You further, before accepting a conveyance, should determine that there are no encumbrances of record against said premises granted by the present owners.

The data you submitted is being returned herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4416.

COSMETOLOGY LAW—ASSIGNMENT OF LICENSE FOR BEAUTY SHOP OR SCHOOL OF COSMETOLOGY PROHIBITED.

SYLLABUS:

1. *Since there is no express or implied authority in the Cosmetology Law for the assignment of a beauty shop license or a school of cosmetology license, and inasmuch as such licenses are not property rights, but merely licenses to engage in such business, neither a beauty shop nor a school of cosmetology license may be assigned upon the sale of a beauty shop or school of cosmetology.*

2. *If a person operating a licensed beauty shop or a licensed school of cosmetology moves to a new location during the licensing year, he is not required to obtain a new license, but such person may by rule of the State Board of Cosmetology, be required to obtain the consent of the board to such transfer before operating the beauty shop or school of cosmetology at the new location.*

COLUMBUS, OHIO, July 13, 1935.

State Board of Cosmetology, Wyandotte Building, Columbus, Ohio.

MESDAMES:—I am in receipt of your communication which reads as follows:

"The annual license fee for a school of cosmetology is $100.00. The annual license fee for beauty shop is $5.00.

May we have an opinion from you on the following questions:

1. May a shop license be sold with a shop or is a new owner required to obtain a shop license?

2. If a licensed beauty shop is moved to a new location, is the owner required to apply for another shop license?

3. May a license for a school of cosmetology be sold with the school?"

The pertinent provisions of the Cosmetology Law (Secs. 1082-1 to 1082-23, both inclusive, General Code), are as follows:

Section 1082-3.

"* * * It shall be the duty of the Board to adopt rules for carrying out the provisions of this act, * * * and to adopt such sanitary rules as may be authorized by the State Department of Health, with particular reference to the precaution to be employed to prevent the creating or spreading of infectious or contagious diseases in beauty parlors or schools of cosmetology.

* * * * * * * * *

The Board shall keep a record containing the names and known places of business, and the date and number of license, of every licensed cosmetologist and those engaged in the practice of any branch of cosmetology, together with the names and addresses of all licensed beauty parlors and school of cosmetology. * * *"

Section 1082-16.

"Within 60 days after the appointment of the Board as provided in section 3 of this Act, and annually thereafter during the month of June, every person, firm or corporation conducting or operating or desiring to operate a beauty parlor in which any one, or any combination of the occupations of a cosmetologist are practiced; and every person, firm or corporation conducting or operating or desiring to conduct or operate a school of cosmetology, in which any one, or any combination of the occupations of cotmetologist are taught, shall apply to the board for a license, through the owner, manager or person in charge, in writing upon blanks prepared and furnished by the board. Each application shall contain proof of the particular requisites for license provided for this act and shall be verified by the oath of the maker.

Upon receipt by the board of the application, accompanied by the required fee, the board shall issue to the person, firm or corporation so applying and otherwise qualifying under this act, the required license.

The annual license fee for a school of cosmetology shall be one hundred ($100.00) dollars.

The annual license fee for a beauty parlor shall be five ($5.00) dollars."

Section 1082-17, General Code, lays down certain requirements for a school of cosmetology.

Section 1082-18, General Code, provides:

> "Every holder of a license issued by the board to operate a school of cosmetology or a beauty parlor, or to practice the occupation of a cosmetologist or any branch of cosmetology, shall display said license in a conspicuous place in the principal office, place of business, or place of employment of the said holder.
>
> Every licensed cosmetologist shall within thirty days after changing his or her place of business, as designated on the books of the board, notify the secretary thereof of his or her new place of business, and upon receipt of said notification the secretary shall make the necessary change in the register."

Nowhere in the cosmetology law is there any express or implied authority for the assignment of a beauty shop license or the transfer of a school of cosmetology license.

In Volume 37 of Corpus Juris at page 245, it is stated:

> "Unless a transfer is permitted by the license statute or ordinance, a license is generally regarded as a special privilege of personal trust and confidence which cannot be assigned or transferred without the consent of the licensing authorities, and express provision to this effect is made by some license statutes and ordinances. After a transfer without such consent the license is inoperative; * * *."

It is also stated in Vol. 17, R. C. L., at page 475:

> "A license, being a personal privilege, cannot, as a general rule, be communicated or assigned to another. * * *" (Citing: *Arthur* vs. *Commercial etc., Bank,* 9 Smedes & M. (Miss.) 394, 48 Am. Dec. 719; *Temple* vs. *Summer,* 51 Miss. 13, 24 Am. Rep. 615.)

With reference to liquor licenses, it is stated in Vol. 15, R. C. L., at page 310:

> "A license to sell liquor being a mere personal privilege is generally held not to be assignable or transferable, in the absence of express statutory authority, and then only in the manner and form prescribed. Any other rule would defeat the object of the license laws, for licenses are usually granted only to persons whose personal fitness is established to the satisfaction of the authorities."

(See also *State* vs. *O'Brien,* reported in Ohio State Bar Association Report for the month of June 24, 1935; 130 O. S. 23.)

In the case of *State* vs. *Louisiana Boxing Commission,* 163 La. 418, 112 So. 31, it was held that a license, issued to conduct boxing and sparring matches, was neither a contract nor property, nor a vested or property right, but only a privilege to carry on the particular business, which, without a license, would be unlawful. It was stated at page 32 of the Southern Report:

> "There is no force in relator's contention that the license which he received from the Commission constituted a franchise. The sole object of the statute is to authorize and regulate the business specified therein. * * * It is merely a permit or privilege to carry on the particular business specified in the statute. * * *"

It was held in *Munsell* vs. *Temple,* 8 Ill. (3 Gilman) 93, that a license issued by the commissioner's court to keep a grocery was not transferable.

In *Lewis* vs. *United States,* Morris, Vol. I, Morris' Iowa Reports, page 199, it was also held that a license to operate a grocery was not assignable.

In the case of *Burch* vs. *City of Ocilla,* 5 Ga. App. 65, 62 S. E. 665, it was held that a license granted by a municipality to sell soda water and cold drinks could not be transferred without the municipality's consent.

From the foregoing authorities, it is my opinion that since there is no express or implied authority in the Cosmetology Law for the assignment of a beauty shop license or a school of cosmetology license, and inasmuch as such licenses are not property rights but merely licenses to engage in such business, neither a beauty shop nor a school of cosmetology license may be assigned upon the sale of a beauty shop or school of cosmetology.

However, with respect to your second question, I call your attention to the case of *Drew* vs. *City of Mt. Hope,* 171 S. E., 743 (W. Va.), wherein it was stated that a person licensed to operate a restaurant and sell drinks and tobacco products could transfer such licenses to a new place of business in another building from that occupied at the time of obtaining said licenses. In this particular case the licensee had surrendered his lease and moved some one hundred feet down the street from the former location.

Beauty shop owners and cosmetology school owners frequently move to new locations, either because of expansion of their business or because of obtaining a more favorable site, or, in some cases, being forced to move because of the expiration of their leases. Considering the amount of yearly license fees for such businesses, much difficulty would be encountered by such owners if they were compelled to obtain new licenses. However, on the other hand, a new inspection would be necessary in order to ascertain whether or not the

new shop or new school of cosmetology was in proper sanitary condition. Consequently, in my opinion, by virtue of Section 1082-3, supra, giving the State Board of Cosmetology the power "to adopt rules for carrying out the provisions of this act", the board may require by rule that its consent be obtained for such transfer.

In specific answer to your second question it is my opinion that if a person operating a licensed beauty shop or licensed school of cosmetology moves during the licensing year to a new location, he is not required to obtain a new license, but such person may by rule of the State Board of Cosmetology, be required to obtain the consent of the board to such transfer before operating the beauty shop or school of cosmetology at the new location.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4417.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, $9,000.00.

COLUMBUS, OHIO, July 13, 1935.

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

4418.

TAX AND TAXATION—PROCEEDS OF MOTOR VEHICLE FUEL TAX MAY BE CONSIDERED "IN PROCESS OF COLLECTION" BY COUNTY AUDITOR WHEN (O. A. G. 1931, VOL. II, P. 871 OVERRULED).

SYLLABUS:

After the twentieth of each calendar month which is the last day for the filing of dealers' reports required by Sections 5529 and 5529-1, General Code, a county's share of the proceeds of taxes levied upon the use, distribution or sale of motor vehicle fuel for the next preceding month may lawfully be considered by the auditor of such county as being "in process of collection" as that term is used in Section 5625-33, General Code. (Opinions of Attorney General for 1931, Vol. II, page 871, overruled).