

the pleasure of the appointing power, and the incumbent may be removed at any time."

The same author, at Section 354 says:

"The general rule is, that where a definite term of office is not fixed by law, the officer or officers, by whom a person was appointed to a particular office, may remove him at pleasure, and without notice, charges, or reasons assigned."

Specifically answering your question therefore, it is my opinion that a court constable serves at the pleasure of the court which appointed him and that Judge Steuve has the right to make his own appointment who will hold the position until he is removed by the court for any reason satisfactory to the court, either by determining that the business of the court does not require the services of a court constable or by appointing some other person in his place.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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EXCISE TAX—MONEY PAID TO ELECTRIC LIGHT COMPANY BY A PROSPECTIVE CUSTOMER AS A CONDITION PRECEDENT TO RECEIVING ELECTRIC CURRENT IS INCLUDED IN THE TERM "GROSS RECEIPTS" USED IN SECTION 5483, GENERAL CODE, AND IS SUBJECT TO THE EXCISE TAX THEREIN PROVIDED.

**SYLLABUS:**

*Money paid by a prospective customer to an electric light company as a condition precedent to receiving current from such company, even though the amount so paid be expended by the company in constructing an extension necessary to deliver current to the customer, is included in the term "gross receipts" in Section 5483, General Code, and subject to the excise tax therein provided.*

COLUMBUS, OHIO, June 7, 1927.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—You request my opinion on the following question:

"X is a corporation furnishing electricity for light, heat and power purposes to consumers in this state. In certain cases when a prospective consumer makes application for service, the company makes an estimate of the cost of the extension necessary to give the required service and the customer is required to pay this amount to the company. The amount so paid is used by the company in constructing the extension, including line, transformers, etc. The amount so expended by the company is charged into the capital account as an addition and betterment and the property in the extension becomes the property of the company.

The question now presents itself to the commission as to whether or not the sum so advanced by the consumer is to be included in the 'gross receipts' of the company and subjected to excise tax under Section 5483."

Section 5483, General Code, as amended by Amended Senate Bill No. 100, passed April 14, 1927, filed May 11, 1927, provides for an excise tax of one and thirty-five hundredths per cent (1.35%) of the gross receipts of certain utility companies, as follows:

"In the month of October, annually, the auditor of state shall charge for collection from each electric light \* \* \* company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required by this act, by taking one and thirty-five one hundredths per cent of all such gross receipts, which tax shall not be less than ten dollars in any case."

Section 5470, General Code, requires electric light companies doing business in this state to file with the commission, on or before the first day of August, a statement in such form as the commission may prescribe.

Section 5471, General Code, prescribes the general information to be contained in the statement.

Section 5474, General Code, provides in part that:

" \* \* \* such statement shall also contain the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, from whatever source derived, for business done within this state for the next year preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons or associations, but this shall not apply to receipts from interstate business, or business done for the Federal Government. \* \* \* "

Section 5475, General Code, provides in part:

"On the first Monday of September the commission shall ascertain and determine the entire gross receipts of each electric light \* \* \* company for business done within this state. \* \* \* "

Section 5476, General Code, provides in part:

"The amount so ascertained by the commission, in such instance, for the purposes of this act, shall be the gross receipts of such electric light \* \* \* companies for business done within this state for such year."

Section 5417, General Code, defines "gross receipts" as follows:

"The term 'gross receipts' shall be held to mean and include the entire receipts for business done by any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, from the operation of any public utility, or incidental thereto or in connection therewith. The gross

receipts for business done by an incorporated company, engaged in the operation of a public utility, shall be held to mean and include the entire receipts for business done by such company under the exercise of its corporate powers, whether from the operation of the public utility itself or from any other business done whatsoever."

The only limitation contained in the foregoing definition of "gross receipts" is that found in the words "for business done", which appear all through these statutes.

The business of the corporation described in your question is to furnish electricity to consumers in this state. The making of extensions is not only a part of the business of such corporation, but is a duty required by law when public demand reasonably requires them.

Section 614-28, General Code, provides in part:

"Whenever the commission shall be of the opinion, after hearing had, as in this act provided, or upon its own initiative or complaint, as in this act provided, \* \* \* that any additions thereto (plant or equipment) should reasonably be made, in order to promote the convenience or welfare of the public \* \* \* the commission may make and serve an appropriate order with respect thereto, directing that such \* \* \* additions be made within a reasonable time and in a manner to be specified therein. Every such public utility, its officers and agents and official employees shall obey such order and make such \* \* \* additions required of such public utility by such order."

Section 614-12, General Code, provides in part:

"Every public utility shall furnish necessary and adequate service and facilities \* \* \* ."

Whatever compensation the public utility receives for furnishing "necessary and adequate service and facilities" and for making "additions" is in the language of Section 5417, General Code, supra, a part of "the entire receipts for business done by such company under the exercise of its corporate powers."

Such a payment by the customer is not a gift to the company, but is part of the consideration paid by the customer to the company for the service. It is not a loan to the company, for the customer never gets it back. All the customer gets for his money is the service which it is the business and duty of the utility to furnish.

The fact that the money so paid is used by the company in constructing the extension, and that the amount is charged into the capital account as an addition and betterment does not change the conclusion. Whatever the company may do with the money, it is still a payment to the company as consideration for that which the company was organized to furnish, to-wit: electric current. As such it is part of its "receipts for business done" and is included in the term "gross receipts" in Section 5483, General Code, supra.

This conclusion is reached upon the facts of the particular case, and is not intended to cover a case where the amount so paid in by the customer is refunded to him either at a specified time or over a period of years.

Specifically answering your question, it is my opinion that money which a proposed customer is required to pay to an electric light company in order to get electric current, is to be included in the "gross receipts" of the company and subjected to excise tax under Section 5483, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*