custom, and the state of the law with respect to this matter, I am of the opinion that the resolution of the Stokes Township Rural District Board of Education would be held to be a proper exercise of power and would be construed as being an employment of a person as a supervisor and teacher, especially at this time, after the lapse of nearly a year during which time he performed duties as teacher and supervisor in accordance with the terms of his contract apparently with the full knowledge of acquiescence of the baord of education.

Boards of education in the employment of teachers are required, by the terms of Section 7690-1, General Code, to fix their salaries. This was done in the present instance by fixing the salary at the sum of $3,000.00 per year. The expression, "if the money is available" used in the resolution of the board fixing this salary, may be regarded as surplusage. Resolutions and motions of administrative boards as well as those of legislative bodies, are subject to construction and interpretation so as to effectuate the real intention and purpose of their adoption. In doing so, it may be observed that, to use the words of the Supreme Court, in the case of State ex rel. Evans, 90 O. S., 243, at page 251:

> "Obviously, the proceedings of boards of education, of county commissioners, township trustees and the like, may not be judged by the same exactness and precision as would the journal of a court."

I am therefore of the opinion, in specific answer to your inquiry, that the contract in question is a valid obligation of the Stokes Township Rural Board of Education.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4469.

APPROVAL: CONTRACTS FOR ROAD IMPROVEMENT IN HURON, GUERNSEY AND WOOD COUNTIES.

COLUMBUS, OHIO, July 1, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4470.

FOREIGN CORPORATION—TREATING TOBACCO IN OHIO—MUST COMPLY WITH FOREIGN CORPORATION ACT—SUBJECT TO PENALTY FOR FAILURE TO COMPLY WITH ACT.

SYLLABUS:

1. *Where the contract, sale, delivery, storage and ageing of tobacco are completed within Ohio by representatives of a foreign corporation, such corporation is doing business within the state of Ohio, and must qualify under the provisions*

of Sections 8625-1 *to* 8625-33, *inclusive, of the General Code, regardless of the fact that such products are intended later to be shipped to another state for completion of the manufacturing process.*

2. *When a foreign corporation does an intrastate business within the State of Ohio without having obtained a license under the provisions of Sections* 8625-1 *et seq., General Code, for a period of from two to three years, such corporation is liable for the penalties provided in Section* 8625-25, *of the General Code.*

COLUMBUS, OHIO, July 1, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent request, in which you ask my opinion relative to the following state of facts:

B. Brothers, Inc., a foreign corporation, whose general business is the manufacture of cigars, has, during the past three years employed K. in Ohio to purchase Ohio tobacco from farmers in Ohio, with money forwarded to him by the company. K. has this tobacco delivered to warehouses in Ohio, where it remains for a period of time during which interval he employs workmen in Ohio to remove all the tobacco from the cases, shake it out and replace it in the same cases, or in other words, ages or seasons the tobacco.

You inquire first, whether this company should be required to comply with the foreign corporation act, and second, in the event my answer is in the affirmative, whether the company should be required to comply with Section 8625-25, General Code.

Under date of June 15, 1932, I rendered an opinion to you bearing No. 4423, in which I discussed the general principles running through the law as to the meaning of "doing business" within the state, within the meaning of the so-called "foreign corporation act," being Sections 8625-1 to 8625-33, General Code.

Since in this recent opinion I discussed generally what constitutes doing business, I will not here enter into a general discussion of that subject, but will refer you to that opinion.

From the facts contained in your request, it appears that the representative of the foreign corporation in Ohio is authorized to enter into and complete a contract of purchase, to receive delivery of the commodity, and after delivery, to employ men to perform labor and use their skill in the seasoning or fitting of the product for subsequent manufacture into cigars. Such set of facts clearly indicates that Mr. K., the representative in Ohio, is not a mere solicitor of business in interstate commerce. In the case of *Bondurant* vs. *Dahnke-Walker Milling Co.,* 175 Ky. 774, 195 S. W. 139, the court said:

> "Whereas all of the contract, sale, and delivery are all made in the same state, such transaction lacks all of the elements of the negotiations between the citizens of different states for the sale of goods then in one state, to be delivered in another, so as to invest it with the character of an interstate transaction. Such contracts have nothing to give them an interstate character. * * * All of the cited cases have been decisions arising under the laws and in the courts of the states wherein the delivery of the goods sold was made, and we have not been referred to any case wherein the contract, sale, and delivery of the goods was made wholly within one state, and of goods then in such state, and from a citizen of such state, where the transaction has been held to be one of interstate commerce,

although the purchaser might contemplate removing the goods into another state after the sale and delivery to him."

This Kentucky decision is well reasoned, and points to a definite rule, that where, in the purchase of commodities by a foreign corporation in a state other than that of its domicile, the entire transaction of purchase, including the delivery, is completed within the state other than that of the domicile of a foreign corporation, such transaction is intrastate business, regardless of the fact that subsequent to the completion of the delivery such articles are transported to another state. In other words, when a purchase is a complete and distinct item of business and the transaction in interstate commerce is another distinct transaction, the purchase is intrastate business and the foreign corporation thereby renders itself liable to compliance with the regulations adopted by the state in which the transaction of purchase was completed.

In specific answer to your first question, I am of the opinion that, where the contract, sale, delivery, storage and ageing of tobacco is completed within Ohio, by representatives of a foreign corporation, such corporation is doing business within the State of Ohio, and must qualify under the provisions of Sections 8625-1 to 8625-33 of the General Code, inclusive, regardless of the fact that such products are intended later to be shipped to another state for a completion of the manufacturing process.

In reply to your second inquiry, as to whether the company should be required to comply with the provisions of Section 8625-25 of the General Code, which section is the "penalty section" of the foreign corporation act, and imposes a penalty upon any foreign corporation for doing business in Ohio without procuring a license, the language of such statute, in so far as material, reads as follows:

> "Any foreign corporation required to be licensed under the provisions of this act which transacts business in this state without being so licensed, * * * shall forfeit and pay a penalty of one thousand dollars and an additional penalty of five hundred dollars for each month that it continues to transact business in this state without being licensed, said penalties to be recovered in an action in the name of the state brought in the Court of Common Pleas of Franklin county, or in any county in which the corporation has transacted business or has property or a place of business, by the attorney general or by the prosecuting attorney, and if brought by the attorney general said penalties shall on collection be paid into the state treasury to the credit of the general revenue fund, and if brought by the prosecuting attorney on collection of said penalties one-half thereof shall be paid to the treasurer of the county in which such action was brought and one-half into the state treasury to the credit of the general revenue fund. For good cause shown the court may remit the penalty, or part thereof. * * *"

The letter from the secretary of the company states that the business, described in the first part of this opinion, has been carried on by that company, during the past two or three years. It is therefore liable for the penalties provided in such section unless by reason of the last sentence of Section 8625-25, General Code, quoted above, the court, for good cause shown, remits the penalty.

I do not believe that I, as Attorney General, without having before me the evidence of "good cause," can answer specifically your second inquiry as to

whether the company *should be* required to pay. However, from the facts stated in the enclosures accompanying your request, it is evident that the company is liable for the penalty imposed by such section unless, for good cause shown, the court causes such penalty to be remitted.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4471.

COUNTY RECORDER—MAY DISCHARGE DEPUTY WITHOUT CAUSE—NEITHER RECORDER OR COUNTY LIABLE IN DAMAGES.

SYLLABUS:

A county recorder may discharge his deputies at any time, even though he may have attempted to appoint them for a definite term, and neither the county nor the recorder will be liable for damages for such removal.

COLUMBUS, OHIO, July 1, 1932.

HON. DWIGHT CUSICK, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

> "I have received the following letter from the County Recorder of Perry County, Ohio:
>
> 'I respectfully request from you a written opinion as to whether or not I can discharge one or more of the deputies in my office in case I desire to do so.
>
> 'The appointment of each deputy provides that they were appointed for one year from January 1st, 1932.'
>
> * * * * * * * * *
>
> The questions, if any, herein involved appear to me to be the following:
>
> (1) May the County Recorder commit the County to the payment of a definite sum of money for a certain period of time in the employment of a deputy?
>
> (2) May the County Recorder remove a deputy after they have certified an appointment for a definite period of time?
>
> (3) Where a deputy is appointed for a definite period of time and then removed, can said deputy hold the County Recorder personally liable in damages for such removal?
>
> I respectfully request your opinion concerning the above matters."

Section 2754, General Code, provides as follows:

> "The county recorder may appoint a deputy or deputies approved by the court of common pleas to aid him in the performance of his duties. Such appointment or removal shall be in writing and filed with the county