authorized officers of The Pennsylvania Railroad Company, this lease is approved by me as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5750.

PARKING METERS—MUNICIPALITY MAY LEGALLY INSTALL SAME—MAY NOT BE PURCHASED ON INSTALLMENT PLAN, PAYABLE FROM RECEIPTS OF SAME—MAY NOT BE PAID FOR FROM GASOLINE TAX FUND.

SYLLABUS:

1. A municipality may legally purchase and install parking meters along the curb lines of a street for the purpose of regulating and controlling the parking of automobiles on such street, and may require that the person parking his automobile at designated places on such street pay a fee which is reasonably commensurate with the cost of enforcing such parking ordinance.

2. A municipality may not legally enter into an arrangement with a manufacturer whereby the manufacturer installs the parking meters, allowing the municipality a percentage of the revenue therefrom, and retains the balance until the total cost of the meters has been earned, at which time the title to the meters is transferred to the municipality.

3. A municipality may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purchase and installation of such parking meters.

COLUMBUS, OHIO, June 26, 1936.

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:

> "We have been requested to submit questions to you relative to the legal authority of municipal corporations to install meters along the curbs for the purpose of traffic regulation and parking control of automobiles. We are inclosing for your information a pamphlet describing the meters manufactured by one concern.

Question 1. Do municipal corporations have the legal authority to purchase and install such devices along the curb lines of streets?

Question 2. If a municipal corporation has the legal authority to install such devices, could the following method of acquiring same be used: the manufacturer installs the meters, allowing the municipality a percentage of the earnings and retaining a percentage until the total cost of installation has been earned, then giving title to the municipality?

Question 3. If your answer to the first question is in the affirmative, could the purchase and installation cost of such devices be paid from the motor vehicle license or gasoline tax funds?"

An examination of the pamphlet that you enclosed, as well as an independent investigation, discloses that the meters are intended as a traffic regulation and to assist in the regulation of parking. The ordinances regulating the length of time that a person may park at designated places will continue in full force and effect. Council will designate the length of time for parking but will require by ordinance that the person parking insert a nickel (this amount may vary but all the ordinances that have been examined provide for this amount) in a meter placed at the curbing for that purpose. When a person parks his car at a certain place, which, by way of example, will limit parking to thirty minutes, he will insert the proper coin in a meter which will start the meter running, and the meter will stop running at the end of thirty minutes. If a car should be parked at this place without the meter running, it will constitute a violation of the traffic ordinance. No doubt a person might insert another coin at the end of thirty minutes which would start the meter running again. This, of course, would be a violation of the ordinance and it might be difficult to determine such violation but this would be purely a question of enforcement and would not affect the legality of the ordinance. No doubt favorable comment could be made for the use of such meters. On the other hand, certain objections might be urged against the installation of such meters. However, the wisdom of installing these meters is not for this office to question if the same may be legally installed. It must also be borne in mind that if a municipal council has legal authority to enact an ordinance, it is not within the province of the courts to substitute their judgment for that of the legislative body.

It should be borne in mind that a rapid advancement in the mode of travel in recent years and the great number of people who have caught step with this forward move and joined in the procession, have brought forth for solution one of the greatest questions of the age, to-wit, the traffic problem.

Timely is the statement by Mr. Justice McReynolds in a separate opinion in *Frost* v. *Railroad Commission of California,* 271 U. S., 583, 70 Law Ed., 1101:

> "The states are now struggling with new and enormously difficult problems incident to the growth of automobile traffic, and we should carefully refrain from interference unless and until there is some real, direct and material infraction of rights guaranteed by the federal constitution."

At the outset it is apparent that this question is for the first time presented in Ohio and consequently there are no authorities in Ohio directly on the question. A number of cities in the southwest have installed these meters but after an extensive research, I am unable to find any reported case covering this exact question. In approaching this question, there is one fundamental principle that should be kept clearly in mind at all time,—*streets are dedicated primarily for the purpose of public travel and not for parking purposes.* When the correctness of this proposition is clearly established, the question becomes comparatively simple. The following two provisions of the Ohio Constitution should be quoted at the outset. Article I, Section 19, reads in part as follows:

> Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money: * * *"

Article XVIII, Section 3, reads as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

It is well settled that a municipality has the right to limit the time that a certain street or streets may be used for parking. It is likewise well settled that a municipality in the exercise of its police power, may prohibit parking entirely on a certain street or streets. Too often it is thought that inasmuch as the streets belong to the city for the use of the public, anyone has the right to park his car thereon without being subject to any conditions whatsoever. This is entirely erroneous. The moment

one ceases to use a street for the primary purpose for which it was dedicated and attempts to use it for some other purpose, he can only use it for such other purpose on such terms and conditions as are imposed by the ordinance permitting such use.

In the case of *Murphy* v. *City of Toledo,* 108 O. S., 342, it was held, as disclosed by the syllabus:

> "1. Municipalities have full power to regulate or control the use of their own streets.
>
> 2. In such control or regulation a municipality may make any reasonable classification of vehicular traffic in the use of its streets.
>
> 3. The judgment of a legislative body as to a reasonable classification cannot be questioned, except when it is in clear conflict with some express provisions of state or federal constitution."

In the case of *City of Stillwater* v. *Lovell,* 159 Okla., 215, 15 Pac. (2nd), 12, the law is stated in the syllabus as follows:

> "The primary and paramount object in establishing and maintaining streets and highways is for the purpose of public travel, and the public and individuals cannot be rightfully deprived of such use nor can the rights of the public therein be encroached upon by private individuals or corporations even with the consent of the municipality. 13 R. C. L., 251, Highways, Section 208."

In *Wonewoc* v. *Taubert* (Wis.), 233 N. W., 755, 72 A. L. R., 224, the court in discussing a parking ordinance which prohibited the parking of automobiles except in the center of a street, said:

> "* * * The parking ordinance is clearly a police regulation, and we have no hesitation in holding that such power may be implied from the statutory authority given. It is the settled law of this state that villages not only have such powers as are expressly conferred upon them but all such powers as are necessarily implied from the powers conferred. * * *
>
> In Volume I, Cyclopedia of Automobile Law, 178, it is said: 'Under the powers, generally conferred upon municipalities to regulate the use of their streets to the end that they may secure to the inhabitants and the general public a convenient and unobstructed use and enjoyment of its (their) thoroughfares for their

appropriate purpose, it is held without dissent that they may prohibit or restrict the right of parking or standing motor vehicles in the street, subject to constitutional restrictions as to class legislation.'

Under the express and implied authority conferred upon villages, we entertain no doubt that the village of Wonewoc had authority to enact a reasonable ordinance relating to the parking of cars on its main business street. * * *

The term 'parking' as applied to automobiles and automobile traffic has a well defined meaning, understood by all automobile drivers to mean not only the voluntary act of leaving a car on the highway though occupied and attended for a length of time inconsistent with the reasonable use of a street, considering the primary purpose for which streets exist. Streets exist primarily for the purpose of travel. As was said in Park Hotel Co. v. Ketchum, 184 Wis., 182, 183, 199 N. W., 219, 33 A. L. R., 351: 'The streets are dedicated for the primary purpose of travel. They are for the use of all, "upon equal terms, for any purpose consistent with the object for which (they) are established; subject, of course, to such valid regulations as may be prescribed by the constituted authorities for the public convenience; this to the end that, as far as possible, the rights of all may be conserved without undue discrimination." Donovan v. Pennsylvania Co., 199 U. S., 279, at page 303, 26 S. Ct., 91, 98, 50 L. Ed., 192.'

Use of the streets for the purpose of travel incidentally and as a matter of course includes the right to stop at the curb for the purpose of taking in or letting out passengers or occupants of the car or for the purpose of loading or unloading merchandise or products. This use of the street is an incident of public travel, and is in no sense 'parking.' No village has authority to prohibit such reasonable stopping of cars at the curb of its streets for the purposes above mentioned. When, however, a car is stopped at the curb of a street where parking is prohibited for a length of time greater than is reasonably required for purposes incidental to public travel hereinbefore mentioned, it then becomes a 'parking' of the car and within the prohibitions of a no parking ordinance. For one to claim that he has the right, as an incident of public travel and as an incident of the free use of a street, to stop his car for such length of time as suits his own pleasure or convenience in a no parking area is so unreasonable as to merit no serious consideration. * * *"

"* * * Defendant's third contention, that the ordinance is

> void because discriminatory, in that it does not apply to all vehicles, is not in our opinion sound. Automobiles are employed in this day and age, at least in the summer time in this state, as the most universal means of travel. * * * To say that municipal authorities may not regulate them by ordinance, not inconsistent with the Constitution and laws of the United States or of this state, as they shall deem expedient, without including in the same ordinance every other kind of vehicle and without applying the same rules to vehicles other than automobiles, seems to us not worthy of serious consideration. * * *"

The leading case on this particular point is that of *Pugh* v. *Crawford,* 176 Iowa, 593, 156 N. W., 892, 1917F, L. R. A., 345, wherein the court in an exhaustive opinion held that, "The primary use or purpose for which streets are established is to afford the general traveling public a way of passage or travel." The syllabus of that case reads as follows:

> "1. Statutory authority to control the streets, keep them free from nuisance, and regulate the driving of vehicles thereon, empowers a municipal corporation, where the statute declares the obstruction of streets to be a nuisance, to forbid the parking of automobiles on streets in congested districts.
>
> "2. An individual has no right to permit his automobile to stand in a public highway for an unreasonable time.
>
> "3. A municipal corporation is not deprived of authority to prohibit the parking of automobiles on its congested streets by the fact that the legislature has made it unlawful to permit them to stand near corners, hydrants, or the entrance to theatres, or with machinery running, and has forbidden municipalities to exclude them from the free use of highways."

In the case of Ex Parte Corvey (Mo.) 287, S. W. 879, a part of the syllabus is as follows:

> "City ordinance, forbidding parking of vehicles in certain districts bounded by named streets, held not invalid as attempting to regulate parking on private property, in view of general ordinance defining parking."
>
> " 'Parking', when applied to traffic of automobiles or vehicles, means to permit such vehicle to remain standing on public highway or street."

See also the following cases: *Peoples Transit Co.* v. *Henshaw,* 20 Fed. (2nd) 87; *Commonwealth* v. *Kingbury* (Mass.) 85 N. E. 848; *Norman*

Milling Co. v. *Bethuren,* 41 Okla. 735, 139 Pac. 830; *Westlake* v. *Cole,* 115 Okla. 109, 241 Pac. 809; *Wood* v. *City of Chickasha,* 125 Okla. 212, 257 Pac. 286; *Pallace Garage* v. *Okla. City,* 131 Okla. 122, 268 Pac. 240; *McGuire* v. *Wilkerson,* 22 Okla. Crim. 36, 209 Pac. 445; *Park Hotel Co.* v. *Ketchum* (Wis.), 199 N. W., 219.

A further question presents itself, namely: Assuming that a municipality may legally install such meters, may the municipality collect a fee by requiring the person to put the coin in the meter? It would seem that if parking is a privilege which a municipality may permit or restrict, or refuse, the municipality may lawfully condition the enjoyment of the privilege on payment, by those who elect to enjoy the privilege, of the expense caused by the enjoyment of the privilege, including the cost of supervision and enforcement of regulations reasonably necessary to effectuate the regulations.

In the case of *Jackson* v. *Copelan,* 50 O. App. 414, it was held, as disclosed by the third and fourth branches of the syllabus:

> "3. A city ordinance providing for the impounding of vehicles parked in violation of municipal regulations is constitutional, and a city may retain possession of a vehicle thus impounded until service charges imposed by ordinance are paid.
> 4. Such service charges thus fixed by ordinance will be presumed reasonable until the contrary is shown."

The ordinance in the above case required the payment of a $5.00 fee.

In the case of *Steiner* v. *City of New Orleans* (La.) 136 So., 596, the court upheld an ordinance requiring the payment of a fee of $3.00 to obtain the release of an automobile removed from a public street by the police where it was parked overtime.

In the case of *Noble State Bank* v. *Haskell, 22* Okla. 48, 97 Pac. 590, the court sustained a law requiring contribution by various state banks to a fund to be known as "The bank guaranty fund".

The Supreme Court of the United States in 219 U. S. 104, 55 Law Ed. 112 sustained the bank guaranty law and held that the power and authority to regulate authorizes the collection of such fees as the law provided and even held that the power to regulate carried the power to prohibit.

In *Northwestern Union Packet* v. *City of St. Louis,* 100 U. S. 423, 25 Law Ed. 688, the Supreme Court sustained an ordinance of the city of St. Louis requiring a wharfage fee of all boats landing at the improved wharf. The court sustained the ordinance because there was nothing to show that the fees were exacted to increase the general rev-

enue of the city, but were collected for the purpose of meeting the expense reasonably necessary to meet its outlay in maintaining this wharf in such condition as the business in that locality required.

In *Cincinnati Packet Co.* v. *Catlettsburg,* 105 U. S. 559, 26 Law Ed. 1169, the court sustained an ordinance which required vessels to land at certain places and to pay certain fees therefor. The court said that there was nothing to show that the amount collected was unreasonable or that it was more than was necessary to keep the wharf in good condition and to pay the wharfmaster.

In the case of *Oxford* v. *Love,* 250 U. S. 603, 63 Law Ed. 1165 the court sustained a Mississippi statute requiring banks to pay the expense of their examinations. The syllabus of the case is as follows:

> "The obligation of the state's undertaking in a special act incorporating a bank, that 'the business of said bank shall be confined to and controlled by its stockholders under such rules of laws and regulations as said company may see fit to adopt, provided the same be not in conflict with the Constitution of the United States or of this state," was not unconstitutionally impaired by the subsequent enactment of legislation providing for reasonable examinations and reports by duly authorized officers of the state banking department created by such legislation, and for the enforced annual contribution to the expenses of such department of 1/40 of 1 per cent of the bank's total assets."

In the case of *Wadsmans Oil Company* v. *Tracy* (Wis.) 123, N. W. 785, the court sustained a fee charged for the inspection of gasoline, and the fee was to be paid by the person desiring to sell the product.

In *Wisconsin Telephone Company* v. *Public Service Commission of Wisconsin,* (Wis.) 240 N. W. 411, the court sustained a law compelling public utilities to bear the expense of the public service commission.

In *People of New York* v. *Squire,* 145 U. S. 145, 36 Law Ed. 686, the Supreme Court sustained an ordinance of the city of New York requiring an electric company desiring to lay cables in the street to pay the salary of the subway commission having charge of that particular work.

In *Gant* v. *Oklahoma City,* 289 U. S. 98, 77 Law Ed. 1058, the Supreme Court of the United States sustained an ordinance of Oklahoma City requiring the owner of an oil and gas lease on property within the corporate limits to post a $200,000.00 bond and pay a permit fee of One Thousand Dollars to the city as a condition precedent to the drilling of an oil well in the city.

In *Burns* v. *City of Enid,* 92 Oklahoma, 67, 217 Pac. 1038, the court had before it an ordinance which allowed the city to contract with

a scavenger to take and remove from within the city all refuse and deleterious substance, and to charge the various property owners a fee therefor. Some of the citizens of Enid took the position that the ordinance was illegal because it created a monopoly and that it was an unlawful restraint of trade because it prohibited private individuals from contracting with whom they please for the removal of such substance. This ordinance even prevented private individuals from cleaning their own premises and thereby avoided the necessity of having to pay a fee or charge to the scavenger. In other words, the city forced the service upon the people and made them pay for it. The Supreme Court of Oklahoma held the city ordinance valid and that the city not only had the right to abate a nuisance but had the right to take such steps as were reasonably necessary to prevent a nuisance.

An ordinance providing for parking meters is not nearly so drastic as the ordinance just discussed because no one is bound to do parking where parking meters are located. A person can do as he chooses and, of course, if he chooses not to park at such places, he is not required to pay any regulatory charge, but in the Enid case, supra, the service was forced upon the people and they were forced to pay for it.

In *Tacoma Safety Deposit Company* v. *City of Chicago* (Ill.) 93 N. E. 153, the Supreme Court of Illinois sustained an ordinance requiring abutting owners on streets to pay certain annual fees for permits to construct vaults under the streets where the city owned a fee to the streets. In discussing the question, the court said:

> "The contention is made by the complainant that the city is without power to pass an ordinance requiring persons who use subways beneath sidewalks adjoining their property to pay compensation for the use of such space. The position of the complainant, we think, is well founded as to subways beneath the sidewalks in streets of which such persons are the owners in fee; but as to subways beneath sidewalks in streets in which the fee is in the city or in the state, and which are held for the use of the city, we do not think this is true. In the Gregsten Case and in the Norton Milling Co. case the right of the city of Chicago to confer, by contract, upon a private individual or corporation the right to use space beneath the public streets of the city was recognized. If the city has the power to contract for the use of space beneath the public streets of the city, we see no reason why it cannot provide for such use, and regulate the manner of such use, and the compensation that shall be paid for such use, by ordinance, in those streets in which it holds the fee, subject at all times to the right to reclaim the portion of the

street then in use when the necessities of the public may require. In the Gregsten Case it was held a city, under special legislative authority, as well as its general powers, may grant permits for and regulate the building of vaults under the streets, alleys and sidewalks, *and require such compensation for the privilege as it may deem reasonable and just,* when such permits relate solely to use of the alleys, etc., as is in no wise inconsistent with their use by the public * * *"

In *City of New Orleans* v. *Shuler* (La.) 73 So. 715, the court sustained an ordinance requiring a fee for use of part of a sidewalk for a filling station.

The courts in sustaining the laws and the ordinances in the above cases, had to go, in the most of them, far beyond what is necessary in the instant case. There is no such question as leasing a street or sidewalk in this inquiry. The only question is, can a person desiring to use a street for parking purposes, instead of for travel, which is the primary purpose of a street, be required to pay a regulatory fee? Certainly in the exercise of the police power, a municipality has the right to impose on those who enjoy the privilege of parking, the cost of providing the privilege, and the cost of supervising its enjoyment and enforcing appropriate regulations. As before stated, I have been unable to find any reported cases on this exact question. However, the exact question you present was raised in the case of *Butterfield* v. *City of Oklahoma,* being case No. 87560 in the District Court of Oklahoma, County and State of Oklahoma. In that case an attempt was made to secure an injunction against the enforcement of such a parking meter ordinance. The District Court unanimously refused the injunction and upheld the validity of the ordinance.

In view of the above, it would therefore appear that your first question should be answered in the affirmative.

In your second question you inquire whether or not the meters could be installed under an arrangement whereby the municipality secures a percentage of the revenue and the manufacturer retains the balance until the total cost of the meters and the installation of the same has been paid. Up to that time title to the meters is to remain in the manufacturer. When the earnings under this arrangement fully pays for the meters, title is to be transferred to the municipality.

The question is therefore presented whether or not such an arrangement if entered into by a municipality, through its proper officers, would be violative of Section 6 of Article 8 of the Ohio Constitution. This section reads as follows:

"No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit."

The above constitutional provision has been construed by the Supreme Court in a number of cases and it would not seem improper to say that a strict construction has been placed upon this provision of our constitution.

In the case of *Walker* v. *Cincinnati,* 21 O. S., 14, the following appears at page 54:

"The mischief which this section interdicts is a business partnership between a municipality or subdivision of the state, and individuals or private corporations or associations. It forbids the union of public and private capital for credit in any enterprise whatever."

In the case of *Wyscaver* v. *Atkinson,* 37 O. S., 80, the following appears at page 97:

"In short, the thing prohibited is the combination in any form whatever of the public funds or credit of any county, city, town or township with the capital of any other person, whether corporated or unincorporated, for the purpose of promoting any enterprise whatever."

In the case of *Alter* v. *Cincinnati,* 56 O. S., 47, the first and second branches of the syllabus read as follows:

"1. Under section six of article eight of the constitution, a city is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and thereby a city is prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property.

2. A city must be the sole proprietor of property in which it invests its public funds, and it cannot unite its property with the property of individuals or corporations, so that when united, both together form one property."

The following appears at page 64:

"This section of the constitution not only prohibits a 'business partnership,' which carries the idea of a joint or undivided interest, but it goes further and prohibits a municipality from being the owner of part of a property which is owned and controlled in part by a corporation or individual. The municipality must be the sole owner and controller of the property in which it invests its public funds. A union of public and private funds or credit each in aid of the other, is forbidden by the constitution. There can be no union of public and private funds or credit, nor of that which is produced by such funds or credit."

In the case of Cincinnati v. Harth, 101 O. S. 344, the following appears:

"This constitutional provision was adopted by the people after painful and expensive experiences. Prior to its adoption, disastrous results had followed the investment of public money and credit in enterprises which were vainly supposed to be of benefit to the public. In light of those experiences, it was the deliberate judgment of the people that such aid to private or quasi-public enterprises was unwise and must stop.

This constitutional provision has been under consideration by this court in a number of cases and the court has been constantly impressed with its duty to steadfastly enforce its letter and spirit."

This constitutional provision against the raising of money or loaning of credit to or in aid of a company or association is not confined to money raised by taxation but applies equally to the earnings from the operation of any property of the city. This principle is important in considering the question presented by you.

In the case of *State ex rel. Campbell* v. *Cincinnati Railway Company,* 97 O. S. 283, the following material comment appears at page 309 of the opinion:

"* * * * * * * * *

In this case the earnings—the income of the city's property —are pledged as security for the securities now existing and

hereafter issued by the company. It is the exact thing which the constitution expressly prohibits. We, therefore, think it clear that these provisions of the ordinance with reference to the distribution of the gross receipts are in violation of the constitutional inhibition. It must be remembered that the thing prohibited is not only the gift of money or property but also the loan of credit to or in aid of any such company.

This enterprise was initiated in recognition of the urgent needs of the city for better means of transportation for the large population in its suburbs which participates in its manifold activities. But it is not within the sphere of the court's power to consider the wisdom, safety or advantage of the proposed arrangement, and these considerations have nothing to do with the authority of the city to so loan its credit. The constitution is the superior law and the ultimate criterion. The court's sole duty is to enforce it. The office of a judge is jus dicere non jus dare.

* * * * * * * * *"

A case which is very similar to the one presented in your request is that of *Village of Brewster* v. *Hill,* 128 O. S., 343. In order to show that a parallel question was presented in that case, I am taking the liberty of quoting at length from that case. The syllabus of the case reads as follows:

"A village owning a distribution system for electric current, contracted with another to supply generating machinery for its system for the sum of $24,960.00, payable partly in cash and partly in deferred installments from the net revenues derived from the plant's operation. The title to the machinery was to remain in the seller until paid for, but the purchase price installments were not to be the general obligation of the village or payable from taxes. Upon its part the village agreed to provide housing for the machinery, to pay $5000.00 in cash upon arrival of the equipment and to pay the deferred installments out of the net revenues in sixty consecutive installments after erection. Held: The foregoing transaction between the village and the seller of the machinery contemplates the union of the property of the village with that of the seller in a common pool, from which the net earnings of the joint enterprise would be paid to the seller. To the extent that the village devoted the whole of its own property to secure the seller, to that extent did it loan its financial credit to and in aid of the seller in violation of Section 6, Article VIII, of the Ohio Constitution."

Jones, J., after quoting a number of cases by the Supreme Court, some of which are referred to in this opinion, used the following language which appears at page 352 of the opinion:

"* * * * * * * * *

> While it is true that the net revenues derived from the joinder of the properties were not to be realized from general taxes, but from the income from the plant; it is also true that the village's distribution system must originally have been raised by taxation. If such be a fact it follows that, by the contribution of the two properties, a part by the village and a part by the contractor, these properties were placed in a common pool from which the net earnings were to be paid to one member of the pool until its purchase price should be paid under the agreement. Let us assume that the village's distribution system has a value of $60,000, as indicated by counsel. Had the village advanced that amount in cash or credit, from which the net earnings of the joint enterprise would be first paid to the contractor in liquidation of his purchase, as stated by Johnson, J., on page 308 of his opinion in State, ex rel., v. Cincinnati, supra, it would be "in effect a lending of the city's (village) credit in aid of the company" (contractor). To the extent that the village devoted the whole of its own property to secure the contractor, to that extent did it loan its financial credit to and in aid of the contractor.
>
> * * * * * * * * *"

See also Opinions of the Attorney General for 1931, Volume I, Page 502, opinion No. 5293 rendered March 25, 1936.

In view of the above, it would appear that your second question must be answered in the negative.

I come to your third question, namely, whether or not the cost of purchasing and installation of such meters may be paid for from the municipality's portion of the motor vehicle license or the gasoline tax funds. These funds are license and excise taxes respectively and are provided for by legislative enactment for definite purposes. The proceeds of these taxes are limited in their uses by both constitutional and express legislative provisions, strictly to the purposes for which the taxes are levied. The 91st General Assembly in House Bill No. 32, effective July 3, 1935, amended Section 5625-13a to prohibit transfers from the motor vehicle license and gasoline tax funds and, therefore, this revenue may only be used by municipalities for purposes authorized under Sections 6309-2, 5537 and 5541-8, General Code. These sections respectively relate to the motor vehicle license, the first gasoline and the second gasoline taxes and in so far as they are material to your inquiry, read as follows:

Sec. 6309-2:

"(1) Twenty-five per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations forthwith upon receipt by the county auditor, and the remainder retained in the county treasury. In the treasuries of such counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways, and for no other purpose, and shall not be subject to transfer to any other fund. 'Maintenance and repair' as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a subsurface of the improvement thereof, in whole or in substantial part; and in the treasuries of such municipal corporations, such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose and shall not be subject to transfer to any other fund, provided, however, that as to such municipal corporations, not more than fifty per cent of the total funds available during any year from such source including the unexpended balance of such funds from any previous year, shall be used in such construction and repaving which shall be done by contract let after the taking of competitive bids as provided by law, or in the manner provided in the charter of any such municipal corporation."

Sec. 5537:

"Upon receipt of taxes herein provided for, the treasurer of state shall place the first $50,000.00 collected in a special fund to be known as the gasoline tax rotary fund. Thereafter, as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to $50,000.00. The balance of taxes collected under the provisions of this act, after the credits to said rotary fund, shall be credited to a fund to be known as the gasoline tax excise fund.

Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total

number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be used by such municipal corporations for the sole purpose of maintaining, repairing, constructing and repaving the public streets and roads within such corporation.

* * * * * * * * *"

Sec. 5541-8:

"* * * * * * * * *

Seven and one-half per cent of said highway construction fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be expended by each municipal corporation for the sole purpose of constructing, maintaining, widening, reconstructing, cleaning and clearing the public streets and roads within such corporation, and for the purchase and maintenance of traffic lights.

* * * * * * * * *"

The question simply stated is whether or not the purchase and installation of parking meters properly falls within any of the uses enumerated in the above three quoted sections. The question is not altogether free from doubt and an examination of prior opinions of this office clearly indicates the difficulty in the application of such terms as "maintenance", "clearing", etc.

In an opinion to be found in Opinions of the Attorney General for 1929, Volume I, page 452, it was held that these funds could legally be used for the cost of posts and wire mesh at the sides of streets for the repairing and constructing of loading platforms in streets; for the use of street car passengers; and for removing right angle and installing circular curbs.

In an opinion to be found in Opinions of the Attorney General for 1931, Volume I, Page 790, it was held that the cost of metal discs inserted in municipal streets to mark safety zones, may properly be paid from the receipts of the gasoline and motor vehicle license taxes. On the other hand it was held in an opinion to be found in Opinions of the Attorney General for 1928, Volume I, Page 84, that these funds might not be used for the purpose of sweeping and cleaning streets. It should be noted that

the Legislature, by specific amendment, now permits the second gasoline tax to be used for this purpose. See 114 O. L., 507. An opinion somewhat close to the question presented by you is to be found in Opinions of the Attorney General for 1930, Volume I, Page 35. The syllabus of that opinion reads as follows:

> "A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof."

Likewise, it should be noticed that the Legislature, by a specific amendment to Section 5541-8, General Code, now has permitted the second gasoline tax to be used for this purpose. See 114 O. L., 507. From the 1930 opinion I quote the following passage which appears at Page 36:

> "* * * While undoubtedly traffic signals contribute to the safety of the traveling public it must be said that such signals have no relation whatever to the actual preservation of the life of the pavement itself. It is a police regulation pure and simple. The convenience of the traveling public is aided by police officers who afford protection to motorists and, in view of congested traffic conditions, the need of such officers becomes more important. Prior to the adoption of traffic signals police officers performed the duties at busy intersections which traffic signals are now supposed to perform. It is believed that it would be just as logical to hold that the salary of police officers should be paid out of the gasoline tax as it would be to hold that the cost of traffic signals should be paid therefrom. While traffic signals are necessary incidents in connection with the utility of streets, it would seem that the legislature as yet has not authorized the cost of the same to be paid out of the gasoline tax. The maintenance of traffic while a necessary police function, is not the 'maintenance' of the street itself, and the purpose of said tax as hereinbefore stated, is for the physical improvement of the surface of the street. * * *"

In view of the holding in the above quoted 1930 opinion, as well as a consideration of the purposes for which the motor vehicle license and gasoline taxes are levied, it would seem that in the absence of express legislative authority, the answer to your third question should be in the negative.

Summarizing and in specific answer to your inquiries, it is my opinion:

1. A municipality may legally purchase and install parking meters along the curb lines of a street for the purpose of regulating and controlling the parking of automobiles on such street, and may require that the person parking his automobile at designated places on such street pay a fee which is reasonably commensurate with the cost of enforcing such parking ordinance.

2. A municipality may not legally enter into an arrangement with a manufacturer whereby the manufacturer installs the parking meters, allowing the municipality a percentage of the revenue therefrom, and retains the balance until the total cost of the meters has been earned, at which time the title to the meters is transferred to the municipality.

3. A municipality may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purchase and installation of such parking meters.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5751.

SALES TAX—PURCHASES OF MATERIAL BY BOARD OF EDUCATION FOR STADIUM OR PLAYGROUND—NOT TAXABLE ALTHOUGH FUNDS USED ARE VOLUNTARY SUBSCRIPTIONS.

SYLLABUS:

Sales of materials made to the board of education of a school district for the construction of a stadium on the athletic field and playground of a school in the district, are exempt from the sales tax provided by section 5546-2, General Code, although a part or all of the moneys used by the board of education in purchasing such materials were paid into the treasury of the school district on voluntary subscriptions for this purpose.

COLUMBUS, OHIO, June 26, 1936.

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

GENTLEMEN: This is to acknowledge the receipt of your recent communication in which you request my opinion upon a question stated therein as follows:

> "When a board of education proceeds to build a stadium on its athletic field and a large part of the cost of materials is being