managed and supported by individuals or a private organization. A parochial school is a private school."

There is cited in support of the last statement of the text quoted above, the case of *Quigley* vs. *State,* 5 O. C. C. 638. This is a case decided by the Circuit Court of Lucas County in 1891. It was later affirmed by the Supreme Court without report. Case No. 2973, 27 O. L. B. 332. In that case the court said:

> "We are of opinion that parochial schools are private schools. We suppose, if a certain number of gentlemen were to meet together and agree that they would hire a teacher, and pay him for his services in that school, and no persons should attend that school but their own children, that would be a private school. We cannot see any difference between that school and a school where the congregation of a church should meet together and say 'we will have a school to be supported by this congregation, by the contributions of its members, which shall be open to the children of this congregation, and in which they shall be educated.' We think that becomes a private school within the terms of the statute, so far as that congregation is concerned, and is a private school as distinguished from a public school, which we understand to be a school supported by taxation, and by money raised by the state."

In view of the authorities, I am of the opinion that the term "public school" is synonymous with the term "common school" as used in the Constitution of Ohio, that it means such schools as are established by the legislature, in pursuance of the constitutional mandate to provide a system of common schools. It imports schools that are free to all the inhabitants of the state of proper age and attainments, administered by public agents appointed or elected in accordance with law and supported by public funds raised by taxation or otherwise. No authority exists for the use of public funds for the support or maintenance of any other class of schools than the schools mentioned, and no power exists in the legislature or in any public official, for the diversion or use of any part of the public funds intended for school purposes, for schools administered by religious groups or sects.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1410.

PROMISSORY NOTE EXECUTED TO A SURETY TAXABLE AS AN INVESTMENT WHEN—MORTGAGE EXECUTED TO SURETY NOT TAXABLE WHEN.

SYLLABUS:

A promissory note executed to a surety to protect him against loss on account of a loan of money made by a bank to the maker of the note, is subject to taxation as the property of such surety although the note is secured by a mortgage, and such note and mortgage have been hypothecated to the bank to secure the loan made by it to the maker of the note. Such note, if interest-bearing,

is taxable as an investment unless the term of the note is such as to characterize it as a "current account," under the provisions of Section 5327 G. C.

A mortgage executed to sureties to save them harmless and free from loss as such sureties on a note signed as principal by the person executing the mortgage, is not a taxable interest in the hands of such sureties until they have suffered loss by being compelled to pay the amount due on the note or some part thereof.

COLUMBUS, OHIO, August 17, 1933.

HON. EMMETT D. LUSK, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—As previously acknowledged, I am in receipt of a communication from you which reads as follows:

> First: A borrows money from B Bank. No mortgage on A's real estate is given to B Bank as security. C signs A's note to B Bank as surety. C then takes note from A for same amount as borrowed from Bank and in order to secure said note A gives C mortgage on real estate. Said mortgage is filed and recorded in proper county. After mortgage has been so filed and recorded C then deposits said note and mortgage with B Bank as collateral security for loan to A. No assignment of said mortgage appears on the record thereof. Is the note and mortgage standing in C's name such a credit or property right as to make the same taxable in C's name? In other words, should C pay taxes on said note and mortgage, the same having passed out of his control when deposited with B Bank as aforesaid.
>
> Second: A borrows money from B Bank and C and D sign said note as security. No other security is taken by B Bank. In order to protect C and D as sureties on said note, A executes and delivers to C and D an indemnifying mortgage on A's real estate. Said mortgage is filed and recorded in proper county. No note was executed from A to C and D in connection with the execution of said mortgage. Is the mortgage standing in C and D's name such credit or property as to make the same taxable? In other words, should C and D pay taxes on said mortgage?

Your communication does not contain sufficient facts to enable me to make a categorical answer to either of the questions submitted. As to your first question it is quite clear that the promissory note executed by A to C is, under the provisions of Section 5323 G. C., to be classed as an investment for purposes of taxation if the same is interest-bearing, unless the term of said note is such as to characterize the note as a "current account," within the meaning of Section 5327 of the General Code. Under this Section a "current account" is an item receivable or payable within one year, however evidenced. You do not, in your communication, give me any information as to the term of this note. Inasmuch, however, as it is quite likely that the note executed by A to the bank for the money loaned by the bank to him, was a 60 or 90 day note, it is quite probable that the note executed by A to C, the surety of his note to the bank, was likewise a short term note and was, in this view, a "current account" to be listed for the purpose of determining the net credits of C to be assessed for taxation under the provisions of this Section and of Section 5328-1 G. C.

However, whether this note be considered as an investment or as a "current account" the same remains the property of C notwithstanding the fact that the note and the mortgage securing the same have been hypothecated with the bank to secure the loan made by the bank to A. And since, under the provisions of Section 5370 G. C., it is the duty of the owner of taxable personal property to return the same for taxation unless some fiduciary is required to make the return for him, the return of the note here in question for purposes of taxation should be made by C, it not appearing that the bank which holds the possession of the note is a fiduciary within the meaning of that term as the same is defined by Section 5366 G. C.

I am, therefore, of the opinion in answer to your first question that if the term of the note referred to in your communication is for more than one year, and the same is interest-bearing, C should list this note and pay taxes on the same as an investment, either upon the income yield of the note if said note yielded an income during the year prior to January 1, 1933. If considered as an investment under the rule above stated, the note did not yield any such income, C should list the same for taxation and pay the taxes on the same at the flat rate otherwise prescribed by law. On the other hand, if the term of this note is such as to make the same a "current account" within the provisions of Section 5327 G. C. the same should be listed by C in his personal property tax return and the question whether any taxes will be required to be paid upon the same will depend upon whether the same together with other "current accounts" receivable owned by C will be in excess of his "current accounts" payable so as to produce for purposes of taxation "credits" the taxation of which is provided for by Section 5327 and 5328-1 G. C., at the rate provided for in Section 5638 G. C.

With respect to your second question it has been noted that no provisions have been made for the taxation of mortgages as such *eo nomine*. The question to be considered in this connection is, therefore, whether the terms of this mortgage executed by A to C and D are effective to create a chose in action or other present intangible rights which are taxable under the comprehensive provisions of the personal property tax law. If, as I assume is the case, the condition of this mortgage is that the mortgagees therein named are to be saved harmless and free from loss by reason of the fact that as sureties they signed A's note to the bank, no right or chose in action in favor of the mortgagees, C and D would arise until they had suffered loss by being compelled to pay A's note to the bank. *Henderson-Achert Lithographing Company* vs. *The John Shillite Company,* 64 O. S., 236, 256. And by way of answer to your second question it may be said that before the event which would give C and D a right of action on the mortgage against A, the rights secured to C and D by the mortgage are not such as are taxable, and C and D would not in such case be required to make any return with respect to said mortgage or the rights secured to them thereby.

Respectfully,
JOHN W. BRICKER,
Attorney General.