"Under the provisions of Section 8398, General Code, when there is a contract to sell specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and by the clear terms of that section and Section 8399, General Code, the rule set forth in the latter section for ascertaining the intention of the parties has no application where 'a different intention appears' from 'the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.'"

In view of what has been said, it is my opinion that:

1. Under the provisions of Section 6310-10, General Code, any corporation, partnership, association, or person to whom title has been passed for any motor vehicle, is required to file with the clerk of courts of the county in which said sale is consummated, duplicate copies of the bill of sale therefor.

2. Where negotiations to the contract have taken place in two or more counties, the bill of sale is required to be filed with the clerk of courts in the county where the sale has finally been consummated.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1906.

GASOLINE—MUNICIPALITY MAY PASS ORDINANCE REQUIRING PUBLIC FILLING STATIONS TO POST QUALITY OF GASOLINE SOLD.

SYLLABUS:

A municipality may legally enact and enforce a reasonable ordinance requiring public filling stations to post in a conspicuous place the quality of the gasoline sold.

COLUMBUS, OHIO, March 27, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your inquiry as follows:

"May a municipal corporation legally enact and enforce an ordinance requiring public filling stations to post in a conspicuous place the quality of gasoline sold?"

You have not furnished me with any specific ordinance, so that in this opinion I will confine myself solely to a consideration of the question of the validity of such a provision.

Peculiar provisions of certain ordinances and their application to peculiar sets of facts might have important bearing upon the decision of specific cases. The justification for such an ordinance must be found, if at all, in the police power of the city.

Section 3 of Article XVIII of the Constitution of Ohio is as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

It is unnecessary to review the cases dealing generally with the subject of the exercise of police power by a municipality so long as that exercise is valid and reasonable in other respects, it is within the Home Rule power of municipalities provided the state has not already dealt with the subject in question by general statute. In the case before me I know of no provision of general law applicable and hence the conclusion is reached that the general subject is within the power of municipalities.

In the nature of things it is impossible to formulate any precise definition of police power nor can any precise limitations be placed upon it. One of the best descriptions of this almost undefinable power is that of Judge Wanamaker, in the case of *Leonard* vs. *State,* 100 O. S. 456, which is quoted in Cooley's Constitutional Limitations, 8th Edition, at page 1226, as follows:

> "Judge Wanamaker says: 'The dimensions of the government's police power are identical with the dimensions of the government's duty to protect and promote the public welfare. The measure of police power must square with the measure of public necessity. The public need is the polestar of the enactment, interpretation, and application of the law. If there appears in the phrasing of the law and the practical operation of the law a reasonable relation to the public need, its comfort, health, safety, and protection, then such act is constitutional, unless some express provision of the Constitution be clearly violated in the operation of the act. Moreover the growth of the police power must from time to time conform to the growth of our social, industrial and commercial life. You cannot put a straight-jacket on justice any more than you can put a straight-jacket on business. Private initiative, enterprise, and public demand are constantly discovering and developing new methods and agencies, honest and dishonest, and the police power must be always available to afford apt and adequate protection to the public.'"

The growth and development of the police power, coincident with the growth and development of social, industrial and commercial life, has been one of the most interesting phases of modern jurisprudence. It is impossible today to forecast to what this power will extend in the future and limitations placed upon the exercise of that power in the past are now archaic. Hence in consideration of the question you present the necessities of modern methods of business must be borne in mind.

The retail sale of gasoline is a legitimate business. As such it is entitled to pursue its normal course without restriction save such as may be reasonably necessary for the protection of the public safety and welfare. At the same time gasoline is an essentially dangerous product. In recognition of the danger of its storage, many regulatory provisions have been enacted and sustained by the courts as a proper exercise of the police power, but this line of cases need not be given consideration herein.

The requirement in question here is not, I take it, enacted with a view to the protection of the public safety. Its object is to enable purchasers to know the quality of the product which they are getting. It is a matter of general knowledge that various grades of gasoline are produced. So far as the ordinary purchaser is concerned, these grades are indistinguishable. It is only by the application of scientific tests that the grade may be definitely established.

While I have been unable to discover any authority precisely in point, it is a well recognized principle that the police power extends to the prevention of frauds. Thus statutes have been enacted forbidding the sale of milk below a certain standard of purity, although it may be mixed with pure water and hence not in any way dangerous from a health standpoint. *Commonwealth* vs. *Waite*, 11 Allen 254; *People* vs. *Cipperly*, 101 N. Y. 634; *State* vs. *Comphue*, 64 N. Hamp. 402.

The sale of fertilizers may be regulated to prevent deception. *Steiner* vs. *Ray*, 34 Ala. 93. Baking-powder manufacturers may be compelled to publish upon the labels of the cans a list of the ingredients. *State* vs. *Sherod*, 80 Minn. 446.

A familiar application of this principle is in the case of the manufacture and sale of oleomargarine. There are many decided authorities holding constitutional provisions prohibiting the manufacture and sale of any substance made in imitation of yellow butter, and not made wholly from cream or milk.

All of these cases are directed toward the prevention of a fraud upon the public. They uniformly recognize the right, in the exercise of the police power, to impose regulations looking toward the prevention of deception in private sales. Another familiar illustration of the application of this principle is in the case of the so-called blue sky laws. These have uniformly been upheld as being properly enacted in the exercise of police power to prevent fraud and unfair dealings in the case of securities.

Illustrative of the extent to which police power has been recognized in this state, see *Allion* vs. *Toledo*, 99 O. S. 416, the second branch of the syllabus of which is as follows:

> "A city ordinance, fixing standard sizes of bread loaves and prescribing loaves of one pound avoirdupois as the minimum weight that may be manufactured and sold by a baker, is not an unreasonable or arbitrary exercise of police power and is constitutionally valid."

Manifestly there would be nothing injurious in the sale of loaves of less than one pound in weight and accordingly the decision was based on the right of the municipality to prescribe a minimum weight as a protection against fraud.

Applying the principles announced in the cases discussed, I have no hesitancy in saying that a reasonable ordinance requiring the posting of the quality of the gasoline sold would be within the power of a municipality. As I have before stated, the quality cannot be ascertained by the ordinary purchaser through casual inspection. The recent development of motor cars has been such that it is oftentimes important to the purchaser to know the grade of the product which he is purchasing. A reasonable regulation of this character which would aid him in obtaining this information would not, in my opinion, be invalid.

Specifically answering your question, therefore, I am of the opinion that a municipality may legally enact and enforce a reasonable ordinance requiring public filling stations to post in a conspicuous place the quality of the gasoline sold. What would be a reasonable requirement I am unable to say. Judge Hickenlooper, of the United States District Court for the Southern District of Ohio, quite recently rendered a decision holding invalid a requirement of this character on the ground of unreasonableness. The opinion is as yet unreported and I am, therefore, unable to advise you the exact ground upon which the decision was reached. I am advised, however, that there was a large amount of expert testimony introduced to show that compliance with the terms of the ordinance would not advise the public of anything which would be of value to it in determining the character of the gasoline sold. It may possibly be that, from the nature of the business and the product sold, it would be impossible to prescribe any requirements which would be of material benefit to the public. Accordingly my approval of the legality of such an ordinance must, as I have

said before, be conditioned upon its reasonableness, and I make no attempt to pass upon this question without having a specific case before me.

Although I have made answer to your question, I deem it not improper to point out that the question presented appears to be one which should be answered in the first instance by the solicitor of the municipal corporation in question and then by the courts. As I have stated at the first of this opinion, it is difficult to generalize upon a subject of this character because of the fact that the apparently minor provisions of particular ordinances or peculiar sets of facts may ultimately be decisive of the reasonableness of the ordinances in particular cases. Charter provisions may also have a direct bearing on the question under consideration. Because of this I feel that it would be unsafe to use this opinion as a test of the validity of any particular municipal legislation, since it is a mere generalization indicating the modern tendency with respect to the exercise of police power.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1907.

APPROVAL, BONDS OF COLERAIN TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—$9,000.00.

COLUMBUS, OHIO, March 28, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1908.

APPROVAL, BONDS OF COLERAIN TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY—$14,768.33.

COLUMBUS, OHIO, March 28, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.