

419.

PORTABLE CRANE—PROPELLED OVER HIGHWAYS—SUBJECT TO
MOTOR VEHICLE LICENSE TAX.

SYLLABUS:

When a gasoline motor operated hoisting derrick is propelled over the highways of the state on its own wheels, by means of an engine or motor mounted thereon, it is a motor vehicle, within the meaning of that term as defined in Section 6290, General Code, and is subject to the motor vehicle license tax.

COLUMBUS, OHIO, March 30, 1933.

HON. GLENN P. BRACY, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as to whether a portable crane used "in the erection of structural steel" is a "motor vehicle" within the meaning of the so-called "motor vehicle license act" and whether the owner of such equipment is required to obtain a license pursuant to the provisions of Sections 6290 et seq. General Code, before operating such equipment over the public highways.

A "motor vehicle" is defined, for the purposes of such act, in Section 6290, General Code, as:

"* * * Any vehicle propelled or drawn by power other than muscular power, except road rollers, traction engines, steam shovels, electric shovels, well drilling machinery, ditch digging machinery and farm machinery."

Since the vehicle in question is self-propelled, that is, it is operated by other than muscular power, it is clearly a motor vehicle unless it comes within the provisions of the exception clause in Section 6290, *supra*.

From the enclosed photographs, it is self-evident that the portable crane in question is not a road roller, steam shovel, electric shovel, ditch digging machinery, farm machinery or well drilling machinery. The accompanying photographs show an ordinary gasoline motor hoisting portable, or derrick crane mounted upon a wheeled carriage, having automotive engine and steering equipment. No equipment is mounted thereon for digging ditches, drilling wells or performing ordinary farm work.

Your complainant contends that he is entitled to exemption from the tax "under paragraph 2, section 6290 * * * as ditch digging machinery and gasoline shovels, even though we ourselves do not use the machine for this specific purpose." It must be borne in mind that the exemption of ditch digging machinery and gasoline shovels from the tax is only by reason of the fact that they are specifically exempted in the exception clause in a law levying a tax on motor vehicles generally. As stated by Wanamaker, J., in *State ex rel. Keller vs. Forney*, 108 O. S. 463, 467:

"The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the law is clearly included in the operation of the law."

The presumption is even greater in the case of exemption from taxation for, as has been held on several occasions, laws exempting any property in the state from taxation are in derogation of common right and should therefore be strictly construed. *Cincinnati College vs. State*, 19 Oh. 110, 115; *Lima vs. Cemetery Association*, 42 O. S. 128; *Lee vs. Sturges*, 46 O. S. 153; *Sturges vs. Carter*, 114 U. S. 511, 29 L. Ed. 240; *Waterson vs. Halliday*, 77 O. S. 150.

While many of the working parts of a self-propelled gasoline motor crane or derrick may be similar to that of ditch digging machinery, or gasoline shovels, if the apparatus is neither used for the purposes of digging ditches or shoveling earth nor equipped to be so used, it would be almost a perversion of the language to say that such apparatus came within the meaning of the terms.

The term "traction engine" is defined in Section 6290, paragraph 3, 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."

The vehicle in question is not designed or used for drawing other vehicles.

I am therefore of the opinion that when a gasoline motor operated hoisting derrick is propelled over the highways of the state on its own wheels, by means of an engine or motor mounted thereon, it is a motor vehicle, within the meaning of that term as defined in Section 6290, General Code, and is subject to the motor vehicle license tax.

Respectfully,
JOHN W. BRICKER,
Attorney General.

420.

ORDINANCE—MUNICIPALITY GRANTING PUBLIC UTILITY A FRANCHISE AND FIXING RATE—REFERENDUM PROCEDURE OF CONSTITUTION APPLICABLE—FAILURE OF COUNCIL TO ORDER SUCH REFERENDUM AND OF THE ELECTION TO BE HELD WITHIN TIME UNLESS SUCH ELECTION INVALID.

SYLLABUS:

1. *Where an ordinance is passed by council granting to a public utility company a franchise for furnishing its product and service to a municipality and its inhabitants, and fixing the rates therefor, the procedure for a referendum thereon is governed by the provisions of sections 5 and 8 of article XVIII of the Ohio Constitution, and section 4227-2, et seq., of the General Code, do not apply thereto.*

2. *Where, in such a case, a referendum petition to such an ordinance was filed with a village clerk who certified the same to the board of elections, and an election was had thereon one hundred and ninety days after the passage of the ordinance, the council never having taken any action thereon, the failure to file such referendum petition with the legislative authority of the village, and the*