open to all persons in the community on equal terms or which will not, in the judgment of the board of education, benefit the people of the community."

In this opinion the Attorney General was construing Section 7622, General Code, after its amendment authorizing the opening of school houses "for any other lawful purposes," and it was said as follows:

"It was evidently the intent of the Legislature in adding this provision, to give to a board of education the authority to open a school building or part thereof for any lawful public purpose of a similar nature to those above mentioned, providing its use for that purpose does not in any way interfere with its use for public school purposes. In other words, the school building is a social center of the school district for educational purposes and, in addition to its use for public school purposes, it may be used for any other lawful purpose which, in the judgment of the board of education, will be for the advantage of the people of the community.

The use of a school building, or part thereof, by a fraternal order for the holding of lodge sessions and such social functions and entertainments of the order as are not open to all persons in the community on equal terms, is not public in its nature and meets with the objection that the benefits resulting from such use are confined to the purposes of the order and to such other persons as may be permitted by the order to enjoy said benefits. Such a use is not within the meaning of the above provision of the statute and there is no other statutory provision authorizing such use."

I am therefore of the opinion that a board of education may permit the use of the auditorium in a school building for the purpose of playing basketball, under the auspices of a responsible organization, including a church basketball league, even though a fee is charged for admission to the games. The charging of a fee for admission to such entertainments is not violative of the provision that such meetings and entertainments shall be non-exclusive and open to the general public.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1671.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE C. MATTHES AND ETHEL N. MATTHES, CITY OF SANDUSKY, ERIE COUNTY.

COLUMBUS, OHIO, February 3, 1928.

HON. CHAS. V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of abstract of title relating to the following described premises:

"Situated in the City of Sandusky, in the County of Erie, and State of Ohio, and being in that part of water lots thirty-seven (37) and thirty-eight (38) lying northerly of the northerly line of Railroad Street in said city, more particularly described as follows:

Being all that part of said water lot thirty-seven (37) that lies northerly of the northerly line of said Railroad Street and all that part of said water lot thirty-eight (38) that lies northerly of the northerly line of said street except the following portion of water lot number thirty-eight (38):

Beginning at a point in the northerly line of said Railroad street 84.20 feet easterly, measured in said street line, from the westerly line of lot number forty (40); thence westerly in said northerly line of said Railroad street 16.75 feet to an iron pipe monument set at the southwesterly corner of said lot number thirty-eight (38); thence northerly in the westerly line of said lot number thirty-eight (38) a distance of 351.58 feet to the northerly face of the new dock; thence easterly at right angles to the westerly line of said lot number thirty-eight (38) a distance of 17.75 feet; thence southerly 350.08 feet to the place of beginning.

Together with the riparian rights pertaining or belonging to the above described premises."

The abstract of title submitted to me covers the history of the title of the premises in question from the year 1838 down to the date of said abstract, December 15, 1927.

Prior to the year 1838, the territory now included within the bounds of Erie County was a part of Huron County and the records pertaining to the title of these premises prior to 1838 are found in the Recorder's office of Huron County.

I have made a careful examination of the abstract of title submitted to me and I have supplemented this examination by an investigation of the early history of this title, as disclosed by an abstract now in the hands of the Auditor of State, which abstract contains the history of the title of said premises as indicated by the records of Huron County down to the year 1838, when the territory now included within the county of Erie was, by an act of the Legislature, set off as a separate county.

My examination of these abstracts discloses a fee simple title to the premises described in the caption of the abstract in George C. Matthes, subject to the inchoate dower right and interest of his wife, Ethel N. Matthes, and subject to the following exceptions noted by me upon examination of said abstracts:

1. Prior to his death on February 10, 1850, water lot No. 38, a part of which is included in the captioned premises, was owned in fee simple title by one Buckingham Lockwood. It appears by an affidavit shown at page 45 of the abstract submitted to me that, upon his death, Buckingham Lockwood left the following children his sole heirs at law, to-wit, Julia A. Lockwood, Elizabeth Lockwood Morgan, Mary E. Lockwood Treadwell, William B. E. Lockwood and F. St. John Lockwood.

In 1853, the four children of Buckingham Lockwood, first above named, together with John P. Treadwell, the husband of Mary E. Lockwood Treadwell, executed and delivered to their brother, F. St. John Lockwood, a power of attorney authorizing such attorney to sell and convey, by deed of general warranty, lands owned by them in Portland Township, Erie County, Ohio, including the premises here under investigation. Thereafter, in 1855, a separate and additional power of attorney was given by said Elizabeth L. Morgan and Henry T. Morgan, her husband, to said F. St. John Lockwood for the same purpose; and thereafter, in 1858, the said William B. E. Lockwood having married, another power of attorney was executed by him and his wife, Mary C. Lockwood, to the said F. St. John Lockwood for said purpose.

At page 49 of the abstract there is shown a warranty deed under date of

August 24, 1878, executed by Julia A. Lockwood, William B. E. Lockwood, Mary E. Treadwell, Henry T. Morgan and Elizabeth L. Morgan, by their attorney in fact, F. St. John Lockwood, and by F. St. John Lockwood and Carrie A. Lockwood, his wife, to one John Carr. It appears further by the affidavit noted at page 45 of the abstract, above referred to, that at the time said affidavit was executed, to-wit, February 17, 1913, all of the children of Buckingham Lockwood above named were dead. The only one of the children and heirs of Buckingham Lockwood who executed the deed to John Carr noted at page 49 of the abstract was F. St. John Lockwood, who executed the same first as attorney in fact for his brothers and sisters above named and then individually in his own right. There is nothing in the abstract to show whether all of the brothers and sisters of F. St. John Lockwood, who had executed powers of attorney to him authorizing him to make this conveyance on their behalf, were living at the time of the execution of said deed to Carr on August 24, 1878. If any of these brothers and sisters of F. St. John Lockwood died prior to the execution of said deed to Carr, the power of attorney given by any such deceased brother or sister of F. St. John Lockwood was revoked, so far as the interest of such deceased brother or sister was concerned. The interest of such deceased brother or sister would be left outstanding in his or her children or other heirs, unless the same was otherwise disposed of. Further, it may be noted, as a part of this exception, that there is nothing in the abstract to show that Mary E. Treadwell was a widow at the time of the execution of said deed to Carr, nor is there anything shown which would otherwise dispose of the dower interest of said John P. Treadwell if he were then living. Likewise, there is nothing in the abstract to show that William B. E. Lockwood was a widower at the time this deed to Carr was executed, nor is there indicated anything which would otherwise dispose of the dower interest of Mary C. Lockwood.

2. At page 63 of the abstract submitted to me there is noted a warranty deed under date of November 2, 1899, from The Lake Erie Coal Company, then the owner of the premises under investigation, to The Wagner Lake Ice Company. Later, under date of July 19, 1909, The Wagner Lake Ice *and Coal* Company executed and delivered a deed conveying the premises in question to one C. A. Nielson. It appears from the deed whereby The Wagner Lake Ice Company obtained title to the premises that it was an Ohio corporation. As noted by the abstracter, there is nothing in the records submitted to show whether The Wagner Lake Ice and Coal Company was a corporation separate and distinct from The Wagner Lake Ice Company, or whether it was the same corporation under a change of name. If said The Wagner Lake Ice and Coal Company was a separate and distinct corporation, there is nothing in the abstract to show how it obtained title to the premises under investigation and which it assumed to convey to said C. A. Nielson.

3. At page 69 of the abstract there is noted a lease, under date of April 5, 1920, of the premises under investigation, by C. A. Nielson to the City Ice Delivery Company for a period of five years, with an option in said lessee to renew the lease for a further term of five years commencing at the expiration of the term of the original lease and ending on the first day of December, 1930. It is noted in the abstract that said lease is not canceled of record and that the same was not renewed *of record.* However, there is nothing in the abstract to show whether or not said lessee, as a matter of fact, exercised its option to renew said lease. If said lease was renewed and said lessee is in actual possession of the premises, any purchaser of the same would be required to take notice of whatever rights such lessee may have, whether the renewal lease has been filed for record or not. In connection with this exception it may be observed that if any person other than the owner, George C. Matthes, is in actual possession of the premises under investi-

gation, or any part thereof, under color of right, a purchaser of said premises is required to take notice of the rights of such person, whatever they may be.

4. At page 73 of the abstract there are shown the entries appearing in case No. 16643, on the appearance docket of the Court of Common Pleas of Erie County, Ohio. From this it appears that on November 24, 1926, one Lillian Sherman filed an action to recover damages in the sum of $15,000 from said George C. Matthes, the owner of the premises here under investigation. The last entry noted by the abstracter was one under date of January 26, 1927, wherein the defendant was given leave to file an answer in the case. The date of the abstract submitted to me is December 15, 1927, and I have, of course, no knowledge with reference to the procedings in said action subsequent to the date of the abstract. Section 11656, General Code, was amended by the last General Assembly (112 O. L. 199) so as to provide that the lien of a judgment shall attach to lands and tenements of the judgment debtor in the county, from the day on which such judgment is rendered. However, I am inclined to the view that, by force of the provision of Section 26 of the General Code, no effect can be given to this amendment with respect to any judgment that may be rendered against Mr. Matthes in the pending action above referred to. As to any such judgment, effect must be given to the provisions of Section 11656, General Code, as they read prior to the amendment of said section: and the lien of such judgment will attach to any lands in Erie County owned by Mr. Matthes on the first day of the term of the Common Pleas Court of said county at which such judgment may be rendered. I am advised that the present term of the Common Pleas Court of Erie County commenced on January 9, 1928, and any judgment rendered against him in said pending action at any time during the present term of said court will operate as a lien on the premises under investigation and other property owned by Mr. Matthes in said county on and after said date.

5. It appears that taxes for the year 1927, amounting to $81.78 on lot No. 37, and $21.78 on that part of lot No. 38 now owned by Matthes, are unpaid and are a lien on said premises.

In addition to what has been said in connection with the above specific exceptions, it may be observed that any purchaser of these premises is required to ascertain whether or not any person or persons are furnishing labor or material on any building or structure on said premises, or whether they have done so within the statutory time in which a mechanic's lien might be perfected on said premises.

By reason of the currency of time amounting to fifty years since the execution of the deed referred to in the first exception hereinabove noted, and of the fact that the successive grantees of said premises in privity have apparently held the same in adverse possession openly, notoriously and continuously during this period of time, I am of the opinion that said first exception hereinabove can now be safely waived. The other exception noted should, however, be observed, and the necessary corrections made.

Your attention is called to the fact that no encumbrance estimate accompanied the abstract submitted to me, but I assume such encumbrance estimate is in your possession and that the same shows the proper certificate of the Director of Finance, showing that there are unencumbered balances sufficient to cover the purchase price of said property. Without such encumbrance estimate I am not advised as to the purchase price of said property, but in this connection your attention is called to the provisions of Section 12 of the general appropriation act of the Eighty-seventh General Assembly, which provides that no monies therein appropriated or reappropriated for the purchase of real estate to cost in excess of $5,000 shall be

expended without the consent and approval of the Controlling Board therein provided for.

I am herewith returning, without my approval, the deed executed by said George C. Matthes and Ethel N. Matthes, conveying the premises under investigation. In the granting clause of said deed the words "Department of Agriculture" should be stricken out. Likewise, in the clause of said deed containing the covenant of seizing and against encumbrances, the words "and thereafter" should be eliminated, and a new deed making these corrections should be executed.

I herewith enclose the abstract and deed submitted.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1672.

BOARD OF EDUCATION—PUPIL RESIDING MORE THAN 4 MILES FROM HIGH SCHOOL—BOARD MUST PAY TUITION TO HIGH SCHOOL ATTENDED.

SYLLABUS:

A board of education, which does not furnish transportation to the high school maintained by it, is required to pay the tuition of pupils residing within the district and more than four miles from such school, who attend a nearer high school in another district.

COLUMBUS, OHIO, February 3, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

> "A high school pupil lives in a district which maintains a third grade high school but lives over four miles from that high school by the most direct route of public travel. He lives nearer the first grade high school in another district. The board of education of the district in which he lives will not undertake to transport him to the high school of that district or to board him in lieu of transportation. In fact transportation to the high school in his own district owing to the condition of the roads would be costly, if not impossible.
>
> Can the board of education of the district in which he lives be compelled to pay his tuition to the nearer high school in the first and second years of the course, which years are also covered by the course of study in the high school in his home district, if the board will not pay his transportation to the high school in his own district or his board in lieu thereof?"

Transportation of high school pupils is governed by Section 7749-1, General Code, which as amended in 1925, reads as follows:

> "The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation