

613.

SENATE BILL NO. 100—IS NOT SUBJECT TO THE REFERENDUM.

SYLLABUS:

*Under the provisions of Section 1d of Article II, Ohio Constitution, Amended Senate Bill No. 100 amending Sections 5468 and 5483 of the General Code, being an act levying an excise tax on certain public utilities therein named, is not subject to the referendum and became effective from May 10, 1927, i. e., at 12:01 o'clock A. M. May 11, 1927.*

COLUMBUS, OHIO, June 13, 1927.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Will the Attorney General please advise this department as to date on which Senate Bill No. 100 (Mr. Kumler) amending 5468, etc., is effective? Is this a measure that is effective upon passage and filing in the office of the Secretary of State rather than ninety (90) days thereafter; that is to say about August 9th? It will be noted that under this law a certain act is *to be performed* on August 1, 1927.”

Amended Senate Bill No. 100 is an act entitled “To Amend Sections 5468 and 5483 of the General Code, Relative to Excise Taxes on Certain Public Utilities.”

Section 5468 as amended in this bill is as follows:

“Sec. 5468. On the first Monday in August, of each year, the commission shall certify such amount to the Auditor of State, who shall charge a sum in the nature of an excise tax, to be collected from each sleeping car, freight line and equipment company, doing business or owning cars which are operated in this state, to be computed by taking one and \* \* \* *thirty-five one-hundredths* per cent of the amount fixed by the commission as the value of the portion of the capital stock representing the capital and property of each company owned and used in this state.”

Section 5483 as amended in said bill is as follows:

“In the month of October, annually, the auditor of state shall charge, for collection from each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling and water transportation 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 in 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 1d of Article II, of the Ohio Constitution, provides as follows:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. \* \* \* The laws mentioned in this section shall not be subject to the referendum."

It will be noted that the above mentioned sections fix a definite percentum on an amount to be fixed by the commission to be collected as an "excise tax."

It also provides that the minimum "tax shall not be less than ten dollars in any case."

It is clearly apparent that this is a measure providing for tax levies, and being such it is not subject to the referendum.

This bill was presented to the Governor, April 28, 1927, and was not signed or returned to the senate wherein it originated within ten days after being so presented, exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State, May 11, 1927.

It is my opinion that this law is not subject to the referendum and therefore became effective from May 10, 1927, i. e., on and after 12:01 o'clock A. M., May 11, 1927.

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

614.

APPROVAL, TENTATIVE DRAFT OF CONTRACT BETWEEN STATE OF OHIO AND COUNTY OF CUYAHOGA, PERTAINING TO WHITEHOUSE CROSSING.

COLUMBUS, OHIO, June 13, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communicatoin of recent date enclosing tentative draft of contract between the State of Ohio, acting by and through you as Director of Highways and Public Works and the County of Cuyahoga, Ohio, pertaining to the elimination of what is commonly known as the Whitehouse Crossing situated in I. C. H. No. 12 in the Village of Garfield Heights, Ohio.

I have examined said tentative draft and have rewritten the same to embody certain changes I have made in said contract as submitted.

I am of the opinion that the agreement is now in proper legal form and when the same shall have been properly executed I shall approve the same. I am herewith enclosing the contract as redrafted in order that the same may be executed.

You also request that I formally approve the contract between the State of Ohio, acting by and through you as Director of Highways and Public Works, the Pennsylvania Railroad Company and The Wheeling and Lake Erie Railway Company.

I have carefully examined the latter contract and find that the same fully covers the intention of the parties relative to the elimination of grade crossings located at what is commonly known as The Whitehouse Crossing in the Village of Garfield Heights, Cuyahoga County, Ohio, and that the same is in proper legal form. I am therefore formally approving this contract.

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