is damaged beyond repair it would require the replacement of another part to be in workmanlike condition equal to the part damaged before the injury.

Specifically answering your question, it is my opinion that where a company contracts to maintain repairs in a workmanlike manner upon certain exterior parts of an automobile for a given period of time and in consideration of a given sum, the contract is one substantially amounting to insurance under the laws of Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1767.

LEASE—TAXATION OF 99 YEAR LEASE RENEWABLE FOREVER DISCUSSED—WHEN LEASED FOR CHARITABLE PURPOSES.

SYLLABUS:

The legal effect of a ninety-nine year lease renewable forever is to pass to the lessee an estate of freehold in land which is taxable to said lessee. When said land so owned, is used by said lessee exclusively for charitable purposes, it is exempt from taxation under the provisions of Section 5353, *General Code.*

COLUMBUS, OHIO, February 27, 1928.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"On the first day of October, 1927, a cemetery association holding title to a certain tract of real estate leased the same to an institution of learning for a term of ninety-nine years, renewable forever, the consideration moving from the lessee to the lessor being stated as follows:

"Said lessee, its successors and assigns yielding and paying therefor the following annual rentals:

'During the 1st year of said term the sum of	$8,657.50
'During the 2nd year of said term the sum of	8,382.50
'During the 3rd year of said term the sum of	8,107.50
'During the 4th year of said term the sum of	7,832.50
'During the 5th year of said term the sum of	7,557.50
'During the 6th year of said term the sum of	7,282.50
'During the 7th year of said term the sum of	7,007.50

'And the sum of $1732.50 annual rental for each and every year thereafter during the term of said lease. Said annual rentals to be payable in equal quarterly installments on the last day of each March, June, September and December during said term, the first said installment to be payable December 31, 1927, together with all taxes, assessments and other charges against said property which are now due or may hereafter be levied against said premises during said term.'

The lessee in question has been operating as an eleemosynary institution since the year 1883 and is now so operating. The commission is now called upon to determine whether or not the land in question is exempt from property tax. Will you be good enough to give us your views with regard thereto?"

Upon my request said letter was supplemented by a copy of the lease in question. This lease is one for ninety-nine years renewable forever, with annual payments and rentals prescribed in said lease, and with privilege of purchase.

The real question, however, is as to what estate the lessee takes under said lease. If said lessee takes the entire estate subject to be defeated by non-payment of the rentals and said lessee is an eleemosynary or charitable institution, said lands may be exempt from property taxation.

In the case of *Loring* vs. *Melendy, et al.,* 11 Ohio Reports, page 355, it is held that:

"A permanent leasehold estate is not a chattel, but is realty, subject to all the laws and rules which attach to land."

It is further stated in said opinion that:

"A permanent leasehold estate is not a chattel, but is, in truth, land, carrying the fee. Such is the nature of the estate, and so it has been considered and treated in the legislation of our state. We therefore declare that permanent leasehold estates are lands subject to all the rules and laws which attach to land for all purposes, and that judgment liens attach to them as lands. * * * And although this case might have been disposed of without deciding this point, yet as it fairly comes up, and was the point upon which the case was reserved, we have thought proper to put this doubtful question at rest."

It is also provided in said lease that the lessee shall pay all taxes, assessments and insurance, and that it will keep the buildings in good repair. And in the event of destruction or damage, it is bound to repair and renew the improvements and to rebuild.

In the case of *Stevenson* vs. *Haines,* 16 O. S. 478, the court was considering the lessor's interest in a permanent lease-hold, and held:

"Its legal effect is to pass to the grantee an estate in fee simple, subject to be defeated by the non-payment of annuities, denominated in the instrument *'rents and charges.'* The truth is—and it is impossible to shut our eyes to the fact—that the real transaction was the sale of the premises for $2400 with a right to defer the payment of the principal sum, so long as the interest thereon should be paid quarter-yearly; and a conveyance of the premises upon condition to be void in case of non-payment."

In the case of *Worthington* vs. *Howes and McCann,* 19 O. S., page 66, at page 75, it was held that:

"The lessor, in effect, parts at once with his entire estate, for a stipulated consideration in money, payable in specified installments and secured by a *lien* upon the land; and the lessee takes the entire estate, an estate of inheritance, subject only to the payment of the money."

In the case of *Ralston Steel Car Company* vs. *Ralston*, 112 O. S. 306, it was held in the syllabus:

"1. Where the owner of real estate leases the same to another and to his heirs and assigns for a term of 99 years, renewable forever, the estate created by such instrument becomes a freehold estate in real property and becomes subject to the laws of descent as an estate in fee.

2. Such an estate is subject to dower, under the provisions of Section 8606, General Code."

The conclusions in said Ralston case are directly applicable to the facts in the instant lease. Marshall, C. J., in the opinion of the court states as follows:

"It is important in this connection to inquire more minutely into the character of a permanent leasehold. A copy of the lease is not set forth in the record, but it will be assumed that it was of the usual form and contained the usual conditions of such instruments. The agreed statement of facts does show that the tenure was for 99 years, renewable forever. It was therefore as permanent as a fee-simple estate. By virtue of Section 8597 it descended to the heirs and was not subject to distribution. The grantee, Ralston, was required to pay all taxes, duties, rates, and assessments of every kind levied by the authorities of the federal, state, and municipal governments. He was also bound to keep the premises insured against loss by fire, tornado, or other casualty. In the event of destruction or damage he was bound to repair and renew the improvements, and to rebuild over and over again if necessary. In short, there is not a single liability which usually attaches to the owner of real estate which was not assumed and agreed to be discharged by Ralston, and, so long as all of the conditions of the lease were faithfully observed, the only rights which the owner of the fee could lawfully claim were those of receiving the stipulated rent and the further right to claim a forfeiture in the event of nonperformance of the conditions, including the payment of rent.

The usual and ordinary permanent lease contains an option of purchase clause, upon the exercise of which the grantee becomes invested with the full fee-simple title. It frequently happens that expensive improvements are erected by the grantee, and in cities where the general growth of the community is rapid and substantial the estate of the grantee becomes quite valuable, just as it has in the instant case, and it frequently happens that in the course of a few years the estate of the grantee becomes more valuable than that of the grantor.

It should be further added that the usual and ordinary permanent lease runs for a term of 99 years, renewable forever, and such an instrument uniformly extends to the heirs, successors, and assigns of the grantee. It is therefore not easy to see how the tenure under such an instrument differs from the tenure of a similar instrument which extends merely to the grantee, his heirs and assigns forever. The one is neither more nor less permanent than the other. The mention of successive terms of 99 years each, renewable forever, such renewals to become effective without any affirmative action on the part of the grantee, does not limit the perpetuity of the tenure, provided the conditions as to payment of rent and other covenants are faithfully observed. Some permanent leases are drawn in one form and some in the other. Any effort to show that a permanent

lease to the grantee, his heirs and assigns, forever, is a more permanent tenure than an instrument which mentions successive terms of 99 years, forever, must be upon refinements of reasoning which do not tend to promote substantial justice. * * *

Section 5322, General Code, appearing under the title 'Taxation,' defines the term 'real property,' and that section has been so construed in the case of *Cincinnati College* vs. *Yeatman, Aud.*, 30 Ohio St., 276, as to include permanent leases and to require the grantee of such a lease to return the property covered thereby for taxation.

Sections 8510, 8511, and 8517, General Code, require all instruments relating to real estate, for a term not less than three years, to be executed with all the formalities of a deed conveying a fee-simple title.

It is claimed, however, that these qualities which have been added by legislation to the inherent qualities conferred upon permanent leases by the language of such instruments still fall short of giving such instruments the quality of permanence necessary to make them real property. It is urged that the statutory provisions relating to descent, taxation, and conveyance should be confined in their application to those particular subjects, and should not be extended into the domain of dower. As we shall proceed hereafter to show, this rule of interpretation is so narrow and technical that it would defeat the purposes which the Legislature has undoubtedly designed to serve. * * *

All authorities agree that in the last analysis the true test of a freehold is indeterminate tenure. Measured by this standard, how can it be said that a so-called permanent leasehold is really a lease at all, and what possible reason exists for classifying it as a chattel?"

Said opinion concludes as follows:

"Throughout this entire discussion we have used the expression 'permanent leasehold,' because that is the term which has repeatedly been employed in the statutes, and it has therefore seemed convenient to use that expression as the basis of the discussion. We agree with Judge Welch that such an instrument is not in any true sense a lease. * * * "

Upon consideration of the terms of said lease, and applying the principles and law as stated in the cases herein cited, it is manifest that the legal effect of said perpetual lease is to pass to the grantee a freehold estate.

It is therefore my opinion that the lessor has in effect parted with its entire estate, for a stipulated consideration in money, payable in specified installments and secured by a lien on the land. The lessee takes the entire estate, subject only to the payment of the stipulated installments. Under these circumstances, ordinarily the lessee would be subject to the payment of the tax on said land; but as said lessee is operating as an eleemosynary institution, and as said land is the property of an institution used exclusively for charitable purposes, it is therefore exempt from taxation under the provisions of Section 5353, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.