

expenses for the year 1927. It is therefore presumed that the combined maximum rate in said village was levied.

Section 5649-5e (f), General Code, entitled "Tax levy for general purposes; limitations, Sec. 6," provides as follows:

"The taxing authorities of any municipality may by resolution adopted by a two-thirds vote, levy annually for the general purposes of the municipality in addition to the levy for current expenses within the ten mill limitation prescribed by the General Code on the tax rate, a tax not exceeding three and a half mills upon each dollar of the taxable property of such municipality. Such levy shall be subject only to the limitations imposed by the combined maximum tax rate for all taxes by Section 5649-5b, and shall include any levies heretofore authorized by vote of the electors of the municipality under Sections 5649-5, 5649-5a and 5649-5b, and a sufficient levy under and within the provisions of Section 7908 of the General Code, to produce the amount requested from the budget commission for any municipal university. * * * The additional levy authorized as hereinbefore set forth shall be certified to the budget commission prior to the first Monday in August."

This section provides for an additional tax levy by a municipality by resolution adopted by a two-thirds vote; but it also provides that said levy shall be within the limitations prescribed therein and that said additional levy so authorized shall be certified to the budget commission prior to the first Monday in August.

It is evident that under the provisions of this section said levy authorized by a two-thirds vote of the taxing authorities in a municipality must come within the limitations prescribed in said section, and that it also must be acted upon by the budget commission prior to the first Monday in August, and therefore confers no authority upon a village council to enact legislation for an additional tax levy and have the same certified to the county auditor and placed upon the tax duplicate for collection.

I find no other section or sections of the General Code that would authorize the village council to take the action purported by said ordinance.

It is therefore my opinion that the council of the village of Bryan was unauthorized to enact and pass the ordinance passed by it March 7, 1927, purporting to levy an additional tax of eight-tenths of a mill upon all of the real and personal property in said village.

There was therefore no authority for certifying this ordinance to the county auditor, and said county auditor would be unauthorized to place said levy upon the tax duplicate for collection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

258.

COMMERCIAL CAR—DEFINITION OF—APPLICATION TO SPECIFIC CASE.

SYLLABUS:

1. *The phrase "commercial car" as used in Section 7249-1, General Code, is defined in Section 6290, General Code, and is any motor vehicle having motor power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor.*

2. *The fact that a motor vehicle of the above description transports only the goods of the company owning such vehicle, does not render inapplicable the provisions of Section 7249-1 of the General Code.*

COLUMBUS, OHIO, March 30, 1927.

HON. HERMAN E. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent letter reading as follows:

“A question has been presented to me in connection with the traffic rules and regulations contained in Section 7246 to Section 7251 of the General Code, and I would like to have an opinion from your office before taking any definite action. Section 7249-1 provides that no COMMERCIAL car shall be operated upon the improved streets, highways, bridges or culverts within this state which does not display on the side thereof, in plain, legible letters and figures, the weight of the vehicle fully equipped, manufacturer's rated carrying capacity or passenger seating capacity and tire width of such vehicle.

There is a truck operating over the roads of this county owned by a baking concern in Dayton, Montgomery county, Ohio, which truck does not display the weight of the vehicle and so forth as specified in Section 7249-1. The company owning this truck contends that it is not a COMMERCIAL car in that it only transports the goods of this company, and that therefore it does not fall within this section of the law.

In view of this contention I would like to have your opinion construing the word COMMERCIAL car, as used in said Section 7249-1 of the General Code.”

Section 7249-1 of the General Code reads as follows:

“No commercial car shall be operated upon the improved streets, highways, bridges or culverts within this state which does not display on the side thereof in plain, legible letters and figures, the weight of the vehicle fully equipped, manufacturer's rated carrying capacity, or the passenger seating capacity and the tire width of such vehicle.”

Section 7249 of the General Code was amended in 110 O. L., 319, and at the same time Section 7249-1 was enacted. One of the evident purposes of Section 7249-1 is to assist in the enforcement of the preceding section. This preceding section provides for the operation of commercial cars with respect to the speed and weight of these cars and defines only certain classes of commercial cars. Since Section 7249-1 uses the phrase “commercial car” comprehensively, it is necessary to determine whether or not there is any definition of such phrase found elsewhere in the statutes.

Section 6290 of the General Code reads in part as follows:

“Definitions of terms, as used in this chapter (Chapter 21, Motor Vehicles) and in the penal laws, except as otherwise provided:

* * *

6. ‘Commercial car’ means any motor vehicle having motor power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor .

* * *”

Section 13421-17 of the General Code reads:

“Whoever violates any of the provisions of section 7246 to 7250 inclusive,

of the General Code, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than ninety days, or both fined and imprisoned."

Since Section 13421-17, supra, is a penal section or penal law as referred to in Section 6290, supra, I am of the opinion that the phrase "commercial car" as used in Section 7249-1, supra, is defined in Section 6290, supra, and is any motor vehicle having motor power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor.

It is clear that the truck mentioned in your letter falls within the purview of the above definition, and I am of the opinion that the contention that said truck transports only the goods of the company owning the truck is not sufficient to warrant this company from refusing to comply with the provisions of Section 7249-1 of the General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

259.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN ALLEN COUNTY, OHIO.

COLUMBUS, OHIO, March 30, 1927.

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

DEAR SIR:—I have examined the abstract of title and warranty deed submitted by you covering the following described property:

"Situated in the county of Allen and state of Ohio, to-wit:

Being a part of the Northwest quarter ($\frac{1}{4}$) of Section One (1) Township Four (4) South, Range Six (6) East Shawnee Township, more particularly described as follows:

Beginning at a point on the East line of the Amanda Road (sometimes called Shawnee Road) One Hundred and Thirty (130) feet Northeast of the Northeast corner of Oxford Avenue and Amanda Road, thence Northeasterly along the East line of said Amanda Road Four Hundred (400) feet to a point, thence in a Southeasterly direction at right angles to the said Amanda Road and parallel to the North line of said Oxford Avenue Four Hundred (400) feet to a point. Thence Southwesterly on a line parallel to said Amanda Road Four Hundred (400) feet to a point one hundred and Thirty (130) feet from Oxford Avenue, thence in a Northwesterly direction on a line parallel to the North line of said Oxford Avenue Four Hundred (400) feet to the point of beginning."

I. The abstract of title under consideration was prepared by Atmur & Atmur, abstracters, Lima, Ohio, and was certified to by them under date of March 5, 1927, at 10:15 o'clock A. M. The abstract as submitted covers the premises above described, and upon examination thereof I am of the opinion that the same shows good and marketable title to said premises in J. O. Hover, William E. Hover, Frank B. Hover, H. M. Dille, Rea H. Stockton, Lou Hunt and Robert Byron.

II. I find the deed to be a general warranty deed in proper form and to have been duly executed according to law, except in the following respects, to-wit: