

3836.

## DEED—ACT OF CONGRESS IMPOSING STAMP TAX ON DEEDS DOES NOT APPLY TO DEEDS EXECUTED TO OR BY STATE.

## SYLLABUS:

*Section 725 of the Act of Congress, approved June 6, 1932, as amended by the Act of Congress, approved June 16, 1933, providing for a stamp tax upon deeds and other instruments for the conveyance of lands, tenements or other real property, does not apply to deeds executed to or by the State.*

COLUMBUS, OHIO, January 18, 1935.

HON. T. S. BRINDLE, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication in which you request my opinion as to whether or not two certain deeds, recently executed by the State of Ohio, conveying to the Chesapeake & Ohio Railway Company certain parcels of abandoned Hocking Canal lands in Falls Township, Hocking County, Ohio, were required to have affixed thereon the stamps provided for by Section 725 of the Act of Congress, approved June 6, 1932, as amended by the Act of Congress, approved June 16, 1933.

This section, as so amended, provides that a deed instrument or other writing, delivered on or before July 1, 1935, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in, the purchaser or purchasers or any other person or persons, by his, her or their direction, when the consideration or value of the interest of the property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500.00, shall carry a stamp tax of 50c and for each additional \$500 or fractional part thereof, 50c.

The provisions of this section do not in terms exclude from the operation of the law, deeds executed by or to the State. As to this it is to be noted, however, that neither the Internal Revenue Department of the Federal Government nor any other department thereof has at any time sought to enforce the provisions of this section with respect to deeds by which real property is conveyed by or to a State. This has been by reason of the recognition on the part of federal officials, charged with the duties of administering the provisions of this law, that the execution of deeds by or to a State is the means by which such State exercises its functions in disposing of or in acquiring lands or other real property; and that, in this view, such deeds are instrumentalities of the State in carrying out these purposes. Being instrumentalities of the State, in the exercise of its functions in acquiring or disposing of property, these instruments are considered to be immune from Federal taxation on the familiar principles discussed and applied in the case of *Indian Motor Cycle Company vs. United States*, 283 U. S. 570, and in many other Federal and State cases which might be cited on this point.

I am of the opinion, therefore, by way of specific answer to your question, that no Federal stamps were required on these deeds.

It is, perhaps, pertinent to note further in this connection that for the reasons stated in the case of *Cole vs. Ralph*, 252 U. S. 286, 64 L. ed. 567, the absence of Internal Revenue stamps required on deeds by the Act above referred to, neither invalidates such deeds nor the title of the lands or other property thereby conveyed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*