was August 6, 1931. Assuming that no applications for the lease of any of the parcels of canal lands covered by these lease instruments have been made by the village of Newcomerstown or by any other person or corporation entitled to prior rights under this act in respect to the lease of these canal lands, I find that these leases and the provisions thereof are in conformity with the act of the legislature above referred to and with other statutory enactments relating to leases of this kind. I am, accordingly, approving these leases by endorsing my approval upon the lease instruments and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5501.

AMUSEMENT TAX—PRIVATE SOCIAL CLUB CONDUCTING DANCE—TAX ASSESSED WHEN.

SYLLABUS:

1. In cases where a fixed admission charge is made to all members or invited guests attending dances or other forms of amusement conducted by a private social club, the tax provided for in Section 5544-2 of the General Code must be collected.

2. Unless such dances or other forms of amusement are open to the public and conducted for profit, assessments made against only those members attending are not taxable under Section 5544-2 of the General Code.

3. Private social clubs conducting dances or other forms of amusement for which direct admission charges are made to members or invited guests attending are required under the provisions of Section 5544-6a of the General Code to secure an amusement license. If, however, instead of admission charges, assessments are made against only those members attending, such clubs are not required to secure such amusement license, unless such dances or other forms of amusement are conducted for profit and are open to the public.

COLUMBUS, OHIO, May 11, 1936.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This acknowledges receipt of your request for my opinion which reads as follows:

> "Attached is a copy of a letter from the Willowdale Club near Canton which raises the question of the requirement of

amusement licenses for a private club giving dances strictly confined to members and their families. This question, as we view it, is really that of whether a dance for which charges are made for admission is subject to the admission tax, when conducted by a club fairly designated as 'private', for (a) members only, or (b) members and invited guests.

We should like to get your opinion on this question. We will state our practice in accordance with ruling of Tax Commission attorneys in respect to conditions differing somewhat from this particular one.

Under the Section 5544-6(a) G. C., enacted in December, providing for amusement licenses, we are not requiring these except where taxable admissions are charged.

It has been the rule to treat as untaxable payments out of a club treasury for the carrying on of dances; likewise assessments made against all members whether in attendance or not. When members or invited guests have been charged each a definite sum for the privilege of admissions and dancing, we have treated the payments as admissions charges and taxable. When assessments are made against only those members who attend, we have treated these as taxable. Under the present law, when members have been admitted by virtue of their membership or their subjection to an assessment, and guests or others have been admitted for certain individual payments, the tax has been applied to the latter payments only.

We have assumed at times that behind the tax enactment was the idea of commercial and public amusement enterprises. We have not assumed to question gatherings in homes and unadvertised dances in fraternity houses. A distinction can be drawn between such places and a club with extensive facilities for entertainment, though its membership be somewhat exclusive."

Section 5544-6a, General Code, which provides for the procuring of amusement licenses, reads in part as follows:

"On and after January 1, 1936, it shall be unlawful for any person to continue to conduct or thereafter to begin to conduct any form of amusement at any permanent or temporary place of amusement or any itinerant form of amusement or to maintain or operate a golf course, or collect green fees in connection therewith, within this state, without a license therefor, as hereinafter provided."

Exceptions to the provisions of the above section are contained in the last paragraph thereof, which reads as follows:

> "When an exemption from the payment of the admissions tax is granted by the commission for a given amusement or series of amusements in accordance with the provisions of Section 5544-3, Ohio General Code, such exemption shall be considered as the equivalent of the license herein provided for. The exemption form as executed on behalf of the commission shall be displayed in the same manner as is provided for the license."

The answer to your question of whether or not a private club conducting dances for its members only or its members and guests, is required to secure the license provided for in Section 5544-6a, supra, depends therefore upon whether or not admission to such dances is subject to the admissions tax.

Section 5544-2, General Code, reads in part as follows:

> "* * * the following taxes are hereby levied, effective January 1, 1935, and for the period ending March 31, 1937, to-wit:
>
> (1) A tax of three percentum on the amounts received for admission to any place, including admission by season ticket or subscription.
>
> * * * * * * * * *
>
> (3) A tax of three percentum on the amount received for admission to any public performance for profit of any roof garden, cabaret, or other similar entertainment in case the charge for admission is in the form of a service charge, or cover charge, or other similar charge."

Section 5544-3, General Code, referred to in Section 5544-6a, supra, which exempts certain admissions from the tax levied by Section 5544-2, supra, reads as follows:

> "No tax shall be levied under this act with respect to:
>
> (1) Any admissions, all the proceeds of which inure
>
> (a) Exclusively to the benefit of religious, educational or charitable institutions, societies or organizations, societies or organizations for the prevention of cruelty to children or animals or societies or organizations conducted for the sole purpose of

maintaining symphony orchestras and receiving substantial support from voluntary contributions, or of improving any municipal corporation, or of maintaining a co-operative or community center moving-picture theater, or swimming pool—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual;

(b) Exclusively to the benefit of persons in the military or naval forces of the United States, or of national guard organizations, reserve officers' associations or organizations, posts or organizations of war, veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the state of Ohio, and if no part of their net earnings inure to the benefit of any private stockholder or individual;

(c) Exclusively to the benefit of persons who have served in the military or naval forces of the United States and are in need;

(d) Exclusively to the benefit of members of the police or fire department of any municipal corporation, or the dependents or heirs of such members.

(2) Any admissions to agricultural fairs, if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same; or admissions to any exhibit, entertainment or other fee feature conducted by such association as part of any such fair, if the proceeds therefrom are used exclusively for the improvement, maintenance and operation of such agricultural fairs.

The exemption from tax provided by this section shall, however, not be allowed in case of admissions to wrestling matches, prize fights, or boxing, sparring or other pugilistic matches or exhibitions, nor in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university."

It will be noted that the above section contains no provisions relative to admissions to dances, the proceeds of which inure to the benefit of a private social club, nor is there anything contained therein which exempts admissions paid by members or invited guests of such club.

It therefore seems manifest that in cases where a direct fixed admission charge is made to members of such club or to invited guests, a tax as provided for in Section 5544-2, supra, must be collected on the price charged.

Your question also involves cases where assessments are made

against members of private social clubs who attend dances given by such clubs. To assess means to "set, fix, or charge a certain sum." Seested v. Dickey, 318 Mo. 192; City of Sioux Ste. Marie v. Railroad Co., 184 Mich. 681.

Paragraph 3 of section 5544-2, supra, deals with cases where the charge for admission is in the form of a service charge, cover charge or other similar charge. It would therefore appear that in cases where no direct fixed admission charge is made, but where an assessment is made against those members attending, the provisions of the above paragraph would apply. It will be noted that under the terms of said paragraph the tax applies only in the case of "a public performance for profit," while under paragraph 1 of section 5544-2, supra, an admission charge to "any place" is taxable.

From the above, it therefore seems apparent that in cases where an assessment is made, if the amusement furnished is not open to the public even though the assessment may be in an amount to permit a profit to be made, said charge or assessment is not taxable.

Therefore, in specific answer to your inquiry, it is my opinion that:

1. In cases where a fixed admission charge is made to all members or invited guests attending dances or other forms of amusement conducted by a private social club, the tax provided for in section 5544-2 of the General Code must be collected.

2. Unless such dances or other forms of amusement are open to the public and conducted for profit, assessment made against only those members attending are not taxable under section 5544-2 of the General Code.

3. Private social clubs conducting dances or other forms of amusement for which direct admission charges are made to members or invited guests attending are required under the provisions of section 5544-6a of the General Code to secure an amusement license. If, however, instead of admission charges, assessments are made against only those members attending, such clubs are not required to secure such amusement license, unless such dances or other forms of amusement are conducted for profit and are open to the public.

Respectfully,

JOHN W. BRICKER,

Attorney General.