

Nicholas Kiebel and Caroline Kiebel, his wife, there is contained an agreement on the part of the Traction Company to construct a good substantial crossing across the premises therein granted and a lawful fence along the north line of said strip and forever maintain the same in good condition and repair. Such a covenant would run with the land.

If these defects pointed out supra are cured, it is my view that such Traction Company or its successors could convey a good fee title to the property therein described.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

2243.

BEER—DUTY OF TAX COMMISSION TO ASSESS TAX ON BARREL BEER SOLD DURING AUGUST, 1933.

*SYLLABUS:*

*Under the provisions of House Bill No. 4, enacted by the 90th General Assembly at its first special session, returns made by permit holders on account of barrel beer sold by them during the month of August, 1933, were properly filed with the Tax Commission of Ohio on or before the 10th day of September, 1933; and from these returns and from such other information as was available to the Tax Commission, it was its duty to ascertain the amount of such taxes and certify the same to the Auditor of State in the manner provided by section 6212-58, General Code, as amended in said act.*

COLMBUS, OHIO, January 31, 1934.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

“The Beverage Tax Department requests your formal opinion relative to the respective duties of the Liquor Control Commission and the Tax Commission under the provisions of the last paragraph of H. B. No. 4. That portion of the bill reads as follows:

‘The amendments of sections 6212-50 and 6212-58 of the General Code hereby made shall be operative with respect to the returns and statements made in the calendar month next following the month in which this act shall take effect as a law. Said amendments shall not affect the power of the Ohio Liquor control commission to proceed under the law now in force in the collection of taxes and penalties accruing prior to the time when this act shall take effect as a law.’

It is our feeling that we have no jurisdiction to assess barrel taxes on beer or proceed in any manner with respect to such

taxes except in those cases where the sale or distribution was made subsequent to September 1st. As a converse to that we feel that the Liquor Control Commission should assess all barrel taxes, penalties, etc., prior to that date."

As noted in your communication, the question therein presented arises out of certain provisions of section 3 of House Bill No. 4, which was enacted by the 90th General Assembly at its first special session, under date of August 22, 1933, and which, as an act providing for the levy of taxes, went into effect on the approval of the Governor under date of August 25, 1933, except as therein otherwise provided.

The question here presented, however, requires a consideration of earlier statutes providing for and otherwise relating to the assessment of taxes on barrel beer, so-called, enacted by the 90th General Assembly in regular session. By Amended Substitute Senate Bill No. 346, which, as an emergency act, went into effect on approval by the Governor under date of March 30, 1933, and which provides for and regulates the manufacture and sale of beer under the control of the Ohio Liquor Control Commission thereby created, provision was made for the levy of a tax on the sale and distribution of beer in this state, whether in barrels or other containers, at the rate of one dollar per barrel of thirty-one gallons. And as to such tax, it was therein further provided that the same, as to beer made in Ohio, should be paid by the manufacturer, and that, as to beer made outside of this state, the tax should be paid by the original consignee within this state.

This barrel tax on beer was specifically provided for by section 6 of said act, which section was carried into the General Code by designation of the Attorney General as section 6212-49. By other sections of the act, provisions were made for determining and assessing the tax upon reports filed with the Ohio Liquor Control Commission by such permit holders as might be liable for the payment of the tax. In this connection, it is provided by section 7 of the act (sec. 6212-50, G. C.) that it should be the duty of every Class A and Class B permit holder, and such Class C and Class D permit holders as may have sold or distributed beer on which the tax levied by the provisions of section 6 (sec. 6212-49, G. C.) had not been paid, to transmit to the Ohio Liquor Control Commission on or before the tenth day of the calendar month a return, under oath or affirmation, showing the amount of beer sold or distributed by such permit holder on which the tax was due for the next preceding calendar month. Section 15 of this act, which was carried into the General Code as section 6212-58, provided in part as follows:

"On or before the 15th day of each calendar month, the commission shall transmit to the auditor of state a statement showing:

1. The names of all permit holders who have filed a report provided for in section 7 of this act, during the same calendar month.

2. The amount of tax due under the provisions of section 6 of this act as shown by the reports of such permit holders.

3. The names of any permit holders whom the commission determines by investigation to have improperly reported the quantity of beer sold or distributed during any preceding calendar month, together with the quantity of such beer found by the commission to have been omitted.

4. Such other information as the auditor of state may deem necessary.

Upon receipt of such statement from the commission, the auditor of state shall compute the tax due from each permit holder at the rate as prescribed by law. On or before the 20th day of each calendar month, the auditor of state shall transmit to the treasurer of state a copy of such statement, showing the amount due from each permit holder. On or before the 20th day of each calendar month, each permit holder shall pay to the treasurer of state as custodian of the undivided beer tax and permit fund, the tax due on the sale or distribution of beer by him during the preceding calendar month, together with any amounts omitted and any tax penalty on the amounts omitted, as certified to him during such calendar month. Such payment shall be accompanied by a copy of the statement filed with the commission."

Section 6212-58, General Code, was later amended in and by Amended Senate Bill No. 380, which went into effect as an emergency act under date of July 11, 1933; but the above quoted provisions of this section were not changed or otherwise affected by the amendment.

On June 30, 1933, the legislature enacted Amended Senate Bill No. 399, which, as an act providing for the levy of taxes, went into effect at the expiration of ten days from the time the enacted bill was presented to the Governor, it appearing that he allowed this act to become a law without his signature. This act provided for the levy of a tax on the sale of bottled beer under the administration of the Tax Commission of Ohio and for the levy of an additional tax on the sale of barrel beer which, like that provided for in section 6212-49, General Code, above referred to, was under the administration of the Ohio Liquor Control Commission. This additional tax on the sale of barrel beer was provided for in section 2 of said act, which by designation became section 6212-49b, General Code. This section provided that in addition to the tax imposed by section 6212-49 of the General Code of Ohio, a tax was to be levied upon the sale of bulk beer at the rate of fifty per centum of that portion of the sale price charged by the manufacturer in excess of the price computed on the basis of fourteen dollars per thirty-one gallon barrel. No change in the provisions of section 6212-50 or 6212-58, General Code, was made by this act. And after the enactment of this act, as before, the administration of the law relating to the tax on the sale of barrel beer was imposed on the Ohio Liquor Control Commission. And under the provisions of sections 6212-50 and 6212-58, General Code, before noted, the taxes on the sale of barrel beer by permit holders in any particular calendar month became due and payable on or before the twentieth day of the succeeding calendar month in amounts determined by the Ohio Liquor Control Commission from the reports which permit holders were required to file with said Commission on or before the tenth day of the month, or from other information obtained by the Commission with respect to the quantity of barrel beer sold by permit holders during the preceding month.

This was the situation with respect to the administration of the law providing for the tax on the sale of barrel beer when House Bill No. 4, referred to in your communication, was enacted. As before noted, this act was passed by the 90th General Assembly in special session on August 22, 1933, and was

approved by the Governor August 25, 1933. This act in comprehensive terms provides for a levy of a tax on the sale of beverages generally, including bottled beer, under the administration of the Tax Commission of Ohio, and by the amendment of section 6212-49, General Code, further provides for the levy of a tax on the sale or distribution of beer in barrels or other containers at the rate of one dollar and fifty cents per barrel of thirty-one gallons, which tax is in lieu of that formerly provided by sections 6212-49 and 6212-49b, above noted. By this act, the administration of the law providing for this levy on the sale of barrel beer was transferred from the Ohio Liquor Control Commission to the Tax Commission of Ohio; and to this end suitable changes were made in the provisions of sections 6212-50 and 6212-58, General Code, by so amending these sections that the name of the Tax Commission of Ohio appears therein where the Ohio Liquor Control Commission was previously named or referred to.

As previously noted, the question presented in your communication arises under the provisions of section 3 of said act, which reads as follows:

"The taxes imposed by sections 6212-49 and 6212-49b of the General Code, as herein amended, shall apply to all sales of beverages in sealed bottles made on and after the first day of September, 1933. Any person, firm or corporation having possession at the beginning of said day of bottled beer to the bottles in which the same is contained there shall have been affixed, pursuant to the law as theretofore existing, stamps in amounts in excess of those required by the provisions of this act may sell or dispose of the same without affixing thereto the stamps required by this act. Any such person, firm or corporation and any person, firm or corporation having in possession at the beginning of said day bulk beer to the container of which stamps shall have been affixed pursuant to the law theretofore in force, may apply to the tax commission of Ohio, under regulations to be adopted by the commission, for an allowance in the purchase of stamps required by this act; or, where it is shown that the applicant does not intend to purchase such stamps, for an order of refund pursuant to the appropriate provisions of this act. The commission, on being satisfied as to the facts after availing itself of any information from whatever source derived may issue an order of allowance or refund, as the case may require, to the treasurer of state, who shall be governed thereby.

The amendments of sections 6212-50 and 6212-58 of the General Code hereby made shall be operative with respect to the returns and statements made in the calendar month next following the month in which this act shall take effect as a law. Said amendments shall not affect the power of the Ohio liquor control commission to proceed under the law now in force in the collection of taxes and penalties accruing prior to the time when this act shall take effect as a law."

This act, as before noted, went into effect on approval of the Governor August 25, 1933, and it is noted that under the provisions of section 3 of this act, above quoted, the taxes imposed on the sale of barrel beer provided for in section 6212-49, General Code, as amended in said act, and those provided for by section 6212-49b, General Code, as amended in this act (taxes on beverages), were made to apply to all sales of beverages in sealed bottles made on

and after the first day of September, 1933. With respect to sections 6212-50 and 6212-58, General Code, which were amended in and by said act, and which provide the means by which the amounts of taxes due from permit holders on the sale of barrel beer are determined, it is provided that these sections in their amended form shall be operative with respect to the returns and statements made in the calendar month next following the month in which said act took effect as a law. Inasmuch as the law took effect in the month of August, 1933, the returns of permit holders with respect to barrel beer sold by them during the month of August were required to be filed with the Tax Commission of Ohio on or before the tenth of September, 1933; and the taxes on such sales became due and payable on or before the twentieth of September, 1933, after the determination thereof by the Tax Commission of Ohio from the returns made to it.

The provision in the last paragraph of section 3 of this act to the effect that the amendments of sections 6212-50 and 6212-58, General Code, should not affect the power of the Ohio Liquor Control Commission to proceed under the law then in force in the collection of taxes and penalties accruing prior to the time when this act shall take effect as a law, obviously refers to taxes on the sale of barrel beer which had accrued on or before August 20, 1933, and prior thereto on account of sales of barrel beer made prior to the month of August, 1933. Such taxes may be collected by the Ohio Liquor Control Commission by the means afforded by the several acts above referred to. I am of the opinion, however, by way of specific answer to the question presented in your communication, that the Tax Commission of Ohio has the power and authority to determine the taxes to be paid on account of the sales of barrel beer made by permit holders during the month of August, 1933, the amounts of which taxes are to be assessed from returns filed by such permit holders with the Tax Commission on or before September 10, 1933.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2244.

APPROVAL—CONTRACT BETWEEN THE STATE OF OHIO AND  
THE OTIS ELEVATOR COMPANY, FOR THE MAINTENANCE  
OF ELEVATORS IN THE STATE OFFICE BUILDING.

COLUMBUS, OHIO, January 31, 1934.

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

DEAR SIR:—A few days ago Hon. C. H. Burk, Director of Finance, submitted for my examination and approval a contract form in duplicate of a contract to be entered into by and between the State of Ohio, acting through you as Superintendent of Public Works and as Director of said Department, and the Otis Elevator Company, by the hand of some authorized officer or officers of said company. By this proposed contract, the Otis Elevator Company, in consideration of the monthly compensation payments therein provided for, contracts and agrees to maintain the elevators in the new State Office Build-