prior taxes have been paid. Upon the basis of said certificate, Mr. Conkle's title to said property is hereby approved.

For future reference, said certificate sets out in chronological order the different links in the chain of title to said property.

The proposed deed by Harvey A. Conkle and Ida A. Conkle, his wife, is executed in proper form to convey a fee simple title, with release of dower, to the State of Ohio.

The encumbrance estimate shows that there is sufficient money in the proper appropriation account to pay for said land. The state controlling board has given its approval to the purchase.

Enclosed please find said certificate of title, said deed to the State of Ohio, said encumbrance estimate, and a copy of the authority of the controlling board. I am also enclosing an affidavit made by said Harvey A. Conkle, stating the manner in which he procured said land by a deed from the county auditor following the sale of land for delinquent taxes, setting out the facts which show that Mr. Conkle has had adverse possession of said land for forty years last past, and establishing the facts which show that certain oil and gas leases, made by Mr. Conkle, have expired. Finally, there are enclosed the notes which were made during the course of the examination of said title, which notes should be preserved for future reference.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4463.

INSURANCE—FLEET POLICY—PRIVATE AUTOMOBILES OF EMPLOYES MUST BE INCLUDED IN SUCH POLICY WHEN.

SYLLABUS:

The inclusion in a fleet policy of insurance, excepting fire insurance, of automobiles owned by employes of the owner of the fleet of motor vehicles covered by such policy does not violate section 9589-1, *General Code, provided the amount of the premium actually charged such employes is plainly specified in such policy and no discount or deduction in any way is made from the amount of premiums payable thereon.*

COLUMBUS, OHIO, June 30, 1932.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

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

> "Under Section 9589-1, General Code of Ohio, known as the Anti-Rebate and Discrimination Statute, the Superintendent has held that an employer might not include privately owned cars of his employees under his fleet policy. The jurisdiction of the Superintendent of Insurance, to exclude privately owned cars of employees from employers automobile fleet policy has been raised.

The Department has been of the opinion that to do so would be a discrimination against owners of the same kind of cars, but not employed so as to enjoy the same rate.

Would appreciate an early ruling as to our authority under said Section to order exclusion of employees cars."

I understand that a fleet policy is a policy of insurance which is issued to persons or companies owning and using in their business a group of not less than a certain specified number of motor vehicles, and that such a policy ordinarily covers the entire group or fleet of such motor vehicles. I also understand that the insurance involved comprises liability for injury to persons and for damage to property, and sometimes what is known as collision insurance. The question is presented whether it is lawful to include in such a policy motor vehicles which are owned by the employes of the owner of the fleet and thus give to such employes the benefit of the fleet rate which is somewhat lower than the premium charged on a policy covering but one motor vehicle.

That the inclusion of automobiles owned by such employes in the fleet policy of their employer is of advantage both to the employer and employes is apparent. The insurer probably justifies the rate on the fact that the insurance cost in such cases is reduced. On the other hand, it is claimed that the inclusion in a fleet policy of employes' automobiles is a discrimination against owners of the same kind of automobiles who are not employes of the owner of a fleet so insured.

In the absence of statutory prohibition, discrimination in the amount of premiums charged by insurance companies is not illegal. 32 C. J. 1193.

Section 9589-1, General Code, referred to by you, reads as follows:

"No corporation, association or co-partnership engaged in the state of Ohio in the guaranty, bonding, surety or insurance business, other than life insurance, nor any officer, agent, solicitor, employe or representative thereof shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducements to insurance, and no person shall knowingly receive as an inducement to insurance any rebate of premium payable on the policy, nor any special favor or advantage in the dividends or other benefits to accrue thereon, nor any paid employment or contract for services of any kind or any special advantage in the date of the policy or date of the issue thereof, or any valuable consideration or inducement whatsoever not plainly specified in the policy or contract of insurance or agreement of indemnity, or give or receive, sell or purchase, or offer to give or receive, sell or purchase, as inducements to insurance or in connection therewith any stock, bonds, or other obligations of an insurance company or other corporation, association, partnership or individual. But the provisions of this act shall not apply, however, to prevent the payment to a duly authorized officer, agent or solicitor of such company, association or co-partnership of commissions at customary rates on policies or contracts of insurance effected through him by which he himself is insured, provided such officer, agent or solicitor holds himself out as such and has been engaged in such business in good faith for a period of six months prior to any such payment; nor shall this act prohibit a mutual fire insurance company from paying dividends to policy holders at any time after the same has been earned."

In the case of *State, ex rel.,* vs. *Conn,* 110 O. S. 404, it is held that the purpose of this statute is not to prevent competition between companies but to prevent discrimination as to rates directly or indirectly by the insurer between its insured. However, before a discrimination as to rates can be unlawful, it must be such a discrimination as is violative of the provisions of this statute. The sole question therefore is whether the case you present violates section 9589-1, General Code. Some of the other states have statutes similar to this section but I have been unable to find any judicial decision on the questions here involved.

The first prohibition contained in this section is the giving or receiving, directly or indirectly, of any rebate of premiums payable on the policy. The word "rebate" is defined in 52 C. J. 1189 as "abatement; allowance by way of discount or drawback; concession; deduction from a gross amount; discount; drawback; giving back; remission or payment back; and, generally speaking, any discount or deduction from a stipulated payment, charge, or rate not taken out in advance of payment, but handed back to the payer after he has paid the stipulated sum, even when such discount or deduction is equally applied to all from whom such payment is demandable." Within the meaning of this provision of the statute, unlawful rebating might consist of paying or accepting as full payment an amount less than the premium stipulated in the policy. This provision, however, does not prohibit charging different persons different amounts of premiums for the same risks, provided such premiums are stipulated in the policy and so long as the full amount of the premium payable on the policy is charged and collected. It only prohibits a rebate of premiums *payable on the policy.*

The next prohibition contained in this section is the giving or receiving of any special favor or advantage in the dividends or other benefits to accrue on the policy. This provision has no application to your inquiry as a premium can not be considered a dividend or any other benefit accruing on the policy. Neither can the case you present come within the next prohibition of this section, that of giving or receiving any paid employment or contract for services or any special advantage in the date of the policy or of its issuance. The next prohibition, that of giving or receiving any valuable consideration or inducement whatsoever not plainly specified in the policy, is not violated if the lower premium rate to be charged employes is plainly stated in the fleet policy. The final prohibition of this section only has reference to the giving, selling, receiving or purchasing of stocks, etc., as inducements to insurance.

Section 9404, General Code, relating to life insurance companies, contains language similar to section 9589-1, except that the provision against the giving or receiving of any valuable consideration or inducement whatever is not qualified by the clause, "not plainly specified in the policy," which appears in the latter section.

Section 9403, General Code, also provides in part as follows:

> "No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and equal expectation of life in the amount of payment of premiums, or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; * *"

Likewise, section 9592-8, General Code, reads as follows:

"No fire insurance company or other insurer against the risk of fire or lightning, nor any rating bureau, shall fix or charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire."

Life insurance companies and fire insurance companies which are not mutual protective associations are therefore prohibited from making any discrimination in the amount of premiums charged from the same risk, but an analysis of section 9589-1 reveals no such prohibition as to the insurance companies included in this statute where the amount of the premium actually charged is plainly specified in the policy and no deduction in any way is made from the amount of premiums payable on the policy. It is significant that although section 9589-1 applies to fire insurance companies, the legislature saw fit in 1917 to pass section 9592-8 definitely prohibiting such companies from unfairly discriminating between risks of essentially the same hazards.

I am of the opinion therefore that the inclusion in a fleet policy of insurance, excepting fire insurance, of automobiles owned by employes of the owner of the fleet of motor vehicles covered by such policy does not violate section 9589-1, General Code, provided the amount of the premium actually charged such employes is plainly specified in such policy and no discount or deduction in any way is made from the amount of premiums payable thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4464.

SALARY—JAIL MATRON—COUNTY COMMISSIONERS MUST APPROPRIATE WITHIN STATUTORY LIMITATION AMOUNT FIXED BY PROBATE JUDGE.

SYLLABUS:

A board of county commissioners must appropriate the amount fixed by the probate judge for the salary of jail matron, providing the same does not exceed the one hundred dollar per month limitation imposed by statute.

COLUMBUS, OHIO, June 30, 1932.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"Section 3178, G. C., provides that jail matrons may be appointed by the sheriff on the approval of the probate judge who shall fix the compensation of such matrons not to exceed $100.00 per month, payable monthly from the general fund of such county upon the warrant of the county auditor upon the certificate of the sheriff. Upon the probate judge's fixing the salary of the jail matron at $100.00 a month, can this be re-