

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3003.

APPROVAL, PROPOSED LEASE TO THE PURE OIL COMPANY OF COLUMBUS, OHIO, FOR CERTAIN MIAMI AND ERIE CANAL LANDS IN CITY OF DAYTON, AT A VALUATION OF \$8,333.34.

COLUMBUS, OHIO, April 18, 1922.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—Your letter of the 14th inst. was duly received, submitting for my approval a proposed lease to The Pure Oil Company, of Columbus, Ohio, for certain Miami and Erie canal lands in the city of Dayton, lying between the northerly line of Third street and a line drawn parallel to and forty feet northerly therefrom; valuation \$8,333.34.

I have carefully examined said lease, find the same correct in form and legal, and I am therefore returning it to you with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3004.

INTOXICATING LIQUORS—WHERE ONE ENGAGES IN SAID TRAFFIC, LIEN FOR ASSESSMENT PROVIDED BY SECTIONS 6071 AND 6212-33 G. C. WITH PENALTY, IMMEDIATELY ATTACHES—WHEN ASSESSMENT PAYABLE—ONE-HALF IN JUNE AND ONE-HALF IN DECEMBER—EXCEPTION.

1. *Upon one becoming engaged in the traffic of intoxicating liquors, the lien for the assessment provided for by sections 6071 and 6212-33 G. C., with the penalty thereon, immediately attaches.*

2. *Under the provisions of section 6212-33 G. C., such assessment is payable one-half in June and one-half in December, as other taxes are payable, excepting in those cases in which business is begun after June 20th and prior to December 20th, in which case all of said assessment is payable in December.*

COLUMBUS, OHIO, April 18, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date reads:

"We respectfully request your written opinion upon the following questions in connection with the construction of the provisions of section 6212-33 G. C., 109 O. L. 8.

Question 1. In the following cases when does a liquor assessment of taxes operate as a lien upon the real estate on and in which such business is conducted when certified by the prohibition commissioner through the auditor of state to the county auditor, or when placed upon the liquor duplicate by the county auditor under the provisions of section 6085 General Code:

(a) When such assessment is certified between the 4th Monday of May and the 20th day of June, 1921?

(b) When such assessment is certified between the 20th day of December, 1921, and the 4th Monday in May, 1922?

(c) When such assessment is certified between the 20th day of December, 1921, and the 4th Monday in May, 1922?

Question 2. When are the assessments certified on the above dates due and payable?"

Section 6212-33 G. C., to which you refer, provides:

"Such assessment, with any penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May of each year, and shall be paid at the times provided for by the law for the payment of taxes on real or personal property within this state, to-wit: one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December of each year; provided, however, that if the illegal traffic in liquor is commenced after the fourth Monday in May in any year such assessment shall attach and operate as a lien as herein provided upon the date of such commencement, and provided if such traffic is commenced after the twentieth day of June of any year, then the full tax of one thousand dollars and any penalty thereon shall be paid on the twentieth day of December of the same year; and provided further that such assessment with any penalty thereon shall not attach or operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, corporation or co-partnership without the knowledge or assent of the owner of said real property. Any person who traffics in intoxicating liquors as a beverage shall not be entitled to any rebate or refunder under the liquor tax law, except as provided in the preceding section. The payment of such tax shall give no right to engage in the traffic of intoxicating liquors, nor relieve any one from criminal liability."

In considering the history of this legislation, which we may properly do to arrive at the intention of the legislature, we find, as was pointed out in Opinion No. 2926, rendered to your bureau on March 10, 1922, that the section as above quoted was in effect substituted for section 6072, which was repealed by the same act. This section provided as follows:

"Sec. 6072. Such assessment, with any penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May of each year, and shall be paid at the times provided for the payment of taxes on real or personal property within this state, to-wit: one-half on or before the twentieth day of June,

and one-half on or before the twentieth day of December of each year; provided, however, that such assessment, with any penalty thereon, shall not attach and operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, corporation or co-partnership without the knowledge or assent of the owner of said real property. Any person who trafficks in intoxicating liquors as a beverage at retail shall not be entitled to any rebate or refunder under the liquor tax law without giving a bond in amount equal to twice the amount of such rebate or refunder, with securities acceptable to the county clerk that he will not traffic in intoxicating liquors without paying the liquor taxes provided by law; such bond shall be filed with the county auditor and certified to the state liquor licensing board."

In comparing the new section with the old provision in the light of the status of the liquor laws, in force at the time of each enactment, it is believed to be clear that in the enactment of section 6072 consideration was given to the fact that there were many who were authorized by law to carry on the business of selling intoxicating liquors, and this section provided for the assessment year and the lien date for convenience, for the same purpose that the lien date for general taxes on real estate is fixed. It further seems to be clear that in the enactment of section 6212-33, the legislature, perhaps by inadvertence, carried into the first sentence the same language which appeared at the beginning of section 6072. However, we cannot speculate as to the intention of the legislature with respect to the language which is unambiguous, and in so far as the same is definite it must be given effect.

It is clear that the assessment year is the same as before, covering the period from the fourth Monday of May to the fourth Monday of May. However, as a matter of practical operation, it will be seen that when one is in such business he will have commenced after the fourth Monday in May, unless the business was begun on the fourth Monday in May, in which case the assessment immediately operates as a lien.

Therefore, in answer to your first inquiry, with all of its branches, you are advised that it is the opinion of this department that the liquor assessment operates as a lien as of the day when business was commenced; and the other provisions of the law, relative to certification and assessment by state and county officials, relate to the method of collection and enforcement of said lien.

In considering your second inquiry, it is essential to distinguish the assessment or lien year, as defined in said section 6212-33, from the tax paying periods adopted by reference in the same section. The opening sentence says that such assessment shall be collected as other taxes, "one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December." Keeping in mind the foregoing conclusion that the lien attaches on the day business is begun, it will be observed that it is at once an obligation accruing to the state to be paid in accordance with the provisions of the statute. There being no longer any refunder provided for the fractional part of the year, it is evident that no matter when business is begun during the assessment year the tax becomes an obligation. The provision for the collection of the same is made with reference to the tax paying periods. Therefore, in determining when the same should be paid, we may eliminate from consideration the assessment year. In other words, if one has obligated himself to pay a tax prior to June 20th, one-half of the same will be payable in June and the remaining half in December. If business is commenced between June 20th and December 20th, the same will be collected in full in December. If the business is engaged in after December 20th and prior to June 20th, the tax will be payable one-half in June and one-half in December.

There appears to be no practical reason why one beginning business between the 20th day of June and the 20th day of December should pay all of the assessment in December, and one beginning business after December 20th and prior to June 20th should have the opportunity to pay one-half in June and one-half in December. However, we are not called upon to question the wisdom of the legislature in this respect.

While there are other possible interpretations of section 6212-33, it is believed that the foregoing is the only practical construction that can be given which is clearly sanctioned by the provisions of the section. It is clear, as heretofore pointed out, that the lien attaches on the beginning of business, and that such lien is to be collected as other taxes, one-half in June and one-half in December, excepting in so far as this rule has been expressly modified as to those cases in which business is begun after June 20th and before the ending of the tax paying period in December.

In view of the foregoing discussion, it is the opinion of this department that:

(1) Upon one becoming engaged in the traffic of intoxicating liquors, the lien for the assessment provided for by sections 6071 and 6212-33 G. C., with the penalty thereon, immediately attaches.

(2) Under the provisions of section 6212-33 G. C., such assessment is payable one-half in June and one-half in December, as other taxes are payable, excepting in those cases in which business is begun after June 20th and prior to December 20th, in which case all of said assessment is payable in December.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3005.

APPROVAL, BONDS OF ALLEN COUNTY IN AMOUNT OF \$90,500 FOR
ROAD IMPROVEMENTS.

COLUMBUS, OHIO, April 19, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3006.

APPROVAL, BONDS OF MARION COUNTY IN AMOUNT OF \$114,650 FOR
ROAD IMPROVEMENTS.

COLUMBUS, OHIO, April 19, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.