the state, a notice describing particular goods then within the state, upon which he desires the insurance under the open policy to attach (Acts La. 1894, No. 66), operates to deprive such citizen of his liberty without due process of law, in violation of the fourteenth amendment to the federal constitution. 18 South. 904, reversed."

On page 432 Mr. Justice Peckham, in the course of his opinion, used the following language:

"Has not a citizen of a state, under the provisions of the federal constitution above mentioned, a right to contract outside of the state for insurance on his property,—a right of which state legislation cannot deprive him? We are not alluding to acts done within the state by an insurance company or its agents doing business therein, which are in violation of the state statutes. Such acts come within the principle of the Hooper Case, supra, (*Hooper* vs. *State of California,* 155 U. S. 648, 15 Sup. Ct. 217), and would be controlled by it. When we speak of the liberty to contract for insurance or to do an act to effectuate such a contract already existing, we refer to and have in mind the facts of this case, where the contract was made outside the state, and as such was a valid and proper contract. The act done within the limits of the state, under the circumstances of this case and for the purpose therein mentioned, we hold a proper act,—one which the defendants were at liberty to perform, and which the state legislature had no right to prevent, at least with reference to the federal constitution. To deprive the citizens of such a right as herein described without due process of law is illegal. Such a statute as this in question is not due process of law, because it prohibits an act which under the federal constitution the defendant has a right to perform. This does not interfere in any way with the acknowledged right of the state to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the federal constitution."

The mere fact that the citizen may be a resident within the limits of a particular state does not prevent his making a contract outside its limits, while he, himself, remains within it. *Milliken* vs. *Pratt* 125 Mass. 374; *Tilson* vs. *Blair,* 21 Wall. 241.

The instant case is a much stronger case than was the Allgeyer case above mentioned for the reason that the contracting parties, together with the property, were within the jurisdiction of New York when the contract was made. It was therefore a New York contract and not an Ohio contract and no countersigning of the policy in Ohio would be necessary to make it a valid contract.

It is, therefore, my opinion that under the provision of the fourteenth amendment of the Federal Constitution as interpreted in the Allgeyer Case, 165 U. S. 578, a resident of Ohio who bought an automobile in this state and journeyed to New York City and there obtained insurance on his automobile, was not transacting any insurance business in Ohio and was therefore not violating any of the insurance laws of this state in so doing.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3097.

MUNICIPALITY—AIRPORT—LEASE OF LANDS OUTSIDE CORPORATION LIMITS ILLEGAL.

SYLLABUS:

A municipal corporation may not lease lands outside its corporate limits for the purpose of providing a landing field for aircraft.

COLUMBUS, OHIO, January 5, 1929.

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

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

> "Section 3939, General Code, Item 22, as amended, 112 O. L. 379, authorizes municipal corporations to purchase or condemn land within or without the corporation limits for landing field for aircraft, etc.
>
> Section 3615, General Code, authorizes municipal corporations to acquire property by purchase or lease for any municipal purpose authorized by law.
>
> Question: May a municipal corporation lease lands outside of the corporate limits for the purpose of providing landing field for aircraft?"

The General Code of Ohio now contains two statutes specifically dealing with municipal airports. The first is Section 3677, General Code, which, in so far as it is pertinent, reads as follows:

> "APPROPRIATION OF PROPERTY.
>
> * * *
>
> Municipal corporations shall have special power to appropriate, enter upon and hold real estate within their corporate limits. Such power shall be exercised for the purposes, and in the manner provided in this chapter.
>
> * * *
>
> (15) For establishing landing fields either within or without the limits of a municipality for air craft and transportation terminals, with power to impose restrictions on all or any part thereof and leasing such