In *Ohio Jurisprudence*, Volume 37, at pages 536 and 537, it is declared:

> "The lawmaking body's own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, there is no better way to determine the intent and purpose of the legislature than by its own definition of the language used. Accordingly, any provision in a statute which declares its meaning is authoritative and in many cases will have controlling weight. In such cases, definitions of experts of the terms used are immaterial."

In view of the foregoing, it would appear that the definition contained in section 1390, General Code, supra, manifestly requires that the word "resident", as used in sections 1430 and 1431, General Code, be construed to mean a citizen of the United States who has lived in the state of Ohio for not less than one year next preceding the date of making application for a license.

Specifically answering your question, it is therefore my opinion that a resident of Ohio, for the purposes of the Fish and Game Act, is a person who is a citizen of the United States and who has lived in the state of Ohio for not less than one year next preceding the date of application for a fishing license or hunter's and trapper's license.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4552.

FRANCHISE TAX—APPLICABILITY WITH RESPECT TO U. S. GOVERNMENT BONDS OWNED BY OHIO CORPORATION BUT HELD IN MICHIGAN OFFICE—SHOULD BE ALLOCATED IN OHIO.

SYLLABUS:

Sections 5328-1 *and* 5328-2, *General Code, providing for the allocation of intangible property in and out of this State for purposes of taxation, are not applicable with respect to the allocation of United States government bonds owned and held by an Ohio corporation at its office in the state of Michigan where it does not appear that such bonds were created or acquired by the corporation in the course of repeated dealings in property of this kind, and it appears that such bonds are simply owned and held by the corporation*

as a part of its surplus. And in this situation such bonds under the rule of mobilia sequunter personam should be allocated in this state for the purpose of determining the franchise tax to be paid by such corporation under the provisions of section 5395, et seq., General Code.

COLUMBUS, OHIO, August 17, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have requested my informal opinion upon the question of the proper allocation for franchise tax purposes of certain United States government bonds of the amount and value of something more than three hundred thousand dollars owned and held by The Sparks-Withington Company, an Ohio corporation which carries on all of its business as a manufacturer at Jackson, Michigan, where these bonds are held.

Most of the considerations which enter into a question of this kind have been fully discussed in other and more formal opinions directed by this office to you from time to time, and these matters will not be discussed at length in this communication. It is sufficient to say in this connection that although the bonds here in question would not be subject to property taxes under any law this State might enact for this purpose, there can be no legal objection to the inclusion of these bonds to the full amount of their value as a part of the assets of the company for the purpose of using such bonds, together with other property of the company, as a measure of the franchise tax to be assessed against this company under the provisions of section 5495, et seq., General Code. It is to be further observed, consistent with former opinions to you on the general question, that aside from the provisions of sections 5328-1 and 5328-2, General Code, which are referred to in section 5498, General Code, and made a part of this section with respect to the allocation of intangible property for franchise tax purposes, the bonds here in question as intangible property are to be allocated in this State where the company has its legal residence without reference to the fact that these bonds are owned and held by the company in the state of Michigan and without reference to the fact that conceivably under the laws of the State such bonds as surplus of the company were derived from earnings in the conduct of its business in that State and may be there localized for purposes of taxation of this kind.

As a consideration touching the question here presented, it is noted that section 5498, General Code, relating to the determination of the base for the assessment of franchise taxes on domestic and foreign corporations, in this State, provides that "in determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation the commission shall be guided by the provisions of sections 5328-1 and 5328-2 of the General Code".

Section 5328-1, General Code, which, together with section 5328-2,

General Code, was enacted as a part of the Intangible and Personal Property Tax Law, provides that property of the kinds and classes mentioned in section 5328-2, General Code, used in and arising out of business transacted in this State by, for or on behalf of a non-resident person, other than a foreign insurance company, shall be subject to taxation in this State; and that all such property of persons residing in this State used in and arising out of business transacted outside of this State by, for or on behalf of such persons, shall not be subject to taxation in this State. Section 5328-2, General Code, so far as the same is pertinent in the consideration of the question at hand, provides in part as follows:

> "Property of the kinds and classes herein mentioned, when used in business, shall be considered to arise out of business transacted in a state other than that in which the owner thereof resides in the cases and under the circumstances following * * *. In the case of investments not held in trust, when made, created or acquired in the course of repeated transactions of the same kind, conducted from an office of the owner in such other state, and (1) representing obligations of persons residing in such other state or secured by property located therein, or (2) when an officer or agent of the owner in the owner's office in such other state, has authority, in the course of the owner's business, to receive or collect the income thereon or the principal, if any, or both when due, or to sell and dispose of the same."

Aside from the consideration that it is to be presumed that the term "investments" as the same is found in the above quoted provisions of section 5328-2, General Code, was intended by the legislature to have the same meaning as that ascribed to this term in the definitive provisions of section 5323, General Code, wherein the definition of the term "investments" expressly excludes, among other things, bonds or other securities issued by the United States, it is noted that although the bonds here in question were doubtless acquired from the earnings of the company in the transaction of its business in the state of Michigan, it cannot be said, consistent with the applicable provisions of sections 5328-1 and 5328-2, General Code, that these bonds are "used in and arise out of business transacted out of this state" within the meaning of the provisions of these sections, and this for the reason that there is nothing in the facts here presented to show that these bonds were "made, created or acquired in the course of repeated transactions of the same kind", conducted from the office of the company in the state of Michigan. On the contrary, it would seem that inasmuch as this company is a manufacturing concern and not a dealer in intangibles, these bonds were acquired and held simply as surplus of the company and not by dealing in this class of property. It follows from the considerations above noted that no effect can be given to

the provisions of sections 5328-1 and 5328-2, General Code, referred to in section 5498, General Code, for the purpose of allocating these bonds out of the State in determining the franchise tax to be assessed against the company under the provisions of this and other related sections of the General Code. As a consequence of this conclusion and applying the general rule with respect to the situs of intangible property of this kind for pursoses of taxation, I am required to hold that these bonds should be allocated to the state of Ohio in determining the franchise tax to be paid by this corporation.

As a consideration which is pertinent though, perhaps, not conclusive with respect to the construction and application of the reciprocal terms of section 5328-2, General Code, which provide that the assignment of a business situs outside of this State to property of a person residing in this State in any case is inseparable from the assignment of such situs in this State to property of a person residing outside of this State in a like case and under similar circumstances, it is noted that although the statutory law of the state of Michigan provides for the localization in that State for tax purposes of intangible property, including capital investments, which is owned or used in the State by either a domestic or foreign corporation, if such intangible property is acquired from the conduct of its business in that State, no provision is made in the law of the state of Michigan excluding from taxation in that State investments or other intangible property owned by a corporation or other person having a legal residence in that State where property of this kind is held in another state in which such corporation or other person carries on the business out of which such property was acquired. On the contrary, it appears from the decision of the Supreme Court of Michigan in the case of *In re Truscon Steel Company*, 246 Mich., 174, that that State does not give any recognition to the doctrine of business situs with respect to intangible property owned by a Michigan corporation and held by it in another state where it conducts its business out of the earnings of which such intangible property has accrued, but that in a case of this kind such intangible property is allocated to the state of Michigan for the purpose of determining taxes to be paid by the corporation. As above noted, this consideration is probably not conclusive with respect to the question here presented. However, for the reasons first above noted herein, I am of the opinion that the government bonds here in question owned by The Sparks-Withington Company should be allocated to the state of Ohio for the purpose of determining the franchise tax to be assessed on the issued and outstanding shares of stock of this corporation.

It is evident from what has been said above that laying aside the provisions of sections 5328-1 and 5328-2, General Code, as inapplicable in the determination of the allocation of the government bonds here in question, the conclusion here reached allocating these bonds to the state of Ohio in the determination of the franchise tax to be paid by this corporation follows from the application of the rule of *mobilia sequunter personam* governing the situs

of intangible property for purposes of taxation. I am not unmindful of the fact that this rule and its application in some places has been to some extent limited and qualified by expressions found in the majority opinion in several comparatively recent cases decided by the Supreme Court of the United States. I refer particularly to the cases of *Safe Deposit and Trust Company* vs. *Virginia,* 280 U. S., 83, 92, and *Farmers Loan and Trust Company* vs. *Minnesota,* 280 U. S., 204, 210. Thus, in the case of *Safe Deposit and Trust Company* vs. *Virginia,* supra, it was said:

> "Ordinarily this court recognizes that the doctrine of *mobilia sequunter personam* may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett* vs. *Silberman,* 277 U. S., 1. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation, or otherwise."

However, this view and similar views expressed by the Supreme Court of the United States from time to time in cases decided by this court were not, in my opinion, so necessarily and directly involved in the actual questions before the court in these cases, that such views should be accorded controlling weight as against the decisions of that court in the cases of *Cream of Wheat Company* vs. *County of Grand Forks,* 253 U. S., 325; *Kirtland* vs. *Hotchkiss,* 100 U. S., 491; *Fidelity and Columbia Trust Company* vs. *City of Louisville,* 245 U. S., 54; *Blodgett* vs. *Silberman,* 277 U. S., 1; *Coal Company* vs. *O'Brien,* 98 O. S., 14; *Anderson* vs. *Durr,* 100 O. S., 251, 259; *Baldwin* vs. *Missouri,* 281 U. S., 586, 591; *Beidler* vs. *South Carolina Tax Commission,* 282 U. S., 1; *Lawrence* vs. *State Tax Commission,* 286 U. S., 276, 279; *Virginia* vs. *Imperial Coal Sales Company,* 79 Law Ed., U. S. Supreme Court, 56; and many other cases that might be cited giving controlling effect to the rule of *mobilia sequunter personam* in determining the situs of intangible property for purposes of taxation.

Having reached the conclusion that this rule applies in determining the situs of these bonds for purposes of taxation, I am of the opinion, as above indicated, that these bonds should be allocated to the state of Ohio in determining the franchise tax to be paid by The Sparks-Withington Company.

Respectfully,

JOHN W. BRICKER,

Attorney General.