

4. That C. having committed a breach in the performance of his contract, the board of education may enter into a new contract for the transportation of the pupils on C.'s former route.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2198.

TRUCK CHASSIS—TAR AND ASPHALT DISTRIBUTOR OR  
CEMENT MIXER—EQUIPMENT USED IN ROAD CON-  
STRUCTION WORK—NOT MOTOR VEHICLE—EXEMPT  
FROM ANNUAL MOTOR VEHICLE LICENSE TAX.

*SYLLABUS:*

*An "asphalt and tar distributor" or a "cement mixer" is equipment used in road construction work and not designed for or employed in general highway transportation. Therefore, such equipment is excepted from the legislative definition of the term "motor vehicle," and is accordingly exempt from the annual motor vehicle license tax.*

COLUMBUS, OHIO, March 31, 1938.

HON. PAUL F. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion as to whether or not an asphalt and tar distributor, which is a truck chassis, but which is built with a tar tank and other distributing equipment, and which is used exclusively for the spreading of tar and asphalt on highway construction projects, is exempt from the annual motor vehicle license tax.

The Prosecuting Attorney of Franklin County, Ohio, has also requested my opinion on the question as to whether or not the language used in Section 6290, as amended by House Bill No. 772, is comprehensive enough to except from the definition of the term "motor vehicle" concrete mixers used in construction work.

As a matter of expediency, both of these questions will be here considered.

Section 6290, General Code, as amended by Amended House Bill No. 773, passed by the 92nd General Assembly, and effective January 1, 1938, provides, in so far as pertinent to the questions to be considered, as follows:

“ ‘Motor vehicle’ means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels \* \* \*, power cranes and other equipment used in construction work and not designed for or employed in general highway transportation, \* \* \* ”

A determination of the questions here considered necessitates a construction of the language “and other equipment used in construction work and not designed for or employed in general highway transportation.”

It is fundamental that in construing statutes the paramount object to be attained is the intent of the legislature, and such a course should be followed which harmonizes best with the context and promotes in the fullest degree the apparent purpose and object of the legislature. In this respect your attention is directed to Lewis’ Sutherland Statutory Construction, Vol. II, Page 694, wherein the following is found:

“The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act.”

In considering the provisions of Section 6290, supra, it is apparent that little difficulty would be experienced if the legislature in its enactment had merely excepted from the legislative definition of the term “motor vehicle”, in addition to the list of property therein particularly described, “other equipment used in construction work.” If such were the case it is quite obvious that all equipment used in construction would be exempt from the annual motor vehicle license tax. However, the legislature has qualified the list of property excepted from the term “motor vehicle” as contained in Section 6290, supra, to the extent that such property shall not be designed for or employed in general highway transportation. Consequently, as heretofore stated, the greatest difficulty experienced in construing the provisions of Section 6290, supra, arises, not by reason of any ambiguity existing as to the language “and other equipment used in construction work,” as therein contained, but by reason of the qualifying language, used in the section to the effect that the prop-

erty as therein excepted shall not be designed for or employed in general highway transportation.

Two plausible constructions can be placed on this language. It might be persuasively argued that it was the intention of the legislature by the use of such language that the equipment such as here considered, although primarily constructed for construction work and used exclusively for that purpose, might, nevertheless, by reason of the design of such equipment, be used, if desired, in general highway transportation, and that therefore such equipment would not be excepted from the term "motor vehicle."

The second construction which could be placed on this language, and one which I believe to be more significant of the legislative intent, is that such language only contemplates equipment which by reason of its design, could be used without any material change either in construction work or in general highway transportation. Accepting the latter construction as the real object for the use of such language by the legislature, I come now to the consideration of two types of equipment here considered and whether such equipment is such "other equipment used in construction work and not designed for or employed in general highway transportation."

I am informed that a "tar and asphalt distributor" is a truck, with a cab and tar tank, pump, gasoline motor and a distributor. It serves the specific purpose of heating, hauling and distributing tar and asphalt on highway construction projects. The tank is elliptical in shape and is placed on a truck chassis. Near the front end of the tank is a tar pump which pumps the tar from the tank on to the road after hot air is forced through the tank by a heating system. Connections from the tank to the distributing system permits the tar pump to force the tar out for distribution on the surface of the road. Obviously, such equipment cannot be classified as anything other than a tar distributor apparatus. The description of this equipment is of vital importance because only from the description can be gleaned the use to which the same is subject. If the tar tank were used solely to transport the tar and thus serve a distinct hauling purpose without connection with heating, pumping and motor systems, it is apparent that such equipment would be designated and classified as equipment used in general highway transportation. However, such is not the situation here considered. Although it is admitted that the tank on a tar and asphalt distributor is so designed as to provide a means of conveyance of tar, yet from the description of such equipment as heretofore referred to, it is apparent that its inherent nature, its characteristics, and the primary purpose for its construction all point to the very obvious fact that such equipment was designed for and is employed exclusively in the distributing of tar and asphalt on highway construction projects. Notwithstanding this fact, it is apparent that the legislature by the use of the language "general highway transportation"

intended that only those vehicles designed and employed principally in the general transportation of materials should not be included within the exceptions to the term "motor vehicle." Surely if a construction were placed on this language, the effect of which would say that a "tar and asphalt distributor", by reason of its incidental use in conveying tar from the place of loading to the point of construction work, would be engaging in general highway transportation, such a construction, in my opinion, would render nugatory the provisions of Section 6290, supra, and ultimately defeat the very purpose for its enactment.

The same reasoning on which the foregoing conclusion was reached relative to the question as to whether a "tar and asphalt distributor" is by virtue of the provisions of Section 6290, supra, excepted from the legislative definition of the term "motor vehicle," is applicable to equipment such as concrete mixer, and for that reason, I do not deem it necessary to here engage in a lengthy discussion as to this particular type of equipment. Suffice it to say that the very description of a concrete mixer refutes any argument that might be advanced that such equipment is "designed for and employed in general highway transportation." Although like a "tar and asphalt distributor", the concrete mixer, when placed on a truck, serves partly for the transportation of concrete, yet the obvious and principal purpose for the construction of this equipment is to make concrete out of the necessary component materials. The very design of such equipment argues strongly for the contention that such equipment is not designed for and could not be employed with any degree of success in the general highway transportation of concrete.

The conclusion herein reached, both as to a "tar and asphalt distributor" and concrete mixer being excepted from the legislative definition of the term "motor vehicle" is in accord with the decision rendered by the Common Pleas Court of Montgomery County in the case of *State, ex rel. Tejan, et al. vs. Lutz, et al.*, 31 N. P. (N. S.) 473. Although in this case the provisions of Section 6290, supra, were not directly considered, yet I believe the decision therein rendered is of such importance, and is so closely connected with the facts herein considered, the same is worthy of note. In this case it was held, as is disclosed by the 10th and 12th branches of the syllabus:

"10. When equipment, apparatus, or machinery does not assist in affectuating the purposes of a motor vehicle, but serves other purposes not inherently characteristic of a motor vehicle nor related to its operative mechanism or operative purposes, it is not subject to taxation under the motor vehicle license tax law.

12. Grinding mill and motor appurtenance thereto; hoisting rinch and engine; welding machine and power plant; tar-spreading apparatus; concrete mixing equipment; held; not truck equipment within purview of truck license tax law."

In view of the foregoing, and in specific answer to the questions presented, it is my opinion that an "asphalt and tar distributor" or a "cement mixer" is equipment used in road construction work and not designed for or employed in general highway transportation. Therefore, such equipment is excepted from the legislative definition of the term "motor vehicle," and is accordingly exempt from the annual motor vehicle license tax.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2199.

CELEBRATION—150TH ANNIVERSARY ADOPTION OF ORDINANCE 1787 AND SETTLEMENT NORTHWEST TERRITORY—CHARTER CITY—UNLESS PREVENTED BY CHARTER, HAS PLENARY POWER TO APPROPRIATE AND EXPEND REASONABLE SUM OF MONEY—GENERAL, PUBLIC, EDUCATIONAL PURPOSE—SEE OPINION 2274, APRIL 12, 1938.

*SYLLABUS:*

*A charter city, unless prevented by its charter, has plenary power to appropriate and expend a reasonable sum of money, by way of participation in the one hundred and fiftieth anniversary of the adoption of the Ordinance of 1787 and settlement of the Northwest Territory, such expenditure being for a general, public, educational purpose.*

COLUMBUS, OHIO, March 31, 1938

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*  
GENTLEMEN:

I am in receipt of your communication of recent date as follows:

"We are enclosing herewith a letter from our Zanesville Examiner, in which it is shown that the City of Zanesville contemplates participation in a celebration concerning the Northwest Territory, which involves the expenditures of public funds.