to any person desiring to *sell* such warehouse receipts. It is quite evident that if an issuer of warehouse receipts were to sell such warehouse receipts in this state, not only would he be required to file an application for the qualification of such warehouse receipts, but he would also be required to obtain a dealer's license. The legislature is providing the manner in which warehouse receipts for intoxicating liquor may be qualified in this state is presumed to have intended that particular method to the exclusion of any other. The maxim "expression unius est exclusio alterius" has direct application. The Supreme Court of Ohio in the case of *Cincinnati* vs. *Roettinger,* 105 O. S. 145, in referring to the above maxim said at page 152:

> "That maxim has peculiar application to any statute which in terms limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise."

Specifically answering your question it is my opinion that:

1. Every dealer licensed under the provisions of Section 8624-18, General Code, is required to file an application under Section 8624-49, General Code, to qualify warehouse receipts in order to lawfully sell such warehouse receipts in other than exempt transactions in this state.

2. The right to file an application for qualification of warehouse receipts for intoxicating liquor under Section 8624-49, General Code, is restricted to persons desiring to sell such warehouse receipts in this state.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1071.

CONTRACT AGREEING TO REPAIR MOTOR VEHICLE AMOUNTS TO INSURANCE, WHEN.

SYLLABUS:

Where a company, in consideration of a specified amount payable in advance together with a certain co-operative charge payable when service is rendered, issues a contract whereby it agrees to repair certain described parts of a motor vehicle damaged as a result of an accident, it is

entering into a contract substantially amounting to insurance under the provisions of Section 665, General Code.

COLUMBUS, OHIO, August 30, 1937.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, requesting an opinion of this office as to whether or not a certain cooperative maintenance contract enclosed with your letter is a contract substantially amounting to insurance. The contract reads as follows:

"COOPERATIVE MAINTENANCE CONTRACT

This agreement made by and between B. M. S., having a principal place of business in Y., Ohio, and.....
.....residing at number.....
witnesseth:

1. In consideration of the sum of Eight Dollars ($8.00) and upon compliance with the stipulations herein contained, B. M. S. agrees to render the specified services hereinafter enumerated for the cooperative service charge of $0.50, for a period of one year from date, for the automobile owned by:

.....

and which automobile is described as follows:
MAKE ..... TYPE..... YEAR.....
ENGINE NUMBER..... And now having a registration number..... said $0.50 cooperative charge, to be paid when the service is rendered, is the fixed charge for one or more of the following services:

The repair of all fenders, running boards, steps, splash pans, side splashers, tire racks and tire carriers, metal tire covers, front bumpers and rear bumpers, bumperettes and to repaint all of the parts so repaired; including brake adjustments and inspections.

If the Owner wishes any of the parts herein above described to be replaced with new parts, the service charge shall include all labor necessary to replace any and all of said parts.

2. When broken, the Company will sell to the Owner and install for him a windshield of the kind and quality now in the car for the cooperative charge of $1.00.

3. It is further agreed and understood that all services

as hereinbefore enumerated, shall be made by and at the garage specified by the Company.

4. For a period of one year from the date hereof B. M. S. covenants and agrees to tow the car of the Owner, day or night, to any place designated by the Owner of this cooperative maintenance contract, within a radius of ten miles from the maintenance garage of the Company, excluding mechanical or battery trouble, for the fixed cooperative charge of $0.50.

5. The Company further agrees that this cooperative maintenance contract will be transferred upon written request from the Owner of the car above described, to any other car in good condition, and owned and described by the Owner of this cooperative maintenance contract.

6. Except for brake inspections and adjustments, this cooperative maintenance contract does not include service arising out of natural wear of the above described parts.

7. It is hereby understood and agreed that the Owner shall notify the Company within forty-eight hours after any service become necessary.

8. This cooperative maintenance contract shall be void if not fully paid for within.....days.

IN WITNESS WHEREOF, B. M. S. HAS CAUSED its name to be hereunto attached, this.....day of..... 193.....

B. M. S.
By ....."

It is apparent from a reading of the above contract that the company, in consideration of a fixed amount payable in advance, together with a certain cooperative charge payable when service is rendered, agrees to repair certain described parts of a motor vehicle owned by the purchaser of the contract with the exception of those parts which require service arising out of natural wear.

Insurance business in this state is regulated by statute. Section 665, General Code, provides in part as follows:

"No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is

> expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with.
> * * * * * * * * *"

A reading of the aforementioned section indicates that in order to come within its provisions, it is not necessary that a contract be one of strict insurance. The statute prohibits, unless the insurance laws of this state are complied with, a company from entering into a contract substantially amounting to insurance. This language is much broader and more inclusive than the phrase "contract of insurance." This office has consistently held that where a company, in consideration of a fixed sum, contracts for a definite period of time to repair certain parts of motor vehicles damaged as a result of an accident, it is entering into a contract substantially amounting to insurance under the provisions of Section 665, supra. (Opinions of the Attorney General for 1928, Vol. I, page 497; Opinion No. 168, rendered February 25, 1937.) The conclusions reached in the foregoing opinions of the Attorneys General were on the basis that where companies issuing certain contracts undertook to repair parts of motor vehicles damaged as a result of an accident or collision, such companies agreed to assume the risk of damage or loss of the owner of the motor vehicle and by reason thereof the contracts were ones substantially amounting to insurance.

In order to determine whether or not the contract involved in this opinion is one substantially amounting to insurance, it is necessary to determine whether or not the company agrees to repair certain parts damaged as a result of an accident. The important provision of the contract which in my opinion controls a determination of the above is found in Item 6. Under this provision the repair services offered by the company are not available, with the exception of brake inspections and adjustments, to those parts rendered unserviceable by reason of natural wear. It is reasonable to assume that the company is bound, at least by inference, to repair all automobile parts described in the contract if such parts are damaged as a result of accident or collision.

Although there is no statutory definition in this state of "insurance," the Supreme Court of Ohio has on many occasions defined the term "insurance." Thus, in the case of Ohio Farmers Insurance Co. vs. Cochran, 104 O. S. 427, the court said:

> "An insurance policy is a contract between the insured and the insurer, whereby for an agreed premium one party undertakes to compensate the other for loss on a specified subject by specified perils."

In view of the above definition of "insurance," it would seem that the company issuing the contract involved in this opinion undertakes for a specified sum to compensate the owner of a motor vehicle for loss arising out of damage to his property.

There is one other opinion of a former Attorney General which should be discussed at this time. In Opinions of the Attorney General for 1928, Vol. I, page 670, the then Attorney General held as disclosed by the syllabus:

> "Where a company contracts to render specified services to the owner of automobile tires or other parts of an automobile, or for services connected therewith, for a given period of time and in consideration of a specified sum for the services when rendered, the contract is not one substantially amounting to insurance under the laws of Ohio."

The facts in the foregoing opinion are distinguishable from the facts involved in this opinion in that all service charges were paid by the contract holder at the time the work was performed. No consideration was paid by the purchaser of the contract in advance. In view of the above, I concur with the conclusion reached in the foregoing opinion. In this case, however, the purchaser pays not only a service charge at the time the service is performed but also pays a certain consideration at the time the contract is entered into with the company.

The contract involved in this opinion is very similar to the contract involved in Opinion No. 168, rendered February 25, 1937, wherein I held:

> "A company, which in the conduct of its business, issues and sells a contract to owners of motor vehicles whereby, in consideration of a certain sum of money, it undertakes for a definite period of time to repair motor vehicles damaged as a result of an accident or agrees to furnish towing services to contract holders whose automobiles are disabled by reason of an accident, is entering into a contract substantially amounting to insurance under the provisions of Section 665, General Code."

In specific answer to your question, I am of the opinion that where a company, in consideration of a specified amount payable in advance together with a certain cooperative charge payable when service is rendered, issues a contract whereby it agrees to repair certain described parts of a motor vehicle damaged as a result of an

accident, it is entering into a contract substantially amounting to insurance under the provisions of Section 665, General Code.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1072.

APPROVAL—BONDS OF MONTGOMERY COUNTY, OHIO, $5,000.00.

COLUMBUS, OHIO, August 30, 1937.

State Employes Retirement Board, Columbus, Ohio.
GENTLEMEN:

IN RE: Bonds of Montgomery County, Ohio, $5,000.00.

The above purchase of bonds appears to be a part of an issue of bonds of the County of Montgomery, dated October 1, 1933. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement System under date of April 26, 1934, being Opinion No. 2595.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said county.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1073.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, $11,000.00.

COLUMBUS, OHIO, August 30, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

IN RE: Bonds of Toledo City School District, Lucas County, Ohio, $11,000.00.