

The above conclusions are all based upon the interpretation of your question which was stated at the outset of this opinion. It may be that the resolution of the board of education and the proposition submitted to the electors were indefinite in the description of the particular five-year period covered by the vote, and that the proceedings are susceptible to such interpretation as would make the five-year period commence with the year after the vote was taken and run for five years thereafter. If this is the case, then without impairing any of the propositions laid down in this opinion, it might turn out that the district has not really been deprived of the one year's levy described in the question. This department would, however, without additional information, be unable to express an opinion upon this point.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1108.

STATE DEPARTMENT OF OIL INSPECTION—BENZOL—SECTION 865
 G. C. CONSTRUED AS TO VOLATILE LIQUID USED FOR PURPOSES
 SIMILAR TO THAT OF GASOLINE OR PETROLEUM-ETHER WHICH
 EXPLODES AT SIMILAR TEMPERATURE—IS "SIMILAR" OR "LIKE"
 GASOLINE OR PETROLEUM-ETHER WITHIN MEANING OF SAID
 SECTION—WHAT FEES CHARGEABLE.

A substance, which is a volatile liquid used for purposes similar to that of gasoline or petroleum-ether, and which explodes at a similar temperature, is "similar" or "like" gasoline or petroleum-ether within the meaning of section 865 G. C. and such a substance should be inspected by the department of oil inspection. The same fees should be paid for such an inspection as are provided for the inspection of gasoline or petroleum-ether under said section.

COLUMBUS, OHIO, March 29, 1920.

HON. CHARLES L. RESCH, *State Inspector of Oils, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date reads as follows:

"I am advised by my deputy inspectors that there is being sold within the state a quantity of Benzol also a product known as B-Zol both of which I understand to be coal tar products and on which we have not been making any inspection for the reason that in every section of the inspection laws reference is made only to petroleum products.

For a time it was understood that these products were used only in manufacturing of rubber goods and cleaning, but I now understand that B-Zol especially is being advertised and sold as a substitute for gasoline in the operation of motor vehicles; you will find attached a small circular to this effect.

My object in writing this letter is to ask you for an opinion as to whether or not there should be an inspection made and fees collected on these so-called coal tar products."

Sections 854 to 865 G. C. relate to the inspection of oil which is sold for

illuminating purposes and will only be referred to generally in consideration of your question.

Section 865, which is relevant to your inquiry, provides:

"Gasoline, petroleum-ether or similar or like substances, under whatever name called, whether manufactured within this state or not, having a lower flash test than provided in this chapter for illuminating oils, shall be inspected by the state inspector of oils or his deputies. Upon inspection, the state inspector or a deputy shall affix by stamp or stencil to the package containing such substance a printed inscription containing its commercial name, the word 'dangerous,' date of inspection and name and official designation of the officer making the inspection. For such inspection, the state inspector or his deputy shall receive the same fees as for the inspection of oil, which shall be paid into the state treasury as herein provided for other fees. Such fees shall be a lien on the gasoline, petroleum-ether or similar substance so inspected. For such inspections, deputy inspectors shall receive the same fees and shall make monthly report of such inspections, as provided herein for the inspection of oils. Whoever sells or offers for sale any gasoline, petroleum-ether or similar or like substance not stamped as provided in this chapter shall be fined not more than one thousand dollars or imprisoned in the county jail not exceeding twenty days, or both."

In an opinion of the Attorney-General, found in the Annual Report of the Attorney-General for 1912, page 891, a question similar to the one you present was passed upon. The question presented was:

"May the state inspector of oils or his deputies lawfully stamp or stencil as 'dangerous' a package containing a substance which is neither gasoline nor petroleum-ether and which is not used for illuminating purposes but solely for mechanical purposes?

May the department of oil inspection lawfully inspect such substance and collect fees therefor."

The following is quoted from the conclusion of said opinion:

"I observe that the claim is made by Mr. Paw that the substance concerning which he particularly inquires, which is already described in the question as I have stated it as not being gasoline or petroleum-ether, is not similar to or like either one of these substances. This is a question of fact, of course. I have no means of knowing what substances are like gasoline or petroleum-ether. I beg to advise you, however, that in my opinion, the respect in which its likeness is to be determined is explosive-ness. I do not think it necessary that a substance in gasoline or petroleum-ether should be chemically or mechanically similar to or like either one of these substances in any respect other than this one.

The general assembly in enacting this law did not use the words 'similar' or 'like' in any scientific or technical sense and must be regarded as having in mind as the basis of the comparison suggested by them, the fundamental idea which runs through the whole section.

It is, therefore, my opinion that a substance in order to be 'similar to' or 'like' gasoline or petroleum-ether must at most have the attributes of fluidity, volatility and explosiveness which characterize both of these

substances, and all of which are elements which enter into the other considerations of section 865. That is to say, it is not every fluid that is 'similar to' or 'like' gasoline or petroleum-ether or both of them nor every volatile substance, nor every explosive substance, but a substance which is at once fluid, volatile and explosive is like gasoline and petroleum-ether and similar thereto.

I have just advised you as a matter of law as to the scope of the words 'similar to' and 'like' as used in section 865. The application of the principle which I have tried to define to a specific case is, of course, a question of fact. If the substance which Mr. Paw refers to is not volatile like gasoline and petroleum-ether and is not similarly explosive, which, of course, would be ascertained by the use of the flash test referred to in the section, then, of course, there is no question that the inspector of oils or his deputy may not lawfully inspect or label as 'dangerous' any packages containing such substance.

If, however, the substance is fluid, volatile and possessed of the degree of explosiveness described in section 865, then the further question, which I take it is the one in Mr. Paw's mind and in yours, is raised, viz.: Is section 865 intended to apply to substances not used or intended to be used for illuminating purposes? I have already pointed out that the entire chapter exclusive of sections 865 and 866 relates to illuminating fluids. In practically every section of the act excepting these now under consideration the words 'for illuminating purposes' occur and limit the meaning of general language otherwise of broader significance. It is also true that the chapter is otherwise limited to the inspection, handling and sale of mineral oils and by-products of petroleum. This, however, is equally true of section 865 and this fact itself furnishes another possible element for your guidance in determining what constitutes a substance 'similar to' or 'like' gasoline or petroleum. That is to say, a substance is not 'similar to' or 'like' gasoline or petroleum-ether unless it is a by-product of petroleum. I should have stated this qualification in formulating the definition above set forth, and for the sake of clearness I repeat that definition as further limited by this qualification:

A substance is 'similar to' or 'like' gasoline or petroleum-ether, within the meaning of section 865 General Code which is a volatile fluid by-product of petroleum or mineral oil having a degree of explosiveness ascertained by the use of the flash test for illuminating oil."

It is my opinion that the conclusion reached by my predecessor is correct with the exception of the statement above quoted to the effect that a substance is not similar to gasoline or petroleum-ether unless it is a by-product of petroleum. My view is that it was the intent of the legislature in the enactment of section 865 to protect the public against those products which have properties which cause them to explode at a temperature lower than the standard fixed by statute for salable illuminating oil, and that the use of the word "similar" as used in said section has reference to substances which have similar explosive characteristics irrespective of the source from which the elements composing the substance are taken. In other words, when a substance is volatile liquid, which has a use similar to gasoline or petroleum-ether, and explodes at a similar temperature, it is like or similar to gasoline or petroleum-ether. While primarily gasoline or petroleum-ether is distilled from petroleum, coal tar contains elements which are found in petroleum such as naphtha and benzine, which are very volatile, inflammable and explosive. Therefore, it will be readily seen that a substance may be compounded,

which not only is similar to gasoline because of its explosive character, but is similar because the volatile, inflammable and explosive elements are the same notwithstanding said elements are not obtained from petroleum. Such a substance should be inspected under the provisions of section 865 G. C. and the same fees collected as are prescribed for the inspection of gasoline. It is a matter of common knowledge that if a substance can be used to operate a gasoline engine it has some properties in reference to its volatile and explosive character similar to gasoline. Such a use of a substance, while not conclusive, certainly would furnish some evidence tending to prove it is similar to gasoline. While it is a question of fact whether or not a certain product is similar to gasoline, the volatile, inflammable and explosive character of the substance should be the guide in the determination of the matter, regardless of the source from which said elements were obtained.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1109.

MUNICIPAL CORPORATIONS—SECTION 3637 G. C. PROVIDES FOR LICENSING OF PLUMBERS—AUTHORITY OF STATE INSPECTOR OF PLUMBING DOES NOT EXTEND TO MUNICIPALITIES WHEREIN ORDINANCES REGULATING PLUMBING HAVE BEEN ADOPTED—WHAT MAY BE INCORPORATED IN MUNICIPAL ORDINANCE—PAMPHLETS OF STATE PLUMBING CODE CANNOT BE SOLD BY STATE.

1. *Municipalities are expressly empowered by section 3637 G. C. to provide for the licensing of plumbers, and the authority of the state inspector of plumbing does not extend to municipalities wherein ordinances regulating plumbing have been adopted and are being enforced by the proper authorities. See section 1261-3 G. C.*
2. *The provisions of section 12600-137 to 12600-273 G. C., constituting a part of the state building code, may, by apt words of reference, be incorporated into and made a part of a municipal ordinance providing for the licensing of plumbers.*
3. *The commissioners of public printing are without authority to require that pamphlets containing the state plumbing code, and which have been published at state expense, shall be sold either at cost or profit.*

COLUMBUS, OHIO, March 29, 1920.

The State Department of Health, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date relative to the authority of municipalities to provide by ordinance for licensing persons engaged in the business of plumbing, etc., was duly received.

(1) Section 3637 G. C. expressly empowers municipalities "to provide for the licensing of * * * plumbers," etc., and by section 1261-3 G. C., which is one of the sections of the act creating the office of state inspector of plumbing and defining the duties of the inspector, it is expressly provided that such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof.

It therefore appears that the power conferred upon municipalities by section 3637 G. C. to license plumbers has not been taken away, but has been expressly recognized and saved to them by section 1261-3 G. C.