

Department to share in the cost of construction, and that it has no authority to pay any claims, which are part of the cost of such highway, without the approval of the Director of Highways.

Your question as to whether or not there is liability on the part of the State for change of grade in the construction of state highways, is under consideration by this office in other matters and has not yet been determined, and since it is not of specific import to the county, I am expressing no opinion herein.

Specifically answering your inquiries, I am of the opinion that:

1. There is no legal liability on a village, where the State Highway Department has changed the established grade of a state highway within its corporate limits, even though such village has consented to such improvement when it has not entered an agreement with the State Highway Department to share in the cost thereof.

2. The county commissioners, when cooperating with the State Highway Department in the construction or improvement of a state highway, can not be held directly liable for damages caused by a change of the established grade of such highway since such improvement is under the control and supervision of the State Highway Department, and can only contribute to the payment of such damages as are a part of the cost of construction, in the proportion specified in the agreement with the State Highway Department, when such expenditures have been approved by the Director of Highways.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4007.

CIGARETTE TAX--UNNECESSARY TO HAVE LICENSE FOR SALE OR DISPOSAL OF CIGARETTE WRAPPERS.

SYLLABUS:

Persons selling or giving away cigarette wrappers in Ohio are not required to secure a license under the terms of Amended Senate Bill No. 324 of the 89th General Assembly.

COLUMBUS, OHIO, January 28, 1932.

HON. CHAS. D. HAYDEN, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent inquiry which reads as follows:

“Will you please render me an opinion on the construction of the term, ‘cigarette’ as defined in Section 5894-1 of the General Code of Ohio, being Amended Senate Bill No. 324, passed June 24, 1931?

The original Section 5894 was repealed by Sections 5894-1 to 5894-25. The original Section 5894 provided a certain license fee for persons engaged in the trafficking of cigarettes, CIGARETTE WRAPPERS, etc.

As defined in Section 1 of the Amended Act, cigarette wrappers are not included within the statutory definition of cigarettes. Section 5 of the

Amended Act provides that no persons shall engage in the wholesale or retail business of trafficking in cigarettes within this state, etc., without having a license therefor, etc.

The penal Section 12680 as amended retains the words, 'cigarette wrappers'.

Your opinion is requested as to whether or not a person selling or giving away cigarette wrappers is required under Section 5894-5 to secure a license so to do."

As you indicate in your communication, Section 1 of Amended Senate Bill No. 324 of the 89th General Assembly (114 O. L. 805-814), codified by the Attorney General as section 5894-1, General Code, provides, in part, that "'Wholesale dealer' includes only those persons who sell *cigarettes* to licensed retail dealers", etc., and "'Retail dealer' includes every person other than a wholesale dealer engaged in the business of selling *cigarettes* in this state," etc. In other words, the definitions of wholesale and retail dealers disclose that such dealers are those engaging in the sale of *cigarettes*. Said definitions clearly do not cover dealers dealing in cigarette wrappers or papers. Moreover the definition of "cigarettes" as given in this same section clearly does not include cigarette wrappers. Also, as you further point out, section 5 of the act (G. C. 5894-5) states in the first sentence that "No person shall engage in the wholesale or retail business of trafficking in *cigarettes* within this state without having a license therefor * * *."

Thus, if it were not for language contained in section 23 of the act, amending section 12680, General Code, there would be no question but that the legislature did not intend to require persons selling cigarette wrappers to be licensed. This section, as amended, reads as follows:

"Whoever, being engaged in the business of trafficking in cigarettes, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a license issued by the county auditor of the county wherein such business is located authorizing him to engage in such business, *or sells or offers to sell cigarettes, cigarette wrappers or a substitute for either without complying with the provisions of law relating to cigarettes,* shall be fined not less than one hundred dollars nor more than three hundred dollars and for each subsequent offense shall be fined not less than three hundred dollars nor more than five hundred dollars."

In view of the italicized language above, it could well be argued that the legislature intended to license persons who sell wrappers, by incorporating by reference the provisions of section 5894-5, General Code, which require a license to traffic in cigarettes.

Before amendment, the last quoted section read:

"Whoever, being engaged in the business of trafficking in cigarettes, cigarette-wrappers or a substitute for either, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a receipt signed by the county treasurer showing that the amount of the assessment required by law has been paid into the treasury of the county where such business is located, or sells or offers to sell cigarettes, cigarette-wrappers or a substitute for either without

complying with the provisions of law relating to cigarettes, shall be fined not less than three hundred dollars nor more than five hundred dollars."

Comparing the section as amended with the former section, it will be noted that the legislature substituted the word "cigarettes" for the words "cigarettes, cigarette-wrappers or a substitute for either" in the first part of the statute, but failed to do the same in the latter part of the statute. Obviously, this would appear to have been an oversight on the part of the legislature. However, it is a general principle of law that effect must be given, if possible, to all the language of a statute and it cannot be assumed that the legislature made any error in framing a statute.

It is a well recognized principle of statutory construction that all parts of an act must be construed together to arrive at the intention of the legislature in passing such act. Also, it is an equally well settled principle of statutory construction that the title of an act, though no part of it, may be considered to explain its object and solve what is doubtful; for, unlike acts of parliament, the title is sanctioned by vote of the legislature. See *Burgett vs. Burgett*, 1 O., 469; *Steamboat Monarch vs. Finley*, 10 O., 384; *State vs. Granville Alexandrian Society*, 11 O., 1; *Wilber vs. Paine*, 1 O., 251; *Burgander vs. Weil*, 60 O. S. 234; *State vs. Pugh*, 43 O. S., 113; *Gollings-Taylor vs. Fidelity Co.*, 96 O. S., 123; *DuBois vs. Coen*, 100 O. S., 17, 23; and *Janes et al. vs. Graves*, 15 N. P. (N. S.) 193, 199, 200.

Applying this principle to the act under consideration herein, the legislative intent may be said to be reasonably clarified. On April 24, 1893, the legislature first passed an act for the taxing of the business of dealing in cigarettes and cigarette wrappers, and stated in the title of the act (99 O. L. 235):

"To tax the business of trafficking in cigarettes or cigarette wrappers."

This act was repealed on May 18, 1894, and another similar act passed (91 O. L. 311), entitled:

"To provide against the evils resulting from the traffic in cigarettes, cigarette-wrappers, and packages containing the same, and to prevent the sale of the same, cigars and tobacco to minors as therein provided."

This last act was carried into the Ohio General Code by the Codifying Commission of 1910 and given the code numbers 5894-5902, inclusive, 12965 and 12680 to 12683, inclusive.

From the above, it will be noted that the legislature clearly indicated in the titles of the foregoing acts its intention to regulate the business of dealing in cigarette-wrappers as well as cigarettes. On the other hand, the recent act of the 89th General Assembly is entitled:

"Providing for the levy of an excise tax on sales of cigarettes in the state of Ohio for and during the years 1931, 1932 and 1933 and in aid of such purpose, the substitution for the present tax on the business of trafficking in cigarettes, cigarette wrappers or substitutes therefor, of a license tax on the business of dealing

in cigarettes; and enacting supplemental sections 2624-1 and 2685-2 of the General Code, amending section 12680 of the General Code and repealing sections 5894, 5895, 5896, 5897, 5898, 5899, 5900, 5901, 5902 and 12680-1 of the General Code."

Certainly the title of Amended Senate Bill No. 324, *supra*, clearly shows that it was the intention of the legislature to substitute a license tax on the business of dealing in cigarettes for the former tax on the business of trafficking in cigarettes, cigarette wrappers or substitutes therefor.

In construing the present cigarette tax law, another principle of law should be kept in mind. The courts have on a number of occasions stated that taxing statutes are to be construed strictly in favor of the citizen, as against the taxing authority and where there is any ambiguity as to the legislative intent, the doubt should be resolved in favor of the person upon whom the burden of taxation is to be imposed. See *Anderson vs. Durr*, 100 O. S., 251; *Cassidy vs. Ellerhorst*, 110 O. S., 535, 539; *Caldwell vs. State*, 115 O. S., 458, and *State of Ohio vs. Harris*, 229 Fed., 892, 144 C. C. A., 174, 14 O. L. R. 95 writ of certiorari denied, 242 U. S., 634.

A reference to the cigarette statutes of at least two sister states, disclosed that when it is intended to tax the business of dealing in cigarette wrappers, such is definitely stated. Section 1 of an act approved by the Utah legislature on March 8, 1923 (Laws 1923, Chapter 52, Pages 110-114) reads in part as follows:

"Section 1. Permit for sale of cigarettes and cigarette papers—license—bond—fraud—penalties—tax stamps—enforcement—minors—nuisance.

It shall be unlawful for any person, firm or corporation to barter, sell or offer for sale, cigarettes or *cigarette papers* in the State of Utah, without first having obtained a permit therefor * * *." (Italics the writer's.)

Title V, Chapter 78, sections 1552-1586 of the Code of Iowa, 1931, under the heading "Regulations under Police Power", sub-heading "Cigarettes and Tobacco", is also illustrative of the point. Section 1552 (Definition of Terms) provides, in part:

" * * * The term 'paper' shall include 'wrapper' and 'tube' * * *."

Section 1557 (Permit to sell) reads in part:

"No person shall sell cigarettes or *cigarette papers* without first having obtained a permit therefor in the manner provided by this chapter * * *." (Italics the writer's.)

There is, moreover, a very definite rule of statutory construction to the effect that criminal laws are to be strictly construed in favor of the accused. The recently enacted law contains no reference whatsoever to cigarette wrappers as distinguished from cigarettes, except in the provisions of section 12680, *supra*, which is penal in character. It follows that all doubts must be resolved in favor of the accused and, applying this rule to the question you present, I am inclined to the belief that the sale of cigarette wrappers, without complying with the provisions of the law relating to cigarettes was not intended, although a literal reading of the penal statute tends to support the opposite conclusion. In other words, as an academic proposition, it might well be said that this statute makes it a crime

to sell cigarette wrappers without complying with all the provisions of law necessary to engage in the business of selling a different commodity, namely, cigarettes; but a consideration of the entire act would, in my opinion, lead a court to conclude that this language in the penal section is inadvertent.

Accordingly, in view of the general legislative intent expressed in the title of Amended Senate Bill No. 324, and the further rules of strict statutory construction applicable to taxing and penal laws, I am impelled to the conclusion that a person either selling or giving away cigarette wrappers need not comply with the provisions of law relating to cigarettes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4008.

TAX FORECLOSURE—PURCHASE PRICE MAY NOT BE PAID IN INSTALLMENTS—SECTION 2672, G. C., INAPPLICABLE.

SYLLABUS:

1. *Section 2672 of the General Code, relating to the payment of delinquent taxes in installments, has no application to the payment of the purchase price of property sold upon tax foreclosure sale.*

2. *There is no statutory authorization or permission for the payment of the purchase price in such sales in installments, as described in Section 2672 of the General Code, for the payment of taxes.*

COLUMBUS, OHIO, January 29, 1932.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your request for opinion is as follows:

“Will you kindly advise me whether or not the method provided in Section 2672 of the General Code for the paying of delinquent taxes in installments would apply in cases where land is sold by the sheriff for non-payment of taxes?

In other words, could the purchaser at the tax sale pay the purchase price in installments as set forth in the statute?”

Sections 5718-3 and 5719 of the General Code, provide the manner of procedure for the sale of property to enforce the lien of taxes, and the section last named, in so far as material to your inquiry, reads as follows:

“A finding shall be entered of the amount of such taxes and assessments, or any part thereof, as are found due and unpaid, and of penalty, interest, costs and charges, for the payment of which, together with all taxes and assessments payable subsequent to certification for foreclosure, the court shall order such premises to be sold without appraisement for not less than the total amount of such finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of