

3099.

APPROVAL, BONDS OF COSHOCTON COUNTY, \$70,000, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 15, 1922.

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

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3100.

APPROVAL, BONDS OF ELIZABETH TOWNSHIP RURAL SCHOOL DISTRICT, \$35,000, TO PURCHASE SITE AND ERECT SCHOOL HOUSE.

COLUMBUS, OHIO, May 15, 1922.

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

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3101.

APPROVAL BONDS OF HANCOCK COUNTY IN AMOUNT OF \$8,500 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 15, 1922.

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

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3102.

MOTOR VEHICLES—MAXIMUM HEIGHT FOR VEHICLES OPERATED UPON PUBLIC HIGHWAYS—SECTION 7248-2 G. C. REFERS TO VEHICLE ALONE AND NOT TO HEIGHT OF VEHICLE AND LOAD.

*Section 7248-2 G. C., in prescribing a maximum height for vehicles operated upon the public highways, is to be taken as referring to the vehicle alone, and not to the height of vehicle and load.*

COLUMBUS, OHIO, May 16, 1922.

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

GENTLEMEN:—You have requested the views of this department in connection with a communication recently submitted to your department, the substance of which is as follows:

A certain company operates trucks in the conduct of its business and loads these trucks in such way that the top of the load is more than twelve feet six inches from the ground. The company calls attention to the pro-

visions of section 7248-2 G. C., and expresses doubt whether the terms of that section in specifying height refer to both vehicle and load, as distinguished from vehicle alone; but they add that if their doubts are not well founded they desire from you written permission to operate their trucks with loads having a greater height than twelve feet six inches. They say that their trucks are of a less height than twelve feet six inches.

Section 7248-2 G. C. reads as follows:

“No vehicle shall be operated upon the highways of this State whose width, is greater than ninety-six inches, except traction engines whose width shall not exceed one hundred and thirty-two inches, *and no vehicle shall be operated on the highways of a greater height than twelve feet six inches*, or of a greater length than thirty feet, and no combination of vehicles coupled together shall be so operated whose total length, including load, shall be greater than eighty-five feet, provided that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter. Provided that this section shall not apply to fire engines, fire trucks, or other vehicles or apparatus belonging to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions.”

The section was originally enacted as part of the so-called Burke Truck Law, 109 O. L. 546, regulating the use of motor vehicles upon highways, etc.

Section 7246, as amended in that act, makes provision for maximum weight, and specifies the weight as including “weight of vehicle, object or contrivance and load.” Section 7247 G. C., which was not amended by the Burke Bill, but which is part of the series of sections which were so amended, also uses the words “including weight of vehicle, object or contrivance, structure and load” in making provision for permits in special cases. Likewise, section 7248, as amended by the Burke Bill, and 7248-1, as originally enacted in the Burke Bill, both include load in making provision for width of tires and distribution of weights; and again section 7249, as amended by the Burke Bill, uses the words “combined weight of vehicle and load” in prescribing certain speed limits.

With these facts in mind, the conclusion is inevitable that section 7248-2 cannot be so read as to include load in measuring height. It is quite true that there is not much logical relationship between prescribing maximum height on the one hand, and maximum weight on the other; but at the same time the General Assembly in passing the Burke Bill was practically revising the whole subject of the use of commercial vehicles upon public highways, so that had there been an intention to limit the height of both vehicle and load, the legislature could readily have said so, as it did in the case of weights. Moreover, the Burke Bill, while regulatory in character and hence not perhaps subject to the same strict construction in favor of an accused as the courts give criminal statutes, nevertheless provides rather drastic penalties for a violation of its terms; so that the terms of the act are certainly not to be extended beyond their fair import. At all events, whatever may have been the intent of the legislature, it has used language in section 7248-2 going only to the extent of limiting the height of vehicles, and has not made provision in said section 7248-2 or elsewhere for a limitation upon the height of vehicle and load combined.

The conclusion stated makes unnecessary a discussion of the question whether

you are authorized to grant permits in special cases where it is desired to operate a vehicle when the combined height of vehicle and load is in excess of twelve feet six inches.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3103.

TAXES AND TAXATION—DELINQUENT REAL ESTATE TAX—FORECLOSURE ACTION PROVIDED FOR IN SECTION 5718 G. C. BROUGHT BY COUNTY TREASURER—PROSECUTING ATTORNEY REPRESENTS TREASURER—ACTION PROVIDED IN SECTION 5722 G. C. SPECIAL—THE THREE MONTHS PERIOD MENTIONED IN SECTION 5718 G. C. REFERS TO TIME—AUDITOR OF STATE MUST ACT—NO LIMITATION APPLICABLE TO ACTION BY TREASURER UNDER SECTION 5718 G. C.

*The foreclosure action provided for in section 5718 G. C. in case of delinquent land is to be brought by the county treasurer; and it is the duty of the prosecuting attorney to represent such treasurer in such proceedings. The provision of section 5722 of the General Code for such action in the name of the State brought by the Attorney-General is special.*

*The period of three months mentioned in section 5718 G. C. refers to the time within which the Auditor of State must act; whether or not it is directory, quære. There is no limitation applicable to the action brought by the treasurer under section 5718 G. C.*

COLUMBUS, OHIO, May 16, 1922.

HON. C. A. MAXWELL, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Your letter of May 9th, requests the advice of this department as follows:

“I am writing you for an opinion as to whose duty it is to bring the proceedings for foreclosure provided for under sections 5718, 5719, 5720, 5721 and 5722 of the General Code. Our county auditor on the 15th of February, 1922, certified to the State Auditor a list of some thirty-seven pieces of property that had been delinquent for four years as provided under section 5718. The State Auditor has notified our county treasurer to bring the necessary proceedings as required under said section for foreclosure of these tax liens on the said property. Recently the treasurer has requested me as prosecuting attorney to bring these proceedings. Section 5722 provides that these proceedings shall be brought by the Attorney-General. I would like to know whether the Attorney-General is expecting to take care of these proceedings or whether they are expecting me as prosecuting attorney, to take care of them. According to law the time for bringing the proceedings will expire on May 15th, leaving a very short time in which to prepare the necessary proceedings for so large a number of cases.