

It will be noted that these conclusions are in accord with the conclusion reached by my predecessors in office in the opinions referred to in your letter, namely, those reported in Opinions, Attorney General, 1919, Vol. 1, p. 869, and Opinions, Attorney General, 1923, Vol. I, p. 499, with the exception of the second conclusion reached in the latter opinion, as set forth on page 502, to the effect that :

“When all of a village school district is transferred to an adjoining rural district, the resulting district is a rural one.”

The former Attorney General based this conclusion upon the following reasoning, as set forth on page 501 :

“Evidently if an entire village district is transferred to a rural district the village board of education is abolished and the rural board of education of the district to which the transfer is made becomes the governing board. It must be presumed that a rural board of education exercises control and jurisdiction only over a rural school district. And in the case just mentioned the enlarged district is rural, the village district having ceased to exist, therefore, your second question is answered that the district is rural.”

I agree with his holding that where a village district is transferred to a rural district by a county board of education the village board of education is abolished and the rural board of education is the one which continues to function; but I do not agree that from this fact it follows that the district is a rural school district, for the reason that, as set forth above, the characteristics of a village school district are plainly set forth in the statutes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1596.

MOTOR TRUCK—WHEN TOTAL GROSS WEIGHT EXCEEDS TEN TONS
—UNLAWFUL TO OPERATE UNLESS EXCEPTED BY SECTIONS
7246 OR 7247, GENERAL CODE.

SYLLABUS:

Under the provisions of Section 7246 of the General Code, it is unlawful to operate a motor truck over the public streets of a municipality or the public highways of the state, the total gross weight of which, including truck and load, exceeds ten tons, unless said vehicle comes within one of the exceptions expressly provided in Sections 7246 or 7247, General Code.

COLUMBUS, OHIO, January 18, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“What is the maximum load permitted on a six-wheel automobile truck, which has a four-wheel drive in the rear, two axles in the rear, and twelve-inch tires on each of the four back wheels, and six-inch tires on the two front

wheels? I am enclosing herein a picture of this truck so that you may see at a glance what kind of a truck it is.

The reason I am asking this question is that former Attorney General C. C. Crabbe in Opinion 3298 said that in the case of a tractor and semi-trailer the maximum load allowed would be ten tons upon the tractor and eight tons upon the semi-trailer making a total of eighteen tons upon the two vehicles.

The vehicle in this picture according to Section 7246 of the General Code would have to keep within the ten ton limit, that is, the weight of the truck plus the weight of the load could not exceed ten tons. I have had various truck dealers in our office claiming that the truck, the picture of which is enclosed herein, has the same number of bearing points as a commercial tractor and semi-trailer together have, and has the same width of tires and that one license plate costs as much on this kind of truck as two plates cost for the commercial tractor and the semi-trailer. These dealers tell me that they want to know definitely just what the maximum load is for this kind of a truck so that they may be able to tell prospective purchasers who are wanting to know this question all the time before they purchase these trucks."

Section 7246, General Code, provides in part as follows:

"* * * no trailer, semi-trailer, wagon, truck, *automobile truck*, commercial tractor, or other vehicle, whether propelled by muscular or motor power, *weighing in excess of ten tons, including weight of vehicle and load*, shall be operated over and upon the improved public streets, intercounty highways, main market roads, bridges or culverts within the state, *except as provided in this chapter*.

This provision shall not apply to vehicles run upon rails or tracks or to fire engines, fire trucks or other vehicles or apparatus belonging to any municipal or volunteer fire department or used by such department in the discharge of its functions. No object shall be moved over or upon such streets, highways, bridges or culverts upon wheels, rollers or otherwise, except as provided in this chapter, in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, and load."

Sections 7247, 7248 and 7248-2, General Code, read as follows:

Sec. 7247. "The county surveyor of any county, upon application in writing by the owner or person having charge thereof, may grant permission for the moving of vehicles, objects or structures in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, structure and load, over the improved intercounty highways, main market roads, bridges or culverts within such county and located outside of any municipal corporation or corporations therein situated. Such permission shall be in writing and the county surveyor may grant the same, subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection of such highways, bridges and culverts. The director of public service of a city or mayor of a village may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within such city or village.

The director of the department of highways and public works may in like manner grant such permission as to the improved public highways,

streets, bridges or culverts within this state in regard to all intercounty movements of such vehicles, objects or structures, or in regard to any such movement wholly upon any portion of the intercounty highways, bridges or culverts."

Sec. 7248. "No person, firm or corporation shall transport over the improved public streets, alleys, intercounty highways, main market roads, bridges or culverts in any vehicle propelled by either muscular, motor or other power, any burden, including weight of vehicle and load, greater than the following:

In vehicles having metal tires three inches or less in width a load of five hundred pounds for each inch of the total width of tire on all wheels. When the tires on such vehicles exceed three inches in width an additional load of eight hundred pounds shall be permitted for each inch by which the total width of the tires on all wheels exceeds twelve inches.

In vehicles having tires of rubber or other similar substances, for each inch of the total width of tires on all wheels, as follows: For tires three inches in width, a load of four hundred and fifty pounds; for tires three and one-half inches in width, a load of four hundred and fifty pounds; for tires four inches in width, a load of five hundred pounds; for tires five inches in width, a load of six hundred pounds; and for tires six inches and over in width a load of six hundred and fifty pounds. The total width of tires on all wheels shall be, in case of solid tires of rubber or other similar substance, the actual width in inches of all such tires between the flanges at the base of the tires, but in no event shall that portion of the tire coming in contact with the road surface be less than two-thirds the width so measured between the flanges. And in the case of pneumatic tires of rubber or other similar substance, the total width of all tires on all wheels shall be the actual width of all such tires measured at the widest portion thereof when inflated and not bearing a load.

In no event shall the load, including the proportionate weight of vehicle that can be concentrated on any wheel, exceed six hundred and fifty pounds to each inch in width of the tread as defined above for solid tires; or each inch in the actual diameter of pneumatic tires measured when inflated and not bearing a load."

Sec. 7248-2. "No vehicle shall be operated upon the intercounty highways or main market roads, whose width is greater than ninety-six inches, except traction engines whose width shall not exceed one hundred and thirty-two inches, and no vehicle shall be operated on such highways, of a greater height than twelve feet six inches, or of a greater length than thirty feet, and no combination of vehicles coupled together shall be so operated whose total length, including load, shall be greater than eighty-five feet, provided, that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter.

Provided, that this section shall not apply to fire engines, fire trucks, or other vehicles or apparatus belonging to any municipality or to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions."

All of the above sections were enacted in their present form in House Bill No. 244, passed by the 86th General Assembly on March 27, 1925 (111 v. 243). From the provisions of these statutes, it is apparent that the gross weight of an automobile

truck, together with its load cannot exceed ten tons and be legally operated on the public roads or highways, unless it comes within one of the exceptions for which provision is expressly made, and that there is the further and additional limitation that not to exceed 16,000 pounds, nor more than 80% of the total gross weight of vehicle and load may be concentrated on both wheels of one axle.

It is observed that under the provisions of Section 7246, *supra*, and the related sections contained in Chapter 19, Title IV of the General Code entitled "Traffic Rules and Regulations," the only language providing exceptions to the prescribed limit of ten tons gross weight for automobile trucks and loads operated over the streets and public highways is that found in Sections 7246 and 7247, *supra*. A reading of the sections in said chapter discloses that the legislature has made no exceptions to the gross weight fixed by Section 7246, *supra*, except that which is provided in the provisions of Sections 7246 and 7247 of the General Code. It is obvious that the exceptions set forth in Section 7246 are not of general application and the provisions of Section 7247 have no application to your question for the reason that they relate only to exceptional cases where a vehicle or other objects or structures are being moved over the streets or highways from one point to another.

Section 7248, General Code, regulates the weight of the vehicle and load that may be transported over the streets and highways in relation to the tire surface of the vehicle, permitting the weight to be increased as the surface of the tire is increased, but the increased weight permitted as the surface of the tire increases can in no event exceed the gross weight of ten tons fixed by the provisions of Section 7246, *supra*.

It is quite clear that the provisions of Section 7248, General Code, have to do with the kind of tire and the amount of the surface thereof coming in contact with streets and roads over which such vehicles are traveling. It is clear that the legislature had in mind in enacting said section that principle which experience has taught, namely, that damage to improved highways is caused by impact which is the result of weight and speed. That the legislature had in mind the principle above mentioned is emphasized by the fact that under the provisions of Section 7249, General Code, appearing in the same chapter, the speed of commercial cars is regulated according and in relation to the type of tires and the weight of a vehicle using such highways for commercial purposes. The provisions of the statutes under this chapter being in their nature police regulations for the preservation of our improved highways such provisions must be construed reasonably to effect the purpose intended, *viz.*, the protection and preservation of such highways.

It is true, as stated in your communication, that my predecessor in the opinion mentioned therein held that in the case of a tractor and semi-trailer the maximum weight permitted is ten tons for the tractor and eight tons for the semi-trailer. I concur in the conclusion therein reached. An examination of said opinion will show, however, that as therein pointed out, the legislature amended Section 6290 of the General Code on March 26, 1925 (111 v. 239), which section has to do with the registering of motor vehicles. Under the provisions of subsection 8 of Section 6290, General Code, which defines a semi-trailer, the same must be considered as a separate vehicle for all purposes. Therefore, it would not be possible to consider a tractor and a semi-trailer as one vehicle in applying the weight limitation as provided in Section 7246, General Code.

While there may be some force in the contention of truck dealers that trucks of the kind here involved have the same number of bearing points and the same width of tires as a commercial tractor and semi-trailer together, yet the legislature has made no provision which places a truck of the kind and character which you mention in the same category or classification as a tractor and semi-trailer. If the

present law is wrong in this respect, the remedy lies with the legislature. Suffice it to say that the legislature in Section 7246, *supra*, has spoken of each vehicle therein named as a single entity and has given no leeway to consider the same otherwise.

Answering your question specifically, it is my opinion that under the provisions of Section 7246, General Code, it is unlawful to operate a motor truck over the public streets of a municipality or the public highways of the state, the total gross weight of which, including truck and load, exceeds ten tons, unless said vehicle comes within one of the exceptions expressly provided in Sections 7246 or 7247, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1597.

TAX AND TAXATION—FLAXSEED—IMPORTED IN BULK—WHEN SUBJECT TO PROPERTY TAX OF OHIO.

SYLLABUS:

Flaxseed, or a like commodity, imported in bulk from a foreign country, for use by the importing company in the manufacture of finished products, which flaxseed is drawn from the hold of the ship in which it is imported by elevator and stored in large bins, from which the company takes sufficient flaxseed to supply its needs from time to time as production requires, has lost its distinctive character as an import and is property subject to taxation by the state of Ohio.

COLUMBUS, OHIO, January 18, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

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

“The Tax Commission of Ohio is desirous of having a formal opinion from your office relative to the following question:

When does an import commodity into this state become merged or embodied into the commercial world, and thereby become subject to taxation?

The question has been raised by the auditor of Cuyahoga County, Mr. Zangerle, and we feel it is a very pertinent question and heartily concur for an official opinion on this matter. We are submitting copies of his letter and material submitted from his office which will, perhaps, more clearly set forth the full scope of this subject.”

The copy of the letter from the auditor of Cuyahoga County, referred to by you, reads as follows:

“About a year ago one of the large paint manufacturers of this city purchased four shiploads of flaxseed from a Montreal vendor. The flaxseed was loaded at Montreal and shipped to the Cleveland manufacturer, unloaded at his dock on the Cuyahoga river and placed in a bin, or bins, within his warehouse. These shiploads of flaxseed are being used from time to