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MOTOR VEHICLES—EXCEPTION OF "POWER CRANES" IN DEFINITION OF MOTOR VEHICLE—APPLICABLE TO ALL CRANES REGARDLESS OF HOW USED—SECTION 4501.01 RC.

SYLLABUS:

The exception of "power cranes" in the definition of "motor vehicle" as set out in Section 4501.01, Revised Code, is applicable to all powers cranes regardless of how used.

Columbus, Ohio, April 18, 1956

Mr. C. Ervin Nofer, Acting Registrar
Bureau of Motor Vehicles, State of Ohio
Columbus, Ohio

Dear Sir:

I have for consideration your inquiry in which the following question is presented:

"Are all power cranes, regardless of how used, exempt from license plate registration requirements by reason of the exception to the definition of 'motor vehicle' as set out in Section 4501.01, Revised Code?"

Section 4501.01, Revised Code, contains the following provisions, pertinent to your inquiry:

"* * * (B) 'Motor Vehicle' means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, *except road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation,* well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay bailing machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products. * * * (Emphasis added.)

This definition of motor vehicles is used in connection with the provisions of Sections 4503.01 to 4503.99, Revised Code, levying an annual license tax on the operation of motor vehicles on the public highways. Such tax is sometimes known as the automobile license tag tax or, more briefly, as the license tag tax. Section 4503.02, Revised Code, levies an annual license tax on the operation of *motor vehicles* on the public highways.

The above quoted definition of motor vehicle excepts therefrom certain wheeled vehicles and certain kinds of machinery supported on wheels, half-tracks, or caterpillar tracks, and, by reason thereof, such vehicles and machinery are exempt from the levying of the annual motor vehicle license tag tax. As is seen, this exemption applies to eleven specific vehicles and machines and to three, additional, groups of machinery not exactly defined. Your inquiry refers to "power cranes," which is the fourth in the series of exceptions. This is followed by the clause, "and other equipment used in construction work and not designed for or employed in general highway transportation," and such clause is, in turn, followed by a continuation of the series of exceptions. Your inquiry raises the question of whether the clause just quoted is merely one of the series of exceptions, or whether it is a limiting or modifying clause applying to all the preceding exceptions in the series. Clearly there is a modifying or limiting phrase in this clause, to wit, "used in construction work and not designed for or employed in general highway transporta-

tion." The question arises, "does such limiting or modifying phrase limit or modify the entire preceding series or only the last antecedent of such series?"

There can be no doubt that the modifying phrase does apply to the last antecedent in the series, to wit, "other equipment." It seems equally clear that such modifying phrase does *not* apply to the entire series of exceptions. The second in the series is "traction engines," and in Section 4501.01 (C), Revised Code, "traction engine" is defined as "used principally for agricultural purposes." It can hardly be said that a machine which is used principally for agricultural purposes is at the same time a machine used in construction.

The rule of statutory construction that modifying or limiting words or phrases apply only to the last antecedent has been recognized and approved by the Supreme Court. In Carter v. Youngstown, 146 Ohio St., 203, at 209, the Court said:

> "The rule of construction in substance that referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent, is applicable and persuasive. See 2 Sutherland on Statutory Construction (3 Ed.), 448, Section 4921."

In that case, provisions of Section 1345-1 c D (3), General Code, were under consideration. The specific question was whether or not an employee of a city waterworks was exempt from coverage under the unemployment compensation law, and it involved the interpretation of a series of four exceptions, followed by a modifying or limiting phrase. If the modifying phrase applied to the entire preceding series, the employee was not exempt from unemployment compensation coverage. If the modifying phrase applied only to the last antecedent in the series, the employee was exempt; because the previous items in the series then stood unqualified. The court applied the rule of "last antecedent" and held the employee exempt.

A situation similar to the one raised by your inquiry existed in the case of C. P. R. R. v. State, 2 Ohio App., 228. In that case an interpretation of the then existing statute concerning the levying of excise taxes on certain corporations was involved. The statute in question contained a series of fifteen specific exemptions from the tax, followed by the clause, "and other corporations, required by law to file annual reports with

the auditor of state." The state, in attempting to levy the tax against the plaintiff, maintained that the modifying phrase, "required by law to file annual reports with the auditor of state," applied to each of the preceding fifteen specific exemptions. The court decided that such modifying phrase applied *only* to the last antecedent, to wit, "and other corporations," and that the fifteen specific exemptions stood unqualified. The court, in its decision, said in part as follows:

> "It would seem that the legislature, if it had intended what the law officer of the state now contends for, would have said so. It could have said so by using the following simple language:
>
> " 'Provided that all corporations (or all public service corporations) required by law to file annual reports with the auditor of state, shall not be subject to the provisions of the preceding sections of this act.'
>
> "Instead of using this simple language it enumerated some fifteen kinds of corporations, and then said 'and other corporations, required by law to file annual reports with the auditor of state,' shall not be required to comply with the act.
>
> "Clearly the intention was to exempt steam railroad corporations and the fourteen other corporations mentioned from the operation of the act, and also to exempt therefrom such other corporations, if any, then existing, or which might thereafter be authorized by law, and which might be required by law to file annual reports with the auditor of state.
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> "The use of the words 'other corporations required,' etc., *was to complete the enumeration of exempt corporations and not,* as claimed by the state, *to limit* and qualify the enumeration already made." (Emphasis added.)

I conclude, therefore, that the qualifying phrase, "used in construction work and not designed for or employed in general highway transportation," applies only to the last antecedent, "other equipment," and does not apply to the preceding items in the series of exceptions.

References to the definition of a motor vehicle and the exceptions thereto as they appeared in earlier versions of this section (Section 4501.01, Revised Code, formerly Section 6290, General Code) as tending to establish a different conclusion, are not persuasive. While it is sometimes appropriate to consult the history of a section of the statutes in order to try to determine the legislative intent, it is wholly unnecessary and improper to rely on such history to interpret a section in a manner contrary to the ordinary meaning of the language and construction

actually used. The Supreme Court has several times emphasized this point. One of its recent decisions is State v. Stevens, 161 Ohio St., 432, of which the first syllabus is as follows:

> "1. In the construction of a legislative enactment, the question is not what did the General Assembly intend to enact but what is the meaning of that which it did enact. (Paragraph two of the syllabus in the case of Slingluff v. Weaver, 66 Ohio St., 621, approved and followed.)"

This rule was again applied in the case of Goodyear v. Peck, 162 Ohio St., 200, at 202, where the exact language here quoted was used in the opinion. Whatever the original legislative intent may have been, there have been numerous amendments to Section 4501.01, Revised Code, and its present form is as set out at the beginning of this opinion. It is the meaning of the present words and construction, the existing legislative enactment, which we here decide, not what the intent of some previous enactments may have been.

There is another point which should be considered: this section is the basis for the levying of a tax and should be strictly construed against the state. The Supreme Court has stated, in the case of Carter v. Youngstown, supra, at page 210:

> "* * * it is well settled that language employed in a taxation statute will *not* be extended by implication beyond its clear import or enlarged so as to embrace purposes or objects not specified or clearly included in its terms." (Emphasis added.)

And, to the same effect, Goodrich v. Peck, 161 Ohio St., 202, syllabus 3:

> "3. It is a general rule that, if there is any ambiguity in a statute defining the subjects of taxation, such ambiguity must be resolved in favor of the taxpayer; and this rule of construction generally applies with respect to provisions of a statute stating that certain potential objects of taxation shall *not* be considered to be included within specified subjects of taxation."
> (Emphasis added.)

It seems, from your inquiry, that the language used in Section 4501.01, Revised Code, has given rise to a doubt as to whether the motor vehicle license tag tax should, or should not, be levied against power cranes. Applying the decisions last quoted, such doubt must be resolved in favor of the property upon which the burden is sought to be imposed, and against the state.

Therefore, in specific answer to your inquiry, it is my opinion that the exception of "power cranes" in the definition of "motor vehicle" as set out in Section 4501.01, Revised Code, is applicable to all power cranes regardless of how used.

Respectfully,
C. WILLIAM O'NEILL
Attorney General