

OPINION NO. 84-094**Syllabus:**

The packet seed inspection tax imposed by R.C. 907.13(G) is to be calculated based upon the wholesale value of the seed packets and not merely upon the wholesale value of the seeds contained in those packets.

To: Dale L. Locker, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1984

I have before me your request for my opinion concerning the sale by your Department of packet seed inspection stamps pursuant to R.C. 907.13(G). The specific language of R.C. 907.13(G) about which you have asked reads:

Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces or less, the lot container shall bear packet seed inspection stamps. Each stamp shall cost fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container. (Emphasis added.)

Your question asks "whether the Seed Packet Inspection Tax. . .should be computed using the entire weight of the package unit or the weight of the seed (less the weight of the packaging material) alone."

A member of your staff has indicated that you wish to know whether the tax should be computed based upon the value of the seeds in the packets as opposed to the actual selling price of the packets. Thus, your question is whether, pursuant to R.C. 907.13(G), your Department is to impose a tax of fifty cents upon every twenty-five dollars worth of seed which is sold in packets or upon every twenty-five dollars worth of packet cost. You have indicated in your letter that current methods of seed distribution sometimes result in drastic discrepancies in the selling price of a seed package and the actual value of the seeds in that package. You have given the examples of seeds which are sold in prefabricated strips or in flats which contain starter soil.

Of utmost importance in responding to your concern is the principle that the legislature should be held to mean that which is plainly expressed. Lemmon v. State, 77 Ohio St. 427, 83 N.E. 608 (1908); Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902). The language of R.C. 907.13(G) clearly provides for a tax based upon the wholesale value "of the packets." It is generally presumed that if the legislature had intended a different result, it would have found apt words to express it. This is particularly true where the legislature has used those words in another connection. See Shafer v. Streicher, 105 Ohio St. 528, 138 N.E. 65 (1922); Scovern v. State, 6 Ohio St. 288 (1856). In this regard, comparison should be made to the

language used by the legislature in R.C. 907.13(B). In that subsection, the General Assembly has clearly provided for seed inspection fees at different rates for every one hundred pounds, based upon the type of seed being sold. For example, R.C. 907.13(B)(1) provides that the Ohio seed inspection fees are "[f]or small grains and soybeans, two cents per one hundred pounds." Had the legislature intended to base the packet seed inspection tax upon the type or weight of the seed contained in the packet it could easily have done so. It clearly chose, however, to calculate the tax based upon the "wholesale value of the packets."

Based upon the foregoing, it is my opinion and you are hereby advised, that the packet seed inspection tax imposed by R.C. 907.13(G) is to be calculated based upon the wholesale value of the seed packets and not merely upon the wholesale value of the seeds contained in those packets.