It seems that for a long period of time the officers administering the law have interpreted Section 704, supra, as requiring a fee of fifty cents per folio to be charged in those instances wherein papers are required to be filed by bond investment companies, in order to qualify to do business in Ohio, other than those cases where a specific filing fee is provided.

I cannot concur in the contention made by the company you mention to the effect that the language under consideration relates to charges for copies made by your department. It will be noted there is no specific provision in said enactment requiring your department to make copies. There is a provision fixing a fee to be charged for "affixing seal and certifying any paper."

It will be noted that Section 701 requires the filing of certain papers, and it is my opinion that the provisions of Section 704, supra, to which you refer, has reference to a filing fee to be charged for each instrument or paper so filed, other than those cases wherein said section specifically provides the filing fee for certain instruments.

It may be that the contention made by the company is a possible interpretation, but it seems to me it is too far-fetched to be given serious consideration. If such a construction could be said to be as plausible as the construction I place thereon, it is believed the view I have indicated must control on the theory that weight must be given to the administrative interpretation hereinbefore referred to.

In the case of *Industrial Commission* vs. *Brown,* 92 O. S. 309, it was held:

> "The administrative interpretation of a statute is to be given great weight by the courts in the judicial construction of such statute, if it has been continued for a long time and generally acquiesced in."

In view of the foregoing you are advised that Section 704, General Code, provides a fee of fifty cents per folio to be charged by the Department of Commerce for filing each copy of papers required to be filed by a bond investment company, in those instances wherein said section does not otherwise specifically provide a filing fee for certain instruments.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2996.

SCHOOL BUS DRIVER—MUST GIVE BOND—MUST HAVE CERTIFICATE OF GOOD MORAL CHARACTER—RECOVERY ON VOID CONTRACT DISCUSSED.

SYLLABUS:

1. *The driver of a school wagon or motor van who does not give a satisfactory and sufficient bond and who has not received a certificate of good moral character as provided by Section 7731-3, General Code, cannot recover for his services as such driver.*

2. *When the driver of a school wagon or motor van is employed by a board of education otherwise than in strict conformity with the provisions of Section 7731-3, General Code, and renders satisfactory service as such driver in reliance upon such contract and is paid therefor, in the absence of a showing of fraud or collusion in the transaction, no recovery can be had on behalf of the school district for the moneys so paid.*

COLUMBUS, OHIO, December 10, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "We respectfully request you to furnish this department with your written opinion upon the following:
>
> Section 7731-3 of the General Code, provides that 'when transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond, and who has not received a certificate from the county board of education in the county of which he is to be employed * * * that such person is at least eighteen years of age and is of good moral character and is qualified for such position.'
>
> Question: In the event that a board of education enters into a contract with a driver without a certificate of the county board of education, may such driver be legally paid the compensation due him under the contract and if paid, could the amount be recovered to the school district?"

Section 7731-3, General Code, reads in part as follows:

> "When transportation is furnished in cities, rural or village school districts, no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond, and who has not received a certificate from the county board of education of the county in which he is employed, or in a city district from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. * * * "

Clearly, by reason of the terms of the foregoing statute, a contract for the employment of a person to drive a school bus or motor van is void unless the person who contracts for his services as such driver gives a satisfactory and sufficient bond and procures a certificate of good moral character, as set forth in the statute. No liability would be incurred by the school district on such a void contract. That is to say, no action would lie in behalf of a driver who had performed services in reliance on such a contract, to recover for such services, either on the contract or upon a *quantum meruit* for the reasonable value of such services. It is said by Labat on Master and Servant, Volume 2, Section 570:

> "The general principle that 'no court will lend its aid to a man who founds his action upon an immoral or illegal act' precludes a servant from suing on a *quantum meruit* for the value of services, the performance of which involved a violation of an express statutory provision by both parties. Under such circumstances the master and servant are deemed to be in pari delicto."

However, if such a contract is entered into in good faith, either inadvertently or in ignorance of the provisions of law governing the same and services are rendered in pursuance thereof, and the driver is paid, a more difficult question is presented and that is, whether or not a recovery may be had of the moneys paid out in pursuance of such a void contract.

By the terms of Section 274, et seq., General Code, provision is made for the inspection and supervision of the accounts and reports of the offices of each taxing district in the State by the Bureau of Inspection and Supervision of Public Offices. The statutes require that the report of this examination by the Bureau shall set forth in detail the result of the examination, and in accordance with Section 286, General Code, if such report sets forth that any public money has been illegally expended, or that any public property has been converted or misappropriated, suit is required to be instituted for the recovery of said money from the persons who illegally expended or received or misappropriated the same.

In 1907 the Supreme Court of Ohio decided the case of *State ex rel. Hunt, Prosecuting Attorney,* vs. *Fronizer, et al.,* 77 O. S. 2. At that time there was in force Section 1277, Revised Statutes, (later codified and now existing as Section 2921, General Code), by virtue of which authority, the prosecuting attorney of a county was directed to institute suit for the recovery of moneys illegally expended from the county treasury, the provisions thereof with reference to the illegal expenditure of moneys from the county treasury, being similar to those of Section 286, General Code, applicable to all taxing districts.

In the Fronizer case, supra, it appears that on or about July 18, 1903, a contract had been entered into between the County Commissioners of Sandusky County and the Bellefontaine Bridge and Iron Company through its agent, Fronizer, for furnishing the materials and performing the work for the construction of certain bridges in Sandusky County, and the repair of other bridges at prices therein named, the same to be paid on the completion of the work. It was contended that these contracts were illegal, contrary to, and in violation of law, as was well known by both the bridge company and its agent as well as the county commissioners, for the reason that the said board did not, before nor at the time of entering into said contracts or any other time, procure the certificate of the county auditor, as required by Section 2834b, Revised Statutes, that the money required for the payment of the obligation created by the contracts, or any part thereof, was in the treasury of said county to the credit of the bridge fund of said county, or had been levied and placed on the duplicate of said county and was in process of collection and not appropriated for any other purpose. The bridges were constructed and paid for and suit was instituted by authority of said Section 1277, Revised Statutes, against the bridge company and its agent and the county commissioners seeking to recover for the county the moneys paid out on such illegal contract. The court held:

> "Section 1277, Revised Statutes, which authorizes a prosecuting attorney to bring action to recover back money of the county which has been misapplied, or illegally drawn from the county treasury, does not authorize the recovery back of money paid on a county commissioners' bridge contract fully executed but rendered void by force of Section 2834b, because of the lack, through inadvertence, of a certificate by the county auditor that the money is in the treasury to the credit of the fund, or has been levied and is in process of collection, there being no claim of unfairness or fraud in the making, or fraud or extortion in the execution of such contract for such work, nor any claim of effort to put the contractor in statu quo by a return of the bridge or otherwise, the same having been accepted by the board of commissioners and incorporated as part of the public highway."

In the course of the opinion written by Judge Spear, it was said:

"This court is of opinion that such recovery is not authorized. The principle applicable to the situation is the equitable one that where one has acquired possession of the property of another through an unauthorized and void contract, and has paid for the same, there can be no recovery back of the money paid without putting, or showing readiness to put, the other party in statu quo, and that rule controls this case unless such recovery is plainly authorized by the statute. The rule rests upon that principle of common honesty that imposes an obligation to do justice upon all persons, natural as well as artificial, and is recognized in many cases. * * *

The county should not be permitted to retain both the consideration and the bridges. * * * the court leaves the county of Sandusky where it finds it."

Applying the principle of the Fronizer case, and assuming that a board of education entered into a contract with a person to drive a school wagon or motor van otherwise than in conformity with the statute and received the benefit of the services of such driver and paid him, the district should not now be permitted to recover the moneys so paid in the absence of a showing of fraud or collusion in the transaction.

I am therefore of the opinion, in specific answer to your question, that a driver of a school wagon or motor van who does not give satisfactory and sufficient bond and who has not procured a certificate of good moral character, as provided by Section 7731-3, General Code, cannot recover for services rendered on a contract of employment for the driving of said school wagon or motor van. If, however, he is so employed, and renders services in pursuance of such a contract, and is paid therefor, no recovery can be had on behalf of the school district of the moneys so paid, in the absence of a showing of fraud or collusion in the transaction.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2997.

DELINQUENT TAXES—LAND NOT FOUND—REQUIREMENTS FOR CANCELLATION BY COUNTY AUDITOR DISCUSSED.

SYLLABUS:

Where delinquent taxes are charged against land and it is made to appear to the county auditor by affidavit or otherwise, that said land is not and has not been in existence during the time said delinquency has occurred, the county auditor may legally cancel the charge for delinquent taxes upon his tax list and certify the cancellation so made by him to the county treasurer who should correct the tax duplicate in accordance therewith.

COLUMBUS, OHIO, December 10, 1928.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads: