Note from the Attorney General's Office:

1932 Op. Att'y Gen. No. 32-3932 was clarified by 1983 Op. Att'y Gen. No. 83-046.

Indemnity Company of New York appears as surety, sufficient to cover the amount of the contract.

There has further been submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3930.

APPROVAL, BONDS OF CITY OF MANSFIELD, RICHLAND COUNTY, OHIO—$42,000.00.

COLUMBUS, OHIO, January 8, 1932.

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

3931.

APPROVAL, BONDS OF ALLIANCE CITY SCHOOL DISTRICT, STARK COUNTY, OHIO—$40,000.00.

COLUMBUS, OHIO, January 8, 1932.

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

3932.

MOTOR VEHICLE LICENSE TAX—TRUCK EQUIPPED WITH FEED GRINDER NOT SUBJECT TO SUCH TAX WHERE USED FOR AGRICULTURAL PURPOSES—MAY BE TAXED WHERE USED FOR COMMERCIAL PURPOSES AND SUCH COMPUTED ACCORDING TO WEIGHT, INCLUDING EQUIPMENT.

SYLLABUS:

1. *When a farmer or group of farmers purchases a truck chassis and equip it with a feed grinder, corn sheller, hay baler, fodder shredder, silo filler or other farm apparatus to be used in his or their farm enterprises, such device is not subject to the license tax provided by Am. S. B. 328.*

2. *When a truck chassis is equipped with, or there is built thereon a feed grinder, corn sheller, hay baler, silo filler or other machine ordinarily used by farmers in their operations, and such apparatus, so constructed, is operated by an individual or corporation as his or their principal business in the grinding of feed,*

shelling of corn, baling of hay, shredding of fodder, etc., for farmers, for hire, such apparatus is a motor vehicle within the purview of Section 6290, General Code, as amended, and being such, the tax should be computed thereon at its weight, which includes such equipment as is built into, and becomes a part of such vehicle.

COLUMBUS, OHIO, January 8, 1932.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent request for opinion with which you enclose similar requests from the Prosecuting Attorney of Hardin County and the Prosecuting attorney of Wood County. I have received a similar request from the Prosecuting Attorney of Seneca County and another from the Sheriff of Williams County.

The question raised by the Prosecuting Attorney of Hardin County is whether under Section 6290, General Code, the term "farm machinery" is broad enough to include hay balers and feed grinders mounted upon trucks.

The Prosecuting Attorney of Wood County raises the question of whether a person equipping a Dodge three-quarter ton truck with a Hammer Mill feed grinder should pay a tax based on the weight of the truck with the stake body on a Dodge truck of that tonnage or whether he must pay the tax for the weight of the Hammer Mill feed grinder affixed to the truck, in addition to the chassis itself.

The request from the Prosecuting Attorney of Seneca County is almost identical and is whether a portable grinding outfit is subject to auto tax, including load weight of the grinding outfit.

The Sheriff of Williams County inquires whether it is necessary to buy a license for a truck with a portable feed grinder on it, when it is being used for no other purpose than grinding feed.

These questions call for an interpretation of Am. S. B. 328, enacted by the 89th General Assembly, which levies a tax on motor vehicles.

Section 6291, General Code, which is a part of said bill, reads as follows:

> "An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles, maintaining and repairing public roads, highways and streets, paying the counties' proportion of the cost and expenses of cooperating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructiong, improving, maintaining and repairing roads and for the use of the general funds of the counties and the townships. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided."

Section 6290, General Code, as enacted by the same General Assembly, reads, in so far as material to your inquiry, as follows:

> "Definitions of terms, as used in this chapter and in the penal laws, except as otherwise provided:
>
> * * * *
>
> 'Motor vehicle' means any vehicle propelled or drawn by power

other than muscular power, except road rollers, traction engines, steam shovels, gasoline shovels, electric shovels, well drilling machinery, ditch digging machinery and farm machinery."

Your queries raise the legal question as to whether the apparatus mentioned therein, when attached to a motor truck chassis, constitutes a motor vehicle, within the meaning of Section 6291, supra.

Paragraph 3, of Section 6290, supra, reads as follows:

"'Agricultural tractor' and 'traction engine' mean any self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used *principally for agricultural purposes.*" (Italics the writer's.)

This paragraph puts certain vehicles under the classifications "agricultural tractor" and "traction engine" when used "principally for agricultural purposes."

In the State of Illinois there is a somewhat similar exception in their statutes which reads as follows:

"Provided, that nothing in this act shall be construed to include tractors, traction engines or other similar vehicles used exclusively in agricultural pursuits, or used by residents of this State in any kind of road work."

Occasion arose for the Attorney General of that state to construe the term "exclusively in agricultural pursuits" and in Opinion 543 rendered April 2, 1926 he held:

"The intention of the legislature in the provision referred to was to give the farmer the right to use a tractor or traction engine in and about his own farming operations and doubtless give a group of farmers in a neighborhood the right to own a threshing outfit or corn shelling outfit and use the same in connection with their farming operations, without the necessity of procuring a license or licenses for the tractors or traction engines used in the threshing of grain or shelling of corn, etc., on their respective farms."

The language of Paragraph 3, of Section 6290, General Code, differs somewhat from that of the Illinois statute. "Principally" is defined in Webster's New International Dictionary, as follows:

"In a principal manner; in the chief place or degree; primarily; chiefly; mainly."

The rule laid down in Lewis' Sutherland Statutory Construction, Vol. 2, paragraph 389, was quoted with approval in *Smith et al.* vs. *Buck,* 119 O. S., 101, at page 105, and is applicable in determining the legislative intent in enacting the sections concerning which you inquire. This rule is as follows:

"Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular

sense: common-law words according to their sense in the common law; and technical words, pertaining to any science, art or trade, in a technical sense. It is a familiar rule of construction, alike dictated by authority and common sense, that common words are to be extended to all the objects which, in their usual acceptance, they describe or denote; and that technical terms are to be allowed their technical meaning and effect, unless in either case the context indicates that such construction would frustrate the real intention of the maker. They should be construed according to the intent of the legislature which passed the act. If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the legislature."

What is an agricultural purpose? The word "agriculture" is defined by the Supreme Court of Alabama, in *Dilard* vs. *Webb,* 55 Ala., 468, 474, as:

"Agriculture is defined to be the art or science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and managing of livestock."

And by the Supreme Court of Wisconsin, in the case of *Binzel* vs. *Grogan,* 67 Wis., 147:

"'Agriculture', as defined by Webster, 'is the art or science of cultivating the ground, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock.'"

The word "purpose" is defined in Webster's New International Dictionary as follows:

"That which one sets before himself as an object to be obtained."

The word "vehicle" is defined in Section 6290, paragraph 1, as,

"Everything on wheels or runners."

If we were to substitute these definitions for the respective words by them defined when and as they appear in Paragraph 3, of Section 6290, such paragraph would read: "Agricultural tractor" and "traction engine mean any self-propelled apparatus on wheels or runners designated or used for drawing apparatus on wheels or runners or wheeled machinery, but having no provisions for carrying loads independently of such other apparatus on runners or wheels and used in the chief place or degree for the same purpose of either cultivating land for the raising of food stuffs or preparing soil for seed beds, or in connection with the harvesting of such crops or the management, feeding or rearing of live stock.

It is thus apparent from the language used by the legislature that it intended that the motor vehicle tax created by Am. S. B. 328 should not apply to motor vehicles which were so constructed that they have no provision for the carrying of additional loads and were designed to, or were used to draw other vehicles or wheeled machinery, *provided such motor vehicles were used chiefly or primarily*

for agricultural purposes, as distinguished from merely such incidental use. Especially is this true, in view of the language which is further used at the end of Paragraph 2, "and farm machinery."

While the ownership of a vehicle is not determinative of the character of, or purpose of a piece of machinery, it is entitled to consideration for the purpose of determining such fact. And when a machine is owned by a person engaged exclusively in agricultural or farming purposes, there is a presumption that such machine is to be used by him in his business. This is not an irrefutable presumption, and, if he should change his business to some entirely distinct type of business he would no longer be a farmer.

The test as to whether any piece of machinery is farm machinery, is whether such machinery is used principally or chiefly for agricultural or farming purposes, that is for purposes usually pursued by farmers. If a piece of machinery that may be of a type commonly used or might be used by a farmer, is used by a manufacturer for the purpose of increasing his business as such manufacturer by carrying his manufacturing business to the farmer's door, or in other words, to enable him to gain some advantage in his competition with other similar manufacturers, it could hardly be said that the mere carrying on of his manufacturing business on the farmer's land, rather than at his manufactory, by means of portable machinery, as distinguished from stationary machinery, would change his business from a manufacturer to a farmer and his machinery from manufacturing machinery to farm machinery.

Applying this test to the apparatus forming the subject of inquiry, such as feed grinders, hay balers, clover hullers, silo fillers, corn huskers, etc., it is my opinion that when such apparatus is owned by a farmer or a group of farmers whose particular purpose, as distinguished from incidental purpose, or that which they set before themselves as an object, is farming or agriculture, as distinguished from baling hay, grinding feed, hulling clover, threshing grain or filling silos, shredding fodder or husking corn, it is not subject to the tax levied by Am. S. B. 328, regardless of the fact that they may incidentally use such apparatus for hire in doing such work for a neighbor, but when the aim or purpose of the owner of such apparatus or machinery so mounted upon a truck chassis, is to make a livelihood or business of the grinding of feed, baling of hay, etc., such machinery is not then used principally for agricultural purposes, within the meaning of Paragraph 3, of Section 6290, General Code, and is not "farm machinery" within the meaning of Paragraph 2, of such section, and is taxable under the provisions of Am. S. B. 328, being Sections 6291 to 6294, of the General Code.

The next question raised by these requests is whether or not the tax is to be computed upon the truck chassis as delivered by the manufacturer, the tax being computed on such weight, or whether or not the tax is to be computed upon the weight of the truck chassis, including the attached machinery.

The answer to this query involves an interpretation of Section 6292, General Code, which reads as follows:

> "The rates of such taxes shall be as follows:
>
> For each motor bicycle or motorcycle, five dollars; and for each side car, one dollar and fifty cents.
>
> For each passenger car having twenty-five horsepower or less, seven dollars; for each such car having more than twenty-five and not more than twenty-eight horsepower, ten dollars; for each such car having more than twenty-eight and not more than thirty-two horsepower, fifteen dollars; for each such car having more than thirty-two and not more

than thirty-six horsepower, twenty dollars; and for each such car having more than thirty-six horsepower, twenty-five dollars.

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof for the first two thousand pounds or part thereof of weight of vehicle fully equipped; one dollar and ten cents for each one hundred pounds or part thereof in excess of two thousand pounds up to and including three thousand pounds; one dollar and fifty cents for each one hundred pounds or part thereof in excess of three thousand pounds up to and including four thousand pounds; one dollar and seventy-five cents for each one hundred pounds or part thereof in excess of four thousand pounds up to and including six thousand pounds; two dollars for each one hundred pounds or part thereof in excess of six thousand pounds up to and including ten thousand pounds; and two dollars and twenty-five cents for each one hundred pounds or part thereof in excess of ten thousand pounds.

The minimum tax for any vehicle having motor power other than a motor bicycle or motorcycle shall be six dollars; and for each trailer or semi-trailer two dollars and fifty cents.

Taxes at the rates provided for in this section shall be in lieu of all taxes on or with respect to the ownership of such motor vehicles."

Section 6291, General Code, levies a tax on the operation of "all motor vehicles" on the public roads and highways of this state.

Section 6292, General Code, provides the rates of taxation, and classifies all motor vehicles into three types, for the purpose of determining the rates of taxation: First, motor bicycles or motorcycles, second, passenger cars, third, commercial cars and trailers. The third paragraph of such section provides that on commercial cars, which term necessarily must include all taxable cars other than motorcycles and passenger cars the tax is to be paid at the rate of seventy cents per hundred pounds or part thereof, for the first two thousand pounds or part thereof, of weight of vehicle *fully equipped.*

It is common knowledge that the only difference between a passenger car and a light delivery truck is in the body; thus, in a three-quarter ton truck of a standard make, if the truck body were removed by taking out six or eight bolts, a sedan body could immediately be placed on the chassis by the insertion of six or eight bolts, and likewise a passenger car can be converted into a truck. It must be presumed that the legislature intended the language "fully equipped" to have a meaning. If it were meant that a truck was to be taxed as delivered from the manufacturer, it would have used the language "truck chassis", for the larger trucks are usually delivered by the manufacturer in chassis form and the dealer will place thereon a truck body of the type desired, if he has it in stock, or will sell the chassis alone, and as is usually done, a body manufacturer or carriage manufacturer builds the body on a truck of the type suitable for the business of the purchaser of the truck chassis.

I believe that under the rules of construction laid down by the court, I must presume that the legislature had in mind common business practice and when it used the language "weight of vehicle fully equipped", it meant the weight upon which the tax was computed to be that of the vehicle which included the equipment regularly and permanently attached to or built into such vehicle and regularly a part thereof.

I am therefore of the opinion that the tax is to be computed not only upon

the chassis of the truck but upon the weight including any equipment built into or upon such chassis in such manner as to become a part thereof.

Specifically answering your inquiry, I am of the opinion that:

1. When a farmer or group of farmers purchases a truck chassis and equip it with a feed grinder, corn sheller, hay baler, fodder shredder, silo filler or other farm apparatus to be used in his or their farm enterprises, such device is not subject to the license tax provided by Am. S. B. 328.

2. When a truck chassis is equipped with, or there is built thereon a feed grinder, corn sheller, hay baler, silo filler or other machine ordinarily used by farmers in their operations, and such apparatus so constructed is operated by an individual or corporation as his or their principal business in the grinding of feed, shelling of corn, baling of hay, shredding of fodder, etc., for farmers, for hire, such apparatus is a motor vehicle within the purview of Section 6290, General Code, as amended, and being such, the tax should be computed thereon at its weight, which includes such equipment as is built into, and becomes a part of such vehicle.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3933.

PUBLIC DANCE—MAYOR WITH-HOLDING PERMIT SOLELY FOR REASON OF TRAFFIC CONGESTION, ACTS IMPROPERLY—SAME APPLICABLE TO BOXING EXHIBITIONS.

SYLLABUS:

Where the mayor of a municipality denies dancing permits provided for in Section 13393, *General Code, and boxing exhibition permits provided for in Section* 12803, *General Code, solely for the reasons that such affairs cause congestion of traffic, violations of parking rules and complaint about congested parking by citizens living in the vicinity, and where he indicates that he would grant such permits but for these reasons, he withholds such permits improperly.*

COLUMBUS, *Ohio,* January 9, 1932.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio*

DEAR SIR:—Acknowledgment is made of your communication stating that the mayor of Berea, Ohio, refuses to issue permits for dancing and boxing and other functions at the new state armory there, for the reasons that such affairs cause congestion of traffic, violation of parking rules and complaint about congested parking by citizens living in the vicinity, and asking whether the mayor may prohibit the holding of such functions in a state-owned armory for the reasons given. It is important to note that the letter which you enclose, addressed to you by Captain Ursprung of the 145th Infantry Regiment, stationed at Berea, states that the mayor stated to the captain that he would issue such permits if a parking space were built in the rear of the building, but that the captain says that