Note from the Attorney General's Office:

1940 Op. Att'y Gen. No. 40-3087 was clarified by
1983 Op. Att'y Gen. No. 83-046.

Upon examination of the text of said proposed constitutional amendment and the summary thereof, I am of the opinion that said summary is not a fair and truthful statement of the proposed constitutional amendment in that it does not meet the requirements contained in secion 4785-175 of the General Code, as interpreted by the Supreme Court of Ohio in the case of State, ex rel. Hubbell v. Bettman, Attorney General, and for such reason I am unable to make the certification requested by you.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

3087.

TRACTOR AND VEHICLE — EQUIPMENT USED TO TRANSPORT LIME FROM WAREHOUSES TO FARMERS AND SPREAD LIME ON FIELDS—NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES—SUBJECT TO LICENSE TAX, "OPERATION OF A MOTOR VEHICLE" — SECTION 6291 G. C.

SYLLABUS:

Equipment, consisting of a tractor and vehicle constructed from the chassis of a truck which is used for transporting lime from warehouses to farmers and for spreading such lime on the fields of the farmers purchasing the same, is not used principally for agricultural purposes, and consequently, such tractor and vehicle would be subject to the license tax levied upon the operation of a motor vehicle under the provisions of Section 6291, *General Code.*

Columbus, Ohio, December 6, 1940.

Hon. Raymond O. Morgan, Prosecuting Attorney,
Wooster, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

"In this county it has become a practice with some farmers to

use a vehicle commonly known as an agricultural tractor to draw another vehicle constructed from the chassis of a truck for the purpose of transporting lime from the warehouses to the purchasers for which they receive pay from the seller at a certain amount per ton.

In addition to the hauling of the material the lime is spread on the fields with the same equipment.

I would like to have your opinion as to whether or not such a tractor should be licensed in accordance with the provisions of Sections 6291, et seq.

I also desire your opinion as to whether or not the vehicle used as a trailer for hauling the material comes within the provisions defining a trailer which requires a license."

Section 6291, General Code, reads in part:

"An annual license is hereby levied upon the operation of motor vehicles on the public roads or highways of this state * * *."

Inasmuch as the license tax is levied upon the operation of *motor vehicles,* the question to be determined is whether the tractor in question is a motor vehicle.

Paragraph 2 of Section 6290, General Code, provides:

" 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels, power cranes and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay baling machinery and agricultural tractors and machinery used in the production of horticultural, agricultural and vegetable products."

An examination of the foregoing section reveals that if the tractor, in the situation you have presented, is an agricultural tractor, such vehicle would not be a motor vehicle and, therefore, no registration would be required.

Paragraph 3 of Section 6290, General Code, provides:

" 'Agricultural tractor' and 'traction engine' means any self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes."

It will be noted that to constitute an agricultural tractor the vehicle must be "used principally for agricultural purposes".

The spreading of lime on the fields is no doubt efficacious in the production of crops and a tractor when employed in such operation is without question being used for an agricultural purpose, and if such tractor is transported over the highways from one farm to another, there to be used for such purpose, said tractor would still be used principally for agricultural purposes. However, if such tractor is used by the owner thereof solely to haul lime from the seller to farms, it certainly could not be said in such case that a tractor is being used for agricultural purposes. Whether or not after the delivery of the lime transported, the tractor is also used for the spreading of such lime, in my opinion makes very little difference.

In Opinions of the Attorney General for 1932, Vol. I, page 30, it was ruled by the then Attorney General:

> "1. When a farmer or group of farmers purchases a truck chassis and equip it with a feed grinder, corn sheller, hay baler, fodder shredder, silo filler or other farm apparatus to be used in his or their farm enterprises, such device is not subject to the license tax provided by Am. S. B. 328.
>
> 2. When a truck chassis is equipped with, or there is built thereon a feed grinder, corn sheller, hay baler, silo filler or other machine ordinarily used by farmers in their operations, and such apparatus, so constructed, is operated by an individual or corporation as his or their principal business in the grinding of feed, shelling of corn, baling of hay, shredding of fodder, etc., for farmers, for hire, such apparatus is a motor vehicle within the purview of Section 6290, General Code, as amended, and being such, the tax should be computed thereon at its weight, which includes such equipment as is built into, and becomes a part of such vehicle."

On page 34 it was said:

> "While the ownership of a vehicle is not determinative of the character of, or purpose of a piece of machinery, it is entitled to consideration for the purpose of determining such fact. And when a machine is owned by a person engaged exclusively in agricultural or farming purposes, there is a presumption that such machine is to be used by him in his business. This is not an irrefutable presumption, and, if he should change his business to some entirely distinct type of business he would no longer be a farmer.
>
> The test as to whether any piece of machinery is farm machinery, is whether such machinery is used principally or chiefly for agricultural or farming purposes, that is for purposes usually pursued by farmers. If a piece of machinery that may be of a type commonly used or might be used by a farmer, is used by a manufacturer for the purpose of increasing his business as such manufacturer by carrying his manufacturing business to the farmer's

door, or in other words, to enable him to gain some advantage in his competition with other similar manufacturers, it could hardly be said that the mere carrying on of his manufacturing business on the farmer's land, rather than at his manufactory, by means of portable machinery, as distinguished from stationary machinery, would change his business from a manufacturer to a farmer and his machinery from manufacturing machinery to farm machinery.

Applying this test to the apparatus forming the subject of inquiry, such as feed grinders, hay balers, clover hullers, silo fillers, corn huskers, etc., it is my opinion that when such apparatus is owned by a farmer or a group of farmers whose particular purpose, as distinguished from incidental purpose, or that which they set before themselves as an object, is farming or agriculture, as distinguished from baling hay, grinding feed, hulling clover, threshing grain or filling silos, shredding fodder or husking corn, it is not subject to the tax levied by Am. S. B. 328, regardless of the fact that they may incidentally use such apparatus for hire in doing such work for a neighbor, but when the aim or purpose of the owner of such apparatus or machinery so mounted upon a truck chassis, is to make a livelihood or business of the grinding of feed, baling of hay, etc., such machinery is not then used principally for agricultural purposes, within the meaning of Paragraph 3, of Section 6290, General Code, and is not 'farm machinery' within the meaning of Paragraph 2, of such section, and is taxable under the provisions of Am. S. B. 328, being Sections 6291 to 6294, of the General Code."

The above reasoning is directly applicable to the instant situation. While it appears from your letter that the equipment concerned is owned by a farmer, it is nevertheless used to haul lime to the farms of any purchasers. When used in such a manner, in my opinion, a tractor is not being used for agricultural purposes within the meaning of the statute. This being true, the tractor would constitute a motor vehicle and, therefore, would have to be licensed.

The same reasoning applies to your second inquiry. When used for such purpose, the vehicle carrying the lime would not constitute "farm machinery" or "machinery used in the production of horticultural, agricultural and vegetable products". Therefore, the vehicle would fall within the definition of the term "motor vehicle" as contained in paragraph 2 of Section 6290, General Code.

Paragraph 7 of Section 6290, General Code, provides:

" 'Trailer' means any vehicle without motive power designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle, and means and in-

cludes any such vehicle when formed by or operated as a combination of a 'semi-trailer' and a vehicle of the dolly type such as that commonly known as a 'trailer-dolly'."

An examination of the foregoing definition clearly reveals that the second vehicle is a trailer, inasmuch as it is without motive power, is designed and used for carrying property wholly on its own structure and is designed and used for being drawn by a motor vehicle.

In view of the above and in specific answer to your inquiries, I am of the opinion that equipment, consisting of a tractor and vehicle constructed from the chassis of a truck which is used for transporting lime from warehouses to farmers and for spreading such lime on the fields of the farmers purchasing the same, is not used principally for agricultural purposes, and consequently, such tractor and vehicle would be subject to the license tax levied upon the operation of a motor vehicle under the provisions of Section 6291, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

3088.

INCOMPATIBLE OFFICE — MEMBER, BOARD OF COUNTY COMMISSIONERS — MEMBER, BOARD OF EDUCATION, RURAL SCHOOL DISTRICT, SAME COUNTY—CANNOT LAWFULLY BE HELD SIMULTANEOUSLY BY ONE AND SAME PERSON.

SYLLABUS:

The offices of member of a board of county commissioners and member of a board of education in a rural school district in the same county are in-