Again, in Opinions of the Attorney General for 1935, Vol. 2, p. 858, the then Attorney General ruled broadly that:

> "A municipal corporation is without authority to expend public funds for membership dues or fees in an association of municipalities or to appropriate funds to pay for services rendered, or information furnished on municipal affairs by such association."

My research does not disclose any language in any decision of the Supreme Court subsequent to State ex rel Thomas v. Semple, supra, which would indicate any change from such opinion on the part of such court.

In view of the decision of such court and the consistent opinions of the preceding Attorney General, I am persuaded that, regardless of the practical value and benefit which the exchange of ideas or the pooling of thought of the members on the problems may benefit them, the expenditure of public funds in payment of a membership in an organization for such purpose is beyond the power of a public corporation or quasi corporation.

Specifically answering your inquiry, it is my opinion that a Metropolitan Housing Authority may not expend its funds for the payment of membership fees in associations such as the "National Association of Housing Officials" or the "American Federation of Housing Authorities."

Very truly yours,

THOMAS J. HERBERT,

Attorney General.

1190.

COUPON BOOKS TO CUSTOMERS—MERCHANTS—NOT ENGAGED IN SALE OF "SECURITIES" WHEN THEY ISSUE SUCH BOOKS—CREDIT PLAN, CONTRACT—DOWN PAYMENT—INSTALLMENT—STATUS WHEN CARRYING CHARGES MADE IN EXCESS OF 8% PER ANNUM—LICENSE—COMMISSIONER OF SECURITIES—SECTIONS 8624-2 (2), 6346-1 G. C.

SYLLABUS:

1. Merchants are not engaged in the sale of securities, as defined in section 8624-2(2), General Code, when they issue coupon books to their customers as a part of a credit plan whereby customers seeking credit, if satisfactory credit risks, sign a contract agreeing to make a small down payment and pay the balance in installments who are thereupon given coupon books entitling them to immediately purchase any

articles of merchandise in the store and use the coupons issued in payment therefor.

2. If such coupon issuing merchants make carrying charges in connection with the aforesaid credit plan, which carrying charges are in excess of eight percent per annum, they are not violating the provisions of section 6346-1, General Code, even though they have not obtained licenses from the Commissioner of Securities, as provided in that section.

COLUMBUS, OHIO, September 15, 1939.

HON. PAUL L. SELBY, *Chief, Division of Securities, Columbus, Ohio.*

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

> "It has recently come to the attention of this Division that various retail establishments in this state have developed and put into use a system whereby they sell to the public a so-called credit 'coupon book'. Generally the stores advertise that these 'coupon books' may be used as cash for the purchase of goods in any department of their store. They may be used at once or over a period of time.
>
> A book is obtained by applying therefor through the credit department of the store which obtains certain information from the customer and then checks his credit rating. If approved a book is issued in various denominations generally in $10.00, $15.00, and $20.00 amounts. A down payment of a fixed sum is required, the balance to be paid over a definite period.
>
> A carrying charge is provided for and may be returned to the purchaser under conditions hereinafter set forth.
>
> As previously stated the book upon issuance may be used at once in lieu of cash within the confines of the store and in some instances cash is returned to the customer, if it is necessary to use a coupon larger than the amount of sale. The plans vary slightly and are as follows:
>
> 1. A $20.00 "credit book' is issued upon the establishment of the customer's credit. The balance of $18.00 plus $.40 service charge is to be repaid over a period of four months. If the entire $20.00 is paid in sixty days, the $.40 service charge is refunded. Change is received in cash, that is, if an article cost $.61, three $.25 coupons are extracted from the 'credit book' and the sales person returns $.14 in cash to the owner of the book. These coupons may also be used for C.O.D. deliveries made at the home of the owner of the 'coupon book'. The

'coupon book' does not state that the coupons must be redeemed within a certain period.

A purchase contract is attached hereto and marked Exhibit A. Coupon book is marked Exhibit Number 1.

2. 'Credit coupon books' are sold in denominations of $10.00, $15.00, and $20.00. They may be used only for the payment of cash merchandise and the sale is handled as a fully paid transaction. This establishment in its orders to branch stores states that these books are actually cash ond must be stored in the safe. A carrying charge of $1.00 for each $10.00 of coupon is assessed. Customers are allowed twelve months to repay the balance due. If a sale is in odd amounts, the customer is requested to pay the difference in cash. If he refuses, a coupon will be accepted and the difference in cash returned to the customer. Unused coupons will be redeemed by clerk or cash provided the book has been completely paid for. The 'coupon book' does not state that the coupons must be used within a certain period though this store attempts to have all books used within ten days. However, if not used within that period an extension may be obtained. The experience of this store is that all the coupons are generally used up in the same day. Unused coupons are credited to balance due on the account. A customer can relieve himself of his obligation and can get a refund of all money paid if he gives up the entire book. If he gives up part of the book, he is released of obligation of the surrendered part and receives back a proportionate refund applicable to the coupons unused. A minimum down payment is required and a refund is made for paying within a certain period. The refund is based on the proportion of time required to make the payment in full.

A contract form is attached and marked Exhibit B. Coupon book is marked Exhibit Number 2.

3. A 'coupon book' is sold for $20.00 plus $1.00 carrying charge. The customer is required to pay $2.00 down and $1.00 per week for nineteen weeks. No additional charge is made even upon default in the terms of payment. The book is issued upon the establishment of the customer's credit and may be used immediately. The smallest coupon is $.25 and if a purchase is in an uneven amount, a coupon is detached and the cash difference is returned to the customer. If the book is paid for within sixty days the carrying charge is refunded. The company agrees to credit to the purchase price the full amount of the unused coupons not in excess of the balance due. No time limit for the use of the coupons is stipulated and some books have been held for long periods of time. A copy of the contract used is attached hereto and marked Exhibit C. Coupon book is marked Exhibit 3.

4. 'Coupon books' are sold in denominations of $15,00, $25.00, and $50.00. The initial payment must be 20% of the face value of the 'coupon book', the balance to be paid in four equal monthly installments. The carrying charge is $.06 each month on the $15.00 book, $.10 per month on the $25.00 book and $.20 per month on the $50.00 book. If the payment of the installments are in default then the carrying charge is assessed each month. No cash is given the customer who must pay odd amounts. The 'coupon books' are only good for ninety days.

Attached hereto and marked Exhibit D, is a copy of the purchase contract.

Your opinion is respectfully requested as to whether any of the instruments used herein may be construed to be securities as defined in Section 8624-2 of the Ohio General Code.

Your further consideration is requested as to whether the transactions set out herein may be construed to be in violation of Section 6346-1 of the Ohio General Code. You will note that in some of the examples cited the carrying charge is in excess of 8% per annum. None of the establishments known to be using the 'credit book' system have applied for or obtained Small Loan Licenses nor registered any of their contracts or 'coupon books' within this Division."

In order to arrive at an answer to the questions you have submitted it is pertinent to first analyze the nature of the transactions involved. While no two of the plans submitted are identical, the general purpose and method of each are the same. Essentially, each plan is a credit scheme whereby the merchant offers credit contracts to customers. The credit seeking customer is required to make a fixed down payment, sign a contract to pay the balance of the desired credit in installments, and is then given a coupon book allowing him to select merchandise immediately, if he wishes, to the extent of the total coupons issued to him. The coupon book should not be considered alone for it is only a part of the agreement to extend credit. It is an efficient type of evidence for the sales personnel indicating that the customer is an approved credit risk up to the extent of the unused coupons in the customer's possession. The same results might be accomplished without a coupon book. After credit has been established and the contract signed as outlined above, the merchant could sell his merchandise and before delivery the clerk could contact the credit department to receive authority for the completion of the sale.

If any of the submitted coupon books are securities, they must fall within one or more branches of the definition of securities as found in Section 8624-2(2), General Code, which is as follows:

"The term 'security' shall mean any certificate or instrument which represents title to or interest in, or is secured by any lien

> or charge upon, the capital, assets, profits, property or credit of any person (as that term is defined by subsection (4) of this section 2) or of any public or governmental body, subdivision or agency, and shall include shares of stock, certificates for shares of stock, voting trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates in or under profit sharing or participation agreements, or in or under oil, gas or mining leases, or certificates of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, and the currency of any government other than that of the United States and Canada, but the provisions of this act shall not apply to bond investment companies or to the sale of real estate or any interest in real estate intended for burial purposes.
>
> "The term 'security' shall, for the purposes of this act, be deemed to include real estate not situated in this state and any interest in real estate not situated in this state."

When armed with this coupon book the customer is entitled to make purchase on credit, but he has not thereby acquired any interest, lien or charge upon the capital, assets, profits, property or credit of the merchant. He is not even a general creditor for any amount greater than the total payments he has made on his contract less the price of all merchandise purchased thereunder. His coupon book is neither a promissory note, for that has been defined in Burk v. State, 104 O. S., 220, 222, as "a written promise to pay a certain sum of money at a future time, unconditionally", nor is it an evidence of indebtedness, for as has been suggested, it is an evidence of limited established credit. Participation agreements, investment contracts, and similar instruments specified in the definition of a security, all contain the elements of potential gain or profit for the investor, an element which is entirely lacking in the coupon books. The remaining branches of the definition seem so inapplicable that discussion here is superfluous.

The purpose of the Ohio Securities Act as stated in the title to the original act (103 O. L., 743) is "to regulate the sale of bonds, stocks, and other securities, and all real estate not located in Ohio, and to prevent fraud in such sales."

In Sellers v. State, 18 Abs., 328, in the third branch of the syllabus referring to the act, it was held:

> "The Ohio Securities Act was enacted to guard investors against fraudulent enterprises; to prevent sales of securities based only on schemes purely speculative in character; to protect the public from swindling peddlers of worthless stock; and it should be so administered as to fully meet the purpose of its enactment."

Almost the same language is used by the Supreme Court in its opinion in Groby v. State, 109 O. S., 543, at page 550.

It is difficult to see how stores issuing coupons on the plans outlined could defraud or swindle the customer. The risk appears to be definitely in the opposite direction. After a small cash payment, the customer is entitled to purchase goods and merchandise from the merchant to the full extent of the coupons issued and pay for such merchandise in installment payments over an extended period. The fact that some stores adjust in cash the difference between the price of articles sold and coupons tendered does not seem to alter the situation. Such cash payments are inconsequential and incidental; they are merely adjustments made in cash for the convenience of both parties. The attitude the courts would probably take is indicated and summed up in the case of Gimbel Bros., Inc., v. White, Supt., 10 N. Y. S. (2d), 666. In this case, coupon books had been issued to credit customers on a plan similar to those outlined in your letter and the issuing store was thereupon charged with being engaged in the banking business. In a discussion of the plan the court said:

> "We know of no banking operation comparable to this credit coupon plan. Here the plaintiff is not holding money which it must repay. It is selling goods. Where the book is issued plaintiff has in substance sold an equal amount of goods which are to be selected. A similar form of transaction is found in the issuance of meal tickets by a restaurant, tokens by a trolley or bus transportation company and Christmas gift certificates by stores. One would not think of calling these transactions engaging in banking or the receipt of deposits in the banking sense."

In specific answer to your first inquiry, it is my opinion that none of the instruments known as coupon books described in your letter may be construed to be securities as defined in section 8624-2(2) of the General Code.

You also ask whether or not the transactions outlined in your in-

quiry may be considered as violations of section 6346-1, General Code, which section is 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, or due-bills, or otherwise, or upon the mortgage or pledge of chattels or personal property of any kind, or of purchasing or making loans on salaries or wage earnings, or of furnishing guarantee or security in connection with any loan or purchase, as aforesaid, 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."

As I have suggested above, the use of coupon books by merchants is a part of a credit scheme for the sale of merchandise on the installment plan. The general rule is stated in 66 Cor. Jur., page 183, wherein it is said:

> "A vendor may fix upon his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cost price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties but not to the courts, barring evidence of bad faith."

Your inquiry suggests, however, that extra payment made by the purchaser is a carrying charge. In other words, the price of the merchandise remains constant but the purchaser must pay a bonus for the privilege of obtaining his limited credit. Credit granted by a merchant for the price of goods sold can only be termed a loan by giving the term "loan" its broadest interpretation. A loan is said to be that which is furnished for temporary use with a condition that it or its equivalent shall be returned with compensation for its use. Touching on this point, it was said in the case of Day v. Cohen, 43 N. E. 109 (115 Mass., 304), that:

> "While, in a broad sense of the word, the credit given for the price of goods sold may be called a 'loan', it is not a loan in the ordinary and usual sense of the word, and we think it is not a loan within the meaning of the statute. The language here used has reference primarily to money furnished to another, to be repaid; and it is not intended to include credits given for goods sold, upon which a mortgage is taken back by way of security."

Even if we considered for the purposes of this discussion that the credit granted under the outlined circumstances may be termed a loan as used in section 6346-1, supra, it is apparent that it is not made on "plain, endorsed or guaranteed notes, due-bills, or otherwise", for the purchaser is only required to be a satisfactory risk for limited credit and obliged to sign a contract acknowledging receipt of a coupon book and agreeing therein to the amount of the cash payment and the susequent installment payments. Each of these contracts, except that shown under your second plan, contains reference to the inclusion of a carrying charge. The statement in your inquiry shows that even under Plan 2 a carrying charge is made. None of these contracts could be classified as plain promissory notes, nor do they fall within any of the other classifications of section 6346-1. Furthermore, there is no chattel mortgage or pledged chattels involved and no loan of any nature is required upon the salary or earnings of the purchaser. Unless one or more of these conditions are present, or the purchaser is required to furnish guarantee or security in connectnion with such transactions, there is no requirement that merchants using coupon books as a part of their credit plans be licensed to make loans and charge interest thereon, as provided in sections 6346-1, et seq., General Code.

It therefore seems evident, and it is my opinion, that the issuance of coupon credit books by merchants to their customers for the purpose of facilitating limited credit and the making of a carrying charge in excess of eight per cent. per annum does not constitute a violation of section 6346-1, General Code.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1191.

LIFE INSURANCE—CHURCH MAY INSURE LIVES OF SUBSCRIBERS TO ITS "DEBT RETIREMENT FUND" IN AMOUNT OF SUBSCRIPTION — POLICY PAYABLE TO DESIGNATED BENEFICIARY AFTER REMAINDER ON SUBSCRIPTION PAID—NO VIOLATION OF SECTION 9404, G. C.

SYLLABUS:

Where a church establishes a special fund known as the "Debt Retirement Fund" under the control and management of trustees, to which the members of the church subscribe in writing to pay a stipulated amount, and where as part of the plan such subscriber to the Debt Retirement Fund applies for insurance on his life payable to the trustees of the Debt Retirement Fund who are to pay the premiums on such life insurance