stallments of $10.00 each is purchased from the borrower for $91.00, the purchasing company should be licensed under the Small Loan Act of the State of Illinois.

It should be noted that the method of doing business here under consideration should be distinguished from the case where a company is engaged in the business not of loaning money, but of purchasing commercial paper in good faith. When engaged in such latter business, there is no relationship of borrower and lender existing between the financial institution and the party who borrowed the money and incurred the obligation evidenced by the paper purchased by such company. There are no provisions contained in Chapter 25a of Title II, Part 2, General Code, which require a company engaged in the business of purchasing commercial paper to take out a chattel loan license. Since the decision of the Ohio Supreme Court in the case of *State* vs. *Mehaffey*, 112 O. S. 330, provision has been made requiring persons engaged in the business of purchasing salaries or wage earnings to be so licensed as contained in Section 6346-11, General Code, 113 O. L. 44, but, as previously stated, there is no provision applicable to persons who in good faith as a business purchase commercial paper at a discount.

It is clear, upon the facts set forth in your letter, that the relationship of borrower and lender actually exists, notwithstanding the fiction whereby the borrower is nominally the payee and the seller of the note. It is the payee that borrows the money and pays the note. The makers of the note are nothing more nor less than accommodation makers. Under such circumstances, it becomes necessary to draw aside the veil, look through the fiction and consider the actual facts. It, accordingly, follows that each office should be licensed as provided in Sections 6346-1, et seq., of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1514.

APPROVAL, CONTRACTS ON ROAD IMPROVEMENTS IN MAHONING, MERCER AND WASHINGTON COUNTIES.

COLUMBUS, OHIO, February 10, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1515.

BOARD OF EDUCATION—RIGHT TO CONTRACT THAT BUS DRIVERS SHALL COMPLY WITH CERTAIN REQUIREMENTS IN ADDITION TO THOSE PROVIDED BY STATUTES—POWER TO PRESCRIBE THAT SUCH DRIVERS SHALL PROVIDE LIABILITY INSURANCE.

SYLLABUS:

1. *A board of education may, when making contracts for the transportation of pupils, or for the employment of drivers to drive the board's equipment in the transportation of pupils, lawfully fix by the terms of the contract certain require-*

ments looking to the safety of the pupils transported, both with reference to the vehicle used in transportation and the conduct of the driver of such vehicle, in addition to those provided for by Sections 7731-2 and 7731-3, General Code.

2. A board of education in contracting for the transportation of pupils may lawfully provide by such contract that the pupils and the public generally, be protected by liability insurance.

COLUMBUS, OHIO, February 11, 1930.

HON. FRANK W. GEIGER, *Chairman, The Public Utilities Commission of Ohio, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "I have yours of January 21, 1930, in re employment and liability of the driver of a school wagon or motor van used in the transportation of school children. To this letter is attached an opinion, on the 4th page of which is the conclusion that inasmuch as there is no liability on the school district on account of the negligence of the driver of the school wagon because of the fact that the board of education is in the performance of a governmental duty in providing transportation, the board could not lawfully spend public money to provide insurance for protection against liability to third persons growing out of the transportation of the pupils.
>
> Sec. 7731-2, provides that,
>
> 'the vehicle shall be of such construction as to afford the driver thereof a practically unobstructed view of the roadway ahead and also to his right and left.'
>
> Sec. 7731-3, provides, in substance, that no one shall be employed as driver,
>
> 'Who has not received a certificate—that such person is at least eighteen years of age and of good moral character, and is qualified for such position.'
>
> It is manifest that this statute is not strict enough in reference either to the bus to be operated or the qualification of the driver and the provision as to 'satisfactory and sufficient bond' is too indefinite.
>
> I think it highly important that busses used for transportation of children should be covered by liability insurance to the same extent as is provided for the protection of transportation companies by Sec. 614-99.
>
> Inasmuch as your office has held that a board cannot lawfully spend public money to provide insurance, I would ask your opinion as to whether or not a board of education, before employing a driver for the transportation of children in school busses, may require as part of his qualification for such position that the bus be protected by liability insurance. It is evident that if this requirement is enforced the cost of such transportation will be enhanced to the extent of the premiums to be paid upon such policies. Would, in your judgment, the enhanced cost for the bus service, due to the requirement that the driver carry liability insurance, violate the holding of your department that the board cannot lawfully spend public money? May the board of education demand that the vehicle to be used for the transportation meet other requirements tending toward safety than the limited requirement of the statute that it shall be 'of such construction as to afford the driver thereof a practically unobstructed view of the roadway ahead, and also to his right and left?'"

The authority vested in boards of education to provide transportation for

pupils attending school is quite broad and general in terms. No specific method to be followed by a board of education in providing this transportation is fixed by statute. In many districts, the board of education owns the vehicle and contracts with, or hires someone to drive it, and if it be a horse drawn vehicle, the use of horses for the purpose is provided for by some sort of contract of hire. In other districts the board owns neither the vehicle nor the means of locomotion and contracts with someone to furnish the vehicle and the means of locomotion and the driver. Frequently these contractors drive the vehicle themselves and in other cases they employ drivers. Any of these methods may lawfully be followed by a board of education in providing for the transportation of pupils, as the statute leaves these matters entirely in the hands of the board.

In making contracts for the transportation of pupils, the board is not limited by statute in so far as the terms of the contract are concerned or the amount to be expended for the purpose. The only limitation on the amount that may be expended for the transportation of pupils is the amount of money which may be available for that purpose, after taking into consideration the other purposes for which the available funds of the district must be used in providing the necessary school privileges for the youths of the district.

There are certain police regulations provided by Sections 7731-1, 7731-2 and 7731-3, General Code, which must be complied with when transportation of school pupils is provided. The mere fact that certain police regulations pertinent to the matter are fixed by statute does not preclude the board of education from making any other regulations that it may see fit, as a part of the contract for transportation. In fact there is no limit, so far as the statutes are concerned, on the terms of any contract a board of education may make for the transportation of pupils, either with a contractor who furnishes the equipment and transports the pupils or with a driver to drive the vehicles furnished by the board.

A board of education could no doubt provide in any contract made for the transportation of pupils for any sort of regulations with reference to the vehicle or the conduct of the driver that might, in the judgment of the board be necessary and proper for the protection and safety of the pupils and the public generally. A board might also, in my opinion, require as a part of the contract for transportation, or to drive a school bus, that the pupils and third persons be protected against the negligence of the driver by liability insurance, and no doubt, as you suggest, if such a requirement were made, the board would indirectly have to pay for the cost of this insurance. I know of no legal obstacle to a board making such an arrangement, however.

After a contract had been entered into for the transportation of pupils a board of education as one of the contracting parties would of course not be able to substantially change the contract so as to place a greater burden on the other contracting party than that provided by the terms of the contract itself. Persons dealing with a board of education, however, are charged with notice of the board's powers. One of these is the power to make rules and regulations for its own government and the government of its employes by authority of Section 4750, General Code. The regulations which a board may make by authority of the statute are said by the Supreme Court in *State* vs. *Griffith*, 74 O. S. p. 80, to be "merely disciplinary regulations." To require an employe of the board or a person with whom the board had contracted, by the terms of which contract of employment or hire coverage by liability insurance was not required, thereafter to provide liability insurance, would be undertaking to make a regulation which would be something more than merely a disciplinary regulation, and would not be authorized by said Section 4750, General Code. Such a requirement would

be changing the terms of the contract, and placing upon the contractor additional burdens to that provided for by the contract.

It will be observed, from the terms of Section 7731-3, General Code, that no one shall be employed as the driver of a school wagon or motor van used in the transportation of pupils, whether that driver is hired directly by the board of education or by a contractor with whom the board of education has contracted for the transportation of pupils, who has not given *satisfactory and sufficient bond.* This no doubt means that the bond must be satisfactory to the board of education and in sufficient amount to cover whatever liability might accrue against the said driver growing out of his employment as driver of the school wagon or motor van. If a board of education is diligent in having a satisfactory and sufficient bond given, that is, a bond upon which a recovery may be had in a sufficient amount to cover the liability which may accrue against a driver, there would be little need of the driver carrying liability insurance because, under the rulings of the Supreme Court, a bond such as is required to be given by the above statute covers liability for negligence of the operator of a school wagon or motor van to the same extent as would a contract for liability insurance. This question is discussed in my Opinion No. 56 rendered under date of February 4, 1929, and addressed to the Hon. J. L. Clifton, Director of Education. The cost of such a bond, if given by a driver hired directly by the board of education, would necessarily be paid directly by the board of education from public funds, by authority of Section 9573-1, General Code. If given by a driver who is employed by a contractor of the board of education, the premium on the bond would necessarily have to be paid in the first instance by the contractor, but no doubt in the last analysis the cost of the bond would be borne from public funds, inasmuch as the fact that such a bond must necessarily be given would be taken into consideration when the contract for transportation was originally made.

Even though the bond must be given, as required by Section 7731-3, General Code, the cost of which is borne either directly or indirectly from public funds, and the bond so given if it is a proper bond, as contemplated by the statute, covers any liability which may accrue by reason of the negligence of the driver, a board of education might, in my opinion, require, when making contracts for transportation that the pupils and the public generally, be protected by liability insurance even though such a requirement would enhance the cost of the transportation to the board of education.

In specific answer to your question, I am of the opinion;

First, that a board of education may, when making contracts for the transportation of pupils, or for the employment of drivers to drive the board's equipment in the transportation of pupils, lawfully fix by the terms of the contract certain requirements looking to the safety of the pupils transported, both with reference to the vehicle used in transportation and the conduct of the driver of such vehicle, in addition to those provided for by Sections 7731-2 and 7731-3, General Code.

Second, a board of education in contracting for the transportation of pupils may lawfully provide by such contract that the pupils and the public generally, be protected by liability insurance.

Respectfully,
GILBERT BETTMAN,
Attorney General.