

Quite obviously the statute was designed primarily to prevent a municipal officer, as such, committing the municipality to the prosecution of some special project involving the expenditure of money and then resigning and, in a private capacity, reaping profit from the very work he helped to initiate. This can have no application to the present case and I therefore feel that there is a violation of neither the letter nor the spirit of the law.

Based upon the foregoing citations and discussion, in specific answer to your inquiry, it is my opinion that a member of a board of park trustees, appointed under the provisions of Section 4068 of the General Code, may resign and immediately thereafter be legally appointed park superintendent.

Respectfully,
GILBERT BETTMAN,
Attorney General.

415.

MOTOR VEHICLE FUEL—IMPORTED INTO OHIO AND SOLD IN ORIGINAL CONTAINERS—PURCHASER DEEMED DEALER.

SYLLABUS:

Under the provisions of Section 5526, General Code, when a person, firm, association, partnership or corporation, imports motor vehicle fuel into this state and sells such motor vehicle fuel in tank car lots or in its original containers to any purchaser for use, distribution or sale and delivery in this state, such purchaser and not the seller shall be deemed the dealer as to the motor vehicle fuel contained in such tank car lots or original containers.

COLUMBUS, OHIO, May 18, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

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

“We find that registered refiners are selling motor vehicle fuel to non-registered dealers. In this case, would it be within the statute to collect the excise tax from the seller, if in our judgment the person to whom they sold the motor vehicle fuel was not responsible?”

For your information, we have just discovered that the S. Refining Company (who are registered dealers), have sold from August 15, 1928, to April 14, 1929, twenty-four (24) cars of gasoline to the M. C. Oil Company, of L., Ohio. To make our request for an opinion clear, shall we endeavor to collect the tax from the S. Refining Company or the M. C. Oil Company?”

At my request for additional information, you supplemented the foregoing by stating that the S. Refining Company imported said motor vehicle fuel and sold the same in tank car lots or in its original containers to purchasers for use, distribution or sale and delivery in this state.

Section 5526, General Code, reads in part as follows:

“‘Dealer’ shall include any person, firm, association, partnership or corpo-

ration who imports or causes to be imported into the State of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the State of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

It will be noted that the additional information furnished me, brings the importing and sale of such motor vehicle fuel within the express provisions of said Section 5526. As the importers of said motor vehicle fuel sold the same in tank car lots or in its original containers to purchasers for use, distribution or sale and delivery in this state, said Section 5526 applies, and provides that, under such facts, "such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers." The fact that the importer in this instance is a registered dealer is immaterial, since the proviso of the section clearly makes the purchaser the dealer, and liable for the tax on the motor vehicle fuel herein described.

It is not believed that further discussion or citations are necessary as the provisions of Section 5526, supra, are an express answer to your question.

It is therefore my opinion, specifically answering your question, that you should endeavor to collect the motor vehicle fuel tax from the M. C. Oil Company, the purchaser, and not from the S. Refining Company, the seller.

Respectfully,

GILBERT BETTMAN, °
Attorney General.

416.

FOREIGN REAL ESTATE—SPECIFIC ACTIVITIES OF TOURS COMPANY DO NOT CONSTITUTE DEALING IN SUCH PROPERTY UNDER SECTION 6373-15, GENERAL CODE—LICENSE UNNECESSARY.

SYLLABUS:

When solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio, at a cost to the tourist of more than the actual cost necessary for such tour, resulting in a profit to the tours company, which company is not operating in conjunction with any land selling company and has no agreement or understanding whereby a commission or compensation is paid to the tours company on sales of real estate to tourists, and the sole object of conducting a tour is to make a profit thereon rather than the sale of real estate, although compensation may be paid to the tours company in isolated cases when tourists purchase real estate, which compensation is paid by land selling companies without any agreement or understanding as to its payment, such solicitation does not constitute dealing in real estate not located in