

2137.

APPROVAL, BONDS OF PERRY COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, January 4, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2138.

INTERURBAN RAILROAD—NOT EXEMPTED FROM PAYMENT OF ASSESSMENTS AS PROVIDED BY SECTION 606, G. C.

*SYLLABUS:**Interurban railroad companies are not exempt from the payment of the assessments provided by Section 606, General Code, under the provisions of House Bill No. 674, as enacted by the 90th General Assembly.*

COLUMBUS, OHIO, January 5, 1934.

Public Utilities Commission of Ohio, State Office Building, Columbus, Ohio.

GENTLEMEN:—I hereby acknowledge receipt of your recent communication, which reads as follows:

“House Bill 674, passed July 1, 1933, provides for the exemption of interurban railroad companies in the State of Ohio from all state taxes and charges.

The wording of the applicable portion of this Section specifically is as follows:

‘Section 1. Certain property of interurban railroad companies exempt from taxation; exception.

That the interurban railroad companies within the State of Ohio, as defined in sections 614-2 and 501 of the General Code of Ohio, and so much of the property thereof, excepting real estate, as may be used for railroad purposes by said companies be exempt from all state taxes and charges and from all county, city, and other political subdivision taxes and charges in the nature of a tax, except special assessments for the years during which such interurban railroad companies are operated and such property so used but not exceeding three years from January 1, 1932. Provided, however, that during such period if any interurban railroad company has in its employ an officer or an employe at a rate of compensation in excess of five thousand dollars per year, such company shall not be entitled to remission of taxes and charges.’

Section 606 of the General Code, provides:

‘Assessment for maintaining department and how apportioned.

For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred

thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the State, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state, the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same to the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.'

In view of the fact that that portion of House Bill 674 hereinbefore quoted contains a statement to the effect that interurban railroad companies are to be relieved from all state taxes and charges for a period of three years, with the exception of special assessments, the question arises as to whether or not the provisions of House Bill 674 hereinbefore quoted exempted interurban railroad companies from the assessment provided for under Section 606 of the General Code."

Section 606 of the General Code of Ohio, provides for the assessment of railroads and public utilities for the purpose of securing funds for the maintenance of the Department of Public Utilities Commission of Ohio. The amount to be assessed against all railroads and public utilities within the State of Ohio under the provisions of this statute is not to exceed two hundred thousand dollars each year and is to be apportioned among and assessed upon the railroads and public utilities within the state by the Commission in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are to be made. The assessment against any railroad or public utility naturally will vary from year to year.

It would appear that the charge so levied against the railroads and public utilities within the state, pursuant to the provisions of the foregoing statute, constitute an assessment. It is so referred to by the language of both Section 606 and Section 614-114 (Amended Substitute Senate Bill No. 47) of the General Code. Section 606 of the General Code, is entitled as follows:

"Sec. 606. Assessment for Maintaining Department and how apportioned."

Section 614-114, General Code, contains the following language:

"* * except the assessments required by General Code Section 606 * *".

This charge has also been considered as an assessment by the courts. In the case of *Donahey, Auditor of State vs. State ex rel. Marshall*, 101 O. S. 473, at 476, we find the following statement:

"The fact that the fund to be used for the maintenance of the department of public utilities commission is created by assessments does not change the fact that the money therein is public money."

Section 1, of House Bill No. 674, however, refers to "special assessments".

The term "special assessments" is generally considered in this state to be an assessment which is local and which is levied upon real estate only, and which depends for its validity, upon special benefits. A distinction may well be drawn between the term "special assessments" and the term "assessments". In this view, the language of Section 1 of House Bill No. 674 is, to say the least, ambiguous, this for the reason that the exemption does not apply to charges or assessments against real estate. The legislature, in the enactment of this section, after exempting these utilities from certain taxes against personalty, has expected from the provisions of the act "special assessments". As has been stated, "special assessments" are generally recognized to apply only to local taxes levied upon real estate only, as measured by special benefits.

It is not, however, necessary to consider further the distinctions which the courts have drawn between taxes, assessments and special assessments, in view of the language of Section 2, of House Bill No. 674, which section provides as follows:

"That the provisions of sections 2583, 2584, 2585, 2585-1, 2587-1, 5366, 5419, 5423, 5424, 5425, 5328-1, 5426, 5427, 5428, 5429, 5430, 5431, 5445, 5448, 5470, 5471, 5473, 5478, 5480, 5482, 5486, 5490, 5498, 5499, 5548, 5625-3, 5630, 5637 and 5638 of the General Code of Ohio, insofar as the said sections are applicable to interurban railroad companies and so much of the property thereof, excepting real estate, as may be used for railroad purposes by said companies for the years during which said interurban railroad companies are operated and such properties so used, be and the same are hereby suspended for a period of three years from January 1, 1932."

A reading of the foregoing section in conjunction with Section 1 of the act, clearly leads to the conclusion that interurban railroad companies are not exempt by this act, from the payment of the assessments provided by Section 606 of the General Code, under the well known doctrine of *expressio unius est exclusio alterius*.

In view of the foregoing, and in specific answer to your question it is my opinion that interurban railroad companies are not exempt from the payment of the assessments provided by Section 606, General Code, under the provisions of House Bill No. 674, as enacted by the 90th General Assembly.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2139.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE W. H. SPOHN PLUMBING COMPANY OF COLUMBUS, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF CONTRACT FOR PLUMBING AT STATE SCHOOL FOR THE BLIND, COLUMBUS, AT AN EXPENDITURE OF \$15,570.00—SURETY BOND EXECUTED BY THE GREAT AMERICAN INDEMNITY COMPANY OF NEW YORK.