

Conceding this to be the rule as a general proposition of law, there is no intent found in the Ohio act, when the state or its political subdivisions have the status of a dealer, to assess the tax against the state or such political subdivision. While the act uses the word "corporation," we think it would be held that such word is used in the generally accepted sense of private corporation and as not referring to a political subdivision. See *Board of Education vs. Volk*, supra. Taking into consideration also the foregoing cited and other authorities to be found in this state, we believe that it can rightfully be said that there was no intent on the part of the legislature to assess the tax against the state or its political subdivisions when and if they have the status of a "dealer" within the meaning of the act.

I am therefore of the opinion:

First, in the event the state or its political subdivisions produces, refines, prepares, distills, manufactures or compounds motor vehicle fuel as defined in House Bill No. 44, or imports the same into the state for its own use, the state and such political subdivision is not required to pay the tax of two cents per gallon levied and imposed by section 2 of said act.

Second, there is no provision in said act for reimbursement of the state or its political subdivisions for the amount of the tax assessed and paid by the dealer in the event the state or its political subdivisions purchase motor vehicle fuel from a dealer, unless such fuels are used for other purposes than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in section 9 of said act.

Respectfully,

C. C. CRABBE,
Attorney General.

2434.

ELIMINATION OF GRADE CROSSINGS—AUTHORITY OF COUNTY COMMISSIONERS TO ISSUE BONDS TO PAY ITS SHARE OF COST OF SUCH IMPROVEMENT—SECTIONS 8863 ET SEQ. CONSTRUED.

SYLLABUS:

Section 8863, et seq., General Code of Ohio, is not repealed by implication by the enactment of section 6956-22, General Code, found in 110 Ohio Laws, 231, and the county commissioners may proceed to eliminate grade crossings under such section by agreement and may issue bonds and levy a tax to pay its share of the cost of such improvement.

COLUMBUS, OHIO, May 4, 1925.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date in which, in substance, you submit the following statement of facts and questions:

"The county commissioners propose to enter into a contract with the Wabash Railway Company providing for the construction of an overhead crossing over the tracks of said company at a point on Inter County Highway No. 107, Williams county, east of Montpelier.

"The commissioners are unable to proceed under the provisions of the act providing for the separation of grades on inter-county highways and

main market roads (110 O. L. 231), for the reason that the county has heretofore reached the taxation limitations provided for in section 14 of said act (Section 6956-35 of the General Code).

"1. Are the county commissioners authorized to construct said improvement under the provisions of sections 8863, and related sections, of the General Code, in view of the fact that said proposed improvement is located on an inter-county highway?"

"2. If the county commissioners are so authorized to proceed, may they legally issue bonds and levy a tax to provide for the payment of the county's proportion of the cost of the proposed improvement, according to the provisions and within the limits prescribed in section 8870 of the General Code?"

Section 8863 of the General Code reads:

"If the council of a municipal corporation in which a railroad or railroads, and a street or other public highway cross each other at a grade or otherwise, or the commissioners of a county in which a railroad or railroads and a public road or highway cross each other at grade, and the directors of the railroad company or companies are of the opinion that the security and convenience of the public require alterations in such crossing, or the approaches thereto, or in the location of the railroad or railroads or the public way, or the grade thereof, so as to avoid a crossing at grade, or that such crossing should be discontinued with or without building a new way in substitution therefor, and if they agree as to the alterations they may be made as hereinafter provided; provided, however, that the commissioners of a county shall have the same powers with respect to that part of a state, county or township road which lies within the limits of a municipal corporation as are conferred upon municipal corporations to alter or require to be altered, any railroad crossings, or to require any improvement in connection therewith to be made, and to apportion the cost thereof between the county and such railroad or railroads, as is provided in sections 8874, 8875, 8876, 8877, 8878, 8879, 8880, 8881, 8882, 8883, 8884, 8885, 8886, 8887, 8888, 8889, 8890, 8891, 8892, 8893, and 8894, of this chapter."

"Without quoting from section 6956-22, and related sections, of the General Code, it may be said generally that said sections provide, among other things, a detailed administrative and quasi-legislative procedure under the jurisdiction of county commissioners, whereby the county commissioners, with the approval of the director of highways and public works as to the expediency, and necessity of the proposed improvement, may bring about the separation of grades at a railroad crossing on an inter-county highway or main market road.

It will be noted that Section 8863 of the General Code is a part of a chapter entitled "Tracks and Crossings," and that the section, together with related sections, is contained under the sub-title of "Grade Crossings;" the section in its present form was passed April 27, 1915 (106 O. L. 206).

The act providing for the separation of grades at railroad crossings on inter-county highways and main market roads is contained in sectional numbers 6956-22 to 6956-39, both inclusive, of the General Code, and constitutes an act passed April 6, 1923, (110 O. L. 231), which act is entitled "An Act Authorizing the State and Counties to Abolish Grade Crossings on Main Market Roads and Inter-County Highways."

Underlying your first question is the question whether or not the authority

granted in said section 8863 of the General Code is repealed, or modified, by the provisions of the act of April 6, 1923 (110 O. L. 231).

Neither said act last referred to, nor any other act, expressly repeals said section 8863 of the General Code. Repeals by implication are never favored, and if any reasonable construction may be given to previously existing statutes, so that both may stand, it must be given.

Goff vs. Gates, 87 Ohio st. 142;
 Thorniley vs. State, 81 Ohio St. 108;
 State vs. Commissioners, 20 Ohio St. 421.

Statutes in *pari materia* should be construed so as to give effect to all their provisions.

Alexander vs. Baker, 74 Ohio St. 269.

In order that there may be a repeal by implication, the later statute must be in clear conflict with the existing legislation.

It is believed that there is no conflict between the provisions of the act of April 6, 1923, and section 8863 of the General Code. It will be noted that said section 8863 provides for the separation of grades on public roads and highways, while section 6956-22, and related sections, pertains only to those classes of roads making up the state system. The terms "roads" and "highways" are used in their generic sense and include all kinds of public ways, those of the state system as well as others.

It will be further noted that the proceedings found in said section 8863, and related sections, are entirely dependent upon an agreement between the county commissioners and the railroad company, while said section 6956-22, and related sections, provides a proceeding whereby the railroad company may be compelled to participate in the proposed improvement.

This conclusion is further strengthened and relieved of doubt when it is noted that in the act of April 6, 1923, section 8869 of the General Code, which is one of the sections under the sub-title of "Grade Crossings," was amended, and which, among other things, provides that:

"when the public way crosses a railroad or railroads, * * * , by an overhead bridge, the cost of maintenance must be borne by the county, or by the State of Ohio as may be provided by law."

These statutory provisions are clearly not in conflict, and it would follow that in answer to your first inquiry, and you are so advised, that county commissioners are authorized to construct, in co-operation with a railroad company, a grade separation project, at a grade crossing on an inter-county highway under the provisions of section 8863, General Code, and related sections.

In passing it is deemed pertinent to call your attention to the provisions of section 1203 of the General Code, under the provisions of which the county commissioners are required to submit the plans and specifications for the proposed improvement to the director of highways and public works for his approval.

Your second question is whether or not the county can issue bonds and levy a tax to pay its share of the cost, under section 8870, General Code. Section 8870, General Code, found in 109 Ohio Laws, 530, provides as follows:

"For the purpose of raising money to pay its proportion of the cost of such improvement, the municipality or county may issue its bonds to the

necessary amount, which bonds shall be of such denomination and payable at such place and times as the council or the commissioners determine, and bear interest not exceeding six per cent per annum, but not to be sold for less than their par value. A tax on the taxable property of the municipality or county not exceeding one-half mill in each year may be levied to pay the principal and interest of the bonds as they mature. After the improvement is completed, a tax may be levied by the municipality or county to pay the cost of maintaining and keeping in repair that part of the work required to be maintained and kept in repair by it."

The same reasoning by which we arrive, in answer to the first question, at the conclusion that sections 8863, et seq., are not repealed by implication by the enactment of section 6956-22, General Code, applies equally as well to section 8870, General Code; and as section 8870 specifically provides for the county issuing bonds to the necessary amount to pay its proportion of the cost of such improvement and further provides that a tax on the taxable property of the county, not exceeding one-half mill in each year, may be levied to pay the principal and interest of the bonds as they mature, it is my opinion that the county may issue bonds and levy a tax to pay its share of the cost of the improvement, under section 8870, General Code.

Respectfully,

C. C. CRABBE,

Attorney General.

2435.

MUNICIPALITY—MANAGEMENT OF PARKS DONATED TO MUNICIPALITY—SECTIONS 4067 AND 4326 G. C. CONSTRUED.

SYLLABUS:

It is the duty of the director of public service, under the provisions of section 4326 of the General Code, to manage parks donated to the municipality in those instances wherein the conditions of the instrument of donation do not expressly require the appointment of trustees under the provisions of section 4067, or in those instances wherein a park commission has not been appointed under the provisions of section 4053 et seq.

COLUMBUS, OHIO, May 4, 1925.

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

GENTLEMEN:—In your recent communication you request my opinion on the following:

"Property for park purposes was donated to the city of 'L' upon the following terms and conditions:

"I direct that my executor secure from the Hazelton Oil Company the area now in front of the house now occupied by me at South Logan, which area is bounded as follows: * * * and to donate this area to the town of Logan, to be used solely for a public park, to be called Kachelmacher