Section 7807-8 G. C. in effect authorizes the granting of state life elementary certificates without examination to three classes of applicants:

1. To those who have completed a four-year high school course or its equivalent and have had a two-year normal course in an institution approved by the superintendent of public instruction, and in addition thereto have had at least fifty months of experience in teaching, satisfactory to the state board of examiners.

2. To those who have completed a four-year high school course or its equivalent, have had a one-year normal course in an institution approved by the superintendent of public instruction and in addition thereto have had at least one hundred months of experience in teaching, satisfactory to the state board of examiners.

3. To those who have had the same qualifications required for applicants described in the second clause herein, except that in lieu of training in an approved normal institution they have done such professional reading and study as the superintendent of public instruction may require.

That part of this section which says:

> "provided, however, that no life certificate authorized by this subsection to be issued to graduates of a one-year normal course shall be issued unless application therefor be made prior to the year 1920"

excludes only graduates of a one-year normal course and is not intended to apply to any who have done the required professional reading and study.

Your question therefore is answered in the affirmative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1230.

TAXES AND TAXATION—WHEN INTEREST OF VENDOR IN CONTRACT FOR SALE OF LAND, REPRESENTING DEFERRED INSTALLMENTS OF PURCHASE MONEY IS TAXABLE AS A CREDIT.

The interest of a vendor in a contract for the sale, possession and conveyance of land, representing the deferred installments of the purchase money, is taxable as a credit, though the contract contains a clause providing that in the event of default in the payment of any such installment, the vendor at his option may avoid the contract and in that event the installments previously paid are to be regarded as rent and as liquidated damages, and the vendee is to yield up the possession.

COLUMBUS, OHIO, May 8, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your letter of recent date submitting a form of land contract and requesting the opinion of this department as to whether or not the amount remaining unpaid on the contract on the day preceding the second Monday of April, 1920, is taxable as a credit against the vendor.

The vendor's interest in an ordinary land contract is clearly a taxable credit. Rheinboldt vs. Raine, 52 O. S. 160.

It is sought to escape this rule by calling attention to the following stipulation of the contract now submitted.

"It is understood and agreed by and between the parties to this agreement that if the said (vendee) fail to pay the said consideration money, or the assessments, insurance or taxes, as herein stipulated, within sixty days from the time same is due and payable then this agreement is to be void as it regards the said (vendor) at his option, and all money paid on this contract shall be forfeited to said (vendor) as and for rent and for liquidated damages, and such default of further payments shall operate as a forfeiture of all rights of said (vendee), in and to said premises, and they shall peaceably surrender the possession of said premises to the said (vendor), who shall be immediately entitled to the return thereof."

The contention is that this language, appended to an ordinary contract whereby the vendor sells and agrees to give possession of and to convey to the vendee certain described real estate, and the vendee agrees to pay a certain consideration in installments and to pay the assessments and taxes, makes the agreement in effect a lease with option to purchase. That is to say, speaking in more general terms, it is argued that the contract becomes unilateral, being binding on the vendor to convey if and when the vendee completely discharges his contract, but not being binding on the vendee to discharge the conditions imposed upon him.

If this contention is correct, the result would indeed be that the vendor's interest would not be a taxable credit. However, it is believed that the contention is not well founded. A fair interpretation of the paragraph quoted leads to the result that the consequences of the vendee's failure to perform as outlined in that paragraph are only to arise at the option of the vendor. That is to say, if the vendor so elect, he may recover possession, and in that event he will not be entitled to damages for the vendee's breach of contract, inasmuch as the moneys paid on the contract constitute liquidated damages. But there is nothing to require him to make such an election and if he chooses he may nevertheless have specific performance of the vendee's obligation to pay the purchase money.

The following quotations from 36 Cyc. 571 will show the application of the principle which controls:

"Although the contract contains a provision for liquidated damages in case of a breach, where such provision is intended merely to secure performance, and not to give an option either to perform or to pay damages, the court, * * * will disregard the provision and enforce performance, if the contract is one that falls within its jurisdiction."

Here it is submitted the author means that the option referred to is that of the vendee and not that of the vendor.

"Where, however, the contract was intended to give defendant the choice between two courses, the performance of certain acts or the payment of a sum of money, equity will not decree the performance of the acts, but will leave plaintiff to his legal remedy for the recovery of the money."

The following Ohio cases are cited as illustrating the two sides of the rule:

In Egle vs. Morrison, 27 C. C. 497, the court, per Hull, J., had under consideration the effect of the following language: (p. 500)

"Should said purchaser fail to perform this contract on his part at the time and manner specified, the earnest money paid as above, shall at the option of the vendor and his agents, be forfeited as liquidated damages, and this contract shall become null and void."

and, the action being by the vendor, made use of the following language: (p. 504)

> "As to the claim that the parties agreed upon the sum of $100 liquidated damages, it appears from the contract that this was at the option of the vendor. The plaintiff might keep the $100 which had been paid to her as liquidated damages, if she chose, or she might exercise her option to bring an action for specific performance, and she has chosen to do that."

On the other hand, in Allison vs. The Luhrig Coal Co. 22 C. C. 489, the lessor under a mining lease sought injunction and accounting against the lessee, on account of failure of the lessee to mine efficiently and thus to discharge a covenant to operate the mines in a workmanlike manner and mine a minimum tonnage therefrom. For various reasons the remedy sought by the lessor was held not available to him. The court quite properly regarded the injunction and accounting as a means of securing specific performance and says at p. 494, per Jones, J.:

> "Indeed, the parties to the leases have provided therein, for a method by which the lessor may obtain damages. The supplemental lease provides for a liquidated sum to be paid lessor in case of failure to mine a minimum quantity specified in the lease. The parties, in the supplemental lease, have provided, in terms, for any damages sustained by lessor from negligent operations in the exercise of its rights thereunder by the lessee. We think an action of law could be maintained and a complete and adequate remedy be had therein."

It is clear that the court acted in this case upon the principle that the liquidated damages would afford an adequate remedy to the lessor. Such a statement can hardly be made under the contract submitted by the commission for the opinion of this department. The cases are indeed quite different.

The real question, as disclosed by examination of the cases cited, is as to whether the intention of the parties is that the remedy for defendant's breach, afforded by the contract itself, is an exclusive remedy or merely an additional remedy intended more effectually to secure his performance. In arriving at the intention of the parties, the fact that the remedy thus afforded by the contract is at the option of the plaintiff, would seem to be determinative. The word "option" denotes choice. To say that the vendor may avoid the contract at his option means that if he chooses otherwise the contract is still to remain in force.

For all the foregoing reasons then, it is the opinion of this department that the vendor, in the form of contract enclosed in the commission's letter, has a claim for the unpaid purchase money due or to become due, which at his option he may enforce specifically. It follows therefore that such a claim constitutes a taxable credit.

Respectfully,
JOHN G. PRICE,
Attorney-General.