The existence of this claim, if any, which apparently will not exceed the sum of two hundred dollars, cannot be ascertained until the settlement of the Winspear estate. Arrangements have been made to protect the state against the existence and assertion of such possible claim and lien against the lands purchased of the Winspear heirs by W. W. Shinkle, by securing from said W. W. Shinkle, a deposit in the First National Bank of Batavia, Ohio, in the sum of five hundred dollars in the name of the chairman of the U. S. Grant Memorial Centenary Commission.

The title of said W. W. Shinkle to the land here in question is therefore approved, subject to the adjustment of the taxes on said property for the year 1929, and subject to the deposit by said W. W. Shinkle of the sum of five hundred dollars to protect the state against a possible lien on said property arising out of the Winspear estate above referred to.

I have examined the warranty deed tendered by said W. W. Shinkle and find that the same has been signed and otherwise properly executed and acknowledged by said W. W. Shinkle and Nellie Shinkle, his wife, and that the same is in form sufficient to convey to the State of Ohio a fee simple title to the above described property free and clear of all encumbrances except the taxes for the last half of the year 1929, due and payable in June, 1930, and free and clear of the dower interest of said Nellie Shinkle.

There has likewise been submitted to me encumbrance estimate No. 6496, which has been properly executed and which shows that there are sufficient balances in a proper appropriation account to pay the purchase price of this property. It is further noted that the purchase price of this property in the sum of twenty-four hundred dollars was released by the Controlling Board as is evidenced by the certificate of said board under date of September 15, 1929.

All of said above mentioned files are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1153.

COMPULSORY SCHOOL LAWS—CONSTITUTIONAL—RIGHT TO RELIGIOUS FREEDOM NOT EXCUSE FOR NON-COMPLIANCE.

SYLLABUS:

1. *The compulsory school laws of Ohio contained in Sections 7762, et seq., of the General Code, are constitutional and operate uniformly on all citizens of the State of Ohio.*

2. *The compulsory school laws of Ohio are not an interference with the religious freedom granted by the constitution to each and every citizen of the State of Ohio.*

COLUMBUS, OHIO, November 6, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

> "A parent who is a member of a religious sect, which apparently does not favor high school education, claims exemption from the operation of the compulsory education law in respect to his children on the ground of religious belief. He has two children who have completed the eighth grade, one 14

years of age and the other 15 years of age. These children he refused to send to high school for several reasons, and claims that his sect does not believe in high school education and that it is an infringement of their religion for the authorities to compel the attendance of these children.

We ask whether the right of a parent in respect to religous belief can operate to make the requirement of attendance at high school of his children, when they have been assigned to high school, unenforcible?"

It is generally recognized in this country that all persons have a full and free right to entertain any religious belief, to practice any religious principle and teach any religious doctrine which does not violate the laws of morality and which does not infringe upon personal rights.

It has come to be looked upon as a fundamental principle of American government that no interference on the part of the state shall be permitted to interfere with or restrict any citizen's right to worship God according to the dictates of his conscience, and the greatest latitude within which an individual may enjoy this constitutional right of religious freedom is allowed. There must necessarily, however, be some line of demarcation where liberty, whether that liberty be called natural, civic or religious, ends and where civic responsibility begins. Religious freedom does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as a part of their religious system, so that no one can stretch his own liberty so as to interfere with that of his neighbors and to violate peace and good order. *Watson* vs. *Jones,* 13 Wall. 679; In Re Franze, 63 Mich. 396.

Before the adoption of the Federal Constitution, attempts were made in some of the Colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts. People were taxed against their will for the support of religion and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for failure to attend public worship and sometimes for entertaining what were deemed to be heretical opinions.

This brought out determined opposition from leading thinkers of the day, including such men as Franklin, Madison, Washington and Jefferson. The first legislation that was enacted by any of the states seeking to remedy these evils was that enacted by the House of Delegates of Virginia in 1785, which passed an act "for the establishment of religious freedom." In the preamble of this act, religious freedom is defined, and, after a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty", it is declared "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." Chief Justice Waite, in the case of *Reynolds* vs. *United States,* 98 U S. 145, in commenting on the language quoted above, said: "In these two sentences is found the true distinction between what properly belongs to the church and what to the state."

Although when the Federal Constitution was adopted no specific provision was made therein for the preservation of religious freedom, that right was guaranteed upon the early adoption of Article 1 of Amendments to the Federal Constitution, in which it was declared: "Congress shall make no law respecting an establishment of religion or prohibiting the proper exercise thereof."

At least one of the states, North Carolina, refused to ratify the Constitution until the principle of religious freedom was preserved to the people by the adoption of the amendment referred to. Since that time practically all of the states of the Union, if not all of them, have incorporated similar guarantees in their constitution.

In the Bill of Rights, contained in the Constitution of Ohio, Section 7, it is declared:

> "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. * * * "

The question here to be considered is whether our compulsory education law, requiring children to attend the public schools or otherwise pursue their studies after they have completed the elementary grades until they have attained a certain age, is an interference with the religious freedom guaranteed by our constitution when made to apply to those persons whose religious scruples prevent their participation in the pursuance of educational advantages afforded by the public schools beyond the eighth grade.

The Legislature of Ohio has deemed it to be conducive to the public welfare to require the schooling of children within the state, between the ages of six and eighteen years, and has declared it to be a penal offense for failure to comply with this requirement. Sections 7762, et seq., and Section 12974, General Code. The law is uniform in its application and applies to all youth within the state, irrespective of the religious belief of their parents. Compulsory school laws have been adopted by practically every state in the Union, as well as many foreign countries. Their constitutionality has uniformly been sustained by the courts of this country.

In the case of *Parr* vs. *State,* 117 O. S., 23, decided by the Supreme Court of Ohio so late as 1927, it is said by the court:

> "Compulsory education laws have very generally been upheld by the courts. 'Statutes making the education of children compulsory have become very general in the United States, and their constitutionality is beyond dispute, for the natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state, and may be restricted and regulated by municipal laws. One of the most important natural duties of the parent is the obligation to educate his child; and this duty he owes, not to the child only, but to the commonwealth. If he neglects to perform it, or wilfully refuses to do so, he may be coerced by the law to execute such civil obligation.' 24 Ruling Case Law, p. 621, Ann. Cas. 1912A, 373; *State* vs. *Jackson,* 71 N. H. 552, 53 A., 1021, 60 L. R. A. 739; *State* vs. *Bailey,* 157 Ind. 324; 61 N. E. 730, 59 L. R. A. 435; 35 Cyc. 1122; *Quigley* vs. *State,* 5 C.C. 638, 3 C. D. 310, affirmed by the Supreme Court without report, 27 W. L. B. 332.
>
> Additional authorities might be cited in support of this proposition; but we regard the constitutionality of such laws as so well established that other citation is unnecessary."

It is very generally understood that religious liberty and freedom, as guaranteed by the constitutional provisions of the Federal Constitution and the several state constitutions, does not mean a license to engage in acts having a tendency to disturb public peace under the form of religious worship, nor does it include the right to disregard those regulations which have been deemed by legislative authority to be reasonably necessary for the security of public order and the promulgation of the public welfare. *State* vs. *White,* 64 N. H. 48, 5 Atl. 828; *Reynolds* vs. *United States,* 98 U. S. 145; *Late Corporation of Latter-Day Saints,* vs. *United States,* 136 U. S. p. 1.; *State* vs. *Marble,* 72 O. S. 21.

In an early case in Ohio, *Bloom vs. Richards,* 2 O. S. 387, 392, Judge Thurman says:

> "Acts evil in their nature, or dangerous to the public welfare, may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion could shield a murderer, ravisher or bigamist; for community would be at the mercy of superstition, if such crimes as these could be committed with impunity, because sanctioned by some religious delusion."

In *Reynolds* vs. *United States, supra,* after showing historically how religious freedom came to be guaranteed by amendment to the Constitution of the United States, Chief Justice Waite considers what is meant by religious freedom, and concludes:

> "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."

The Reynolds case, supra, was an indictment for bigamy alleged to have been committed in one of the territories of the United States in contravention of a federal statute prohibiting bigamous marriages. The defense sought to show that as he was a member of the church of Latter-Day Saints, commonly called the Mormon Church, it was his religious belief and duty to practice bigamy, and that the statute prohibiting the same was an interference with his religion, contrary to the rights guaranteed to him by the constitution. In the course of the opinion the court said:

> "The only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religous worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?
>
> So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself, Government could exist only in name under such circumstances."

To a like effect are the holdings in the cases of *Davis* vs. *Beason,* 133 U. S. 333, and *Late Corporation of Latter-Day Saints* vs. *United States,* 136 U. S., 1. In the latter case the opinion was delivered by Mr. Justice Bradley, in the course of which he said, with reference to the Mormon Church and its belief in the practice of polygamy:

> "One pretense for this obstinate course is, that their belief in the practice of polygamy, or in the right to indulge in it, is a religoius belief, and therefore under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugs of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one on that account would hesitate to brand these practices, now, as crimes against society, and obnoxious to condemnation and punishment by the civil authority."

It might be suggested that the cases cited above involve questions not parallel with the question here under consideration for the reason that the crimes of polygamy, murder, and similar crimes, are evil in themselves and import immorality rather than a mere violation of a law such as the compulsory school law. In other words, they are *malum in se* rather than *malum prohibitum,* and therefore, the inhibition contained in the constitution upon the denying of religious freedom does not apply with equal force to such laws as the compulsory school law as it does to laws prohibiting bigamous marriages and the like. I do not find this distinction to have been made by the courts.

In the case of *State* vs. *Marble,* 72 O. S., p. 21, the question of the right of a Christian Scientist to charge a fee for prescribing treatment for the cure of a bodily ailment, contrary to the statute, was under consideration. It was contended that Christian Science is a religious belief and that the defendant, in giving the treatment, did so in obedience to a religious and conscientious duty, or in other words, was worshiping God according to the dictates of his conscience, and that a statute interfering therewith was unconstitutional. It was held, as stated in the third branch of the syllabus:

> "Legislation prohibiting anyone from treating a disease for a fee, excepting such persons as have prescribed qualifications, is a valid exercise of the police power of the state, and is constitutional."

The court in determining the question confined its inquiry largely to whether or not the statute was a valid exercise of the police power and in effect said that if it was a valid exercise of the police power, it could not be an interference with religious liberty. In the course of the opinion the court, after stating that the question to be considered was whether or not the act, in so far as its application to Christian Science is concerned, is a valid exercise of the police power, stated that the term "police power" is incapable of an exact definition, and quoted the definition given by Freund in Section 3 of Police Power, as follows:

> "It aims directly to secure and promote the public welfare and does so by restraint and compulsion."

The court then refers with approval to the case of *Parks* vs. *State,* 159 Ind., 211, wherein is given a list of subjects which have been dealt with under the police power. In this list is found "children are required to attend school."

In conclusion, I may state that it is well settled that compulsory school laws, such as are prescribed in the statutes of Ohio, are constitutional, are a proper exercise of the police power and operate uniformly on all persons within the state, that they are enacted in furtherance of the public welfare of the state and are not an

interference with the religious freedom of any citizen of the state. I am of the opinion, therefore, that no resident of the state lawfully may set up his religious beliefs as an excuse for non-compliance with the compulsory school laws.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1154.

APPROVAL, BONDS OF CITY OF HAMILTON, BUTLER COUNTY—$30,400.00.

COLUMBUS, OHIO, November 6, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1155.

UNENCUMBERED BALANCES—INSTITUTIONAL FUND FOR WELFARE DEPARTMENT IN SENATE BILL NO. 28—UNAVAILABLE AFTER GENERAL APPROPRIATION BILL EFFECTIVE, IF NO APPROPRIATION FOR THE PURPOSE IN LATTER BILL—EXCEPTION.

SYLLABUS:

The unencumbered balances as of December 31, 1928, *in the institutional fund for the Department of Public Welfare as set forth in Senate Bill No.* 28, *are not available for allotment by the Controlling Board or any other use after the effective date of House Bill No.* 510, *if there were no appropriations for the purpose in the latter bill, excepting such funds as may properly be used to pay liabilities lawfully incurred under authority of such appropriation prior to the effective date of House Bill No.* 510.

COLUMBUS, OHIO, November 6, 1929.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your communication reads:

> "I respectfully request your written opinion upon the following question:
>
> Senate Bill No. 28, Eighty-eighth General Assembly, contains the following appropriation 'To be allotted to the Department of Public Welfare for Additions and Betterments * * * * subject to the approval of the Controlling Board, there is hereby appropriated the unencumbered balance in the Institutional Building Fund on December 31, 1928, together with any receipts which may be credited to said fund during the period of this act.'