Supporting the conclusion reached by the courts in the case of *Phillips* vs. *Board of Education, supra,* the following cases may be noted: *Sperry* vs. *Pond,* 5 Ohio, 388; *Liferd* vs. *Laconia,* 75 N. H., 220; *North Adams First Universalist Society* vs. *Boland,* 155 Mass. 171. In this connection, I am inclined to the view that the recent case of In re: Copps M. E. Church, 120 O. S., 309, should be considered an authority only in cases presenting facts substantially the same as those under consideration in said case.

Touching the question stated in your communication, however, it is to be noted that the owner of the base or determinable fee in real property has all the rights and privileges of such property that he would have if he were an owner in fee simple as long as the estate in fee remains in him, and until the contingency upon which the estate is limited occurs.

In 21 Corpus Juris at page 923, it is said:

> "Until its determination such an estate has all the incidents of a fee simple, and while this estate continues, and until the qualification upon which it is limited is at an end, the grantee or proprietor has the same rights and privileges over his estate as if it were a fee simple."

It follows from this that as long as the school lands here in question are used for school purposes and the estate of the board of education therein is not terminated, the board of education of the school district owning and controlling said lands may lease the same for oil and gas purposes under the authority of Section 7620-2, General Code.

If, however, by reason of the use of such school property for oil and gas purposes under lease or leases therefor executed by the board of education, the use of such property for school purposes is abandoned, or if the use of this property for school purposes is abandoned and discontinued for any other reason, the estate and interest of the board of education in such school property will terminate and revert to the grantor in the deed to the board of education, or to his heirs and assigns.

This termination of the estate of the board of education in said property will occur not by reason of the act of the board in leasing the same for oil and gas purposes, but by reason of the fact the same has been abandoned for school purposes, if this be done.

Respectfully,
GILBERT BETTMAN,
Attorney General.

810.

MOTHER'S PENSION—COUNTY RESIDENT ELIGIBLE IF SHE HAS RESIDED IN ANY ONE COUNTY OF OHIO FOR TWO YEARS.

SYLLABUS:

Under the provisions of Section 1683-2, *General Code, a resident of a county in the State of Ohio may make application in such county for an allowance for mothers' pension, providing such applicant has been a resident in any one county in the state for a period of two years.*

COLUMBUS, OHIO, August 29, 1929.

HON. JAY R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"Section 1683-2 of the General Code reads as follows, in part:

'And such mothers and children have a legal residence in any county in the state for two years.'

Does this portion of said section mean that before the Probate Court of Defiance County can allow a mother's pension the applicant for such pension must have resided in Defiance County for two years or does it mean that the Probate Court of Defiance County may allow such pension if such applicant has resided in any county in the State of Ohio for a period of two years?"

In considering your inquiry, it will be well to have in mind Section 1683 of the General Code of Ohio, which provides:

"This chapter shall be liberally construed to the end that proper guardianship may be provided for the child, in order that it may be educated and cared for, as far as practicable in such manner as best subserves its moral and physical welfare, and that, as far as practicable in proper cases, the parent, parents or guardian of such child may be compelled to perform their moral and legal duty in the interest of the child."

In an opinion to the Bureau of Inspection and Supervision of Public Offices, under date of June 29, 1914, the then Attorney General held that the two years' residence qualification mentioned in Section 1683-2 of the General Code, bore no proper analogy to the settlement statutes in the poor laws providing for relief to paupers, but that in contradistinction to such settlement statutes, the provisions of the mother's pension law were to be liberally, rather than strictly construed. The syllabus of the opinion above referred to, Annual Report of the Attorney General for 1914, page 921, holds:

"Under the provisions of Section 1683-2, General Code, a mother is not required to have resided two years in a county before applying in that county for a mother's pension, but residence for two years on the part of the mother and children in any county in the state, whether that county be the county in which the two years' residence is established or not, entitles the mother to an allowance within a county of the state. Legal residence is not to be computed or ascertained by adding together periods of residence less than two years in different counties of the state. The mother and children must have resided legally for two years in some one county of the state."

Quoting from the opinion herein referred to:

"Having regard to these controlling considerations, I am of the opinion that the phrase 'in any county of the state' as used in the first sentence of Section 1683-2 is to be given its broad and primary meaning and that, as a result thereof, legal residence on the part of the mother and child in any county of the state would entitle the mother to an allowance by the Juvenile Court in any county of the state, whether that county be the county in which the two years' residence has been established or not."

This ruling has been several times affirmed by this office; see Opinions of the Attorney General, 1915, Volume 3, p. 2368, 1917, Volume I, p. 170.

In view of the provisions of Section 1683, supra, which provides that the provisions of the chapter shall be liberally construed, I am inclined to agree with my predecessors.

Therefore, in specific answer to your inquiry, I am of the opinion that the Juvenile

Court of Defiance County may allow mothers' pensions, if the applicant for the pension has resided in any county in the State of Ohio for a period of two years, providing, however, that the applicant is a resident of Defiance County at the time the award is made by the Juvenile Court.

Respectfully,
GILBERT BETTMAN,
Attorney General.

811.

COUNTY COMMISSIONER—DEEMED TO HAVE RESIGNED WHEN ABSENT FROM COUNTY CONTINUOUSLY FOR SIX MONTHS.

SYLLABUS:

In order that a county commissioner shall be deemed to have resigned from office under the provisions of Section 2398, General Code, the absence from the county must be for a continuous period of six months and, accordingly, absences aggregating six months, but interrupted by a period when he is present in the county and performs duties as such commissioner, will not affect his official status in so far as the provisions of such section are concerned.

COLUMBUS, OHIO, August 29, 1929.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

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

> "Section 2398 of the General Code provides:
>
> 'The absence of a commissioner from the county for a period of six months, shall be deemed to be a resignation of the office.'
>
> One of our commissioners, on account of illness, went to Hot Springs, Ark., on February 9th, 1929. He was partially cured, and returned to his home in Trumbull County, where he remained from April 5th to April 24th, 1929. On April 24th he went to Cleveland, and has remained in Cleveland, Ohio, ever since. While he was at his home in April he transacted some county business, signed some county papers, and some notes and bonds. He has also signed some papers, including notes and bonds since he has been in Cleveland.
>
> In computing the six months of his absence from the county, the question arises whether the six months must be continuous, or whether the time spent in Hot Springs should be added to the time which he is spending in Cleveland.
>
> Will you kindly apprise me your ruling on this point?"

The provision of law to the effect that the absence of a county commissioner from a county for a period of six months is deemed equivalent to his resignation was first enacted as a part of Section 5 of "An Act establishing boards of county commissioners and prescribing their duties" March 12, 1853, and published in Vol. 51 of Ohio Laws, page 422. Said Section 5 as then enacted read as follows:

> "That whenever there shall be a vacancy in the office of county commis-