2167.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS, HARRISON COUNTY, OHIO.

COLUMBUS, OHIO, June 15, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

2168.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, WAYNE, HENRY AND MONTGOMERY COUNTIES, OHIO.

COLUMBUS, OHIO, June 15, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

2169.

"VAN-CO"—EVAPORATED SKIMMED MILK COMPOUND—CANNOT BE MANUFACTURED IN OHIO FOR EXCLUSIVE SALE IN OTHER STATES.

Under the provisions of section 12725 *G. C., "Van-Co" is not only a substance which cannot be sold in Ohio, but is also one that cannot be manufactured here for exclusive sale in other states.*

COLUMBUS, OHIO, June 16, 1921.

Department of Agriculture, Bureau of Dairy and Food, Columbus, Ohio.

GENTLEMEN:—In your communication of recent date you request my opinion upon a statement of facts which, based upon your letter, with enclosures, is understood to be as follows:

> An Illinois packing company maintaining Ohio plants desires to manufacture in the state an evaporated skimmed milk compound known as "Van-Co". Said compound is conceded to be identical with the substance known as "Hebe", a compound which was the subject of litigation in the case of Hebe Co. vs. Colvert, 246 Federal Reports, 711, and also the Hebe Co. vs. Shaw, 248 U. S. Reports, page 297.
>
> It is conceded by the company that its said substance known as "Van-Co", under the decisions above referred to, cannot be legally sold within the state. The question now for consideration is whether or not the compound may be manufactured within the state for the purpose of sale without the state.

The question presented arises by reason of the provisions of sections 5774 and 12725 and other related sections of the General Code of Ohio, which

were considered in the opinion above referred to. Said sections were held to be constitutional, and it was further decided that a substance such as the one being considered was prohibited from being sold in Ohio.

It is believed to be well settled that a state may, under its police power, prevent the manufacture of a substance within its borders if its legislature so prescribes by the proper enactments. This proposition has been heretofore determined by this department in an opinion rendered to your department, reported in Opinions of the Attorney-General, 1919, Vol. II, p. 1424, the syllabus of which reads:

> "The manufacture in Ohio of oleomargarine containing coloring matter, although manufactured exclusively for sale in other states, is made unlawful by sections 12733 of the General Code."

There are numerous authorities cited in said opinion substantiating the proposition that a state may prevent the manufacture of a substance without interference with inter-state commerce, which will not be repeated herein. However, it should perhaps be mentioned for the purpose of convenience that the case of Hammer vs. Dagenhart, 247 U. S. 251, is one of the cases relied upon in said opinion in reaching the conclusion.

It therefore follows that the only question requiring consideration is whether or not it was the intent of the legislature, in the language used in the sections above mentioned, to prohibit the manufacture of such a substance within the state.

Section 5774 G. C. provides:

> "No person, within this state, shall manufacture for sale, offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is adulterated within the meaning of this chapter, or offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is misbranded within the meaning of this chapter."

Section 12725 G. C., which is the penal section controlling, provides:

> "Whoever manufactures, sells, exchanges, exposes or offers for sale or exchange, condensed milk unless it has been made from pure, clean, fresh, healthy, unadulterated and wholesome milk, from which the cream has not been removed and in which the proportion of milk solids shall be the equivalent of twelve per cent of milk solids in crude milk, twenty-five per cent of such solids being fat, and unless the package, can or vessel containing it is distinctly labeled, stamped or marked with its true name, brand, and by whom and under what name made, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days."

From a perusal of this statute it would seem clear that it was the intent of the legislature to prohibit the manufacture of an article such as "Van-Co" is admitted to be, as well as to prohibit its sale or exchange. From a grammatical standpoint there is no room for doubt as to what the statute says in this respect. Whoever manufactures the substance therein forbidden to be manufactured is guilty of the offense therein defined. Too, it is logical

to assume that the legislature made this provision advisedly. To prevent the manufacture, it strikes at the fountain-head of the trouble and makes it less probable that a forbidden sale will be made. This provision is not new to Ohio police regulations. In any event, the language is clear and unambiguous, and the supreme court of Ohio in the case of Brewing Co. vs. Schultz, 96 O. S. 27, speaking in reference to the interpretation of a statute, said:

> "* * * When the language employed is clear, unambiguous, and free from doubt, it is the duty of the court to determine the meaning of that which the legislature did enact, and not what it may have intended to enact."

In view of the foregoing, it is the opinion of this department that "Van-Co" is not only a substance which cannot be sold in Ohio, but is also one which cannot be manufactured here for exclusive sale in other states.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2170.

INHERITANCE TAX LAW—WHERE BEQUEST OF FIVE THOUSAND DOLLARS MADE TO EACH OF TWO SONS—PROVISION IN WILL FOR DEDUCTIONS FOR ANY MONEYS LOANED—ONE SON SOLVENT, OTHER INSOLVENT—HOW SONS' NOTES TO BE VALUED—LEGACIES DETERMINED—HOW TAX DETERMINED—NOTES TAXABLE.

B died testate, his will containing the following provision: "I give and bequeath to my two sons, X and Y, $5,000 each, upon the condition, however, that from this bequest shall first be deducted before payment any amount or amounts of money loaned either of said sons by me directly or indirectly or for their benefit or any amount that I might become liable upon by reason of any endorsement that I have made for their accommodation or benefit. In the event that the said bequest of $5,000 shall not entirely liquidate the indebtedness of either of said legatees of my estate, that the balance due my estate from either of said legatees shall be held against such legatee and deducted from any future distribution of my estate to him." At the time of death of B, his son X was insolvent but Y was solvent. Among the assets of B were found three promissory notes of $3,000 each given to him by X, one so given prior to June 5, 1919, and the others subsequent thereto. Exactly similar notes were found signed by Y. In addition to the specific legacies mentioned above X and Y will inherit from B sums in excess of $20,000;

HELD:

1. *The notes are to be valued as part of the estate of the decedent at their actual market value; therefore, the notes held against the insolvent legatee are to be regarded as worthless.*

2. *The cash legacy to each legatee is the amount of money which each would respectively receive, less the face value of the notes and interest, regardless of their actual value.*

3. *Each legatee is to receive in addition to cash the forgiveness of his debts to the testator. In the case of the solvent legatee this part of the legacy represents the*