as are specifically authorized by section 9593, General Code. Volume 2, Opinions of the Attorney General for 1930, page 1013.

It is not affirmatively stated in said proposed certificate that the corporation limits the risk taken to property within the state of Ohio. Section 9593, General Code; Vol. 1, Opinions of the Attorney General for 1914, pp. 835, 965; Vol. 1, Opinions of the Attorney General for 1919, page 18.

The Fourth clause of said certificate purports to authorize the incorporators to act as trustees until the first annual meeting or other meeting is held to elect trustees. I find no authority for the appointment of trustees by the incorporators in the special provisions of the General Code governing this type of corporation. Section 9596 authorizes the election of directors and officers. I am of the opinion, although the question is not necessarily before me, that the provisions of section 9596, General Code, are exclusive and that trustees may not be selected by the incorporators to act in their stead until the directors and officers are elected after due incorporation of the association.

I am returning herewith the proposed Certificate of Incorporation and advise that you should not file the same until revised in conformance with law.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3960.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN LAKE COUNTY, OHIO.

COLUMBUS, OHIO, January 16, 1932.

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

3961.

EMBALMING EXAMINERS—NOT REQUIRED TO RECOGNIZE EMBALMING SCHOOLS HAVING TWENTY-SIX WEEKS COURSE.

SYLLABUS:

The Board of Embalming Examiners, in passing upon the question of whether or not an embalming school shall be recognized by the board, is not compelled to recognize a school merely because it has a twenty-six weeks course; neither is it precluded from recognizing only schools which may have a reasonably longer course if, upon due consideration of the facilities of the various schools, the board should determine that a reasonably longer course is necessary to adequately fit an applicant to become an embalmer.

COLUMBUS, OHIO, January 18, 1932.

State Board of Embalming Examiners, 6406 Franklin Blvd., Cleveland, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

"As Secretary-Treasurer of the State Board of Embalming Exam-

iners of Ohio I have been instructed by the Board to request an opinion from your department on the following matter. I have quoted certain portions of our law which apply to this matter.

Section 1338. '* * * The board shall from time to time make and adopt rules, regulations and by-laws, for its government not inconsistent with the laws of this state and the United States. * * *.'

Section 1342. '* * * Before a registered applicant can apply for and take an examination in the practice of embalming or preparing for burial, cremation or transportation, the body of any dead person in the state of Ohio, said applicant shall have completed to the satisfaction and approval of the said board, a course consisting of at least twenty-six weeks of studies in the science of embalming, disinfection and sanitation in a regular school of embalming, recognized by said board and shall have had at least two years of practical experience under a licensed embalmer in this state, * * *.'

Many requests have come in to this Board from the heads of training schools for embalmers, the schools which we recognize, asking us to raise the educational standard of this profession by lengthening the embalming school course from twenty-six weeks to nine months; their claim being that they can not properly teach the twelve major subjects required in a period of only twenty-six weeks. Further, it is felt by this Board that adequate educational training can not be received in less than nine months.

Our reason for asking your opinion on this matter is to learn whether this Board has the power to adopt rules and regulations, with respect to professional schooling, in which we will not recognize schools of embalming giving courses of instruction which can be completed in less than nine months.

It shall be understood that should your department approve this change it shall in no way pertain to any person who has previously served an apprenticeship or has already become enrolled in a school of embalming."

Your inquiry requires a construction of the requirement of Section 1342, General Code, that applicants for the examination of your board shall have completed to the satisfaction and approval of your board a course of studies in a school of embalming recognized by your board of "at least twenty-six weeks". I have found no judicial interpretation of the words "at least" in Ohio, but there are several reported cases outside of Ohio in which these words have been construed.

In the case of *In re Gregg's Estate,* 62 Atl. 856, 857, 213 Pa. 260, it was held that "The meaning of the words 'at least' is in the smallest or lowest degree; at the lowest estimate or at the smallest concession or claim: at the smallest number."

In the case of *City of St. Charles* vs. *Stookey,* 154 Fed. 772, 782, 85 C. C. A. 494 (citing *Roberts* vs. *Wilcock* (Pa.) 8 Watts & S. 464, 470; *Stewart* vs. *Griswold,* 134 Mass. 391), it was held that an extension of "at least sixty days" is an extension for an indefinite time not less than sixty days, and gives a reasonable time after the sixty days expires. To the same effect is *Miller* vs. *State,* 94 So. 706, 130 Miss. 564, which held as set forth in "Words and Phrases", 3d. Series, Vol. I:

"The term 'at least four months,' as used in Const. §205, requiring

public schools to be maintained in each school district at least four months during each scholastic year, means that four months was to be the minimum term, or to put it in another way, there must be not less than four months of schooling, and inferentially there may be a longer term, or at least a longer term was not intended to be prohibited either expressly or by implication."

There appear to have been some decisions construing the phrase "at least" as meaning "not more than", but this construction has been based upon the legislative use of the term in such a way as to clearly indicate such intention. Typical of such a construction is the case of *Metropolitan Life Ins. Co.* vs. *Peeler,* 176 P. 939, 943, 71 Okl. 238, cited in "Words and Phrases", 3d Series, Vol. I, p. 711, in support of the following text:

"'At least' in Rev. Laws 1910, §3470, prohibiting the issuance of life insurance unless it shall 'at least' provide that policy shall be incontestible after two years from date, except for nonpayment of premium, etc. held to show when read with context that legislative intent was to make maximum limit of time within which a policy might be contestible two years, leaving it for the parties to the insurance contract to fix a less term if they so agreed."

The use of the phrase "at least twenty-six weeks" in Section 1342, General Code, which you quoted, does not in my judgment authorize any construction which would give it a meaning other than "not less than twenty-six weeks", and under authority of *Miller* vs. *State, supra,* it is provided that your board inferentially may require a longer term in determining the schools of embalming which may be "recognized" by your board.

In your letter you state that it is proposed to recognize schools of embalming which give a course of not twenty-six weeks or six and one-half months, but a nine months course. The degree of latitude contemplated by the statute is one which must depend upon all the facts and circumstances bearing upon the necessary subjects to be taught and the time which in the fair and impartial judgment of your board is required to adequately cover such subjects. The courts would undoubtedly uphold a reasonable extension of the statutory twenty-six weeks required, providing the extension were not so great as to constitute an abuse of the discretion vested in your board in recognizing schools of embalming.

Similar discretionary powers are conferred upon the State Medical Board, which has the power to determine what shall be a medical institution in good standing. The Supreme Court commented upon this power in the case of *State, ex rel. Medical College* vs. *Coleman, et al.,* 64 O. S. 377, saying at p. 388:

"The statute does not define what shall constitute a medical institution 'in good standing.' Its language is that, 'if the board shall find the diploma to be genuine, and from a legally chartered medical institution in good standing as determined by the board,' etc., thus leaving the standing of the institution whose diploma is presented by an applicant, to be determined according to the best judgment of the board.

It is unnecessary to inquire here whether there may be cases in which the courts would undertake to correct or control the judgment of the board on this question. It is clear that the standing of a medical college within the meaning of the statute, is not to be determined alone from the course

of study it has prescribed for graduation. The statute imports, at least, that the institution shall be one which has established a favorable reputation among members of the medical profession; and the board should not be required to recognize one, that, from the brief period of its existence, or the novelty of its system of treatment has not yet acquired such reputation, but might, in the judgment of the board, be considered as still in an experimental state. The statute has undoubtedly left much in this respect to the sound discretion of the members of the board, who, in passing upon the various applications presented to them, it must be assumed, will act as their official position requires, fairly, impartially, and justly to all concerned."

You inquire as to the authority to make a rule that only schools having a nine months course shall be recognized. I do not think the recognition of schools is a matter which may be arbitrarily governed by rules and regulations. Nor do I think your board has the power to arbitrarily rule that no school may be recognized which has a course of less than nine months. While the statute has given the board some latitude, to arbitrarily attempt to require a course half again as long as contemplated by the legislature would very possibly constitute an abuse of discretion. The standing of a school to be such as to justify your recognizing it, is not, as stated by our Supreme Court, to be determined by the course of study alone. Neither is the length of the course the sole determining factor. There may possibly be some schools having a nine months course which because of the inadequacy of the instruction given, the insufficiency of the subjects covered, and their general bad reputation, should not be recognized by your board. In the last analysis the various schools should be independently considered and passed upon.

In specific answer to your inquiry, it is my opinion that the Board of Embalming Examiners, in passing upon the question of whether or not an embalming school shall be recognized by the board, is not compelled to recognize a school merely because it has a twenty-six weeks course; neither is it precluded from recognizing only schools which may have a reasonably longer course if, upon due consideration of the facilities of the various schools, the board should determine that a reasonably longer course is necessary to adequately fit an applicant to become an embalmer.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3962.

COMPENSATION OF PUBLIC OFFICIAL—CONTRACT TO TAKE LESS THAN STATUTORY COMPENSATION AGAINST PUBLIC POLICY—MAY DONATE PORTION TO POLITICAL SUBDIVISION AND CANNOT LATER RECOVER SUCH COMPENSATION WHEN.

SYLLABUS:

1. *A public officer may, lawfully, if he sees fit, draw his salary or compensation and donate a portion or all of it to the political subdivision from which it*