the osteopath as a physician, the only limitation on his authority to so act being that he shall not prescribe or administer drugs. One who has not passed the required examination is limited to the further extent that he may not practice major surgery. "Major surgery" as defined in a former opinion of the Attorney-General (1919 Opinions, Vol. 1, p. 12) is as follows:

> "All operative procedures requiring the use of the knife or other surgical instruments for the opening of any natural cavity of the body or the amputation of any member or part of the body." (107 O. L., 152.)

It is to be observed that the qualifications of the physician, General Code section 1273, above quoted, include all the qualifications of both the osteopathic physician, General Code section 1288, and the practitioner of optometry, General Code section 1295-28, and the qualifications of the osteopathic physician include those of the practitioner of optometry. Refraction is governed by the optometry statutes which exempt both physicians and surgeons from the operation thereof. It should also be remembered that refraction does not require the use of drugs or surgery and that the use of drugs is the only limitation to the osteopathic physician except he who does not pass the required examination cannot prescribe drugs or practice major surgery.

The conclusion of this department therefore is that the present law of this state does permit the osteopathic physician to do the work of refraction.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2115.

BUILDING AND LOAN ASSOCIATIONS—MORTGAGE ON 99 YEAR LEASEHOLD WHETHER OR NOT RENEWABLE FOREVER IS NOT OBLIGATION SECURED BY "REAL ESTATE MORTGAGE" WITHIN MEANING OF SECTION 9662 G. C.

Interest bearing obligations secured by a mortgage on a 99-year leasehold, whether renewable forever or not, are not obligations secured by "real estate mortgages," within the meaning of section 9662 G. C.

COLUMBUS, OHIO, May 26, 1921.

HON. FRANK F. MCGUIRE, *Inspector, Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date, with which you enclosed a letter addressed to your department in behalf of an Ohio savings and loan asociation, inquiring whether or not interest bearing obligations secured by a mortgage on a 99 year leasehold, not renewable forever, are obligations secured by "real estate mortgages," within the meaning of section 9662 G. C., which empowers such associations to buy "interest bearing obligations secured by real estate mortgages," was duly received.

At common law leasehold estates, whether perpetual or for any number of years, were classed as chattels or chattels real, and subject to the rules of law applicable to personal property. By statutes enacted in this and other states, however, perpetual leaseholds, such as those for 99 years renewable forever, are for certain purposes and to a limited extent regarded as real estate,—but only to the extent specified or provided for in the particular statutes that may

be involved. See section 5530 G. C. which provides that lands held under such leases shall be considered for purposes of taxation as the property of the lessees; section 8597 G. C. which provides that permanent leasehold estates renewable forever shall be subject to the same law of descents as real estate in fee simple; and section 11665 G. C. which provides that permanent leaseholds renewable forever are subject to payment of debts, and to execution and sale. See, also, in this connection St. Bernard v. Kempel, 60 O. S. 244.

A clear statement of the law on the subject to which could only be added references to the particular statutes now in force, will be found in Taylor vs. De Bus, 31 O. S. 468, 472, as follows:

> "By the common law, leasehold estates were regarded as chattels—chattels real to be sure, but nevertheless subject to the rules relating to chattel property; but by statute, as early as 1821, leaseholds renewable forever were made subject to judgments and executions 'as real estate,' and in 1837 they were subjected to the same laws of descent and distribution 'as estates in fee,' and such has continued to be the state of our statute laws ever since. Now, it is contended that, by force of this legislation, such estates are no longer chattels; that the creation of such an estate in lands is equivalent to an absolute transfer of the fee, and, therefore, the common law incidents of leasehold estates are abrogated. Such results do not follow such legislation. To the extent that leasehold estates have, by statute, been subjected to the rules which govern estates in fee, of course the rules of the common law, in respect thereto, have been abrogated; but beyond this, the common law continues to furnish the only rules for the guidance of courts in determining the rights of parties in relation to leasehold estates."

At one time in the judicial history of the state the real character or status of perpetual leases was in question. Thus, while in Reynolds vs. Comm. 5 Ohio, 204, and in Mickey vs. Wintrode, 7 Ohio, 119, such leaseholds were held to be subject to the laws applicable to real estate to a certain extent and for certain purposes, yet in Loring vs. Melendy, 11 Ohio, 355, 358, the opinion went so far as to say that they "are lands subject to all the rules and laws which attach to land for all purposes." But in Boyd vs. Talbert, 12 Ohio, 212, 213, the broad statement just quoted from Loring vs. Melendy, supra, was challenged, and it was said that the case was not conclusive on that point. Later on, in Northern Bank vs. Roosa, 13 Ohio, 335, 361, the supreme court had occasion to consider the question anew, and concluded that at common law all leaseholds renewable forever were but chattel interests, and that the common law in this respect, is the law of Ohio, except as modified by legislative enactment.

Consistent with the law as laid down in Taylor vs. DeBus, supra, the court, in Smith vs. Harrison, 42 O. S. 185, stated that a perpetual leasehold is not a fee simple, although by some statutes it has many of the incidents of a fee simple estate.

It would seem from the foregoing decisions that a leasehold mortgage cannot be classed as a real estate mortgage without some legislative declaration to that effect, and since we have no such statute, the only conclusion that can be arrived at is that interest bearing obligations secured by a mortgage on a 99 year leasehold, whether renewable forever or not, are not obligations secured by "real estate mortgages," within the meaning of section 9662 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.