

and hold these taxes, but they collect and hold them only on behalf of the various school districts. The 'county or township treasury' means not the physical place of deposit, but the funds deposited to the credit of the county or township. Therefore, if this writ issues, no money will be drawn from any county or township treasury. It will be drawn from a fund of the school districts placed for safe-keeping in the custody of the county officials."

The Legislature by the amendment of Section 7600, General Code, in 1929, recognized the existence of the county board of education fund and created as a subdivision of that fund the "county educational equalization fund," consisting of the moneys derived from the proceeds of the levy of two and sixty-five hundredths mills provided in Section 7575, General Code, in all school districts of the county school districts outside of city and exempted village school districts. It provided for the apportionment of this fund by the county board of education, but did not change the method of handling the fund or of paying out moneys from said fund.

It will be observed from the terms of Section 4744-3, General Code, that the county treasurer is the custodian of the fund, although the county auditor really has control of it. The said statute provides that after the county board of education certifies under oath to the state auditor the amount due from the State as its share of the salaries of the county and assistant county superintendents of each county school district for the next six months, the said state auditor shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund.

It is, of course, true that Section 4744-3, General Code, was enacted prior to the enactment of the so-called budget law in 1927, as was also the decision of the case of *State ex rel. Retirement Board vs. Kurtz, et al.*, supra, but I find nothing in the budget law that changes the status of the county board of education fund or the method of holding or handling the same.

I am, therefore, of the opinion that the county educational equalization fund, created by amended Section 7600, General Code, should be retained by the county treasurer as established by the county auditor, and moneys due to the several school districts, in accordance with apportionment made thereto by the county board of education, should be paid upon warrants issued by the county auditor, payable to the treasurers of the several school districts entitled to the same, and inasmuch as the county board of education does not have a treasurer, and the statute makes no provision for the payment to the county board of education of the county educational equalization fund, the same should not be paid in a lump sum to said board.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1751.

OIL BOTTLE—USE OF SUCH BOTTLE FOR SELLING OIL IN FILLING STATIONS UPHELD.

SYLLABUS:

Whether or not the use of certain oil bottles is in violation of law discussed.

COLUMBUS, OHIO, April 9, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"There has just recently been put on the market an oil bottle used for the sale of oil in filling stations. This bottle is 18 inches high and about $2\frac{3}{4}$ inches in diameter and is filled by the use of a machine which measures the oil into the bottle. This bottle is then sealed with a crown cap similar to the kind which are used on soft drink bottles and is put out with a guarantee that it will deliver one quart to the customer. These bottles are not sold but the oil emptied from the bottle into the machine and returned to the station to be refilled.

Our regulations in regard to oil bottles are found in our book of Specifications and Tolerances for Weighing and Measuring Devices on page 56. These regulations are, as I understand it, the same as have been adopted by the Bureau of Standards of the U. S. Department of Commerce. The question which we would like answered is:

"Would these bottles referred to above come under the heading of "Liquid Capacity Measures"?" or

"Would they come under the classification of a "Package" or "Container"?"

You will find on page 30 of the book referred to above the Interpretations and Instructions of the Package Law."

Section 7965 of the General Code makes the Director of Agriculture the state's sealer and gives him authority to make, promulgate and enforce such rules and regulations as may be necessary to the prompt and effective enforcement of the weights and measures laws of the state. Under authority granted the Director of Agriculture by the provisions of Section 7965, General Code, he promulgated, among a large number of regulations, certain regulations providing specifications for liquid measures which are grouped under the heading "Liquid Capacity Measures and Measuring Devices." The specifications under this heading, in so far as pertinent, are as follows:

"1. Liquid measures shall be made of metal, glass, earthenware, enameled ware, composition, or similar and suitable material, and shall be of sufficient strength and rigidity to withstand ordinary usage without becoming bent, indented, distorted, or otherwise damaged: Provided, however, That when the measure is made of iron or steel plated with tin, zinc, or copper, or is made of copper, the minimum thickness of the metal shall in no case be less than those given in the following table:

* * *

2. Liquid measures of the customary system shall be of one of the following capacities only: One gallon, a multiple of the gallon or a binary sub-multiple of the gallon; that is, a measure obtained by dividing the gallon by the number of 2 or by a power of the number 2.

3. Liquid measures shall be so constructed that the capacity is determined by a definite edge, plate, bar, or wire at or near the top of the measure. When one of the last three forms is employed the capacity shall be determined to the lowest portion of such plate, bar or wire.

4. No subdivided liquid measures shall be allowed, and the only reinforcing rings which may be used are those which are firmly attached to the outside of the measure and do not, by indentations or in any other manner, show divisions or lines on the inside surface of the measure.

5. The capacity of the measure shall be conspicuously, legibly, and permanently indicated on the side of the measure. This shall be in combination with the word 'Liquid' or the letters 'Liq' in the case of measures in which the word 'quart' or 'pint' occurs. In the case of measures made of earthenware,

enameled ware, or composition, this marking shall be of a different color than the measure."

The question arises whether or not the bottle described by you in your letter is a 'measure' within the meaning of these regulations. This question, I believe, is one of fact and must be determined by the facts bearing upon the intended use of such bottle. You state in your letter that the bottle is filled by the use of a machine which measures the oil and the bottle is then sealed with a crown cap similar to a cap used on soft drink bottles. It appears from these facts that the bottle is not used to measure the oil, but merely as a container to provide a convenient method of handling the oil by the attendants of the gas stations. Therefore I must conclude that the bottle in question is not a measure within the meaning of the foregoing regulations.

Consideration must be given at this point to other regulations which appear in the regulations of the Director of Agriculture under the heading of 'Lubricating-Oil Bottles', Regulations Nos. 1 and 2 under this heading are as follows:

"1. Bottles used for the sale of lubricating oil shall be made of clear uncolored glass and only in sizes heretofore specified under the heading 'Liquid Capacity Measures.' They shall be made to contain their indicated capacities at a temperature of 20 deg. C. (68 deg. F.), and they shall not be subdivided.

2. The overall heights of bottles of the various capacities shall not be greater than the values shown in the following table:

Capacity of bottle	Maximum height
2 quarts	12¾ inches
1 quart	10½ inches
1 pint	8¾ inches"

You will note that regulation No. 1, quoted above, though it provides that sizes of the bottles referred to in the regulation shall be 'only in the sizes heretofore specified under the heading Liquid Capacity Measures', it does not contain any provision which justifies an interpretation that the bottles referred to in these regulations are bottles used as a measure. The regulations refer to 'bottles used for the sale of lubricating oil'. It becomes necessary to determine what is the intended meaning of 'used for the sale'. It must be borne in mind that the bottles in question are not sold to the customers but are used by the attendant of the gas station as a means of carrying the oil from the gas station to the automobile of the customer. The words 'used for' do not have any technical meaning attached to them and they should be construed in their ordinary signification. A bottle 'used for the sale of oil' means a bottle used in connection with the sale of oil, that is, a bottle is used for the sale where the bottle is sold with its contents. A bottle used as a container, in the manner described by you in your letter, is not a bottle used for the sale of oil within the meaning of the regulations of the Director of Agriculture.

I now direct my attention to your inquiry as to whether or not the bottle described in your letter comes under the classification of a package. I assume that you desire to know whether or not this bottle is covered by the provisions of Section 13128 of the General Code. Section 13128 of the General Code provides in part as follows:

"Whoever puts up or packs goods or articles sold by weight or count into a sack, bag, barrel, case or package, or whoever puts up or fills a bottle, barrel, keg, drum, can or other container with any commodity sold or offered for sale

by liquid measure, shall mark thereon in plain letters and figures the exact quantity of the contents thereof in terms of weight, measure or numerical count; provided, however, that reasonable tolerances and variations and also exemptions as to small packages shall be established by rules made by the Secretary of Agriculture and shall conform to those of the federal law, and provided, further, that this act shall not apply to such packages or containers, weighed, put up, packed or filled in the presence of the customer."

From a reading of this statute it is apparent that whoever puts up or fills a bottle with a commodity sold or offered for sale by liquid measure must comply with the provisions of this section. When a person puts up a bottle of oil in the manner set forth in your letter and the bottle with the commodity is not sold or offered for sale, but the commodity is sold or offered for sale without the bottle and the bottle is merely used as a container to carry the oil, such person is not subject to the provisions of this section.

In view of the conclusions reached by me I am inclined to the view that the bottles described by you in your letter are not liquid measures or bottles used for the sale of lubricating oil within the meaning of the regulations of the Director of Agriculture nor is a person putting up such bottles where the contents are sold without the bottle, required to comply with the provisions of Section 13128, General Code.

I am therefore of the opinion that the use of the bottles in the manner indicated by you is not in violation of law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1752.

APPROVAL, LEASE FOR OFFICE ROOMS FOR USE OF THE DEPARTMENT OF INDUSTRIAL RELATIONS IN THE ULMER BUILDING, CLEVELAND, OHIO.

COLUMBUS, OHIO, April 9, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between the Public Square Improvement Company of Cleveland, Ohio, as lessor, and the State of Ohio, acting by and through yourself, as Superintendent of Public Works, for the Department of Industrial Relations, as lessee. By the terms of this lease, the State is granted the use for office purposes of Rooms 708 and 709 in the Ulmer Building, Cleveland, Ohio, for the period of eleven months beginning on the first day of February, 1930, and ending on the thirty-first day of December, 1930, in consideration of a total rental of twelve hundred and sixty-five dollars, payable in monthly installments of one hundred fifteen dollars.

You have also submitted an encumbrance record, No. 1083, bearing the certificate of the Director of Finance, to the effect that there is legally appropriated an unencumbered balance sufficient to pay the first five months' rent for the above mentioned premises in the sum of \$575.00.

You have further submitted a copy of the proceedings of the board of directors, certified to by the president and secretary of the company, authorizing the secretary to enter into the lease herein considered.