

appears that the act is one which provides for a tax levy and consequently falls within the constitutional exception.

The words, "charge such amount to such company as a tax upon the business done by it in this state" directly impose a tax and state distinctly the object for which it is imposed. The act likewise fixes the amount or percentage of value to be levied, designates the property against which the levy is to be made, and in respect to its being self-executing requires no additional legislation to put it into execution.

Summarizing, it is therefore my opinion that Section 5433 of the General Code, as amended by Amended Senate Bill No. 218, of the 93rd General Assembly, is a law providing for a tax levy and therefore under the provisions of Section 1d, of Article II, of the Constitution of Ohio, became effective upon approval by the Governor, on March 25, 1939.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

452.

FIREWORKS PLANTS—FACTORY BUILDINGS—MANUFACTURING — RESTRICTIONS — ZONING—LEGISLATION—RETROACTIVE—STATUS—OPERATION SECTION 5904-13 G. C.

SYLLABUS:

1. *Factory buildings in fireworks plants in operation at the time of the effective date of Section 5904-13, General Code, may continue to be used for manufacturing fireworks, even though such buildings have changed ownership since such effective date, irrespective of the restrictions contained therein.*

2. *Factory buildings in fireworks plants that have been erected since the effective date of Section 5904-13, General Code, may not be used for manufacturing fireworks, if such buildings are within the distances prohibited by Section 5904-13, General Code.*

COLUMBUS, OHIO, April 21, 1939.

HON. GEORGE A. STRAIN, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication from your office which reads as follows:

"In August, 1931, Section 5904-13 of the General Code, State of Ohio, otherwise known as the fireworks statute, be-

came effective, requiring a manufacturer of fireworks to meet certain requirements in the situs of its buildings or plants with reference to inhabited dwellings, railroads and public highways. However, the section of the statute above referred to exempted those plants which were existing and in operation at the time of the effective date of such Act.

A manufacturer of fireworks, operating on what is known as the Akron-Hudson-Cleveland Highway, under the name of the X company one thousand (1000) feet from the nearest inhabited dwelling, and nearer than three hundred (300) feet to any public highway, was incorporated in the year 1938. However, some of the buildings of the X company were in existence, and fireworks were being manufactured in some of such buildings at the time of the effective date of Section 5904-13 by a previous corporation. Since the year 1931 additional buildings have been built and constructed by both the previous company and the present company, the X company.

The Department of Industrial Relations, State of Ohio, desires to have an opinion from the Attorney General's Office, State of Ohio, on the following two questions:

1. The fact that fireworks are now being manufactured by a company other than the owner of the plants, as of the effective date of Section 5904-13, is such statute applicable to the present owner and operator?
2. Is such statute applicable to the buildings that have been erected since the effective date of Section 5904-13?"

Section 5904-13 of the General Code, in so far as it is pertinent to the issue, reads as follows:

"No factory building used in the manufacture of fireworks or pyrotechnic displays shall be situated nearer than one thousand feet to any inhabited dwelling, nor nearer than 300 feet to any highway or any railroad, nor nearer than 100 feet to any building used for the storage of explosives or fireworks, nor nearer than 50 feet to any other factory building. *This section shall not apply to existing factory buildings in fireworks plants now in operation.* * * * 114 O. L. 232, effective August 1, 1931 * * *." (Italics the writer's).

I may say at the outset that after a careful examination of the authorities in Ohio, I am unable to find any reported case or any opinion of this office which has passed upon the questions in your letter.

To your first question :

In 18 O. J., p. 886, it is said :

“It is within the police power of the State to enact measures to minimize the dangers resulting from the manufacture, storage and use of explosives by prescribing regulations therefor. The General Code prescribes various regulations relating to the manufacture, storage, possession, transportation and sale of explosives which are to be reasonably construed to accomplish the manifest purpose.”

A cursory examination of Section 5904-13, supra, shows that there was to be no retroactive operation. I am advised that fireworks have been manufactured continuously on these premises for the past 18 years and operations have never ceased to this date.

Section 5904-13, supra, being regularatory in nature, should be construed in light of the evil to be remedied and with the cardinal object of ascertaining and giving effect to the intention of the Legislature. The statute expressly states that it was not to affect “existing factory buildings.” It does not mention owners operating factory buildings, nor any specific corporation operating factories when the law was to become effective.

This section may be likened to the average zoning ordinance in any city. In those cases, existing businesses may continue to operate the same as when the ordinance became effective by virtue of a saving clause in such ordinance and subsequent owners of such businesses are not affected by such zoning ordinances as long as they continue to use their premises as preceding owners did. Applying the analogy to the question at hand, Section 5904-13, supra, contained a saving clause that the statute was not to apply to existing factory buildings in operation at the time it became effective. The statute containing no other prohibition, the saving clause applies to all buildings used for the manufacture of fireworks at the effective date of Section 5904-13, supra, as long as continuously operated and is not limited to then owners of such buildings. It follows that the statute does not forbid subsequent owners to continue the use of such buildings for the manufacture of fireworks.

Therefore, in specific answer to your first question, it is my conclusion that the statute is applicable to the present owner and operator of the X company.

In answer to your second question, it is my conclusion that the statute is applicable to buildings erected since the effective date of Section 5904-13, supra.

In conclusion, it is my opinion that :

1. Factory buildings in fireworks plants in operation at the time of

the effective date of Section 5904-13, General Code, may continue to be used for manufacturing fireworks, even though such buildings have changed ownership since such effective date, irrespective of the restrictions contained therein.

2. Factory buildings in fireworks plants that have been erected since the effective date of Section 5904-13, General Code, may not be used for manufacturing fireworks, if such buildings are within the distances prohibited by Section 5904-13, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

453.

BONDS—CITY OF YOUNGSTOWN, MAHONING COUNTY,
\$10,000.00.

COLUMBUS, OHIO, April 24, 1939.

Retirement Board, State Public School Employes' Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Youngstown, Mahoning County,
Ohio, \$10,000.00.

The above purchase of bonds appears to be part of a \$1,845,000 issue of street widening bonds of the above city dated October 1, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of March 2, 1939, being Opinion No. 223.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.