I find that the same has been executed by you in your official capacity above stated, and by Isaac H. Norman, in the manner provided by law.

Assuming as I do, that this property has not been designated for state highway purposes and that no application for the lease of the same has been made by any of the corporations or persons having prior rights to the lease of the property, I find that the terms and provisions of this lease are in conformity with the Act of the Legislature and related statutes.

I am, therefore, approving this lease, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1626.

SENTENCE—OHIO STATE PENITENTIARY OR OHIO STATE REFORMATORY—TRIAL COURTS DURING TERM HAVE POWER AND JURISDICTION TO VACATE JUDGMENT AND SENTENCE—SUSPEND IMPOSITION OF NEW SENTENCE — PLACE ON PROBATION — RESENTENCE — DECREASE, NOT AUGMENT PUNISHMENT—EVEN THOUGH ACCUSED COMMENCED TO SERVE SENTENCE—SEE SECTIONS 13452-1 ET SEQ., G. C.

SYLLABUS:

1. *Trial courts in Ohio have the power and jurisdiction during term to vacate a judgment and sentence in a criminal case and to resentence so as to decrease but not augment the punishment, even though the accused shall have commenced to serve his sentence in the Ohio Penitentiary or the Ohio State Reformatory.*

2. *This power and jurisdiction includes the power during term entirely to vacate the judgment and sentence once pronounced, and to suspend the imposition of a new sentence and place the accused upon probation in accordance with the provisions of Sections 13452-1, et seq., General Code.*

COLUMBUS, OHIO, December 30, 1939.

HONORABLE CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

"Will you please advise us on the following questions:

Under what circumstances may courts of common pleas

require the return to court of persons convicted of felony, sentenced to and received at a penal or reformatory institution?

We are familiar with sections of the General Code governing relief after judgment, and upon new trial. We are particularly interested in the question of the court's jurisdiction to modify a sentence or to place a person on probation after sentence has been carried into effect and the prisoner has entered upon his sentence in a penal or reformatory institution. Court decisions and opinions rendered in the past indicate a difference of opinion on the subject.

Some decisions held that the court has general jurisdiction in the exercise of its power *during term;* that it has an inherent right to vacate or modify judgment during term.

In Opinion No. 2657, October 1, 1928, rendered to this department, it was held:

'Where a person has been convicted of a felony and sentenced to imprisonment in one of the penal institutions of this state, and such sentence has been executed in part, the trial court is without jurisdiction, *either after or during term,* to vacate the judgment imposing the sentence and cause the prisoner to be discharged. In such a case, where the prisoner is confined in the Ohio State Reformatory, the superintendent of such institution is justified in refusing to honor the order of the court discharging the prisoner.'

During the year 1938, thirteen Ohio State Reformatory prisoners were returned to court upon the court's order for the purpose of mitigating punishment and placing the defendant on probation. We are giving you records and court orders in a few of these cases which are typical."

Your specific question is when, and under what circumstances, may courts of common pleas require the return to court of persons convicted of felony after sentence has been imposed and service of said sentence started at the Ohio State Penitentiary or the Ohio State Reformatory, and you state that you "are particularly interested in the question of the court's jurisdiction to modify a sentence or to place a person on probation after the sentence has been carried into effect and the prisoner has entered upon his sentence in a penal or reformatory institution."

Before entering upon a discussion of the law pertaining to your question, it is advisable to invite your attention to two well settled principles of law of this state:

First, there is a distinction between the suspension of the imposition of a sentence and the suspension of the execution of a sentence. When

a person has been convicted of a felony in a court of competent jurisdiction, either by the finding of a court or upon the verdict of a jury, or upon a plea of guilty to the charge preferred, there is no authority in our criminal code for the *unlimited suspension* of the execution of a sentence duly imposed. Under our statutes the court may suspend the *imposition* of a sentence and place the defendant on probation, and the court may suspend the *execution* of a sentence in order that the defendant may perfect an appeal on questions of law; and,

Second, the other proposition is that, since there are no common law offenses in Ohio, and since the procedure in criminal matters is entirely regulated by statute, the Legislature, having dealt with the suspension of the *imposition* of sentences in criminal cases for the purpose of placing the accused upon probation, and having provided for the suspension of the execution of a sentence in order that an appeal on the law might be perfected, no other or further power in these respects exists.

This doctrine was laid down in the case of Madjorous v. State of Ohio, 113 O. S. 427 (1925) in which the court said in part at page 433:

> "It would be unprofitable to discuss the many cases cited in the briefs of counsel, as we think the best authority upon this subject is the very well-considered opinion of Chief Justice White (Ex parte United States, 242 U. S. 27, 37 S. Ct. 72, 61 L. Ed. 129 (1915)), in which he reviews and discusses the leading cases at length *and reaches the conclusion that the courts do not possess the inherent power to suspend a sentence in a criminal prosecution,* except to stay the sentence for a time after conviction, for the purpose of giving an opportunity for a motion for a new trial or in arrest of judgment or during the pendency of a proceeding in error. The Ohio Legislature having dealt with the subject, and having made certain provisions and certain exceptions thereto, it will be presumed that the Legislature has exhausted the legislative intent, and that it has not intended the practice to be extended further than the plain import of the statutes already enacted. The well-known maxim, *expressio unius est exclusio alterius,* applies. (Emphasis and citation in parenthesis ours.)

A writ of certiorari filed in the Madjorous case was denied by the Supreme Court of the United States, 270 U. S. 662, 46 S. Ct. 471, 70 L. ED., 787, and the Madjorous case, supra, was approved and followed in the case of Municipal Court of Toledo, et al. v. State, ex rel. Platter, 126 O. S. 103 (1933).

In the Platter case, the court held, as stated in the first three branches of the syllabus:

> "1. Criminal procedure in this state is regulated entirely by statute, and the state has thus created its system of criminal law covering questions of crime and penalties, and has provided its own definitions and procedure.
>
> 2. By statute, authority is conferred upon trial judges to suspend imposition of sentence and place the defendant upon probation; also discretionary power is conferred upon trial judges to suspend execution of sentence of one convicted of a bailable offense for such period as will give the accused time to prepare, file or apply for leave to file a petition for review of such conviction. Also provision is made for conditional sentence in misdemeanors.
>
> 3. The trial courts of this state do not have the inherent power to suspend execution of a sentence in a criminal case and may order such suspension only as authorized by statute."

It is clear, therefore, that in so far as the suspension of the imposition of the sentence, or of the execution of the sentence, is concerned, the answer to your questions must be found in our Criminal Code; while at the same time the power and jurisdiction of the trial court over its own judgments *during term* can only be determined by resort to the common law and to common law principles.

Provisions for the suspension of the *imposition* of sentences and the placing of persons convicted of crime on probation are contained in Chapter 31, Title II, Criminal Procedure, entitled "probation" (Sections 13452 to 13452-11, inclusive, General Code); while provisions for the suspension of the execution of a sentence to permit one convicted of crime to perfect an appeal on questions of law are contained in Chapter 32 of the same title, embracing Sections 13453-1 to 13453-6, inclusive, of the General Code.

Further provisions having to do with conditional sentences and the remission or suspension of a sentence imposed on one convicted of a "misdemeanor forbidden by statute or ordinance" are contained in Sections 13451, 13451-8a and 13451-8L, General Code. These sections do not affect your question and need not be further noticed.

The power and authority of trial judges and magistrates to suspend the imposition of a sentence and place a defendant on probation are provided for by Section 13452-1, General Code, which reads:

> "In prosecutions for crime, except as mentioned in G. C. 6212-17, and as hereinafter provided, where the defendant has pleaded, or been found guilty and it appears to the satisfaction of the judge or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and the public

> good does not demand or require that he be immediately sentenced, such judge or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such judge or magistrate may determine; provided, that juvenile delinquents shall not be included within this provision."

Section 6212-17, General Code, which had to do with violations of the State Prohibition Laws, has been repealed (115 v. P. II, 118, 164).

The succeeding sections prohibit the granting of probation in the case of conviction of certain crimes and relate to the execution of the order of probation, including the control and supervision of the person on probation; the extent of the probation period; the restoration to the rights of citizenship, etc.

A proper resolution of your question does not require a resume of these sections; nor, is it necessary herein to quote or further to refer to Sections 13453-1 to 13453-6, General Code. And this is true because, as hereinbefore pointed out, the answer to your question depends upon the jurisdiction and authority of the court over its orders during term.

In your letter you refer to and quote the syllabus of Opinion No. 2657, Opinions of Attorney General, 1928, Vol. III, p. 2237. While the syllabus of that opinion does categorically hold that "the trial court is without jurisdiction, either after or *during* term, to vacate the judgment imposing the sentence and cause a prisoner to be discharged", an examination of the opinion reveals that the then Attorney General recognized that there were divergent views on the question under consideration and there was considerable doubt as to what was the law in Ohio. At page 2241 of the Opinion, my predecessor said:

> "In view of the conflict of authority on the question last above discussed, since in the instant case the court has not vacated its former judgment for the purpose of imposing a lesser sentence, and could not do so for the obvious reason that the sentence imposed is the minimum fixed by law, *until there shall have been an authoritative pronouncement by the court of last resort of this state, I do not feel justified in attempting to determine whether or not trial courts in Ohio may, during term, vacate a judgment imposing a sentence upon a person convicted of crime after such sentence shall have been executed in part, for the purpose of imposing a sentence of lesser degree.*" (Emphasis ours.)

Furthermore, a reading of the opinion under review discloses that the conclusions therein reached were adopted because of the dictum of Mr. Chief Justice Taft, in the combined cases of United States v. Mur-

ray and Cook v. United States, 347 U. S., 359, 48 S. Ct., 146, 72 L. Ed., 309 (1928), which was explained and modified in the case of United States v. Benz, 282 U. S., 304, 75 L. Ed., 354 (1931).

In Opinion No. 2657, it was said as follows at page 2243:

> "While it might appear at first that where a judgment imposing a sentence is vacated and the entering of a judgment suspending the imposition of a sentence would constitute a mitigation of the penalty, and would, therefore, come within the principle established by the case of Ammon vs. Johnson, supra, Mr. Chief Justice Taft, of the Supreme Court of the United States, has clearly defined the distinction in a recent opinion, holding that the United States Courts, under similar statutory provisions relating to the suspension of criminal sentences, have no power to enter judgments suspending sentences after imprisonment has commenced. This was decided in the decision of the combined cases of United States vs. Murray and Cook vs. United States, appearing in U. S. Supreme Court Advanced Opinions of January 16, 1928 (72 L. Ed., 201).
>
> Writs of error were prosecuted to the United States Supreme Court from judgments suspending sentences of Murray and Cook after their imprisonment. Murray had been imprisoned only one day after sentence, when the judgment of suspension was entered, this being, of course, at the same term. Cook had been imprisoned for two years, so the judgment of suspension was entered at a subsequent term. The federal statutes relating to the suspension of sentences in criminal cases are similar to Section 13706, et seq., of the General Code of Ohio, in all respects except that they provide for a suspension of the *execution* of sentence as well as the *imposition.*"

My predecessor then quoted several excerpts from the Murray case, including the following:

> "*Probation was not sought to shorten the term.* Probation is the attempted saving of a man who has taken one wrong step and whom the judge thinks to be a brand who can be plucked from the burning at the time of the imposition of the sentence. *The beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it.* Ex Parte Lange, 18b Wall., 163, 21 L. Ed., 872. Such a limit for probation is a natural one to achieve its end."

The headnotes in the Benz case read as follows:

> "1. The power of a court to amend a sentence of imprisonment during the term of court in which it was imposed, by

shortening the period of imprisonment, continues after service of the sentence has been begun.

2. Generally, judgments, decrees, and orders are within the control of the court during the term at which they are made, and may be amended, modified, or vacated by it.

3. Sentence in a criminal case may be amended by the court at the term of court in which it was imposed, provided the punishment be not augmented.

4. Usurpation of the pardoning power of the executive is not involved in the action of a court, at the term in which sentence was imposed, in reducing the punishment after the prisoner has served a part of the imprisonment originally imposed."

In the opinion, Mr. Justice Sutherland said as follows at page 307:

"The general rule is that judgments, decrees and orders are within the control of the court during the term at which they were made. They are then deemed to be 'in the breast of the court' making them, and subject to be amended, modified, or vacated by that court. Goddard v. Ordway, 101 U. S., 745, 752, 25 L. Ed., 1040, 1043. The rule is not confined to civil cases, but applies in criminal cases as well, provided the punishment be not augmented. Ex parte Lange, 18 Wall., 163, 167-174, 21 L. ed., 872, 876-878; Basset v. United States, 9 Wall., 38, 19 L. ed., 548. In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and is thus brought within the limitation. Wharton in Criminal Pleading & Practice, 9th ed., § 913, says: 'As a general practice, the sentence, when imposed by a court of record, is within the power of the court during the session in which it is entered, and may be amended at any time during such session, provided a punishment already partly suffered be not increased.' "

At page 309, the Murray case was explained and modified in the following language:

"The Lange Case, 18 Wall., 163, 21 L. ed., 872, and the Basset Case, 9 Wall., 38, 19 L. ed., 548, probably would have set at rest the question here presented, had it not been for a statement in United States v. Murray, 275 U. S., 347, 358, 72 L. ed., 309, 313, 48 S. Ct., 146. In that case this court held that where the defendant had begun to serve his sentence the district court was without power, under the Probation Act of March 4, 1925 (43 Stat. at L. 1259, chap. 521, U. S. C. title

18, § 724), to grant him probation; and citing Ex parte Lange as authority, said: 'The beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it.' But the Murray Case involved the construction of the Probation Act, not the general powers of the court over its judgments. The words quoted were used by way of illustration bearing upon the congressional intent, but were not necessary to the conclusion reached. That they state the rule more broadly than the Lange Case warrants is apparent from the foregoing review of that case.

The rule thus being settled for this court by its prior decisions, we need not discuss the conflicting state cases nor the conflicting decisions of lower federal courts which are cited, further than to say that the federal cases cited by the government in support of its position are comparatively recent, and at least in some instances rest upon the general statement in the Murray Case, just quoted. The earlier view is to the contrary. Thus in the case of Re Graves (D. C.), 117 Fed., 798, where a person has been resentenced to serve for a period of one and one-half years after having been imprisoned for a number of days under a sentence of two years, the court refused to discharge him on habeas corpus, saying:

'It involves only the inquiry whether the court possessed the power to recall the prisoner, set aside the sentence, and impose another modified sentence during the same term, notwithstanding the fact alleged that execution of the former sentence had commenced; and, whatever diversity of opinion appears in other jurisdictions, the doctrine is established in the federal courts that such power exists, and that it is applicable as well where the original sentence was in excess of jurisdiction.

* * * * * * * * *

We find nothing in the suggestion that the action of the district court in reducing the punishment after the prisoner had served a part of the imprisonment originally imposed was a usurpation of the pardoning power of the executive. The judicial power and the executive power over sentences are readily distinguishable. To render judgment is a judicial function. To carry the judgment into effect is an executive function. To cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment, but does not alter its qua-judgment. To reduce a sentence by amendments alters the terms of the judgment itself and is a judicial act as much as the imposition of the sentence in the first instance."

Since, as above suggested, the holding of Opinion No. 2657 was largely, if not entirely, arrived at because of the opinion of the Supreme Court of the United States in the Murray case, and since the decision in the Murray case is clearly modified in the holding and opinion in the Benz case, I feel amply warranted in saying that Opinion No. 2657 should to the same extent be modified.

Moreover, in addition to the Ohio cases cited and quoted from in Opinion No. 2657, viz., Lee v. State, 32 O. S., 113 (1877); Ammon v. Johnson, Guardian, 3 O. C. C., 263, 2 O. C. D., 149 (1888); In re George, 3 O. C. D., 104 (1891); and Antonio v. Milliken, 9 O. A., 357 (1918), two other cases directly in point have been decided by Ohio Courts of Appeals, namely, Minnick v. State, 29 O. L. R., 170, 7 Abs., 301 (C. of A., Cuyahoga Co., 1929) and Miglierero v. State, 9 Abs., 44 (C. of A., Mahoning Co., 1930).

Touching these earlier Ohio cases, Opinion No. 2567 contains the following discussion at pages 2238, 2239 and 2240:

> "As a general proposition, the power of the courts to vacate, revise or modify their judgments during the same term has been generally recognized throughout the courts of the United States, including those of Ohio. Thus Judge Johnson, of the Ohio Supreme Court, in the case of Lee v. State, 32 O. S.. 113, on page 114 of the opinion, quotes with approval from Lord Coke, as follows:
>
> 'It is said by Lord Coke (Co. Litt. 260a) that "during the term wherein any judicial act is done, the record remaineth in the breasts of the judges of the court, and in their remembrance, and therefore the roll is alterable during that term, as the judges shall direct; but when that term is past, then the record is in the roll, and admitteth of no alteration, averment or proof to the contrary."'
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> * * * * * * * * *
>
> The exercise of this power in criminal cases, *after execution* of the *judgment has commenced,* has certain restrictions conditioned upon the proposed further disposition of the defendants. Thus, 'It seems to be well established that the trial court is without power to set aside a sentence after the defendant has been committed thereunder, and impose a new or different sentence increasing the punishment, even at the same term at which the original sentence was imposed. See note, 44 A. L. R., 1203; 16 C. J., 1314. However, in many jurisdictions a court may set aside a sentence for the purpose of mitigating punishment (same note, Section III), or for the purpose of granting a new trial (Section IV). A court is, therefore, not precluded from vacat-

ing its judgment, even after partial execution of the sentence, if the same is not done for an unauthorized purpose, which should appear in the terms of the vacating order. In the instant case, according to the facts stated in your letter, the court simply vacated its former judgment imposing sentence; and in so far as this office is advised, it does not appear from the order in question, or other writ, that the judgment was vacated in order that a lesser punishment might be imposed, or for the purpose of granting a new trial.

* * * * * * * * *

However, since the case of Ammon vs. Johnson, 3 O. C. D., 263, 2 O. C. D., 149, decided by the Circuit Court of Cuyahoga County in 1888, Ohio has been recognized, together with the states of Minnesota, North Carolina and North Dakota, as permitting the vacation of judgments during term and after partial execution by imprisonment for the purpose of mitigating punishment. In that case the plaintiff sought release upon habeas corpus from an imprisonment imposed by a judgment which modified a former judgment imposing a fine and imprisonment for contempt. The latter judgment reduced the fine and imprisonment relating to it.

The court in denying the writ held:

'Where the court has imposed a fine upon a witness refusing to answer, and ordered her to be imprisoned until she answers and pays the fine—it is within the power of the court during the same term of court, and while the action in which she refused to answer is still pending, and after her imprisonment has commenced, to remit the fine and that part of the sentence of imprisonment relating to it.'

In the opinion the court said as follows at page 154:

'The ordinary doctrine that the court has power to set aside or modify its judgment during the same term is well settled and familiar. Longworth vs. Sturgis, 2 O. S., 105; Ash vs. Marlow, 20 O., 119. The want of power in this instance is placed on the ground that the imprisonment of Mrs. Ammon had commenced, and we are cited to the case of Lee vs. The State, 32 O. S., 113, where the guarded syllabus lends some color to the claim. It reads: "Where a court in passing sentence for a misdemeanor has acted under a misapprehension of the facts necessary and proper to be known in fixing the amount of the penalty, it may, in the exercise of judicial discretion, and

in furtherance of justice, at the same term and before the original sentence has gone into operation, or any action has been taken upon it, revise and increase or diminish such sentence within the limits authorized by law."

There is at least one case (57 Me., 57) which decides that after the execution of a sentence has commenced, it cannot be increased, though none that we have say that it may not be diminished. In the case of Lee v. State, supra, the sentence was increased. In none of the cases cited in Lee v. State, supra, is any reason given why there should be any difference in the extent of power of the court during the same term over a civil case or one criminal or quasi criminal. The authorities on which the case of Lee v. State, supra, is based sustain generally the power to what was done in the case before us. In Basset vs. United States, 9 Wall. (U. S. Supreme Court), 39, the judgment was set aside after imprisonment had commenced and the court say: "The control of the court over its own judgment is of every day practice." '

That case has since been cited with approval by Ohio Courts of Appeals upon two occasions. See In re George, 3 O. C. D., 104, and Antonio vs. Milliken, 9 Ohio App., 357. The headnote in this later case reads:

'In misdemeanor cases the trial court has power under favor of Section 13711, General Code, to suspend in whole or in part the execution of a sentence at any time during the term at which sentence was passed, even though the defendant had entered upon the imprisonment ordered by the sentence.' "

In the Minnick case it was held as stated in the headnote:

"A trial court, after passing sentence in a felony case, has the right, during term, to increase the term of imprisonment and to change the place of incarceration from the State Reformatory to the State Penitentiary."

At page 173 of the opinion the court said:

"From an examination of this section (Sec. 13720, G. C.) we do not find anything contained therein which destroys the principle universally established that a court has the power to change its judgment before actionable execution at least, any time during the term, for the reason that the term is considered as of a day, under the principle of ancient law as the legal status is the same as if both sentences in the cases at bar were imposed

> the same day. There is a presumption of law that when a change of judgment is made by a court during term, that it is done in furtherance of justice and for good cause.
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> * * * * * * * * *
>
> On the other hand, it might be discovered, after the imposition of sentence to imprisonment, that certain facts appear which would warrant a much lighter sentence, perhaps no sentence at all and the granting of a new trial, and to deprive the court of its inherent power to do justice under such circumstances as these, would be an unwarrantable curb upon the power of the courts."

The headnote in the Miglierero v. State case reads:

> "Judgment on a plea of guilty in Municipal Court may be set aside by the Municipal Court in the same term of court and defendant may be permitted to enter a plea of not guilty, even after defendant has paid his fine and costs."

A good summation of the law of Ohio with reference to the power of the trial court to revise, modify or vacate its judgment and sentence in criminal causes *during term,* is contained in 12 O. Jur., 713. The text citing the Ohio cases above referred to reads:

> "The discretionary power of the trial court, at the term at which judgment and sentence are entered, to revise its judgments, is well established. Such power is necessary for the protection of the defendant, as well as the public, and may be exercised as well in his favor as against him, when the court has been misled by mistake or fraud. The proper and regular method to invoke this power is by motion addressed to the court. The suggestion in the Lee Case that revision had to be made before sentence had gone into execution, was approved by the Cuyahoga circuit court in a case where the prosecution sought to increase the punishment, but that court has also held proper a ruling remitting the fine imposed by a sentence imposing both fine and imprisonment, after imprisonment had begun. *But after the term at which judgment was entered the court of common pleas has no power or authority to modify its judgment except in such manner as is pointed out by statute.*"

The above views are strengthened by a comparison of former Section 13706, General Code, as enacted by the 85th General Assembly (110 v. 110), with the language of present Section 13452-1 as it now exists. The old section provided for the suspension of the execution of the

sentence *"at any time before such sentence is carried into execution."* You will note that there is no such limitation in the sections of the Criminal Code which now make provision for the suspension of the imposition of sentences.

In view of the foregoing, including the Ohio authorities cited, and especially since the Murray case, upon which Opinion No. 2657 was grounded, was expressly explained and modified by the Supreme Court of the United States in the Benz case, supra, I feel constrained to modify the 1928 opinion to the extent that it conflicts with the Benz decision. And, in specific answer to your question, it is my opinion that:

1. Trial courts in Ohio have the power and jurisdiction during term to vacate a judgment and sentence in a criminal case, and to resentence so as to decrease but not augment the punishment, even though the accused shall have commenced to serve his original sentence in the Ohio Penitentiary or the Ohio State Reformatory.
2. This power and jurisdiction includes the power *during term* entirely to vacate the judgment and sentence once pronounced, and to suspend the imposition of a new sentence and place the accused upon probation in accordance with the provisions of Sections 13452-1, et seq., General Code.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1627.

CONTRACT—STATE WITH THE OHIO STATE CONSTRUCTION COMPANY, GENERAL AND ELECTRIC CONTRACTS, DEFIANCE COUNTY HIGHWAY GARAGE, DEFIANCE.

COLUMBUS, OHIO, December 30, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a contract by and between the state of Ohio acting through you as director of the department of public works for the department of highways, and The Ohio State Construction Company of Columbus, Ohio, for the construction and completion of contract for general work for a project known as revised September 1, 1939 (general and electrical contracts only), Defiance County Highway Garage, Defiance, Ohio, as set forth in Item 1, general contract for Defiance County Highway Garage of the form of proposal dated November 13, 1939, all according to plans and specifi-