This section does not limit the terms of the agreement in any way. It merely states that the terms finally determined between the county and other subdivisions be specifically set forth in the agreement.

The terms are, therefore, for the parties to the contract to decide and it is my opinion that should they decide to make full payment in advance for the services to be rendered, it is entirely within their power.

Therefore, in specific answer to your questions, I am of the opinion that: (1) A county may, by contract, furnish to a municipality information over the county broadcasting system for a sum to be agreed upon between the proper officials of the county and the municipality; (2) whatever sum so agreed upon may be paid by the municipality in advance to receiving such service.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

828.

INSURANCE—WHERE COMPANY CONTRACTS OR ISSUES CERTIFICATE FOR A CONSIDERATION TO REPAIR MOTOR VEHICLE, TO DESIGNATE GARAGE, PROVIDE TOWING SERVICE IN UNITED STATES OR CANADA, TO INVESTIGATE NEGLIGENCE, DAMAGE, ETC.—ACTS SUBSTANTIALLY AMOUNT TO INSURANCE—SECTION 665 G. C.—LEAGUE OF AMERICAN MOTORISTS, INC., CLEVELAND.

SYLLABUS:

A company which issues a certificate to a subscriber whereby it agrees, in consideration of a specified amount paid to it, (1) to cause to be repaired at a designated gargae the motor vehicle of the subscriber damaged through the negligence of the driver of another vehicle at one-half the ordinary price thereof, (2) to cause to be repaired at a garage designated by it any motor vehicle damaged by the motor vehicle described in said certificate through the sole negligence of the subscriber, and (3) to cause towing services to be rendered in the United States or Candada whenever same may be necessary because of damage to the automobile specified in the certificate by reason of the negligence of the driver of another moving vehicle or when another automobile is damaged by the motor vehicle described in the certificate through the sole negligence of the subscriber, is entering into a contract substantially amounting to insurance under the provisions of Section 665, General Code.

COLUMBUS, OHIO, June 29, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, State House Annex, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date with which were inclosed specimen copies of the application and certificate, respectively, being offered by the League of American Motorists, Inc. of Cleveland, Ohio. You request my opinion as to whether the contract evidenced by said specimen copies would substantially amount to insurance within the meaning of Section 665, General Code.

The application provides that the applicant for membership shall pay the sum of Twenty-Eight Dollars ($28.00) for one year for his membership in the company. The certificate itself, on the first page thereof, reads in part as follows:

"WHEREAS.....of No.....
.....of the City of.....
County of .....State of .....
the owner of ..... automobile described below has subscribed for this service certificate to the LEAGUE OF AMERICAN MOTORISTS INC., for.....
year.....from this date, in the sum of .....
Dollars.

NOW THEREFORE: the subscribers of the LEAGUE OF AMERICAN MOTORISTS., in good standing are entitled to the advantages and services listed herein:—

REPAIRS AND SERVICE

1. It is understood and agreed that any and all garage work to be done on the below described motor vehicle will be taken to the Official Garage of the Company for any and all repairs during the term of this certificate.

2. In the event the subscriber's automobile is damaged by negligence of the driver of any other moving vehicle, The Company, by special contract with a reliable Garage has arranged for the subscribers of this company whereby they may have repaired at this garage, at fifty per cent (one Half) of the standard price any and all work and repairs to be done on their automobiles regardless of the amount of damage.

3. Subscriber's of the company are entitled to the advantages and services of the garage and service station which has contracted with the company to repair without charge any other motor vehicle damaged by the within described motor vehicle thru the sole negligence of the subscriber of the company, pro-

vided that the motor vehicle so damaged is taken to the garage specified by the company for such repairs regardless of the amount of damage.

4. Towing Services will be rendered in the United States or Canada, day or night, by the official garage of the company whenever necessary to render the services as specified under any of the above items, without charge.

5. This department will assist subscribers of the company in procuring loans on their automobiles.

No agent or representative has authority to change or alter this certificate and no statement made by any person not embodied herein shall be binding on the company.

Any subscriber charged with driving the within described motor vehicle while under the influences of alcohol or narcotics shall forfeit all rights under this certificate."

Then follows a description of the motor vehicle to which the certificate is applicable.

In this state the business of insurance is impressed with a public interest and is regulated in great detail 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.

* * * * * * * * *"

It will be noted that this section applies not only to the business of insurance, but also to contracts substantially amounting to insurance and it is, therefore, necessary to determine whether the application and certificate used by the League of American Motorists, Inc. result in a violation of the above quoted section.

There is no statutory definition of the term "insurance" in this state. However, the Supreme Court has defined the term a great many times. In the case of State, ex rel. Duffy, Attorney General vs. Western Auto Supply Company, 134 O. S. 163, at page 168, it is said:

"* * * 'Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him

> or his nominee a certain or ascertainable sum of money on a special contingency. As regards property and liability insurance, it is a contract by which one party promises on a consideration to compensate or reimburse the other if he shall suffer loss from a specified cause, or to guarantee or indemnify or secure him against loss from that cause.' "

Further in said opinion at page 169, I find the following statement:

> "It seems well settled that to constitute insurance the promise need not be one for the payment of money, but may be its equivalent or some act of value to the insured upon the injury or destruction of the specified property."

The League agrees that in the event the subscriber's automobile is damaged by the negligence of the driver of any other vehicle, it may be repaired in a designated garage at a cost to the subscriber of fifty per cent of the standard price which is defined in the certificate to mean "the price of repairs as computed by authorized dealers of a like vehicle as covered in this certificate".

The League further agrees that the garage will repair, without charge, any motor vehicle damaged by the vehicle described in the certificate through the sole negligence of the subscriber provided the motor vehicle is taken to said garage specified by the League for such repair. While it is true that the certificate at no place provides for payments in money to be made directly to the subscriber, nevertheless the subscriber is compensated in what is the equivalent of money.

In other words, the League agrees to cause to be rendered to the subscriber service at one-half the usual price when his own automobile is damaged and agrees to cause to be repaired at garages designated, the automobiles of other persons damaged through the sole negligence of the subscriber.

The League also agrees that towing services will be rendered in the United States or Canada, during the day or night, by the official garage of the company whenever the subscriber's automobile is damaged by the negligence of the driver of any other moving vehicle or when any other motor vehicle is damaged by the automobile described in the certificate on account of the sole negligence of the subscriber.

These agreements made by the League constitute "acts of value" and I, therefore, have no difficulty in reaching the conclusion that the contract evidenced by the application and certificate in question amounts substantially to insurance within the meaning of Section 665, General Code.

Specifically answering your questions, I am of the opinion that the contract evidenced by the certificate and the application which you have

submitted to me is one substantially amounting to insurance within the meaning of Section 665, General Code.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

829.

SCHOOL PUPILS—TRANSPORTATION—BUSSES—STATE DEPARTMENT OF EDUCATION, THROUGH DIRECTOR, MAY PROMULGATE RULES AND REGULATIONS IN RE: CONTRACTS, TRANSPORTATION, EQUIPMENT, INSPECTION, EXAMINATION, BUSSES, ETC.—BOARDS OF EDUCATION MUST CONFORM WHETHER CONTRACT ENTERED INTO PRIOR TO PROMULGATION OF RULES OR LATER.

SYLLABUS:

1. The State Department of Education may through its Director, promulgate rules and regulations providing for the inspection and examination of transportation equipment used for the transportation of school pupils and boards of education throughout the state must conform to such rules and regulations whether they own transportation equipment or not, and if they have contracted for such transportation these contractors, whether the contract was entered into prior to the promulgation of the rule or later, must submit to having the equipment inspected and examined in accordance with regulations.

2. When a contract for transportation of school pupils has been entered into by a board of education prior to April 15, 1938, the effective date of the rule promulgated by the State Department of Education with respect to annual inspection of school pupil transportation equipment used in its district, and the said contract does not either expressly or impliedly provide for the payment to the contractors of the necessary expense if any, of moving its transportation equipment to the proper place for such examination and inspection, the contractors can not be made to bear such expense and the same should be borne by the board of education.

3. Where a board of education enters into a contract for the transportation of school pupils within its district subsequent to April 15, 1938, the effective date of the regulation promulgated by the State Department of Education with respect to the examination and inspection of school busses, the said regulation is a part of such contract the same as though it had been expressly written therein, whether or not the contracting parties had actual knowledge of the existence of the said regulation.