

4253.

APPROVAL, NOTES OF NILES CITY SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$47,000.00.

COLUMBUS, OHIO, April 18, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4254.

TAX AND TAXATION—PUBLISHER OF NEWSPAPER AND PERSONS MAKING BOOKS ARE MANUFACTURERS WITHIN MEANING OF SECTION 5388, G. C.

SYLLABUS:

The publisher of a newspaper is a manufacturer within the meaning of that term as used in section 5388, General Code, providing for the valuation at which the personal property of a manufacturer used in business shall be listed.

Job printers and persons engaged in the business of making books, blank books and stationery and selling the same for profit are manufacturers within the provisions of section 5388, General Code.

COLUMBUS, OHIO, April 18, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

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

“Considerable question has arisen relative to the proper classification of newspaper publishers, job printers and similar taxpayers under the provisions of Amended Senate Bill 323.

It has been claimed that newspaper publishers, etc., are manufacturers and consequently entitled to a 50% rate on their engines, machinery, tools and equipment, and inventories, rather than a 70% assessment. We therefore request your formal opinion regarding the proper classification of newspaper publishers, job printers and other similar taxpayers.”

The questions presented in your communication require a consideration of the following sections of the General Code as they have been amended or enacted by the 89th General Assembly in and by Amended Senate Bill No. 323, 114 O. L. 719, 720.

Sec. 5385. “A person who purchases, receives or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, is a manufacturer, and, when he is required to return a statement of the amount of his personal property used in business, he shall include therein the

average value estimated, as hereinafter provided, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining, and of all articles which were at any time by him manufactured or changed in any way, either by combination or rectifying, or refining or adding thereto, (separately listing finished products not kept or stored at the place of manufacture or at a warehouse in the same county therewith), which, from time to time, he has had on hand during the year next previous to listing day annually, if he has been engaged in such manufacturing business so long, and if not, then during the time he has been so engaged."

Sec. 5386. "Such average value shall be ascertained by taking the value of all property subject to be listed on the average basis, owned by such manufacturer, on the last business day of each month the manufacturer was engaged in business during the year, adding such monthly values together and dividing the result by the number of months the manufacturer was engaged in such business during the year. Such result shall be the average value to be listed. A manufacturer shall also list all engines and machinery of every description used, or designed to be used, in refining or manufacturing, and all tools and implements of every kind used, or designed to be used, for such purpose, owned or used by such manufacturer."

Sec. 5388. "Excepting as herein otherwise provided, personal property shall be listed and assessed at seventy per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the time as of which it is required to be estimated on the average basis, as the case may be. * * *

Personal property of the following kinds, used in business, shall be listed and assessed at fifty per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the times as of which it is required to be estimated on the average basis, as the case may be:

(1) All engines, machinery, tools and implements of a manufacturer mentioned in section 5386 of the General Code, and all engines and machinery of every description used, or designed to be used in mining, and all tools and implements of every kind used, or designed to be used for such purpose, excepting as provided in the last paragraph of this section, and all engines, machinery, tools, implements and domestic animals used in agriculture.

(2) The average value of all articles purchased, received or otherwise held by a manufacturer for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining; the average value of all articles which were at any time by him manufactured or changed in any way, either by combining or rectifying, or refining or adding thereto, but not including finished products unless kept or stored at the place of manufacture or at a warehouse in the same county therewith; and agricultural products on farms.

Boilers, machinery, equipment and personal property used for the generation or distribution of electricity other than for the use of the person generating or distributing the same shall be listed and assessed at the true value thereof in money, on the day as of which they are required to be listed, anything in this section to the contrary notwithstanding."

The significance of the questions presented by you lies in the fact that although under the provisions of section 5388, General Code, above quoted, tangible personal property generally is required to be listed and assessed for the purpose of taxation at seventy per centum of the true value thereof in money, the personal property of a manufacturer used in business, including machinery, tools and implements, raw materials and finished products (other than those kept or stored out of the county), are required to be listed and assessed for taxation at fifty per centum of the value of such property.

It is obvious that the term "manufacturer", as the same is used in section 5388, General Code, above quoted, has the same meaning as that given in the definition of the term stated in section 5385, General Code. This definition is as follows:

"A person who purchases, receives or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, is a manufacturer."

The provisions of section 5385, General Code, just quoted, doubtless add somewhat to the generic meaning of the term "manufacturer"; and there is added to the normal meaning by terms of inclusion types of business which perhaps would not ordinarily be classified as manufacturing. It is perhaps well, however, to examine and consider adjudicated cases involving the definition and application of the term "manufacturing".

In the case of *Engle vs. Sohn & Co.*, 41 O. S. 691, the court had under consideration the provisions of section 2742, Revised Statutes, identical in terms with those of section 5385, General Code, above quoted, for the purpose of determining whether a firm engaged in the business of purchasing and slaughtering hogs and packing pork was required to list for taxation certain personal property of substantial value owned by it as a manufacturer or as a merchant. After quoting the language of section 2740, Revised Statutes, defining a "merchant" for the purpose of taxation, which language is now found in section 5381, General Code, the court in its opinion in this case said:

"In both definitions there is the common element of purchasing personal property, with a view of making a gain or profit. But the definition of a manufacturer contemplates the attainment of such object by adding to the value of the property after purchase, by some process or combination with other materials, while the merchant is supposed to get his advanced price or profit by selling the article as it is, without subjecting it to any change by hand, by machinery, or by art. The material entering into the manufactured article may be modified, more or less, in its identity, as it passes through the several stages of a manufacturing process; but the merchant deals in the manufactured article itself, or its constituents, by buying and selling them in the same condition in which he purchases them. His business is that of exchanges, and not of making or fabricating from raw materials."

With respect to your question as to whether one who is engaged in the business of publishing and selling newspapers is a "manufacturer" within the meaning of statutory provisions wherein this term is used, it appears that the greater number of adjudicated cases on this question support the conclusion that the

proprietor and publisher of a newspaper is not a manufacturer as that term is used in statutes relating to taxation and other matters. In the case of *State vs. Crouse*, 105 Neb. 672, the court held that a newspaper publishing company, engaged exclusively in printing and publishing a daily newspaper, was not a manufacturing establishment within the meaning of a statute of that state which prohibited the employment of women in a "manufacturing, mechanical, or mercantile establishment," for more than nine hours a day or in the nighttime after ten o'clock P. M. From the stipulation of facts upon which this case was tried, it appeared that the defendant who was charged with a violation of the statutes of the state of Nebraska, above referred to, was the superintendent of employes of a company which was engaged exclusively in publishing and printing a daily newspaper, with morning, evening and Sunday editions, and that the company did no job printing or contract work of any kind. Inasmuch as it was admitted that the women employes mentioned in the charge against the defendant were employed in the office of the newspaper between ten o'clock at night and six o'clock in the morning, the only question presented to the court for determination was whether or not the newspaper publishing company was a manufacturing or mechanical establishment within the meaning of the statutory provision. The court in its opinion in this case said:

"The courts are not in entire accord on the question of whether or not such a publishing company is a manufacturing establishment within the commonly understood meaning of that term. In *State vs. Dupre*, 42 La. Ann. 561, 7 So. 727, and by dictum in *Re Kenyon*, 1 Utah, 47, the view is taken that a newspaper is a manufactured product and the publishing house a manufacturing establishment. In its literal sense, it seems to us, the term is hardly capable of that interpretation. Webster's New International Dictionary defines 'manufacture' as 'the process or operation of making wares or any material products by hand, by machinery, or by other agency; often, such process or operation carried on systematically with division of labor and with the use of machinery.'

The work which characterizes the business of publishing a newspaper is the gathering and disseminating of news, the furnishing to subscribers of various kinds of information, the carrying of advertisements, and the writing of editorials and articles on matters of public interest. Machinery and mechanical labor are indispensable, but are only incidental to the carrying on of the main purpose of the business. A newspaper is the product of intellectual effort, not of mechanical labor. That such business is not manufacturing is supported by the following decisions: *Oswald vs. St. Paul Globe Pub. Co.* 60 Minn. 82, 61 N. W. 902; *Re Capital Pub. Co.* 3 MacArth. 405; *State, Evening Journal Asso., Prosecutor, vs. State Assessors*, 47 N. J. L. 36, 52 Am. Rep. 107, note; *Press Printing Co. vs. State Assessors*, 51 N. J. L. 75, 16 Atl. 173."

In the case of *State, The Evening Journal Association, Prosecutor, vs. the State Board of Assessors*, 47 N. J. L. 36, cited by the court in its opinion in the case of *State vs. Crouse*, *supra*, it was held that a company incorporated for the purpose of carrying on the business of printing and publishing, whose capital is wholly employed in publishing a newspaper for circulation, "is not a manufacturing company" within the meaning of the term as used in a taxation exemption provision in the tax laws of that state. The court in its opinion in this case, speaking of the

nature of the work done by a publisher in the production of newspapers, among other things, said:

"It is true that in the production of his papers, which he sells, he employs manual labor and mechanical skill. But so does the sculptor who produces, as the result of his handiwork and genius, the statue; so does the painter who executes his painting with his palette and his brush; so does the lawyer who prepares his brief, or the author who writes a book. But neither the sculptor nor the painter is classified as a manufacturer by reason of his works; nor would the lawyer or the author be regarded as a manufacturer, though they employed a printer—the former to print his brief, and the latter his book. In the ordinary and general use of the word 'manufacturer', the publishing of a newspaper does not come within the popular meaning of the term. As was said by the court in the case . . . (Re Capital Pub. Co. 3 McArth. (D. C.) 405: 'No definition of the word 'manufacturer' has ever included the publisher of a newspaper, and the common understanding of mankind excludes it . . . It gives employment to printing presses, types, and editors, and yet, in the whole history of newspapers from the close of the seventeenth century, this word 'manufacturer' has never been applied to them or appropriated by them in the whole range of English literature.'"

In the case of *City of Lexington vs. Lexington Leader Company*, 193 Ky. 107, the Supreme Court of that state had under consideration the question whether a person, firm or corporation engaged in the publication of a newspaper was engaged in manufacturing within the provisions of a law of that state which exempted from municipal taxation "machinery and products in course of manufacture of persons, firms or corporations actually engaged in manufacturing and their raw material actually on hand at their plants for the purpose of manufacture". The court in this case answered this question in the negative and held that machinery and materials used in printing and issuing a newspaper are not "products in manufacturing", and that the publisher of a newspaper was not "engaged in manufacturing" within the meaning of the tax exemption statute. In arriving at this conclusion, the court in this case held that it was not the means or methods employed nor the nature or number of processes resorted to, or the size of the factory, or the number of persons employed, or the amount of machinery used that determines whether an article is manufactured or not, but that this is determined by the result accomplished. The court in its opinion in this case observed that lexicographically most any alteration of a given piece of material by adding to or subtracting from it, or changing its shape so as to be adapted to a different use, would constitute "manufacturing". As to this, however, the court further says:

"But, evidently it was not the intention and purpose of the legislature in exempting such articles from taxation to adopt that broad definition, for if so, it would relieve from the burdens of local government a large per cent of property which the legislature never intended to exempt. The peanut roaster, the vendor of pop corn, the mixer of prescriptions, the baker, the tailor, the carpenter, the stonecutter, and a vast number of others who might be mentioned could claim their exemptions if the literal definition of the term should be applied; and to prevent such literalism courts have announced the rule that 'the common under-

standing of mankind' shall be looked to in construing such statutes, the interpretation of which is largely governed by the facts and circumstances of each particular case.

The produced article in this case, i. e., the newspaper, has about as little differentiating features from the raw material, which it is claimed were given to it by the process of manufacturing, as any other conceivably manufactured article."

The court in its opinion in this case said that in a legal point of view with respect to the meaning of the term "manufacturer", as used in the statute there under consideration, that case was quite similar to the case of *Muir vs. Samuels*, 110 Ky. 605, a case theretofore decided by that court in which it was held that a steam laundry was not a "manufacturing establishment" within the meaning of the mechanics' lien law of that state. In this connection, the court in the *Lexington Leader Company* case quoted from the opinion of the earlier case as follows:

"The only business of a laundry is to transform soiled into clean linen. It is true that this is done largely by means of machinery, and requires the use of an engine and boilers, and other appliances ordinarily used in manufacturing establishments; but, after all, nothing new is produced."

In the opinion of the court in this case it is further said:

"The *Muir* case and the one we have here are not without their points of resemblance. In the one, soil is removed and the finished product made clean and fit for use, while in the other a clean article is soiled and the finished product also made useful; in the one, something is subtracted while in the other something is added to the supposed 'raw material'."

In the case of *Oswald vs. St. Paul Globe Publishing Company*, 60 Minn. 82, 85, it is said:

"The business of publishing an ordinary daily or weekly newspaper is at most only partly a manufacturing business, and that part is merely incidental to the main or principal part of the business, which is collecting and selling news, preparing and selling literary work, and other editorial work. Even the advertising department of such a newspaper cannot be considered merely as the printing and distribution of advertisements handed in by advertisers, so as to amount in itself to a merely mechanical or manufacturing business. The advertiser buys the use of the news and the literary and editorial work as a vehicle on which to convey his advertisements into the hands and to the notice of the readers of the paper, and he pays much more for such use of the news and literary and editorial work than he does for the mere mechanical work of printing and distributing his advertisements. This view of the nature of the business of publishing a newspaper is sustained by the following cases: *In re Capital Pub. Co.* 18 N. B. R. 319; *Evening Journal Assn's vs. State Board of Assessors*, 47 N. J. Law, 36; *Press Printing Co. vs. Board of Assessors*, 51 N. J. Law, 75, 16 Atl. 173,—in each of which it was held

that the business of publishing a newspaper is not a manufacturing business."

In the case of *In re The Capital Publishing Company*, 18 National Bankruptcy Register, 319, decided by the Supreme Court of the District of Columbia, it was held that a newspaper publisher was not a "manufacturer" within the meaning of the National Bankruptcy Act then in force. The court in its opinion in this case, among other things, said:

"We have already stated the proposition that every branch of industry which converts any material or substance into useful commodities, strictly speaking, comes under the term manufactures, and in that sense a newspaper or a painting would be included. But we are of opinion that this is not the strict sense of the statute, which only includes those industries which commonly pass under that designation. This is an important distinction; for while all employments rest upon the same faculty in man to labor, to contrive, and to mould the refractory elements of matter, common usage and the convenience of society have given a limited signification to the word. The rule already adverted to for the interpretation of statute law limits its import to the sense in which it is usually received. Now no definition of the word manufacturer has ever included the publisher of a weekly newspaper, and the common understanding of mankind excludes it. You may reason by analogy, or reason from the nature of things, that it is; and so you may do the same thing with anybody who labors himself or employs others. But surely a Bankrupt Law is not to be expanded to cover every employment. It was by express terms limited to certain classes, who are designated by names well known in the business world."

A diligent search reveals only one Ohio case upon this question. In the case of *Chew vs. Grieve*, 13 O. N. P. (N. S.) 358, the court held that a newspaper publisher was not a "manufacturer" as that term is defined by the provisions of section 5385, General Code, above quoted. The court (Jones, J.) in the opinion in this case said:

"The court is unable to agree with the contention of plaintiff that the publisher of a newspaper is a 'manufacturer' and entitled to make a return and be assessed for taxation as such. Such a definition has been held in a number of cases to apply to a publisher of books, or even to a producer of stationery, or a job printer, but a distinction is made between these occupations and that of printing a newspaper. The publisher of a newspaper does not combine, refine or change the character of any raw material. He takes sheets of paper, a finished product, and by means of other finished products, type and ink, he impresses characters upon the paper, which enhances its value, for the time being, at least, but it is still a sheet of paper.

In our own state, as was forcibly remarked by Judge Shearer of our own circuit court, in an interesting and thorough opinion in *Village of Tippecanoe vs. Boercher*, 5th O. C. C. Rep., 6, 8, we get little aid from the language of the statute in determining in any particular case, who is a manufacturer, for, as he says, 'reduced to the last analysis a manu-

facturer is a manufacturer'. In the view of this court, the enhancement in value of the plain sheet of paper, when it is covered with interesting printed matter, does not make the printer or publisher a manufacturer, more than the painter or artist who enhances the value of a canvas or a sheet of cardboard, or a board or piece of metal (all finished products in themselves), by placing on them a picture, drawing or a sign.

I am unable to find any reported decision in Ohio as to newspaper publishers, but outside the state the decided weight of authority seems to be that they are not considered as manufacturers for the purpose of taxation."

Aside from a dictum in the early case of *In re Kenyon*, 1 Utah 47, I have been able to find but one case in which it has been held that the publisher of a newspaper is a "manufacturer" within the meaning of the term as used in a statutory provision relating to taxation or other matters. The case referred to is that of the *State of Louisiana vs. Dupre*, 42 La. An. 561. The court in this case held that the publisher of a newspaper was a "manufacturer" within the meaning of the term as used in a tax exemption statute of that state. In the majority opinion of the court (Fenner, J.) it is said:

"A manufacturer is defined to be: One who is engaged in the business of working *raw* materials into *wares* suitable for *use*, who gives *new shapes, new qualities, new combinations* to matter which has already *gone* through some artificial process. A manufacturer prepares the original substance for use in different forms. He *makes to sell*, and stands between the original producer and the dealer, or first consumers, *depending* for his *profit* on the *labor* which he bestows on the *raw* material.' *City vs. Le-Blanc*, 35 An. 747; *City vs. Ernst*, 34 An. 597.

Keeping this definition in view, the statement of facts embodied in this record shows that defendants use in their business valuable machinery and implements; that, in addition to the clerical and editorial departments, they employ a large number of mechanical laborers, such as type-setters, engineers, pressmen and their assistants; that they purchase and use great quantities of raw materials, such as paper, ink, glue, etc.; that, by means of this machinery and mechanical labor, they convert this raw material into a new and distinct article, fit for use and in commercial demand, called a newspaper, which they sell directly to dealers and consumers.

Certainly, from a mechanical point of view, this presents all the essentials of *manufacture* under every definition of the word.

It also comes clearly within the reason and motive of the constitutional exemption, which was to encourage enterprises that furnished employment to home labor in the making of things which the people use and require, and which, if not made here, would be bought abroad.

But because the value of the newspaper is not derived from the raw material, or from the mechanical labor expended upon it, but rather as a mere medium for conveying the ideas and information impressed upon it by the purely intellectual labor of its editors, reporters, correspondents and advertisers, the judge *a quo* concluded that the newspaper is a product of mind labor rather than of hand labor, and, therefore, is not an article of manufacture.

The suggestion is plausible, but, we think, not sound.

Such a view would deny exemption to a book publisher or manufacturer of books; yet it seems very clear that he would be considered a manufacturer within the intendment of the Constitution. For when we turn to Art. 207 of the Constitution we find expressly exempted from property taxation, capital, etc., engaged in the 'manufacture of stationery'. What is 'stationery?' Worcester defines it thus: 'The goods sold by a stationer, such as *books*, paper, pens, sealing wax, ink, etc.' He says that 'stationer' originally was synonymous with *book seller*, and meant 'one who kept a stall or station for selling books.' But in modern use the term 'stationery' probably covers only blank books, account books, etc. Yet the Constitution clearly considers makers of such books as *manufacturers*; and it is certainly difficult to conceive of any reason or principle that should deny the same quality to the maker of printed books.

Are we to say that a maker of blank books and account books is a manufacturer, but a maker of printed books is not, although the latter employs in his operations much more elaborate machinery and more varied and extensive manual labor than the former? We think not.

Then the argument stands thus: If the maker of blank books and account books is a *manufacturer* under the express terms of the Constitution, the maker of printed books, employing similar processes, with more machinery and labor, is also a manufacturer; and if the publisher of books is a manufacturer, all the reasons on which the denial of the same quality to the publisher of a newspaper rests absolutely fail.

That the Legislature took this view seems very clear from the fact that while it mentions 'agencies for publications' among the businesses taxed it makes no mention of home publishers; just as it taxes *editors*, but does not allude to newspaper publishers.

Other illustrations might be given of the fallacy of the view on which the judgment appealed from rests.

Who would deny that an establishment to make, with the aid of machinery and skilled workmen, optical instruments, such as telescopes and microscopes, would be exempt as a manufacture? Yet manifestly the value of such instruments is not derived from the brass, glass and other component materials, nor from the mechanical labor expended thereon, but from the scientific skill and knowledge which, by the power of adaptation and arrangement, gave to them the faculty of conveying to the eye visions of remotest stars or of minutest atoms.

Or, to take a case more homely and more strictly analogous, what would be said of the manufacturer of artistic wall paper, who impresses upon raw material, prepared for the purpose, designs of grace and beauty, invented and traced by his corps of skilled artists?

All manufacturers combine, in greater or less degree, the products of intellectual and of mechanical labor, and in very many the intellectual element confers upon the article produced its peculiar and greatest value. Such is conspicuously the case with a newspaper; but since the making of newspapers is a business; since the newspaper, when made is a new and distinct article of commerce; since the process of making it requires machinery and manual labor and physical raw material as essential and

important factors, aggregating, as this record shows, much the larger part of its cost, we can see no sound reason why such a business does not fall within the letter and spirit of the constitutional exemption as that of a manufacturer.

While we admit that newspaper publishing does not fall within the common usage of the term 'manufacture', the Constitution, Art. 207, attaches a broader meaning to the word by embracing within it the occupations of stationers, boat builders, chocolate makers, etc., which are not ordinarily considered as manufacturers, any more than newspaper and book publishers.

We are satisfied that the Legislature took the same view of the subject, and this reinforces our own opinion."

In this case, two of the five judges of the Supreme Court of Louisiana dissented from the view that the business of printing a newspaper is manufacturing in any sense of the word. And, in this connection, it is noted that the majority opinion in this case contains the admission that newspaper publishing does not fall within the common usage of the term "manufacture", but the view was therein expressed that under the constitution of that state a broader meaning should be given to the term.

The authorities have thus been exhaustively reviewed in order to show that, were I to be governed solely by the force of judicial decisions, the conclusion would be impelled that a newspaper publisher is not a "manufacturer" within the meaning of the sections here under discussion. Obviously, the authorities clearly sustain the view that the term "manufacturer", when used generically and not otherwise elaborated, can scarcely be held to include within its terms the normal newspaper publishing business.

The inquiry here, however, perforce extends somewhat beyond this point. The statute has defined the term in fairly specific language, and it becomes necessary to inquire whether any of the language used is such as to fairly comprehend the newspaper business, although not within the common definition of the term "manufacturer"; for this is a taxing law and any substantial doubt would, in all probability, be resolved in favor of the taxpayer by the courts.

It accordingly becomes necessary to examine critically some of the definitive language of section 5385 of the General Code in order to test its application to the business here in question. It is to be observed that a manufacturer is described as anyone "who purchases, receives or holds personal property, of any description, for the purpose of adding to the value thereof * * * by the combination of different materials with a view of making a gain or profit by so doing". Without again analyzing the various characteristics of the newspaper business, which has been done sufficiently in the authorities heretofore quoted, it is sufficient to state that a newspaper publisher, while not manufacturing or producing the white paper itself, does cut it, fold it, combine it with ink, and thus produce an essentially different thing than the raw materials originally purchased. This processing requires a vast amount of specialized machinery and equipment and it is separate and distinct from the artistic and creative work of the editorial, reportorial and art portions of the business, which, of course, contribute the real value to the finished product. I am not prepared to say, however, that the extent of enhancement of value by means other than the mere processing renders the business any the less a manufacturing business.

Many illustrations might be cited of instances in which the intellectual or

artistic element produces the greatest value to the finished article, but in which the businesses may still be properly denominated manufacturing; for example, the business of book publishing is, I believe, generally conceded to be a manufacturing business although quite obviously the real value consists of the work of the author in most instances.

Taking into consideration the breadth of language employed by the legislature in the definition of the term "manufacturer" for the purpose of taxation, and in spite of the decision in the case of *Chew vs. Grieve, supra*, which reaches the opposite conclusion, I feel impelled to the conclusion that the publisher of a newspaper is a manufacturer within the meaning of that term as used in section 5388, General Code, providing for the valuation to which the personal property of a manufacturer used in business shall be listed.

In view of the foregoing conclusion, the answers to your other questions become obvious. With respect thereto, however, the following statement is found in 38 C. J., at page 986:

"As to printing it is generally held that it is manufacture when it consists of the production of printed matter such as books, blank books, bill heads, etc."

In keeping with this rule, it was held in the case of *State, The Jersey City Printing Company, Prosecutor, vs. The State Board of Assessors*, 47 N. J. L. 36, that a company incorporated to conduct and prosecute the business of book printing, and job printing, engraving, electrotyping and lithographing, and whose capital is invested in the prosecution of that business, and which manufactures on orders only, is a "manufacturing company" within the meaning of the term as used in the tax exemption statute that was under consideration in the case of *State, The Evening Journal Association, Prosecutor, vs. The State Board of Assessors, supra*, in which it was held, as above noted, that a company incorporated for the purpose of carrying on the business of printing and publishing a newspaper was not a manufacturing company within the meaning of the statutory provision. The court in its opinion in the *Jersey City Printing Company* case said:

"The certificate of the Jersey City Printing Company, the prosecutor in the other case, states the object for which it was incorporated to be 'to conduct and prosecute the business of book printing and job printing, engraving, electrotyping and lithographing'. The depositions show that this company has, since its organization, been engaged in the business for which it was incorporated. Its capital was invested in the prosecution of that business when this tax was laid. The return to the board of assessors states that the principal line of articles manufactured by the company consists of pamphlets, textbooks, and all descriptions of printed matter, including chromos and illustrated cards, and that the company manufactures only upon orders.

Both the cases cited from the federal courts agree that a person engaged in such a business is a manufacturer in a legal sense; and in *Seeley vs. Gwillim*, 40 Conn. 106, it was held that a person who carried on the business of a book-binder and making blank-books was a manufacturer. In this view we concur. A person who is engaged in such a business would be appropriately denominated a manufacturer in the popular sense of that term, and he would fall within that designation in

its scientific sense, for by his skill and labor he adds to the intrinsic value of the materials used, which gives them a merchantable value in the market as merchandise.

We think that the Jersey City Printing Company is a manufacturing company within the exemption contained in the proviso."

In the case of *Press Printing Company vs. The State Board of Assessors*, 51 N. J. L. 75, the court followed the earlier rule recognized and applied by it to the effect that a corporation engaged in the business of printing and publishing a newspaper is not a manufacturing company but further held that "a company incorporated for the purpose of printing and publishing books and general job printing and publishing a newspaper, is a manufacturing company with respect to its business of printing books and job printing, and is exempt from taxation on so much of its capital as is invested in that branch of business". Likewise, in the state of Pennsylvania it has been held that a corporation organized for the purpose of manufacturing blank books and stationery, printing, lithographing, and in selling such products was within the meaning of a statute exempting from taxation corporations organized for manufacturing purposes, and carrying on manufacturing within the state. *Commonwealth vs. Wm. Mann Company*, 150 Pa. St. 64; *Commonwealth vs. J. B. Lippincott Company*, 156 Pa. St. 513.

In the light of these decisions, I am clearly of the view that the activities referred to in your communication may all be classified as those of a manufacturer within the meaning of the statutory provisions above referred to.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4255.

LEGAL SERVICES—RENDERED BY ATTORNEY AT REQUEST OF PROSECUTING ATTORNEY—COUNTY COMMISSIONERS MAY NOT COMPENSATE WHERE SUCH APPOINTMENT UNAUTHORIZED BY COMMON PLEAS COURT.

SYLLABUS:

There is no legal authority for the commissioners of a county to pay an attorney for services rendered at the request of the prosecuting attorney of said county when the appointment of such attorney was not authorized by the court of common pleas of the county regardless of whether or not the litigation for which the attorney was appointed as special counsel actually resulted in the saving of money to the county, even though commissioners of said county are willing to pay the attorney for his services.

COLUMBUS, OHIO, April 19, 1932.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your request for my opinion which reads as follows:

"Where the prosecuting attorney asks the assistance of another attorney in a particular case involving the interest of the county on a test