"This act shall be known as 'The Uniform Bond Act.' The following definitions shall be applied to the terms used in this act:

* * *

(e) 'Permanent improvement' or 'improvement' shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interest therein, and including reconstructions, enlargements and extensions thereon having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways.

* * *"

You will note that a permanent improvement is defined *inter alia* to mean any improvement with an estimated life or usefulness of five years or more, and that while reconstruction of a highway includes "resurfacing," ordinary repair of highways is not included. I assume that the improvement contemplated is not a repair but a construction of a specific road, as you state in your inquiry. Therefore, if the estimated life or usefulness of the proposed improvement is five years or more, the township trustees may act under Section 5625-15, paragraph 6, and pass the necessary legislation to submit the question to a vote of the people.

Specifically answering your question, it is my opinion that:

1. Township trustees are not authorized by the terms of paragraph 7 of Section 5625-15, General Code, to submit to the electors of the township the question of making a tax levy over and above fifteen mills for the general construction, reconstruction, resurfacing and repair of roads.

2. Under authority of paragraph 6 of Section 5625-15, General Code, township trustees may, however, submit to the electors of the township the question of levying a tax in excess of the fifteen mill limitation for the purpose of constructing a specific road improvement, if the estimated life of such improvement is five years or more.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2405.

EMPLOYMENT AGENCY—PRIVATE.

SYLLABUS:

The law relative to private employment agencies discussed.

COLUMBUS, OHIO, July 30, 1928.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

"It has been brought to our attention that the so-called free employment office operated by the B. A. M. Company, * * * Building, Cleveland, Ohio, has been using their office to secure applicants from fee charging agencies.

Applicants are being referred directly to employers who had listed their positions with the B. A. M. Company, and who were undoubtedly of the opinion that such service would cost the applicant nothing.

We further understand that many applicants were compelled, if placed through the B. A. M. Company, to pay a fee to the licensed agency through which they were secured. Further advice secured is that the B. Employment Agency requires many of their applicants to take a course in B.'s book-keeping which is furnished by the B. A. M. Company at the applicants' expense, which of course is very beneficial in placing their product upon the market by furnishing employes who are mostly familiar with the B. A. M.

Under the circumstances we believe that the B. employment Office should be compelled to take out an employment agency license."

Your question requires consideration of the provisions of Sections 886, 887 and 888 of the General Code, relating to private employment agencies.

Section 886, General Code, provides as follows:

"No person, firm, association of persons or corporation shall engage in the business of an employment agency, for hire, within the State of Ohio, without first obtaining a license so to do from the industrial commission of Ohio, and paying to said industrial commission an annual license fee of one hundred dollars and executing and filing with the said industrial commission a bond as provided in Section 6 of this act (G. C. Sections 886 to 896-16)."

The provisions of this section in substance requires all persons, associations, etc., who engage in the business of "an employment agency, *for hire,*" within the state, to obtain a license and pay an annual license fee. You will note that this and the related sections are only applicable to such agencies as are engaged in the business "for hire."

"Employment Agency" is defined in Section 887, General Code, as follows:

"A person, firm, association of persons or corporation who secures, or, by any form of representation or by means of signs, bulletins, circulars, cards, writings, or advertisements, offers or agrees to secure or furnish employment, engagements of help, or information or service of any character concerning or intended or purporting to promote, lead to or consummate employment, shall be deemed an employment agency, and subject to this act (G. C. Sections 886 to 896-16) governing such agencies."

According to the facts of your letter the company in question is an employment agency as that term is defined in Section 887, supra, for the reason that it at least offers to secure "engagement of help or service," and the further question is presented as to whether or not the company is engaged "in the business of an employment agency, *for hire.*"

The term "hire" is defined in Section 888 of the General Code, as follows:

"The term 'hire' as used in this act (G. C. Sections 886 to 896-16), shall be deemed to mean and include any charge, fee, compensation, service or benefit exacted, demanded or accepted, or any gratuity received, for or in connection with any act, service or transaction comprehended by the term 'employment agency,' or for or in connection with any transaction or representation which includes matters comprehended by the term 'employment agency.' "

It is obvious that, in addition to being an employment agency, in order to make such agency subject to the provisions of the various sections of the Code here involved, it would have to be engaged in such services and charge a fee or receive compensation, service or benefit, either by way of demand, contract or gratuity in connection with the transaction of furnishing the service.

Your letter in the first instance states that the company is operating a so-called *free* employment agency. You also state that the company is using its office to secure applicants from fee charging agencies. If you mean by such statement that the company, when called upon to furnish some employer with an operator, applies to a regular licensed agency for the name of such a person to furnish the employer, I am of the opinion that the company would only be a go-between, and that such acts would not make the B. A. M. Company an employment agency within the meaning of the sections of the General Code here under consideration.

Another inference might, however, be placed upon the state of facts given in your letter and that is, that the applicants for positions make their applications and list their names direct with the B. A. M. Company. In such cases, if I correctly understand your letter, no fee, compensation, service or benefit is exacted or accepted, excepting only such incidental benefit as may come from the fact that such applicants are familiar with the use of the B. A. M. Company's products. If that be the case and this company furnishes to the employer such person, I do not understand how a fee could be exacted by the licensed company, even though they had placed their name with that company, for the reason that the licensed company performed no services. It is also my opinion that there is nothing illegal about the B. A. M. Company's furnishing positions to only those who have taken a course furnished by that company. It is true, of course, that the company may benefit from the fact that the applicants are familiar with the use of its machines. However, I am of the opinion that such incidental benefit does not come within the definition of the word "hire" as that term is defined in Section 888, General Code. In this connection I am informed that this practice is adopted by practically all of the business colleges and other like institutions of the state.

A specific answer to your question depends upon the exact facts in each particular case and inasmuch as they are not given I cannot give you a specific answer other than hereinabove set forth. If, after reading the above discussion, you have any particular case or cases to which you are unable to apply the statutes above quoted, upon the submission of the facts of this office proper consideration will be given thereto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2406.

TAX AND TAXATION—ADDITIONAL TAX LEVY OUTSIDE MAXIMUM FIFTEEN MILL LIMITATION FOR TOWNSHIP ROAD CONSTRUCTION NOT AUTHORIZED UNDER SECTION 5625-15 (7)—PERMISSIBLE UNDER SECTION 5625-15 (6).

SYLLABUS:

1. *The trustees of a township may not under the provisions of paragraph 7 of Section 5625-15, General Code, as enacted in 112 O. L. 397, submit to a vote of the electors of the township the question of an additional tax levy outside of the combined maximum fifteen mill limitation for the general construction, reconstruction, resurfacing and repair of roads and bridges in the township.*