

2689.

APPROVAL--AGREEMENT, STATE OF OHIO, THROUGH DIRECTOR OF HIGHWAYS, ELIMINATION GRADE CROSSING OVER TRACKS N. Y. CENTRAL RAILROAD COMPANY AND TOLEDO ANGOL AND WESTERN RAILWAY COMPANY, STATE HIGHWAY No. 55, DESIGNATED POINT SOUTH OF TOLEDO AND OTTAWA HILLS, LUCAS COUNTY, OHIO.

COLUMBUS, OHIO, July 12, 1938.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval as to form a copy of a proposed agreement to be executed in triplicate providing for the elimination of the grade crossing over the tracks of the N. Y. Central Railroad Company and the Toledo Angol and Western Railway Company on State Highway No. 55, located at a point just south of Toledo and Ottawa Hills in Lucas County, Ohio.

Upon examination, I find said agreement in proper legal form and it is my opinion that when the same is properly executed on behalf of the State of Ohio, it will constitute a binding contract by and between the parties thereto.

I, therefore, hereby approve said agreement as to form and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2690.

STATE BANKS--MEMBERS OF FEDERAL RESERVE SYSTEM
--NOT SUBJECT TO UNEMPLOYMENT COMPENSATION
ACT FOR PERIOD DECEMBER 21 TO DECEMBER 31, 1936 -
BECAUSE INSTITUTIONS WERE NOT SUBJECT TO EX-
CISE TAX LEVIED BY SECTION 901 OF FEDERAL SOCIAL
SECURITY ACT.

SYLLABUS:

State banks, members of the Federal Reserve System, are not subject to the Unemployment Compensation Act for the period from December

21, 1936, to December 31, 1936, because such institutions were not subject to the excise tax levied by Section 901 of the Federal Social Security Act.

COLUMBUS, OHIO, July 13, 1938.

Ohio Unemployment Compensation Commission, 33 North Third Street, Columbus, Ohio.

GENTLEMEN: I am in receipt of your recent letter asking whether state banks, members of the Federal Reserve System, were amenable to the Unemployment Compensation Act as it was originally enacted, 116 O. L., Part 2, page 286, and before the amendment by the 92nd General Assembly, Amended Senate Bill No. 26, effective August 7, 1937.

Opinion No. 1769, issued January 17, 1938 was based on the provisions of the law as amended. The question involved in that opinion was whether or not state banks which are members of the Federal Reserve System and state building and loan associations which are members of the Federal Home Loan Bank came within the category of the institutions described in Section 1345-1c(E)4, which now reads as follows:

(E) "The term employment shall not include:

(4) Service performed in the employ of any governmental unit, municipal or public corporation, political subdivision, or instrumentality of the United States or of one or more states or political subdivisions in the exercise of purely governmental functions;"

The opinion held that inasmuch as the institutions under consideration did not exercise "purely governmental functions," that employment by said institutions is not exempt by reason of this section. This exemption as to employment is exactly the same as was contained in Section I d(4) of the Unemployment Compensation Act as originally enacted in House Bill No. 608, reported in 116 O. L., Part 2, page 286, which became effective December 17, 1936.

The change important to the instant question made by the 1937 amendment to the Unemployment Compensation Act was in the definition of the word "employer." In the original enactment "employer" was defined in Section I (b) as follows:

"'Employer,' except where the context clearly shows otherwise, means any person, partnership, firm, association or corporation who (which) has three or more persons employed at any one time in an employment subject to this act,

except that for the period from December 21, 1936, to December 31, 1936, both inclusive, the term 'employer' shall mean any person, partnership, firm, association, or corporation which is subject to the excise tax levied by Section 901 of the social security act. 'Employer' shall not include: the United States or any instrumentality thereof; the State of Ohio or any state; any municipal or public corporation, political subdivision, governmental unit, or instrumentality of one or more states or political subdivisions in the exercise of purely governmental functions but shall include any such service performed in the exercise of proprietary functions; any farmer; nor any person, partnership, firm, association or corporation to which this act may not apply by reason of any provision of the Constitution of the United States or act of Congress."

The amended definition for "employer" as that word is used in the Unemployment Compensation Act is set forth in Section 1345-1b and it is significant that the last sentence of the earlier definition has been omitted. It is important to note, however, that the new definition does not include the exception provided for in the earlier definition, to-wit: "except that for the period from December 21, 1936, to December 31, 1936, both inclusive, the term 'employer' shall mean any person, partnership, firm, association, or corporation which is subject to excise tax levied by Section 901 of the social security act." Therefore, in so far as the period between December 21, 1936, to December 31, 1936, both inclusive, is concerned we must refer to the federal laws and rules to determine whether the institutions under consideration were included within the above exception.

Section 901 of the Social Security Act referred to in the statute is known as Title 42 U. S. C. A., Section 1101 and the pertinent parts thereof are as follows:

"On and after January 1, 1936, every employer (as defined in Section 1107 of this chapter) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in Section 1107 of this chapter) payable by him (regardless of the time of payment) with respect to employment (as defined in Section 1107 of this chapter) during such calendar year: * * *"

Section 1107 of Title 42 U. S. C. A. exempts the following employment in subdivision (c) 5 thereof:

“Service performed in the employ of the United States Government or of an instrumentality of the United States.”

It was held in a ruling of the Bureau of Internal Revenue, reported in 42 Social Security Tax No. 44, that state banks, which are members of the Federal Reserve System, are instrumentalities of the United States within the meaning of Titles 8 and 9 of the Social Security Act (Sections 1101 to 1110 comprise Title 9) and that neither the banks nor the employees are subject to the taxes imposed under Titles 8 and 9 of the Act.

Inasmuch, therefore, as the state banks which are members of the Federal Reserve System are not “subject to the excise tax levied by Section 901 of the social security act,” I am of the opinion that they are exempt from the Ohio Unemployment Compensation Act as to the period from December 21, 1936, to December 31, 1936.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2691.

APPROVAL—BONDS, VILLAGE OF DENNISON, TUSCARAWAS COUNTY, OHIO, \$4,000.00, PART OF ISSUE DATED NOVEMBER, 1, 1935.

COLUMBUS, OHIO, July 14, 1938.

*Retirement Board, State Public School Employes Retirement System,
Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Village of Dennison, Tuscarawas
County, Ohio, \$4,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of deficiency bonds in the aggregate amount of \$36,000, dated November 1, 1935, bearing interest at the rate of 5½% per annum.