You have submitted the following papers and documents in this connection: Contract bond signed by the following sureties, Inland Bonding Company, The Trinity Universal Insurance Company and The Excess Insurance Company of America; its powers of attorney for the signers; Certificates of compliance from the Division of Insurance, showing that the laws of Ohio relating to insurance companies have been complied with by the surety companies; Division of Contract; Estimate of cost; Notice to bidders; Proof of publication; Workmen's Compensation Certificate, showing that the James I. Barnes Construction Company have complied with the laws of Ohio relating to Workmen's Compensation; Tabulation of bids; Recommenations of State Architect; Certificate of Availability of funds for this project; Approval of P. W. A.; Letter from the Auditor of State, showing that all necessary papers are on file in his office.

Finding said contract in proper legal form, I have noted my approval thereon, and said contract is returned herewith together with all papers and documents submitted in this connection.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

493.

TAX—WHISKEY OR OTHER ALCOHOLIC LIQUORS STORED IN BONDED WAREHOUSES OR OTHER PLACES OR BUILDINGS — TANGIBLE PERSONAL PROPERTY — ASSESSED — VALUATION — FEDERAL CONSTITUTION — STATUS ORIGINAL PACKAGES OR CONTAINERS—CASES, UNBROKEN, UNSOLD — IMPORTATION INTO OHIO FROM FOREIGN COUNTRY—CONTROL—SECTIONS 5388, 5388-1, 5325-1, ET SEQ. G. C.

SYLLABUS:

Consistent with recognized rules of statutory construction, effect should be given to the special provisions of section 5388-1, General Code, relating to the taxation of whiskey or other alcoholic liquors stored in bonded warehouses or other places or buildings as against the later and more general provisions of section 5388, General Code, providing for the valuation bases on which tangible personal property generally is assessed for taxation, in so far as the provisions of section 5388-1, General Code, are inconsistent with those of the later enactment; and in this view, whiskey or other alcoholic liquors stored or kept as provided in section 5388-1, General Code, are required to be assessed for taxation at their true value in money. However, consistent with the provisions of section 5388-1, General Code, and giving effect to the provisions of section 5328, General Code, it is held that only such whiskey or other alcoholic

liquors as are used in business within the purview of section 5325-1, General Code, are taxable. And likewise consistent with the provisions of section 5388, General Code, it is held that where whiskey or other alcoholic liquors is owned or held by a manufacturer for the purpose of being used in whole or in part in manufacturing, combining, rectifying or refining, such whiskey or other alcoholic liquor so used is taxable on the basis of fifty per cent of the true value thereof.

Consistent with the interstate commerce clause of the Federal Constitution, which confers upon Congress the power to regulate commerce between the states and with foreign countries, the State of Ohio may tax whiskey and other alcoholic liquors after the same have come to rest in this State whether the same are in the original packages or containers in which they were shipped or not.

Whiskey and other alcoholic liquors which have been imported into this State from a foreign country, and upon which the customs, duties and charges have been paid, are not subject to taxation in this State while the same remain in the original cases, unbroken and unsold in the hands of the importer; and such goods do not lose their character as imports and become taxable as property in this State until they have passed from the control of the importer, or until the importer has broken up the original cases in which such property was transported.

COLUMBUS, OHIO, April 27, 1939.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This is to acknowledge the receipt of your recent communication in which you ask my opinion on certain questions relating to the taxation of whiskey and other intoxicating liquors as personal property. Your communication stating the questions which you have in mind, together with certain observations which you make on some of the sections of the General Code relating to these questions, is as follows:

> "The enactment of the so-called intangible tax law, the repeal of constitutional prohibition, and the enactment of the liquor contract act have raised a question concerning the taxation of whiskey and other alcoholic liquor physically present in this state under varying circumstances.
>
> Sections 5388-1, 5388-2, 5388, and 5388-4 were enacted in 109 O. L., page 63, and were effective March 31, 1921.
>
> The so-called intangible tax law, including sections 5381, 5382, 5385, 5386, 5387 and 5388, General Code, was enacted in 114 O. L., 719, et seq., effective June 30, 1931, and some of the sections amended in 115 O. L. 563, et seq., effective July 18, 1933.

Whiskey and other alcoholic liquor may legally be present in this state under at least the following circumstances: (1) owned by the State of Ohio and kept or stored in state liquor stores; (2) owned by the State of Ohio and kept or stored in duly authorized liquor agencies; (3) in so-called 'bailment' warehouses pursuant to regulation and/or permission of the liquor control board; (4) in the hands of a distiller or rectifier in various stages of manufacturing or aging as a finished product stored and ready for sale; (5) in the hands of a duly licensed retailer by drink, either on shelves exposed for sale or stored in in the same or an adjacent room or building until such time as it is needed for sale.

As to whiskey and other alcoholic liquors present in this state under the circumstances mentioned in (1) and (2) of the immediately preceding paragraph, it seems apparent that such liquors are not subject to personal property taxes at all, the title to same remaining in the state at all times until sold to the retailer or ultimate consumer. However, as to liquors present in Ohio under circumstances mentioned in (3), (4), and (5) of the paragraph above, several questions relative to the application of the personal property tax laws are raised.

All of the questions raised involve a construction, at the least, of the sections of the General Code noted hereinabove and particularly the language appearing therein providing for the taxation of personal property at varying percentages of value, as well as the construction of the language 'in bonded warehouses or other place or buildings' appearing in Section 5388-1, General Code.

Various of the sections quoted above define the terms 'merchant' and 'manufacturer' and prescribe rules governing the listing and assessing of the property of such taxpayers on the average and other basis. Section 5388, General Code, provides in part as follows:

'Excepting as herein otherwise provided, personal property shall be listed and assessed at seventy per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the times as of which it is required to be estimated on the average basis, as the case may be. * * *

Personal property of the following kinds, used in business, shall be listed and assessed at fifty per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the times as of which it is required to be estimated on the average basis, as the case may be:

(1) All engines, machinery, tools and implements of a manufacturer mentioned in Section 5386 of the General Code, and all engines and machinery of every description used, or designed to be used in mining, and all tools and implements of every kind used, or designed to be used for such purpose, excepting as provided in the last paragraph of this section, and all engines, machinery, tools, implements and domestic animals used in agriculture, and all machinery, implements and tools used in laundries and dry cleaning plants, except as any of the kinds of property mentioned in this paragraph may have been legally regarded as improvements on land and considered in arriving at the value of real property assessed for taxation.

(2) The average value of all articles purchased, received or otherwise held by a manufacturer for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining; the average value of all articles which were at any time by him manufactured or changed in any way, either by combining or rectifying, or refining or adding thereto, but not including finished products unless kept or stored at the place of manufacture or at a warehouse in the same county therewith; and agricultural products on farms. * * *'

Section 5388-1 provides in part as follows:

'Upon all whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings shall be collected taxes at the rate current in the taxing districts in which such warehouse or warehouses or other places or buildings shall be situated for the year in which such state and local tax is to be paid and shall be assessed upon its true value in money. * * *'

You will note from a consideration of the provisions of the above quoted sections that there is a direct conflict therein as to the percentage of value to be used in the assessment of whiskey and other alcoholic liquors for personal property tax purposes.

We, therefore, respectfully request your opinion (1) as to the percentage of value to be used in the assessment of whiskey and other alcoholic liquor stored in so-called 'bailment' warehouses; (2) the percentage of value to be used in the assessment of whiskey and other alcoholic liquor of a manufacturer or rectifier, which said liquor is in process, or is a completed product except for the aging process and which said liquor is stored in the same building of the place of manufacture or in a warehouse or other place or building; (3) as to the percentage of value to be used in the assessment of whiskey and other alcoholic liquor of a retailer or merchant either when placed on the shelves for

sale or when stored in some place in the same building awaiting demand for sale or when stored in some other building awaiting demand for sale."

By a communication supplementary to that above referred to, you refer to whiskey held in storage and against which warehouse receipts have been issued and sold. And in this situation, you inquire: (1) as to the taxability of such warehouse receipts as some form of intangibe personal property in the hands of the owner and holder of such warehouse receipts; and (2) as to taxability as personal property of the whiskey represented by warehouse receipts as against the owner and holder of such warehouse receipts.

As a further question relating to this subject, you request my opinion "as to the authority of the Tax Commission to assess 'imported' whiskeys and other alcoholic beverages, assuming that such whiskey and other alcoholic beverages are in the State under the circumstances which would otherwise forbid state taxation on same, were it not for the provisions of the so-called 'Webb-Kenyon Act' and its successor acts, as well as the 21st Amendment to the (Constitution of the) United States."

The questions presented in your original communication are suggested by section 5388-1, General Code, the pertinent provisions of which have been quoted by you. The provisions of section 5388-1, General Code, were originally enacted as a part of an act passed by the 84th General Assembly under date of March 14, 1921. It is noted that this section provides for the taxation of whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings at the local tax rates in the taxing district in which such warehouse or warehouses or other places or buildings may be situated and that such property shall be assessed for taxation at its true value in money. In this connection, it is further noted that there is nothing in the provisions of this section which in any wise limits or conditions the taxability of whiskey or other intoxicating liquor stored in bonded warhouses or other places or buildings, with respect to the use made or to be made by the owner of such property. And as to this, it is pertinent to note that at the time of the enactment of the provisions of section 5388-1, General Code, in and by the act above referred to, section 5328, General Code, relating to the taxation of real and personal property, provided that "all real or personal property in this state, belonging to individuals or corporations, * * * shall be subject to taxation except only such property as may be expressly exempted therefrom." The provision in section 5388-1, General Code, requiring taxes on whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings to be assessed on such property at its true value in money was, of course, in conformity with the then provisions of section 2 of aritcle XII of the State Constitution which required all property, both real and

personal, to be assessed by uniform rule on such property at its true value in money.

Some time after the enactment of this section, to-wit, in 1929, the electors of this State amended section 2 of article XII of the Constiution so as to permit the classification of tangible and intangible personal property for purposes of taxtion and, to this end, this amendment removed personal property from this requirement as to uniform rule in the taxation of property and as to the valuation on which property was to be assessed for taxation. This amendment of section 2 of article XII of the State Constitution became effective January 1, 1931; and later in this year the 89th General Assembly enacted the Intangible and Personal Property Tax Law, so-called, 114 O. L., 714, in which comprehensive provisions were made for the taxation of intangible property at classified rates and for the taxation of tanigble personal property, therein defined as "personal property," at classified valuations of such property. Moreover, section 5328, General Code, was amended in this act so as to provide, among other things, that "all personal property located and used in business in this state and all domestic animals kept in this state, whether used in business or not shall be subject to taxation, regardless of the residence of the owners thereof." It is thus seen from the provisions of section 5328, General Code, as the same now read, that with certain exceptions, not here material, the only tangible personal property that is subject to taxation in this State is that located and used in business in this State. The term "used in business," as the same appears in section 5328, General Code, above quoted, is defined by section 5325-1, General Code as follows:

> "Within the meaning of the term 'used in business,' occuring in this title, personal property shall be considered to be 'used' when employed or utilized in connection with ordinary or special operations, when acquired or held as means or instruments for carrying on the business, when kept and maintained as a part of a plant capable of operation, whether actually in operation or not, or when stored or kept on hand as material, parts, products or merchandise; but merchandise or agricultural products belonging to a non-resident of this state shall not be considered to be used in business in this state if held in a storage warehouse therein for storage only."

Section 5328, General Code, as the same was amended in the enactment of the Intangible and Personal Property Tax Law, quite clearly declares the policy of this State as to the kinds of tangible personal property which shall be subject to taxation, and, as above noted, and subject to certain exceptions, limits the classes of personal property so taxed to those kinds that are used in business as that term is defined in section 5325-1, General Code, above quoted. In this view, no reason is seen why

the provisions of section 5328, General Code, as the same were amended in the enactment of the Intangible and Personal Property Tax Law, should not be given effect with respect to the taxation of whiskey and other alcoholic liquor stored in bonded warehouses or other places or buildings. And I am, accordingly, of the view that the only whiskey or other liquor that is subject to taxation in this State is that used in business in some one or more of the ways mentioned in section 5325-1, General Code.

With respect to the questions presented in your communication as to the percentage of the valuations of whiskey and of other intoxicating liquor to be used in the assessment of taxes on such property in the several different situations in which such property may be found as noted in your communication, the pertinent provisions of section 5388, General Code, should be noted. This section, as the same was amended in the enactment of the Intangible and Personal Property Tax Law, provides, among other things, as follows:

> "Excepting as herein otherwise provided, personal property shall be listed and assessed at seventy per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the times as of which it is required to be estimated on the average basis as the case may be * * *
>
> Personal property of the following kinds, used in business, shall be listed and assessed at fifty per centum of the true value thereof, in money, on the day as of which it is required to be listed, or on the days or at the times as of which it is required to be estimated on the average basis, as the case may be:
>
> (1) All engines, machinery, tools and implements of a manufacturer mentioned in section 5386 of the General Code, and all engines and machinery of every description used, or designed to be used in mining, and all tools and implements of every kind used, or designed to be used for such purpose, * * *
>
> (2) The average value of all articles purchased, received or otherwise held by a manufacturer for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining; the average value of all articles which were at any time by him manufactured or changed in any way, either by combining or rectifying, or refining or adding thereto, but not including finished products unless kept or stored at the place of manufacture or at a warehouse in the same county therewith; and agricultural products on farms.
>
> Boilers, machinery, equipment and personal property used for the generation or distribution of electricity other than for the use of the person generating or distributing the same shall be listed and assessed at the true value thereof in money, on the

day as of which they are required to be listed, anything in this section to the contrary notwithstanding."

Standing alone and considered independently of section 5388-1, General Code, section 5388, General Code, above quoted, is sufficiently comprehensive in its terms to provide for the percentage valuation bases of all kinds of tangible personal property subject to taxation, including whiskey and other intoxicating liquor. And in this view, whiskey and other alcoholic liquor stored in bonded warehouses or other places or buildings would be taxable on a valuation bases of seventy per cent. of the true value in money of such property unless the same as the finished product of manufacturer and as the property of the manufacturer is kept or stored at the place of manufacture or at a warehouse in the same county, in which case such whiskey or other intoxicating liquor, under the provisions of section 5388, General Code, would be taxable on a valuation of fifty per cent. of the true value in money of such property. However, the legislature in the enactment of the Intangible and Personal Property Tax Law and of section 5388, General Code, as a part of said law, did not in terms repeal section 5388-1, General Code, and the same is a part of the statutory law of this State unless it has been repealed by implication by the later and more general provisions of section 5388, General Code.

In view of the comprehensive provisions of section 5388, General Code, relating to the valuation of personal property for purposes of taxation, and the manifest purpose of the legislature to cover the whole subject indicated by its provisions, it may well be argued that the legislature in the enactment of the provisions of this section thereby evinced an intention to repeal by implication the provisions of section 5388-1, General Code, which are inconsistent with the later act, in the absence of some provision in the later act indicating a contrary intent. This result might be said to follow from the rule of statutory construction that a subsequent legislative enactment which deals with the whole subject of a former enactment and is evidently intended as a substitute therefor, operates as a repeal of the former enactment by implication. Touching this point, the Supreme Court of this State in the case of Goff v. Gates, 87 O. S., 142, held:

> "An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revised the whole subject-matter of the former act and is evidently intended as a substitute for it."

However, in section 5388-1, General Code, we have statutory provisions which deal with only a particular kind of personal property which is likewise included in the more general provisions of section 5388, Gen-

eral Code, which deal with all kinds of taxable personal property. In this situation, the rule of construction stated in the case of City of Cincinnati v. Connor, 55 O. S., 82, 89, should be noted. The court in its opinion in this case said:

> "It is an equally well established rule, that the provisions of a statute are to be construed in connection with all laws in pari materia, and especially with reference to the system of legislation of which they form a part, and so that all the provisions may, if possible, have operation according to their plain import. It is to be presumed that a code of statutes relating to one subject, was governed by one spirit and policy, and intended to be consistent and harmonious, in its several parts. And where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provision should, when possible, be given a construction which will bring them in harmony with that policy."

A rule of construction which, perhaps, is more immediately pertinent in the consideration of the questions here presented was stated by the Supreme Court in the case of City of Cincinnati v. Connor, supra, as follows:

> "We recognize it to be a well settled rule of statutory interpretation that: 'Where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intention shall be considered an exception to the general one;' and hence 'if there are two acts, or two provisions in the same act, of which one is special and particular, and clearly includes the matter in controversy, whilst the other is general, and would, if standing alone, include it also; and if, reading the general provision side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.' Endlich on Inter. Stat., section 216; Sedgwick, on Stat. and Const. Law, Section 652. Maxwell on Inter. of Stat. p. 202, Second Ed."

In the case of Doll v. Barr, 58 O. S., 113, the court, in its opinion, quoting Endlich on the Interpretation of Statutes, said:

> "In Endlich on the Interpretation of Statutes, Section 216, the rule is stated to be that: 'Where there are in one act, specific provisions relating to a particular subject, they must govern in respect to that subject, as against general provisions in other

parts of the statute, although the latter, standing alone would be broad enough to include the subject to which the more particular relate'. And, 'if there are two acts, or two provisions of the same act, of which one is special and particular, and clearly includes the matter in controversy, whilst the other is general and would, if standing alone, include it also, and if reading the general provisions side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.'"

In the case of State, ex rel., v. Connar, 123 O. S., 310, it was held:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

This rule of statutory construction is noted in the case of Commissioners v. Board of Public Works, 39 O. S., 628, where it was held:

"A local and special act is not repealed or otherwise affected by the conflicting provisions of a subsequent general statute on the same subject, unless the legislative intent that such effect be given the later enactment is clearly manifest."

In the opinion of the court in this case it is said:

"Repeals by implication are not favored. So, particular and positive provisions of a prior act are not affected by a subsequent statute treating a subject in general terms and not expressly contradicting the provisions of the prior act, unless such intention is clear. Perrysburg v. Fosdick, 14 O. S. 472; Knox Co. v. McComb, 19 O. S. 320, 346; Shunk v. First National Bank, 22 O. S. 508, 515; Olds v. Franklin Co., 20 O. S. 421; Allen v. Russell, 39 O. S. 336.

The decided weight of authority supports the proposition that when there is a general act and also one local and special on the same subject, in conflicting terms, neither necessarily abrogates the other, but both are permitted to stand together, and it is immaterial which is of the later date. Bishop on the Written Laws, 112 b.; Crane v. Reeder, 22 Mich. 322; People v. Quigg, 59 N. Y. 83."

In the earlier case of Fosdick v. Village of Perrysburg, 14 O. S., 472, referred to by the court in the case of Commissioners v. Board of Public Works, supra, it was held:

"It is an established rule in the construction of statutes, that a subsequent statute, treating a subject in general terms, and not expressly contradicting the provisions of a prior act, shall not be considered as intended to affect more particular and positive provisions of the prior act, unless it be absolutely necessary to do so in order to give its words any meaning."

The court in its opinion in this case quotes with approval from Sedgwick on Statutory Law, 123, as follows:

"In regard to the mode in which laws may be repealed by subsequent legislation, it is laid down as a rule, that a general statute without negative words, will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. The reason and philosophy of the rule is that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all."

In the case of Leach v. Collins, 123 O. S., 530, 533, the court, in giving effect to a special statute enacted for a particular purpose as against a later statute dealing with the subject in general terms, said:

"It is well settled that such specific statutory provisions are to be regarded as exceptions to general statutory provisions, and that the rule that repeals by implication are not favored has additional force under such circumstances. State, ex rel. Elliott Co., v. Connar, Supt. of Dept. of Pub. Works, ante, 310, 175 N. E., 200. The rule applicable here is stated by the Supreme Court of the United States in Rodgers v. United States, 185 U. S., 83, 22 S. Ct., 582, 583, 46 L. Ed., 816, as follows; 'Where there are two statutes, the earlier special and the later general, (the terms of the general being broad enough to include the matter provided for in the special), the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general, will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.'"

Likewise, the court in the case of Western and Southern Indemnity Company v. Chicago Title and Trust Company, 128 O. S., 422, in giving

effect to a statute, the subjects of which were limited, as against the provisions of a later statute covering the same and other related subjects, held:

> "A special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms."

The application of the rule of statutory construction last above noted leads to the conclusion that the provisions of section 5388-1, General Code, were not repealed by implication by the amendment of section 5388, General Code, in the enactment of the Intangible and Personal Property Tax Law, or otherwise by any of the provisions of said law. This conclusion is supported by the consideration that the legislature in the enactment of the Intangible and Personal Property Tax Law in the year 1931 and in the amendment of section 5388, General Code, as a part of said law is presumed to have had knowledge of the provisions of section 5388-1, General Code. And in this view, it may be further assumed that the legislature in permitting section 5388-1, General Code, to stand without change, intended that the provisions of this section should fit in with the provisions of section 5388, General Code, as amended in said act, as a part of the legislative plan to thereby provide for the classification of tangible personal property used in business with respect to the valuation base upon which the several classes of such property should be assessed for purposes of taxation. Thus, as is hereinbefore noted, section 5388, General Code, provides generally for the assessment of personal property at seventy per cent. of the true value of the property. This is followed by the provision that personal property used in manufacturing and in mining shall be assessed at fifty per cent of the true value of such property in money and by the further provision that personal property used for the generation and distribution of electricity other than for the use of the person generating and distributing the same, shall be listed and assessed at the true value of such property in money; which, as will be noted, is the valuation base for the assessment of intoxicating liquor under the provisions of section 5388-1, General Code. In other words, the legislature in the enactment of the Intangible and Personal Property Tax Law and in the amendment of section 5388, General Code, as a part of said law, purposely retained the provisions of section 5388-1, General Code, relating to the valuation base upon which intoxicating liquor is to be assessed, as a part of the legislative scheme for the classification of all tangible personal property with respect to the valuation bases upon which such several classes of personal property are to be assessed for taxation. In this connection, it may be further observed that the situation presented by the amendment of section 5388, General Code, to provide for the classification of tangible personal property for purposes of taxation as above indicated is, with respect to the

question of the construction to be placed upon the provisions of section 5388-1, General Code, somewhat analogous to a situation of fact calling for the application of the rule that "an amended section of the statute takes the place of the original section, and must be construed with reference to the other sections, and they with reference to it; the whole statute, after the amendment, has the same effect as if re-enacted with the amendment." See State, ex rel. v. Cincinnati, 52 O. S., 419; State v. Vause, 84 O. S., 207, 217. Upon the considerations above noted, I am led to the conclusion that not only does section 5388-1, General Code, stand unrepealed in its provisions providing for the taxation of whiskey and other alcoholic liquor stored in bonded warehouses or other places or buildings, but that such intoxicating liquor as personal property is to be taxed upon the true value in money of such property.

With respect to the assessment of intoxicating liquor as "whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings" within the purview of section 5388-1, General Code, it is assumed that such intoxicating liquor may be held in stock in warehouses or other buildings at the plant of the distiller or other manufacturer in this State, in bonded warehouses elsewhere established in this State in accordance with the acts of Congress and the regulations of the government of the United States and in bailment warehouses, so-called, in this State where such intoxicating liquor is stored and held prior to the time when such liquor is withdrawn and sold to the Department of Liquor Control.

The question as to the return of property of this kind for taxation with respect to the person or persons who are required to make such return and pay the taxes assessed on this property, is one of some difficulty. As to this, section 5370, General Code, provides generally that each person shall return all the taxable property of which he is the owner, excepting that required by this section or by the regulations of the Commission to be returned for him by a fiduciary. And, in this connection, this section further provides that personal property used in business in this State and in the possession or custody of any agent, factor, bailee or other similar fiduciary, shall be returned by such fiduciary, except as may be otherwise provided by regulation of the Commission. It is to be noted, however, that this section provides "that a warehouseman shall not be required to return for taxation personal property consigned to him for the sole purpose of being stored or forwarded, if such warehouseman has no interest in such property other than his warehouseman's lien thereon, or any profit to be derived from its sale." Acting under the authority conferred upon it generally by section 5370, General Code, and more specifically, by sections 5366 and 5372-1, General Code, the Tax Commission under date of December 3, 1934, adopted Amended Regulation No. 11, which provides as follows:

> "1. Tangible personal property of a non-resident subject to tax in Ohio, and intangible property of a non-resident used in

and arising out of business in Ohio in any of the cases mentioned in Section 5328-2, of the General Code, whether or not in the possession of any agent, factor, bailee, lessee, consignee, or other similar fiduciary in Ohio, shall, except as hereinafter otherwise specifically or generally required by the Commission, be returned by such non-resident, in all cases where such non-resident, is authorized to and is engaged in business in Ohio or if such non-resident is otherwise required to file a personal property tax return in this state.

2. All such property hereinbefore mentioned in paragraph one (1), so owned and so held, and belonging to a non-resident not authorized to and engaged in business in Ohio or not otherwise required to file a personal property tax return in this state, shall be returned by the fiduciary.

3. All taxable property of a resident shall in all instances, except as may be otherwise provided by the Commission, be returned by such resident, although held by a fiduciary of the kind enumerated in paragraph one (1) hereof."

It is not believed that the provisions of this regulation are in any wise in conflict with the provisions of section 5370, General Code. Under this regulation if the property in question, in this case whiskey or other intoxicating liquor, stored in a bonded warehouse or other place or building in this State, is owned by a resident of this State or where such property is owned by a non-resident of this State who "is authorized to and is engaged in business in Ohio" or "is otherwise required to file a personal property tax return in this state," such owner (whether such ownership is evidenced by warehouse receipt or otherwise) is required to return for taxation intoxicating liquor so owned by him and to pay taxes thereon. On the other hand, if the property here in question is owned by a non-resident of the State of Ohio who is not engaged in business in this State and who is not otherwise required to file a personal property tax return in this State, such property, in this case whiskey or other intoxicating liquor held in warehouses or other places or buildings, should be returned by the bailee, consignee or other agent of the owner having the possession of such property.

Upon the considerations above noted and discussed, the conclusion has been reached that whiskey and other alcoholic liquor in storage in bonded warehouses or otherwise are subject to taxation at their true value in money, and that the same should be returned for taxation in the manner above indicated. Nevertheless, the provisions of section 5388-1, General Code, should be read as a law in pari materia with section 5388 and other related sections of the General Code enacted as a part of the Intangible and Personal Property Tax Law of this State; and they should be read as laws in pari materia with section 5388-1, General Code. And

in this view, effect should be given to the applicable provisions of the later and more general law with respect to the taxation of whiskey and other alcoholic liquors unless such provisions are in conflict with the provisions of section 5388-1, as a special act relating to the taxation of property of this kind. As a consideration touching this question, it is noted that the Supreme Court of this State in the case of City of Cincinnati v. Connor, supra, after noting the rule that where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provisions should, when possible, be given a construction which will bring them in harmony with that policy, said:

> "And it is only when, after applying these rules in the endeavor to harmonize the general and particular provisions of a statute, the repugnancy of the latter to the former is clearly manifest, that the intention of the legislature as declared in the general language of the statute is superseded."

Thus, as above indicated, section 5328, General Code, with certain exceptions not here material, provides that personal property located and used in business in this State shall be subject to taxation. This is a clear declaration of policy with respect to the taxation of all personal property; and inasmuch as there is no provision in section 5388-1, General Code, to the contrary, it follows, as hereinbefore stated, that the only whiskey and other alcoholic liquors which are taxable are those which are used in business within the meaning of that term as the same is defined in section 5325-1, General Code.

Again, section 5388-1, General Code, does not in terms deal with whiskey or other alcoholic liquors as property held by a manufacturer for the purpose of being used in manufacturing, rectifying or refining. And in this situation, the question is suggested as to whether, consistent with the rule of statutory construction above noted, effect may not be given in respect to the taxation of whiskey and other alcoholic liquors to section 5388, General Code, which, so far as the same is pertinent to the immediate question at hand, provides:

> "Personal property of the following kinds, used in business, shall be listed and assessed at fifty per centum of the true value thereof, in money, * * * at the times as of which it is required to be estimated on the average basis * * *
>
> The average value of all articles purchased, received or otherwise held by a manufacturer for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining; the average value of all articles which were at any time by him manufactured or changed in any way, either by combining or rectifying, or refining or adding thereto, but not in-

cluding finished products unless kept or stored at the place of manufacture or at a warehouse in the same county therewith; and agricultural products on farms."

The determination of this question requires, or at least suggests, a consideration of section 5388-1, General Code, only a part of which is quoted in your communication, and of section 5388-2, General Code. These sections read as follows:

Sec. 5388-1.

"Upon all whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings shall be collected taxes at the rate current in the taxing districts in which such warehouse or warehouses or other places or buildings shall be situated for the year in which such state and local tax is to be paid and shall be assessed upon its true value in money.

In determining the true value in money for taxation purposes of such whiskey or other alcoholic liquor so stored, the value placed thereon by the owner or his agent when declaring its value for shipment by express shall be prima facie evidence of its true value in money; and in cases where whiskey or other alcoholic liquor is not shipped by express and its value for such purpose not so declared then the true value in money for taxation purposes shall prima facie be the value last declared by an owner who has shipped similar whiskey or other alcoholic liquor by express from the same warehouse or other places or buildings. In case of removal from one bonded warehouse either within or without the state, the value of such whiskey so removed shall be determined in the same way and shall be subjected to the tax as provided in this act.

Delinquent taxes shall be assessable against such whiskey or other alcoholic liquor for the same period and in the same manner as provided for taxes against other property."

Sec. 5388-2.

"It shall be unlawful for the owner or owners of such warehouse or warehouses or other places or buildings where whiskey or other alcoholic liquor is stored to permit the removal or shipment of such whiskey or other alcoholic liquor therefrom until a tax receipt is presented showing the payment of all taxes."

A reading of the provisions of sections 5388-1 and 5388-2, General Code, suggests the thought that the whiskey or other alcoholic liquors

dealt with in these sections are taxable as merchandise or property held in storage for sale either immediately or prospectively. And there is nothing in the provisions of these sections of the General Code which negative or which are inconsistent with the view that if such whiskey or other alcoholic liquors are owned and held by a manufacturer for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining, such whiskey or other alcoholic liquors so used may be assessed on the basis of fifty per cent of the average valuation thereof as provided for in section 5388, General Code. And I am of the opinion that, giving effect to the provisions of section 5388, General Code, above quoted, whiskey or other alcoholic liquors owned, held and used by a manufacturer for the purposes above stated should be assessed for taxation on the basis of fifty per cent of the average valuation thereof determined in the manner provided for by section 5386, General Code. In this connection, I am of the view, however, that the provisions of section 5388-1, General Code, should be given effect to the exclusion of those of section 5388, General Code, with respect to the taxation of whiskey or of other alcoholic liquors as finished products whether the same be kept or stored for sale at the manufacturer's place of business or in a warehouse at some point removed from such manufacturer's plant, whether the same be in the county where such plant is located or in another county in this State.

As before noted herein, you request my opinion as to the authority of the Tax Commission to assess "imported" whiskeys and other alcoholic beverages, "assuming that such whiskey and other alcoholic beverages are in the state under circumstances which would otherwise forbid state taxation on same, were it not for the provisions of the so-called 'Webb-Kenyon Act', and its successor acts, as well as the 21st Amendment to the (Constitution of the) United States." This question as thus stated in your communication is so general and comprehensive that the thought is suggested that if you have in mind intoxicating liquors in situations other than such as are stored in bonded warehouses or other places or buildings within the purview of Section 5388-1, General Code, which have come into this State by interstate commerce from other states or by importation from foreign countries, the discussion of the particular question or questions which you have in mind may well be deferred until some concrete question of this kind arises. Neither do I deem it necessary to enter into any extended discussion of the provisions of the Wilson Act (26 Stat. at L., 313), the Webb-Kenyon Act (37 Stat. at L., 699), or the Read Amendment, so-called (39 Stat. at L., 1069). The same observation may be made with respect to the 21st Amendment to the United States Constitution. It is sufficient to say that the acts of Congress above referred to by name, each withdraw in some measure the immunity of the interstate commerce clause of the Federal Constitution as against regulatory action by a state into which intoxicating liquors were transported from another

state. By the 21st Amendment to the Constitution of the United States, ratified December 5, 1933, it is provided:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

This constitutional provision confers upon the State of Ohio and upon each of the other states of the United States, the power to forbid all importations of intoxicating liquors which do not comply with the conditions prescribed by such state. State Board v. Young's Market Co., 299 U. S., 59, 62; State, ex rel., v. Davis, et al., Tax Commission of Ohio, 132 O. S., 309, 315. As to this, it may be noted, however, that subject to certain conditions inherent in the laws of the State of Ohio providing for and regulating the sale of intoxicating liquors in this State, intoxicating liquors may still come into this State by transportation from another state or by importation from foreign countries. As to the question here presented, it may be said that without regard to the 21st Amendment to the Federal Constitution and to the acts of Congress above referred to, and independently thereof, intoxicating liquors transported into this State from another state do not stand in a more favorable situation than other merchandise transported into this State from another state of the Union; and consistent with the interstate commerce clause of the Federal Constitution, which confers upon Congress the power to regulate commerce between the states and with foreign countries, the State of Ohio may tax intoxicating liquors or other merchandise so transported after the same has come to rest in this State, whether the same is in the original packages or containers in which it was shipped or not. Sonneborn Brothers v. Keeling, 262 U. S., 506; American Steel and Wire Company v. Speed, 192 U. S., 500; Diamond Match Company v. Ontonagon, 188 U. S., 82; General Oil Company v. Grain, 209 U. S., 211; Pittsburgh and S. Coal Company v. Bates, 156 U. S., 577.

With respect to intoxicating liquors, or other merchandise, imported into the State of Ohio from a foreign country, this State may tax such property only in such way as is consistent with Section 10, Article I, paragraph 2, of the Federal Constitution which provides that:

> "No State shall, without the consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws."

Touching the immediate question here presented, the Supreme Court of the United States in the case of Low v. Austin, 13 Wall., 29, in which case was presented a question with respect to an assessment of property taxes on certain champaign wines imported into the State of California

from France, held, as indicated by the headnotes in the report of the case, as follows:

> "1. Goods imported from a foreign country, upon which the duties and charges at the customhouse have been paid, are not subject to State taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports, or upon the goods as part of the general property of the citizens of the State, which is subjected to an ad valorem tax.
>
> 2. Goods imported do not lose their character as imports, and become incorporated into the mass of property of the State until they have passed from the control of the importer, or been broken up by him from their original cases."

The decision of the Supreme Court of the United States in this case has been consistently followed in the decisions of the courts in later cases on this question; and it may be said with respect to the question presented in your communication that intoxicating liquors which have been imported into this State from foreign countries and which are in the possesson of the importer in the original packages or containers in which such property was shipped, are not in such situation subject to taxation, and that such immunity from taxation exists until the importer has sold such intoxicating liquors in such original packages or otherwise, or until such original packages or containers have been broken for the purpose of selling liquors therein contained.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

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BONDS—PORTSMOUTH CITY SCHOOL DISTRICT, SCIOTO COUNTY, $10,000.00.

COLUMBUS, OHIO, April 27, 1939.

Retirement Board, Public Employes' Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Portsmouth City School District, Scioto County, Ohio, $10,000.00.

The above purchase of bonds appears to be part of a $400,000 issue of school bonds of the above city dated September 1, 1921. The trans-