

"The sale of motor vehicle fuel shall not be subject to said tax:

\* \* \*

(d) if such motor vehicle fuel be in process of transportation in international or interstate commerce, \* \* \*

In the instant case the said X, the dealer who imports the motor vehicle fuel into Ohio for distribution or sale, is liable for the payment of the three cent tax on said motor vehicle fuel unless the dealer comes within the proviso of Section 5526, General Code. Said proviso reads as follows:

"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."

Under this provision the dealer so importing such motor vehicle fuel into this state and selling the same in tank car lots or in its original containers to a purchaser for use, distribution or sale and delivery in this state is relieved from the payment of the tax and the purchaser of the motor vehicle fuel in tank car lots or original containers shall be deemed the dealer and therefore be subject to the payment of the tax. It is evident from the plain statements of this proviso that it applies either to sales in tank car lots or in original containers.

Specifically answering your question, it is my opinion that where a dealer ships motor vehicle fuel into Ohio by tank steamers and after unloading it into storage containers, sells said fuel to Ohio dealers in tank car lots, the importer is not liable but the Ohio purchasers from said importer are liable to the payment of the three cent tax.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2816.

CORPORATION—USE OF WORD "BANKER"—PERMISSIBLE WHEN A PERSON'S PROPER NAME—GIVEN NAME AND INITIAL MUST PRECEDE.

**SYLLABUS:**

*The use of the word "Banker," as part of the designation of a corporation, may be permitted, where it is an integral part of the proper name of the person seeking to form the corporation and the remainder of the name is set forth so that no possibility of deception of the public is present.*

COLUMBUS, OHIO, November 1, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

"We enclose copy of a letter under date of October 24th received from Paul M. Banker, located at Dayton, Ohio.

Mr. Banker wishes to incorporate under the name PAUL M. BANKER, INC. He refers to a conversation with someone in your office. Are we to understand notwithstanding your opinion number 1996, under date of April 20, 1928, that articles carrying the name 'Paul M. Banker, Inc.' could be admitted to filing?"

The explanatory letter, copy of which you enclose, is as follows:

"Some time ago I made application for incorporation papers, under the name of Banker & Mays. This name was rejected, saying the name (Banker) could not be used in a corporation in the State of Ohio.

I took this matter up with the Attorney General, Edward C. Turner, and he advises me that he is limited by law, in giving advice, only to state officials, boards and commissions and to prosecuting attorneys, in matters in which the State is or may be a party.

He suggested to me, however, that I make application to you for incorporation, under the name of PAUL M. BANKER, INC., calling particular attention to the fact that (BANKER) is my true name."

Your question is caused by the prohibitory language of Section 710-3, General Code, which so far as pertinent, is as follows:

"The use of the word 'bank,' 'banker' or 'banking,' or 'trust' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business is or may be conducted in this state, is restricted to banks as defined in the preceding section. All other persons, firms or corporations are prohibited from soliciting, accepting or receiving deposits, as defined in Section 2 (G. C., Section 710-2) of this act and from using the word 'bank,' 'banker,' 'banking,' or 'trust,' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business may be conducted in this state. \* \* \*

In a previous opinion of this office addressed to you, being Opinion No. 1996, dated April 20, 1928, it was held that the use of the name "The Ohio Bank-Securities Corporation" could not be permitted in view of the prohibitory language of the section above quoted. This conclusion is based, in part, upon the decision of the Supreme Court of Ohio in the case of *Inglis vs. Pontius et al.*, 102 O. S. 140.

In the question before the court and also in the question before me in my prior opinion the term used as part of the designation was a word in the ordinary sense. Here it is proposed to use the same arrangement of letters as a component part of a proper name. I do not feel that the prohibitory language of the section would be applicable in this instance.

Quite obviously the purpose of the statute is to prevent the deception of the public by advertising the business as that of a bank or pertaining to a banking business, when in fact the business is not qualified as such.

While my previous opinion states that it is dangerous to assume any fixed standard of intelligence and decide as a matter of law that the use of the prohibited words would be misleading to no one, yet, in this instance, I do not feel that the statute applies. In the first place here the word "Banker" is the proper name of the person seeking to form the corporation. That of itself does not in my opinion necessarily

prevent the application of the statute. It is quite possible, that, even though the word were the name of an actual individual, its use in connection with other portions of the designation of the corporation might be such as to be misleading to the public. It is, however, in this instance coupled with the given name and initial of the person proposing to incorporate, and I feel justified in stating that no possible deception could arise.

Accordingly by way of specific answer to your inquiry, you are advised that you may properly file articles of incorporation for a corporation which proposes to use the name "Paul M. Banker, Inc."

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2817.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—\$1,500.00.

COLUMBUS, OHIO, November 1, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2818.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—\$1,500.00.

COLUMBUS, OHIO, November 1, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2819.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, November 1, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*