waterworks bonds in the aggregate amount of $30,000, dated July 1, 1929, bearing interest at the rate of 5½% per annum.

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 valid and legal obligations of said village.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2511.

CHATTEL MORTGAGE COMPANIES—NOT REQUIRED TO SECURE DEALER'S LICENSE TO MAKE CASUAL OR ISOLATED SALE OF MOTOR VEHICLE—SECTION 6302-1 G. C. —EACH CASE SUBJECT TO FACTUAL DETERMINATION —STATUS SALES IN CONTINUOUS SUCCESSION.

SYLLABUS:

1. *Chattel mortgage companies making casual or isolated sales of motor vehicles are not required to secure motor vehicle dealers' licenses.*

2. *The question as to whether or not a sale of a motor vehicle is a casual or isolated sale, as that term is used in Section* 6302-1 *of the General Code, is dependent entirely upon a factual determination made in each particular case under consideration.*

3. *Sales made in more or less continuous succession can not be said to be casual or isolated. (State, ex rel. City Loan and Savings Company of Wapakoneta, Ohio* vs. *Zellner, Clerk,* 133 O. S. 263, Ohio Bar, Feb. 14, 1938.)

COLUMBUS, OHIO, May 26, 1938.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR: Acknowledgment is made of your recent communication wherein you request my opinion on the following:

> "Is a Chattel Mortgage Loan Company, organized under the laws of the state of Ohio which holds chattel mortgages upon automobiles and other chattel property, and is compelled occasionally to repossess an automobile under the terms of the mortgage, in order to collect the loan thereon, required to secure a

license in selling the same pursuant to the provisions of Section 6302-1 of the General Code of Ohio?"

The provisions of the newly enacted Automobile Dealers' and Salesman's Licensing Act, in so far as material to the question here considered, are as follows: Section 6302-2 of the General Code provides in part:

> "No person other than a salesman or dealer licensed according to the provisions of this act shall engage in the business of selling motor vehicles at retail within this state on and after April 1, 1938."

The legislative definition of the word "dealer" as contained in Section 6302-1 of the General Code is as follows:

> " 'Dealer' includes all persons as hereinbefore defined, regularly engaged in the business of selling, displaying, offering for sale or dealing in motor vehicles at an established place of business which is used solely and exclusively for the purpose of selling, displaying, offering for sale or dealing in motor vehicles. For the purpose of this definition, a place of business which is used for selling, displaying, offering for sale or dealing in motor vehicles shall be deemed to be used solely and exclusively for those purposes even though there is maintained at such place of business repair, accessory, gasoline and oil, storage, parts, service or paint department if such departments are operated for the purpose of furthering and assisting in the business of selling, displaying, offering for sale or dealing in motor vehicles. Places of business or departments in a place of business used to dismantle, salvage or rebuild motor vehicles by means of using used parts are not considered as being maintained for the purpose of assisting or furthering the selling, displaying, offering for sale or dealing in motor vehicles."

It is quite obvious that the above definition of a motor vehicle dealer excludes all those persons who are not regularly engaged in the business of selling, displaying, offering for sale or dealing in motor vehicles at an established place of business used exclusively for that purpose. It is further quite evident from an independent consideration of this definition that a chattel mortgage loan company would be unable to qualify for a dealers' license unless and until such loan company regularly became engaged in the business of selling motor vehicles at a place of business used exclusively for that purpose.

The Legislature, in the enactment of the Automobile Dealers' and Salesman's Licensing Act, was emphatic in imposing these requirements on persons, firms or corporations desiring to engage in the selling of motor vehicles as is further evidenced by a reading of Section 6302-3 of the General Code, which specifically empowers the Registrar of Motor Vehicles to deny the application of any person who "has no established place of business which is used or will be used solely and exclusively for the purpose of selling, displaying and offering for sale or dealing in motor vehicles."

As heretofore stated, if the provisions of the Automobile Dealers' and Salesmen's Licensing Act above referred to were to be independently considered, it is apparent that chattel mortgage loan companies would be prohibited from selling, displaying, offering for sale or dealing in motor vehicles which might come into their possession by virtue of a breach of the terms of mortgage contracts covering motor vehicles. However, in again referring to the provisions of Section 6302-1, we find that the Legislature in defining the phrase "engaging in business" specifically safeguarded against the possibility of any person being denied the right of making a casual or isolated sale of a motor vehicle regardless of whether such person was or was not duly licensed as a dealer. This particular provision of Section 6302-1 reads as follows:

> " 'Engaging in business' means commencing, conducting or continuing in business as well as liquidating a business when the liquidator thereof holds himself out to be conducting such business. However, making a casual or isolated sale *is not engaging in business.*" (Italics, the writer's.)

In your request you ask whether a "chattel mortgage company * * * which holds chattel mortgages * * * and is compelled *occasionally* to repossess an automobile * * * is required to secure a license in selling the same pursuant to the provisions of Section 6302-1 of the General Code of Ohio?"

It is quite evident from the discussion heretofore had that unless such loan company regularly engages in the business of selling automobiles at an established place of business used exclusively for that purpose, such loan company would not be able to obtain a dealers' license. However, since in your request you refer to an occasional repossession of a motor vehicle by a loan company, it is assumed that your question also pertains to an occasional sale of a motor vehicle by such loan company. A "casual or isolated" sale of a motor vehicle, as that phrase is used in Section 6302-1, General Code, presents, in my judgment, somewhat of a difficult problem; one which I believe impossible of solution unless definite facts

are presented upon which a conclusion can be based as to whether or not sales of motor vehicles are "casual or isolated". In other words, it is my opinion that questions of this nature can only be properly determined upon a factual determination made of each particular situation under consideration. For example, I can readily conceive of a situation where a loan company, say over a period of six months, is required to sell at retail three or four motor vehicles which have come into its possession by reason of a breach of the conditions of certain mortgage contracts. Surely, it could not be successfully argued that such a loan company was regularly engaged in the business of selling motor vehicles. In my opinion, such sales would be properly classified as casual or isolated sales and, therefore, such loan company would not be required to secure a dealers' license. However, an entirely different situation is presented in those instances where loan companies, by virtue of their activities in making, on a large scale, motor vehicle loans, are required to sell at retail, over a six months' period, twenty-five or thirty motor vehicles which have come into their possession by virtue of a breach of the terms of certain mortgage contracts. Such sales, in my opinion, could not be classed as "casual or isolated" sales. In my judgment, the activities of the loan company in the latter suppositional case would be so abundantly recurrent and continuous as to place such loan company in the category of regularly engaging in business.

The term "casual or isolated sale" is not defined by statute. However, I find that in the case of the *State, ex rel. City Loan and Savings Company of Wapakoneta, Ohio* vs. *Zellner, Clerk,* found in the February 14, 1938, Edition of the Ohio State Bar Association Report, the Supreme Court of Ohio has passed upon a question very similar to the one here under consideration. An examination of this case reveals that an action in mandamus was filed by the City Loan and Savings Company seeking a writ to compel the Clerk of Courts of Richland County, Ohio, to file an automobile bill of sale without sales tax stamps attached thereto. The petition in this case alleged that the relator on June 20, 1937, on breach of the conditions of a mortgage contract, seized a motor vehicle covered by said mortgage and sold it for the sum of Seventy-five ($75.00) Dollars; that upon the execution and delivery of a proper bill of sale, the relator received from the purchaser a certificate of exemption stating in substance that the sale was an occasional or isolated one, and that it represented the sale of property purchased from a mortgagee who had repossessed it under authority of the provisions contained in the mortgage; relator further alleged that it was not engaged in the business of selling motor vehicles; that the sale was an isolated or casual one; and that under the law no sales tax was assessable.

. An agreed statement of facts filed in this case further revealed, among other things, that in the year 1936, the value of the chattel property which the relator was compelled to repossess, by reason of defaults, amounted to Twenty-Seven Thousand Six Hundred Fifty-Six Dollars and Eighty-Two Cents ($27,656.82) and that the amount of the property repossessed and sold by the relator amounted to about one one thousandth of the value of its business in the State of Ohio. The Supreme Court, in denying a writ of mandamus, held as is disclosed by the syllabus:

> "One engaged in a chattel loan business who conducts continued and systematic sales of repossessed tangible personal property is a vendor within the meaning of Sections 5546, et seq., General Code, in the absence of proof to the contrary."

On pages 271 and 272 of the opinion it is interesting to note the comments of Judge Day relative to relator's contention that the sale of the motor vehicle alleged in the petition was a casual or isolated sale. In this connection it was stated:

> "These sales are not occasional but are so abundantly recurrent and continuous as to yield an excess of $25,000 annually. The activity of selling is not only commenced, but continually and systematically conducted, and as such, constitutes engaging in the business of selling within the meaning of the provisions of Sections 5546, et seq. General Code.
>
> Sales made in a more or less continuous succession can not be said to be casual or isolated. *Occasional sales, made by one not engaged in the business of selling, may be casual and isolated but if the characteristic of systematic recurrence and continuity in respect to such sales is developed, that ceases to be occasional, casual or isolated.* Although relator is engaged in the business of lending money, we hold that it is likewise engaged in the busineess of selling tangible personal property, in the course of which the sale herein involved was made." (Italics, the writer's.)

Another case which I believe worthy of note as being of the greatest assistance in the determination of the question herein considered is the case of *Don Carnicon d. b. a. High Speed Service Station,* vs. *Tax Commission of Ohio, et al,* decided by the Common Pleas Court of Wood County, Ohio, on April 17, 1936, and found in Fifth Ohio Opinions, page 348. The facts of this case involved an assessment made by the Tax Commission of Ohio against the appellant alleged to be due as a tax growing out of the sale of three automobiles. The Court in passing on the question

as to whether or not these sales were casual or isolated sales held as is disclosed by the first and second branches of the syllabus:

> "1. The language of subsection 7 of Section 5546-2, General Code exempting 'casual and isolated sales' from the operation of the sales tax where made by 'a vendor who is not engaged in the business of selling tangible personal property' excepts casual and isolated sales when made by a vendor engaged in the business of selling tangible personal property where the sale or sales so made are unrelated to the vendor's business as then conducted.
>
> 2. A sale of three automobiles over a period of six months by a person who conducts a gasoline service station and holds a vendor's license for the sale of tires and accessories, but who is not engaged in the business of selling automobiles, are casual and isolated sales within the meaning of the Act and are exempted from the sales tax."

Thus in the above cited cases we have the guiding principle of law that must be applied in determining whether or not the sale of a motor vehicle is a casual or isolated sale. As heretofore pointed out, the solutions of questions of this nature are dependent entirely upon a factual determination made of each particular case under consideration.

It is, therefore, my opinion in specific answer to your question that: 1. Chattel mortgage companies making casual or isolated sales of motor vehicles are not required to secure motor vehicle dealers' licenses. 2. The question as to whether or not a sale of a motor vehicle is a casual or isolated sale, as that term is used in Section 6302-1 of the General Code, is dependent entirely upon a factual determination made in each particular case under consideration. 3. Sales made in more or less continuous succession can not be said to be casual or isolated. (*State, ex rel. City Loan and Savings Company of Wapakoneta, Ohio,* vs. *Zellner, Clerk,* February 14, 1938 Edition of the Ohio State Bar Association Report).

Respectfully,

HERBERT S. DUFFY,

Attorney General.