In the case of *Matzinger* vs. *Lumber Company,* 115 O. S. 555, the court in construing the Mechanic's Lien Law held:

> "Whether materials furnished by a dealer to a contractor to be used in the process of the erection of a building were selected from the stock of the dealer or made by him in his own establishment or procured from another for the particular purpose, such dealer, having nothing to do relative to the installation of said materials or the fabrication thereof into the structure, is a material man and not a subcontractor."

If these statutes could be applied to employes of material men engaged in delivering materials to the site of a public improvement, then they would apply as well to the employes of material men engaged in manufacturing or getting ready for delivery the materials to be used in such improvement. I do not believe that the legislature intended to include in the term "subcontractor", as the term is used in sections 17-5 and 17-6, General Code, persons or firms who furnish material to contractor or subcontractor for use in a public improvement and who have nothing further to do with the construction of such improvement. However, where such persons or firms not only deliver such materials to the site of the improvement but also install the same in the improvement, I am of the view that these statutes apply.

I am of the opinion, therefore, that where a person or firm furnishes materials to a contractor or subcontractor to be used in the construction of a public improvement and such person or firm has nothing to do with the installation or fabrication of such materials into such improvement, sections 17-4 to 17-6, General Code, inclusive, do not operate to empower the public authority authorized to contract for such improvement to provide in the contract with the successful bidder a minimum rate of wages to be paid to the men employed and paid by such person or firm furnishing such materials when engaged in the delivery of such materials to the site of the improvement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4837.

TRUSTEES OF MUNICIPAL UNIVERSITY—MAY INVEST FUNDS IN SECURITIES OTHER THAN THOSE MENTIONED IN SECTION 7919, G. C., WHEN.

SYLLABUS:

1. *The board of trustees of a municipally owned university may properly invest the funds under its control in securities other than the specific types mentioned in section* 7919 *of the Code, provided such securities are such as are normally dealt in and for which there exists a regular market.*
2. *Opinion No.* 4205 *discussed and clarified.*

COLUMBUS, OHIO, December 23, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—On March 30, 1932, in response to your inquiry, I rendered Opinion No. 4205, the syllabus of which is as follows:

> "The board of trustees of a municipally owned university is not authorized to loan the funds under its control to individuals accepting collateral notes therefor."

Since the issuance of this opinion, some concern has been felt by those interested that certain of the language used therein would preclude investment by the board of trustees of a municipal university of its funds in certain types of securities which it is felt lie properly within the investment power of the board. Accordingly, that there may be no misunderstanding of the matter, I am taking this opportunity to explain the effect of that opinion. In order that this explanation may be clear, however, it is necessary to quote section 7919 of the Code, which is applicable, and is as follows:

> "Such board may invest and hold any part of the funds belonging to or set apart for the use of such university, college or institution or to any department thereof, as it from time to time deems proper in bonds of the United States, or of the state of Ohio, or of any municipal corporation of this state, or any county, or school district herein, or in bonds of any other state or territory of the United States or of any municipal corporation, county or school district therein or in real estate or securities approved by it, and may use any funds, including those arising from sales of any property sold under section seventy-nine hundred and two hereof (provided the terms of the trust do not prohibit such use), in the improvement of any real or leasehold estate belonging either to the particular trust of which the property sold was part or to any other trust under its control and management; or in the improvement of any real or leasehold estate set apart for the use of such university, college or institution."

You will note that, after reciting certain specific types of bonds, the section also authorizes investments in "real estate or securities approved by it". The specific point in doubt is just what is contemplated by the term "securities" as used therein.

In the course of my opinion, I laid some stress upon the rule of construction, known as "ejusdem generis", and concluded that, by the application of this principle, the word "securities" means securities of the same general character as those enumerated in the section. It is feared that this language precludes investment in securities other than those specifically enumerated.

It was not my intention so to hold, although I did not attempt to define what securities of the same general nature would comprehend. Any such restricted interpretation as is suggested would render this phrase meaningless, and it is a general principle of law that, where possible, all language within a statute must be given some significance.

Without attempting to define all of the classes of securities which may, under the language of the section, be a proper investment for the board, I may state that, generally speaking, the board may invest in any securities which are

generally dealt in as such and for which there exists a market. All of the securities specifically mentioned have these characteristics, and I feel that, to this extent, the ejusdem generis rule should apply. In other words, so long as securities have these characteristics, and are generally within the investment field, they are eligible when approved by the board. Perhaps more stress should have been laid upon the fact that the statute uses the word "invest" rather than upon the ejusdem generis rule. At least, for the purposes of my previous opinion, it is sufficient to say that the loaning of funds, even though collateral notes be accepted, can scarcely be described as being within the normal connotation of investment. Investment ordinarily includes the purchase of an existing security, while the loan of money is attended by the bringing into being of a new security to evidence the debt created. Consequently, upon this ground, the conclusion of my previous opinion should be reaffirmed, and I understand that no question is now raised as to its correctness.

By the application of the reasoning hereinbefore set forth, the field of investment offered by the terms of the statute is measurably extended beyond the specific types of investment set forth therein. That such was the intent of the legislature is, I believe, clear from the fact that the section was amended in 113 O. L., page 282, to read as hereinbefore quoted, and at that time the phrase here particularly under consideration, namely, "securities approved by it", first appeared. Theretofore such section authorized, in addition to certain specified investments, the investment of the funds of the university "in any other bonds or first mortgage securities approved by it". The omission in the amendment of any qualifications of the term "securities" manifests to my mind the intention on the part of the legislature to broaden the investment field. I trust that the foregoing will clarify any doubt which may exist by reason of the language of my previous opinion.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4838.

APPROVAL, ABSTRACT OF TITLE TO LAND OF ADELIDE R. BURDGE, IN CLINTON TOWNSHIP, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, December 24, 1932.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have requested my opinion as to the status of the title to the following described premises as disclosed by the abstract which you have submitted which was last continued by E. A. Durbin, abstracter, December 19, 1932:

> "Situated in the County of Franklin, State of Ohio, and in the Township of Clinton, as follows:
>
> Being Lots Numbers Sixty-five (65) and Sixty-six (66) of the subdivision in said township, known as Wood Brown Place as the same is numbered and delineated upon the recorded plat of said Subdivision, of record in Plat Book No. 5, Pages 196 and 197, Recorder's Office, Franklin County, Ohio."