no connection with the work of the county commissioners and who, from their training, are not sufficiently qualified to select the successors, and, in the case of the death or resignation of a county commissioner, it would be beneficial to the preservation of the public peace, health and safety for a successor to be appointed by persons familiar with the work of said county commissioners.' Said provision further provides that therefore said Amended House Bill No. 206 shall go into effect immediately upon being passed by the General Assembly and approved by the Governor."

You will observe that Amended House Bill No. 206 was declared to be an emergency and necessary for the immediate preservation of the public peace, health and safety. I am not unmindful of the fact that under Article II, Section 1d of the Constitution of the State of Ohio, emergency laws necessary for the immediate preservation of the public peace, health or safety, are not subject to referendum.

However, under Section 4785-175, General Code, there is a duty imposed upon me as Attorney General of Ohio to certify a summary if in my opinion the summary is a fair and truthful statement of the measure to be referred. Inasmuch as it is my opinion that the foregoing summary is a fair and truthful statement of the measure to be referred, I accordingly submit for uses provided by law the following certification:

"Without passing upon the legality of referring to the electors of this state Amended House Bill No. 206 but pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the foregoing summary is a fair and truthful statement of Amended House Bill No. 206 of the 92nd General Assembly. HERBERT S. DUFFY, Attorney General."

Respectfully,
HERBERT S. DUFFY,
Attorney General.

480.

FINANCE COMPANY—INTEREST GREATER THAN 8%—ENGAGING IN BUSINESS OF MAKING LOANS—LICENSE.

SYLLABUS:

Where a finance company purchasing a note from an automobile

dealer charges in the re-financing of the original note a rate of interest greater than 8% per annum, which includes charges and interest as defined in Section 6346-1, *General Code, it is engaging in the business of making loans and should be licensed under the provisions of Section* 6346-1, *et seq.,General Code.*

COLUMBUS, OHIO, April 17, 1937.

HON. B. FRANK THOMAS, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR: I received your letter of recent date, requesting an opinion on the following question:

> "There has been a grave misunderstanding regarding the legality of certain transactions engaged in by finance companies who do a discount business. The question arises as to whether or not certain practices of these companies are not violations of the Small Loan Act of Ohio. These companies have instituted a method of business in financing automobiles which is known as the 'balloon note' scheme. Under this scheme, a loan is made for a period of months, of which a twenty-month period is very popular and under which the buyer of the car pays a very small payment each month up until the final payment, which is, in all cases, a very large balance. This final payment is, of course, the balloon note. In nearly every instance, this note must be re-financed and of course, an additional carrying charge is placed upon the account at this time.
>
> The question is whether or not the refinancing of this balloon note is a direct loan to the buyer of the car and if such charge exceeds 8 per cent per annum, whether or not these companies should be licensed under the Small Loan Act of Ohio.
>
> It has also been noted that many of these companies treat delinquencies in like manner. For example, if a buyer has failed to meet payments or to keep same up in full, he is called to the office and told that he must re-finance the balance due or lose his car and possibly have a deficiency judgment against him. At the time of this re-financing, another carrying charge is placed upon the account. The question in this case is also whether or not this is a direct loan or as some finance companies claim—a further extension of credit.
>
> Am including with my letter a report of two cases reported to us in Toledo. In one instance, the company even went so far as to pay for repairs and force the customer to re-finance.

This example is referred to you in order that you might understand the type of transaction from an actual case.

You will also find a preliminary brief in the matter which Mr. Fleckner prepared some time ago.

As the Attorney General for Indiana has made a report on this matter which later was changed, am including a letter from the Indiana Department which sets forth his opinion and may be of some assistance to you. However, the law in Indiana, under which this opinion was given, is unlike the Ohio Law. Further, I believe the opinion is qualified by the Retail Installment Sales Act of Ohio."

It is to be noted from the foregoing that there are two transactions involved: (1) the purchase of the original note by the finance company, and (2) the re-financing of the original note upon maturity or in the event of delinquency.

Regarding the first transaction, suffice it to say that there is no provision in the "Small Loan Act of Ohio" (Sections 6346-1 to 6346-13, inclusive, General Code), which requires a company engaged in the business of purchasing commercial paper to obtain a license.

In Ohio Jurisprudence, Vol. 40, page 835, the following text appears:

"It is accordingly well settled in Ohio, and a general rule in other jurisdictions, though not without some vigorous dissent, that *contracts of sale* are not usurious where the payment or rate of interest in excess of that allowed by law for a loan or forbearance of money forms a part of the price at which an article is to be sold."

It would seem, therefore, that a Company which is not licensed to make loans in accordance with the provisions of the Small Loan Act of Ohio may purchase from automobile dealers, notes given in the course of their business, which bear interest at a rate in excess of 8% per annum, and such purchaser may continue to collect the interest at the rate provided in said note. See Opinions of the Attorney General for 1928, Vol. II, page 1573 and Opinions of the Attorney General for 1930, Vol. I, page 247.

Your question as to whether or not the finance mompany should be required to comply with the provisions of the Small Loan Act of Ohio should be determined by an analysis of the second transaction, that is, the re-financing of the so-called "balloon note." It seems from the report of your examiner that where the borrower is in default in payment or

where the note matures and is unpaid, the finance company in re-financing the original note adds to the unpaid balance finance charges and insurance premiums, which charges exceed a rate of 8% per annum on such unpaid balance. The borrower is required to execute new notes and a new mortgage.

Generally, in considering the question of a renewal of a negotiable instrument, two phases are presented for consideration: first, whether the renewal instrument is a payment of the original instrument; the other, whether the renewal is merely an extension of time of the original instrument. In 29 O. Jur., page 1104, the following appears:

> "If the payee takes from the maker a promissory note and at the same time surrenders the maker's note of an earlier date given for a loan of money, the facts, and not merely what the payee called or considered the transaction, determine whether it was a renewal or payment of the original loan. However, it is well settled in Ohio that the renewing of notes from time to time in no way extinguishes the original debt. Such renewal is simply an extension of the time of payment and a change in the evidence of the debt."

It would appear, however, that for the purpose of determining whether or not the finance company is amenable to the provisions of the Small Loan Act of Ohio, it is not necessary to consider whether the new note given by the borrower is a renewal or a payment of the original loan, for the agreement is a new contract and to be enforcible, it must have all the elements of a valid contract. See 29 O. Jur., p. 1106.

The Supreme Court in the case of *Rosebrough* vs. *Ansley,* 35 O. S., 107, held as disclosed by the third branch of the syllabus:

> "Where money is loaned at the highest rate of interest allowed by law, a contract to pay a sum in addition to such rate in consideration of an extension of the time of payment is usurious."

It would appear from the above that it is immaterial that the original note was issued in consideration for the purchase of an automobile and the finance company purchased such note. The finance company would nevertheless not be permitted, unless it complies with the provisions of the Small Loan Act of Ohio, to charge a rate of interest greater than 8% per annum for the purpose of extending the time of payment of the original obligation.

Answering your question specifically, it is my opinion that where

a finance company purchasing a note from an automobile dealer charges in the re-financing of the original note a rate of interest greater than 8% per annum, which includes charges and interest as defined in Section 6346-1, General Code, it is engaging in the busines of making loans and should be licensed under the provisions of Section 6346-1, et seq., General Code.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

481.

TRANSFER OF TERRITORY ONE SCHOOL DISTRICT TO ANOTHER—LEVY AND COLLECTION OF TAX—DUTY OF COUNTY TREASURER—YEARS 1936 AND 1937.

SYLLABUS:

When a transfer has been completed of the territory of a school district in one county to a school district within another county school district, and a different school tax rate has been established and levied in each said school district, the treasurer of each county must continue collecting the school tax rate for the year 1936, *that has been levied in the school district within each respective county; the treasurer of the county, wherein is situated the territory of the school district that was transferred for school purposes, should at the tax distribution period for each respective half year of* 1936, *forward to the school district to which the transfer has been made, the amount due to the transferred school district; and for the year* 1937, *and annually thereafter, the same school tax rate must be established and levied upon all the school territory included in the new enlarged school district.*

COLUMBUS, OHIO, April 17, 1937.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Warren County, Lebanon, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

> "This office respectfully requests your opinion upon the following:
>
> A petition in proper form, requesting the transfer of cer-