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LAW PROVIDING FOR TAX LEVY—SECTION 5433 G. C.—AMENDED SENATE BILL 218, 93rd GENERAL ASSEMBLY—UNDER ARTICLE II, SECTION 1d, CONSTITUTION OF OHIO—EFFECTIVE WHEN APPROVED BY GOVERNOR, MARCH 25, 1939—PREMIUM TAX ASSESSED AGAINST INSURANCE COMPANIES.

*SYLLABUS:*

*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.*

COLUMBUS, OHIO, April 21, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“A question has arisen as to the effective date of Senate Bill Number 218 amending Section 5433 of the General Code relative to the premium tax assessed against insurance companies upon business done in this state. In view of the fact that the duty of computing such tax is placed upon the Superintendent of Insurance, we are interested in determining the effective date of that act.

In the bulletin of the Ninety-Third General Assembly, Thirteenth Edition, April 6, 1939, at Page 75, it appears that this act was approved by the Governor March 23, after which the following statement appears: ‘Effective June 26, 1939.’ After examining Article II, Section 1 (d) of the Constitution, we were of the view that this was a law providing for a tax levy, and, therefore, went into immediate effect.

We would appreciate your view as to whether this position or the conclusion stated in the legislative bulletin is correct.”

Section 1c, of Article II of the Constitution of Ohio, which provides for the right of referendum by submission to the electors for their approval or rejection a law passed by the General Assembly, reads in part, as follows:

“The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum

of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. \* \* \*

The exceptions referred to in the above section are contained in Section 1d, of Article II, of the Constitution which, in so far as pertinent hereto, reads :

“Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.  
\* \* \*”

The above two sections were under consideration by the Supreme Court in the case of State, ex rel. Keller, v. Forney et al., 108 O. S., 463, wherein it was stated in connection therewith :

“We have therefore a general policy of power reposed in the people to approve or disapprove, to adopt or reject, by referendum, any law or section of law passed by the General Assembly of Ohio, with these three particular exceptions :

- (1) ‘Laws providing for tax levies.’
- (2) Laws providing for ‘appropriations for the current expenses of the state government and state institutions.’
- (3) ‘Emergency laws necessary for the immediate preservation of the public peace, health or safety.’”

It is a well settled principle of law that exceptions to the general provisions of law are to be strictly construed. In regard thereto it is stated in 37 Ohio Jurisprudence, page 781 :

“Statutory exceptions to the operation of laws, especially if such laws are entitled to a liberal construction, should receive a strict, but reasonable, interpretation. In the absence of direct language, they should not, it has been declared, be carried further than the spirit of the law requires, or enlarged from considerations of apparent hardship or inconvenience.”

That the above rule applies with respect to constitutional as well as

statutory exceptions was held in the Forney case supra, wherein it is stated in the syllabus:

"1. Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable, construction.

2. The language of Section 1d, Article II of the Constitution, expressly enumerating certain exceptions to the people's right of referendum upon acts of the General Assembly, must be construed and applied with reference to this rule.

3. The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonymous with laws 'relating' to tax levies, or 'pertaining' to tax levies, or 'concerning' tax levies, or any agency or method provided for a tax levy by any local subdivision or authority."

It was likewise stated in said case that in order to come within the constitutional exception, "provide for a tax levy", the law must be self-executing. The court, in connection therewith further stated:

"You cannot have a law 'providing for tax levies,' except its public purpose be stated; but, in addition thereto, such law must state the property subject to the tax, the rate of tax, the time when such tax is payable, and other elementary essentials of a taxation law."

The Act in question (Amended Senate Bill No. 218, 93rd General Assembly) reads as follows:

"Section 1. That section 5433 of the General Code be amended to read as follows:

Sec. 5433. If the superintendent of insurance finds such report to be correct he shall compute an amount of two and one-half per cent of the balance of such gross amount after deducting such return premiums and considerations received for reinsurance and charge such amount to such company as a tax upon the business done by it in this state for the period shown by such annual statement. All taxes so collected shall be credited to the general revenue fund of this state.

Section 2. That existing section 5433 of the General Code be and the same is hereby repealed."

Submitting the above language to the rules of construction above quoted, and to the tests laid down in the Forney case, supra, it clearly

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.*

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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-