

3942.

APPROVAL, BONDS OF CEDARVILLE TOWNSHIP RURAL SCHOOL DISTRICT, GREENE COUNTY, OHIO, \$3,478.39.

COLUMBUS, OHIO, February 14, 1935.

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

---

3943.

APPROVAL, CONTRACT FOR HIGHWAY IMPROVEMENT IN HARRISON COUNTY, OHIO.

COLUMBUS, OHIO, February 14, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

---

3944.

APPROVAL, CONTRACT FOR HIGHWAY IMPROVEMENT IN LORAIN COUNTY, OHIO.

COLUMBUS, OHIO, February 14, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

---

3945.

APPROVAL, BONDS OF VILLAGE OF GLOUSTER, ATHENS COUNTY, OHIO, \$6,476.92.

COLUMBUS, OHIO, February 14, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

---

3946.

SALES TAX—SALES OF FEED, SEEDS, LIME OR FERTILIZER ARE EXEMPT.

*SYLLABUS:*

*Under the provisions of paragraph 2 of section 2 of the Sales Tax Act, sales of feed, seeds, lime or fertilizer are exempt from the tax imposed by that act.*

COLUMBUS, OHIO, February 15, 1935.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

"The tax commission has received many inquiries from various organizations relative to the construction which it has given to section 1, paragraph 2 of Amended House Bill No. 134 known as the Sales Tax Act, and in view of the fact that said section is ambiguous as to the intent of the General Assembly, your opinion is requested. The section reads as follows:

'2. When the vendor is a farmer, the thing transferred is the product of his own farm, or of a farm which he operates, and the retail establishment is located on such farm, or when the sale is of feed, seeds, lime or fertilizer.'

The question is whether or not the language 'when the sale is of feed, seeds, lime or fertilizer' should be limited to sales when the vendor is the farmer, or should it be construed to be general and exempt all sales of these items regardless of whom the vendor may be."

Paragraph 2 of section 2 of House Bill No. 134, which you quote, contains an exemption as to the sales therein mentioned from the provisions of the sales tax levied in such act. It is a cardinal rule of statutory construction that full effect must, whenever possible, be given to all the language used by the legislature, the courts having no authority to read out of the statute any of the language so used nor to read into a statute words which do not appear therein. *Munding vs. Industrial Commission*, 92 O. S. 434, 445; *Stanton vs. Realty Co.*, 117 O. S. 345, 349. It must be presumed that the clause "when the sale is of feed, seeds, lime or fertilizer" was inserted for some purpose and a construction which would give no effect to that clause would be unauthorized if it is possible to construe the same so as to give it effect and subserve a purpose. In the event the clause is to be construed as exempting from the imposition of the sales tax sales of feed, seeds, lime or fertilizer only when such sales are made by farmers and such items are products of their own farms, or farms which they operate, then it would appear that the clause in question is mere surplussage and to be given no substantial effect,—this for the reason that the first part of the paragraph exempts such products.

It may be urged that the clause in question can be given some effect by construing it to exempt sales of feed, seeds, lime or fertilizer by farmers when such items are not products of their own farms, or farms which they operate, and the retail establishment is not located on such farms, or perhaps to exempt such sales by farmers when either the element of their own production or the location of the retail establishment is absent. Such a construction would not, in my judgment, be tenable for the reason that under it farmers would be authorized to open up a retail feed, seed, lime or fertilizer establishment in any municipality and sell such products tax free whereas another individual running a similar retail establishment who is not a farmer would be compelled to collect the tax on such sales. Such a construction would raise a serious constitutional question as to the validity of such classification and courts will not construe a statute so as to impair or seriously affect its constitutionality when a construction is possible which supports its constitutionality. *Burt vs. Rattle*, 31 O. S. 116; *Commercial Co. vs. Manufacturing Co.*, 55 O. S. 217; *Youngstown vs. Fishel*, 89 O. S. 243.

An additional possible construction of the clause under consideration would be that it serves to exempt sales of feed, seeds, lime or fertilizer by farmers when the retail establishment is located on their farms, or on farms which they operate, but which feed, seeds, lime or fertilizer is not the product of such farm on which the retail establishment is located. Such a construction would, in my judgment, be strained and untenable for the reason that it is presumed that the legislature enacts laws in the light of existing conditions and there is a strong presumption that the legislature will not be assumed to have done a vain thing. Retail establishments located on farms at which

feed, seeds, lime or fertilizer are sold which are not the product of that farm, are, to say the least, uncommon, and in addition to this, to construe the statute as exempting such sales without exempting similar sales where the retail establishment is not located on a farm, would be attempting a construction which again would raise a constitutional question as to the validity of the classification. It should be observed that lime and fertilizer, at least in the form in which commercially sold, are not ordinarily farm products and hence not customarily sold by farmers, but rather in transactions involving the sale of these commodities, the farmer is usually the purchaser.

The construction which I have indicated of the paragraph here under consideration is strengthened by the fact that section 1 of the act, defining "retail sale," exempts sales where the purpose of the consumer is to use or consume the thing transferred in retailing or to incorporate the thing transferred as a material into tangible personal property to be produced for sale. Statutes relating to one subject are presumed to be governed by one policy and to be consistent. The first branch of the syllabus of *City of Cincinnati vs. Guekenberger*, 60 O. S. 353, reads as follows:

"A code of statutes relating to one subject, is presumed to be governed by one spirit and policy, and intended to be consistent and harmonious, and all of the several sections are to be considered in order to arrive at the meaning of any part, unless a contrary intent is clearly manifest."

The clause relating to sales of feed, seeds, lime or fertilizer under consideration in this opinion was not contained in paragraph 2 of section 2 of House Bill No. 134 as originally introduced on November 20, 1934. On November 22, the special committee of the House to which the bill had been referred, reported it amended and recommended its passage. The amendment of this section so reported read as follows:

"In line 84 strike out the period and insert in lieu thereof a comma and 'or when the vendee is a farmer and the sale is of feed, seeds, lime or fertilizer, for the use on a farm in Ohio.'"

The bill was passed with this amendment by the House on November 22, 1934. This exemption inserted by the House was obviously limited to cases where the purchaser of feed, seeds, lime or fertilizer was a farmer and the purchase of such commodities was for use on a farm in Ohio. This limitation, however, of the exemption to purchases of such commodities by farmers only for use on a farm was taken out of the clause by amendment of the Senate Taxation Committee on November 28, 1934. This amendment struck out the words "the vendee is a farmer and" and inserted a period after the word "fertilizer", striking out the words appearing thereafter, "for the use on a farm in Ohio", thus leaving the exemption to apply without limitation as to whether or not the purchaser is a farmer and without limitation as to the use to which the purchaser is to put these commodities. The legislative history of this clause would thus strengthen the interpretation which I have hereinabove indicated.

In view of the foregoing, it is my opinion that under the provisions of paragraph 2 of section 2 of the Sales Tax Act, sales of feed, seeds, lime or fertilizer are exempt from the tax imposed by that act.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*