erations." As you have been previously advised, the rules of the offices above named require the exact consideration to be stated in the deed. From other evidence at hand, it appears that the consideration to be paid for this property is the sum of $1,000.00 and this amount should have been stated in the deed as the recited consideration for the conveyance. Inasmuch, however, as this deed has not only been executed and acknowledged by the grantors above named but the same has likewise been filed for record in the office of the Recorder of Athens County, Ohio, I am inclined to the view that the rule above referred to may be waived in the present instance. I am, therefore, approving both the abstract of title and deed submitted to me in connection with the purchase of this property.

It appears further that a contract encumbrance record in proper form has been certified over the signature of the Director of Finance in the manner required by Section 2288-2, General Code, which contract encumbrance record shows that there is a sufficient balance in the appropriation account of irreducible debt funds to the credit of Ohio University, otherwise unencumbered, to pay the purchase price of this property, which purchase price is the sum of $1,000.00. I note further in this connection that the purchase of this property has been approved by the Controlling Board in the manner required by law.

In the files which I have before me, relating to the purchase of this property, I find Voucher No. 1612 issued by Ohio University covering the purchase price of this property. This voucher was submitted to me by the Auditor of State; and I am herewith returning the same to him, together with said abstract of title and warranty deed, with this opinion, a copy of which I am mailing to you, to the end that a warrant may be issued payable to W. F. Copeland and Olive C. Gard for the amount of said voucher, which, as above noted, covers the purchase price of the property.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

594.

DOMESTIC LIFE INSURANCE COMPANIES—INVESTMENT OF CAPITAL AND SURPLUS — COLLATERAL TRUST NOTES, WHEN.

SYLLABUS:

A domestic life insurance company may invest its capital, surplus

and all accumulations in collateral trust notes issued under and secured by an indenture of trust whereby certain obligations are conveyed to a trustee for the benefit of the holders of such collateral trust notes, which notes are the obligations of a solvent corporation organized under the laws of any state of the United States, provided, however, the issuing company has not defaulted in payment of interest or principal on any of its bonds, notes, debentures or other evidence of indebtedness and the average annual net earnings of the issuing company for a period of not less than seven fiscal years preceding purchase of such notes have been at least three times the amount required to pay interest on its outstanding funded debt.

COLUMBUS, OHIO, May 14, 1937.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date which reads as follows:

> "The N. G. & F. Co., an Ohio corporation operating as a dealer in intangibles, has asked approval of its collateral trust notes as a permissible investment of capital, surplus and accumulations of domestic life insurance companies.
>
> These collateral trust notes, we understand, are secured by chattel mortgages or other obligations of purchasers of automobiles, in most cases, and are also guaranteed by the N. G. & F. Co.
>
> Deeds of trust are executed by the N. G. & F. Co. to various Ohio banks, after they are accepted by the latter, these banks issue and sell the collateral trust notes.
>
> For your examination in considering this matter we are forwarding herewith copy of trust indenture, specimen of collateral trust note, copy of statement as of close of business November 30, 1936, and copy of statement as of close of business February 28, 1937.
>
> By reason of the above, I respectfully request your opinion as to whether said trust notes are eligible as an investment of the capital, surplus and accumulations of a domestic life insurance company."

It is to be observed that the banks as trustees sell but do not issue the collateral trust notes. Such notes are guaranteed and are the obligations of the N. G. & F. Co., the issuing company. These collateral trust notes are issued under and secured by an indenture of trust whereby

certain purchase money obligations are conveyed to a trustee for the benefits of the holders of such notes. Such purchase money obligations consist in most cases of chattel mortgages on automobiles.

Domestic life insurance companies are permitted to invest their capital, surplus and all accumulations only as provided in Section 9357, General Code. This section, as amended in 116 O. L., provides in part as follows:

> "The capital, surplus and all accumulations of every domestic life insurance company, shall be invested as follows:
> * * * * * * * * *
>
> In the bonds, notes or debentures not secured by mortgage of solvent incorporated companies existing under the laws of the United States or any state thereof, provided that such corporation shall not have defaulted in payment of interest or principal on any of its bonds, notes, debentures or other evidences of indebtedness and whose average annual net earnings for a period of not less than seven (7) fiscal years preceding purchase thereof shall be at least three (3) times the amount required to pay interest on its outstanding funded debt."

Although the collateral trust notes in question are secured by chattel mortgages or other obligations of purchasers of automobiles, it is to be noted that under the provisions of the above section the bonds, notes or debentures in which a domestic life insurance company is permitted to invest its funds, are not required to be secured by mortgage.

My predecessor in office in Opinions of the Attorney General for 1936, Opinion No. 5699, considered the question as to whether or not the same notes involved in this opinion may be considered "evidence of indebtedness" within the meaning of Section 9519, General Code, relating to the investment of accumulated funds by domestic stock insurance companies other than life. He held in this opinion that the collateral trust notes were "evidence of indebtedness" within the meaning of Section 9519, General Code, and that domestic stock insurance companies other than life may invest their accumulated funds and surplus in such notes.

It is apparent from a reading of Section 9357, supra, that the question to be determined for the purpose of this opinion is whether or not the collateral trust note which is the obligation of the issuing company may be considered a note within the meaning of this section. The Supreme Court of Ohio has defined a promissory note on numerous occasions.

In the case of *Ring* vs. *Foster,* 6 Ohio 279, at page 281, the court said:

"Any absolute promise to pay a certain sum of money at a specified time, if it constituted the entire contract, may be taken to be a promissory note."

Again, in the case of *Burke* vs. *State,* 104 O. S. 220, the Supreme Court said that a promissory note is a written promise for the unconditional payment of money at a future time.

In view of the above authorities, there can be no question that the collateral trust note involved in this opinion wherein the issuing company "for value received, hereby promises to pay to bearer," on a certain date a certain amount of money, is a note within the meaning of Section 9357, supra.

It is to be noted, however, that before a domestic life insurance company may invest its funds in these collateral notes, it must determine:

1. That the maker of the notes has not "defaulted in payment of interest or principal on any of its bonds, notes, debentures or other evidence of indebtedness," and

2. That the average annual net earnings of the maker "for a period of not less than seven fiscal years preceding purchase" of such notes, "shall be at least three times the amount required to pay interest on its outstanding funded debt."

In specific answer to your inquiry, I am of the opinion that a domestic life insurance company may invest its capital, surplus and all accumulations in collateral trust notes issued under and secured by an indenture of trust whereby certain obligations are conveyed to a trustee for the benefit of the holders of such collateral trust notes, which notes are the obligations of a solvent corporation organized under the laws of any state of the United States.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

595.

PROBATE JUDGE — MARRIAGE LICENSE — CEREMONY—IN FOREIGN COUNTY—MARRIAGE CERTIFICATE.

SYLLABUS:

A probate judge issuing a marriage license may not demand the filing of the minister's license in that county, the minister having been