

to them. Applying the above rule and giving the words "authority and control" their natural and full meaning, the statute nevertheless would grant only the power to carry out the duties of the Conservation Council and to give to the Council complete supervision and superintendence of the enforcement of the fish and game laws. To hold otherwise would be to extend the language of the statute beyond its actual import and effect.

Whether or not advertising space in such magazine is to be sold is of no importance in determining the question.

It is accordingly my opinion, in specific answer to your question, that the Conservation Council is not authorized to expend monies derived from the sale of fishing and hunting licenses, for the publishing of a magazine covering subjects relating to fish and game protection, preservation and propagation.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4282.

WORKMEN'S COMPENSATION ACT—UNDER H. B. #102 SELLER TO STATE OR ITS SUBDIVISIONS MUST FILE AFFIDAVIT OF COMPLIANCE WITH WORKMEN'S COMPENSATION LAW—NON-RESIDENT WHO HAS NOT COMPLIED MAY NOT FILE AFFIDAVIT.

**SYLLABUS:**

1. *Under the provisions of House Bill 102 of the 90th General Assembly, a person as therein defined selling materials or supplies to the state or its subdivisions must certify under oath that such person "has fully complied with all the requirements of the workmen's compensation act of the state of Ohio."*

2. *A non-resident of Ohio who is not doing business in Ohio and who has not complied with the requirements of the workmen's compensation act of Ohio may not subscribe to such affidavit.*

COLUMBUS, OHIO, May 23, 1935.

HON. B. FRANK THOMAS, *Superintendent of Purchases and Printing, Columbus, Ohio.*

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

"Will you kindly advise how the application of House Bill 102 will apply to purchases outside the state, especially to the stamp requirements, as we have a number scattered throughout the United States who will no doubt bid upon our requisitions."

I am advised that the reference in the foregoing letter to the purchases outside the state is to purchase from sellers who are not doing business in this state,—that is to say, you desire my opinion on the question of your right to purchase materials or supplies for the state from a seller domiciled outside of Ohio who is not doing business in this state, and your authority to consider a bid submitted by such person.

Sections 2 and 3 of House Bill No. 102 of the 90th General Assembly provide as follows:

#### SECTION 2.

"So long as a recovery act shall remain in effect it shall be unlawful for any public agency to enter into a public contract with any person on behalf of the state or a political subdivision in this state or any institution supported wholly or in part by public funds, or to issue permits or licenses to do business to any person, unless and until such person shall have filed with the public agency an affidavit certifying to the following:

(a) That said person, if engaged in an industry subject to an approved code of fair competition, is complying with all the provisions of such code and that he is a registered member of said industry if registration is provided for in said code or by the code authority thereof; and

(b) That such person has listed for taxation all property used in the production of the supplies and materials for which such public contracts are to be let; and

(c) That such person has fully complied with all the requirements of the workmen's compensation act of the state of Ohio."

#### SECTION 3.

"In case competitive bids are solicited for any public contract, the public agency shall require each bidder to submit the affidavit prescribed by section two of this act with his bid. No bid shall be considered unless and until such affidavit is so submitted."

The word "person" as used in Section 2, supra, is defined in Section 1 of the act as follows:

" 'Person' includes individuals, firms, partnerships and corporations wherever organized or incorporated."

It is obvious that if a non-resident of this state desires to sell materials or supplies to the state, he must file the affidavit prescribed by Section 2, supra, otherwise such non-resident's bid may not be considered. The language of the act in this respect is couched in mandatory terms and must be given mandatory effect. It is required that each seller affirmatively swear to three facts set forth in paragraphs a, b and c, supra. As to paragraphs a and b there is nothing contained in the language thereof which would preclude a non-resident of Ohio who is not doing business in this state from making oath as to the facts therein set forth. The only requirement in paragraph a as to the matter of code compliance is that the affiant is complying with the provisions of the applicable code "if engaged in an industry subject to an approved code of fair competition". The language of this paragraph contains no reference to such code of fair competition as has been approved in this state and is not necessarily limited in this respect. This same observation may be made as to paragraph b of Section 2, supra, relating to the matter of having listed for taxation the property therein described.

I come then to a consideration of the requirement set forth in paragraph c of Section 2, supra, that the seller certify "that such person has fully complied with all the requirements of the workmen's compensation act of the state of Ohio." This provision is not predicated upon a proviso that the affiant shall so certify if authorized or required to comply with the workmen's compensation act of this state, as is paragraph

a of the section predicated upon the proviso that there be an approved code governing the industry. The requirement as to certifying affirmatively that the seller has complied with the requirements of the workmen's compensation act of Ohio is clear and unambiguous. I am unable to ascribe any meaning to this language as used by the legislature other than that which is apparent on its face. Obviously, a person who is not doing business in Ohio and who accordingly may not comply with the workmen's compensation act of Ohio may not affirmatively certify that he has complied with the requirements of such act. The case is somewhat analogous to the principle that an affirmative enactment of a new rule implies a negative of whatever is not included, and if by the language used a thing is to be done in a particular form it includes the negative that it shall not be done otherwise. *Wells vs. Supervisors*, 102 U. S. 625, 26 L. Ed. 122. The legislature could well have provided that the affiant certify as to compliance with the workmen's compensation act of Ohio to the extent that he is required by that act so to do, but to construe this paragraph as containing, such a proviso requires the insertion of words therein not used by the General Assembly; this the courts will not do. The rule is well stated in *Stanton vs. Realty Co.*, 117 O. S. 345, wherein the Supreme Court said at page 349:

"It is a general rule of interpretation of statutes that the intention of the Legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

A construction of paragraph (c) of Section 2, supra, as to complying with all the requirements of the Workmen's Compensation Act of Ohio, to the effect that the legislature did not intend to limit the state and its subdivisions in purchasing only from those persons who are required or permitted to comply, might have some justifiable basis were it not that in this same section 2 of the act, as hereinabove noted, there is an express proviso as to those not required to comply with a code of fair competition. The inclusion of such proviso in paragraph (a) and the exclusion of such proviso in paragraph (c) would indicate a legislative intent that paragraph (c) shall not be subject to such a proviso. There is here suggested, in this one section of the law, a clear application of the doctrine of *expressio unius est exclusio alterius*.

I am aware of the fact that this requirement of affirmative compliance with the Workmen's Compensation Act of Ohio might be said to discriminate against citizens of Ohio who have not complied with this last mentioned act. Section 1465-60, General Code, provides that employers that have in service three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract or hire, are subject to the provisions of the Workmen's Compensation Act. However, residents of Ohio who employ only one workman or operative are permitted to comply with the requirements of the Workmen's Compensation Act. I refer to Section 1465-71, General Code, which authorizes employers in this state to comply with such act although they employ less than three such workmen or operatives, and is permissive in form.

Whatever discrimination might exist as a result of this act, that is a matter of policy for the General Assembly and not within the province of the Attorney General who must take the laws as he finds them and construe them in accordance with the rules of statutory construction as laid down by the courts. In *Slingluff vs. Weaver, et al.*, 66 O. S. 621, the first branch of the syllabus sets forth certain latitudes of interpretation

when the courts are confronted with ambiguities in legislation. The second branch of the syllabus is as follows:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

See also *Schew vs. State*, 83 O. S. 146. In *State vs. Roney*, 82 O. S. 376, it is said in the first branch of the syllabus:

“The province of construction is to ascertain and give effect to the intention of the legislature, but its intention must be derived from the legislation and may not be invented by the court. To supply the intention and then give the statute effect according to such intention would not be construction but legislation.”

It is recognized that there might be an underlying constitutional question as to the validity of this classification of persons who may sell materials or supplies to the state and its subdivisions, but this office has long adhered to the principle that the power to set aside an act of the General Assembly on the ground that it is violative of the Constitution is solely the prerogative of the judiciary and a power vested solely in the courts; accordingly, no comment is made upon this phase of the question. House Bill 102, here under consideration, is perhaps loosely drawn, but in view of the clear language contained in paragraph (c) of section 2 thereof, it must be assumed that the legislature, whether wisely or unwisely, saw fit to limit the state and its subdivisions in purchasing materials and supplies from those persons who have met the requirements of the Workmen's Compensation Act of this state. As stated by the court in *Nelson vs. State*, 41 O. App. 174, 181:

“The wisdom or want of wisdom of the enactment of such a law was solely a question for the Legislature which enacted it, and its continuance in effect rests on the will of the voters. The sole duty of the courts is to construe and apply the law as it exists.”

In your inquiry you refer to stamp requirements. I assume that your reference is to the applicability of the so-called Sales Tax Act to purchases made by you outside of this state from persons not doing business in Ohio. House Bill 102 makes no reference to the Sale Tax Act and in view of the conclusion I have hereinabove indicated as to your lack of authority to purchase from such persons outside of Ohio, a reply to this phase of your question is unnecessary. Your attention is, however, directed to the fact that under paragraph 1 of Section 5546-2, General Code, when the consumer in the state or any of its political subdivisions, the sales of material and supplies are expressly exempt from the provisions of the Sales Tax Act.

Specifically answering your inquiry, it is my opinion that:

1. Under the provisions of House Bill 102 of the 90th General Assembly, a person as therein defined selling materials or supplies to the state or its subdivisions

must certify under oath that such person "has fully complied with all the requirements of the workmen's compensation act of the state of Ohio".

2. A non-resident of Ohio who is not doing business in Ohio and who has not complied with the requirements of the workmen's compensation act of Ohio may not subscribe to such affidavit.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

4283.

PEDDLER'S LICENSE REQUIRED ONLY OF PEDDLER WHO ACTUALLY  
PEDDLES STOCK IN TRADE.

*SYLLABUS:*

*A peddler's license issued pursuant to the provisions of Sections 6347 et seq., General Code, is required of those persons who actually peddle their stock in trade and is not required of those persons who have a financial interest in the peddling of merchandise but who do not actively peddle such merchandise.*

COLUMBUS, OHIO, May 24, 1935.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

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

"The Auditor of Putnam County, Hon. John F. Klein, on April 19, 1935, requested an opinion from your office and was forwarded a copy of Opinion 4885 which Mr. Klein feels does not answer his problem. The question is relative to peddler's licenses issued by the County Auditor pursuant to Section 6347 to 6355 inclusive. Briefly, the problem resolves itself to three questions:

1st. A merchant with a fixed business sends out a salaried employee to peddle his wares. Is either the peddler or merchant subject to a peddler's license?

2nd. A merchant with a fixed place of business furnishes merchandise to a third person who goes out and sells the merchandise and turns all funds over to the merchant. At the end of a given period the merchant makes an accounting and pays the third party a certain per cent on the goods sold. Is either the merchant or the peddler subject to a license?

3rd. A third person takes goods on consignment from a merchant with a fixed place of business and peddles same, paying the merchant a fixed price for all goods sold and retaining the balance as his profit. Is either the merchant or the peddler subject to a license under this state of facts?"

You do not state in your letter the method in which the "employee" in your first question and the "third person" in your second and third questions carry on their transactions. You refer to them, however, as "peddlers". I assume therefore that