

ration who imports or causes to be imported into the State of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the State of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

It will be noted that the additional information furnished me, brings the importing and sale of such motor vehicle fuel within the express provisions of said Section 5526. As the importers of said motor vehicle fuel sold the same in tank car lots or in its original containers to purchasers for use, distribution or sale and delivery in this state, said Section 5526 applies, and provides that, under such facts, "such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers." The fact that the importer in this instance is a registered dealer is immaterial, since the proviso of the section clearly makes the purchaser the dealer, and liable for the tax on the motor vehicle fuel herein described.

It is not believed that further discussion or citations are necessary as the provisions of Section 5526, supra, are an express answer to your question.

It is therefore my opinion, specifically answering your question, that you should endeavor to collect the motor vehicle fuel tax from the M. C. Oil Company, the purchaser, and not from the S. Refining Company, the seller.

Respectfully,

GILBERT BETTMAN, °  
Attorney General.

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416.

FOREIGN REAL ESTATE—SPECIFIC ACTIVITIES OF TOURS COMPANY DO NOT CONSTITUTE DEALING IN SUCH PROPERTY UNDER SECTION 6373-15, GENERAL CODE—LICENSE UNNECESSARY.

SYLLABUS:

*When solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio, at a cost to the tourist of more than the actual cost necessary for such tour, resulting in a profit to the tours company, which company is not operating in conjunction with any land selling company and has no agreement or understanding whereby a commission or compensation is paid to the tours company on sales of real estate to tourists, and the sole object of conducting a tour is to make a profit thereon rather than the sale of real estate, although compensation may be paid to the tours company in isolated cases when tourists purchase real estate, which compensation is paid by land selling companies without any agreement or understanding as to its payment, such solicitation does not constitute dealing in real estate not located in*

*Ohio within the meaning of Section 6373-15, General Code, and it is therefore unnecessary that such solicitors be licensed under the securities law.*

COLUMBUS, OHIO, May 18, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“On March 13, 1929, I asked you for an opinion as to whether the operation of a ‘tours company’ in accordance with the facts set forth in my said letter, was in violation of Section 6373-15 of the General Code of Ohio in that it constitutes dealing in foreign real estate without having a license from the Division of Securities. In response to my request you rendered Opinion No. 256.

A somewhat similar question again arises in the Division of Securities. The facts, however, are slightly different and in order to more clearly place before you the question as to which I now seek your opinion I state the following case:

‘Ray C. Ellsworth, Inc., of which Mr. Ray C. Ellsworth is president, is an incorporated company with its principal place of business at Akron, Ohio. This company organizes tours which are conducted to various points in the southwest but are not confined to any one itinerary or route. Schedules of the various tours take the parties to either New Orleans or St. Louis as concentration points and from there they go to Houston, San Antonio, Matamoros in old Mexico and various points in the lower Rio Grande Valley of Texas.

The cost for each person is \$100 which covers the entire expense of the trip and in addition leaves a margin of profit for the company. The majority of the tours, organized by the company, are personally conducted by Ray C. Ellsworth, president of the company.

Neither Mr. Ellsworth nor the company owns any land in southern Texas or elsewhere along the route, have no land for sale and do not solicit or attempt to sell any land either while in Ohio or on the tour. This is made plain to the members of the party at the outset and they are under no obligation whatever to purchase land.

Numerous companies and individuals have land for sale in southern Texas and it often happens that members of the party purchase tracts of land, either direct from the owner or the agent, after a personal inspection of the property. In most cases where sales are made to the members of the party, the negotiations for the sale or purchase are had and contracts consummated in the absence of Mr. Ellsworth and without his knowledge. In other words, the negotiations leading up to the sale or purchase, the making of the contract for such sale or purchase, and all other arrangements in connection with the transaction are between the purchaser and owner, or his local agent or representative direct.

Although neither Mr. Ellsworth nor the Ellsworth Company has any contract with any land company, we are frank to admit that several of these companies have compensated Mr. Ellsworth in cases where sales have been made to members of his party.

Neither Mr. Ellsworth nor the company have any knowledge of the intention on the part of the members of the party to purchase land and each and every member is given the same consideration on this tour for the \$100 deposited by such member.

Will you please advise whether or not the tours conducted by Ray C. Ellsworth, Inc., as recited above are in violation of the Blue Sky Law of Ohio, this company not being licensed thereunder?"

From the facts presented in your letter, apparently a very different situation arises from that which was considered in my Opinion No. 256 to which you refer. Practically every fact upon which this previous opinion is predicated appears to be absent here.

This tours company is conducting tours independently and at a profit, and not as an incident to the business of selling real estate in any locality. Furthermore, the tours are not confined to any one particular itinerary or route. To hold from the statement of facts as presented, that this company is engaged in the selling of real estate would in my opinion place such a construction upon the securities law as was clearly not intended by the Legislature and which could not be upheld in the courts in an attempt to conduct a prosecution for an alleged violation of this act.

If in isolated cases tourists upon their own initiative purchase land and a land selling company compensates the tours company, the acceptance of such compensation with no agreement or understanding as to its payment would not constitute the tours company as real estate dealers.

Specifically answering your question, I am of the opinion that when solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio, at a cost to the tourist of more than the actual cost necessary for such tour, resulting in a profit to the tours company, which company is not operating in conjunction with any land selling company and has no agreement or understanding whereby a commission or compensation is paid to the tours company on sales of real estate to tourists, and the sole object of conducting a tour is to make a profit thereon rather than the sale of real estate, although compensation may be paid to the tours company in isolated cases when tourists purchase real estate, which compensation is paid by land selling companies without any agreement or understanding as to its payment, such solicitation does not constitute dealing in real estate not located in Ohio within the meaning of Section 6373-15, General Code, and it is therefore unnecessary that such solicitors be licensed under the Securities Law.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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417.

CHARTER CITY—PROVISION OF SECTION 5625-10, GENERAL CODE, APPLICABLE—APPROPRIATION OF DEPOSITORY INTEREST EARNED ON BOND FUNDS FOR CERTAIN PURPOSE—ILLEGAL.

SYLLABUS:

1. *The provision of Section 5625-10, General Code, that interest earned on money in a special bond fund shall be paid into the sinking fund or the bond retirement fund of the subdivision, is a limitation upon the power to tax and is, accordingly, applicable to charter municipalities as well as to other taxing subdivisions of the state.*

2. *A charter city may not legally appropriate depository interest earned on bond funds for the purpose of supplementing such bond funds and authorize the expenditure of such depository interest for the purposes of such bond funds.*