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1. "LAWS PROVIDING FOR TAX LEVIES"—EFFECTIVE IMMEDIATELY UPON FAILURE OF GOVERNOR TO RETURN AMENDED SUBSTITUTE HOUSE BILL 267, 99 GENERAL ASSEMBLY WITHIN TEN DAYS AFTER PRESENTATION TO HIM — MOTOR VEHICLE REGISTRATION LAWS—SECTIONS 6290, 6292 G. C. AS AMENDED—ARTICLE II, SECTION 1D CONSTITUTION OF OHIO.
2. SECTIONS 6309-2, 7250-1, 7250-2, 7250-3, 7250-4 G. C. BECOME EFFECTIVE NINETY DAYS AFTER FILING OF BILL BY GOVERNOR IN OFFICE OF SECRETARY OF STATE.

SYLLABUS:

1. Sections 6290 and 6292, General Code, as amended by Amended Substitute House Bill No. 267, enacted by the Ninety-ninth General Assembly, are "Laws providing for tax levies," within the purview of Article II, Section 1d of the Constitution and, as such, became effective immediately upon the failure of the Governor to return Amended Substitute House Bill No. 267 within ten days after such was presented to him.

2. Sections 6309-2 and 7250-1, General Code, as amended by Amended Substitute House Bill No. 267, enacted by the Ninety-ninth General Assembly, and supplemental Sections 7250-2, 7250-3 and 7250-4, General Code, as enacted by such bill, will become effective ninety days after the filing of such bill by the Governor in the office of the Secretary of State.

Columbus, Ohio, June 28, 1951

Hon. T. J. Kauer, Director, Department of Highways
Columbus, Ohio

Dear Sir:

Your letter of recent date is as follows:

"Amended Substitute House Bill No. 267 amends Sections 6290, 6292, 6309-2 and 7250-1 and enacts supplemental Sections 7250-2, 7250-3 and 7250-4 of the General Code.

"Section 6290, G. C., sets forth the definitions applicable to the Motor Vehicle Registration laws and Section 6292 was amended so as to increase the license fees on certain types of vehicles. Section 6309-2 relates to the distribution of the fees collected under Section 6292 and its related sections. The other sections in said act deal principally with penalties for violation of the overweight laws and false weight certificates.

"This act was presented to the Governor and it was not signed or returned by him within 10 days after its presentation. The said 10 day period is believed to have expired at midnight, June 18th.

"The question has arisen as to when this act goes into effect.

"You will appreciate the need of an early decision for the reason that the Bureau of Motor Vehicles will need to know what registration fees to charge upon the vehicles on which the rate has been changed in said bill. Also, the Highway Patrol and other enforcement agencies should know when the criminal provisions take effect."

Article II, Section 1c of the Constitution provides that "No law passed by the general assembly shall go into effect until ninety days after

it shall have been filed by the governor in the office of the secretary of state, except as herein provided." Article II, Section 1d of the Constitution provides in part as follows:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. * * *"

It appears that Amended Substitute House Bill No. 267 was not passed as an emergency law. Therefore, the question herein presented is whether any of the sections therein contained are laws providing for tax levies or laws providing for appropriations for the current expenses of state government and state institutions, within the purview of Article II, Section 1d of the Constitution.

Before discussing the several sections involved, it first should be noted that all of the sections of an act of the General Assembly are not necessarily effective at the same time. That some of the sections of a single bill may go into immediate effect as "Laws providing for tax levies" while others do not go into effect until the expiration of ninety days has been held by one of my predecessors in Opinion No. 6207, Opinions of the Attorney General for 1943, page 378. This question was also considered by the Supreme Court in *State, ex rel. Donahey, Auditor, v. Roose*, 90 Ohio St., 345, the second paragraph of the syllabus therein reading:

"Section 1c of Article II of the Constitution of Ohio expressly provides for a referendum not only upon any law but any section of a law. All sections of a law not subject to the referendum provisions of this section of the constitution go into immediate effect when approved and signed by the governor."

Article II, Section 16 of the Constitution provides in part:

"* * * If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. * * *"

Thus, it would appear that all sections of a law not subject to referendum go into immediate effect either when approved and signed by the

Governor or when not returned by him, before adjournment of the General Assembly, within ten days after being presented to him.

I now turn to an examination of the several sections of Amended Substitute House Bill No. 267 here under consideration.

Section 6291, General Code, which contains the operative language actually levying a tax, was not amended by the bill here under consideration. Section 6290, General Code, was amended to exclude from the definition of "Commercial car" motor vehicles having motor power designed and used for carrying more than seven passengers, and to define such a motor vehicle as a "motor bus." Under the amended definitions, a "commercial car" is "any motor vehicle having motor power designed and used for carrying merchandise or freight, or used as a commercial tractor." Section 6292, General Code, is the section prescribing the schedule of rates of the annual license tax levied upon the operation of motor vehicles on the public roads or highways of this state by Section 6291, General Code. The effect of the amendment of Section 6292, General Code, is to increase such rates for a "commercial car," as newly defined by Section 6290, General Code, and to establish rates for each "motor bus," as defined by Section 6290, General Code, in the same amount as previously paid for such a motor vehicle while defined as a "commercial car." The amendment of Section 6292, General Code, also increased certain minimum taxes.

This situation is almost identical to that considered by one of my predecessors in Opinion No. 524, Opinions of the Attorney General for 1937, Vol. I, page 875. In that instance, the Ninety-second General Assembly also amended Section 6292, General Code, and left undisturbed Section 6291, General Code. 117 Ohio Laws, 160. The syllabus of this opinion is as follows:

"Section 6292, General Code, as amended by Amended Substitute House Bill No. 283 of the 92nd General Assembly, prescribing the rate of taxes levied by Section 6291, General Code, upon the operation of motor vehicles on the public roads or highways of this state, is a law providing for tax levies within the meaning of the term as used in Article II, Section 1d of the Constitution and went into effect April 16, 1937, when approved by the Governor."

Another one of my predecessors in Opinion No. 4311, Opinions of the Attorney General for 1935, Vol. I, page 648, held that an amendment

to the Sales Tax Act in which the definition of "retail sale" was changed, but the section containing the specific language levying a tax on retail sales was not disturbed, was a law "providing for tax levies," within the meaning of Article II, Section 1d of the Constitution. See also Opinion No. 723, Opinions of the Attorney General for 1927, Vol. II, page 1234.

It is clear that the amendments of Sections 6290 and 6292, General Code, are inextricably interwoven with Section 6291, General Code, this latter section containing the operative language actually levying the tax. That Section 6292, General Code, is a law "providing for tax levies" has been held by the Supreme Court. I quote from the opinion of Robinson, J., in *State, ex rel. Janes, v. Brown, Secretary of State*, 112 Ohio St., 590, at page 593:

"That original Sections 6292 and 6295 of the General Code were 'laws providing for tax levies' was definitely decided by this court in the case of *Saviers v. Smith, Sec'y of State*, 101 Ohio St., 132, 128 N. E., 269. * * *"

It would clearly appear, therefore, that Sections 6290 and 6292, General Code, as amended by Amended Substitute House Bill No. 267, became effective immediately upon the failure of the Governor to return such bill within ten days after such had been presented to him.

Section 6309-2, General Code, as amended by the bill in question, provides for a somewhat different method of distribution of the revenues collected under the provisions "of this chapter," being Chapter 21, Title II, Part Second of the General Code. The principal change made by such amendment is to provide for annual distribution to the several townships of the state the sum of five hundred thousand dollars, distribution to be made to such townships based on the ratio of miles of township roads in each township to the total number of miles of township roads in Ohio.

While such section might be considered as a law "relating to tax levies," it cannot be considered as a law "providing for tax levies," within the meaning of Article II, Section 1d of the Constitution. *State, ex rel. Keller, v. Forney, et al.*, 108 Ohio St., 463. Neither would it appear to be a law providing for "appropriations for the current expenses of the state government and state institutions," within the meaning of Article II, Section 1d of the Constitution. I conclude, therefore, that Section 6309-2, General Code, as so amended, will go into effect at the expiration

of ninety days after its filing with the Secretary of State in compliance with the provisions of Article II, Section 1c of the Constitution.

The remaining sections of Amended Substitute House Bill No. 267, namely, the amendment of Section 7250-1, General Code, and the enactment of supplemental Sections 7250-2, 7250-3 and 7250-4, General Code, all relate to penal offenses concerning overweight vehicles and the compulsory use of flexible flaps on the rearmost wheels of certain vehicles. Quite obviously, these sections are not laws providing for tax levies or appropriations for the current expenses of the state government and state institutions. Necessarily, therefore, these sections will go into effect at the expiration of ninety days after the filing of such bill with the Secretary of State.

In specific answer to your question, it is my opinion that :

1. Sections 6290 and 6292, General Code, as amended by Amended Substitute House Bill No. 267, enacted by the Ninety-ninth General Assembly, are "Laws providing for tax levies," within the purview of Article II, Section 1d of the Constitution and, as such, became effective immediately upon the failure of the Governor to return Amended Substitute House Bill No. 267 within ten days after such was presented to him.

2. Sections 6309-2 and 7250-1, General Code, as amended by Amended Substitute House Bill No. 267, enacted by the Ninety-ninth General Assembly, and supplemental Section 7250-2, 7250-3 and 7250-4, General Code, as enacted by such bill, will become effective ninety days after the filing of such bill by the Governor in the office of the Secretary of State.

Respectfully,

C. WILLIAM O'NEILL
Attorney General