should be construed as limiting the authority and power of the Attorney General to matters of law in the approval or disapproval of leases of this kind.

Said lease is herewith returned with my approval as to legality and form endorsed thereon and upon the duplicate and triplicate copies thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1512.

APPROVAL, BONDS OF URBANA CITY SCHOOL DISTRICT, CHAMPAIGN COUNTY—$75,000.00.

COLUMBUS, OHIO, February 10, 1930.

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

1513.

CORPORATION—LOANING MONEY UNDER SPECIFIC PLAN—HELD TO BE BUSINESS OF MAKING LOANS ON INDORSED NOTES AT INTEREST RATE EXCEEDING 8% PER ANNUM—LICENSE FOR EACH BRANCH OFFICE REQUIRED.

SYLLABUS:

When a corporation is engaged in the business of making loans under a plan whereby the borrower is made the payee of a $100.00 *note executed by two third parties which note is sold to such corporation for* $90.00 *and is payable* $10.00 *per month at the office of the corporation under agreement whereby there is a rebate of* $2.12 *at the time of the last payment, such corporation is engaged in the business of making loans on indorsed notes at a charge or rate of interest in excess of eight per cent per annum as provided in Section* 6346-1, *General Code, and should be licensed as provided in Sections* 6346-2 *and* 6346-3, *General Code.*

COLUMBUS, OHIO, February 10, 1930.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Your opinion in the following matter is respectfully requested:

XY, a corporation, has four offices, one of which is operating under the Chattel Loan Law and is licensed by the Division of Securities. All four offices make loans in the following manner:

A note is drawn to the order of John Doe, payable at the office of the XY Corporation in any amount agreed upon. The note is then signed

by two parties other than John Doe as makers. The note is then indorsed on the back by John Doe and left with the XY Corporation.

John Doe, the borrower, subsequently pays the note to the XY Corporation.

Interest on the face of the note is 8%. 10% is deducted at the time the loan is made and the balance is payable in ten monthly installments, each being 10% of the face of the note. In other words John Doe makes the note for $100.00, receives only $90.00, but pays $100.00 over the ten months period. If the note is paid promptly there is a rebate of $2.12 leaving an interest charge of $7.88 for a 10 months period.

Since this figures interest more than 8% per annum, is the company violating the law by not qualifying under the Small Loan Act?"

Section 6346-1, General Code, being the first section of Chapter 25a, Title II, Part 2, providing for the licensing of chattel loan companies, provides in part as follows:

> "It shall be unlawful for any person, firm, partnership, association or corporation, to engage, or continue, in the business of making loans, on plain, endorsed, or guaranteed notes, * * * at a charge or rate of interest in excess of eight per centum per annum, including all charges, without first having obtained a license so to do from the commissioner of securities and otherwise complying with the provisions of this chapter."

If the practice of making loans upon the plan set forth constitutes making loans on indorsed notes at a charge or rate of interest in excess of eight per cent per annum within the meaning of this section, it is evident that each office must have a chattel loan license. Section 6346-3, General Code, provides, inter alia:

> "Not more than one office or place of business shall be maintained under the same license."

From the statement of facts submitted, I have little difficulty in concluding that all four offices are engaged in the business of loaning money on indorsed notes at a charge or rate of interest in excess of eight per cent per annum as provided in Section 6346-1, supra. In an opinion of this office, reported in Opinions of the Attorney General for 1921, Vol. II, p. 812, an almost parallel case was considered. A company was engaged in the business of loaning money on a plan whereby the maker of a negotiable promissory note promised to pay to the order of three persons $100.00 in ten equal installments at the company's office. Payments were to begin thirty days after date and $6.00 interest was payable eleven months after date. The note was then negotiated by the indorsement of the three payees and delivered to the company which then loaned the sum of $100.00. The then Attorney General held that whether the money is actually paid to the indorsers or the maker is not material and that such method of doing business constituted making loans on an indorsed note at a rate of interest in excess of eight per cent per annum and necessitated compliance with the provisions of Sections 6345, et seq., of the General Code.

Another similar plan was considered by the Attorney General of the State of Illinois which state has a small loan act somewhat similar to that of the State of Ohio. In the opinion rendered to the Department of Trade and Commerce of the State of Illinois under date of June 25, 1927, the Attorney General held that where a note in the amount of $100.00 payable to "myself" in ten monthly in-

stallments of $10.00 each is purchased from the borrower for $91.00, the purchasing company should be licensed under the Small Loan Act of the State of Illinois.

It should be noted that the method of doing business here under consideration should be distinguished from the case where a company is engaged in the business not of loaning money, but of purchasing commercial paper in good faith. When engaged in such latter business, there is no relationship of borrower and lender existing between the financial institution and the party who borrowed the money and incurred the obligation evidenced by the paper purchased by such company. There are no provisions contained in Chapter 25a of Title II, Part 2, General Code, which require a company engaged in the business of purchasing commercial paper to take out a chattel loan license. Since the decision of the Ohio Supreme Court in the case of *State* vs. *Mehaffey*, 112 O. S. 330, provision has been made requiring persons engaged in the business of purchasing salaries or wage earnings to be so licensed as contained in Section 6346-11, General Code, 113 O. L. 44, but, as previously stated, there is no provision applicable to persons who in good faith as a business purchase commercial paper at a discount.

It is clear, upon the facts set forth in your letter, that the relationship of borrower and lender actually exists, notwithstanding the fiction whereby the borrower is nominally the payee and the seller of the note. It is the payee that borrows the money and pays the note. The makers of the note are nothing more nor less than accommodation makers. Under such circumstances, it becomes necessary to draw aside the veil, look through the fiction and consider the actual facts. It, accordingly, follows that each office should be licensed as provided in Sections 6346-1, et seq., of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1514.

APPROVAL, CONTRACTS ON ROAD IMPROVEMENTS IN MAHONING, MERCER AND WASHINGTON COUNTIES.

COLUMBUS, OHIO, February 10, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1515.

BOARD OF EDUCATION—RIGHT TO CONTRACT THAT BUS DRIVERS SHALL COMPLY WITH CERTAIN REQUIREMENTS IN ADDITION TO THOSE PROVIDED BY STATUTES—POWER TO PRESCRIBE THAT SUCH DRIVERS SHALL PROVIDE LIABILITY INSURANCE.

SYLLABUS:

1. *A board of education may, when making contracts for the transportation of pupils, or for the employment of drivers to drive the board's equipment in the transportation of pupils, lawfully fix by the terms of the contract certain require-*