portion of the right-of-way formerly used by the Lima-Fort Wayne Traction Company and located in any street or highway.

You have not submitted to me any evidences of conveyances from the Lima-Delphos-Van Wert-Fort Wayne Traction Company to the Fort Wayne-Van Wert-Lima Traction Company or from either of these companies to the Fort Wayne-Lima Railroad Company, the company in receivership, the receiver of which company conveyed the right-of-way in question to Bernard P. Shearon, the latter conveying the right-of-way to Arch Robison, trustee; consequently I must limit my opinion to the evidences of title submitted to me and assume that the grantors named in the deeds submitted to me had a good and indefeasible estate in fee simple to the property described therein free from any defects or encumbrances and then the grantees named in such deeds, if there were no further changes in the title, could convey good legal title to the premises described therein to the State for highway purposes with the following exceptions which I now summarize:

1. The alleged deed from John Foust and Josephine Foust, (No. 59) was not acknowledged.

2. Deed No. 64 in which Frank Evans did not convey away his interest; Aggie Luttrell and Tobias Luttrell did not acknowledge.

3. Deed No. 89 in which the interest of the railroad company is not shown.

4. Deed No. 47 from the Lima-Delphos-Van Wert-Fort Wayne Traction Company to W. F. Pearson which deed is neither acknowledged nor witnessed but under which W. F. Pearson may have some interest.

5. You must also note the qualifications mentioned above in the receiver's deed to Bernard P. Shearon, which easements would run with the land if the Highway Department acquired title to such land.

6. You must also note the qualifications mentioned in the deed from Bernard P. Shearon to Arch Robison, trustee, mentioned supra, which easements would run with the land if the Highway Department acquired title to the same.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2976.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRACT FOR PAYMENT OF PREMIUMS ON "PUBLIC LIABILITY" OR "PROPERTY DAMAGE" INSURANCE ON COUNTY OWNED MOTOR VEHICLES.

SYLLABUS:

1. *A board of county commissioners cannot legally enter into a contract and expend public monies for the payment of premiums on "public liability" or "property damage" insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles.*

2. *In the event a county does take out such insurance, there could be no liability against the insurance company in favor of a third person who was injured, as a result of the negligent operation of a county owned motor vehicle.*

COLUMBUS, OHIO, July 31, 1934.

HON. ELMO M. ESTILL, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "I am advised today by our Board of County Commissioners that they have taken out liability insurance on all County cars and they now inquire of my office as to their right to take out this insurance and pay the premiums.
>
> The cars are driven by our Sheriff and by the Commissioners and the county Surveyor in their official capacities and it has been my opinion that being operated in a governmental capacity there would be no liability in case of accident or collision and that therefore it may be irregular to pay premiums on this insurance.
>
> Again, if there would be no liability and insurance policies were carried there may be a question as to the possibility of forcing the Insurance Company to pay for any damage.
>
> I presume your office has heretofore considered these matters and would appreciate a letter advising as to the legality of a Board of Commissioners taking out insurance on the County cars and paying premiums therefor out of county funds. Also the liability of the Insurance Company to pay for any loss in the event that the County itself would have no liability by reason of their operating the cars as a governmental function."

The law in Ohio is well settled that a county is not liable in tort in the absence of an express statute creating such liability. In the case of *Weiher* vs. *Phillips, et al.,* 103 O. S. 249, it was held as disclosed by the first branch of the syllabus:

> "1. A board of county commissioners is not liable in its official capacity for damages for negligent discharge of its official duties except in so far as such liability is created by statute, and such liability shall not be extended beyond the clear import of the terms of the statutes."

In the case of *Riley* vs. *McNicol, et al,* 109 O. S. 29, Jones J., at Page 33, stated the rule as follows:

> "This court has on various occasions announced the principle that these county boards are not liable in their official capacity for negligent discharge of official duties, unless such liability is created by statute, and that 'such liability shall not be extended beyond the clear import of the terms of the statutes.' *Weiher* vs. *Phillips,* 103, O. S. 249, 133 N. E. 67."

The exact question raised by your inquiry was passed upon by one of my predecessors in an opinion to be found in the Opinions of the Attorney Gen-

eral for 1927, Volume II, page 814. The syllabus of that opinion reads as follows:

> "A board of county commissioners cannot legally enter into a contract and expend public moneys for the payment of premiums on 'public liability' or 'property damage' insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles; there being no liability to be insured against, the payment of premiums would amount to a donation of public moneys to the Insurance Company."

I concur in the conclusion reached in the above opinion and in the reasoning upon which it is based. It might be well to point out that the 90th General Assembly enacted Section 3714-1, General Code (115 O. L. 206). This section creates a liability against municipal corporations for the negligent operation of motor vehicles, under certain conditions. In an opinion to be found in the Opinions of the Attorney General for 1933, Volume 2, Page 1022, I was called to pass upon the question of whether or not this section would create any new liability against counties. In that opinion I held as disclosed by the syllabus:

> "Section 3714-1, General Code, enacted by the 90th General Assembly, does not render a county liable in damages for the negligent operation of county owned motor vehicles."

You next inquire about the liability of an insurance company to third persons in the event the county did take out liability insurance, even though such insurance is unauthorized under the laws of this state. In this connection I call your attention to Section 9310-4, General Code, which reads as follows:

> "Upon the recovery of a final judgment against any firm, person or corporation by any person, including administrators and executors, for loss or damage on account of bodily injury or death, for loss or damage to tangible or intangible property of any person, firm, or corporation, for loss or damage on account of loss or damage to tangible or intangible property of any person, firm, or corporation, for loss or damage to a person on account of bodily injury to his wife, minor child or children if the defendant in such action was insured against loss or damage at the time when the * * * rights of action arose, the judgment creditor or his successor in interest shall be entitled to have the insurance money provided for in the contract of insurance between the insurance company and the defendant applied to the satisfaction of the judgment, and if the judgment is not satisfied within thirty days after the date when it is rendered, the judgment creditor * * * or his successor in interest, to reach and apply the insurance money to the satisfaction of the judgment, may file in the action in which said judgment was rendered, a supplemental petition wherein the insurer is made new party defendant in said action, and whereon service of summons upon the insurer shall be made and returned as in the commence-

ment of an action at law. Thereafter the action shall proceed as to the insurer as in an original action at law."

Obviously, if third persons could not secure a judgment from the county for injuries received through the negligent operation of county owned motor vehicles, there would be no liability against the insurance company.

Without further extending this discussion, it is my opinion, in specific answer to your questions, that:

1. A board of county commissioners cannot legally enter into a contract and expend public monies for the payment of premiums on "public liability" or "property damage" insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles.

2. In the event a county does take out such insurance, there could be no liability against the insurance company in favor of a third person who was injured, as a result of the negligent operation of a county owned motor vehicle.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2977.

APPROVAL, BONDS OF EAST CLEVELAND CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—$153,000.00.

COLUMBUS, OHIO, July 31, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2978.

APPROVAL, NOTES OF CANAL WINCHESTER VILLAGE SCHOOL DISTRICT, FRANKLIN, COUNTY, OHIO—$6,150.00.

COLUMBUS, OHIO, July 31, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2979.

APPROVAL, NOTES OF RICHMOND VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—$1,676.00

COLUMBUS, OHIO, July 31, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.