5705.

APPROVAL — BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, $36,-000.00.

COLUMBUS, OHIO, June 10, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5706.

AGRICULTURAL SEEDS—SALE BY PRODUCER ON OR FROM HIS PREMISES TO USER THEREOF—NOT REQUIRED TO HAVE LICENSE WHEN.

SYLLABUS:

When agricultural seeds are sold and delivered by the producer thereof, on or from his premises for seeding purposes by the purchaser himself, the seller thereof is not required to procure the license provided for in section 5805-13 of the General Code, unless said seeds are advertised for sale through the medium of the public press or by circular letter, or advertised for delivery by common carrier. If said seeds are so advertised, the seller thereof is required to procure such license.

COLUMBUS, OHIO, June 13, 1936.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

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

> "This office desires an opinion upon the following:
>
> In the Ohio Agricultural Seed Law, Section 5805-6, Subsection (d), it provides as an exemption to this act that 'When such seed is grown, sold, and delivered by any producer on his premises for seeding purposes by the purchaser himself, unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act. If, however, said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier, said producer shall be

considered a vendor, and said seed must be labeled in accordance with the provisions of this act.'

Then under Section 13 of the same act it is provided that a license fee must be paid '. . . except as provided in Section 6, Sub-section (d) of the Ohio Agricultural Seed Law and except the producer of only those seeds grown and delivered directly from the premises where produced.'

Under Sub-section 6 (d) it seems perfectly clear that a farmer advertising and/or shipping seeds produced on his farm becomes a vendor and as a vendor must pay the license fee as provided as well as comply with the labeling provisions of the act. There are some, however, who take the view that the exemptions of Section 13 nullify this division and that it is thereby not required that he take out a license.

Your interpretation of the above provisions will be appreciated."

Section 5805-2 of the General Code, provides that every lot of agricultural seeds as defined in section 5805-1 of the General Code, shall have affixed thereto on each container of such agricultural seeds a label on which is stated certain information set out in said statute.

Exceptions to the provisions of the above section are contained in section 5805-6, General Code, which reads as follows:

"Agricultural seeds or mixtures of the same shall be exempt from the provisions of this act.

(a) When possessed, exposed for sale, or sold for food purposes only.

(b) When sold direct from grower to seed merchants to be cleaned or graded or shipped to a general market to be cleaned or graded before offered or exposed for sale for seeding purposes.

(c) When in store for the purpose of recleaning, or not possessed, sold, or offered for sale for seeding purposes within the state.

(d) When such seed is grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself, unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act. If, however, said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier said producer shall be considered a vendor, and said

seed must be labeled in accordance with the provisions of this act."

Provision for the licensing of seed dealers is contained in section 5805-13 of the General Code, which, in its present form, reads in part as follows:

> "For the purpose of defraying the cost of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person, firm, company or corporation shall sell, offer for sale, expose for sale, or solicit for sale in this state any of the agricultural seeds, except as provided in section 6, sub-section (d) of the Ohio agricultural seed law and except the producer of only those seeds grown and delivered directly from the premises where produced."

That portion of the above section which exempted certain persons from the provisions thereof, read prior to its recent amendment (116 O. L. 367) as follows:

> "For the purpose of defraying the costs of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person, firm, company or corporation shall sell, offer for sale, expose for sale, or solicit for sale in this state, any of the agricultural seeds, except as provided in section 6, sub-section (d) of this act, he or they shall pay each year a license fee to the director of agriculture of five dollars, * * *"

As a general rule, it must be assumed that the legislature intended some change in the operation and effect of a law by the amendment thereof. The presumption is that every amendment of the statute is made to effect some purpose. In the present instance, the statute in question was amended to include within the exceptions thereto "the producer of only those seeds grown and delivered directly from the premises where produced."

By the application of the rule of construction above stated, it would therefore appear that the amendment was to alter the operation and effect of the early provision. However, in considering the provisions of an amendment, such amendment may not be considered as standing alone; the same must be construed in connection with the language of the whole statute of which it has become a part. On this point it is stated in Ohio Jurisprudence, Volume 37, page 767, as follows:

> "An amended statute becomes a part of the chapter and subdivision of the Code in which it is placed, and it is to be read and construed as if introduced into the place of the repealed section in said chapter and subdivision. Similarly, an amendment operates the same as if the whole statute is re-enacted with the amendment; and therefore, an act amending one or more sections of a statute should be considered in connection with, and as if embodied in, the whole statute of which it has become a part. The amended sections are presumed to have been made in contemplation of the provisions of the unamended sections of the original act."

It is also stated in Lewis' Sutherland Statutory Construction, Vol. 1 (2nd Ed.), page 444, that:

> "It is a general rule, however, that an amended statute is construed, as regards any action had after the amendment was made, as if the statute had been originally enacted in the amended form. The effect of an amendment of a section of the law is not to sever it from its relation to other sections of the law, but to give it operation in its new form as if it had been so drawn originally, treating the whole act as a harmonious entirety, with its several sections and parts mutually acting upon each other.'"

See also State vs. Cincinnati, 52 O. S. 419.

From the above, it would seem imperative that the new language contained in the amendment to section 5805-13, supra, must be construed with reference to, and in connection with the provisions contained in section 5805-6d, supra, which were readopted in amending the former section.

By striking from the former section the reference to the latter subsection and substituting in lieu thereof the adopted language contained therein, the pertinent portion of section 5805-13, supra, would read as follows:

> "For the purpose of defraying the cost of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person * * * shall sell * * * in this state any of the agricultural seeds, except when such is grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself unless the purchaser of said seeds demands and receives from the seller at the

time of the sale a certificate that said seed is subject to the provisions of this act. If, however, said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier said producer shall be considered a vendor, and said seed labeled in accordance with the provisions of this act, and except the producer of only those seeds grown and delivered directly from the premises where produced, he * * * shall pay each year a license fee to the director of agriculture. * * *"

Reading the above language, standing in the order in which it does, would seem to require the conclusion that persons selling and delivering seeds on their own premises are not exempt from the licensing provision of the act if they advertise in the manner set out in section 5805-6d, supra, while persons delivering from their premises may advertise in the manner aforesaid and still be exempt from procuring a license. Certainly, such was not the intent of the legislature. Such a construction would lead to the most unreasonable and absurd consequences, which, according to all rules of statutory construction, are to be avoided unless restrained by the clear language of the statute itself. In regard thereto, it is stated in Ohio Jurisprudence, Vol. 37, pages 643 and 654, inclusive, (sections 352 and 353) that:

"Section 352. It is to be assumed that the legislature intends to enact only that which is reasonable, and courts sometimes refer to the presumption against absurdity in the provisions of a legislative enactment. It is clear that the general assembly will not be assumed, or presumed, to have intended to enact a law producing unreasonable or absurd consequences."

"Section 353. One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration."

If, however, the provisions of section 5805-6d, supra, relative to advertising, were construed to modify the provisions contained in said section with reference to persons selling on their premises and also the

provisions of section 5805-13, with reference to persons selling from their premises, a more logical conclusion would be reached. In other words, by transposing the language contained in the latter section to read as follows:

> "For the purpose of defraying the cost of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person * * * shall sell * * * agricultural seeds, except when such seed is grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act, and except the producer of only those seeds grown and delivered from the premises where produced unless said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier he * * * shall pay each year a license fee to the director of agriculture. * * *"

it would appear that the real intent of the legislature would be reached.

Relative to the transposition of words and phrases in connection with statutory construction, it is stated in Lewis' Sutherland Statutory Construction, Vol. 2, (2nd Ed.), page 744:

> "Words, phrases and sentences may be transposed when necessary to give effect to all the words of a statute and carry out the manifest intent."

See also State vs. Turnpike Company, 16 O. S. 308.

In regard thereto, it is likewise stated in Ohio Jurisprudence, Volume 37, page 496:

> "Nothing may be read into, or out of, the statute which is not within the manifest intention of the legislature as gathered from the act itself. However, these principles do not prevent the interpolation or transposition of words where the intention of the legislature is plain and unmistakable, and such interpolation or transposition is necessary to carry out that intention and to make the statute sensible and effective."

The above text is supported by the following cases:

Slingluff vs. Weaver, 66 O. S. 621;
Remington vs. Central Press Association, 13 O. C. C. 542.

To take the view as stated in your letter, that the provisions of section 5805-6d, supra, are nullified by the new language contained in section 5805-13, supra, would require that no consideration be given to the fact that the legislature in amending the latter section readopted the language of the former. If such were the intention of the legislature, it might well have omitted from the new statute all reference to section 5805-6d, supra. Furthermore, to interpret a statute or any part thereof as to make it wholly nugatory is the last extremity to which judicial construction should go. See Sawyer vs. State, 45 O. S. 343; State, ex rel. Mitman vs. Greene County, 94 O. S. 296; Scovern vs. State, 6 O. S. 288; Probasco vs. Raine, 50 O. S. 378; Shuck vs. Board of Education, 92 O. S. 55; Cleveland R. Co. vs. Brescia, 100 O. S. 267.

It must also be borne in mind, on that point, that exceptions to the operation of statutes should receive a strict construction. In regard thereto, it is stated in State, ex rel. v. Forney, 108 O. S. 463, at page 467:

> "The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law."

In view of the foregoing and in specific answer to your question, it is therefore my opinion that:

When agricultural seeds are sold and delivered by the producer thereof, on or from his premises for seeding purposes by the purchaser himself, the seller thereof is not required to procure the license provided for in section 5805-13 of the General Code, unless said seeds are advertised for sale through the medium of the public press or by circular letter, or advertised for delivery by common carrier. If said seeds are so advertised, the seller thereof is required to procure such license.

Respectfully,
JOHN W. BRICKER,
Attorney General.