a certificate to practice medicine, whether a person holds a diploma from a medical institution of the proper standing. It is only when a diploma is presented upon such application, that the action of the board can be invoked."

To the same effect is *State of Ohio* vs. *Gravett,* 65 O. S. 289 and *Williams* vs. *Scudder,* 102 O. S. 305.

In view of the foregoing, it is my opinion that the regulation of your board defining a nurses' training school in good standing as a school connected with a hospital which requires nursing to be practiced therein by Ohio registered nurses, as adopted January 5, 1932, effective July 1, 1932, is a valid rule and not violative of any constitutional rights of those who may have heretofore matriculated in schools of nursing which are not in good standing as defined by such rule.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4836.

MINIMUM WAGE—PUBLIC CONTRACTS—INAPPLICABLE TO PERSONS OR FIRMS WHO FURNISH MATERIAL TO CONTRACTOR OR SUB-CONTRACTOR.

SYLLABUS:

Where a person or firm furnishes materials to a contractor or subcontractor to be used in the construction of a public improvement and such person or firm has nothing to do with the installation or fabrication of such materials into such improvement, sections 17-4 *to* 17-6, *General Code, inclusive, do not operate to empower the public authority authorized to contract for such improvement to provide in the contract with the successful bidder a minimum rate of wages to be paid to the men employed and paid by such person or firm furnishing such materials when engaged in the delivery of such materials to the site of improvement.*

COLUMBUS, OHIO, December 23, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"Under Section 17-3 to 17-6, the Director of Highways has authority to fix a minimum wage on highway contracts.

This minimum wage is binding on all contractors and sub-contractors. Under authority of the above sections, the Director has set a minimum wage on all contracts since last August.

The practice has grown up among contractors of having material delivered directly to the job by the material company, whereas such delivery has almost always been made by the contractor or his sub-contractor.

The Highway Department recently made a ruling that when material was hauled from railroad cars or from material plants to the

site of the work, this operation was a portion of the contract and would be subject to the minimum wage provision.

I respectfully request your opinion whether or not we can be sustained in this ruling."

Sections 17-4 and 17-5, General Code, read as follows:

"Any public authority authorized to contract for a public improvement may, before advertising for bids for the construction thereof, fix and determine a fair rate of wages to be paid by the successful bidder to the employees in the various branches or classes of the work, which shall not be less than the prevailing rate of wages paid for each such branch or class in the locality wherein the physical work upon such improvement is to be performed. The rate of wages so fixed shall be printed on the bidding blanks."

Sec. 5. "In all cases where any public authority shall fix a fair rate or rates of wages as herein provided, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his sub-contractors to pay a rate or rates of wages which shall not be less than the rate or rates of wages so fixed. It shall be the duty of the successful bidder and all his sub-contractors to strictly comply with such provisions of the contract."

Section 17-6, General Code, reads in part as follows:

"Any contractor or sub-contractor who shall violate the wage provisions of such contract, or who shall suffer, permit or require any employee to work for less than the rate of wages so fixed, shall be fined not less than $50.00 or more than $500.00."

The question you present is whether these statutes can apply to wages paid to employes of persons or firms from whom a contractor purchases materials to be used in the construction of a public improvement which employes are engaged in delivering said materials to the site of the improvement. These statutes clearly apply to subcontractors, but one who simply furnishes materials for an improvement and has nothing to do with the installation or fabrication thereof into the improvement is not ordinarily considered a subcontractor. There is a distinction between a subcontractor and a material man. This distinction has been recognized by the legislature in our Mechanic's Lien Law. Section 8323-9, General Code, defines material man and subcontractor as follows:

"* * * The words, 'material man,' as used herein, shall be construed to include all persons by whom any machinery, materials or fuel are furnished in, or for any construction, erection, alteration, repair, or removal hereinbefore mentioned. * * * The word 'sub-contractor' shall be construed to include any person, firm, or corporation who undertakes to construct, alter, erect, improve, repair, remove, dig, or drill any part of the structures or improvements mentioned herein under a contract with any person other than the owner. * * *"

In the case of *Matzinger* vs. *Lumber Company,* 115 O. S. 555, the court in construing the Mechanic's Lien Law held:

> "Whether materials furnished by a dealer to a contractor to be used in the process of the erection of a building were selected from the stock of the dealer or made by him in his own establishment or procured from another for the particular purpose, such dealer, having nothing to do relative to the installation of said materials or the fabrication thereof into the structure, is a material man and not a subcontractor."

If these statutes could be applied to employes of material men engaged in delivering materials to the site of a public improvement, then they would apply as well to the employes of material men engaged in manufacturing or getting ready for delivery the materials to be used in such improvement. I do not believe that the legislature intended to include in the term "subcontractor", as the term is used in sections 17-5 and 17-6, General Code, persons or firms who furnish material to contractor or subcontractor for use in a public improvement and who have nothing further to do with the construction of such improvement. However, where such persons or firms not only deliver such materials to the site of the improvement but also install the same in the improvement, I am of the view that these statutes apply.

I am of the opinion, therefore, that where a person or firm furnishes materials to a contractor or subcontractor to be used in the construction of a public improvement and such person or firm has nothing to do with the installation or fabrication of such materials into such improvement, sections 17-4 to 17-6, General Code, inclusive, do not operate to empower the public authority authorized to contract for such improvement to provide in the contract with the successful bidder a minimum rate of wages to be paid to the men employed and paid by such person or firm furnishing such materials when engaged in the delivery of such materials to the site of the improvement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4837.

TRUSTEES OF MUNICIPAL UNIVERSITY—MAY INVEST FUNDS IN SECURITIES OTHER THAN THOSE MENTIONED IN SECTION 7919, G. C., WHEN.

SYLLABUS:

1. *The board of trustees of a municipally owned university may properly invest the funds under its control in securities other than the specific types mentioned in section* 7919 *of the Code, provided such securities are such as are normally dealt in and for which there exists a regular market.*
2. *Opinion No.* 4205 *discussed and clarified.*