

itself, nor does it in terms definitely fix the amount of any levy, but rather contemplates and provides that the budget commission shall make the levy and for such amounts as the commission may or must allow, and then leaves the calculation of the number of mills required to meet the amounts to the county auditor. In the respects noted the section is materially different from the section held to be a tax levying law in *State v. Roose*, supra, which section directly made a levy or fixed the amount thereof, and it may also be said that it lacks some of the characteristics of a law providing for a tax levy as enumerated in *State v. Milroy*, supra, in that it does not itself impose the tax or fix the amount or rate. The section also fails to meet the test of a law providing for a tax levy as laid down by the former Attorney General in the first opinion referred to, in that "it is not self-executing; it does not itself levy a tax," but instead grants authority to some agency or agencies (a) to finally fix the exact amount to be raised under each budget, (b) to determine the number of mills necessary to raise the fixed amounts, and (c) to make the levy. It also, notwithstanding its commanding language, seems to fall in that class of laws which the former Attorney General, in his later opinion hereinabove referred to, held to be subject to the referendum.

The question under consideration, the same as those formerly considered by this department, is a close one, and while much might be said in favor of a conclusion opposite to that herein expressed, we feel, since the people, in their constitution, have prescribed and ordained that referendum shall be the rule, and exemption therefrom the exception, that section 1d of Article II, which provides the exception, should be strictly construed, and that laws, such as the Taft bill, which do not clearly fall within the excepting clause should be held subject to the referendum. In making this disposition of the matter we are but following administrative rulings and practice which apparently have never been criticized or challenged, and there being no Ohio decisions clearly to the contrary, we feel justified in adopting and adhering to the former opinions of this department until the question is authoritatively settled by the court.

Your second question has been taken under advisement and will be disposed of at an early date.

Respectfully,

C. C. CRABBE,
Attorney General.

335.

ROAD IMPROVEMENT—ABANDONED CEMETERY IN LINE OF PROPOSED ROAD IMPROVEMENT—REMOVAL OF BODIES AND MONUMENTS SHOULD BE PROVIDED FOR BY TOWNSHIP TRUSTEES—EXPENSE OF SUCH REMOVAL—HOW PAID.

SYLLABUS:

1. Where an abandoned cemetery is in the line of a proposed road improvement, under section 6907 and related sections, of the General Code, and such cemetery is necessary as a part of the right of way of such road, the removal of all bodies buried in such cemetery, and all monuments marking the graves thereof, should be provided for by the township trustees under the provisions of section 3465 of the General Code.
2. The Cost and expense of providing for such removal should, in the first instance, be borne by the township trustees.

3. The cost and expense of providing for such removal having, in the first instance, been borne by the township trustees, such cost and expense should be treated as a part of the compensation, damages, costs and expenses of the improvement, and, under section 6919 of the General Code, be apportioned and assessed as therein, and in related section, provided.

4. The township trustees should be reimbursed for such expenditure from the funds of the improvement.

COLUMBUS, OHIO, May 12, 1923.

HON. CLARENCE U. AHL, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Recently you have submitted the following request for opinion:

“A petition has been filed by 51% of the land owners asking for the improvement of a certain road according to the provisions of section 6907 G. C., and the method of apportionment and payment of the costs and expense as provided in 6919. The road to be improved is one of the Old roads in this county and along the route of said improvement there is located an old abandoned cemetery around which the present road winds; the proper way to make said improvement would be to provide for the removal of said cemetery and run the road straight.

“Section 3465 G. C. provides how such an abandoned burial ground may be removed and the bodies and stones removed to another cemetery, and the facts in the present instance authorize the township trustees to provide for said removal and there is a new cemetery within about five hundred feet of this old abandoned burial ground to which the bodies can be removed.

“QUERY: May the costs of the removal of the bodies in said abandoned burial ground be included in the total costs of said road improvement and a part thereof paid by the county and a part by the township, as provided by their contract under section 6919 G. C.; or must the township trustees pay said entire cost of removal, out of township funds?”

Section 6906 of the General Code provides that county commissioners shall have power, among other things, to improve, reconstruct or repair any existing public road or any part thereof; and also to alter, widen, straighten, vacate or change the direction of any part of such road in connection with the proceedings for such improvement.

Section 6913, and related sections, of the General Code, provide the manner and method by which land or property may be appropriated for the improvement.

Section 6919, and kindred sections, of the General Code, provide that the compensation, damages, costs and expenses of the improvement shall be apportioned and paid—providing various proportionments among the land owners, county and township.

An analysis and study of these various provisions clearly show that it was the purpose and intent of the legislature that the financial burden of the construction of the improvement, including compensation and damages and all costs and ex-

penses incident to the improvement, be borne under one of the plans or methods as outlined in said section 6919, and if property is appropriated the compensation and damages, and the expenses incident thereto, are paid under one of the above mentioned plans.

It is not deemed necessary to discuss the question as to whether or not the county commissioners are empowered in a road improvement proceedings under said section 6906, and related sections, of the General Code, to appropriate a right of way through a cemetery, abandoned or otherwise. Section 3465 of the General Code, which reads:

“When any burial ground, public or private, has been abandoned, or when the trustees of a township, or the trustees or directors of a cemetery association, are of the opinion that the further use for burial purposes of any cemetery or burial ground will be detrimental to public welfare or health, and a cemetery or burial ground in the near vicinity thereof is open for public use, such township trustees in every such case, or, in case of a cemetery association, the trustees or directors thereof, may order such cemetery or burial ground to be discontinued, and provide for the removal of all bodies therein buried, and for the removal of all stones and monuments marking the graves thereof, and for the reinterment of such bodies and the re-erection of such stones and monuments in suitable and public ground in the near vicinity, and pay therefor from the township treasury. They shall before providing for any such removal, first cause notice to be given to the family, friends or kindred of the deceased, if known to them of such order and of the time within which, not less than thirty days, such removal must be made, and that it is desired that such removal be made by the friends or kindred of the deceased. If at the expiration of such time such removals have not been made, the trustees or the board, as the case may be, may cause them to be made as hereinbefore provided.”

provides, in part, that when the trustees of a township are of the opinion that the further use for burial purposes of any cemetery will be detrimental to public welfare, and a cemetery in the near vicinity thereof is open for public use, such township trustees in every such case may order such cemetery to be discontinued and provide for the removal of all bodies buried therein, and all stones and monuments, and for the re-interment of such bodies and re-erection of such stones and monuments in suitable and public grounds in the vicinity, and pay therefor.

It will not be doubted that an abandoned cemetery in the line of a highway improvement is detrimental to the public welfare, and the use of the same having been discontinued, the trustees of the township would be authorized to remove the stones and monuments and disinter the bodies buried therein. It is believed the right, authority and power to remove the stones, monuments and bodies from an abandoned cemetery which is in the line of and necessary in a highway improvement, by the county commissioners, is, in the first instance, in the township trustees.

The purpose of and the necessity for the removal of the stones, monuments and bodies from the abandoned cemetery being incident to providing a right of way for a highway improvement in its nature pertains of eminent domain, and is a part of the costs and expenses of the improvement in the nature of compensation and damages, and while, in the first instance, the expense thereof is paid by

the trustees of the township, the same should be treated as a part of the compensation, damages, costs and expenses of the improvement, apportioned and assessed as such, and the trustees thereby reimbursed for the original expenditure.

Yours respectfully,

C. C. CRABBE,
Attorney General.

336.

COMMERCIAL CAR—VEHICLE DESIGNED FROM TRACTOR AND SEMI-TRAILER OPERATED AS UNIT—SUBJECT TO TAX AS COMMERCIAL TRUCK.

SYLLABUS:

A vehicle designed from a tractor and semi-trailer in such manner as to be operated as a unit and designed to be used as a commercial car or truck, is subject to a tax as a commercial truck.

COLUMBUS, OHIO, May 12, 1923.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This department is in receipt of your recent communication as follows:

“Submitted herewith are two photographs covering two types of Fordson Tractors; together with semi-Trailmobile trailers, each designed to be operated on the highways as a unit.

“An opinion is requested as to whether these vehicles come within the classification of commercial cars or trailers under the provisions of Sec. 6292 G. C. A complete description of each vehicle is given on the reverse side of each photograph.”

An examination of the photographs accompanying your letter shows that the vehicle in question is a Fordson tractor to which is attached what is called a semi-Trailmobile so designed as to be operated on the highways as a unit. As I take it, your question is whether the whole unit can be classified as a commercial car and subject to a tax as such, or whether it is to be classified as a tractor with a trailer attached, and subject only to the trailer tax.

Section 6290, General Code, provides in part:

“As used in this chapter and in the penal laws, except as otherwise provided:

1. ‘Motor Vehicle’ means any vehicle, propelled or drawn by power other than muscular power and not operated exclusively upon rails or tracks, except road rollers, traction engines, tractors, trailers designed to be drawn by animal power and used principally for agricultural purposes, public ambulances, and vehicles belonging to any police department, municipal fire department, volunteer fire company or salvage company, organ-