exclusive of improvements, shall be determined; also, the value of all improvements and structures thereon and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing on cultivated lands."

The court held that the provisions of this statute excluding from the valuation of land for purposes of taxation "the value of crops growing on cultivated lands," did not apply to nursery stock, as the same was outside of the definition of the term "crops" in the ordinary sense of that term. I am of the opinion, therefore, that growing nursery trees and shrubs, spoken of generally as nursery stock, are not excluded from valuation and assessment as a part of the land, by the provisions of section 5560, General Code, and that the same are properly taxable as real property.

It would be competent for the legislature to classify nursery stock as personal property and to provide for the taxation of the same as merchandise as is done by a statute of the State of Washington which was under consideration by the court in the case of *Miethke,* vs. *Pierce County, supra,* where it was held that such statute was constitutional even though by reason of the provisions of another statute ordinary crops were exempt from taxation. In the absence, however, of a statute of this state classifying property of this kind as personal property, I do not see any escape from the conclusion that the same is properly taxable as real property.

In the consideration of the question here presented, I am not unmindful of the fact that the Common Pleas Court of Clark County in the case of *Miller, Treasurer,* vs. *Mellen Co., supra,* held that growing plants and floral stock, cultivated for the purpose of sale, and which the owner treats as merchandise, are personal property and that the same should be returned and assessed as such. So far as I know, floral stock has been quite uniformly taxed as personal property since this decision was made in the year 1913 and which was later affirmed by the Court of Appeals of that county. If any of the property referred to in your communication comes within the category of the property under consideration in the case of *Miller, Treasurer,* vs. *Mellen Co.,* the same should, I assume, be taxed as personal property.. Nursery trees and shrubs planted and kept by the owner of the land in which they are growing should be valued and assessed for taxation as a part of such land.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2431.

COSMETOLOGY—BEAUTY PARLOR LICENSE REQUIRED WHEN—MANICURING IN BARBER SHOP, HOTEL LOBBY OR DRUG STORE—INTERPRETATION OF "BEAUTY PARLOR"—

SYLLABUS:

1. *When a person does manicuring in a barber shop, hotel lobby or drug store or other place not regularly, as distinguished from occasionally, patronized*

by women, such places are not required by the provisions of Sections 1082-1 *to* 1082-23, *General Code, to obtain a beauty parlor license.*

2. *When a person establishes a place of business within a barber shop, hotel lobby, or drug store for the manicuring of nails or other branch of cosmetology and such place of business so established is regularly patronized by women, such place of business is required by Sections* 1082-1 *to* 1082-23, *General Code, to obtain a beauty parlor license.*

COLUMBUS, OHIO, March 30, 1934.

MRS. FRANCES DIAL, *Chairman State Board of Cosmetology, Columbus, Ohio.*

DEAR MADAM:—I am in receipt of your recent communication which reads as follows:

> "Under the State Cosmetology Law (House Bill No. 318) where persons do no other cosmetology practice than manicuring in barber shops, must such shops have a beauty shop license? Also, those having space in hotel lobbies and drug stores?"

I call your attention to Section 1082-1 of the Cosmetology Bill which reads in part:

* * * * * * * * *

> (b) The practice of cosmetology is defined to be and includes any or all work done for compensation by any person, which work is generally and usually performed by so-called hairdressers, cosmetologists, cosmeticians or beauty culturists, and however denominated *in so-called hairdressing and beauty shops, ordinarily patronized by women;* which work is for the embellishment, cleanliness, and beautification of the woman's hair, such as arranging, dressing, curling, cutting, waving, permanent waving, cleansing, singeing, bleaching, coloring, or similar work thereon and thereabout, and the massaging, cleansing, stimulating, manipulating, exercising or similar work upon the scalp, face, arms or hands, by the use of mechanical or electrically operated apparatus, or appliances, or cosmetics, preparations, tonics, antiseptics, creams or lotions and of *manicuring the nails,* which enumerated practices shall be inclusive of the practice of beauty culture but not in limitation thereof. * * *
>
> (d) The word 'manicurist' is defined as any person, who for compensation, engages only in the occupation of manicuring the nails of any person.
>
> (e) The term 'beauty parlor' is defined as any premises, building, or part of a building whereon or wherein any branch or any combination of branches of cosmetology or the occupation of a cosmetologist is practiced." (Italics the writer's.)

Section 1082-16 reads as follows:

> "Within 60 days after the appointment of the board as provided in section 3 (G. C. Sec. 1082-3) of this act, and annually thereafter

during the month of June, every person, firm or corporation conducting or operating or desiring to operate a beauty parlor, in which any one, or any combination of the occupations of a cosmetologist are practiced; * * * shall apply to the board for a license, through the owner, manager or person in charge, in writing upon blanks prepared and furnished by the board. Each application shall contain proof of the particular requisites for license provided for in this act and shall be verified by the oath of the maker.

Upon receipt by the board of the application, accompanied by the required fee, the board shall issue to the person, firm or corporation so applying and otherwise qualifying under this act, the required license. * * *

The annual license fee for a beauty parlor shall be five dollars ($5.00)."

Section 1082-2, General Code, provides in part:

"On and after 60 days after this law becomes in effect and the state board of cosmetology as herein provided for, has been duly appointed and qualified, every person, firm or corporation who shall conduct or operate a beauty parlor * * * either as manager, operator, or manicurist; without license, issued as herein provided, * * * shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). * * *"

Section 1082-18 provides in part:

"Every holder of a license issued by the board to operate a * * * beauty parlor, * * * shall display said license in a conspicuous place in the principal office, place of business, or place of employment of the said holder."

From the foregoing provisions, it is clear that every person, firm or corporation conducting or operating a "beauty parlor" must obtain a shop license for such beauty parlor.

A reading of paragraph (e) of Section 1082-1, General Code, which defines "beauty parlor," in conjunction with paragraph (b) defining the practice of cosmetology, serves to limit the definition of a "beauty parlor" to an establishment "ordinarily patronized by women," and to show the true legislative intent not to require barber shops, hotel lobbies and drug stores to procure beauty parlor licenses unless such places of business are "ordinarily patronized by women."

It is a matter of common knowledge that the ordinary barber shop wherein manicuring is practiced is not ordinarily "patronized by women," and is consequently not a "beauty parlor," within the purview of the definatory provisions of Section 1082-1, General Code, supra.

However, due to changing conditions and the uncertainties involved in foretelling the future, it is impossible to state as a matter of law, whether any barber shop is or is not or whether it will become regularly, as disinguished from occasionally, patronized by women. Nor am I able, as a matter of law, to state such proposition with reference to drug stores or hotel lob-

bies wherein manicuring is practiced. Such matters are questions of fact to be determined from all circumstances of each particular case.

However, I do not intend to rule, and do not hold, that a hairdressing, beauty or manicuring parlor "ordinarily patronized by women" may not be established within a barber shop, a hotel lobby, or a drug store, within the provisions of Section 1082-1 to 1082-23, General Code.

Specifically answering your inquiry, it is therefore my opinion that:

1. When a person does manicuring in a barber shop, hotel lobby or drug store or other place not regularly, as distinguished from occasionally, patronized by women, such places are not required by the provisions of Sections 1082-1 to 1082-23, General Code, to obtain a beauty parlor license.

2. When a person establishes a place of business within a barber shop, hotel lobby, or drug store for the manicuring of nails or other branch of cosmetology and such place of business so established is regularly patronized by women, such place of business is required by Sections 1082-1 to 1082-23, General Code, to obtain a beauty parlor license.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2432.

APPROVAL, PROPOSED FORM OF AGREEMENT BY AND BETWEEN STATE OF OHIO AND THE CITY OF COLUMBUS FOR RIGHT TO CONSTRUCT A SEWER THROUGH THE GROUNDS OF THE OHIO STATE UNIVERSITY.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication under date of the 30th instant, with which you submit for my examination and approval the proposed form of an agreement by and between the State of Ohio, acting by and through the Board of Trustees of Ohio State University as party of the first part, and the City of Columbus as party of the second part, by the terms of which there is granted to the City of Columbus the right to construct a sewer through the grounds of the Ohio State University from and between the points set out in said agreement and in accordance with the conditions and covenants therein contained.

This proposed agreement is one to be executed by the Board of Trustees of Ohio State University on behalf of the state pursuant to the authority of an act of the 88th General Assembly, passed April 1, 1929, 113 O. L. 78. By this act, the Board of Trustees of the Ohio State University, acting on behalf of the State of Ohio, are authorized to enter into an agreement with the City of Columbus, Ohio, to permit said city to construct and maintain an 8 ft., 9 in. and 7 ft. circular or equivalent sewer through the grounds of Ohio State University from King Avenue to Woodruff Avenue just east of the Ohio stadium. By this act, it is further provided that the exact location of said sewer and the necessary conditions with respect to the construction of the same shall