

Had the legislature seen fit to limit the power to assess only in cases where a permanent improvement is to be constructed for the purpose of lighting streets, it could easily have done so, but the language used is much broader and evidently discloses a legislative intent to authorize the assessment of the cost of lighting, regardless of whether or not the municipality may desire to purchase such service from an illuminating company or supply it itself. The legislative intent must be sought from the language employed. *State, ex rel. vs. Pharmacy Board*, 127 O. S. 513.

It is my opinion that a municipality may, in accordance with the provisions of Sections 3812, et seq., General Code, assess upon benefited property the cost of lighting a street when the lighting equipment is owned by a private utility which is furnishing the service under contract with the municipality.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3841.

EXCISE TAX—EFFECTIVE DATE OF H. B. No. 43, SECOND SPECIAL SESSION
 90TH GENERAL ASSEMBLY—DEDUCTION PROVIDED IN SECTION 5483,
 G. C. DISCUSSED.

SYLLABUS:

1. *House Bill No. 43 of the second special session of the 90th General Assembly is an act providing for tax levies as defined in Article II, section 1d of the Constitution, and went into immediate effect when approved by the Governor.*

2. *The \$25,000 deduction provided for by section 5483, General Code (House Bill No. 43 of the second special session of the 90th General Assembly) is applicable to the gross receipts from the effective date of said act to the end of the reporting period provided for in said act. However, the \$10.00 minimum tax provided in said act is not applicable to that portion of the reporting period subsequent to the effective date of said act but will apply to the entire year.*

3. *The special excise tax levied on certain public utility companies for the purpose of providing funds for poor relief under the provisions of Amended Senate Bill No. 4, passed by the 89th General Assembly, at its special session March 21, 1932, is to be computed upon the basis prescribed by sections 5483 and 5485 of the General Code as they read March 21, 1932.*

COLUMBUS, OHIO, January 19, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“The Commission respectfully submits the following questions relative to the administration of House Bill No. 43 of the Second Special Session of 1934 which increases the rates of excise taxation imposed upon the gross receipts and gross earnings of certain public utilities. The questions relative to the administration of this act on which your opinion is desired are as follows:

· What is the actual effective date of this Act?

The original Act provides that the tax shall be collected on that portion

of such gross receipts of certain classes of public utilities after a deduction of twenty-five thousand has been taken which raises this administrative question,—Is this deduction applicable to the gross receipts from the effective date of the Act to the end of the reporting period, or is it applicable to the gross receipts for the entire reporting period? If applicable from the effective date of the Act to the end of the reporting period and the gross receipts are less than twenty-five thousand dollars, does the ten dollar minimum tax apply to this portion of the reporting year and would it be added to any tax on the gross receipts for the period of the beginning of the reporting year to the effective date of the amended Act?

Is the additional one per cent excise tax upon public utilities imposed by Section 4 of Amended Senate Bill No. 4 of the Special Session of 1932 to be computed upon the basis prescribed by the sections of the General Code as they read prior to the amendments by House Bill No. 43 of the Second Special Session of 1934, or will Amended House Bill No. 43 as pertains to certain exemptions from the tax base in any way apply to the original poor relief legislation set forth in Senate Bill No. 4 passed in the year 1932?

Owing to the unusual number of requests for information relative to the administration of the amended Act and the necessity that public utilities arrange for their tax accruals for 1935, the commission would be very pleased to have an oral opinion on this in advance of the regular written opinion."

House Bill No. 43 of the second special session of the 90th General Assembly is an act to increase the rates of excise taxes imposed on the gross receipts and gross earnings of certain public utilities, and to apply the increased revenue resulting therefrom to the general fund of the counties for county statutory relief and welfare purposes and for such purposes to amend sections 5474, 5475, 5483, 5485, 5486, 5487 and 5491 of the General Code and to enact supplemental sections 5487-1 of the General Code.

Article II, section 16 of the Constitution of Ohio provides that if the Governor approves a bill he shall sign it and thereafter it shall become a law, and be filed with the Secretary of State. Article II, section 1c provides in part as follows:

"No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided."

In the case of *State, ex rel. Keller, vs. Forney*, 108 O. S., page 463, it was held that the language "except as herein provided" relates to the following portion of section 1d of Article II of the Constitution of Ohio:

"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."

It was declared in the case of *State, ex rel. Keller, vs. Forney, supra*, that the express language "laws providing for tax levies" is limited to an actual self-executing levy of taxes and is not synonymous with laws "relating" to taxes, or "pertaining" to taxes, or "concerned" with taxes. The statutes in question are clearly of the kind

contemplated by the provisions of Article II, section 1d of the Constitution. The act embodying said statutes imposes a tax, stating distinctly the object of the same, the percentage of value to levied, and designating the persons and property against whom and which the levy is to be made.

It must therefore be concluded that said act is one providing for tax levies and hence shall go into immediate effect. The question of what is meant by "immediate effect" is answered in the case of the *State of Ohio vs. Lathrop*, 93 O. S. 79, the syllabus of which case reads as follows:

"Construing Section 1c of Article II with section 16 of Article II of the Constitution, in so far as both sections relate to the time from which an act of the general assembly shall operate, laws providing for tax levies, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in Section 1d of Article II of the Constitution, go into immediate effect when approved by the governor. All other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor."

An examination of the act in question reveals that the same was approved by the Governor on December 13, 1934, and consequently it is my opinion that the effective date of this act is December 13, 1934.

I come now to your second and third questions.

Section 5483, General Code, in its form prior to the amendment (House Bill No. 43, second special session of the 90th General Assembly) read 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 5483 of the General Code, in its present form, reads as follows:

"In the month of October, annually, the auditor of state shall charge, for collection from each electric light, intra-state toll bridge, 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 * * * two and thirty-five one-hundredths per cent of all such gross receipts, which tax shall not be less than ten dollars in any case. Provided, however, that such tax shall not be collected on that portion of such gross receipts as are received from the sale of merchandise and electrical appliances. Provided, however, that in the case of each gas, natural gas and telephone company, a deduction of twenty-five thousand dollars shall be taken from the gross receipts before computing the excise tax."

Section 2 of the act in question reads as follows:

"That said existing sections 5474, 5475, 5483, 5485, 5486, 5487 and 5491 of the General Code are hereby repealed.

Sections 5483, 5485, 5486 and 5487 as amended by this act shall take effect so that excise taxes payable in the year 1935 shall be computed as follows: First, at the rate specified in the sections hereby repealed on gross receipts and gross earnings on intrastate business up to the effective date of this act; and second, at the rate specified in said amended sections on gross receipts and gross earnings on intrastate business from, on and after the effective date of this act."

The rate specified in the repealed section 5483 is as follows: One and thirty-five one hundredths per cent. The rate specified in section 5483, as amended, is: Two and thirty-five hundredths percent. of all such gross receipts after deducting in the case of gas, natural gas and telephone companies the sum of \$25,000. In other words, any question that might arise as to the method of computation of the tax, by reason of the fact that the effective date of the act falls within the reporting period, is at once answered by the provisions of section 2 thereof. It will be noted that said section 2 deals only with the change in the rate effected by the amendment and nothing is said therein with reference to the minimum annual tax of \$10.00. The language of the statute in regard thereto, is the same in its present amended form as it was in the statute prior to the amendment. The language is clear and apparent and leaves no room for construction. All that is necessary is to apply it to the facts found.

Therefore, in answer to your second and third questions, I am of the opinion that the deduction of \$25,000 is applicable to the gross receipts from the effective date of the act to the end of the reporting period and if the gross receipts for such period are less than \$25,000, the \$10.00 minimum tax will not apply to that portion of the reporting year, following the effective date of the act. If such were not the case, the minimum annual tax collectible in the year 1935 would be \$20.00, which from the plain language of the statute is certainly not the intent thereof.

I shall now determine the next question submitted for my consideration.

Section 4 of Amended Senate Bill No. 4, passed by the 89th General Assembly at its special session in 1932, reads as follows:

"For the purpose of providing funds for poor relief and of the carrying out of the other purposes and provisions of this act, a sum in the nature of an excise tax for the privilege of carrying on its intrastate business in the amount of one per centum of the gross receipts of each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling, water transportation, and telegraph company, on its intrastate business from on and after the effective date of this act, as covered by the annual reports required by law to be filed by all such companies as are herein before mentioned in the years 1932, 1933, 1934, 1935, 1936, 1937, is hereby levied and imposed upon each such company in each of said years, such tax to terminate five years after the final date covered by the annual report filed by each of such companies in the year 1932, and a sum in the nature of an excise tax in the amount of fifteen hundredths of one per centum of the value of the portion of the capital stock representing the capital and property owned and used in this state of each sleeping car, freight line and equipment company, as covered by its annual reports filed in the years 1933, 1934, 1935, 1936 and 1937, is hereby

levied and imposed upon each such company in each of said years; the sum so levied to be in addition to the taxes provided for in sections 5468, 5483, 5485, and 5488 of the General Code, and to be collected on the dates and in the manner provided in said sections."

Statutes which refer to other statutes and make them applicable to the subject of the legislation are called "reference statutes." Their object is to incorporate into the act of which they are a part the provisions of other statutes by reference and adoption.

The rule with reference to subsequent amendment or repeal of an adopted statute is stated in the case of *Heirs of Ludlow vs. Johnston*, 3 Ohio, page 572, as follows:

"When in one statute a reference is made to an existing law, in prescribing the rule or manner in which a particular thing shall be done, or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect, generally, is not to revive or continue in force the statute referred to, for the purpose for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. For this purpose the law referred to is, in effect, incorporated with and becomes a part of the one in which the reference is made, and so long as that statute continues, will remain a part of it, and although the one referred to should be repealed, such repeal would no more effect the referring statute than a repeal of this latter would the one to which reference is made. Such references are common in our legislation, and a slight examination will show that this is the effect intended to be produced."

In Ohio Jurisprudence, Volume 37, page 341, we find the following declaration:

"It is a general rule that when a statute adopts a part or all of another statute, domestic or foreign, general or local, by a specific and descriptive reference thereto to the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of the adopted statute has no effect on the adopting statute, unless it, also, is repealed expressly or by necessary implication."

The above text is supported by the following cases:

Ludlow vs. Johnston, 3 O. 553, 17 Am. Dec. 609

Stoner vs. Pittsburg, C. C. and L. R. Co. 9 O. N. P. (N. S.) 337, 20 O. D. (N. P.) 448; *Lembo vs. State*, 14 O. D. (N. P.) 384; 25 Ruling Case Law, p. 908.

The application of the above rule therefore leads me to the conclusion that the General Assembly in the enactment of Amended Senate Bill No. 4, by incorporating therein by reference the provisions of the then section 5483, General Code, pertaining to the date and manner of collecting such taxes, intended said adoption to take section 5483, General Code, as it existed at that time.

Therefore, in specific answer to your question, I am of the opinion that the special excise tax levied on certain public utility companies for the purpose of providing funds for poor relief under the provisions of Amended Senate Bill No. 4, passed by the 89th General Assembly, at its special session March 21, 1932, is to be computed upon the basis prescribed by sections 5483 and 5485 of the General Code as they read

prior to the amendments by House Bill No. 43, second special session of the 90th General Assembly, and that the deduction of \$25,000 provided for in section 5483, in its present form, does not apply to the tax levied for poor relief under the provisions of Amended Senate Bill No. 4, passed by the 89th General Assembly at its special session.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3842.

APPROVAL, BONDS OF CITY OF MARION, MARION COUNTY, OHIO,
\$2500.00.

COLUMBUS, OHIO, January 19, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3843.

APPROVAL, BONDS OF CAMPBELL CITY SCHOOL DISTRICT, MAHONING
COUNTY, OHIO, \$89,000.00.

COLUMBUS, OHIO, January 19, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3844.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY,
OHIO, \$25,000.00.

COLUMBUS, OHIO, January 19, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

3845.

APPROVAL, LEASE TO CANAL LAND IN PIKE COUNTY, OHIO, FOR PUBLIC
HIGHWAY AND ROAD PURPOSES.

COLUMBUS, OHIO, January 19, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication, submitting