meaning of the phrase "road machinery and equipment", and hence within the purpose of a tax levy for road construction and repair, would in my judgment be an unauthorized extension of the purpose of such levy beyond that contemplated by the legislature.

It is my opinion that the county commissioners may not use the proceeds of gasoline excise taxes levied for road construction and repair purposes, for the purchase of passenger automobiles even though it is contemplated that after acquisition such passenger automobiles will be used solely in connection with such road work.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4807.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, $10,000.00.

COLUMBUS, OHIO, October 18, 1935.

State Employes Retirement Board, Columbus, Ohio.

4808.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, $3,000.00.

COLUMBUS, OHIO, October 18, 1935.

State Employes Retirement Board, Columbus, Ohio.

4809.

MOTOR VEHICLE—WEIGHT OF TANDEM AXLE ALLOWABLE IN ADDITION TO GROSS WEIGHT AND LOAD LIMITATIONS.

SYLLABUS:

When a vehicle used singly or in a combination of motor vehicles, is

equipped with a tandem axle of the type mentioned in Section 7248-1, General Code, the weight of such tandem axle should be allowed in addition to the gross weight and load limitations prescribed in Section 7248-3, General Code.

COLUMBUS, OHIO, October 18, 1935.

COL. LYNN BLACK, *Superintendent, Ohio State Highway Patrol, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

> "I am making a formal request for an opinion from your office relative to Section 7248-1, General Code.
>
> The question at hand is relative to the tandem axle. As you will note in this section, it provides 18,000 pounds per axle plus the extra weight of such axle and equipment as certified by the manufacturer.
>
> The question asked of this office on numerous occasions is, in substance, as follows: "Is the weight of the tandem axle permitted on the permissible gross weight of any one vehicle?" That is, a vehicle with sufficient tire width is permitted to haul 12 tons, is the tandem equipment allowed in excess of the 12 tons?
>
> I call your attention to the previous section mentioned in this letter, namely, Section 7248-1, which deals primarily with axles rather than with gross loads. I would call your attention also to Section 7248-3 which deals with standard lengths and weights.
>
> Your attention is called to the first sentence of this section, which is: "The following shall be the lengths and weights of vehicles and combinations of vehicles operated under the provisions of this chapter, subject to the exceptions otherwise stated in this chapter."
>
> Is Section 7248-1 an exception? Many of the truck operators and likewise automobile clubs and trucking associations are vitally concerned with this question and I am wondering if it is possible for you to submit to us a formal opinion relative to all the questions contained above.
>
> I will greatly appreciate anything you might do to clarify this misunderstanding which now exists relative to these sections."

I assume that the vehicles you have in mind are equipped with pneumatic tires and that the tire surfaces of the vehicles are such that they do not come within the limitation of Section 7248, which section is an additional limitation other than the sections pointed out in your inquiry, it regulating the weight of

the vehicle and load that can be transported over the highways of this state in relation to the tire surface of the vehicle.

Section 7246, General Code, among other things, limits the weight of a vehicle and load used on the highways for each separate vehicle, fixing the limit for the combined weight of a vehicle and its load at 12 tons when the vehicle is equipped with pneumatic tires.

Section 7248-3, General Code, mentioned in your inquiry, provides in toto:

> "The following shall be the lengths and weights of vehicles and combinations of vehicles operated under the provisions of this chapter, *subject to the exceptions otherwise stated in this chapter*: Each vehicle, length over all, thirty-five feet, gross weight including load, twelve tons, maximum weight per single axle, nine tons; commercial tractor and semi-trailer in combination, length over all, forty feet, gross weight including load, twenty-one tons, maximum weight per single axle, nine tons; any other combination of vehicles, length over all, sixty feet, gross weight including load, thirty-three tons, maximum weight per single axle, nine tons."

Section 7248-1, General Code, provides *inter alia:*

> "No vehicle shall be operated upon the improved public highways and streets, bridges or culverts within this state, having a gross weight, including load, * * * greater than eighteen thousand pounds on both wheels of one axle when such vehicle is equipped with pneumatic tires, *or greater than eighteen thousand pounds, plus the extra weight of such additional axle and equipment as certified by the manufacturer, for dual or tandem axles when equipped with pneumatic tires so designed and used that each single axle thereof carries an equal load and moves up and down with the undulations of the road surface, as in the case of cantilever, rocker or similar tandem axles.* * *".
>
> (Italicized language is the amended portion of statute enacted in Senate Bill No. 51 of the Regular Session of the General Assembly, 115 O. L., 240, 241).

The basic question raised by your inquiry is: When a vehicle used singly, or a combination of motor vehicles is equipped with a tandem axle or axles, should the weight of such tandem axle or axles be allowed in addition or as a part of the specific tonnage limitations for vehicle and load for various types of vehicles and combination of vehicles laid down in Section 7248-3, General Code?

The results of numerous governmental and private research studies show

that the addition of tandem axles of the type mentioned in Section 7248-1, General Code, on trucks and on other vehicles and a combination of vehicles produces less impact on a highway than the older types of single axle vehicles and that distributing the weight on four wheels and tires with tandem axles the weight of the load is spread over double the surface on the highway and they thus reduce, if not by half, at least to a great extent, the wear and tear on the surface of the highway. Evidently recognizing their value in road preservation, and to encourage the use of such axles, the General Assembly amended Section 7248-1, General Code, and in addition enacted Section 7248-3, General Code. At the outset, however, it must be admitted that both sections are inartfully drawn.

Section 7248-1 and 7248-3 are *in pari materia* and must be examined in conjunction with each other in order to arrive at the true legislative intent, such intent being the prime and sole object of all rules of statutory construction. *Turner* vs. *State,* 1 O. S., 422; *Strawn* vs. *Columbiana County,* 47 O. S., 404; *Slingluff* vs. *Weaver,* 66 O. S., 621.

On first examination it appears that Section 7248-1, General Code, has reference only to axle weight restrictions, such restrictions being in addition to gross weight of vehicle and load restrictions and that the language employed in Section 7248-3, General Code, *"subject to the exceptions otherwise stated in this chapter"*, in conjunction with Section 7248-1, General Code, means only that a vehicle equipped with a tandem axle, is permitted additional axle weight over and above the nine ton limitation on such axle. However, such a conclusion, relying solely on a strictly literal interpretation of Section 7248-1, results in the absurd effect of penalizing the use of tandem axles, since if a tandem axle is added to a vehicle, the weight of such axle would have to be subtracted from the "pay load" of the vehicle. That is, without the addition of the tandem axle, such pneumatic-tired vehicle, to be within the law, could weigh, with its load, twelve tons. Adding a tandem axle to the vehicle, which tandem axle helps to preserve the road, under such an interpretation, the "pay load" would have to be reduced to the extent of the weight on the tandem axle added to such vehicle. Moreover, with reference solely to axle weight, there would be no real benefit to the truck owner since no additional "pay load" could be carried on that axle. Consequently, it appears that an obvious literal interpretation of Section 7248-1, General Code, leads to the absurd conclusion that if a tandem axle is employed, the "pay load" must be reduced, and the General Assembly, instead of encouraging the use of tandem axles, which preserve the highways, has discouraged their use; or, to carry the thought one step further under such a strict interpretation, the absurd conclusion is reached that weight restriction laws, all of which are designed solely for the protection of our highways, are interpreted in a manner which instead of protecting our roads, are actually detrimental to their preservation. When confronted with a construction of a statute, which is obviously contrary to the legislative in-

tent, and which leads to absurd consequences, the courts have gone to great length to avoid such a construction. It is stated in *Hill* vs. *Michan,* 116 O. S., 549, 553:

> "* * * the construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume. *Butzman* vs. *Whitbeck,* 42 Ohio St., 223. It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent. *Moore* vs. *Given,* 39 Ohio St., 661. * * *"

In the instant case, I am unable to say that the letter of Section 7248-3, supra, limiting the maximum weights, would restrain the courts in effectuating the legislative purpose to be subserved in encouraging the use of tandem axles,—this for the reason, as hereinabove indicated, these maximum limitations of the section are "subject to exceptions". In order to avoid absurd consequences, the courts have even departed, not only from the literal meaning of a statute, but from its letter. The text in 37 *O. Jurisprudence,* pages 548 to 552, is as follows:

> "It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. The manifest purpose and intent of the legislature will prevail over the literal import of the words. Hence, the courts are not always confined to the literal or strict meaning of statutory terminology—especially where there is also a more comprehensive sense in which the term is used. The letter of a law is sometimes restrained, sometimes enlarged, and sometimes the construction is contrary to the letter. Indeed, it is a familair canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter is not within the statute unless it is with the intention of the makers. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning, for he who considers merely the letter of an instrument goes but skin deep into its meaning. *Qui haeret, in litera haeret in in cortice.*"

It is accordingly my opinion that the exception contained in Section 7248-1 General Code, as to allowance for the weight of a tandem axle therein described, must be construed as an exception to maximum gross weight and load limitations prescribed in Section 7248-3, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4810.

POOR RELIEF—WAGES RECEIVED BY FAMILY FOR CCC WORK BY SON NOT "POOR RELIEF".

SYLLABUS:

Where a family has a son in the Civilian Conservation Corps and the family receives a part of his wages earned therein, such family is not receiving "poor relief" within the contemplation of Section 3477 *and* 3479, *General Code.*

COLUMBUS, OHIO, October 18, 1935.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—I am in receipt of your communication, which reads as follows:

> "I wish you would please render this office an opinion as to whether or not a family which has been on relief and which had a son in the Civilian Conservation Corps Camp, receiving $25.00 per month of the earnings of such son from the Federal government, changed their residence from one Township to another within this County during such time, and lived for a period of more than ninety days in the new Township in the County without receiving any relief, the only payments made to them being the $25.00 from the Federal government,—my question being as follows:
>
> Whether or not they are legal residents of the new Township, or would be required to apply for relief at this time in the Township from which they had moved,—as the boy who had been in the Camp has been discharged from service.
>
> The real question being whether or not the money received from the Federal Government as part payment of Civilian Conservation Corps wages is poor relief."