

The latter section would seem to limit the levy to the purpose of paying the township's portion of the expenses of construction of an improvement by the county commissioners.

Nowhere can be found a section specifically authorizing the township trustees to levy a tax to pay for the initial expenses of locating and constructing a township ditch. \* \* \*

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Section 6603 of the General Code, supra, it is believed can be construed in connection with the other sections of the Ditch Law as authorizing the township trustees to levy a tax for the purpose of a general ditch fund to be used in paying the cost in locating and constructing a ditch."

Summarizing, it appears that township trustees are now limited in their authority pertaining to the construction and repair of township ditches, drains and watercourses to the provisions of Section 6603, General Code. Said trustees are authorized, however, under the provisions of Section 6495, General Code, to levy taxes for the purpose of paying the initial cost of the location and construction of a township ditch.

Specifically answering your questions it is my opinion that :

1. The county commissioners are vested with sole authority in regard to the constructing, cleaning and repair of township ditches, except that the township trustees have authority under the provisions of Section 6603, General Code, to improve a township ditch or drain within the limitations contained in said section.

2. When a petition is filed under the provisions of Section 6603, General Code, it is the mandatory duty of the township trustees to proceed under said section.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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1363.

STATUTE OF LIMITATIONS— SECTION 11221-1, GENERAL CODE, NOT APPLICABLE TO ACTIONS ACCRUING BEFORE EFFECTIVE DATE THEREOF — INAPPLICABLE TO STATE OF OHIO — ACTIONS AGAINST CARRIERS, DISCUSSED.

*SYLLABUS:*

1. *Section 11221-1, General Code, which provides for limitation of actions against carriers, does not apply to any cause of action accruing before the effective date thereof, to-wit, July 15, 1925.*

2. *Said section does not apply to claims of the State of Ohio against a carrier for recovery of overcharges for transportation of persons or property in Ohio.*

COLUMBUS, OHIO, December 14, 1927.

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

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows :

"We respectfully request your written opinion upon the following question, to-wit :

Question: Audits of freight bills have been made in this office and considerable money returned to the State for overcharges of common carriers. The question arises as to whether the statute of limitations would prevent the State of Ohio from recovering overcharges from carriers after a period of three years from date of delivery of property. Letters on this matter, submitted by the Cleveland Freight Service Company, are enclosed for your information."

The provision of law to which you refer is Section 11221-1 of the General Code. This section was enacted in 111 Ohio Laws, p. 177, and became effective July 15, 1925. It provides as follows:

"All actions by carriers for recovery of their charges or any part thereof, arising out of the intrastate transportation of persons or property in Ohio, and all actions against carriers, upon recovery of overcharges, collected by such carriers, for the intrastate transportation of persons or property in Ohio, shall be begun within three (3) years of the time the cause of action accrues and not thereafter.

The cause of action in respect to a shipment of property shall, for the purposes of this section, be deemed to accrue upon the delivery, or tender of delivery thereof, by the carrier and not thereafter.

The term 'overcharge' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the public utilities commission.

This section shall apply only to causes of action accruing after the effective date hereof."

It will be noted that among the provisions therein is a provision that all actions against carriers for recovery of overcharges collected by such carriers, for the intrastate transportation of persons or property in Ohio, shall be begun within three years of the time the cause of action accrues and not thereafter.

It will also be noted that the section provides that the cause of action in respect to a shipment of property shall, for the purposes of this section, be deemed to accrue upon the delivery, or tender of delivery thereof, by the carrier of such property.

Your attention is also directed to the last provision therein, that the section shall apply only to causes of action accruing after the effective date of said section, to-wit, July 15, 1925.

Since three years have not yet elapsed since said section became effective, there would be no action against a carrier which would be barred by said section at this time.

I may advise you, however, that said section does not apply to the state of Ohio, and does not in its present form prevent the state from bringing an action against a carrier at any time.

In the case of *State ex rel. vs. Board of Public Works*, 36 O. S. 409, the court held:

"The state is not bound by the terms of a general statute, unless it be so expressly enacted."

There is no language found in said section which expressly makes it applicable to the state of Ohio.

The rule as laid down by the Supreme Court in the above case has been followed at all times.

I also find in the case of *Board of Trustees of Ohio State University vs. Satterfield*, 2 O. C. C., 86, at p. 94, the following language:

"The statute of limitations does not run against the United States, or the state."

The same rule is found in 25 Cyc., p. 1006, as follows:

"In the absence of express statutory provision to the contrary, statutes of limitation do not as general rule run against the sovereign or government, whether state or federal."

It is therefore my opinion that:

1. Section 11221, General Code, which provides for limitation of actions against carriers, does not apply to any cause of action accruing before the effective date thereof, to-wit, July 15, 1925.
2. Said section does not apply to claims of the state of Ohio against a carrier for recovery of overcharges for transportation of persons or property in Ohio.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

1364.

#### SCHOOLS—TRANSPORTATION OF PUPILS—RULES FOR COMPUTING DISTANCE DISCUSSED.

##### SYLLABUS:

1. *In determining whether or not elementary school pupils live more than two miles from the school to which they are assigned, the distance should be computed in accordance with the rules adopted by the courts, and not as the distance a school bus would travel if the pupils were transported by the board of education.*

2. *Under the law providing that in all school districts transportation shall be provided for resident elementary school pupils who live more than two miles from the school to which they are assigned, the distance should be computed by beginning at the door of the school house which would be the most accessible to the pupil in traveling from his home "by the nearest practicable route for travel accessible to such pupil," thence by the regularly used path to the center of the highway, thence along the center of the highway which is the nearest practicable route for travel accessible to such pupil to a point opposite the entrance to the curtilage of the residence of the pupil, (or the path or traveled way leading to the entrance to such curtilage as the case may be) thence to the entrance of the curtilage, along the path or traveled way to said entrance if the curtilage of the residence of the pupil does not extend to the highway.*

COLUMBUS, OHIO, December 14, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows: