priated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

It is clear that this section contains a direct inhibition against any taxing subdivision borrowing money or issuing certificates in anticipation of the February tax settlement before January first of the year of such tax settlements, and then only for the current fiscal year, which in this instance will be 1929. Advancements for 1929 cannot be made until after January first.

In view of the foregoing and specifically answering your question, it is my opinion that under the provisions of Section 2293-4, General Code, the taxing authorities of a taxing district may not prior to January 1, 1929, borrow money in anticipation of the collection of taxes remaining delinquent at the August settlement and collected prior to the February settlement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2815.

GASOLINE TAX—IMPORTER NOT LIABLE FOR TAX ON MOTOR VEHICLE FUEL IMPORTED INTO OHIO BY TANK STEAMERS AND SOLD IN TANK CAR LOTS—PURCHASERS LIABLE.

SYLLABUS:

Where a dealer ships motor vehicle fuel into Ohio by tank steamers and after unloading it into storage containers, sells said fuel to Ohio dealers in tank car lots, the importer is not liable but the Ohio purchasers from said importer are liable to the payment of the three cent tax.

COLUMBUS, OHIO, November 1, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"X, an Ohio registered dealer in motor vehicle fuel, ships motor vehicle fuel by tank steamers from East Chicago, Indiana, via Lake Erie to Cleveland, Ohio. The motor vehicle fuel is emptied into storage facilities owned by X in Cleveland, then afterward loaded into tank cars and sold in such tank cars to other motor vehicle fuel dealers in Ohio. A question has arisen as to who is liable to the state for the Ohio 3 cent tax on the motor vehicle fuel, whether it is X or X's customers who purchase it in tank car lots.

We shall greatly appreciate your giving us your opinion in the matter at your earliest convenience."

The company in question evidently bases its claims to exemption upon the concluding sentence of Section 5526 of the General Code. This section defines the terms "motor vehicles" and "motor vehicle fuels" and provides as follows:

"* * *

'Dealer' shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the state of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the state of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the state of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

It is noted that the motor vehicle fuel is carried in ships from East Chicago, Indiana, to Cleveland, Ohio, and it is then taken from the ships and emptied into containers in Cleveland and thereafter is loaded into tank cars and then sold to dealers in Ohio.

In an opinion of this department to your commission under date of September 19, 1927, Opinions of the Attorney General for 1927, Vol. III, page 1778, it was stated in the first paragraph of the syllabus that:

"A person, firm or corporation, transporting from outside the state of Ohio and delivering to persons within this state, gasoline in tank cars, tank wagons or drums, is not a 'dealer' within the definition of that term as contained in the provisions of Section 5526 of the General Code of Ohio, where such delivery is made to the purchasers in such original tank cars, tank wagons or drums."

The facts then under consideration, however, were different from the facts now before me. It was also stated in said opinion at page 1780, that:

"It is quite obvious that the delivery is made from West Virginia to Ohio in a single container, and that the transaction is single, continuing from the filling of the wagon in West Virginia to its delivery to the tenant in Ohio. I have no difficulty in reaching the conclusion that such transaction is within the express language of the exception heretofore quoted from Section 5526 of the General Code. Although the delivery, of course, is not in tank car lots, it certainly is in the original containers in the sense that it is in the original container in which it is brought across the state line. Even though the language of the statute were not so specific, I should be compelled to hold that the transaction in question constitutes interstate commerce, and, therefore, that the state has no power to impose a tax thereon.

It is unnecessary to review the decisions of the Supreme Court of the United States in which the 'original package' doctrine is laid down. I call your attention, however, to the opinion of this department, No. 585, rendered to your commission on June 8, 1927, in which reference is made to two late decisions of the Supreme Court of the United States on the question of interstate commerce. The two authorities cited, namely, *Pennsylvania Gas Co.* vs. *Public Service Commission, 252 U. S. 23, and Public Utilities Commission* vs. *Attleboro Steam & Electric Co.,* decided January 3, 1927, Vol. 47, Supreme Court Reporter (Advance Sheets), p. 294, are pertinent here and warrant the

conclusion that, in the present instance, the transaction is one in interstate commerce and so beyond the taxing power of the state. It follows, therefore, that in the first instance the tenant in Ohio must be regarded as the 'dealer' within the terms of the gasoline tax law.

There is no difference in principle between the facts in the first instance cited and those relative to the second transaction. In this case, however, the shipment is made in fifty gallon drums to persons in this state and transportation effected either by trucks or rail. While it is true that in this instance single truck loads may be divided among several consignees, yet the drums which constitute the original containers are not, as I understand it, themselves divided. These drums being the original container, I am of the opinion that here again the express language of the proviso of Section 5526 is applicable, and, even if this were not so, under the uniform rulings of the Supreme Court of the United States, the state would be without power to tax the transaction, constituting as it does interstate commerce. It follows that the individual purchaser in Ohio and not the company shipping the gasoline into this state must be regarded as the dealer."

In the instant case the motor vehicle fuel is taken from the vessel in which it is shipped and stored in containers in the city of Cleveland. It therefore loses its import character and is no longer within the provisions pertaining to shipments in interstate commerce.

In an opinion to your Commission, No. 1597, dated January 8, 1928, in answering the question as to whether certain flaxseed shipped in the hold of a vessel from Montreal and unloaded into bins in Cleveland, was liable to taxation in Ohio, it was stated that:

"When the original package of importation has been broken for the purposes of sale (*May* vs. *New Orleans,* 178 U. S. 496), the import character of the property is lost and it may be taxed by the state where it is located.

There is no original package to protect this flaxseed from taxation by the state, for if there ever was any original package it was the hold of the ship and it has been removed from that."

It is also stated in said opinion that:

"Even conceding that while in the bins unused the flaxseed could have been said to be exempt from state taxation, on the theory that the importer still had the right to sell the total bulk of flaxseed, the reasoning of the court in *Brown* vs. *Maryland* and *May* vs. *New Orleans*, supra, would seem clearly to lead to the conclusion that when the importer commenced to use it the exemption was lost."

Said opinion quotes from the case of *May* vs. *New Orleans,* page 501, as follows:

"When their goods had been so acted upon as to become a part of the general mass of property in the state the plaintiffs stood, with respect to liability to state taxation, upon the same basis of equality as the owners of like property, the product of this country."

It is therefore concluded that said motor vehicle fuel after being emptied into containers in Cleveland is no longer in interstate commerce and therefore not within the exemption provided in Section 5527, General Code, wherein it is provided that:

"The sale of motor vehicle fuel shall not be subject to said tax:
* * *
(d) if such motor vehicle fuel be in process of transportation in international or interstate commerce, * * *"

In the instant case the said X, the dealer who imports the motor vehicle fuel into Ohio for distribution or sale, is liable for the payment of the three cent tax on said motor vehicle fuel unless the dealer comes within the proviso of Section 5526, General Code. Said proviso reads as follows:

"Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

Under this provision the dealer so importing such motor vehicle fuel into this state and selling the same in tank car lots or in its original containers to a purchaser for use, distribution or sale and delivery in this state is relieved from the payment of the tax and the purchaser of the motor vehicle fuel in tank car lots or original containers shall be deemed the dealer and therefore be subject to the payment of the tax. It is evident from the plain statements of this proviso that it applies either to sales in tank car lots or in original containers.

Specifically answering your question, it is my opinion that where a dealer ships motor vehicle fuel into Ohio by tank steamers and after unloading it into storage containers, sells said fuel to Ohio dealers in tank car lots, the importer is not liable but the Ohio purchasers from said importer are liable to the payment of the three cent tax.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2816.

COPORATION—USE OF WORD "BANKER"—PERMISSIBLE WHEN A PERSON'S PROPER NAME—GIVEN NAME AND INITIAL MUST PRECEDE.

SYLLABUS:

The use of the word "Banker," as part of the designation of a corporation, may be permitted, where it is an integral part of the proper name of the person seeking to form the corporation and the remainder of the name is set forth so that no possibility of deception of the public is present.

COLUMBUS, OHIO, November 1, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows: