Your attention is further invited to an opinion issued by my predecessor, found in 1918 Opinions of the Attorney-General, Vol. I, page 135, wherein it was held:

> "From the provisions of section 5652 General Code it appears that the registration of dogs and the payment of fees therefor must be done in the office of the county auditor of the county in which such dogs are kept or harboured, and these provisions require your second question to be answered in the affirmative if the dog or dogs involved in the transaction are of the required age, and the registration of such dog or dogs in one county will not exempt them from liability to registration in another county where they may be taken and kept."

It therefore is the opinion of this department that where a dog is taken from one county to another to remain for a time for training purposes, the law requires that it should be properly registered in the county where it is being kept or harboured, notwithstanding it has been properly registered in the county where the owner resides.

In considering your second inquiry, it is believed that section 5652-1a supra, which defines a "kennel owner," must furnish the answer. It is clear that the owner of a kennel within the meaning of the statute is a "person, persons, partnership, firm, company or corporation professionally engaged in the business of breeding dogs for hunting or for sale."

While it is not the intendment of this opinion to definitely state the facts that would constitute a kennel owner under all circumstances, it is intended to hold that the fact that a person keeps a number of dogs for hunting purposes does not necessarily constitute a "kennel owner" in view of the statute. In other words, the statute requires the payment of the kennel license where the owner or keeper of the dogs is professionally engaged in the business of breeding dogs for hunting or for sale.

In specific answer to your second inquiry it is the opinion of this department that when one owns a number of hunting dogs he is not a "kennel owner" and required to pay the kennel license unless professionally engaged in the business of breeding dogs for hunting or for sale.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1185.

STATE BUILDING CODE—ROOF GARDEN—WHEN SAME IS OVER GARAGE WITHIN MEANING OF SECTION 12600-42 G. C.—SPECIFIC CASE.

Where three lower floors of a five story building are being used for the storage of automobiles and no repair work of any kind whatsoever is allowed or permitted on the premises; the two upper stories of the building are being used for the storage of crude rubber and other merchandise, it is proposed to place a roof garden on the roof of the building. HELD, that the three lower floors are being used as a "garage," and that the proposed roof garden, if constructed, would be "over or above" the garage, within the meaning of section 12600-42 *G. C.*

COLUMBUS, OHIO, April 27, 1920.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date relative to section 12600-42 G. C., and

its application to certain plans for a roof garden in the city of Akron, was duly received.

The facts, as I understand them, are as follows:

It is proposed to locate a roof garden on the roof of a five story building recently completed according to the latest and most modern and approved type of fire-proof construction. The building is located upon a hillside giving grade entrances to the three lower floors from the street running along the south line of the building. These three floors have entrances direct from the street, and are used for the storage of automobiles only. No automobile repair work of any kind whatsoever is allowed or permitted to be done on the premises, and the motors of cars stored are run only to bring them in and to take them out of the building.

Two additional stories, which are above the surface of the ground at the west end of the building, are used for the storage of crude rubber and merchandise, and not for automobiles or other motor vehicles.

The contention is made by the owner of this building that the proposed roof garden is not prohibited by section 12600-42 G. C., for the reason that it would not be "over or above any garage."

The argument in support of this contention is, first, that the three lower floors of the building are not used as a "garage," as that term is usually and commonly construed,—that a garage is a place where automobiles are repaired and put in running order, and does not include a place where such vehicles are stored only; and, second, that even assuming the three floors referred to are used as a garage; the proposed roof garden will not be "over or above" the garage, but only over or above the floors used for the storage of crude rubber and merchandise.

Section 12600-42 G. C. reads as follows:

> "No roof garden, roof theater or skating rink shall be placed on the roof of any building unless the entire building is of fireproof construction, and no part of any such roof garden, roof theater or skating rink shall be placed over or above any garage, or any portion of the stage of an assembly hall or theater."

(1) *The three lower floors of the buildng are used as a "garage."*

The word "garage," which is of French origin, is defined by the text writers, courts, and lexicographers, as follows:

(*a*) *Text writers*:

Babbitt, Motor Vehicles, (2 Ed.) section 522:

> "A 'garage' is defined in the Technological and Scientific Dictionary by Goodchild & Tweeney (1906), as a 'depot for the storage, or storage and repair of motor cars.' It is also defined in the addenda to the Standard Dictionary to be 'a building, as a stable or shed, for the storage of automobiles and other horseless vehicles.' The word is of French origin and in that language has quite an extensive range of meaning. To the purposes of garages, mentioned in the foregoing, may be added a now common feature, namely, that they are often places where motor vehicles are kept for hire, and also for sale."

Berry, Automobiles, Section 717:

> "A garage is 'a station in which motor-cars can be sheltered, stored,

repaired, cleaned, and made ready for use; also, a place of private storage for a motor-car; a stable for motor-cars."

Davids, Motor Vehicles, Section 280:

"Garages are structures for housing motor vehicles. They may be public, or such as are maintained for the accommodation of the vehicles of other persons than the owner, or they may be for the sole use of the owner."

28 Cyc., p. 42:

"The public garage * * * may be defined as a building or inclosure for the care and storage of motor vehicles and in which motor vehicles are kept for hire."

(*b*) *Courts*:

Grimes vs. State, 200 S. W. 378:

"A garage * * * is defined as a place for the care and storage of of motor vehicles, and in which such vehicles are kept for hire."

Riverbank Improvement Co. vs. Bancroft, 209 Mass. 217, 222:

"In the Century and Standard Dictionaries a garage is defined as 'a stable for motor cars' and 'a building, as a stable or shed, for the storage of automobiles and other horseless vehicles.'

In Gross vs. Whitelaw, 20 C. C. (N. S.) 116, the court says that the owner of automobles commonly use the word "garage" these days in referring to the building "in which they *keep* their automobiles."

(*c*) *Lexicographers*:

Webster's New International Dictionary:

"A place for housing automobiles."

Funk & Wagenalls, New Standard Dictionary:

"A building for the storage of automobile vehicles."

It will thus be seen from the foregoing definitions that a garage is a "depot," "building," "place," "station," "structure," "inclosure," or "stable" for the keeping or storage of motor vehicles, and it may or may not be used for the repair of such vehicles without losing or destroying its identity or classification as such. The purpose or purposes for which the garage may be used in addition to the storage of motor vehicles would seem to be a matter to be determined by the garage keeper, or of arrangement between a garage keeper and his customers. See Babbitt, Motor Vehicles, section 563. In other words, the repair of motor vehicles is not a necessary or indispensable factor or element in the definition or constitution of a garage.

While, as is well said in Babbitt, Motor Vehicles, section 562,

"The practice is daily becoming more common for the garage keeper to be the general repair man for the owner of the machines entrusted to his care. More frequently than not in conjunction with the garage there is a general repair shop for motor vehicles where not only common repairs are made, but extraordinary work is performed,"

yet, the repair work, if undertaken, would seem to be but an incident as distinguished from an indispensable factor. This apparently is the view taken in Lawrence vs. Middleton, 103 Miss. 173, in which the court held that:

"Where a person is engaged in the business of running a public garage, in which automobiles are stored without charge to be repaired by him for a fee, it is immaterial whether the garage is run in connection or forms part of the repair shop, or the repair shop was an incident to the garage."

It must, therefore, be held, in the absence of a legislative definition, or of an administrative definition promulgated under authority of law, that a garage is a place where motor vehicles are stored, as well as a place where they are stored and repaired, etc.

(2) *The roof garden will be "over or above" the garage.*

The contention is made, as already stated, that since there are two floors intervening between the garage floors and the roof garden, which are used for the storage of crude rubber and merchandise generally, the roof garden will be over and above the general storage rooms only, and not over and above the garage.

This contention is plausible, but not sound, and will not bear analysis, especially when we keep in mind, as we must do, that the primary purpose of section 12600-42 G. C. is the protecton of the lives and limbs or safety of persons frequenting or resorting to roof gardens, roof theaters or skating rinks, or, as those who have submitted the proposed plan have so aptly stated it, "The statute was enacted in behalf of the public and for its protection."

The well recognized and commonly accepted definitions of the words "over" and "above," lead to no other conclusion than that the proposed roof garden, if the proposed plans are permitted to be carried out, will be "over or above" the garage, within the meaning of section 12600-42 G. C. supra.

The word "over," used as an adverb and preposition, is defined by the lexicographers, as follows:

Webster's New International Dictionary:

As an adverb: "Above; as, the balloon was directly over."

"Over * * * and above, an emphatic phrase for *over* in certain senses, * * * prepositionally; (1) superior in rank or position to; above."

As a preposition: "Above, or higher than, in place or position, often with the idea of covering; opposed to under; as, clouds are over our heads; the smoke arises over the city."

The word "above," used as an adverb and preposition, is defined as follows:

Webster's New International Dictionary:

As an adverb: "In a place above something; in a higher place; overhead; into or from heaven; the clouds above."

As a preposition: "In or to a higher place than; higher than; on or over the upper or outer surface of; over; opposed to below or beneath."

"Syn. In their literal sense *above, over,* and *on* (*upon*) agree in expressing vertical direction."

Also, *above, over,* and *on* (*upon*) differ in that *on* (*upon*) always implies contact, while over and above allow an interval."

Funk & Wagenalls, New Standard Dictionary:
As an adverb: "Virtically up, overhead; on high."
"Higher up; superior in position. * * *, as the heavens above."
"Over (1) vertically over, as the room above this one."

It will thus be seen from the foregoing definitions that an object does not lose its place or position of "over" or "above" another by the mere existence of intervening space between them, and while it may be necessary in some cases to bring two objects into direct contact in order to say that one is "on" or "upon" the other, yet such contact is not required to make one "over" or "above" the other.

In many cases the danger to persons frequenting or resorting to a roof garden which is separated by intervening floors from the garage floors, would be the same as where the roof garden is immediately over or above the garage. The only difference in any case would be one of degree.

It is a matter of common knowledge that, as a general rule, garages are usually found on the ground floor of buildings, although occasionally, or perhaps frequently, they may be located in higher stories or underground; but whatever may have been, or is now, or may hereafter be the practice or custom with respect to their location, the statute involved in this inquiry has made no distinction in that regard, but has, in clear and positive language, prohibited roof gardens over or above any garage irrespective of its location.

You are therefore advised that the roof garden referred to in the statement of facts is "over or above" the garage also therein referred to.

While of no special significance or application so far as the questions under consideration are concerned, it may not be improper to state for the benefit of any one desiring to pursue the subject further, that a garage has been likened to a livery stable for which it has become the modern substitute to a great extent, and that many of the rules of law governing livery stables and their keepers have been held applicable to garage keepers.

Babbitt, Motor Vehicles, Section 522;
Davids, Motor Vehicles, Section 2a;
Berry, Automobiles, Section 191.
2 Ruling Case Law, p. 1210;
Bourgeois vs. Miller, 104 Atl. 363;
Diocese of Trenton vs. Toman, 74 N. J. 702;
Smith vs. O'Brien, 94 N. Y. Supp. 673;
Grimes vs. State, 200 S. W. 378;
Riverbank Improvement Co. vs. Bancroft, 209 Mass. 217;
Roberts vs. Kinley, 89 Kas. 865;
Lawrence vs. Middleton, 103 Miss. 173.

Respectfully,
JOHN G. PRICE,
Attorney-General.