

OPINION NO. 68-075**Syllabus:**

The imposition of the transfer fee to a transfer presented after the effective date of Section 319.54 (F) (3), Revised Code, violates no constitutional provisions by reason of the fact that the instrument of transfer was required by an enforceable obligation which was in full force and effect prior to the date the real property transfer fee was enacted into law.

To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio
By: William B. Saxbe, Attorney General, May 3, 1968

I have before me your request for an opinion as to the constitutionality of applying the real property transfer fee imposed

by Section 319.54, Revised Code, to a deed or other instrument of transfer of title where delivery of the instrument is required by contract executed and of binding force prior to the effective date of the law. This might be a contract of sale or in the form of a land contract.

The real property transfer fee is in effect an excise tax upon the transaction of transferring real property of record. It is in this respect like the sales tax, the latter being an excise tax on the transaction of making a sale. The Ohio Supreme Court has held that Article II, Section 28 of the Ohio Constitution provides that the General Assembly shall have no power to pass retroactive laws. Safford v. Life Insurance Co., 119 Ohio St. 332. Sales and use taxes can operate prospectively only. State ex rel. v. Ferguson, 133 Ohio St. 325, at page 330. But the Supreme Court has also held that where the goods were delivered after the effective date of the act, the transaction is taxable even though the goods were contracted for prior to the date of the act. Dayton Rubber Mfg. Co. v. Glander, 149 Ohio St. 67. The Court therein rejected the argument of the appellant that the tax as so applied was unconstitutional as being retroactive and impairing the obligation of a contract. The reasoning of the Court here must be regarded, in my opinion, as dispositive of the contention advanced by the grantee in your case that the transfer fee is unconstitutional because of the pre-existing contract to convey.

It is therefore my opinion, and you are accordingly advised, that the imposition of the transfer fee to a transfer presented after the effective date of Section 319.54 (F) (3), Revised Code, violates no constitutional provisions by reason of the fact that the instrument of transfer was required by an enforceable obligation which was in full force and effect prior to the date the real property transfer fee was enacted into law.