2. Neither a board of county commissioners, nor the county which it represents, is liable in damages for injuries to third persons caused by the explosion or the use of steam boilers operated for heating a county court house or the buildings of a county home."

Obviously, if third persons could not secure a judgment from the county for injuries received through the operation of a county owned steam boiler, there would be no liability against the insurance company. See Section 9510-4, General Code; also Opinion of the Attorney General No. 2976, rendered July 31, 1934.

Without unduly prolonging this discussion, it is my opinion in specific answer to your questions that:

1. A board of county commissioners may legally enter into a contract of insurance which would indemnify the county for loss or damage to county owned buildings which might result as an incident to the operation of steam boilers in such county buildings.

2. A board of county commissioners cannot legally enter into a contract of insurance which would purport to indemnify the county for "public liability" and "property damage" resulting from the operating of steam boilers in county owned buildings.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3312.

PRIVATE MOTOR CARRIER'S LAW—CERTAIN SPECIFIC PRACTICES NOT "FOR HIRE" WITHIN MEANING OF SECTIONS 614-103, ET SEQ. G. C.

SYLLABUS:

The applicability of Section 614-103, *et seq., General Code, to certain specific practices considered.*

COLUMBUS, OHIO, October 16, 1934.

The Public Utilities Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—My opinion has been requested by your Superintendent of Motor Transportation as to whether or not the so-called private motor carrier law enacted by the 90th General Assembly and contained in Section 614-103, et seq., General Code, is applicable to certain practices set forth in three hypothetical cases described as follows:

"1. A owns a car and is employed at a mine some distance from his residence. He carries B, C, D and E, men who are working at the same mine, with him. A, B, C, D, and E share the cost of operation while going to work; namely, gas, oil, repairs, tires and license plates. Does this constitute 'for hire' under the Private Motor Carrier Act?

2. A owns a car; works at a mine some distance from his home and he carries with him B, C, D and E who work at the same place. B, C, D and E each own cars of their own. A operates his the first

week, carrying B, C, D and E, B, the following, carrying the same passengers; C, the following, carrying the same passengers; D, the following, carrying the same passengers; E, the following, carrying the same passengers; etc. Does this constitute 'for hire' under the Private Motor Carrier Act.

3. A owns a car and operates it to and from his work, carrying B, C, D and E who work at the same place. A, B, C, D and E share the cost of gasoline and oil consumed in going to and from their place of work. Does this constitute 'for hire' under the Private Motor Carrier Permit Law?"

Section 614-103, General Code, as amended by the first special session of the 90th General Assembly, provides as follows:

"The following words and terms when used in this chapter, unless the same are inconsistent with the text, shall be construed as follows:

(a) The term 'private motor carrier' shall include every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, legal representatives, trustees, receivers or trustees appointed by any court whatsoever, when engaged in the business of private carriage of persons or property, or both, or of providing, or furnishing such transportation service, for hire, in or by motor propelled vehicles of any kind whatsoever, including trailers, over any public highway in this state, but shall not include any corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, legal representatives, trustees, receivers or trustees appointed by any court whatsoever, in so far as they may be engaged:

(1) As a motor transportation company as defined in section 614-84 of the General Code;

(2) In the transportation of persons or property, or both, exclusively within the territorial limits of a municipal corporation or within such limits and the territorial limits of municipal corporations immediately contiguous thereto;

(3) In the transportation of persons in taxicabs in the usual taxicab business, or in hotel busses operating to and from hotels;

(4) In the transportation of pupils in school busses operating to or from school sessions or school events;

(5) As a motor transportation company holding a certificate of public convenience and necessity for the transportation of persons, in the carriage of persons in emergency motor vehicles under a special contract for the entire vehicle for each trip, to or from any point on the route of such motor transportation company, and provided that such use of such emergency motor vehicles shall be reported and the tax paid as prescribed by the commission by general rule or temporary order;

(6) In the transportation of farm supplies to the farm or farm products from farm to market;

(7) In the operation of motor vehicles for contractors on public road work; or

(8) In the transportation of property incidental to the carriage of the operator's own merchandise, or in the transportation of property in a private passenger car, in either case, from not more than one consignor and not exceeding loads of one thousand pounds in weight.

(b) The term 'motor vehicle' shall include any automobile, automobile truck, motor bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks and shall include trailers."

It is apparent that the situation as presented by the hypothetical cases do not come within any of the exceptions hereinbefore set forth. It is equally apparent that in each of the illustrations presented, there is involved the furnishing of private transportation service. The only question presented, therefore, is whether or not such service is furnished "for hire" within the meaning of the phrase as used in paragraph (a) of Section 614-103, supra.

Bouvier's Law Dictionary, Vol. 2, page 1253, defines "for" as follows:

"In place of or in front of; because or on account of; by reason of; as agent for; in behalf of; * * *."

"Hire" is defined as (page 1442):

"A bailment in which compensation is to be given for the use of a thing, or for labor and services about it."

Words and Phrases, Vol. 4, page 3309, defines "hire" in the following language:

"Hire is a reward or compensation paid for the possession or use of personalty."

I shall first consider whether or not the service furnished in case No. 2 which you have submitted constitutes the furnishing of service "for hire" within the meaning of the statute. In this case each of the five persons involved owns his own automobile, and each in turn operates his automobile for one week, carrying with him to work four associates. He receives no compensation of any form or description for this service and clearly does not come within the definition of a motor transportation company for hire as defined by the statute.

This same identical situation was passed on by the Pennsylvania Public Service Commission in the case of *Charles A. Shaw* vs. *Russell Smith, et al.*, under date of September 30, 1924, and reported in Public Utility Reports 1925A at page 529, wherein the Commission held in the syllabus as follows:

"A plan under which five employees of the company, residing in one town and working in another town, alternately use one another's automobile for transportation to and from work does not in any sense make these persons common carriers subject to commission regulation and obligated to secure a certificate of convenience and necessity."

The Commission, in discussing this situation, refers to it as a "mutual benefit practice" and not in any sense a practice of engaging in transportation of persons for hire.

It is accordingly my opinion that the practice set forth in case No. 2, supra, does not constitute the furnishing or providing of transportation service for hire within the meaning of the term as used in Section 614-103, supra, and these parties

operating their own automobiles are not private motor carriers within the meaning of the term as used therein.

Coming now to a consideration of the hypothetical case presented in paragraph 3 of the inquiry, the situation is presented where one workman at a given plant owns an automobile and he operates it to and from work. He likewise carries four associates who work at the same plant to and from work with him They pay him no fixed compensation. In fact, they pay him no compensation at all. They do, however, contribute to the cost of gasoline and oil consumed in going to and from their place of work. The question is then, therefore, presented as to whether or not such a service is the furnishing of a private transportation service for hire within the meaning of Section 614-103. It is possible that a construction could be given to this procedure to interpret the contribution to the cost of gas and oil as compensation; however, such a construction, in my opinion, would be a strained one and would be a construction not contemplated by the statute, for if the succeeding sections of the private motor carrier act are considered it will be discovered that if such an operation does constitute a private carrier operation, then it would be necessary for this individual operating his own private automobile to and from work to secure a certificate from the Public Utilities Commission of Ohio, pay a rather heavy tax thereon (Section 614-112), carry liability insurance (Section 614-115), secure a chauffeur's license (Section 614-116), and do other things which the legislature certainly did not contemplate the operator of a private automobile to and from his work and carrying with him a few associates without receiving from them any fixed compensation should be required to do. It is, therefore, my conclusion that to interpret such a situation as set forth in paragraph 3 of your inquiry as the operation of a private motor carrier for hire would be a strained interpretation of the entire act.

You are accordingly advised that it is my opinion that the practices set forth in paragraph 3 of your inquiry are in the same category, in so far as the private motor carrier law is concerned, as those set forth in paragraph 2 hereinabove discussed.

Coming now to a consideration of the hypothetical situation presented in paragraph 1 of the inquiry, where A owns a car and in going to and from work carries with him four associates who bear a portion of all costs of operating the car, such as gas, oil, repairs, tires and license plates, the situation presented is more difficult to answer. This situation, however, differs from the situation presented in paragraph 3 only in degree. From the facts submitted it appears that no fixed compensation is charged, but the operator and owner of the automobile contributes his share of the operating costs, resulting in the situation being in the nature of a joint enterprise. I recognize, of course, the dividing line between this situation and one in which the operation might properly be said to be "for hire," is a narrow one, and that with a slight variation in the facts the operation might become one for hire. However, it is my opinion, strictly upon the basis of the facts set forth in paragraph 1 of your inquiry, that the operation does not come within the meaning of the phrase "for hire" as used in Section 614-103, supra.

Respectfully,
JOHN W. BRICKER,
Attorney General.