

"The Legislature is presumed to have had former statutes before it, to have been acquainted with their judicial construction, and to have passed new statutes on the same subject with reference thereto."

Without further extending this discussion, it is my opinion, in specific answer to your question, that where the judge of the court of common pleas has failed to appoint a criminal bailiff or a court constable, as provided in sections 1541 and 1692, it is the duty of the sheriff, by virtue of section 2833, General Code, to attend upon the common pleas court in both criminal and civil cases.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2425.

MOTOR VEHICLE—NEW LICENSES NECESSARY FOR MOTOR VEHICLE ACQUIRED PURSUANT TO CONSOLIDATION AGREEMENT BETWEEN CONSTITUENT CORPORATIONS.

SYLLABUS:

Where constituent corporations consolidate to form a new corporation, such consolidated corporation must procure new registration and licenses for the motor vehicles acquired pursuant to such consolidation agreement from the constituent corporations, even though such motor vehicles are already registered and licensed by the constituent corporations.

COLUMBUS, OHIO, March 29, 1934.

HON. GLEN M. DAILY, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Corporations A, B, C and D, all organized under the laws of the State of Ohio, and each owning motor vehicle equipment for which license tags have been purchased for the full year of 1933, desire to consolidate pursuant to Section 8623-67 et seq. of the Ohio General Code, to form a new corporation, namely corporation X.

QUESTION: Is the new corporation X required to purchase new license plates for the motor vehicles acquired pursuant to the consolidation, and theretofore owned by corporations A, B, C and D, or will the new corporation X be authorized to use the license tags purchased by corporations A, B, C and D? In other words, is there or is there not authority in Section 6294-1 or any other section of the Motor Vehicle Act to require corporation X to purchase new license plates for the motor vehicles acquired pursuant to the consolidation agreement?"

Section 8623-67 of the General Code, states in part:

"Any two or more corporations organized under this act or any previous corporation act of this state may consolidate into a single

corporation hereinafter called 'consolidated corporation,' which may be any one of such constituent corporations or a new corporation to be formed by such consolidation, * * *."

Section 8623-68 provides, inter alia:

"When the agreement of consolidation is signed, acknowledged and filed as required in the preceding section the separate existence of all of the constituent corporations, or all of the constituent corporations except the one into which such constituent corporations have been merged, as the case may be, shall cease, except for the limited purpose hereinafter specified, and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, * * *."

Such consolidated corporation shall be subject to all the liabilities and duties of each of such corporations so consolidated; *and all property, real, personal and mixed*, and all debts and liabilities due to any of said constituent corporations on whatever account, as well for subscriptions for shares as all other things in action of or belonging to each of such corporations, shall be vested in the consolidated corporation, *and all property, rights, privileges, powers, franchises, and immunities and all and every other interest* shall thereafter be as fully and effectually the property of the consolidated corporation as they were the property of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state vested in any of such corporations, shall not revert or be in any way impaired by reason of such consolidation; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (Italics the writer's.)

You refer me in your inquiry to Section 6294-1 of the General Code, which provides in part:

"Upon the transfer of ownership of a motor vehicle its registration shall expire, and it shall be the duty of the original owner to immediately notify the director of highways of the name and address of the new owner and return to the director of highways the registration certificate for cancellation. The original owner shall also remove number plates from a motor vehicle upon transfer of ownership of such vehicle.* * *."

I shall give you a short review of the opinions of this office relative to Section 6294-1, General Code. I call your attention to Opinions of the Attorney General for 1928, Vol. II, page 1135, which held as disclosed by the syllabus:

"Under the provisions of Section 6294-1, General Code, the privilege of transferring number plates from the original car to another car is personal to the original owner, and the number plates may not be assigned for transfer to the new owner of the car."

In the course of this opinion at page 1136, it is stated:

"You inquire 'whether or not it is necessary for the new owners who have purchased the assets of a corporation to procure new license plates for trucks taken over from the old corporation.' If at the time of the purchase all the assets of the old corporation are purchased by a transfer of its capital stock and the purchaser is the owner and holder of the assets through the ownership of the capital stock and is owning and operating it as the same original entity, it is my opinion that it would not be required to purchase new license plates. In that event the separate entity would still be the owner within the meaning of the law. If, on the other hand, the trucks are owned and operated after transfer as the property of the N. O. P. and L. Company, then it would be necessary, under the sections above noted, for the new owner to make the application and furnish the necessary information and pay for new license plates, and it would not be entitled to use the old plates in that event."

I also refer you to the Opinions of the Attorney General for 1929, Vol. I. page 557, which held as disclosed by the syllabus:

"The Railway Express Agency Inc. which took over by legal transfer the motor vehicles formerly owned and used by the American Railway Express Company in the conduct of its business in this state, is required to make application for the registration of such motor vehicles before permitting the same to be driven upon the public roads, highways and streets of this state, and to pay therefor the proportion of the normal tax with respect to said several motor vehicles provided for by Section 6295, General Code."

The facts in the request in the above opinion were that the American Railway Express Company, a consolidation of various express companies, was taken over by the Railway Express Agency, Inc., and the Railway Express Agency, Inc., was a corporation and legal entity wholly separate and distinct from the American Railway Express Company. It is stated at page 559 of the opinion:

"* * * It follows, therefore, that where the owner of a motor vehicle, who has filed an application for the registration of such motor vehicle and has paid the annual license tax or fee therefor, sells or transfers such motor vehicle to another person during such current year, the license issued to the original owner on such motor vehicle cannot be transferred to the vendee or transferee of such motor vehicle; but that such vendee or transferee, as a condition to his right to operate such motor vehicle upon the public roads or high-

ways of this state, is required to file an application for the registration of such motor vehicle and pay therefor such part of the normal tax as is provided by the provisions of Section 6295, General Code.
* * *

I also call your attention to an opinion of my immediate predecessor found in Opinions of the Attorney General for 1931, Vol. II, page 692, which held as disclosed by the syllabus:

“Where a corporation changes its name by amendment of its articles of incorporation, there is no authority to require the purchase of new license plates for motor vehicles theretofore owned by the corporation and registered under its original name.”

It is stated at page 693 of the above opinion:

“* * * That the issuance of new license plates is necessary where there is a change in corporate entity is manifest from my opinion to you, found in Opinions of the Attorney General for 1929 at page 557, which dealt with the transfer of the property of the American Railway Express Company to the Railway Express Agency, Inc. It was there held that the issuance of new license plates was required, but you will observe that on page 558 I stated that the ‘Railway Express Agency, Inc., is a corporation and legal entity wholly separate and distinct from the American Railway Express Company.’ Again, in Opinions of the Attorney General for 1928, at page 1135, the same subject matter was under discussion. Mr. Turner in his conclusion clearly shows that *the necessity for new license plates is dependent upon whether there is a transfer of ownership from one legal entity to another.*

Difficult questions may arise in connection with corporate consolidations or mergers, but the proper rule to be applied is clear in the case now under consideration. There being but one corporate entity, there can be but one answer to your question.” (Italics the writer’s.)

Under the facts you have outlined in your inquiry, “X”, the consolidated corporation will be a new legal entity, separate and distinct from the constituent corporations which will consolidate to form it, and there will be a transfer of ownership of the particular motor vehicles in question from the constituent corporations to the new legal entity, “X.”

Under Section 8623-68, General Code, quoted in part supra, if the constituent corporations merged into one of the old corporations rather than forming a new consolidated corporation, the old corporation might not have to procure new licenses for the motor vehicles it itself had already registered, inasmuch as this situation would be comparable to a mere change of name and would be covered by the reasoning of the opinion found in Opinions of the Attorney General for 1931, Vol. II, page 692, quoted supra. However, under the facts presented by your inquiry the constituent corporations plan on consolidating into an entirely new and distinct legal entity, and consequently it is my opinion that such new consolidated corporation must procure

new registration and licenses for the motor vehicles, acquired pursuant to the consolidation agreement from the constituent corporations, inasmuch as the necessity for new license plates is dependent upon whether there is a transfer of ownership from one legal entity to another and in the proposed consolidation there would be such transfer.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2426.

CIVIL SERVICE—APPLICANT MAY NOT BE DENIED RIGHT TO
TAKE EXAMINATION BECAUSE OF FAILURE TO SET FORTH
HIS RACE IN APPLICATION OR ATTACH HIS PHOTOGRAPH
THERE TO.

SYLLABUS:

The Civil Service Commission of the State of Ohio may require persons applying for admission to an examination to set forth in such application, in addition to the matters specifically designated by section 486-11, General Code, such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought, but no person can be denied the right to take an examination by reason of his failure to set forth in his application his race or to attach thereto his photograph.

COLUMBUS, OHIO, March 29, 1934.

HON. FRANK CAVE, *Speaker, House of Representatives, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of Amended House Resolution No. 26, adopted March 21, 1934, which reads as follows:

“90th GENERAL ASSEMBLY
SECOND SPECIAL SESSION

Am. H. R. No. 26

1933-1934.

Mr. Gillespie.

A RESOLUTION

Relative to requesting the
Attorney General to submit
an opinion.

WHEREAS, the State Civil Service Commission requires all persons taking a civil service examination to disclose the identity of their race and, also, to submit a photograph of themselves:.....
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