

the valuation of certain merchandise and the listing of personal property by manufacturers "by taking the amount in value on hand, as nearly as possible, *in each month of the next preceding year in which he has been engaged in business*" and in case of a manufacturer the average amount "he has had on hand *during the year next previous to listing day*, annually, if he has been engaged in such manufacturing business so long, and if not, then during the time he has been so engaged."

In the case of *Shotwell vs. Moore*, 129 U. S. 590, the court said:

"The State of Ohio, like many and perhaps most of the other states, collects from the business and property subject to taxation *for the year preceding the specified date*, the elements of an assessment of a tax to be paid by the taxpayer for the year succeeding that date \* \* \* ."

The corporation in question has apparently complied with the general tax laws of this state, in so far as it was necessary for it to prepare, list and file its personal property tax return as of January 1, 1930.

In specific answer to your inquiry, and from a review of the authorities cited herein, it is my opinion that the corporation in question is subject to the payment of personal property taxes for the full amount assessed against it for 1930, made pursuant to its personal property tax return filed as of January 1, 1930. The fact that it sold its entire assets as of March 15, 1930, would have no effect on the liability of the corporation for the payment of taxes on the valuation of its personal property as listed for taxation as of January 1, 1930.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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PROPOSED LAW AND SUMMARY OF SAME UNDER SECTION  
4785-175, GENERAL CODE.

COLUMBUS, OHIO, April 15, 1937.

MR. VERNON WEYGANDT, *Attorney at Law*, 403 Flatiron Bldg., Akron, Ohio.

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a

proposed law and a summary of the same under Section 4785-175, General Code of Ohio.

The proposed law reads as follows:

“Be it enacted by the people of the State of Ohio for the purpose of reducing the amount of taxes it has heretofore been necessary to levy and collect, and for the purpose of providing from another source part of the revenue with which to meet the needs of the state, counties, cities, villages, schools, and to provide for relief in the counties, there is hereby created the ‘State Lottery Commission.’ hereafter referred to as ‘The Commission,’ composed of seven citizens of the state. The terms of service of each of the members of the ‘Commission’ shall begin November 10, 1937, the effective date of this law.

The first member of the Commission shall be Vernon Weygandt, 564 Storer Ave., Akron, Ohio. He shall be the Chairman to serve for the term of seven years. The second member of the Commission shall be Donald G. Reichert, 1746 24th St., Cuyahoga Falls, Ohio. He shall serve for a term of six years. The Third member of the Commission shall be William M. Locke, 75 Mt. View Ave., Akron, Ohio. He shall serve for a term of five years. The fourth member of the Commission shall be John E. Kauffman, R. D. No. 2, Everett, Ohio, who shall serve for a term of four years. The fifth member of the Commission shall be Wilson Putt, 537 Carroll St., Akron, Ohio, who shall serve for a term of three years. The sixth member of the Commission shall be Frederick George Cain, Akron, who shall serve for a term of two years. The seventh member of the Commission shall be appointed by the Governor for a term of one year. Thereafter, as their terms expire, the Governor shall appoint one member each for a term of seven years. Vacancies shall be filled by appointment by the Governor for the unexpired term. Not more than four members of the Commission shall be of the same political party.

## SECTION 2.

Each member of the Commission shall receive an annual salary of \$5500.00, except the Chairman, who shall receive an annual salary of \$6000.00. Each member of the Commission shall be allowed the actual and necessary traveling expenses incurred in the performance of his official duties.

## SECTION 3

The office of the Commission shall be located in Columbus, Ohio, but meetings may be held at any place in the state, as may be deemed necessary. Branch offices may be established elsewhere, as in the judgment of the Commission may be necessary to facilitate its work, and it shall provide suitable rooms and equipment for the same.

## SECTION 4.

Before entering upon the duties of his office, each member shall take an oath of office in accordance with Section 3 of the General Code. Before entering upon his duties, each member of the Commission shall give a bond of \$10,000.00, which bond shall be approved by the Secretary of the State and filed with the Treasurer of the State.

## SECTION 5.

All employees or deputies of the Commission receiving or disbursing funds shall give a bond to the State of Ohio in an amount and with surety to be approved by the Commission.

## SECTION 6.

The majority of the Commission shall constitute a quorum to transact business. No vacancy shall impair the rights of the remaining Commissioners to exercise all of the powers of the Commission so long as the majority remain.

## SECTION 7.

The Commission shall provide itself with a seal for the authentication of its rules, orders, proceedings and awards, upon which shall be inscribed the words 'State Lottery Commission' 'State of Ohio.'

## SECTION 8.

The Commission shall make an annual report to the Governor.

## SECTION 9.

The Commission shall appoint such clerks, deputies, inspectors, agents and other employees as the Commission may deem necessary in the administration of the provisions of this act, and by regulation fix their remuneration and define their respective duties and powers.

## SECTION 10.

The Commission shall appoint an Executive Director who shall not be a member of the Commission. The term of service of the Executive Director shall be six years, and he shall be subject to re-appointment by the Commission at the expiration of such term. He shall serve as Secretary to the Commission. The annual salary of the Executive Director shall be \$7500.00, and his actual and necessary traveling expenses incurred in the performance of his official duties. Such Executive Director shall not be subject to the Civil Service Laws of the State of Ohio, and shall be responsible for the administration of this law under authority delegated to him by the Commission.

## SECTION 11.

The Commission shall enforce and administer the provisions of this act. It shall have power to adopt and promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act. The Commission shall have full power to control and regulate the sale of lottery tickets.

## SECTION 12.

The Commission shall have full power to make or modify rules and regulations for its own government and for that of its appointees, employees and agents. It may grant and rescind licenses for distribution and sale of lottery tickets.

## SECTION 13.

The Commission and Executive Director shall make a study of the state lotteries, as conducted in France, Sweden, Australia and other countries, and adopt and operate lotteries in the State of Ohio as it deems best for the purposes of raising revenue.

## SECTION 14.

All of the funds received by the Commission shall be deposited in the State Treasury in a fund to be known as the General Lottery Fund, and shall be distributed quarterly as follows:

A. Twenty per centum of all revenue retained under this law shall be transferred to and deposited in the Highway Construction Fund of the state. It is hereby provided that when the revenue so received in the Highway Construction Fund during any twelve months period equals the amount of revenue received from the tax of  $1\frac{1}{2}$ c per gallon on motor vehicle fuel during an equivalent period of time, the legislature shall, in its next session, repeal the tax of  $1\frac{1}{2}$ c per gallon on motor vehicle fuel, as imposed under Sections 5527 to 5536-1B of the General Code of Ohio. It is further hereby provided that when the revenue so received in the Highway Construction Fund during any twelve months period equals the amount of revenue received during an equivalent period of time from the additional tax of  $1\frac{1}{2}$ c per gallon on motor vehicle fuel, imposed under Sections 5541 and 5542-2 of the General Code of Ohio, then the legislature, at its next session, shall repeal said Sections 5541 and 5542-2.

The balance of the twenty per centum transferred from the General Lottery Fund to the Highway Construction Fund not used as a replacement of the revenue formerly obtained by virtue of Sections 5527 to 5536-1B, or Sections 5541 and 5542-2, shall be appropriated and expended in such manner as the legislature may determine.

B. Fifteen per centum of all revenue obtained under the provisions of this law shall be paid on vouchers and warrants drawn on the General Lottery Fund by the Auditor of the State to the County Treasurer of each county in the state, in the proportion that the number of individuals receiving relief in each county bears to the total number of individuals receiving relief in the state on January 1st last preceding, and such funds shall be expended by the county exclusively for relief purposes.

C. Ten per centum of all revenue obtained under provisions of this law shall be paid on vouchers and warrants drawn on the General Lottery Fund by the Auditor of the State to the County Treasurer of each county in the state in the proportion that the population of each county bears to the total population of the state according to the last Federal

census, and such fund shall be expended by the county for such purposes as the County Commissioners deem most necessary.

D. Ten per centum of all revenue obtained under the provisions of this law shall be paid on vouchers and warrants drawn on the General Lottery Fund by the Auditor of State to the Municipal Corporations and Villages in the state in the proportion that the population of each city or village bears to the total population of all cities and villages in the state according to the last Federal census, and such fund shall be expended by said cities and villages for such purposes as their revenue appropriating officials deem most necessary.

E. Ten per centum of the revenue obtained under this law shall be paid on vouchers and warrants drawn on the General Lottery Fund by the Auditor of the State to the schools in each county in the proportion that the population of each county bears to the total population of the state according to the last Federal census.

F. Thirty-five per centum of all revenue received under this law shall be paid on vouchers and warrants drawn on the General Lottery Fund by the Auditor of State to the State Lottery Commission to be used by them as prizes in the various drawings conducted by them and for the necessary expenses of administering this act.

#### SECTION 15.

No money shall be appropriated by the legislature from any state fund for the use or benefit of the State Lottery Commission.

#### SECTION 16.

Existing Section 13062 of the General Code shall hereby be amended by the addition of the following words: 'Provided, however, that none of the provisions of this section shall apply to or in any manner whatsoever affect the operation of the State Lottery or anyone connected with it.'

#### SECTION 17.

Existing Section 13063 of the General Code shall hereby be amended by the addition of the following words: 'Provided, however, that none of the provisions of this section shall apply

to or in any manner whatsoever affect the operation of the State Lottery or anyone connected with it.'

#### SECTION 18.

Existing Section 13064 of the General Code shall hereby be amended by the addition of the following words: 'Provided, however, that none of the provisions of this section shall apply to or in any manner whatsoever affect the operation of the State Lottery or anyone connected with it.'

#### SECTION 19.

Existing Section 13067 of the General Code shall hereby be amended by the addition of the following words: 'Provided, however, that none of the provisions of this section shall apply to or in any manner whatsoever affect the operation or the State Lottery or anyone connected with it.'

#### SECTION 20.

Whoever falsely makes, forges, counterfeits or alters a state lottery ticket issued under the authority of the State Lottery Commission, or with intent to defraud, passes, utters or publishes, sells or attempts to pass, utter, publish or sell, or brings into this state, has or keeps in possession or conceals with intent to pass, utter, publish or sell such false forged, counterfeited, or altered state lottery ticket shall be fined not more than \$1000.00 and imprisoned in the penitentiary for not more than five years. Any rules, regulations or ordinances of any political subdivisions of the state in conflict with any provisions of this law are hereby expressed repealed.

#### SECTION 21.

The sections of this act and every part of such section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective, shall not affect any other section or part of section.

#### SECTION 22.

The effective date of this law shall be November 10, 1937."

The summary of this proposed law reads as follows:

"To provide for the conducting of lotteries by the State of Ohio; for that purpose to create the State Lottery Commission,

Director of Lotteries, and provide for the employment of necessary employees, and to define the respective powers and duties; to name six of the seven members of such Commission; to provide for the allocation of such revenue received for the use of the state, counties, cities, villages, schools, and for relief in the counties and the payment of prizes or expenses of administering this act; to provide by legislative enactment for the reduction of the tax on motor vehicle fuel up to 3c per gallon by repealing Section 5527 to 5536-1B, inclusive, and Sections 5541 and 5542-2 of the General Code of Ohio when receipts from the State Lottery shall reach certain specified amounts; to amend Sections 13062 to 13064, inclusive, and 13067 of the General Code of Ohio; to provide for penalties for violation; and to provide for the effective date of the act to be November 10, 1937."

I am of the opinion that the foregoing summary is a fair and truthful statement of the proposed law and accordingly submit for uses provided by law the following certification:

"Without passing upon the advisability of the proposed law and without passing upon the constitutionality of the same, but pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code of Ohio, I hereby certify that the foregoing summary is a fair and truthful statement of the proposed law. HERBERT S. DUFFY, Attorney General."

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*