It is accordingly my opinion that these bonds constitute valid and legal obligations of said city school district.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1542.

BONDS—MINGO JUNCTION VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, $5,000.

COLUMBUS, OHIO, December 8, 1939.

Retirement Board, School Employes Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Mingo Junction Village School District, Jefferson County, $5,000.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of building and equipment bonds in the aggregate amount of $175,000, dated April 1, 1918, and bearing interest at the rate of 5½% per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village school district.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1543.

SAMPLE OF SEED—NOT SUBJECT TO LABELING REQUIREMENTS CONTAINED IN SECTIONS 5805-1 TO 5805-16 G. C. —WHERE A DEALER IN OHIO SELLS, OFFERS OR EXPOSES FOR SALE, SEEDS, SUITABLE FOR SEEDING PURPOSES—PRIMA FACIE EVIDENCE THEY WERE SOLD, OFFERED OR EXPOSED FOR SALE.

SYLLABUS:

1. A sample of seed is not subject to the labeling requirements contained in Sections 5805-1 to 5805-16, inclusive of the General Code.

2. If seeds are suitable for seeding purposes in Ohio, the selling,

offering or exposing for sale of such seeds by a dealer in Ohio is prima facie evidence that such seeds were sold, offered or exposed for sale for seeding purposes in Ohio, even though such seeds are ultimately sold to another dealer.

COLUMBUS, OHIO, December 8, 1939.

HON. JOHN T. BROWN, *Director of Agriculture, State Office Building, Columbus, Ohio.*

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

"I would like to have your formal opinion on the following questions which have arisen pertaining to the Ohio Agricultural Seed Law, Sections 5805-1 to 5805-16, G. C., inclusive.

1. Does the mailing of a sample of seed from one dealer in Ohio to another dealer in Ohio, or to the trade generally in Ohio, constitute an offering or exposing for sale, contemplated by the Agricultural Seed Law, Sections 5805-1 to 5805-16 inclusive of the General Code, such as would require each said sample to be completely labeled in accordance with the act? (Sections 5805-1, 5805-4, 5805-5 or 5805-5a.)

2. Does the carrying of a sample of seed by a salesman from one dealer in Ohio to another dealer in Ohio constitute an offering or exposing for sale contemplated by the Agricultural Seed Law, Sections 5805-1 to 5805-16 inclusive of the General Code, such as would require each said sample to be completely labeled in accordance with the act?

3. Does the selling, offering or exposing for sale of agricultural and/or vegetable seeds by a dealer in Ohio establish prima facie evidence that such seeds were sold, offered or exposed for sale within this state for seeding purposes within this state?

4. Does the selling, offering or exposing for sale of agricultural and/or vegetable seeds by a dealer in Ohio to another dealer in Ohio establish prima facie evidence that such seeds were sold, offered or exposed for sale within this state for seeding purposes within this state?"

Section 5805-1, General Code, provides:

"The term 'agricultural seeds' or 'agricultural seed' as used in this act, shall be defined as brome grass, Kentucky blue grass, Canada blue grass, fescues, Italian rye grass, timothy, alfalfa, alsike clover, crimson clover, red clover, white clover, sweet clover, field peas, cowpeas, soybeans, vetches, barley, popcorn, field corn, oats, rye, wheat, buckwheat, flax, kaffir corn, millets,

sorghum and all other grasses, cereals, forage plants and legumes; the term 'vegetable seeds' as used in this act shall include the seeds of those crops that are usually grown in Ohio in gardens or on truck farms and generally known and sold under the name of 'vegetable seeds'; which are sold, offered or exposed for sale within this state for seeding purposes within this state."

From a consideration of the above, it appears that the qualification as to sale, offering or exposing for sale within this state for seeding purposes within this state must be considered as part of the definition of "agricultural seeds" and "vegetable seeds." In other words, if the seeds enumerated in this section are not sold, offered or exposed for sale within this state for seeding purposes within this state, then the same are not "agricultural seeds" or "vegetable seeds" as those terms are used in the seed laws.

Section 5805-2, General Code, provides:

"Every lot of agricultural seeds, as defined in section one (G. C. Section 5805-1) of this act, except as here otherwise provided, shall have affixed thereto in a conspicuous place on the exterior of each container of such agricultural seeds, a plainly written or printed tag or label in the English language stating:

(a) Commonly accepted name of such agricultural seeds.

(b) The approximate percentage by weight of pure seed present, meaning the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

(c) The approximate total percentage by weight of weed seed; the term 'weed seeds' as herein used being defined as the noxious weed seeds listed in section three and all other seeds not listed in section one as agricultural seeds.

(d) The name and approximate number per ounce of each kind of seed or bulblets of the noxious weeds in section three which are present singly or collectively; in excess of one seed or bulblet in each five grams of timothy redtop, orchard grass, Kentucky blue grass, Canada bluegrass, fescues, brome grass, perennial and Italian rye grass, crimson clover, red clover, white clover, alsike clover, sweet clover, alfalfa, and all other grasses and clovers not classified in excess of one seed or bulblet; one in twenty-five grams of millet, rape, flax and other seeds not otherwise specified in one or three of this subsection; and the name and approximate number per pound of each kind of seed or bulblets of the noxious weeds in section three which are present singly or collectively in excess of one seed or bulblet in one hun-

dred grams of wheat, oats, rye, barley, buckwheat, vetches and other seeds as large or larger than wheat.

(e) The approximate percentage of germination of such agricultural seed and the month and year such seed was tested, provided, however, that a tolerance of not to exceed ten percent shall be allowed.

(f) The full name and address of the vendor who is the person, firm or corporation selling, offering or exposing for sale such agricultural seed.

(g) All red clover and/or alfalfa seeds shall be labeled to show state or states in which produced if produced within the United States or country in which produced if of foreign origin.

(h) The sale of agricultural seeds for seeding purposes within the state of Ohio containing three percent or over of noxious weed seed is prohibited."

Section 5805-5a, General Code, provides:

"Each separate container of vegetable seeds as defined in section one (G. C. Section 5805-1) of this act, except as herein otherwise provided, shall be clearly and plainly labeled in the English language as follows; provided, however, that no label shall be required on vegetable seed which is sold and delivered direct to the purchaser from a container which is labeled as required herein:

(a) For containers of one pound or more in weight; and for containers of less than one pound in weight when the seed germinates less than the standard set up by the state director of agriculture:

1. The kind and the variety of seed.
2. The approximate percentage of germination and the month and year said seed was tested.
3. The full name and address of the person, partnership, association, or corporation responsible for the labeling of said container.

(b) For containers of less than one pound in weight when the seed germinates equal to or above the standard set by the state director of agriculture:

1. The kind and variety of seed.
2. The full name and address of the person, partnership, association or corporation responsible for the labeling on such container.

(c) All seeds sold in packets shall be equal to or above the standards of germination established annually by the director of agriculture."

Section 5805-15, General Code, provides in part:

"Every violation of the provisions of this act, relating to the * * * failure to label * * * shall be deemed a misdemeanor, punishable by a fine of not more than one hundred dollars. * * *"

The above quoted sections, being concerned with the same subject matter, are all in pari materia and must be construed together. Section 5805-2, supra, provides that *every lot* of agricultural seeds shall have affixed on *each container* a label bearing certain information. Similarly, Section 5805-5a, supra, provides that *each separate container* of vegetable seeds, as defined in the act, shall be labeled. It will be seen that only those containers of agricultural or vegetable seeds which are sold, offered or exposed for sale within this state for seeding purposes within this state must be labeled. A container of seeds distributed as a sample is not sold, offered or exposed for sale. Consequently, a sample of seeds does not fall within the labeling requirements.

The conclusion herein reached is strengthened by the pronouncement of the court in the case of Clymer v. Zane, 128 O. S., 359, wherein the first branch of the syllabus states:

"Penal statutes and statutes which impose restrictions upon the conduct of business must be strictly construed and their scope can not be extended beyond the usual meaning of their terms."

The conclusion that samples of seeds do not fall within the labeling requirements is dispositive of your first two questions.

I come now to a consideration of the question as to whether the selling, offering or exposing for sale of seeds by a dealer in Ohio establishes prima facie evidence that such seeds were sold, offered or exposed for sale "for seeding purposes within this state." As pointed out hereinbefore, seeds which are not sold, offered or exposed for sale within this state are not "agricultural" or "vegetable" seeds as those terms are defined in Section 5805-1, supra.

It should be pointed out at the outset that the purpose of the labeling act was to give to the general public the means of knowing the kind and quality of seeds purchased. Consequently, if the words used in the statute will permit such an interpretation, then that purpose should be effectuated.

In using the words "sold, offered or exposed for sale within this

state for seeding purposes within this state," it seems obvious that the Legislature was not referring to the actual use and place of use by the purchaser. Such a conclusion would require that there be an actual sale and planting before there could be a violation, which would give rise to absurd and ridiculous consequences. As was stated in 37 O. J., at page 647:

> "Accordingly, it is the duty of the courts, if the language of the statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences."

The entire seed act is based on the principle that the public should be able to determine *before it buys,* certain facts about the particular seeds. Obviously, if there had to be an actual sale and planting before there was a violation, then the act would, to a great extent, be rendered ineffectual.

It should also be noted that the Legislature used not only the words "sold" but also the words "offered or exposed for sale." If there had to be a sale before there could be a violation, then the words "offered or exposed for sale" would be mere surplusage and of no effect.

The true test is whether the seeds in question are offered for sale for seeding purposes in Ohio. In the ordinary situation, a dealer has a stock of seeds which he displays to the public. Most seeds, offered for sale in Ohio are suitable, because of climate, soil, etc., for seeding purposes in Ohio. When such seeds are offered for sale to the general public they are subject to the labeling requirements. The reasonable interpretation of the statute supports such a conclusion and effectuates the purpose of the act.

It appears that the discussion of your third question applies with almost equal force to the fourth inquiry. Obviously, the sale of seeds by one dealer to another dealer would not be a sale for seeding purposes in Ohio. Such sale would be for re-sale. However, such seeds might have been offered or displayed for sale for seeding purposes in Ohio, in which event the discussion of your third question would apply to the instant situation. If such seeds were a part of the regular stock of the first dealer and were suitable for seeding purposes in Ohio, then such seeds would have to be labeled, even though they were ultimately sold to a dealer. Such a conclusion, I believe, presents the only logical and reasonable interpretation of the labeling requirements set forth in the seed laws.

In view of the above, I am of the opinion that: (1) A sample of seed is not subject to the labeling requirements contained in Sections 5805-1 to 5805-16, inclusive, of the General Code; (2) If seeds are suitable for seeding purposes in Ohio, the selling, offering or exposing for sale of such seeds by a dealer in Ohio is prima facie evidence that such seeds

were sold, offered or exposed for sale for seeding purposes in Ohio, even though such seeds are ultimately sold to another dealer.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1544.

LEGISLATURE—ENACTMENT—WHERE WORDS ARE: "ALL ACTS OR PARTS OF ACTS IN CONFLICT WITH AND INCONSISTENT TO ANY OF THE PROVISIONS" OF ACT ARE REPEALED—REPEAL IS BY EXPRESS ENACTMENT, NOT BY IMPLICATION—PARDON AND PAROLE COMMISSION HAS FULL, COMPLETE AND EXCLUSIVE JURISDICTION OVER PAROLE OF JUVENILE PRISONERS IN OHIO STATE REFORMATORY, COMMITTED THERE BY JUVENILE COURTS—APPLICATION OF SUCH PART OF SECTION 2131-1 G. C. REPEALED BY PARDON AND PAROLE CODE OF OHIO, SECTIONS 2209 TO 2209-23 G. C.

SYLLABUS:

1. Where the Legislature provides in an act that "all acts or parts of acts in conflict with and inconsistent to any of the provisions" of such act are hereby repealed, such repeal is a repeal by express enactment and not a repeal by implication.

2. That part of Section 2131-1, General Code, relating to the parole of juvenile prisoners confined in the Ohio State Reformatory and committed to such institution by the juvenile courts, and to the supervision and recommitment of such parolees, was repealed by the Pardon and Parole Code of Ohio (Sections 2209 to 2209-23, General Code), and the Pardon and Parole Commission has full, complete and exclusive jurisdiction over the parole of such prisoners and the supervision and recommitment of such parolees.

COLUMBUS, OHIO, December 8, 1939.

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

DEAR SIR: Your communication, requesting my opinion as to the paroling authority over juveniles in the Ohio State Reformatory, reads as follows:

> "Opinion 4865, November 5, 1935, to the effect that juvenile delinquency cases in the Ohio State Reformatory continue under the jurisdiction of the committing juvenile courts and therefore that releases on parole on or before twenty-one years of age are