

any part of the cost of the improvement, would be a simple taking of the property of one person for the benefit of another; and the assessment would be void. * * *

Section 6455, General Code, provides as follows:

"The surveyor, in making his estimate of the amount to be assessed each tract of land, and the commissioners, in amending, correcting, confirming, and approving the assessments, shall levy the assessments according to benefits; and all land affected by said improvement shall be assessed in proportion as it is specially benefited by the improvement, and not otherwise."

In the case of *Chesbrough vs. Commissioners*, 37 O. S. 508, the Ohio State Supreme Court held, that in the absence of evidence to the contrary, it will be presumed that an apportionment of assessments under such a section is in accordance with the benefits. To the same effect is the case of *Miller vs. Commissioners*, 3 C. C. 617.

An examination of Section 6454, General Code, which I deem unnecessary to set forth herein in full, serves to confirm my conclusion that the assessments for the cost of the improvement are to be based upon the sole consideration of benefits derived and without any reference to the proportionate cost of the improvement in the immediate vicinity of the property assessed. As above pointed out, the open and tiled portions of the ditch improvement were properly included in one petition and are considered as a single improvement. It was held by the Ohio Supreme Court in the case of *Goodman vs. Commissioners*, 41 O. S. 399, that it was improper to grant a portion only of such a petition. The statutes above quoted clearly require the assessment of the entire improvement upon all property benefited.

I am therefore of the opinion that the assessments for the improvement described in your letter should be made as one unit under the petition for the improvement and that the fact that the contract price for one portion of the improvement was relatively lower than that for another portion of the improvement, should have no effect upon the assessments.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3014.

EXCISE TAX—MOTOR VEHICLE FUEL PURCHASED IN TANK CAR
LOTS FROM OHIO MANUFACTURER—DEALER LIABLE—REGIS-
TRATION PERMANENT.

SYLLABUS:

There being no provision in law for the withdrawal or cancellation of the registration of a dealer in motor vehicle fuel, a person, firm or corporation, when once duly registered as a dealer, is responsible for the excise tax upon motor vehicle fuel purchased in tank car lots from a person, firm or corporation producing, refining, preparing, distilling, manufacturing or compounding such motor vehicle fuel in Ohio.

COLUMBUS, OHIO, December 12, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“The Pure Oil Company, who has a refinery at Heath, Ohio, sold thirteen cars of motor vehicle fuel tax unpaid to the S. & S. Oil Company, Mechanicsburg, Ohio. The S. & S. Oil Company was once registered as a dealer under the Ohio gasoline tax law, but as it did not want to deal in tax unpaid gasoline, we have not considered it as being a dealer since June 2, 1927. As a matter of fact, the S. & S. Oil Company registered only to account for the tax on one car of gasoline that it received which was discovered by one of our gasoline tax examiners to be tax unpaid and unaccounted for to the state.

Since we received your Opinion No. 1271, dated November 18, 1927, concerning Section 5526-4 of the General Code, we have been holding the Ohio refinery liable for the tax on all motor vehicle fuel which it refines in Ohio and sells to non-registered dealers: and the first purchaser liable for the tax on all motor vehicle fuel which the refinery refines and sells in tank car lots to registered dealers: consequently, we are holding the Pure Oil Company liable for the tax on the motor vehicle fuel contained in the thirteen cars referred to above, but the Pure Oil Company contends that under Sections 5526, 5529-2 and 5533 of the General Code it is not liable for the tax and it sets forth the following reasons why it thinks it cannot be held for the tax:

1. The S. & S. Oil Company, the facts disclose, filed as a registered dealer on the second day of June, 1927, showing it to be a partnership and operating and doing business at Mechanicsburg, Ohio, for some reason, and there is no record by what action so far as the office records in the Tax Commission disclose, after the same date of registration, the Commission no longer carried them as among their registered dealers although the S. & S. Company (partnership) continued in business and are still continuing in the same business to the present date. Therefore, *it is our contention that under Section 5526-4, G. C., The Pure Oil Company properly made shipments to a registered dealer and there is no liability whatsoever against The Pure Oil Company to either collect or pay this tax.* All it is required to do is to report all tank car shipments to the Commission under intra state reports, upon which the gasoline tax is to be paid by the vendee, together with schedules supporting the same showing the tank car number, origination of shipment and destination of shipment and the consignee, which reports of The Pure Oil Company all set forth covering the period from February to September, inclusive. *It is our view of the statute that anyone having filed or becoming a dealer by registration, continues as such dealer and that the Tax Commission is without any warrant of law to allow a cancellation or withdrawal, as the law makes no provision for the same.* Especially would this be true regardless of the most violent stretch of the imagination where the registered dealer was continuing to operate as in the past.

2. It is our contention that when the S. & S. Company imported gasoline into Ohio whether they had filed a registration or not, they became purchasers and in turn thereby a dealer under the definition of Section 5526, G. C.

3. That by the operation as carried on by the S. & S. Company it automatically by law under further Sections not cited above in this letter, was subject to the tax. (Keep in mind that this gasoline was billed to them in intra state tank car shipments, said invoices not containing any statement that the excise tax imposed on the gasoline had been assumed by the dealer or that they had paid or would pay as provided by Section 5532), and, therefore, when the S. & S. Company received this gasoline and offered it for sale they became liable under Sections 5533 and 5529-2, regardless all together of the sections of the Gasoline Act.'

We kindly request that you give us your opinion as to who is liable to the state for the tax on the gasoline referred to above and if we are correct in holding the Ohio refiner liable for the tax on the motor vehicle fuel that it refines in Ohio and sells to non-registered dealers."

I note you refer to my opinion No. 1271, dated November 18, 1927, and found in Opinions of the Attorney General for 1927, Vol. III, at page 2284. The language used in that opinion is clearly not dispositive of the question you now present, since the only conclusion reached was that the first purchaser in tank car lots of gasoline refined in Ohio should be regarded as the dealer, in the event that he is in fact a registered dealer and that such purchaser must pay the tax on such gasoline.

With reference to Section 5526-4 of the General Code (112 O. L. 193), it was stated:

"It will be noted that the section provides that in case any person, firm, etc., who 'refines' motor vehicle fuel and sells the same 'in tank car lots' to 'any purchaser who is a registered dealer,' the purchaser, and not the seller, shall be deemed to be the 'dealer' within the meaning of the act."

Section 5526 of the General Code contains the following definition of the term "dealer":

"'Dealer' shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the State of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the State of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this State, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this State, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

This definition is qualified by the later enactment of Section 5526-4 of the Code under consideration in my prior opinion, as follows:

"In the event any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio, shall sell such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of Section 5528, General Code, then such purchaser and not the seller shall be deemed the 'dealer' as to the motor vehicle fuel contained in such tank car lots."

It seems apparent that the statement of facts contained in your letter comes expressly within the language of this section unless it be held that the S. & S. Oil Company is no longer a registered dealer. The Pure Oil Company is, of course, engaged in the business of refining gasoline in this State and in this instance it has sold motor vehicle fuel in tank car lots to a purchaser in Ohio. Accordingly, the only question remaining is whether or not the purchaser in this instance is a registered dealer and hence responsible for the tax, thus relieving the Pure Oil Company of its obligation, which it otherwise would have.

In your statement of facts it appears that the S. & S. Oil Company was registered as a dealer with your Commission on June 2, 1927. You state that the registration was had solely for the purpose of accounting for one tank car of gasoline. The fact remains, however, that the company was duly registered as a dealer. It becomes necessary, therefore, to determine whether there is any provision for a qualified or temporary registration, the voluntary relinquishment by the dealer or the cancellation by your Commission of a registration once made.

Section 5528 of the General Code is as follows:

"Within thirty days after this act takes effect, each dealer, as herein defined, doing business within the State of Ohio, shall file with the tax commission of Ohio, a certificate stating the name under which such dealer is transacting business within the State of Ohio, the location of its principal office or place of business within the State, the names and addresses of the partners, if such dealer is a partnership, or the names and addresses of the principal officers, if said dealer is a corporation or an association. If such dealer is a corporation, organized under the laws of another state, territory or country, such dealer shall furnish evidence to the tax commission that it has complied with the laws of Ohio relating to the transaction of business in Ohio. After thirty days from the date when this act goes into effect, no dealer shall sell, use or distribute any motor vehicle fuel until such certificate has been filed, and in the case of a foreign corporation, such evidence of authority has been furnished. The tax commission shall receive and file such certificates as comply with the terms of this act, and keep an alphabetical index thereof. Upon filing the certificate herein provided for, such dealer shall pay to the tax commission of Ohio as a filing fee the sum of five dollars. Anyone becoming a dealer within this State after this act takes effect shall forthwith file the certificate herein provided for, and if a foreign corporation, the evidence of authority to do business in this State."

I find no other pertinent provision of the Code dealing with the subject of registration of dealers in motor vehicle fuel. The answer to your question, accordingly, hinges upon the language of Section 5528, supra. This section requires the registration of each dealer in the State, as the word "dealer" is defined in the

Code, and it is quite obvious that the S. & S. Oil Company was such a dealer at the time of its registration in 1927. Although its status as a dealer may have been temporary, there is no provision of law making an exception or providing for any temporary registration. Once the registration is accomplished, it is the duty of the Tax Commission to file the certificates and keep an alphabetical index thereof. No provision is found for the withdrawal of a name from the index so required upon any contingency whatsoever. It inevitably follows that the company was without power to withdraw its name from the register and the Tax Commission likewise had no authority to cease treating the company as a registered dealer. It further follows that the Pure Oil Company, or any other similarly engaged organization, had the right to assume that the S. & S. Oil Company was a registered dealer and that accordingly sales of gasoline refined in Ohio to such company, in tank car lots, might and should be made tax free.

While I recognize the fact that the Legislature might well have provided some means whereby an organization, once registered as a dealer, could thereafter, upon change of the character of its business, withdraw that registration and relieve itself from the obligations imposed by law upon dealers in the way of reports, etc., it is sufficient to state that the Legislature has not so provided.

In view of my conclusion, it is unnecessary to consider the other contentions made by the Pure Oil Company, and which you quote in your letter.

By way of specific answer to your inquiry, I am of the opinion that, there being no provision in law for the withdrawal or cancellation of the registration of a dealer in motor vehicle fuel, a person, firm or corporation, when once duly registered, as a dealer, is responsible for the excise tax upon motor vehicle fuel purchased in tank car lots from a person, firm or corporation producing, refining, preparing, distilling, manufacturing or compounding such motor vehicle fuel in Ohio.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

3015.

APPROVAL, NOTES OF EUCLID VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, December 13, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3016.

APPROVAL, BONDS OF ASHLAND CITY SCHOOL DISTRICT, ASHLAND COUNTY, OHIO—\$4,500.00.

COLUMBUS, OHIO, December 13, 1928.

Industrial Commission of Ohio, Columbus, Ohio.