

the county in which they have jurisdiction to commit a prisoner to a jail of another county.

I am aware that under certain conditions these inferior courts may commit prisoners to the jail of their own county, but the order of commitment in such cases is made to the officer of the court from which it is issued and must be delivered by such officer to the sheriff of the county, otherwise the sheriff would have no authority to detain such prisoner.

The Sheriff of Stark County has no authority to enter into contracts to receive and care for prisoners committed to the jail of the county under favor of Sections 3170, 3171 and 3172, General Code.

The law makes specific provision for the fees the sheriff shall receive in such cases and I fail to see wherein any public purpose would be subserved on account of the existence of such contracts.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

524.

TAXES — OPERATION OF MOTOR VEHICLES—TAX LEVY,
AMENDED SUBSTITUTE HOUSE BILL 283—EFFECTIVE

SYLLABUS:

Section 6292, General Code, as amended by Amended Substitute House Bill No. 283 of the 92nd General Assembly, prescribing the rate of taxes levied by Section 6291, General Code, upon the operation of motor vehicles on the public roads or highways of this state, is a law providing for tax levies within the meaning of the term as used in Article II, Section 1d of the Constitution and went into effect April 16, 1937, when approved by the Governor.

COLUMBUS, OHIO, April 27, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“We have filed with us House Bill No. 283 which was passed by the General Assembly March 31st, signed by the Governor on April 16th, and filed in our office on April 19th.

There seems to be some question as to whether this bill is immediately effective on the date signed by the Governor, or as

to whether or not it becomes effective ninety days following the date on which it was filed.

I will appreciate your opinion relative to same."

Amended Substitute House Bill No. 283, to which you refer, is an act "To amend Section 6292 of the General Code, relative to the annual license tax for motor vehicles." Section 6291 is, strictly speaking, the section which levies an annual license tax upon the operation of motor vehicles on the public roads or highways of this state and defines the purpose of such tax. This section provides at the outset:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state for the purpose of * * * . Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the registrar or deputy registrar at the time of making application for registration as herein provided."

Section 6292, General Code, being the section with which we are here concerned, sets forth the rates of the taxes levied by Section 6291, General Code.

In view of the fact that Amended Substitute House Bill 283, which amends Section 6292, General Code, was not passed as an emergency measure, your question requires a determination of whether or not this section is a law "providing for tax levies." Article II, Section 1d of the Constitution provides that "Laws providing for tax levies * * * shall go into immediate effect." If such Section 6292 may be said to be a law providing for tax levies within the meaning of this phrase as used in the Constitution, the section as amended was in effect on April 16, 1937, the day when it was approved by the Governor. Article II, Section 16 of the Constitution; *State, ex rel. vs. Roose*, 90 O. S. 345.

The Supreme Court has laid down a test to determine whether a law provides for a tax levy within the meaning of the term as used in the Constitution, in the case of *State, ex rel. vs. Milroy*, 88 O. S. 301, wherein the court said at page 304:

"The general assembly did not, in this act, impose a tax, stating distinctly the object of the same, nor did it fix the amount or the percentage of value to be levied, nor did it designate persons or property against whom a levy was to be made. It merely imposed certain limitations and created an agency. The act cannot be said to be one providing for tax

levies,' within the meaning of those words as used in Section 1d of Article II of the Constitution."

The section of the General Code in question expressly fixes the amount of a tax levied on the operation of motor vehicles on the highways of this state and expressly designates the various kinds of motor vehicles and classes of motor vehicles against which the levy is made.

Consideration should next be given to the case of *State, ex rel. vs. Forney*, 108 O. S. 463, which held as set forth in the syllabus:

"1. Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable, construction.

2. The language of Section 1d, Article II of the Constitution, expressly enumerating certain exceptions to the people's right of referendum upon acts of the General Assembly, must be construed and applied with reference to this rule.

3. The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonymous with laws 'relating' to tax levies, or 'pertaining' to tax levies, or 'concerning' tax levies, or any agency or method provided for a tax levy by any local subdivision or authority."

This case held that an act passed April 30, 1923, entitled "An act to revise and codify the laws relating to the levy of taxes, and the issue of bonds by taxing subdivisions, and to establish a budget system for local expenditures," was not a law providing for tax levies. In the majority opinion at page 470, the court said:

"You cannot have a law 'providing for tax levies,' except its public purpose be stated; but, in addition thereto, such law must state the property subject to the tax, the rate of tax, the time when such tax is payable, and other elementary essentials of a taxation law."

While it is true that the act in question does not contain the provisions as to the purpose of the tax, it does, however, state "the property subject to the tax, (and) the rate of tax." The time when the tax is payable is contained in Section 6291.

The situation is not unlike that considered by this office in Opinions of the Attorney General for 1935, Vol I, page 648. My predecessor was there concerned with an act which amended a section of the Retail Sales Tax Law defining the retail sales which were taxes by another section

of the act not included in the amendment. The syllabus of this opinion is as follows:

“An act of the General Assembly defining ‘retail sale’ upon which an excise tax has been levied, is a law ‘providing for tax levies’ and not subject to referendum.”

At page 650, after quoting from the Forney case, the then Attorney General said:

“Here again the Supreme Court has recognized that a law ‘providing for tax levies must state the property subject to the tax’. In the instant case we are concerned not with a tax levy upon property but with an excise tax levied upon retail sales. It seems clear that a law providing for such tax levies must set forth the retail sales which are subject to the tax, just as a law levying a property tax must state the property subject to the tax. The statement as to the retail sales which are subject to the tax is contained in Senate Bill No. 68, defining ‘retail sale’. This act is accordingly inextricably interwoven with Section 5546-2, which is the tax levying section. Certainly a most essential and unseverable part of a law levying a tax on retail sales is the portion of such law defining that which is to be taxed. See Opinions of the Attorney General, 1927, Vol. II, page 1234.”

It is recognized that certain sections of an act may be subject to referendum while others may be held to be laws providing for tax levies and therefore not subject to referendum (see Opinions of the Attorney General for 1935, Vol. I, page 759). However, there is no authority for holding that a section which levies a tax at a rate prescribed in another section may go into immediate effect while the section providing the rate levied in the first section would not go into effect for ninety days and be subject to referendum. To so hold would serve to defeat the purpose of the framers of the Constitution in exempting from its referendum provisions laws providing for tax levies. This is true because in the case just cited the section levying the tax could be rendered ineffective if a referendum petition were filed to the section providing the rate of tax. Clearly, Section 6292, General Code, as amended by Amended Substitute House Bill No. 283 is inextricably interwoven with Section 6291, General Code, which is the tax levying section.

It is accordingly my opinion that Section 6292, General Code, as amended by Amended Substitute House Bill No. 283 of the 92nd General Assembly, prescribing the rate of taxes levied by Section 6291,

General Code, upon the operation of motor vehicles on the public roads or highways of this state, is a law providing for tax levies within the meaning of the term as used in Article II, Section 1d of the Constitution and went into effect April 16, 1937, when approved by the Governor.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

525.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$2,000.00.

COLUMBUS, OHIO, April 27, 1937.

State Employees Retirement Board, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Toledo City School Dist., Lucas
County, Ohio, \$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated February 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of January 19, 1935, being Opinion No. 3844.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.