strictions with respect to payments of adjusted compensation, both with respect to the persons entitled thereto and as to the amount of such payments. No requirements as to the manner of such payments are made in said constitutional provision above referred to other than the provision that the commissioners of the sinking fund should make such payments under such regulations as they may from time to time promulgate. However, the duties imposed upon the sinking fund commissioners with respect to the payment of claims for adjusted compensation require said sinking fund commissioners to make some provision by way of regulation or otherwise for the investigation of such claims before paying the same; and inasmuch as in the case here presented with respect to the appropriation in question the Adjutant General is authorized to make payments on claims for adjusted compensation of said appropriation, on the direction of the sinking fund commissioners, it is clear that a duty is imposed upon the sinking fund commissioners to make adequate and proper provision for the investigation of all claims before the same are certified to the Adjutant General for payment by him by vouchers covering the respective claims allowed.

If the procedure outlined in your communication is adopted by the sinking fund commissioners as a means of carrying out their duties preliminary to their allowance of claims for payment by the Adjutant General, no legal exception could, in my opinion, be taken to such procedure. However, I do not deem it any part of my duty as Attorney General to lay down any hard and fast rule or method as to how investigations should be made of claims for adjusted compensation under the appropriation therefor made in this act.

Under the provisions of Section 2a of Article 8 referred to in the appropriation act, the sinking fund commissioners are authorized to adopt any regulations having reasonable and proper relation to the duties imposed upon them with respect to the investigation of such claims, within the limits of constitutional and statutory provisions defining the persons entitled to such allowances and the amount of the same.

After such claims are allowed for payment by the sinking fund commissioners the same should be paid by the Adjutant General by the issue of vouchers for the payment of the claims which will then be paid by warrants of the Auditor of State on the general revenue fund within the limits of the appropriation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

470.

MOTOR TRANSPORTATION ACT—VIOLATION OF—TAXICABS OPERATED OVER REGULAR ROUTE OUTSIDE MUNICIPALITY WITHOUT CERTIFICATE FROM PUBLIC UTILITIES COMMISSION.

SYLLABUS:

Taxicabs, regularly licensed to operate within the limits of a municipal corporation, which operate over a regular route without the limits of such municipality at periodic intervals, or intermittently, for the purpose of rendering a general motor bus service along such route, lose their identity as such outside of the municipality, and unless a Certificate of Public Convenience and Necessity is first obtained from the

Public Utilities Commission, such operations are in violation of the Motor Transportation Act, Sections 614-84 *to* 614-102, *General Code.*

COLUMBUS, OHIO, June 1, 1929.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

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

"I would like some information and interpretation from your office in regard to the 'Motor Transportation' act, Sections 614-84 et seq., of the General Code of Ohio.

The particular question that is troubling me at the present time arises as follows: A Motor Transportation Company has secured from the Public Utilities Commission a certificate of public convenience and necessity to operate over certain streets and highways in and near to the city of Cambridge. Certain motor vehicles, called taxicabs, and so called in licenses by city of Cambridge to operate within the municipality, and licensed to operate within said city, are carrying passengers from without the limits of the corporation over the route for which the transportation company has its certificate, picking up the passengers on and near said route a short distance out of the city limits and carrying them over and depositing them in the city limits on said route.

Are the drivers of said vehicles (taxicabs) liable to criminal prosecution:

(a) For operating without a certificate of public convenience and necessity?

(b) For operating over the transportation company's route?

Or are they exempt under the exception from the term 'Motor Transportation Company,' as designated in said Section 614-84?

And what is your interpretation of the term 'taxicab' as used in said section?"

In determining whether the drivers are liable to criminal prosecution it must first be determined whether or not they are motor transportation companies within the definition of the act.

Section 614-84, General Code, in so far as it is pertinent, is as follows:

"(a) The term 'motor transportation company,' when used in this chapter, means every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property, or both, as a common carrier, for hire, under private contract or for the public in general, over any public highway in this state; provided, however, that the term 'motor transportation company' as used in this chapter shall not include any private contract carrier as defined in Section 614-2, and shall not include, any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate, or manage a motor vehicle or motor vehicles used for the transportation of persons or property, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control,

operate or manage taxicabs, hotel busses, school busses or sight-seeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which is for the private business of the owners and the use of which for hire is casual and disassociated from such private business.

* * * "

Your attention is also called to the following portion of Section 614-86, defining the jurisdiction of the Public Utilities Commission, as follows:

" * * * The commission, in the exercise of the jurisdiction conferred upon it by this chapter, shall have the power and authority to prescribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license or permit heretofore enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail; provided that such local subdivisions may make reasonable local police regulations within their respective boundaries, not inconsistent with the provisions of this chapter; provided, further, that no motor transportation company operating under a certificate of convenience and necessity, shall carry persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, except with the consent of such municipal corporation or municipal corporations."

There are two types of Certificates of Public Convenience and Necessity issued by the Public Utilities Commission, one for operating over a regular route and the other for operating over an irregular route. The certificates for operating over a regular route are either for passengers or freight but not both, while the certificates for operating over an irregular route are always for freight only.

In the case of *Lake Shore Electric Railway Co.* vs. *P. U. C. O.* 115 O. S. 311, a Certificate of Convenience and Necessity was denied to a motor transportation company applying to haul passengers over an irregular route covering the entire state. As a result of that decision the Commission has never issued a Certificate for the transportation of passengers over an irregular route as the Supreme Court there indicates that public convenience and necessity could not be shown for such an operation.

In *Craig* vs. *P. U. C. O.* 115 O. S. 512; *Coleman* vs. *P. U. C. O.* 115 O. S. 638 and *Breuer* vs. *P. U. C. O.* 118 O. S. 95, the Supreme Court has very definitely laid down the rule that the question as to whether or not an operator is a motor transportation company must be determined from the facts. In each of those cases the operator was found to be doing irregular hauling for the public in general to such an extent as to constitute him a motor transportation company.

In the light of the above decisions, and also of *Lake Shore Electric Co.* vs. *Public Utilities Commission of Ohio,* referred to above, it must first be determined from the evidence whether or not the drivers you refer to are operating over a regular route at intervals frequent enough to classify them as motor transportation companies.

The Public Utilities Commission of Ohio exercises no jurisdiction over motor transportation companies within the boundaries of municipalities except with reference to the route traversed while passing through them. Taxicab operations, from their nature, are almost exclusively confined to municipal limits, as ordinarily there is not sufficient volume of business to be obtained outside of such limits, and therefore the question of taxicab supervision without municipalities has not heretofore arisen.

We can find no definition of taxicabs either by statute or by court decision in Ohio, but they are frequently defined in municipal ordinances regulating them. They are definitely and generally accepted and included in the class of common carriers. In *Donnelly* vs. *Philadelphia and Reading Railway Co.,* 53 Pa. Super. Ct. 78, there is the following definition:

> "The name is a coined one to describe a conveyance similar to a hackney carriage operated by electric or steam power and held for public hire at designated places subject to municipal control."

Taxicabs from their nature would be presumed to be operating over an irregular route serving the public on call and carrying passengers to whatever destinations the passengers designate. One usually finds in municipal ordinances controlling and regulating taxicabs a provision against "cruising," an operation which is hard to describe but is generally understood to mean driving slowly up and down main thoroughfares in search of passengers. From your letter it would appear that this is substantially what drivers you refer to are doing outside of the limits of the city of Cambridge. There is no decision in Ohio exactly in point on this question, but in *People* vs. *Case,* 231 Mich. 246, it was held that the establishing of a taxicab service under schedule, or even intermittent, for the purpose of rendering a general auto-bus service in competition with regulated auto-bus service, without a permit to do so, is a violation of the Michigan motor transportation law.

The facts set forth in your letter are insufficient to give a definite answer to your questions, however, applying the reasoning of this Michigan decision to the general situation, I am of the opinion that if the facts show the taxi drivers to be operating intermittently without the limits of a city over the route of a certificated motor transportation company, and for the purpose of picking up and transporting passengers to points along such route, they lose their identity as such, and are violating the motor transportation law, but that if the operations are casual or on call of the passengers carried, or if the passengers are carried to points off of the route of the motor transportation company, there is no violation of such law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

471.

APPROVAL, BONDS OF SANDUSKY COUNTY—$55,000.00.

COLUMBUS, OHIO, June 1, 1929.

Industrial Commission of Ohio, Columbus, Ohio.