Section 2485 reads as follows:

"The county commissioners shall audit and allow a reasonable compensation to any person who is summoned to aid a sheriff or constable or other officer in the execution of any writ or process in favor of the state, but such compensation shall not exceed one dollar per day, and shall be allowed only upon certificate of such officer."

This seems to be the only statute providing for paying anyone for assisting an officer in apprehending a criminal.

Therefore, in regard to your second question, there being no express statutory authority giving mayors right to issue warrants to sheriffs, or for paying them fees, it must be answered in the negative.

There being no statute providing fees for assisting police officers, other than section 2485, General Code, no fee can be charged for a sheriff or deputy for assisting a police officer.

Respectfully,
C. C. CRABBE,
Attorney General.

491.

APPROVAL, BONDS OF SCIOTO TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, $14,000, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, June 25, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

492.

BUILDING AND LOAN ASSOCIATIONS—NO AUTHORITY TO CHARGE INITIATION OR MEMBERSHIP FEES AFTER JULY 3, 1923—SECTIONS 9643-4, 9645 AND 9649 G. C. CONSTRUED.

SYLLABUS:

1. *By virtue of the provisions of section* 9645 *G. C., as amended by House Bill No.* 88, 110 *O. L., contracts entered into by building associations providing for the sale of their stock in consideration of the payment of commissions for such sales, will not, on and after July* 3, 1923, *the effective date of said House Bill No.* 88, *be operative to permit of the sale of any building association stock, whether such commission contract was entered into either before or after April* 3, 1923, *the date on which said House Bill No.* 88 *was filed with the secretary of state.*

(Quaere. Whether the superintendent of building and loan associations will be under the duty, on and after July 3, 1923, *of refusing authority to commence business to associations whose stock, in whole or in part, has been sold prior to July* 3, 1923, *under commission contracts.)*

2. *Under the amendment of section* 9649 *G. C., in said House Bill No.* 88, *all building and loan associations, whether coming into existence before or after July* 3, 1923, *are without authority to charge initiation or membership fees after July* 3, 1923.

3. *Supplemental section* 9643-4 *G. C., as enacted in said House Bill No.* 88, *operates to make null and void one year from date of issuance the articles of incorporation of any building and loan association, whatever may have been the date of the issuance of such articles of incorporation, if within such one year the corporation fails to commence business.*

4. *The superintendent of building and loan associations is advised that for administrative purposes the requirements of section* 9645 *G. C., as amended in said House Bill No.* 88, *in the matters of minimum authorized capital stock, and of paying in and maintaining five per cent of the authorized capital stock, are to be treated as having no application to building associations which had commenced business prior to July* 3, 1923.

COLUMBUS, OHIO, June 27, 1923.

HON. J. W. TANNEHILL, *Superintendent, Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—In a recent communication to this office you stated that

> "House Bill No. 88, amending and supplementing existing laws relating to building and loan associations, was passed by the General Assembly and goes into effect July 3rd, next."

You then make the following enquiries concerning said bill, namely:

1. "Are all existing contracts for sale of stock of building and loan associations on commission void after July 2, 1923?"

Section 9645 G. C. as amended in said bill provides as follows:

> "Where capital stock is named in the articles of incorporation it shall be deemed to refer to the authorized capital and the organization may be completed and business commenced when a sum equal to five per cent thereof is subscribed and paid in, which amount must thereafter be maintained, and the name and addresses of its officers and not less than two copies of its constitution and by-laws have been filed with the superintendent of building and loan associations, and approved by him and no such corporation shall transact any business whatever except such as is incidental and necessary to its preliminary organization until it has been authorized by the superintendent of building and loan associations to do so, and no amendment to such constitution or by-laws shall become effective until approved by him. The authorized capital of such corporation shall be not less than three hundred thousand dollars; provided that in cities the population of which exceeds five thousand, such capital shall be not less than five hundred thousand dollars. The stock sold by any building and loan association shall be accounted for to the association in

the full amount paid for the same. No commission or fee shall be paid to any person, association or corporation for selling such stock. The superintendent of building and loan associations shall refuse authority to commence business to any building and loan association, if commissions, contributions, or fees have been paid, or have been contracted to be paid, directly or indirectly by the building and loan association, or by anyone, to any person, association or corporation for securing subscriptions for or selling stock in such building and loan association. When a certificate is transmitted to the superintendent of building and loan associations, signed by the president, secretary or treasurer of such corporation notifying him that the required amount of capital stock of such corporation is subscribed, and paid in, and that such corporation has complied with all the provisions of law required to be done before it can be authorized to commence business, the superintendent of building and loan associations shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock paid in of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination of the facts referred to and of any other facts which may come to the knowledge of the superintendent of building and loan associations he finds that such corporation is lawfully entitled to commence business, he shall give it a certificate under his hand and official seal that it has complied with all the provisions required by law and is authorized to commence business. Books or records shall be kept by every building and loan association, in which shall be entered the name and the last known address of each stockholder, the number of shares or fractions of shares or of stock deposits held by each and the time each person became a stockholder; also all transfers of stock, stating the time when made, the number of shares or of stock deposits and by whom transferred."

It is evident from the provisions of this bill that your question must be answered in the affirmative, unless said contracts are protected by the constitutional inhibition against the impairment of the obligation of contracts.

Section 28 of Article II of the Constitution of Ohio reads as follows:

"The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may by general laws, etc. * * *"

In the exercise of its police power the state may lawfully prohibit the doing of an act even though individuals may have theretofore contracted between themselves to perform said act; and this prohibition by the state is not construed to be within the constitutional inhibition, even though thereby the carrying into effect of such contract is made impossible.

Palmer v. State, 39 O. S., 236.

This subject is discussed in Freund on Police Power at page 583 as follows:

"It seems, however, that the constitutional prohibition applies only to laws impairing the obligation of the contract for the benefit of the party obligated. It is not an objection to an otherwise valid police regulation that it makes the performance of a contract valid in its inception impos-

sible. Thus the power of the state to regulate railroad rates is not defeated by the fact that the railroad company has made a contract with another railroad company that it will not charge less than the rate fixed by an existing statute, or that the railroad company has incurred indebtedness upon the basis of an earning capacity calculated on higher rates, and the mere fact that a high rate of interest on bonds cannot be paid under a proposed tariff, would not make that tariff unreasonable.

The regulation by the legislature of the pressure of natural gas in pipes was held valid although it affected existing contracts, and it has been held that the operation of an ordinance establishing fire limits is not affected by an existing contract to erect a frame house on premises covered by the ordinance, although lumber has been bought on the faith of the contract. So the validity of an act requiring a railroad company to elevate or depress its tracks would not be affected by the existence of contracts with adjoining owners for track connections.

Contrary to this doctrine, it was formerly held in Missouri and Kentucky that the power of the state to prohibit or revoke lottery grants could not be so exercised as to defeat rights of purchasers or lenders upon the faith of the franchise, especially when the sale of the franchise had been expressly authorized; but the United States Supreme Court has held that the abrogation of monopolies is valid notwithstanding such contracts. If, indeed, the grantees of a lottery franchise can be deprived of rights for which they have paid, it follows logically that those claiming under them must be equally unprotected.

Undoubtedly in all those cases the obligation of a contract is impaired, but it is not impaired in order to confer a benefit upon the obligor or debtor. The principle is that a person cannot, by entering into a contract, impair the power which the state must have for the protection of peace, safety, health and morals. If this were not so, an owner of property who apprehended that a police regulation would be passed affecting his property, would have it in his power to nullify its effect in advance, by making contracts inconsistent with its enforcement. That the relief from the contractual obligation individually benefits the party previously bound by it, is no objection to the validity of the statute, provided such relief is not the primary object of the law. For this purpose laws which impair existing contracts as being prejudicial to public safety and morals should be treated as not enacted for the primary benefit of the party bound. Upon this theory a law limiting hours of labor in the interest of safety or health may apply to existing contracts, although it is within the legislative power to exempt existing contracts from its operation. Strong considerations of public policy require the exemption of existing contracts, and this policy is raised into a principle of constitutional law when the object of the statute is relief from pecuniary or economic burdens."

In an opinion by a former Attorney General, found in Volume 1, 1913, at page 852, Opinions of Attorney General, rendered in answer to certain questions concerning the Blue Sky Law, which limited the commission paid for the sale of stock to fifteen per cent., it was held as follows:

"When an insurance company prior to the passage of the Blue Sky Law had entered into a contract with some underwriting concern for the sale of its stock at a larger commission than fifteen per cent., such concern

may not take subscriptions from the public for such stock without being bound by the provisions of such act.

The Blue Sky Law is a statute passed under the police power of the state and the right of the legislature to regulate sales of this kind cannot be questioned.

Where a contract was entered into subsequently to the passing of the act, but before it went into effect the provisions of the Blue Sky Law apply."

The principles thus stated apply fully to the legislation embodied in these two sentences of section 9645 G. C., amended as above:

> "The stock sold by any building and loan association shall be accounted for to the association in the full amount paid for the same. No commission or fee shall be paid to any person, association or corporation for selling such stock."

The conclusion follows, and you are accordingly advised, in answer to your first question, that on and after July 3, 1923, existing commission contracts in question will not be operative to permit of the sale of any building association stock.

You next inquire:

> "If such contracts are not void, would contracts of this character entered into after the law was filed with the Secretary of State, April 3, 1923, be valid after July 2, 1923?"

The conclusion stated in answer to your first question is equally applicable as an answer to your second question. Particularly pertinent to your second question is this language above quoted from Professor Freund:

> "An owner of property who apprehended that a police regulation would be passed affecting his property, would have it in his power to nullify its effect in advance, by making contracts inconsistent with its enforcement."

Consideration of your first two inquiries has suggested a further question which you do not ask, namely: Will the superintendent of building and loan associations be under the duty, on and after July 3, 1923, of refusing authority to commence business to associations whose stock, in whole or in part, has been sold, prior to July 3, 1923, under commission contracts? Upon this question no opinion is now expressed. Should there arise in practice the situation indicated in the suggested inquiry, you will be at liberty before taking action, to submit the matter to this office for opinion.

In your third question you ask:

> "Are all building and loan associations in existence previous to the enactment of this law, prohibited from charging initiation or membership fees under section 9646 of the General Code after July 2, 1923?"

Section 9649 G. C., as amended by House Bill No. 88, reads as follows:

> "To issue stock to members upon certificates or upon written subscription on such terms and conditions as the constitution and by-laws provide,

but no initiation or membership fee shall be charged and if the stock is sold at a premium all such premiums shall be placed in the reserve fund of the association. Each member may vote his stock to the extent and in the manner provided by the constitution and by-laws, but no member shall cumulate his votes."

The general provisions of this section necessarily apply to all building and loan associations in existence at the time this section takes effect, because the section goes to the point of corporate power; and it is evident that "no initiation or membership fee shall be charged, and if the stock is sold at a premium, all such premiums shall be placed in the reserve fund of the association."

In your fourth question you inquire as follows:

"Where business has not been commenced, do all articles of incorporation of building and loan associations issued prior to the passage of this law become null and void one year from the date of issuance under section 9643-4 G. C.?"

Section 9643-4 of the General Code reads as follows:

"No association shall establish more than one office nor maintain branches other than these already established except with the approval of the superintendent of building and loan associations, previously had in writing, and any such association failing to commence business within one year from the date of issuance of articles of incorporation shall cease to exist and such articles of incorporation shall be null and void."

Inasmuch as the legislature made no exemption of any building and loan association, it is evident that it was its intention that all building and loan associations should be governed by the general law as expressed in this section, and that the articles of incorporation of any building and loan association will become null and void one year from the date of issuance, if such association fails to commence business.

Your fifth question is as follows:

"Do the minimum authorized capital stock provisions of section 9645 of the General Code apply to associations which were doing business prior to the enactment of this new law?"

The amended form of section 9645, as above quoted, contains certain provisions which deal exclusively with the subject of commencing business, as for example, the terms embodied in the two consecutive and connected sentences beginning with "when a certificate is transmitted to the superintendent" and ending with "and is authorized to commence business". On the other hand, certain provisions deal generally with the conduct of the association, as for example the requirement as to books and records. To which class does the provision regarding authorized capital belong? Was it intended by the General Assembly to apply generally as a standard of conduct for all associations, and thus to be retroactive in the limited sense of requiring associations already in existence, having a small capital stock, to increase their capital stock to three hundred thousand dollars or five hundred thousand dollars, as the case may be; or was it intended to go to the point of organization and commencement of business and thus to be wholly prospective in

operation? Arguments of considerable force on both sides of this question may be readily adduced, not only from the context of the statute iself, but also from the setting in which the amended statute is found. However, it is to be remembered that:

> " * * * a statute should have a prospective operation only, unless its terms *show clearly* a legislative intention that it should operate retrospectively." (Bernier v. Becker, 37 O. S., 72; 74.)

And that

> "It is the duty of the courts in the interpretation of statutes, *unless restrained by the letter,* to adopt that view which will avoid absurd consequences, injustice or great inconvenience, *as none of these can be presumed to have been within the legislative intent."*
>
> *Moore* v. *Given,* 39 O. S., 661.

It is evident that when the minimum capital stock provisions are considered with the provision hereinafter dealt with in answering your sixth question, relative to maintenance of five per cent. of authorized capital, serious embarrassment may result to many existing associations, even to the extent that they may be compelled to cease operation. This fact, with the further fact that your question is at all events a close one, impels me to advise that, unless and until the courts otherwise decide, you, as an administrative official, should proceed on the theory that the minimum capital stock provisions in question do not apply to associations which had commenced business prior to July 3, 1923.

Your sixth question is:

> "Under section 9645 of the General Code, must every building and loan association in Ohio at all times have at least five per cent. (5%) paid in on the entire authorized capital stock of the association?"

Section 9645, prior to its amendment by House Bill No. 88, required the subscription of five per cent. as a condition of commencing business, but did not contain the provision found in the amendment to the effect that the five per cent must be paid in and thereafter maintained. It is difficult to read the first sentence of the amended form of section 9645 as applying to any associations except those commencing business after the amendment goes into effect. The general purport of the sentence is addressed to the matter of organization and commencing of business. Moreover, the matter of maintaining the five per cent has an intimate connection with the matters dealt with in answer to your fifth question.

Upon the whole you are advised that for administrative purposes you should follow the theory that the requirement that five per cent is to be paid in and maintained, is applicable only to associations organized on and after July 3, 1923.

Respectfully,

C. C. CRABBE,

Attorney General.