

"Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, or acts in a way tending to cause delinquency in such minor, shall be fined not less than ten dollars, nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both. Each day of such contribution to such dependency, neglect or delinquency, shall be deemed a separate offense. If in his judgement it is for the best interest of a delinquent minor, under the age of eighteen years, the judge may impose a fine upon such delinquent not exceeding ten dollars, and he may order such person to stand committed until fine and costs are paid."

The fine and costs described in the above section are taxed against a delinquent minor; but even then, they are taxed by the court "when acting as a judge of the juvenile court" and the probate judge's fee is for a "case filed against a delinquent child" and the amount is "two dollars and fifty cents" as provided in section 1602 G. C.

It is therefore the opinion of this department that when acting as judge of a juvenile court, a probate judge may not tax any costs against delinquent, dependent or neglected children, except the costs which may be taxed against delinquent minors under the age of eighteen years, under the provisions of section 1654 General Code. In a case of this kind the fee of the probate judge is two dollars and fifty cents as provided by section 1602 G. C., as amended, 109 O. L., page 42.

Respectfully,

C. C. CRABBE,
Attorney-General.

2139.

AUTOMOBILE LICENSE TAX—FEDERAL RESERVE BANK COMES WITHIN PROVISIONS OF SECTION 6295 G. C.

SYLLABUS:

The Federal Reserve Bank comes within the provisions of section 6295, General Code of Ohio.

COLUMBUS, OHIO, January 12, 1925.

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

DEAR SIR:—I am in receipt of your communication in which you inquire whether a Federal Reserve Bank may be exempted from the payment of automobile license taxes on automobiles owned by it.

Section 6295, General Code of Ohio, as far as pertinent, provides:

"Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto. The secretary of state shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government."

By this section publicly owned and operated motor vehicles used exclusively for

public purposes are registered as provided in this chapter and exempted from the payment of the license tax.

Section 51 of the Federal Reserve Act provides:

“Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, state and local taxation, except taxes upon real estate.”

Section 5219 of the Federal Statutes is a similar provision relating to national banks and differs only in that it permits state authorities to tax the share of stock owned by persons residing in this state. Under such section the courts have held that national banks may only be taxed in accordance with such section.

In the case of *Citizens Savings Bank v. Owensboro*, 173 U. S., 636, it was held:

“The respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress.”

Again, in the case of *Albuquerque First National Bank v. Albright*, 208 U. S., 548, it was held:

“The only taxation of national banks contemplated by this section is taxation on shares of stock and on real property.”

Considering the above cases, it is believed that section 51 of the Federal Reserve Act would only authorize the state of Ohio to levy a tax upon the real estate of such Federal Reserve Bank.

The only question left for determination is whether the automobile license fee, as such, is a tax and therefore prohibited to the state to levy.

In the case of *Saviers v. Smith*, 101 O. S., 132, it is said on page 135 of the opinion of Judge Johnson:

“It is perfectly apparent that this statute is a tax or revenue measure. The taxes are raised for a specific object, namely, the maintenance and repair of the public roads. The tax is levied on the privilege of operating a motor vehicle on the public highways. The provisions in the law with reference to its administration, and with reference to regulation and registration of motor vehicles, are merely incidental police regulations which do not affect the main object intended. The law provides that all fees collected under the chapter shall be paid into the state treasury to the credit of a fund to be designated as a ‘state maintenance and repair fund.’”

The granting of a license is the plan provided for the imposing and collection of the tax. As held by the Supreme Court of the United States, *License Tax Cases*, 5 Wall., 462,

“The requirement of payment for such licenses is only a mode of imposing taxes on the licensed business, and the prohibition, under penalties, against carrying on the business without license is only a mode of enforcing the payment of such taxes.”

From the above case it will be seen that an automobile license tax is a privilege tax and not a police regulation. Since such license fee is a tax, it is believed that it is prohibited by section 51 of the Federal Reserve Act.

You are therefore advised that a Federal Reserve Bank comes within the provisions of section 6295, General Code of Ohio.

Respectfully,
C. C. CRABBE,
Attorney-General.

2140.

MAYOR, MARSHAL OR CHIEF OF POLICE IS ENTITLED TO FEES IN STATE CASES—SECTION 4270 G. C. CONSTRUED.

SYLLABUS:

Section 4270, General Code, does not apply to fees earned by a mayor, marshal or chief of police in state cases, but such fees should be paid to such officers for their personal use.

COLUMBUS, OHIO, January 12, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of December 23, 1924, reading as follows:

The third paragraph of the syllabus of the decision in the case of State ex rel. Nead vs. Nolte, No. 18551, decided by the Supreme Court December 16, 1924, reads:

‘Section 4270, General Code, as amended in 106 O. L., Pt. 2, page 1208, imposes no duty upon the mayor of a municipality to pay into the city treasury the fees taxed in favor of such mayor in the hearing of state cases.’

‘The Court did not have before it the question of fees earned by a chief of police of a city or marshal of a village, in state cases, but such question is of equal importance to the Bureau in view of the above decision and we respectfully request your opinion on the following matters:

“Question 1. Is the chief of police in a city entitled to fees in state cases?”

“Question 2. Is the marshal of a village entitled to fees in state cases without action by the municipal council?”

Provision has been made by the legislature for charging fees earned by a mayor, marshal and chief of police.

Section 4213, General Code, reads:

“The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and, except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury.”

Section 4219, General Code, is as follows:

“Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the