

194.

APPROVAL, BONDS OF GREENFIELD EXEMPTED VILLAGE SCHOOL DISTRICT, HIGHLAND COUNTY, \$50,000, TO ERECT NEW SCHOOL BUILDING.

COLUMBUS, OHIO, March 26, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

195.

APPROVAL, BONDS OF HARDIN COUNTY, \$120,000, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, March 28, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

196.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN MERCER AND FULTON COUNTIES.

COLUMBUS, OHIO, March 29, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

197.

LIEN—TAX ASSESSED AGAINST REAL ESTATE UNDER DOW AIKEN LAW BECOMES A LIEN SUPERIOR TO PREVIOUS MORTGAGE—SECTION 6212-33 OF MILLER BILL DOES NOT CHANGE LAW.

Section 6212-33 of the Miller bill does not change the law relative to the tax assessed against real estate under the Dow Aiken law, and such tax becomes a lien against the property superior to that of a mortgage previously given on said real estate.

COLUMBUS, OHIO, March 29, 1923.

HON. EDWARD S. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

"Section 6071 G. C. the Dow Aiken law provides that the tax for the trafficking in intoxicating liquors shall be placed on the duplicate and collected as other taxes.

The Supreme Court in the case of *Trust Co. v. Stich* 71 O. S. 459 has held that this tax takes priority as a lien over a previously recorded mortgage.

The court has also held in *Krnich v. McCleary*, Treas. 103 O. S. 457, that the provisions of section 6071 G. C. et seq. are still in force.

Section 6212-33 G. C. (Miller act) provides that the assessment placed on the duplicate under the provisions of sections 6071 and 6230-30, 6230-31 and 6230-32 'shall attach and operate as a lien upon the real property on and in which such business is conducted as of the fourth Monday of May of each year, etc.'

Your opinion is requested as to whether the above quoted language would have the effect of qualifying the language of section 6071 with the result that mortgages on the property filed prior to the date on which the lien for the tax attaches and becomes operative under the provisions of section 6212-33 G. C. will have priority of lien over such tax."

Section 6071 G. C. is as follows :

"Upon the business of trafficking in spirituous, vinous, malt or other intoxicating liquors, there shall be assessed yearly and paid into the county treasury, as provided by sections 6072, and following, of the General Code, by each person, corporation, or co-partnership engaged therein the sum of one thousand dollars."

Section 6072 referred to in the above section (6071), provided that such assessment "shall attach and operate as a lien upon the real estate on and in which such business is conducted, as of the fourth Monday of May of each year," and fixed the times for the payments of such assessments.

Under these sections the court held in *Trust Co. v. Stich*, 71 O. S. 459, that the assessments on the traffic of intoxicating liquors, under section 6071, were a *tax* and to be collected as a *tax*, and that as such were preferred liens and given precedence over prior liens by mortgage for purchase money.

The syllabus in said case is as follows :

"By force of our tax laws, the assessments upon the business of trafficking in intoxicating liquors which it is the duty of the county auditor to place upon the tax duplicate, as well those for previous years which may have been omitted as those for the current year, become a lien upon the property in and on which such traffic has been conducted, superior to that of a mortgage given and duly entered of record prior to the entry of such tax on the duplicate and prior to the beginning of such traffic on the premises."

Your question is whether the language, in section 6212-33 G. C., "shall attach and operate as a lien upon the real property on and in which such business is conducted as of the fourth Monday of May of each year, etc.," would have the effect of qualifying the language of section 6071 G. C. with the result that mortgages on the property filed prior to the *date* on which the lien for the tax attaches and becomes operative under the provisions of section 6212-33 G. C. will have priority of lien over such tax.

This department has held that "it was the intent of the legislature that the sections of the Miller bill (6212-33 and others) were to supplant the sections of the

Dow Aiken law (6072 especially) which were repealed." Opinion No. 3004, April 18, 1922.

Since section 6212-33 G. C. is to supplant section 6072 G. C., and the language quoted in your communication from section 6212-33 is identical with that contained in section 6072 prior to its repeal, it must follow that the law as stated in Ohio State 71 at page 459 is still the law of Ohio and that a tax placed under provision of section 6212-33 will be a superior lien on the real estate to a mortgage previously given on said real estate.

Respectfully,

C. C. CRABBE,
Attorney General.

198.

CORONER—NO AUTHORITY TO APPOINT STENOGRAPHER-SECRETARY IN COUNTY HAVING POPULATION OF LESS THAN 100,000.

A stenographer-secretary may not be legally appointed by a coroner in a county having a population according to the last federal census of less than 100,000, even though in the appointment of such stenographer-secretary and the maintenance of the office there is no expenses whatever to the county.

COLUMBUS, OHIO, March 29, 1923.

HON. S. ANSELM SKELTON, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—You have recently written this department as follows:

"Section 2856-2 of the Ohio General Code as enacted in 109 O. L., page 544, provides in substance that in counties having a population according to the last federal census of 100,000 or more, a coroner may appoint in writing an official stenographer-secretary who shall record the testimony of witnesses in attendance upon the coroner's inquests, etc.

"Scioto county has a population much less than 100,000 and the coroner desires to have appointed for his office a stenographer-secretary who will serve in that capacity free of any charge to the county. The coroner uses this stenographer for his other business matters. The purpose of having such appointment made is to dispatch the business in the holding of coroner's inquests and avoiding the necessity of having the witnesses wait and subscribe their statements as provided in section 2856 of the Ohio General Code.

"Will you give me your opinion as to whether or not a stenographer-secretary may be legally appointed in a county having a population according to the last federal census of less than 100,000, when in the appointment of said stenographer-secretary and the maintenance of the office there is no expense whatever to the county?"

The pertinent part of section 2856-2 of the General Code reads:

"In counties having a population according to the last federal census, of 100,000 or more, the coroner may appoint in writing an official stenographer-secretary who shall record the testimony of witnesses in attendance upon coroner's inquest and preserve and file properly indexed records of all