Works, acting for and in the name of the State of Ohio. Save for the erroneous recital above referred to, this lease is in proper form so far as its provisions go, although as to this it is noted that there is no provision in the lease requiring said lessor to furnish light, heat or janitor service in and on said premises. Assuming that these services on the part of the lessor are desired by the lessee for the use for which said premises are intended, it is suggested that provisions to this end be incorporated in the lease. Otherwise the lease is approved as to execution and form.

Contract encumbrance record No. 10, which accompanies this lease, is for the sum of $30.00 and covers the rental on this property from the effective date thereof on March 15, 1937, to April 30, 1937. This contract encumbrance record has been properly executed and is in proper form.

Subject to the exceptions above noted, the lease is approved and the same, together with said contract encumbrance record, is herewith returned.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

372.

MILEAGE—MEMBERS OF GENERAL ASSEMBLY—COMPENSATION RATE FIXED AT $.03 PER MILE—COMPENSATION CANNOT BE CHANGED.

SYLLABUS:

1. *Mileage of the members of the present General Assembly is properly based upon the passenger rate fixed by the Interstate Commerce Commission February* 28, 1936, *namely* 2 *cents per mile for coach travel and* 3 *cents per mile for pullman car travel, but inasmuch as it is not only impracticable but impossible to apply both rates, and it being conceded that mileage is in fact and law compensation and not expense, it is my opinion that* 3 *cents per mile is a proper and legal standard for such mileage.*

2. *The mileage provided for in Amended Section* 50, *General Code of Ohio, is neither an allowance nor a perquisite, but is a constitutent part of the member's compensation as contemplated by Section* 31 *of Article II of the Constitution of Ohio, which shall not be changed during the term of the member.*

COLUMBUS, OHIO, March 31, 1937.

HON. DWIGHT L. MITCHETTE, *Clerk of the Senate, Columbus, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

> "House Bill No. 291 enacted by the 91st General Assembly of Ohio provided for increases in salary for the members of the General Assembly which amended Secs. 50 and 2248 of the General Code.
>
> Possing over the first paragraph of Sec. 50, I desire to call your attention to the second paragraph which relates to the rate of railroad transportation for mileage once a week during the session for the members of the General Assembly. Prior to the enactment of this Act the mileage rate was fixed at .036. On February 28, 1936, the Interstate Commerce Commission, under order No. 26550, handed down a decision relative to passenger fares and surcharges, item 1 of which reads as follows:
>
> 'The regular basic passenger-fare structure by railroads throughout the country found to be unreasonable. Reasonable maximum future fare basis of 2 cents per passenger mile in coaches and 3 cents per passenger miles in Pullmans prescribed.'
>
> Will you kindly render an opinion to me, as Clerk of the Ohio Senate, as to which of the two charges I will be permitted to pay the members of the Senate, and which ruling will undoubtedly govern the Clerk of the House of Representatives in compiling mileage at the end of the present session of the 92nd General Assembly.
>
> It is my understanding that notwithstanding the fact that this decision was rendered on February 28, 1936, the former Attorney General, Hon. John W. Bricker, handed down an informal opinion to the Hon. Joseph T. Tracy, then Auditor of State, that under the constitutional provision no salary or emolument to any member of the General Assembly could be changed during their term of office and the .036 rate should prevail; hence that rate was paid up to December 31, 1936.
>
> I am enclosing with this letter a copy of the Interstate Commerce Commission's decision as of February 28, 1936, together with a copy of the Act created by H. B. No. 291, same to be found on page 419 of the 116 Ohio Laws—regular session."

The scope of your inquiry is decidedly limited, Sections 2 and 31 of the Constitution of Ohio and Amended Section 50, General Code encompassing all the law involved, which I quote:

Section 2, Art. II, Constitution of Ohio, viz:

> "Senators and representatives shall be elected biennally by the electors of the respective counties or districts, on the first Tuesday after the first Monday in November; their term of office shall commence on the first day of January next thereafter, and continue two years."

Section 31, Art. II, Constitution of Ohio, provides:

> "The members and officers of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office."

Amended Section 50, General Code, in so far as it is applicable to the question here, reads as follows:

> "Each member shall receive the legal rate of railroad transportation each way for mileage once a week during the session from and to his place of residence, by the most direct route of public travel to and from the seat of government, to be paid at the end of each regular or special session."

This office has held on different occasions that mileage is not an allowance or a perquisite, but is a part of the compensation of a member as contemplated by the Constitution of Ohio. It is a fixed compensation and shall not be changed during the term of the member. I see no reason for departing from the law as declared in the former opinions. You acted in accordance with the law in paying the members who were elected in 1934 their mileage at the rate of $.036 up to December 31, 1936.

Amended Section 50, General Code, provides that the legal rate of railroad transportation shall be allowed. This provision applies to members elected in 1936. The General Assembly could have fixed a flat rate per mile but it did not. It was content to use the words "legal rate of railroad transportation" and inasmuch as the Interstate Commerce Commission is authorized to fix passenger rates for railroads engaged in interstate commerce, and all railroads in Ohio, so far as I know, being engaged in interstate commerce to some extent, you exercised sound judgment in adopting the rate fixed by it in determining the mileage payable to members. I find

that on February 28, 1936, the Interstate Commerce Commission made the following order:

> "The regular basic passenger fare structure by railroads throughout the country is found to be unreasonable. Reasonable maximum future fare basis of 2 cents per passenger mile in coaches and 3 cents per passenger mile in Pullmans is prescribed."

This is the gauge upon which the mileage of the members of the present General Assembly must be fixed, and they will continue to draw such mileage until the end of their respective terms. The trouble arises when it is undertaken to apply the gauge. The United States pays mileage to members of Congress and delegates under virtue of Section 43 U. S. C. A., which provides as follows:

> "Each Senator, Representative and Delegate shall receive mileage at the rate of twenty cents per mile to be estimated by the nearest route usually travelled in going to and returning from each regular session."

Had the General Assembly walked in the footsteps of the federal government in the enactment of Amended Section 50, General Code, all necessity for statutory interpretations would have been obviated, but it did not see fit so to do and we must take the law as we find it.

It would seem that the dictates of common sense would require that resort be had to the cost of transportation in fixing the mileage rate, but when we remember that mileage is allowed as compensation and not as expense of travel, and when we observe that the federal government allows twenty cents per mile, such resort is not at all necessary. It is a matter of common knowledge that it would be utterly impossible to honestly expend 20 cents per mile on individual railway travel in this United States.

Many members of the General Assembly do not travel by rail at all, using their own motor vehicles instead. If these same members traveled by rail, their actual traveling expenses would be enormous—but we take expense out of the picture.

If we undertake to apply the order of the Interstate Commerce Commisison we are confronted with the expense phase, namely, 2 cents per mile for coach travel and 3 cents per mile for pullman travel, which, as has hereinbefore been said, furnishes no basis at all, but in the preparation of vouchers and warrants some fixed amount must be arrived at.

Three cents per mile is perfectly legal under the order of the

Interstate Commerce Commission, and inasmuch as the federal government pays its members of Congress 20 cents per mile and the 3 cent standard is six-tenths of a cent less than that drawn by the members of the General Assembly, next preceding this one, it is my opinion that 3 cents per mile is a proper and legal standard for such mileage.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

373.

APPROVAL, CORRECTED WARRANTY DEED, CONTACT EMCUMBRANCE RECORD, ETC.—LAUREL TOWNSHIP, HOCKING COUNTY, OHIO.

COLUMBUS, OHIO, April 1, 1937.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you sumbit for my examination and approval an abstract of title, warranty deed, contract encumbrance Record No. 42 and other files relating to the proposed purchase by the Board of Control of the Ohio Agricultural Experiment Station for the use of the Forestry Division of said department of a tract of land which is owned of record by Lulu Lloyd, Myrtle Wright and Belle Devol in Laurel Township, Hocking County, Ohio, which tract of land is more particularly described as being Fractional Lot No. 3 in Section No. 30, Township No. 12, Range No. 18, containing 46 acres, more or less.

On examination of the abstract of title submitted to me, which abstract is certified by the abstracter under date of February 17, 1937, I find that said Lulu Lloyd, Myrtle Wright and Belle Devol, as tenants in common and as sole heirs of Anthony M. Sweazy, deceased, have a good merchantable fee simple title to the above described tract of land and that the same is free and clear of all encumbrances except certain delinquent taxes on the property in the amount of $28.04 and taxes for the year 1936 amounting to the sum of $1.76. These taxes, delinquent and current, aggregating in amount the sum of $29.80, are unpaid and are a lien upon the property..

The warranty deed which has been tendered to the state by said Lulu Lloyd, Myrtle Wright and Belle Devol has been properly