

It is obvious that, in addition to being an employment agency, in order to make such agency subject to the provisions of the various sections of the Code here involved, it would have to be engaged in such services and charge a fee or receive compensation, service or benefit, either by way of demand, contract or gratuity in connection with the transaction of furnishing the service.

Your letter in the first instance states that the company is operating a so-called *free* employment agency. You also state that the company is using its office to secure applicants from fee charging agencies. If you mean by such statement that the company, when called upon to furnish some employer with an operator, applies to a regular licensed agency for the name of such a person to furnish the employer, I am of the opinion that the company would only be a go-between, and that such acts would not make the B. A. M. Company an employment agency within the meaning of the sections of the General Code here under consideration.

Another inference might, however, be placed upon the state of facts given in your letter and that is, that the applicants for positions make their applications and list their names direct with the B. A. M. Company. In such cases, if I correctly understand your letter, no fee, compensation, service or benefit is exacted or accepted, excepting only such incidental benefit as may come from the fact that such applicants are familiar with the use of the B. A. M. Company's products. If that be the case and this company furnishes to the employer such person, I do not understand how a fee could be exacted by the licensed company, even though they had placed their name with that company, for the reason that the licensed company performed no services. It is also my opinion that there is nothing illegal about the B. A. M. Company's furnishing positions to only those who have taken a course furnished by that company. It is true, of course, that the company may benefit from the fact that the applicants are familiar with the use of its machines. However, I am of the opinion that such incidental benefit does not come within the definition of the word "hire" as that term is defined in Section 888, General Code. In this connection I am informed that this practice is adopted by practically all of the business colleges and other like institutions of the state.

A specific answer to your question depends upon the exact facts in each particular case and inasmuch as they are not given I cannot give you a specific answer other than hereinabove set forth. If, after reading the above discussion, you have any particular case or cases to which you are unable to apply the statutes above quoted, upon the submission of the facts of this office proper consideration will be given thereto.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2406.

TAX AND TAXATION—ADDITIONAL TAX LEVY OUTSIDE MAXIMUM FIFTEEN MILL LIMITATION FOR TOWNSHIP ROAD CONSTRUCTION NOT AUTHORIZED UNDER SECTION 5625-15 (7)—PERMISSIBLE UNDER SECTION 5625-15 (6).

SYLLABUS:

1. *The trustees of a township may not under the provisions of paragraph 7 of Section 5625-15, General Code, as enacted in 112 O. L. 397, submit to a vote of the electors of the township the question of an additional tax levy outside of the combined maximum fifteen mill limitation for the general construction, reconstruction, resurfacing and repair of roads and bridges in the township.*

2. *The trustees of a township, under the authority of paragraph 6 of Section 5625-15, General Code, may submit to a vote of the electors of the township the question of an additional levy of taxes outside of the fifteen mill limitation for the construction or reconstruction of a township road, where such construction or reconstruction is a permanent improvement for which the township trustees might issue bonds under the authority of Section 2293-2, General Code.*

COLUMBUS, OHIO, July 30, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 5625-15, 112 O. L., Page 397, provides that the taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

Paragraph 7 of this section then provides, ‘for the general construction, reconstruction, resurfacing and repair of roads and bridges in counties.’

QUESTION 1. May the Trustees of a township under the provisions of this section submit to a vote of the people the question of an additional levy outside of the fifteen mill limitation for the construction, reconstruction, resurfacing and repair generally of township roads and bridges.

QUESTION 2. Under paragraph 6 of the section, may the Trustees of a township submit to a vote of the people the question of the levy of tax outside of the fifteen mill limitation for the construction or reconstruction of a township road?”

Section 5625-15, General Code, as enacted in 112 O. L. 397, so far as the same is applicable to the questions presented in your communication, provides as follows:

“The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

* * *

6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.

7. For the general construction, reconstruction, resurfacing and repair of roads and bridges in counties.

Such resolution shall be confined in a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. The number of years shall be any number not exceeding five, except that when

the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

Such resolution shall go into immediate effect upon its passage, and no publication of the same shall be necessary other than that provided for in the notice of election."

Section 5625-17 et seq., General Code, provide the procedure for submitting the question of such increased levies to the vote of the electors of the subdivision.

In the consideration of the questions here presented certain provisions of Section 5625-6, General Code, may be noted. This section authorizes special tax levies without a vote of the people within the combined maximum fifteen mill limitation for the following purposes, among others, to-wit:

"* * *

e. In the case of a county, for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges thereon.

* * *

g. In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

* * *"

Reading the provisions of Section 5625-15, General Code, in connection with those of Section 5625-6, General Code, above quoted, it is quite clear that the provisions of paragraph "7" of Section 5625-15, General Code, authorizing the levy of certain taxes outside of the combined maximum fifteen mill limitation, refer to the same kind of taxes as those provided for by paragraph "e" of Section 5625-6, General Code, within said fifteen mill limitation, that is, to county levies for the construction, reconstruction, resurfacing and repair of roads and bridges therein.

The tax levies authorized by paragraph "7" of Section 5625-15, General Code, outside of the fifteen mill limitation, being limited to county levies, there is nothing in the provisions of said paragraph or said section of the General Code, authorizing the trustees of a township to submit to the electors the question of an additional levy outside of the fifteen mill limitation for the construction, reconstruction, resurfacing or repair of a township road or bridge and your first question must therefore be answered in the negative.

With respect to your second question it will be noted that paragraph "6" of Section 5625-15, General Code, authorizes the taxing authority of any subdivision to submit to the electors thereof the question of a tax levy outside of the fifteen mill combined maximum limitation for the construction or acquisition of any specific permanent improvement or class of improvements, which the taxing authority of said subdivision may include in a single bond issue.

Aside from the provisions of Section 3298-15e, General Code, authorizing township trustees to issue bonds in anticipation of the collection of taxes and assessments to pay the estimated compensation, damages, costs and expenses of township road improvements, Section 2293-2, General Code (112 v. 365), provides that:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement, which such subdivision is authorized to acquire or construct."

In this connection Section 2293-1, General Code, provides that:

“ ‘Permanent improvement’ or ‘improvement’ shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways.”

Sections 3298-1 et seq., General Code, authorize the board of township trustees of any township to construct, reconstruct, resurface or improve any public road or roads or part thereof under the jurisdiction of such township.

Assuming therefore, in answer to your second question, that the proposed township road construction or reconstruction therein referred to is a permanent improvement within the meaning of the provisions of Section 2293-1, General Code, above quoted, the trustees of the township would have power to issue the bonds of the township for the purpose of constructing such improvement under the authority of Section 2293-2, General Code. It therefore follows that in such case the road construction or improvement referred to in your question would be the construction of a permanent improvement for which the board of township trustees as the taxing authority of the subdivision could submit to the electors the question of a tax levy outside of the fifteen mill limitation for the purpose of paying the compensation, damages, costs and expenses of such improvement. Your second question is therefore accordingly answered in the affirmative.

The conclusions reached by me in this opinion are in accord with those of Opinion No. 2404 addressed to Honorable J. R. Pollock, Prosecuting Attorney, Defiance, Ohio, under date of July 30, 1928, a copy of which is herein enclosed.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2407.

DOGS—PENALTY PRESCRIBED UNDER SECTION 5652-7c, GENERAL CODE, APPLIES ONLY TO SELLERS—WHEN SUBJECT TO PENALTY

SYLLABUS:

1. *The penalty prescribed in Section 5652-7c, General Code, does not apply to the purchaser of a dog but only to the seller.*
2. *The county auditor or county dog warden may not examine and require an applicant for dog registration to divulge the name of the person from whom he purchases the dog.*
3. *Neither the county auditor nor county dog warden may require an applicant for dog registration to sign an affidavit that he did not own said dog on January 1, 1928.*
4. *Every person who owns, keeps or harbors a dog more than three months old prior to January 1, 1928, and fails to register such dog before January 1, 1928, is guilty of a misdemeanor and is subject to the penalty prescribed in Section 5652-14, General Code.*
5. *The owner, keeper or harbinger of a dog more than three months old prior to January 1, 1928, who registers the same after January 1, 1928, either before or after January 20, 1928, is still subject to the fine and costs as provided in Section 5652-14, General Code, if convicted.*