

"Sec. 1182. * * * Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director * * *."

"Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to sufficiency of the sureties by the director, and as to legality and form by the attorney general, and be deposited with the secretary of state * * *."

After an examination of the bond, I find same to have been properly executed in accordance with the above statutory provisions and am therefore approving same and returning it, together with all other papers forwarded in connection therewith.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3892.

SALES TAX—EFFECTIVE DATE OF AMENDED HOUSE BILL NO. 134.

SYLLABUS:

1. *Amended House Bill No. 134 of the second special session of the 90th General Assembly became effective as a law of Ohio on December 13, 1934, but the tax levy imposed by the act did not, by express provision of the act, become operative until January 1, 1935.*

2. *The Order of the Tax Commission fixing January 27, 1935, as the date when the sales tax shall be operative, is void.*

3. *The Tax Commission has no authority to differentiate between sales involving the immediate transfer of the property sold, and sales involving a subsequent transfer of such property, as to their taxability.*

COLUMBUS, OHIO, February 1, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is hereby made of the receipt of your recent communication which reads as follows:

"During the past few days many inquiries have come to this Commission relative to the effective date of Amended House Bill No. 134 enacted by the 90th General Assembly, 2d special session, known as the Sales Tax Act.

The question involved is whether or not 'the actual effective date' as used in the Act means the date when the tax will actually start to be collected, which is January 27, 1935, or does it mean January 1, 1935, the date the Act became effective?

In the event the effective date is January 1, 1935, could tax be collected on property transferred under contracts executed subsequent to January 1, 1935, and prior to January 27, 1935, wherein said property is to

be delivered on or after the date of collection of said tax as prescribed by the tax commission.

Your opinion is therefore respectfully requested on the application of the law to the foregoing questions."

Amended House Bill No. 134 was passed at the second special session of the 90th General Assembly, on December 6, 1934, approved by the Governor on December 13, 1934, and filed in the office of the Secretary of State on December 14, 1934.

In the case of *State vs. Lathrop*, 93 O. S. 79, it was held, as disclosed by the syllabus:

"Construing section 1c of article II with section 16 of article II of the constitution, in so far as both sections relate to the time from which an act of the general assembly shall operate, *laws providing for tax levies*, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in section 1d of article II of the constitution, *go into immediate effect when approved by the governor*. All other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval of the governor." (Italics mine.)

See also *State ex rel. vs. Roose*, 90 O. S. 349.

As stated in the foregoing cases, under the Ohio Constitution, acts of the General Assembly providing for tax levies are effective as laws when approved by the Governor. However, there is nothing in the Constitution to prevent the legislature, if it chooses so to do, from providing in an act providing for a tax levy that the levy shall commence to operate at a date at some period of time beyond that at which the act would become effective as a law under the Constitution. Hence the act should be studied to see at what period of time beyond December 13, 1934, when such act became effective, the legislature intended the tax levy to begin.

Section 2 of Amended House Bill No. 134 (section 5546-2, General Code) provides in part:

"For the purpose of providing revenue with which to meet the needs of the state for poor relief in the existing economic crisis, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purposes of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this act, *an excise tax is hereby levied on each retail sale in this state of tangible personal property occurring during the period beginning on the first day of January, 1935, and ending on the thirty-first day of December, 1935, with the exception hereinafter mentioned and described as follows:*

* * *

The taxes hereby imposed shall apply and be collected when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a *sale as herein defined made during said period*, the price of which as herein defined consists in whole or in part of rentals for the use of the thing transferred, the taxes hereby imposed shall, as regards such rentals, be measured by the installments thereof falling due *within said period* only.

For the purpose of the proper administration of this act and to prevent the evasion of the tax hereby levied, it shall be presumed that all sales made in this state *during the period defined in this section* are subject to the tax hereby levied until the contrary is established." (Italics the writer's.)

From the clear provisions of the foregoing section it is evident that the tax is levied on each retail sale in this state of tangible personal property occurring during the period beginning on the first day of January, 1935, and ending on the thirty-first day of December, 1935. The terms "retail sale" and "sale" are defined in section 1 of the act (section 5546-1, General Code), as follows:

"Sale' and 'selling' include all transactions whereby title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange or barter, and by any means whatsoever.

'Retail sale' and 'sale at retail' include all sales excepting those in which the purpose of the consumer is (a) to re-sell the thing transferred in the form in which the same is, or is to be, received by him; or (b) to incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing or refining, or to use or consume the thing transferred in manufacturing, retailing, processing or refining or in the rendition of a public utility service; or (c) security for the performance of an obligation by the vendor."

Under the definition of the terms "sale" and "retail sale" as quoted, supra, it is clear that with respect to contracts for the sale of property on which the tax is levied, wherein the possession does not pass at the time of making the contract, the sale nevertheless is taxable as of the time of the making of the contract. Hence any contract made for the sale of property on which the tax is levied by the act, wherein possession does not pass immediately, if made after midnight of December 31, 1934, and before January 1, 1936, is subject to the tax levy provided in the act.

While as stated above the language of section 5546-2, General Code, appears to clearly show the intention of the General Assembly was that the tax levy commence to operate January 1, 1935, there is other language in other parts of the act which also shows such intention.

Section 23 of the act amends sections 6212-49a, and 6212-49b of the General Code. Section 6212-49a, General Code, as amended by the act, reads in part:

As used in sections 6212-49a to 6212-49t, both inclusive, of the General Code:

'Beverages' means beer as defined by section 6212-63 of the General Code as amended, *and after December 31, 1935, shall include* also all beverages whatsoever excepting milk and cream and proprietary medicines; and excepting also all intoxicating liquor.* * *"

Section 6212-49b, as amended by the act, reads:

"* * *

The tax hereby imposed *after December 31, 1935*, shall not apply to the sale or distribution of beverages (other than beer) in sealed bottles retailing for five cents or less."

Section 24 of the act (section 5546-22, General Code) provides in part:

"That existing sections 6212-49a and 6212-49b of the General Code, are hereby repealed, and sections 5543-1 to 5543-20, both inclusive, 6212 49q, 6212-49r, 6212-49s and 6212-49t of the General Code *are hereby suspended January 1, 1935, until and including December 31, 1935.* * * *"^a (Italics the writer's.)

In connection with these last quoted sections, the title of the act may be examined to more clearly show the intent of the legislature that the tax levy was to commence to operate on January 1, 1935. The title reads in part:

"* * *

amending sections 6212-49a and 6212-49b of the General Code, relating to the excise tax on the sale of bottle beverages so as to limit the same *to the sale of bottled beer for the year 1935; suspending for the year 1935* sections 5543-1 to 5543-20, both inclusive, of the General Code, relating to the excise tax on cosmetics or toilet preparations."^a (Italics mine.)

The Supreme Court of Ohio has often declared the rule to be that where the terms of a statute are clear and unequivocal, there is no authority to construe the statute. See *Mansfield vs. Brooks*, 110 O. S. 566; *State, ex rel. vs. Brown*, 121 O. S. 329, and *Swelland vs. Miles*, 101 O. S. 201.

It appears to me that this principle is applicable here. The provisions of section 2 of Amended House Bill No. 134 (section 5546-2, General Code), and the other provisions of the act quoted above, together with the title of the act, seem to me to be clear and unmistakable and show that the legislature meant that the tax levy should operate from January 1, 1935 to December 31, 1935. Hence, I am unable to see any authority to construe the act otherwise.

While section 5 of the act (section 5546-5, General Code) provides that your commission "shall have power to adopt and promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act," yet there is no authority under this power to adopt procedural rules to amend the clear provisions of the act.

In the case of *Davis vs. State, ex rel.*, 127 O. S. 261, it was stated in the first paragraph of the syllabus:

"Where a certain jurisdiction is duly conferred, duties assigned and powers granted to a board or commission, such board or commission cannot confer upon itself further jurisdiction or add to its powers by the adoption of rules under authority granted to adopt rules of procedure."

In the opinion at page 264, it is stated:

"A city board or commission can no more amend a city charter, and thus extend its powers by adopting a rule, *than a state commission may in like manner amend the constitution or laws of the state* providing for its creation and *defining its powers; nor is jurisdiction conferred by law upon boards or commissions subject to extension by them.*" (Italics the writer's.)

The legislature obviously did not confer upon your commission the power to fix by rule or regulation the date when the act here under consideration should become operative. On the contrary, the legislature was apparently aware of the fact that some

little time would be required to set up the machinery for the collection of this tax as provided in the act, and determined that the interval between the date of the passage of the act, December 6, 1934, after making allowance for the time within which the Governor could sign the same, and January 1, 1935, would be sufficient for this purpose. It is possible that the period of time fixed by the legislature for preparing to place this act in operation was unduly limited but that, in my judgment, was a question of policy for the legislature, which may not be set aside by either the judicial or executive branch of the government unless the act of the legislature is violative of some provision of the Constitution. As to this subject, the Supreme Court of Ohio said in its opinion in the case of *Probasco vs. Raine, Auditor*, 50 O. S. 378 at pages 390 and 391:

“Whatever may be the rule elsewhere, it is clear that in this state the validity of an act passed by the legislature must be tested alone by the constitution, and that the courts have no right or power to nullify a statute upon the ground that it is against natural justice or public policy.

When the legislature is silent, the courts may declare the public policy, and mark out the lines of natural justice; but when the legislature has spoken, within the powers conferred by the constitution, its duly enacted statutes form the public policy, and prescribe the rights of the people, and such statutes must be enforced, and not nullified, by the judicial and executive departments of the state.

When the legislature, within the powers conferred by the constitution, has declared the public policy, and fixed the rights of the people by statute, the courts cannot declare a different policy or fix different rights. In this regard the legislature is supreme, and the presumption is that it will do no wrong, and will pass no unjust laws. The remedy, if any is needed, is with the people and not with the courts.”

You inquire as to whether or not a tax may be now collected on property transferred after January 27, 1935, under contracts executed subsequent to January 1, 1935 and prior to January 27, 1935. It is perfectly obvious that the attempted postponement of the date when the tax levy became operative was without authority and of no legal effect, and it was, of course, the duty of your commission to enforce the provisions of the act as to all taxable sales made on and after January 1, 1935.

Because of practical difficulties in attempting now to collect this tax on *all* taxable sales made on and since January 1, 1935, I assume you desire information as to your authority to collect on the specific sales of which you inquire. With respect to this matter, I find no authority whereby your commission may differentiate between sales involving the immediate transfer of the property sold and sales involving a subsequent transfer of the property sold as to their taxability, and it would therefore follow that to attempt at this time to enforce the collection of this tax upon such sales as you mention, without at the same time enforcing the collection of this tax upon all sales taxable under the act made on or after January 1, 1935, would constitute an unlawful exercise of the power vested in your commission.

It is accordingly my opinion that:

1. Amended House Bill No. 134 of the second special session of the 90th General Assembly became effective as a law of Ohio on December 13, 1934, but the tax levy imposed by the act did not, by express provision of the act, become operative until January 1, 1935.

2. The order of the Tax Commission fixing January 27, 1935, as the date when the sales tax shall be operative, is void.

3. The Tax Commission has no authority to differentiate between sales involving the immediate transfer of the property sold, and sales involving a subsequent transfer of such property, as to their taxability.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3893.

CITY—MAY BY ORDINANCE OR REGULATION OF BOARD OF HEALTH PROVIDE FOR INSPECTION OF ANIMALS TO BE SLAUGHTERED FOR FOOD.

SYLLABUS:

1. *A City operating without a city charter may, by ordinance of the city council, require the inspection of animals to be slaughtered for food, and for the inspection of the carcasses thereof.*

2. *Such requirement may also be by regulation of the board of health of such city in the absence of or independent of any ordinance of the city council.*

COLUMBUS, OHIO, February 1, 1935.

HON. W. D. LEECH, *Chief, Division of Foods and Dairies, Department of Agriculture, Columbus, Ohio.*

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

“We have the following questions asked us by a city in the state:

‘Can a city operating without a city charter require meat inspection, either Federal or Municipal, at the time of killing in slaughter houses or packing plants?

Can this be done by ordinance of the City Council delegating the enforcement and supervision to the District Board of Health?

Or should this be done by a regulation adopted by the District Board of Health?

Can this be done in either of the above ways independent of the other?”
Article 18, section 3 of the Constitution of Ohio, reads as follows:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

In the case of *City of Bucyrus vs. State Department of Health, et al.*, 120 O. S. 426, the first branch of the syllabus reads as follows:

“The provisions of Article XVIII of the Constitution of Ohio do not deprive the state of any sovereignty over municipalities in respect to sanitation