highways with the device out of the adjustment prescribed by the testing authority.

Your second inquiry may be answered by the statement that the penalty provisions of the act in question go to the point of the use of a motor vehicle upon the public highways without an approved device; and that there is no provision requiring a manufacturer of motor vehicles to equip his product with an approved device, nor prohibiting the sale of a vehicle not so equipped.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2406.

CORPORATIONS—WHERE LOANS MADE ON ENDORSED NOTES AT RATE IN EXCESS OF EIGHT PER CENT PER ANNUM AND CERTIFICATES SOLD, OR INVESTMENT SECURITIES OF ANY KIND ON INSTALLMENT PLAN—REQUIRED TO COMPLY WITH CHATTEL LOAN LAW AND ALSO BOND INVESTMENT COMPANY LAW—THE OHIO INDUSTRIAL ENDOWMENT FUND COMPANY.

A company making loans on endorsed notes at a rate in excess of eight per cent per annum, and selling certificates or other investment securities of any kind on the installment plan, other than a building and loan association, is required to comply with both sections 6345-1 *et seq.—the chattel loan law—and* 696 *G. C.—bond investment companies—notwithstanding the enforcement of such laws, by section* 154-39 *of the Administrative Code, is placed in the Department of Commerce.*

COLUMBUS, OHIO, September 9, 1921.

Department of Commerce, Division of Building and Loan, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

> "Pursuant to the provisions of section 154-39 of the administrative code, this division has been requested to assume authority over Blank Company, of Columbus, Ohio.
>
> The enclosed letter from L. D. Blank, esq., legal director of the said company, is self explanatory.
>
> As indicated therein, will you kindly advise this office whether it will be necessary for this company to maintain its qualifications under the chattel loan law in order to carry on their business in the manner indicated after having been brought under the jurisdiction of this department?"

The business of this company is of a two fold kind, (1) the loaning of money on endorsed notes, and (2) the sale of investment certificates. The law relating to chattel loans is found in sections 6346-1 et seq. G. C., while the law relative to bond investment companies is found in sections 696 et seq. G. C. Copies of the company's endorsed notes and its investment certificates, with a letter from its counsel, were enclosed with your subsequent letters.

The substance of the sample note submitted is that XYZ agrees to pay

to AB, CD and EF, or their order, one hundred dollars in ten equal installments at the company's office. The payments begin thirty days after date and six dollars interest is payable eleven months after date. So that the principal is payable at the end of ten months and interest equal to six per cent per annum is payable eleven months after date. The note is then negotiated by the endorsement of AB, CD and EF and delivery to the company, which then loans the sum of one hundred dollars. Whether the money is actually paid to the endorsers or to the maker is not stated and is not material.

Section 6346-1 in part provides:

> "It shall be unlawful * * * to engage * * * in the business of making loans on * * * endorsed * * * notes * * * at a charge or rate of interest in excess of eight per cent per annum, including all charges",

without first having obtained a license. The time and distribution of the payments in the note are set out in the facts and it is enough to say that as a result of this method of payment, the note is within the rule stated in Collateral Loan Company vs. Bell, 17 O. N. P. (n. s.) p. 385, 388. Of a similar note the court there said:

> "What the installment note does is as follows: The borrower gets the use of one hundred dollars for the first month only, for at the end of the first month he makes a payment which lessens the principal, which the borrower is entitled to keep for the whole year, and so on from month to month as payments are made, the principal growing less and less, though the borrower, according to the statute and usage, is entitled to the use of the principal sum for the whole year."

In this case the court interprets and gives effect to the phrase "eight per cent per annum" and holds that such an installment note may not in the aggregate draw a greater amount of interest than would be equal to the interest on the principal for the time actually used at the rate of eight per cent per annum, unless the loaner has complied with the chattel loan law.

This was the interpretation placed upon the business of this company by the former commissioner of securities, and acquiesced in by this company, as their counsel says:

> "We then came in conflict with the chattel loan law, * * *. We do not make loans upon the mortgage or pledge of the chattels at all, but we do take the endorsed notes."

In referring to the Cleveland case, above referred to, counsel for the company further says that:

> "The holding would have been the same if the original note had drawn only six per cent; the monthly payment plan had made it average more than eight per cent. In order that this holding of the court might not interfere with our collection of principal and interest, we qualified under the chattel loan law."

Another side of the business of the company consists in the sale of in-

vestment certificates. It is not a building and loan association. One of the sample copies submitted is therein named a "twenty year twenty payment" certificate. In this certificate—and only one of them need be considered—the company agrees to pay the investor in twenty years a certain sum of money plus dividends from certain surplus earnings. The investor pays for the certificate in a like period of time in installments. There are other provisions as to the investor's participation in the surplus earnings over eight per cent on the capital stock, interest on advance payments and surrender provisions that need not be stated in further detail.

Section 697 G. C. defines a bond investment company for the purpose of supervision, in part as follows:

> "Every corporation, * * * other than a building and loan association, which * * * sells certificates, * * * or other investment securities of any kind, on the partial payment or installment plan, shall be deemed a bond investment company."

The following sections provide for a deposit by such companies of one hundred thousand dollars and impose certain requirements and supervision.

From the correspondence accompanying your letter, and by personal conference, it is learned that heretofore this company has not been regarded as subject to the jurisdiction of the superintendent of building and loan associations. As above stated, however, it did qualify under the chattel loan law, but now since the enactment and going into effect of the administrative code, particularly section 154-39 G. C., the director of the department of commerce, as stated in your letter, has directed your division to "assume authority" over the company, that is, to permit and require the company to qualify under section 696 et seq. G. C., as a bond investment company. I am informed that the opinion of this department is not requested as to the status of the company under sections 696 et seq. G. C., as a bond investment company, the director of the department having thus passed upon this question. Nor is it contended that the loan business of the company has in any manner changed or that the chattel loan law has been amended since the former ruling. Nor is counsel for the company understood to contend that considering the chattel loan law by itself, his company is exempted from or taken out of the operation of that law, But the question seems to be now, whether or not, by reason of section 154-39 of the administrative code, and possibly other provisions in that code, transferring the duty of enforcing the chattel loan law—formerly entrusted to the commissioner of securities—to your division in the department of commerce, and the present ruling, and the future qualification of this company as a bond investment company it is now subject to the provisions of section 6346-1 as conducting a chattel loan business regulated by those sections. Or, to state in another way, you want to know whether this company, upon compliance with sections 696 et seq., as a bond investment company, will then be obliged to continue its compliance with the chattel loan law as being engaged in loaning money on endorsed notes.

Section 154-39 of the administrative code in part provides that the department of commerce

> "shall have all powers and perform all duties vested in the inspector of building and loan associations * * * and the commissioner of securities; * * * and said department shall have all powers and perform all duties vested by law in any and all officers, deputies and employes of such offices and departments. Wherever powers are

conferred or duties imposed upon any such department, offices or officers, such powers and duties shall be construed as vested in the department of commerce."

This provision explicitly transfers all powers formerly exercised by the inspector of building and loan associations and the commissioner of securites to the new department of commerce. The answer to your question becomes relatively simple by observing here that the administrative code merely puts these powers and functions into one new department; it contemplates the same powers and duties as conferred and imposed by the then existing laws, relating to bond investment companies, and the business of loaning on endorsed notes at a rate in excess of eight per cent per annum; it does not in any manner change the substantive law in this regard and sections 696 et seq. and 6346-1 et seq. remain unaffected in any manner by the administrative code, except that they are now to be enforced by the new department thus created.

The conclusion seems to be irresistible that these loans being made upon "endorsed * * * notes at a charge or rate of interest in excess of eight per cent per annum" may not be made except in compliance with sections 6346-1 et seq.

This department has not been advised of any theory upon which the claim of exemption from such compliance was based, unless it be the suggestion of duplicate license and inspection. The answer to this is that the company is doing two kinds of business, upon which the state, in separate and distinct laws, has imposed certain conditions, and it is the fact that the company is thus engaged in these two kinds of business that entails such apparent double license and inspection.

You are therefore advised that under these circumstances continued compliance on the part of this company with the chattel loan law will be necessary if its loaning business, as above described, is continued.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2407.

ADMINISTRATIVE CODE—DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—WITHOUT AUTHORITY IN MATTER OF INSTALLATION AND REPAIR AT STATE INSTITUTIONS ADMINISTERED BY DEPARTMENT OF PUBLIC WELFARE OF STEAM OR ELECTRIC POWER PLANTS, TRANSMISSION AND DISTRIBUTION SYSTEMS, MECHANICAL EQUIPMENT AND STRUCTURES OTHER THAN BUILDINGS—DEPARTMENT OF PUBLIC WELFARE DECIDES WHETHER OR NOT REPAIRS OF BUILDINGS AT STATE INSTITUTIONS SHALL BE MADE—HIGHWAYS AND PUBLIC WORKS PERFORM REPAIRS—PROCEDURE FOR CONSTRUCTION OF STATE BUILDINGS—EXCEPTIONS NOTED—AUTHORITY OF CONTROLLING BOARD DISCUSSED.

1. *The statutes prescribing the powers and duties of the department of highways and public works vest said department with no authority in the matter of the installation and repair at state institutions administered by the department of public welfare, of steam or electric power plants, transmission and distribution systems, mechanical equipment, and structures other than buildings.*