"The county surveyor of any county, upon application in writing, by the owner or person having charge thereof, may grant permission for the moving of vehicles, objects or structures in excess of the maximum weights permitted by this chapter over the improved public streets and highways, bridges or culverts, within such county and located outside of any municipal corporation or corporations therein situated. Such permission shall be in writing and the county surveyor may grant the same, subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection of such highways, bridges and culverts. The director of public service of a city or mayor of a village may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within such city or village.

The director of the department of highways may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within this state in regard to all inter-county movements of such vehicles, objects or structures, or in regard to any such movement wholly upon any portion of the inter-county highways, bridges or culverts."

No material change was made in this section that is relative to your inquiry.

In specific answer to your inquiry, it is my opinion that the County Surveyor of any county, upon written application, may grant permission for the intra-county movement of vehicles, objects or structures in excess of the maximium weights on the improved public streets and highways, bridges or culverts, within such county and located outside of any municipal corporation therein situated and is not limited solely to granting permission for such intra-county movements to county roads only. It is also my opinion that either the County Surveyor or the Director of Highways, upon written application, may grant permission for the intra-county movements of vehicles, objects or structures of excessive weight when such movement is wholly upon any portion of the inter-county highways, bridges or culverts.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3847.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, $50,000.

COLUMBUS, OHIO, January 23, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

3848.

WAR VETERAN—PROCEEDS OF ADJUSTED COMPENSATION SERVICE CERTIFICATE IN HANDS OF ADMINISTRATION OF VETERAN'S ESTATE EXEMPT FROM INHERITANCE TAX.

SYLLABUS:

Under the provisions of Section 618 of Chapter 11 of Title 38 U. S. C., the pro-

ceeds of an adjusted compensation service certificate paid to and in the hands of the administrator of the estate of a deceased World War veteran, are exempt from the inheritance taxes provided for by Section 5332 General Code.

COLUMBUS, OHIO, January 24, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of a communication from you in which my opinion is requested on the question as to whether the proceeds of a World War veteran's adjusted compensation certificate, which have been paid over to the administrator of such deceased soldier, is subject to inheritance taxes under the laws of this state.

The funds referred to in your communication are, I assume, the proceeds of an adjusted service certificate, issued on the application of a World War veteran under the provisions of the World War Veterans Adjusted Compensation Act, which are found in Chapter 11 of Title 38 U. S. C., Sections 591, et seq.; and I assume, further, that these funds were paid directly to the administrator of such World War veteran after his death.

Under the World War Veterans Compensation Act, above referred to, such compensation is paid to the World War veteran or to his dependents therein classified, in an amount measured by the service credits to which such World War veteran is entitled.

Section 661 found in the Chapter and Title of the United States Code above referred to, provides:

> "If the veteran has died before making application under section 302 (Sec. 612 of this title), or if entitled to receive adjusted service pay, has died after making application but before he has received payment under Title IV (part IV of this chapter), then the amount of his adjusted service credit shall (as soon as practicable after receipt of an application in accordance with the provisions of section 604 (Sec. 663 of this title), but not before March 1, 1925, be paid to his dependents, in the following order of preference:
>
> (1) To the widow;
>
> (2) If no widow entitled to payment, then to the children, share and share alike;
>
> (3) If no widow or children entitled to payment, then to the mother;
>
> (4) If no widow, children or mother, entitled to payment, then to the father."

Inasmuch, however, as you state in your communication that the funds in question were paid to the administrator of the deceased soldier, it is apparent that they were so paid under the authority of Section 618-d in said chapter and title, which section provides that the face value of an adjusted service certificate shall be paid to the beneficiary named by the veteran in his application, or, if the beneficiary died before the veteran, and no new beneficiary was named, or if no beneficiary was named in the application, then the face value of such adjusted service certificate is to be paid to the estate of the veteran.

By this section it is further provided that if in any such case any payments have already been made to the veteran, or to his dependents, the amount of such payment shall be deducted from the face value of the adjusted certificate.

Although, as above indicated, it is here assumed that these funds were paid to the administrator of the deceased soldier, under the authority of Section 618-d, and under the facts and conditions therein provided for, it is, perhaps, pertinent to note in

this connection Section 618-e in this chapter and title. This section provides as follows:

> "Wherever under this chapter it is provided that payment shall be made by the Director of the United States Veterans' Bureau to the estate of any decedent, such payment, if not over $500, may, under regulations prescribed by the director, be made to the persons found by him to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of such estate."

The question presented in your communication as to the exemption, if any, of these funds in the hands of the administrator of the deceased soldier's estate, from the inheritance taxes provided for by Section 5332, General Code, or the successions by which the funds will be taken by those entitled thereto, is to be determined from a consideration of the provisions of Section 618 of Chapter 11 of Title 38 U. S. C. This section provides:

> "No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy, or seizure under any legal or equitable process, or to national or State taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted service credit or from any amounts due under this chapter."

The provisions of this section have not been the subject of extended adjudication. It is noted, however, that in the case of *Jones* vs. *Price,* administrator, 107 West Virginia, 55, the Supreme Court of that state, upon consideration of the provisions of this section, held that the administrator of a deceased World War veteran was not, under the provisions of this section, authorized to pay out any of the proceeds of an adjusted service certificate in his hands as such administrator, to the creditors of such deceased veteran. The court, in its opinion in this case, said:

> "This is a suit brought by the widow and children of James S. Jones, deceased, against his administrator. Its purpose is to recover from the administrator the proceeds of a U. S. Adjusted Service Certificate in favor of the deceased. The administrator seeks to pay the debts of the estate out of the proceeds. The circuit court found in favor of the administrator.
>
> In the first instance, this certificate is not properly a part of the decedent's estate and the administrator was not entitled to collect it. Under the express provisions of section 661 of title 38 Mason's U. S. Code, Ann., the amount of the adjusted service credit in such case, *shall be paid,* not to the veteran's estate, but *to his dependents,* the widow being preferred.
>
> In the second place the sum payable to the dependents is expressly exempted by section 618 of same title from 'attachment, levy or seizure under any legal or equitable process.' It is settled law, that as payments such as this are mere bounties which the government may grant or withhold at pleasure, Congress may surround these gratuities with such conditions as it deems proper to impose. *Hissem* vs. *Johnson,* 27 W. Va. 644, 652; *Kellog* vs. *Waite Tr.,* 94 Mass. (12 Allen), 529, 530; *U. S.* vs. *Hall,* 98 U. S. 343, 357.

> In discussing an exempting phrase similar to the one above, the court said in *Hissem* vs. *Johnson, supra;* 'The exemption here declared is absolute and unqualified.' Congress has manifestly intended to so surround this fund with protection that creditors cannot take it away from dependents."

I do not deem it necessary to express any opinion here as to the correctness of the view entertained by the court in the case above cited, that the adjusted service certificate issued to a World War veteran, and the proceeds thereof, are not properly a part of the deceased soldier's estate, and that his administrator is not entitled to collect the same.

In any view, with respect to this question, it is clear that the exemptions from taxation, provided for by Section 618, above quoted, extend to these funds which are now in the hands of the administrator for distribution to the beneficiaries entitled thereto under the law.

The proper construction and application of the provisions of Section 618, with respect to the question here presented, is quite clearly indicated by a comparison of the provisions of this section with those of Section 454 in Chapter 10 of Title 38 U. S. C. relating to the exemption from taxation of the proceeds of War Risk Insurance.

As noted by the Supreme Court of the United States in the recent case of *Trotter, Guardian* vs. *State of Tennessee,* 290 U. S. 354, Section 454, speaks of "compensation, insurance, and maintenace and support allowance payable" to the veteran, and provides that these shall be exempt from the claims of creditors and from taxation.

Section 618 in Chapter 11 of Title 38 U. S. C., extends the exemptions therein provided for, with respect to adjusted service certificates and the proceeds thereof, not only to the veteran and to his dependents but also "to his estate."

In opinion No. 3631, directed to you under date of December 15, 1934, I reached the conclusion, on a consideration of the provisions of Section 618, and of other related provisions of the World War Veterans' Adjusted Compensation Act, set out in Chapter 11 of Title 38 U. S. C., that the proceeds of an adjusted service certificate, paid to and in the hands of the administrator of the estate of a deceased World War Veteran, were not subject to property taxes under the laws of this state.

No reasons are apparent which suggest a different conclusion with respect to the matter of inheritance taxes on the proceeds of an adjusted service certificate in the hands of the administrator of a deceased World War veteran; and however much the authority of the decision of the Supreme Court of this state in the case of *Tax Commission* vs. *Rife,* 119 O. S. 83, and of similar decisions in other jurisdictions, with respect to the question of the exemption from taxation of the proceeds of a War Risk Insurance policy, paid to and in the hands of the administrator of the estate of a deceased World War Veteran, insured under such policy, may be shaken by the later decisions of the Supreme Court of the United States in the cases of *Singleton* vs. *Cheek,* 284 U. S. 493 and *Pagel* vs. *Pagel,* 291 U. S. 473, I think the reasons assigned by the courts for their conclusions in the case of *Tax Commision* vs. *Rife,* supra, and other later cases still apply in their integrity with respect to the question as to the exemption from taxation of the proceeds of an adjusted service certificate paid to and in the hands of the administrator of the estate of a deceased World War Veteran.

By way of specific answer to your question, I am of the opinion that the funds referred to in your communication are exempt from the inheritance taxes provided for by the laws of this State.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3849.

SALES TAX—LUNCH ROOM CONDUCTED BY BOARD OF EDUCATION NOT SUBJECT TO RETAIL SALES TAX—"VENDOR" DISCUSSED.

SYLLABUS:

1. *A board of education conducting a school lunch room under the provisions of Section 4762-1, General Code, without profit, need not be licensed as a "vendor" as provided by the retail Sales Tax Act, and sales of food in such lunch rooms are not subject to the tax provided for by the retail Sales Tax Act.*

2. *Where a teacher or group of teachers or a group of pupils or a parent teachers' organization or any other group of persons, independent of the board of education, conducts a store in connection with a school wherein certain school supplies or candy or other articles are sold, to the pupils and employes of the school, the profits from which transactions accrue to the school or to some school activity, the sellers should be licensed as vendors under the retail Sales Tax Act and all sales made therein are subject to the retail Sales Tax.*

COLUMBUS, OHIO, January 24, 1935.

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:

> "Section 4762-1 of the General Code, authorizes boards of education to establish cafeterias in the schools for furnishing meals to pupils and teachers, and in some instances a profit is derived from such establishment, although it is assumed that no greater amount will be charged than the actual cost.
>
> Question 1: Under the provisions of House Bill No. 134, known as the Sales Tax, will a board of education be required to take out a vendor's license and collect a tax on the retail sales made in such cafeteria?
>
> Question 2: Where a school, independent of the board of education, conducts a store wherein certain writing materials, such as paper, pens, ink, and pencils and other such articles are sold, will such school be required to take out a vendor's license and collect a tax on the retail sales made in such store?"

House Bill No. 134 of the Second Special Session of the 90th General Assembly, codified as sections 5546-1 to 5546-23, inclusive, of the General Code of Ohio, and commonly known as the "Retail Sales Tax Act" is an act providing for the levy and collection of a tax upon sales of tangible personal property at retail for certain purposes enumerated in the said act. Section 1 of the act (§5546-1 General Code) provides in part, as follows:

> "As used in this act:
>
> 'Person' includes individuals, firms, partnerships, associations, joint stock companies, corporations, and combinations of individuals of whatever form and character. * *
>
> 'Sale' and 'selling' include all transactions whereby title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange or barter, and by any means whatsoever.