As a riparian owner, the respondent has the right of fishery in those waters. 11 R. C. L. 1032. Such right is subject, however, to such regulations, if any, as have been, or may be, imposed by the state. This because the ownership of and title to the fish, until actually reduced to possession at a time and in a manner permitted by law, are in the state."

Your attention is also called to the provisions of section 1418, General Code, inasmuch as your inquiry does not disclose whether or not the artificial lakes have any connection with the rivers mentioned in your letter. Section 1418 reads as follows:

"Fish may be taken in any manner, in the ponds or lagoons formed by the receding waters of any river, when such ponds, or lagoons no longer have any connection with the channels of such streams."

I am therefore of the opinion that the title to the fish stocked and propagated in the several artificial lakes mentioned in your letter is in the state of Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4574.

GASOLINE TAX—GASOLINE SHIPPED THROUGH PIPES TO TANK CARS—WHO DEEMED TO HAVE "RECEIVED" GASOLINE SO AS TO BE SUBJECT TO TAX.

SYLLABUS:

Where motor vehicle fuel is delivered from a refinery by pipe to a licensed dealer into large storage tanks out of which tank car shipments are made, such motor vehicle fuel is deemed to have been received by the owner of the storage tanks when sales or dliveries are made out of such tanks.

COLUMBUS, OHIO, August 22, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I beg to acknowledge receipt of your letter which reads in part as follows:

"In the matter of Refinery operations, Marine Terminal storages and Pipe Line Terminal storages located within the State of Ohio operating under the new Ohio receipts law, effective September 1, 1931, a problem has come to my attention which I believe requires an opinion from the Attorney General of Ohio.

The situation outlined as follows will cover any operation of the above three mentioned plants, which comes to my mind at present, wherein the tax responsibility might be in question. For example, 'A', a licensed refiner selling and delivering motor fuel by pipe line into the storage tanks of 'B', another licensed dealer, would be considered a sale

or delivery in other than tank car lots, and taxable to the first seller, except for the receipts definition paragraph under Section 5526 of the General Code, which reads:

'Motor vehicle fuel produced, refined, prepared, distilled, manufactured, or compounded at any refinery in the state of Ohio by any person shall be deemed to be received by such person when the same shall have been loaded into tank cars for delivery within the state of Ohio or placel in any tank from which sales or deliveries are made other than by tank car, at the refinery where the same shall be produced, refined, prepared, distilled, manufactured, or compounded, but not before.'

Since 'B' above is receiving the motor fuel into large storage tanks from which tank car shipments are made, it seems to me that the selling company, or 'A', is making neither of the deliveries referrerd to in the above section, namely delivering into tank cars for Ohio delivery or into tanks from which other tank car deliveries are made at the refinery where the same is produced."

Supplementing the contents of your letter, I received additional information from the dealers interested in the above problem and also a blueprint description of the physical operations involved. Considering the facts contained in your letter, together with the additional inforamtion secured, your request for my opinion involves the following controversy among three registered dealers in motor vehicle fuel within the state of Ohio, whom we shall designate for the purpose of convenience as "A", "B", and "C". The problem restated is as follows:

"A" refines gasoline at a refinery in Ohio and sells and delivers such gasoline by a short pipe line to "B" directly into large storage tanks of "B".

"B" blends this gasoline in its storage tanks and ships by tank car and by short pipe line to "C", directly into "C's" tanks.

"C" ships gasoline from its tanks in tank truck to its many retail sale stations.

Query: Which of the above named dealers is the taxpayer within the meaning of the gasoline tax law of Ohio?"

The 89th General Assembly amended the Ohio Gasoline Tax Law, the principal change being that the tax was to be based, under the new act, upon the receipts rather than on sales. The provisions of the amended act became effective September 1, 1931. In this new act and contained in the provisions of section 5526 we find definitions as to when and by whom gasoline is deemed to have been received. An examination of this section is essential in order to determine the fixation point of taxability on motor vehicle fuel. Section 5526, paragraphs 7 and 8, reads as follows:

"Motor vehicle fuel produced, refined, prepared, distilled, manufactured or compounded at any refinery in the state of Ohio by any person shall be deemed to be 'received' by such person when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at the refinery where the same shall be produced, refined, prepared, distilled, manufactured or compounded, but not before;

> Motor vehicle fuel delivered by boat at a marine terminal for storage or delivered by pipe at a pipe line terminal or tank farm for storage, shall be deemed to have been 'received' when the same shall have been loaded into tank cars for delivery within the state of Ohio or placed in any tank from which sales or deliveries are made other than by tank car, at such respective marine or pipe line terminal or tank farm, but not before;"

The insistence upon the right or privilege to pay this tax by each of the dealers in this problem can be understood and is justified when we read the provisions of section 5529-1, paragraph (b), which is as follows:

> "That number of gallons of motor vehicle fuel which shall be equal to three per cent (3%) of the total number of gallons of motor vehicle fuel received by the dealer within the state of Ohio during the next preceding calendar month less the total number of gallons deducted under sub-paragraph (a) of this section, this deduction being allowed to cover evaporation, shrinkage and unaccounted-for losses."

This section is quoted for the reason that it is the contention of one of the dealers that a deduction should be allowed to such dealer who suffers the most loss in evaporation, shrinkage, etc.; therefore such dealer should be the taxpayer.

The positions taken by each one of the dealers may help to clarify the problem. "A" contends that it is the taxpayer substantially for the reason that a delivery from "A" to "B" through a short pipe is an "other than a tank car" delivery within section 5526, paragraph 7, and that therefore the gasoline is deemed to be received at "A's" refinery. "B" contends that it is entitled to pay the tax substantially for the reason that the delivery from "A" to "B" is "by pipe" at a "tank farm for storage" and falls squarely within the provisions of section 5526, paragraph 8. "C" contends that it was the intention of the legislature to compensate the dealers in gasoline for the natural loss due to evaporation and shrinkage inherent in the handling and distribution of gasoline and that since "C" suffers the greatest loss in that it is handled in smaller quantities by "C", the tax should be paid by "C", basing its contention on section 5529-1, paragraph (b).

It was undoubtedly the intention of the legislature to allow the deduction provided for in section 5529-1 to the registered dealer and such an allowance or deduction in part compensates the dealer for the expense of paying the premium for the surety bond required under the act, the cost of preparation of monthly reports to the state and the cost of collecting the tax from the purchaser, as well as for the loss specifically mentioned in the statute, namely, shrinkage, evaporation and unaccounted-for losses. It is clear therefore that the necessary and primary solution is to find who the taxpayer is and such a taxpayer will, of course, be entitled to all the rights which the statute gives to the dealer who pays the tax. Of the three contentions advanced by dealers "A", "B", and "C", I am inclined to subscribe to that one advanced by dealer "B".

The facts submitted indicate that "B's" property at which the motor fuel is delivered by pipe is a pipe line terminal or tank farm in view of the fact that the storage tanks situated thereon are of large capacity and several in number. The facts submitted further indicate that the motor fuel delivered at "B's" property is delivered for storage purposes only since (1) no deliveries are made from said tanks except into tank cars or by pipe into smaller marketing tanks, (2)

storage tanks are of large capacity, and (3) the motor fuel delivered thereto comes to rest in the tanks for an appreciable period of time. It was held in the case of *Standard Oil Company* vs. *Commission,* 119 Ky. 75, that:

> "Storage tanks as used in the statute unquestionably had reference to the class of large metal tanks holding many hundreds or many thousands of barrels of oil which producers of oil have adopted for storing their product."

The facts further indicate that there are several such large tanks, the largest in the state of Ohio belonging to "B", and therefore I am inclined to hold that "B's" tanks constitute a "tank farm for storage". However, before I can hold that "B" is the taxpayer, it is necessary not only to define and describe storage tanks but an inquiry must also be made as to whether the delivery by short pipe from the refinery "A" to dealer "B" is a pipe line delivery within the meaning of section 5526, paragraph 8.

Bouvier's dictionary defines a pipe line as a connected series of pipe for the transportation of oil, gas or water. This definition undoubtedly would include gasoline. Again we find no authority in Ohio which is helpful in determining what is a pipe line within the meaning of the Ohio Gasoline Tax Law. In *Dietz* vs. *Transfer Company,* 95 Cal. 92, the court defined a pipe line as follows:

> "A line of pipes running upon or in the earth, carrying with it the right to the use of the soil in which it is placed."

A case which involved a type of pipe more closely resembling your problem is *Associated Pipe Line Company* vs. *Ry. Commission of the state of California,* 169 Pac. 62, in which the court held, as disclosed in the 1st and 2nd branches of the syllabus, as follows:

> "1. Owners of a pipe line who have never exercised their right of eminent domain, and who use their line solely for the transportation of oil produced or purchased by them, are not engaged in transporting the oil to or for the public for hire, so as to become subject to regulation by the Public Service Commission; at least they are not so subject if the oil transported by them is only a small portion of that produced in the section in which they operate.
>
> 2. Pipe lines belonging to a private individual who uses them solely to transport oil produced or purchased by them cannot be subjected to public use without compensation, although, by reason of the fact that there is no pipe line reaching the field served by the lines in question, their owners have an advantage over independent producers in transporting their product."

It does not appear from a reading of section 5526, paragraph 8, that the legislature intended to use the words "delivered by pipe" to indicate necessarily a pipe line company owned and operated as a carrier but rather intended to use those words in a broader sense to indicate a method of delivery and therefore in your problem we find that while it is a short pipe and lies wholly within the state of Ohio and is not operated as a public utility, nevertheless, it takes the place of some other mode of delivery and actually transfers the gasoline from

one dealer to another. This interpretation of the intention of the legislature and the use of the words "delivered by pipe" would limit the interpretation of the words "other than by tank car" contained in paragraph 7 of section 5526 to tank truck delivery and is an answer to the contention of "A". That the ownership and operation of a pipe line is not necessarily a public utility or a common carrier, was decided by the United States Supreme Court in the so-called *Pipe Line Cases in U. S.* vs. *Ohio Oil Company,* 234 U. S. 548, where the Supreme Court held in substance:

> "an oil company using a pipe line solely for the purpose of conducting its own oil from its own wells in one state to its own refinery in another state is not comprehended by the provisions of the Interstate Commerce Commission requiring the parties in control of oil pipe lines to file with the Commission schedules of rates and charges for transportation."

With reference to "C's" contention, it may be said that "C" presents an equitable argument which has some force but it seems to me to be violative of the clear intention of the legislature as regards the question of the deductions for losses sustained in the handling of gasoline. If the loss is occasioned by constant handling, "C's" argument could be applied to the retail service station which handles gasoline constantly with greater exposure, of which there are thousands in the state and whose owners are not registered dealers.

Based upon the foregoing, I am inclined to the view that the problem falls squarely within the provisions of paragraph 8 of section 5526 and it is therefore my opinion that where "A", a licensed dealer refining gasoline in Ohio, delivers such gasoline by short pipe line to "B", a licensed dealer, directly into "B's" storage tanks out of which tank deliveries are in turn made in tank cars and by pipe line to "C", also a licensed dealer, into marketing tanks of "C", out of which tank truck deliveries are made, "B" is deemed to have "received" such gasoline and should pay the tax.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4575.

ANNUITIES—TAX AND TAXATION—ONE HALF SUM PAID AS PURCHASE PRICE TAKEN AS PRINCIPAL INCOME YIELD BASED ON RATE OF FOUR PER CENT.

SYLLABUS:

If a certain sum of money is paid as the purchase price of an annuity, one-half of such sum of money should be taken as the principal upon which the income yield should be computed at the rate of four per cent prescribed by section