

968.

APPROVAL, LEASE IN TRIPLICATE OF THREE TRACTS OF CANAL
4 LANDS, AKRON, OHIO, TO THE B. F. GOODRICH COMPANY.

COLUMBUS, OHIO, January 28, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of January 21st, enclosing lease, in triplicate, of canal lands (three tracts) in the city of Akron to The B. F. Goodrich Company.

I note that the valuation has been fixed at \$331,000, and that the annual rentals are \$19,860.

I have carefully examined the lease and find it correct in form and legal, and am therefore returning the triplicate copies with my approval endorsed thereon.

Respectfully,

JOHN G. PRICE,
Attorney-General.

969.

APPROVAL, BONDS OF CONCORD TOWNSHIP RURAL SCHOOL DIS-
TRICT IN AMOUNT OF \$75,000.

COLUMBUS, OHIO, January 28, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

970.

MOTOR VEHICLES—WHEN HORSE POWER COMPUTED BY FORMULA
PROVIDED IN SECTION 6293 G. C. EXCEEDS TWENTY-FIVE BY
FRACTIONAL PART—FEE IN SUCH CASE.

A motor vehicle propelled by internal combustion, the horse power of which, computed upon the formula provided in section 6293 G. C. as amended in house bill No. 573, exceeds twenty-five by a fractional part, is more than twenty-five, and subject to the twelve dollar tax within the meaning of section 6292 G. C. as amended in house bill No. 573.

COLUMBUS, OHIO, January 29, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of the request by the state registrar of automobiles for the opinion of this department as follows:

“Please render an opinion on the following, which is relative to the new automobile law and is a question of the fee required for registration, according to the horse power.

The law reads, vehicles up to 25 horse power shall be taxed \$8.00; from

25 to 35, \$12.00; above 35, \$20.00. See section 6292, house bill No. 573, an act amending the General Code.

Section 6293 gives a formula for determining the horse power, which is to square the diameter of the cylinder, measured in inches, multiplied by the number of cylinders, and divided by $2\frac{1}{2}$. Example: A four cylinder car with 4 inch cylinder bore, figures 25.60 horse power. A six cylinder car with $3\frac{1}{4}$ inch cylinder bore rates 25.35 horse power, according to the above formula.

"The question is, shall such cars come under the head of 25 horse power, with a fee of \$8.00, or shall they be classed between 25 and 35 horse power with a fee of \$12.00?"

Section 6292 G. C. as amended in house bill No. 573, which said act was filed with the secretary of state January 2, 1920, is as follows:

"Each owner of a motor vehicle shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For each passenger car having twenty-five horse power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horse power, twelve dollars; for each such car having more than thirty-five horse power, twenty dollars.

For each commercial car, the same tax based on horse power, and in the same classifications as are herein provided for passenger cars, and in addition thereto twenty cents for each one hundred pounds gross weight of vehicle and load, or fractional part thereof.

For each trailer, the same tax based on gross weight of vehicle and load, herein provided for commercial cars.

The minimum tax for any vehicle having motive power other than a motor bicycle or a motorcycle shall be eight dollars; and for each trailer, two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state."

Section 6293 as amended in said bill, contains the following which pertains to your inquiry:

"The horse power of all vehicles propelled by internal combustion engines shall be computed upon the following formula: Square the diameter of the cylinder measured in inches, multiply by the number of cylinders and divide by two and one-half. For all motor vehicles propelled by steam engines the rating of the horse power thereof shall be based on the system of rating adopted by the United States government.

For all motor vehicles propelled by electricity the rating of the horse power thereof shall be the normal horse power of the electric motor therein, to be ascertained by the secretary of state."

It is assumed that your inquiry relates to motor vehicles or cars propelled by internal combustion engines as distinguished from motor vehicles propelled by steam engines or electricity.

The formula specified, which must be used in the computation of the horse power of this class of motor vehicles, is definite and certain. It leaves no room for speculation, but provides for the determination of the horse power of such vehicles to a

mathematical certainty. A horse power is the theoretical unit by which the capabilities of engines are measured with reference to the lifting power. This unit and the method of its computation may vary in some degree as used by different mechanical engineers in reference to combustion engines, which undoubtedly accounts for the explicit method provided by the legislature for the computation of said horse power.

In the act from which the above statutes are quoted, the legislature in providing for a graduated tax for motor vehicles were confronted with the task of establishing a line of division between the classes designated to pay a tax of eight and twelve dollars respectively. This line was established with reference to the capabilities or lifting power of the engines of said motor vehicles as scientifically understood. It is believed that the language used "for each passenger car having twenty-five horse power or less," and the further language "for each such car having more than twenty-five," was used with the same technical and specific meaning as the language used in the following section which definitely fixes the method of computation. It will readily be observed that the fractional part of the horse power is capable of functioning in conjunction with the other full units of power, thereby contributing its proportionate part of said lifting power; that is to say, all other things being equal, a motor vehicle, the horse power of which figures any fractional part more than twenty-five, has more power than a vehicle, the horse power of which figures exactly twenty-five. It therefore follows that in any instance where the horse power of a motor vehicle figures twenty-five and a fraction, it is *more* than twenty-five within the meaning of said statute.

The following is quoted from the syllabus in the case of Slingluff, et al. vs. Weaver 66 O. S. 621:

"But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction"

Practically the same rule was announced in *Brewing Co. vs. Schultz*, 96 O. S. 27.

It is the opinion of this department that the language of the statute is clear and specific in its provisions that a motor vehicle propelled by internal combustion, the horse power of which computed by the formula provided in section 6293 G. C. exceeds twenty-five if only by a fractional part, is more than twenty-five, and subject to the twelve dollar tax within the meaning of section 6292 G. C.

Respectfully,

JOHN G. PRICE,

Attorney-General.