control in the other, mark the leading distinction between a mere deposit of the funds and an 'investment' thereof, as those terms are used in statutes."

In discussing the question of loan and deposit, it has been held by a Pennsylvania court, cited in 14 L. R. A., 103:

"Was this transaction with the Bank of America a deposit of the money, or was it a loan or investment of it? A deposit is where a sum of money is left with a banker for safe-keeping, subject to order, and payable, not in the specific money deposited, but in an equal sum. It may or may not bear interest, according to the agreement. While the relation between the depositor and his banker is that of debtor and creditor simply, the transaction cannot in any proper sense be regarded as a loan, unless the money is left, not for safekeeping, but for a fixed period at interest, in which case the transaction assumes all the characteristics of a loan."

In view of these authorities, I have reached the conclusion that in the case which you present for my consideration the transaction between the purchaser of the note and the loan company creates a relationship of debtor and creditor, and that inasmuch as the purchaser retains control over the funds in that he may withdraw the same within thirty days after giving notice, the transaction becomes a deposit and comes within the provisions of Section 710-2, General Code.

In view of the foregoing and in specific answer to your question, I am of the opinion that the corporation described in your communication to the extent of soliciting and receiving such deposits and issuing its promissory notes for the purpose of securing funds as a working capital in the conduct of its business is in the banking business.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1679.

APPROVAL, ABSTRACT OF TITLE TO LOTS OWNED BY JOHN W. HAVENS, IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, March 27, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me for my examination and approval a number of abstracts of title, warranty deed form, encumbrance estimate No. 246, and other files relating to the proposed purchase by the State of Ohio of lots Nos. 1, 2 and 3 of Critchfield & Warden's Subdivision of the south half of the north half of lot 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, as the same are numbered and delineated on the recorded plat thereof, of record in plat book 4, page 254, Recorder's Office, Franklin County, Ohio; and also of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of John W. Burton's Subdivision of the north half of the south half of lot 278 of R. P. Woodruff's

Agricultural College Addition to the city of Columbus, Ohio, as the same are numbered and delineated on the recorded plat thereof, of record in plat book 3, page 350, Recorder's Office, Franklin County, Ohio.

All of the above described lots are owned of record by one John W. Havens, and an examination of the abstracts of title relating to lots Nos. 1, 2 and 3 of Critchfield & Warden's Subdivision of the south half of the north half of lot 278 of R. P. Woodruff's Agricultural College Addition, shows that said John W. Havens has a good and indefeasible fee simple title to said lots, free and clear of all encumbrances except the taxes for the last half of the year 1929, which are due and payable in June, 1930.

Upon examination of the abstracts of title submitted with respect to lots 1 to 12 inclusive of John W. Burton's Subdivision of the north half of the south half of lot 278 of R. P. Woodruff's Agricultural College Addition above described, two exceptions are noted, one of these exceptions relates to all of said lots above noted in John W. Burton's Subdivision, now owned of record by said John W. Havens, and the other exception is only as to lot 1 of said subdivision.

The first exception here noted arises out of the following facts: On and prior to September 29, 1927, said John W. Havens was the owner in fee simple of said lots 1 to 12 inclusive of John W. Burton's Subdivision above noted. On said date said John W. Havens, as the owner of said property, leased the same to one Benjamin F. Hughes for a term of ninety-nine years, renewable forever. On September 30, 1928, said Benjamin F. Hughes attempted to re-convey his interest in said lots by the following transfer or assignment noted by him on said lease, to-wit: "For one dollar I hereby sell, convey and transfer all my rights, title and interest in the above lease to John W. Havens. (Signed) Benjamin F. Hughes."

As to the transaction above noted, it is to be observed that the effect of the lease of this property by John W. Havens to Benjamin F. Hughes for a term of ninety-nine years, renewable forever, was to create in said Benjamin F. Hughes a freehold estate in said property. *Ralston Steel Car Co.* vs. *Ralston,* 112 O. S. 306. In this situation the title to the lots here in question could be re-conveyed to said John W. Havens only by a proper instrument in writing, executed and acknowledged in accordance with the requirements of Section 8510, General Code; and the attempted transfer and conveyance of the property made by Benjamin F. Hughes on the lease held by him was ineffective for the purpose.

I have taken the liberty of correcting the objection hereinabove noted to the title to lots 1 to 12 inclusive of John W. Burton's Subdivision by procuring the execution of a quit-claim deed by said Benjamin F. Hughes by which all of his right, title and interest in said lots is remised, released and quit-claimed to said John W. Havens. This quit-claim deed, which was executed under date of March 25, 1930, obviates the objections above noted by me upon consideration of the abstracts of title as they were presented.

The second exception here noted applies only to lot No. 1 of John W. Burton's Subdivision and arises out of the following situation: On and prior to July 18, 1907, said lot No. 1 in John W. Burton's Subdivision was owned in fee simple by one Joseph H. Herndon and his wife Maria Herndon as tenants in common. On the date above indicated, Joseph Herndon instituted an action for divorse against his wife Maria Herndon in the Common Pleas Court of Franklin County, Ohio. With his petition in this case, Joseph Herndon as the plaintiff in said action, filed an affidavit to the effect that the residence of the defendant was not known and could not be ascertained, and that service of summons could not be made upon her in the State of Ohio. The only service that was made on said Maria Herndon, the defendant in said action, was by publication in the manner required by law

in such cases. It nevertheless appears from the abstract that on October 9, 1907, the court granted to Joseph Herndon a divorce from said Maria Herndon by decree entered in said action, and at the same time by said decree granted to said Joseph Herndon as alimony the undivided half interest of Maria Herndon in said lot; and the court further in said decree ordered the defendant Maria Herndon to convey her interest in this lot to the plaintiff Joseph Herndon, and that in default of such conveyance said decree was to have the effect of such conveyance.

Inasmuch as the only service had on Maria Herndon in said action was by publication, as above noted, the court had no jurisdiction to make this decree as to alimony or to order and direct the conveyance of Maria Herndon's undivided interest in this lot to Joseph Herndon unless, which does not appear from the abstract, the court some time after plaintiff's petition was filed and before said decree was entered, by temporary injunction, or otherwise, effected a seizure of defendant's interest in this property so as to make the subsequent decree of the court subjecting defendant's interest in the property to plaintiff's claim for alimony one *in rem* against said property. *Benner* vs. *Benner,* 63 O. S. 220.

As above noted, there is nothing in the abstract to show any jurisdiction in the court to make said decree effecting the interest of Maria Herndon in this property, and the matters above referred to must be noted as an exception to the title to said lot. As to this exception, however, I am inclined to the view that, inasmuch as it appears that said John W. Havens and his predecessors in title have held possession of said lot and of all interest therein openly and adversely for a period of more than twenty-one years, said exception may be safely waived. I am inclined to the view, therefore, that as corrected by the quit-claim deed of Benjamin F. Hughes, above referred to, the title of John W. Havens in and to lots here in question is good and indefeasible, subject only to the taxes on each and all of said lots for the last half of the year 1929, which are due and payable in June, 1930.

An examination of encumbrance estimate No. 246, which covers lots Nos. 1, 2 and 3 of Critchfield & Warden's Subdivision as well as lots 1 to 12 inclusive of John W. Burton's Subdivision, shows that it has been properly executed, and the same shows that there are sufficient balances in the proper appropriation account of Ohio State University to pay the purchase price of the property here under investigation.

With said abstracts of title and encumbrance estimate there is submitted a deed form of a deed to be executed by said John W. Havens conveying each and all of the above described lots here under investigation to the State of Ohio. Except that no consideration is stated in said deed form, the same is such that if properly executed and acknowledged by said John W. Havens, said deed will be effective to convey said property to the State of Ohio by fee simple title, free and clear of all encumbrances whatsoever, except taxes and assessments due and payable on and after June, 1930.

As above indicated, said deed has not yet been executed by said John W. Havens, and before the tansaction relating to the purchase of this property is closed, care should be taken to see that said deed is executed and acknowledged in the manner required by law. It is further suggested that before the warrant in payment for this conveyance is made to said John W. Havens, a representative of this office be afforded the opportunity of examining said deed as executed and acknowledged by said grantor.

I am herewith returning, with my approval except as herein noted, the said abstract of title, warranty deed form, encumbrance estimate No. 246, and like-

wise the quit-claim deed recently executed by Benjamin F. Hughes, above referred to.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1680.

APPROVAL, BONDS OF STARK COUNTY—$60,000.00.

COLUMBUS, OHIO, March 27, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1681.

DENTISTRY PRACTICE—OWNER, EMPLOYING DENTIST TO DO ALL DENTAL WORK, REQUIRED TO BE LICENSED—USE OF TRADE NAME NOT PRACTICING UNDER FALSE NAME—SPECIFIC CASE.

SYLLABUS:

1. *When a person who owns a dental office employs a registered dentist, pays all bills, signs all advertisements and conducts the office generally, such person is practicing dentistry within the meaning of Section* 1329, *General Code, and should be licensed as required by Section* 1320, *General Code.*

2. *The use of the name "The Jones Dentists" by a licensed dentist does not, under authority of the case of Ex Parte Craycroft,* 24 *N. P. (N. S.)* 513, *constitute practicing dentistry under a false name.*

3. *The use of a sign on a dental office reading "Dr. Jones, Dentist" by other than a licensed dentist of that name is in violation of Section* 12713, *General Code, prohibiting the practice of dentistry under a false name.*

COLUMBUS, OHIO, March 27, 1930.

HON. RAY R. SMITH, *Secretary, Ohio State Dental Board, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "One, Dr. Jones, a licensed and registered dentist in the State of Ohio owns and operates a dental office. He employs one licensed and registered dentist to assist him. Dr Jones dies and leaves the office, equipment and practice to his wife. She, Mrs. Jones, who is not licensed or registered to practice dentistry re-employs the assistant, pays all bills, signs all advertisements, and conducts the business generally. She advertises under the name of 'The Jones Dentists' and across the front of the building are the names DR. JONES, DENTIST in two painted signs.
>
> The questions involved are, first, *Is it within the statutes of the State*