

For this benefit the school boards ought in justice to pay, and hence the intervener, that is, the parent who performed the duty, is entitled to compensation therefor. \* \* \*

Passing to the question of the appropriateness of the intervention of the parent, the father was surely the proper person to perform the obligation. \* \* \*

The performance of this legal obligation was a benefit to the school boards because it saved them from the necessity of performing the duty themselves. Hence the retention of the benefit was inequitable, although there was no contract between the parties. \* \* \* "

It is the obligation of every parent and guardian, whether or not he be a member of the board of education, to comply with the laws relating to compulsory education, and to see that his children or wards attend school, and the fact that the transportation which the law provides should be furnished, has not been supplied, cannot be pleaded as an excuse for the failure of the children to attend school, as stated in the latter part of Section 7731-4, supra.

In my opinion, the obligation of school boards to residents of the district, and the rights of these residents to the advantages afforded by the laws relating to the furnishing of school privileges exist as between the board and all the residents of the district, including the board members themselves. A parent by becoming a member of a school board does not lose his identity as a parent, or surrender any rights he may have as such parent, neither does he thereby become relieved from any obligation he may have as such parent.

While the statute in providing the manner by which school boards may discharge their obligations with reference to transportation of school pupils uses the word "agrees," such agreement can not be construed as a contract, in the sense that the word is commonly used or in the sense intended by the use of the word "contract" in Section 4757, General Code. An obligation rests on the board of education by virtue of law to do the things which Section 7731-4, supra, permits the board to agree to do.

Specifically answering your question, it is my opinion that where in lieu of furnishing transportation for school children entitled thereto, local boards of education agree to pay the parents or guardians of such children transporting their children or wards to school, payment therefor may be made to any such parent or guardian within the district, including those who may be members of the board of education.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1535.

TAX AND TAXATION—CORPORATION ENGAGED IN DUAL BUSINESS OF (1) FURNISHING ELECTRICITY, AND (2) OPERATING ELECTRIC RAILROAD—REPORTS TO TAX COMMISSION FILED IN BOTH CAPACITIES—EXCISE TAX LEVIED ON EACH BRANCH SEPARATELY.

**SYLLABUS:**

*A person, firm, association or corporation engaged in the dual business of (1) supplying electricity for light, heat or power purposes, to consumers within this state, and (2) operating a street, suburban or interurban railroad wholly or partially within this*

*state, must file with the Tax Commission reports in both capacities, and should be charged with an excise tax on the receipts from its electric light business at the rate prescribed for electric light companies in Section 5483, General Code, and on the earnings from its street, suburban or interurban business at the rate prescribed for street, suburban or interurban companies in Section 5484, General Code.*

COLUMBUS, OHIO, January 6, 1928.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your request for my opinion is as follows:

“Among the public utilities which file excise tax reports with this commission are a number which are engaged in the dual business of

1. Supplying electricity for light, heat or power purposes, to consumers within this state.
2. Operating a street, suburban or interurban railroad company, wholly or partially within this state.

If classified and treated solely as electric light companies, these utilities are now subject to an excise tax of one and thirty-five hundredths per cent of their gross receipts, and if classified and treated solely as street, suburban or interurban railroad companies, their excise tax is only one and two-tenths per cent of their gross earnings.

When administering the excise tax law, should the commission segregate the receipts of such a utility as an electric light company from its earnings as a street or other railroad company and so certify the same to the Auditor of State? Or has the commission power to determine to which of the two classes the utility belongs and certify accordingly?”

The answer to your questions involves consideration of the following sections of the General Code:

Sec. 5470. “Each public utility except street, suburban and interurban railroad and railroad companies, doing business in this state, shall, annually, on or before the first day of August, and each street, suburban and interurban railroad and railroad company, shall, annually, on or before the first day of September, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state, of such association or corporation, if an association or corporation, make and file with the commission a statement in such form as the commission may prescribe.”

Section 5471 specifies the general information to be contained in the report, as follows:

“The statement, provided for in the preceding section, shall contain:

1. The name of the company.
- The nature of the company, whether a person or persons or association or corporation, and under the laws of what state or county organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in this state.”

Section 5473 applies only to street, suburban and interurban railroad companies, and specifies additional information to be reported by those companies, as follows:

"In the case of each street, suburban or interurban railroad company, such statements shall also contain the entire gross earnings, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June next preceding, from whatever source derived, for business done within this state, excluding therefrom all earnings derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total gross earnings of such company for such period in this state from business done within this state."

Section 5474 applies to all utility companies (except street, suburban and interurban companies, which are covered in Section 5473, supra, and express, telephone and telegraph companies which are covered in Section 5473-1, General Code) and provides as follows:

"In the case of all such public utilities except railroad, street, suburban and interurban railroad companies and express, telegraph and telephone companies, such statement shall also contain the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, from whatever source derived, for business done within this state for the next year preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons or associations, but this shall not apply to receipts from interstate business, or business done for the federal government. Such statement shall also contain the total gross receipts of such company for such period in this state from business done within the state."

Section 5475 provides for a determination by The Tax Commission of the

"entire gross receipts of each electric light \* \* \* company for business done within this state for the year next preceding the first day of May, excluding therefrom \* \* \* all receipts derived wholly from interstate business or business done for the federal government."

Section 5478 makes a similar provision as to street, suburban and interurban railroad companies, as follows:

"On the first Monday of October, the commission shall ascertain and determine the gross earnings, as herein provided, of each street, suburban and interurban railroad company whose line is wholly or partially within this state, for the year ending on the thirtieth day of June next preceding, excluding therefrom, as to each of the companies named in this section, all earnings derived wholly from interstate business or business done for the federal government. The amount so ascertained by the commission shall be the gross earnings of such street, suburban or interurban railroad company for such year."

Section 5481 requires the Tax Commission to certify to the Auditor of State:

"On the first Monday of October \* \* \* the amount of the gross receipts so determined, of electric light \* \* \* companies, for the year covered by its annual report to the commission \* \* \* ."

Section 5482 makes similar provision as to street, suburban and interurban railroad companies as follows:

"On the first Monday of November the commission shall certify to the Auditor of State the amount of the gross earnings so determined of each street, suburban and interurban railroad and railroad company for the year ending on the thirtieth day of June next preceding."

Section 5483, (112 O. L. 268) fixes the tax to be paid by electric light companies, as follows:

"In the month of October, annually, the Auditor of State shall charge, for collection from each electric light \* \* \* company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking one and thirty-five one-hundredths per cent of all such gross receipts, which tax shall not be less than ten dollars in any case."

Section 5484 makes similar provision as to street, suburban and interurban railroads, as follows:

"In the month of November, the Auditor of State shall charge for collection from each street, suburban and interurban railroad company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission as the gross earnings of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking one and two-tenths per cent of all gross earnings, which tax shall not be less than ten dollars in any case."

From the foregoing it will be seen that a distinction is made between electric light companies and street, suburban and interurban railroad companies, as to the contents of the report, the date of determination by the commission, the basis of the determination, the date of charging the tax and the basis of the tax.

Section 5416, General Code, contains the following definitions:

"That any person, or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

\* \* \*

When engaged in the business of supplying electricity for light, heat or power purposes, to consumers within this state is an electric light company;

\* \* \*

When engaged in the business of operating a street, suburban or interurban railroad company, wholly or partially within this state \* \* \* is a street, suburban or interurban railroad company."

From these definitions it will be seen that the nature of the business done determines the status of the company for the purposes of the excise tax, and from the other sections hereinabove set out it is apparent that the tax in question is in the

nature of an occupational tax, i. e., a tax based upon the nature and amount of business done, rather than upon the person or corporation as such.

Syllabus of *City of Cincinnati, et al., vs. A. T. & T. Company*, 112 O. S. 493, is as follows:

“Sections 5483, 5485 and 5486, respectively, lay an occupational tax upon telephone companies, telegraph companies and railroad companies.”

It is therefore apparent that the companies mentioned in your letter, being engaged in both classes of business, are included in both classes for the purposes of the excise tax imposed by these sections. The tax being imposed on the right to engage in a certain business, a person or company is only required to pay upon its receipts or earnings as the case may be, derived from that business.

It follows, therefore, that such a company as you describe must segregate its business, make its reports accordingly, and that the tax must be imposed at the rates applicable to each class of business.

This was the conclusion reached in the case of *The Youngstown & Ohio River R. R. Co. vs. Poland*, 10 O. N. P. (N. S.) 617, as to railroads. The fourth headnote is as follows:

“But where a road carried on a part of its business as an interurban and the remainder as a steam road, the excise tax will be assessed against the company in its two capacities.”

Also in the case of *State vs. Railroad*, 18 O. N. P. (N. S.) 393, the second headnote is as follows:

“A single transportation operation may be divided into two parts, and the carrier may for the purpose of fixing its excise tax be regarded as a railroad company as to a part of its business and as an interurban railroad company as to the remainder.”

The distinction thus made between railroad operations and interurban railroad operations applies equally to that between street, suburban or interurban railroad operations and electric light company operations. In my opinion the same rule should be applied.

Answering your question specifically it is my opinion that a person, firm, association or corporation engaged in the dual business of (1) supplying electricity for light, heat or power purposes, to consumers within this state, and (2) operating a street, suburban or interurban railroad wholly or partially within this state, must file with the Tax Commission reports in both capacities, and should be charged with an excise tax on the receipts from its electric light business at the rate prescribed for electric light companies in Section 5483, General Code, and on the earnings from its street, suburban or interurban companies in Section 5484, General Code. When administering the excise tax law the Tax Commission should segregate the gross receipts of such a utility from its business of supplying electricity for light, heat or power purposes from its gross earnings arising from the operation of a street or other railroad and separately certify each to the Auditor of State.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*