Columbus, Ohio, in accordance with Item No. 1 of the Form of Proposal dated October 5, 1931. Said contract calls for an expenditure of seventy-two thousand nine hundred and sixty-five dollars ($72,965.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. It is to be noted that the Controlling Board's approval of the expenditure is not required under the act appropriating the money for this contract. In addition, you have submitted a contract bond upon which the United States Fidelity and Guaranty Company of Baltimore, Maryland, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finally, it appears that the Governor has approved all the acts of the Commission in accordance with Section 1 of House Bill No. 17, 88th General Assembly, heretofore mentioned.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4346.

APPROVAL, ABSTRACT OF TITLE TO LAND IN LEBANON, OHIO, OF ANNA M. ROSELL.

COLUMBUS, OHIO, May 20, 1932.

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

DEAR SIR:—Sometime ago Opinion No. 4240 was issued to you concerning the status of the title of a tract of land in Lebanon, Ohio, which the state proposes to purchase from Anna M. Rosell. In said opinion, a number of deficiencies in the submitted abstract of title were pointed out and a request was made for further information and data to clear up the title. The additional information requested has been submitted to me, and I am now of the opinion that said Anna M. Rosell holds a good and merchantable fee simple title to the land proposed to be sold to the state.

Some doubt was expressed in the former opinion as to whether the deed from Stickleman to Lewis and Beachey, which is an important link in the chain of title to the first tract in the state deed, included all of the land in Elliott's outlot No. 3 mentioned in the first tract of the state deed. The abstracter has since certified that outlot No. 3 is 10.13 chains long, and, therefore, it becomes apparent that the Stickleman deed did reach all the way over to the eastern boundary of Elliott's outlot No. 3 so as to coincide with the eastern boundary of tract No. 1 in the state deed. Likewise, any doubt as to whether said Stickleman deed reached far enough north in Elliott's outlot No. 3 to include land in said outlot which is in the first tract of the state deed, is dispelled by information which shows that

said Stickleman land extended northward 79.2′ from the southern boundary of said outlot No. 3 while the first tract in the state deed extends northward only 59.5′ from the south line of said outlot No. 3.

In my former opinion it was pointed out that the land in the first tract in the state deed had not always been conveyed as a single tract; that, at one time, it had been described as consisting of two separate tracts; and that said two separate tracts did not come together so as to form one solid tract, but that there was apparently a space between them which had been referred to in some old deeds as an alley. This defect is cleared up by an affidavit which shows that, as a matter of fact, no alley has extended across said portion of the first tract in the state deed, and that Anna M. Rosell and her predecessors in title have, for over twenty-one years last past, held adverse possession of said tract of land.

Moreover, in the former opinion, some doubt was expressed as to whether the fifth call in the first tract of the state deed did not include more land than was justified by previous conveyances in the chain of title. Had said first tract so taken in more land than was justified, it would have encroached upon the rear boundary of the lot indicated on the abstract plat as belonging to Laura Young. A subsequent survey of said tract No. 1 made by employes of the county surveyor's office of Warren County, shows that said fifth call is a couple feet north of the old rear fence line of said Young lot, and, therefore, it is believed that said first tract does not encroach upon the rear of the Laura Young lot. This conclusion that said first tract does not encroach upon the rear of the Laura Young lot is corroborated by the fact that the Laura Young lot calls for a depth of 189.42′ from the southern line of Elliott's outlot No. 1, which south line is shown by an old plat in the recorder's office to be in the middle of Main Street, while a recent measurement made by surveyors shows that it is more than two hundred feet from the middle of Main Street north to the fifth call in the state deed.

Again, some question was raised in the former opinion as to the correct lengths of the northwestern boundary of the first tract in the state deed and of the call representing the northern part of the eastern boundary of the same tract. Subsequent surveying has shown that the lengths of said lines as expressed in the proposed state deed are correct, and that, as so expressed, they meet the line of an old fence standing on the northern boundary of the first tract of the state deed.

The abstracter has furnished additional information showing the manner in which the title to the land proposed to be conveyed to the state came, by court proceedings, into the hands of the Lebanon Citizens National Bank and Trust Company.

In the former opinion, it was pointed out that the abstract did not show clearly whether a ten thousand dollar mortgage to Tooke & Reynolds, a partnership, had ever been lifted. Subsequent information shows that this mortgage was assigned to the Lebanon Citizens National Bank and Trust Company and that it was foreclosed in case No. 14429.

Likewise, the abstracter has entered supplemental quotations on page 33 of the abstract to show that the mortgage from the Sargents to The People's Building, Loan & Savings Company mentioned on that page, has been satisfied in full and entirely released.

The leases mentioned on pages 52 and 53 of the abstract have, according to supplemental information given by the abstracter, expired according to their own terms.

The above deficiencies were the sole ones which caused me to withhold approval of the title to this land in the former opinion, and now that they have

been cleared away, approval is given to said title.

The condition of the taxes and assessments was pointed out in the former opinion. The only subsequent change that has been made in reference to them is the interlineation of the words "and assessments" by the abstracter in the last paragraph of his certificate (p. 55A, abstract) to indicate that assessments to and including the December, 1931, installments are paid.

Enclosed please find abstract of title and supplemental papers furnished by the abstracter.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4347.

BANKING—LOAN OF FUNDS TO CORPORATION TO BE REPAID IN MERCHANDISE—NOT ENGAGED IN BANKING BUSINESS ALTHOUGH CUSTOMER RECEIVES INTEREST ON SUCH MONEY DEPOSITED.

SYLLABUS:

When an Ohio corporation doing a general retail merchandise business, sells goods on a plan by which the customer pays to the merchant money which is credited upon a pass-book furnished by the merchant in which subsequent payments are to be credited, which pass-book is to be redeemed by a payment in merchandise, such merchant is not doing a banking business even though he may allow the customer a credit of six per cent per annum on the amounts credited in such pass-book.

COLUMBUS, OHIO, May 20, 1932.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion, as follows:

"An Ohio corporation doing a general retail merchandising business, proposes to sell goods according to a plan which it calls the 'Advance Payment Plan'. The nature of the plan is as follows:

1. The customer purchases goods for future delivery.

2. These goods may be within any of the following three classes:

(a) Goods to be made up by the merchant especially for the customer.

(b) Goods selected by the customer at the time of purchase.

(c) Goods to be selected at a future date.

3. The customer at once makes a payment to the merchant to apply upon the purchase and credit therefor is entered in a pass book which the merchant furnishes to the customer. Further payments may be made by the customer from time to time until the goods are delivered.

4. A discount is given the customer purchasing goods under this plan, computed at the rate of 6% per annum on the total of his advance payments at the end of each month prior to delivery of goods so purchased.

5. In the event a customer decides not to purchase goods under his option to select them at a future date as noted in (c) above, The G. Com-