Will you please advise whether or not the tours conducted by Ray C. Ellsworth, Inc., as recited above are in violation of the Blue Sky Law of Ohio, this company not being licensed thereunder?"

From the facts presented in your letter, apparently a very different situation arises from that which was considered in my Opinion No. 256 to which you refer. Practically every fact upon which this previous opinion is predicated appears to be absent here.

This tours company is conducting tours independently and at a profit, and not as an incident to the business of selling real estate in any locality. Furthermore, the tours are not confined to any one particular itinerary or route. To hold from the statement of facts as presented, that this company is engaged in the selling of real estate would in my opinion place such a construction upon the securities law as was clearly not intended by the Legislature and which could not be upheld in the courts in an attempt to conduct a prosecution for an alleged violation of this act.

If in isolated cases tourists upon their own initiative purchase land and a land selling company compensates the tours company, the acceptance of such compensation with no agreement or understanding as to its payment would not constitute the tours company as real estate dealers.

Specifically answering your question, I am of the opinion that when solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio, at a cost to the tourist of more than the actual cost necessary for such tour, resulting in a profit to the tours company, which company is not operating in conjunction with any land selling company and has no agreement or understanding whereby a commission or compensation is paid to the tours company on sales of real estate to tourists, and the sole object of conducting a tour is to make a profit thereon rather than the sale of real estate, although compensation may be paid to the tours company in isolated cases when tourists purchase real estate, which compensation is paid by land selling companies without any agreement or understanding as to its payment, such solicitation does not constitute dealing in real estate not located in Ohio within the meaning of Section 6373-15, General Code, and it is therefore unnecessary that such solicitors be licensed under the Securities Law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

417.

CHARTER CITY—PROVISION OF SECTION 5625-10, GENERAL CODE, APPLICABLE—APPROPRIATION OF DEPOSITORY INTEREST EARNED ON BOND FUNDS FOR CERTAIN PURPOSE—ILLEGAL.

SYLLABUS:

1. *The provision of Section* 5625-10, *General Code, that interest earned on money in a special bond fund shall be paid into the sinking fund or the bond retirement fund of the subdivision, is a limitation upon the power to tax and is, accordingly, applicable to charter municipalities as well as to other taxing subdivisions of the state.*

2. *A charter city may not legally appropriate depository interest earned on bond funds for the purpose of supplementing such bond funds and authorize the expenditure of such depository interest for the purposes of such bond funds.*

COLUMBUS, OHIO, May 18, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

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

> "The pertinent part of Section 5625-10, G. C., 112 O. L. 396, reads:
>
> 'All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision.'
>
> QUESTION: May the council of a city which has a charter providing that ordinances and resolutions shall supersede statutes in conflict therewith, legally appropriate, depository interest earned on bond funds, for the purpose of supplementing such bond funds, and authorize the expenditure of such depository interest for the purposes of such bond funds?"

In an opinion of this department, found in Opinions of the Attorney General, 1920, Vol. II, p. 1100, it was held that depository interest should not be turned over to the sinking fund trustees nor to the contingent fund, but should be held in the special fund created by the bond issue and expended for the purpose of the fund. This opinion was predicated upon Section 5654, General Code, which section was repealed by the 87th General Assembly in the enactment of House Bill No. 80, being the budget law, of which Section 5625-10 is a part. Section 5654 made no provision for the payment of depository interest into the sinking fund or the bond retirement fund as is contained in Section 5625-10. It was on account of the absence of such provision that the then Attorney General held that such depository interest should not be turned over to the sinking fund or to the contingent fund. As stated in the opinion:

> "The general principle is that interest produced by the investment or deposit of a public or trust fund follows the principal and becomes a part of the principal. There appears no specific provision of statute creating an exception to this principle in the case of interest produced by the deposit of the proceeds of a bond issue, and nothing appears in the statutes that it was the intention of the General Assembly that the rule should be otherwise than herein indicated."

There now appears a specific mandatory statutory provision to the effect that depository interest earned on funds received from the sale of bonds shall be paid into the sinking fund or bond retirement fund, instead of into the special fund created by the bond issue as was heretofore the case.

It is next necessary to consider the fact that the municipality proposing to authorize the expenditure of depository interest as aforesaid has a charter providing that ordinances and resolutions shall supersede statutes in conflict therewith. It must be borne in mind that the chief source of revenue of a municipality lies in the power to tax. If depository interest is expended upon improvements, instead of being deposited in the sinking fund or bond retirement fund, although such expenditure may not be specifically an expenditure of taxation money, nevertheless the chief source of revenue being taxation, the ultimate result is that the taxpayers stand the cost of such expenditures. In other words, if depository interest is not applied to reducing the debt, it is necessary to increase taxes proportionally for such purpose. This provision is, accordingly, although perhaps indirectly, a limitation upon the power of taxation. Laws limiting the power of taxation and governing the exercise of that

power have been held to be applicable to all municipalities whether or not they may have adopted a charter. The third branch of the syllabus in the case of *State, ex rel.* vs. *Bish,* 104 O. S., 206, is pertinent:

> "The power of municipalities, both to incur debts and to levy taxes, may be restricted or limited by law. And a municipality, by adopting a charter, cannot escape from limitations imposed thereon by the General Assembly."

In the opinion of the court, at page 216, the following language is used:

> "It must be remembered, as stated above, that this is a matter of taxation wherein not only the municipal power to levy taxes is under consideration, but where the authority of the budget commission is involved."

And again on page 218:

> "The constitution makes no distinction between chartered and unchartered cities as to their power of incurring indebtedness or levying taxes. And the Legislature has made no distinction in placing its limitations upon them; they apply to all municipalities."

The provisions of the budget law and even Section 5625-10 are essentially provisions having to do with taxation, public funds, and public debt. Section 5625-10 is headed "Distribution of revenue derived from tax levies; proceeds from sale of bond, note, etc. Permanent improvement." To contend that the one sentence of this section under consideration, referring to interest on public funds, is not a provision having to do with taxation, would hardly be tenable. This provision of the law has to do with the earnings of borrowed money on hand which must be paid by taxation, and is closely interwoven with the power to incur debts and levy taxes for their payment. Section 6, Article XIII of the Ohio Constitution provides that "The General Assembly shall * * * restrict their (cities' and villages') power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent an abuse of such power." This section is not repealed by any of the home rule provisions of Article XVIII. *Berry, et al.* vs. *Columbus,* 104 O. S., 607.

The principle that laws governing the transfer of money of a subdivision from one fund to another are not violative of any of the sections of Article XVIII of the Ohio Constitution was followed in the case of *Cincinnati* vs. *Roettinger,* 105 O. S. 145. In this case, the provisions of Sections 3959 and 3799, General Code,, as then in force and effect, were considered by the Supreme Court. Section 3959 provides for the disposition of funds arising from water rent, taxes and assessments for waterworks purposes. Section 3799 provided for the transfer of municipal funds. The first two branches of the syllabus are as follows:

> "1. Section 3959, General Code, is constitutional, and operates as a valid limitation upon the uses and purposes for which revenues derived from municipally owned waterworks may be applied. By virtue of the provisions of that section, surplus revenues derived from water rents may be applied only to repairs, enlargement or extension of the works, or of the reservoirs, and to the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt.
>
> 2. Section 3799, General Code, is in the nature of a limitation upon taxation, and as applied to cities and villages under charter governments does not violate any of the sections of Article XVIII of the Ohio Constitution and oper-

ates to prevent the transfer of revenues from the waterworks fund to the general fund."

As above stated, it appears that a law expressly providing what shall be done with interest earned upon money borrowed in anticipation of the collection of funds to be raised by taxation, is a limitation upon that power of taxation and is, therefore, applicable to all taxing subdivisions. Accordingly, any ordinance of a charter city seeking to nullify such provisions would be void and inoperative.

In view of the foregoing, I am of the opinion that:

1. The provision of Section 5625-10, General Code, that interest earned on money in a special bond fund shall be paid into the sinking fund or the bond retirement fund of the subdivision, is a limitation upon the power to tax and is, accordingly, applicable to charter municipalities as well as to other taxing subdivisions of the state.

2. A charter city may not legally appropriate depository interest earned on bond funds for the purpose of supplementing such bond funds and authorize the expenditure of such depository interest for the purposes of such bond funds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

418.

APPROVAL, ARTICLES OF INCORPORATION OF THE IMPERIAL CASUALTY COMPANY OF COLUMBUS.

COLUMBUS, OHIO, May 20, 1929.

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

DEAR SIR:—I am returning to you herewith the articles of incorporation of The Imperial Casualty Company of Columbus, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

419.

WORKHOUSE PRISONERS—VIOLATORS OF CRABBE ACT—MANAGING OFFICER'S POWER TO RELEASE AND PAROLE—SECTION 6212-17, GENERAL CODE, CONSTRUED.

SYLLABUS:

The words "remit" and "suspend" as used in Section 6212-17, General Code, refer only to courts, and therefore Section 6212-17, does not affect the authority under Sections 4133, et seq., given to an officer authorized by statute to manage a workhouse, to release or parole prisoners confined therein for failure to pay fines and costs imposed for a violation of the Crabbe Act.