

"While it is true that no precise form of words is necessary or essential to create a condition subsequent, nevertheless, if in a deed, it must be created by such terms as to leave no doubt of the intentions of the grantor so to do.

"The language used by the grantors in the deed in the case at bar is clear, plain and unambiguous, and there is no doubt about its meaning, but, as we interpret and construe it, falls far short of being sufficient to create a condition subsequent.

"So far as creating limitations upon the title conveyed, it certainly does not do so. In legal effect it has no force, and the most that can be claimed for it is that it might be construed as a mere wish or desire on the part of the grantors to have the property used for the purposes indicated by the language; but in effect it is a mere suggestion, an unenforceable request or desire.

"An examination of the deed nowhere discloses any language that could be construed as intended to create any limitation upon the fee simple title in the grantees, their heirs and assigns, and we find no reservations or limitations contained in said deed.

"It is generally known that, when an estate granted is intended to be terminated or forfeited, certain terms are used in the granting clause, or somewhere in the deed, declaring that the estate conveyed is to be forfeited 'in the event that' certain conditions are not complied with. But in the deed now before us there is an utter absence of any such provisions."

Attention is also directed to a former opinion of this department, found in Opinions of the Attorney General for 1920, Vol. 2, p. 1206.

In view of the discussion in that opinion, involving a somewhat similar question, and the authorities above cited, I am of the opinion that the deed you submit conveys a fee simple estate and that the words in the granting and habendum clause of the deed, to wit, "so long as said lot is used for school purposes," do not create a condition subsequent, but are at most descriptive of a suggestive use for which the land was granted; and that the board of education can sell the buildings and grounds and convey a good and sufficient fee simple title to same.

Respectfully,

C. C. CRABBE,

*Attorney General.*

1235.

LICENSE—TRAFFICKING IN CIGARETTE WRAPPERS—SECTIONS 5894  
AND 5898 CONSTRUED.

SYLLABUS:

1. *Where a dealer is trafficking in cigarette wrappers without a license as required by section 5894, General Code, the county auditor should make his charge on the duplicate from the time it was shown that the person actually trafficked in cigarettes.*

2. *The county auditor should make his charge under section 5898, General Code.*

3. *The persons assessed under section 5898, General Code, are not entitled to a refunder.*
4. *Section 12683 General Code, applies to section 12680-1, General Code.*

COLUMBUS, OHIO, February 27, 1924.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“We respectfully request a written opinion on the following questions:

First. On July 1st, a dealer was found guilty of trafficking in cigarette wrappers under section 12680-1 G. C. without a license as required by section 5894 G. C.

From what date should the county auditor make the charge on his duplicate for a license?

Second. In the above case should the auditor make the charge under section 5894 G. C. or 5898 G. C.?

Third. When a dealer pays the assessment under section 5898 G. C. and later discontinues business, is he entitled to a refunder under section 5896 G. C. for the proportional amount paid or for a proportional amount under section 5894 G. C.?

For example: If the trafficker is assessed under section 5898 G. C. as a retailer and he pays the \$200.00 and then later discontinues business, is he entitled to a refunder for a proportional amount of the \$200.00, or is he entitled to only the proportional amount charged under section 5894 G. C.?

Fourth. Section 12680 G. C. was supplemented by the enactment of section 12680-1 (O. L. 109, page 223).

Do the provisions of section 12683 G. C. apply to this supplemental section?”

The sections of the General Code which are applicable to your questions are sections 5894 to 5899 inclusive, and 12680 to 12683, inclusive.

Section 5895 G. C. relates to the time of payment of assessments and provides same shall be paid June 1st, and when such business has commenced after the fourth Monday in May, the assessments shall be in proportion to the assessment year, but not less than one-fifth of the payment for the total year.

Section 5897 G. C. provides for the assessor to return to the county auditor a statement signed by the person trafficking in cigarettes, etc., showing the name of the person, description of the premises and by whom owned.

Section 5898 provides that if such statement is not made, the assessment shall be four times the amount provided. Such section further provides that the person entering such business after the assessor makes his return, shall make a return before so doing to the county auditor, and failing to do so shall be assessed four times the amount provided.

In cases of conviction under section 12680-1 G. C., such charge for assessment should be made by the county auditor from the time it can be shown that the person convicted was absolutely trafficking in cigarettes.

In case of conviction after the fourth Monday in May, such charge should be made under section 5898 G. C., and the assessment would be four times the assessment for the time the person was actually shown to be trafficking in cigarettes.

Section 5896 G. C. provides:

“When the person, firm, company, corporation or co-partnership described in section fifty-eight hundred and ninety-four, which has been so

assessed, and which has paid or is charged upon the tax duplicate with the full amount of such assessment, discontinues such business, the county auditor shall issue to such person, firm, company, corporation or co-partnership, a refunding order for a proportionate amount of the assessment. Such order shall not be less than one-fifth of the whole amount to be assessed in one year."

By this section the person described in section 5894 G. C. who has been so assessed may have a refunder, if the business is discontinued. The words "which have been so assessed" must refer to persons assessed under section 5894 G. C. supra.

This belief is strengthened by the fact that the charge under section 5898 G. C. is in the nature of a penalty, and by the fact that under section 5898 G. C., the person furnishing information to a county auditor on which a tax is collected is entitled to one-half of the amount collected.

Section 12680 G. C. provides a penalty for engaging in the business of trafficking in cigarettes without displaying a receipt for dealer's tax.

Section 12681 G. C. provides a penalty for selling cigarettes containing deleterious substances.

Section 12682 G. C. provides a penalty for offering inducements with cigarettes.

Section 12683 G. C. provides:

"In case of a conviction for the violation of any provision of the next three preceding sections, the person who furnished the information from which such conviction resulted shall be paid one-half of the fine collected."

Section 12680 was supplemented by the enactment of section 12680-1 G. C., found in 109 O. L., page 223, and provides:

"Whoever, being engaged in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either, or cigars or tobacco, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a copy of section 12965 of the General Code, regulating the sale of tobacco and cigarettes to minors, shall be fined not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than two hundred dollars. Copies of such law shall be obtained from the county auditor.

The secretary of state shall distribute copies of the above mentioned section of the General Code to the county auditors of the various counties, who, in turn, shall distribute the same to any dealer in cigarettes or tobacco in the county who has made application therefor."

In the case of *Miller vs. Miller*, 9 O. C. C. (N. S.), page 315, it was held:

"A section in terms supplementary to other sections is to be considered and construed as a part of the original act."

Under the above rule, section 12680-1 G. C. would be considered a part of the original act and interpreted as such.

Answering your questions specifically, I am of the opinion:

First. That the county auditor should make his charge on the duplicate from the time it was shown that the person convicted actually trafficked in cigarettes.

Second. The county auditor should make his charge under section 5898 G. C.

Third. The persons assessed under section 5989 G. C. are not entitled to the refunder.

Fourth. Section 12683 G. C. applies to section 12680-1 G. C.

Respectfully,

C. C. CRABBE,

*Attorney General.*

1236.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND SAMUEL A. ESSWEIN HEATING AND PLUMBING COMPANY, COLUMBUS, OHIO, FOR COMPLETION OF PLUMBING IN CATTLE BUILDING, OHIO STATE FAIR GROUNDS, AT A COST OF \$9,790.00—SURETY BOND EXECUTED BY FRED J. TRAUTMAN AND O. J. WHEELER.

COLUMBUS, OHIO, February 27, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works and the Sam'l A. Esswein Heating and Plumbing Company of Columbus. This contract covers the completion of plumbing in Cattle Building, Ohio State Fair Grounds, and calls for an expenditure of \$9,790.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which Fred J. Trautman and O. J. Wheeler appear as sureties, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that informal bids were taken and tabulated as required by law and the contract duly awarded. Also it appears that the law relating to the workmen's compensation has been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,

*Attorney General.*

1237.

APPROVAL, BONDS OF LUDLOW TOWNSHIP RURAL SCHOOL DISTRICT, WASHINGTON COUNTY, \$3,451.18, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, February 28, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*