

# A Review of Ohio Legislation 1933-34

In considering the activities of the Ninetieth General Assembly it may be of interest to look first at the output of that body from the standpoint of quantity. The following figures refer only to the regular session, but should be sufficient to give an indication of the total amount of legislation produced during the whole period.

## I *Action*

Bills Introduced .....	886
Bills Passed .....	219
Bills Vetoed .....	5

## II *Sections of the General Code Affected*

Enacted .....	630
Amended .....	326
Repealed .....	56

For purposes of convenience, the consideration of the subject matter of some of the enactments of the Legislature will be divided accordingly as the Acts referred to were passed during the regular session or the special sessions.

### REGULAR SESSION

It takes but a brief examination of the "Laws of Ohio" for the year 1933 to discover that Ohio is doing its part toward national recovery by measures similar in many respects to congressional enactments. Some of the more important of these laws are: an act passed to enable municipal corporations and other subdivisions to participate in the federal aid provided by the "national industrial recovery act" granting authority in these governmental bodies to issue a limited amount of bonds. 115 O.L. 601. Section 11588 of the Ohio General Code relating to the sale of foreclosed property was amended so as to give any court before which a proceeding for foreclosure of a mortgage or the enforcement of a lien or execution against real property power to postpone the sale for a period not later than February 1, 1935. 115 O.L. 227. An amendment to another section of the code made possible the issuance of bonds

by cities and counties for the relief of the poor and the unemployed. 115 O.L. 29. To obtain additional revenue for relief purposes taxes have been imposed on admissions, beer and cosmetics. The coffers of the state treasury were replenished by fees collected from the issuance of beer selling privileges. The state liquor stores which were established by the Liquor Control Commission have already become a lucrative, dependable source of income.

The recognized morals of former days were seemingly disregarded by the legislators in their quest for more revenue. This is shown by the act legalizing horse-racing "at licensed racing meetings and to levy and collect a tax on the business thereof." 115 O.L. 367. An attempt was made to use some of the beer taxes to aid the schools but because of the objection of educators the plan was dropped. Instead, the funds are being used to make payments under the old age pension law. It may be worthy of remark that at least one person who had qualified herself to the receipt of such payments being more sensitive as to the source of the fund than some of our legislators, had her application withdrawn.

To aid the schools a tax was placed on gasoline, in addition to renewing the cigarette tax for another two year period. Another act authorized boards of education to borrow money and issue notes to the amount the school district is entitled in the state educational equalization fund. 115 O.L. 48.

To make the new deal complete an amendment relative to exemptions was passed. 115 O.L. 430. The amount of personal earnings of an unmarried person free from attachment or garnishment was increased to thirty dollars per month; that of heads of families and widows was increased to sixty dollars per month.

In the last session, the legislators, like the administrators of the federal new deal, contracted a mania for organization and regulation of business and industry. The Liquor Control Commission, the Ohio Milk Marketing Commission, a Board of Embalmers and Funeral Directors, a Banking Advisory Board, a Board of Registration for Engineers and Surveyors, a Board of Barbers' Examiners, a Board of Cosmetology, a Wage Board for determining minimum wages and the enforcement thereof, Bureau of Motor Vehicles, a Division of Highway Patrol, and other agencies were created. The establish-

ment of these various organizations, their functions, etc., forms a large bulk of the current laws.

Of special importance to lawyers is the act providing for the rendition of declaratory judgments and decrees. It is an important step toward adapting the judiciary to the needs of a modern society. The next move must be made by the lawyers, namely, the utilization of the procedure it affords.

The liability of owners and operators of motor vehicles for injury to or death of guests is now expressly limited to situations where the injury or death was caused by the wilful or wanton misconduct of the operator or person responsible for the operation. If this enactment accomplishes its obvious purpose, guests, or their representatives, will find the recovery of a judgment much more difficult now than in the past.

An act was passed limiting the compensation of appraisers to five dollars each per day, provided that in the case of real estate the court might fix the compensation at a higher rate. Although it would be difficult to express this in clearer terms, one sheriff has justified the payment of four and five hundred dollars per month to his appraisers. In justice to him it should be added that since the last election he has signified his intention of observing the new fee law.

Several of the current laws have already been the subject of litigation. The act prohibiting the sale of prison-made goods of another state has been unsuccessfully attacked by Alabama. The act extending the present term of county recorders to January, 1937, has been declared invalid. *Board of Elections v State ex rel Schneider* 28 Ohio St. 273.

#### SPECIAL SESSIONS

The chief problems confronting the Assembly during the three special sessions (as well as the regular session) were those of taxation. The practically insoluble problem of extending existing revenue to meet all existing needs received a large portion of the efforts of the legislative body, but the question of providing additional revenue both by means of new tax measures and measures designed to facilitate the collection of delinquent taxes was not neglected.

That the principal cause of the "tax worries" was the "schools" is a matter of useless information so far as those persons who have been residents of this state in recent years are

concerned. It may not be amiss, however, to mention briefly a few of the methods adapted as temporary relief. An act passed at the regular session and amended at one of the special sessions levied a franchise tax on insurance companies, and appropriated the proceeds for the benefit of the school districts of the state. Similar in result was the act levying a tax on liquid fuels. The Statutes governing the apportionment of inheritance taxes was so amended as to give village councils and township trustees the option of crediting one-half of their share of such taxes to boards of education instead of putting it in the general revenue fund of the village or township. These are only a few of the measures involved to meet the emergency selected at random, but they should serve to illustrate the character of the legislative activity in this regard.

Provision for "relief of poor and unemployed" created another major demand on the revenues to the state. Proceeds of taxes on brewers and malt and on bottled beverages were appropriated for this purpose. Also counties and cities were authorized to issue bonds to meet this need.

Attempts to facilitate the collection of delinquent taxes were made in two ways. On the one hand acts were passed remitting penalties on taxes and assessments delinquent for 1932 and 1933. The problem was also attacked from a different angle by an act authorizing county treasurers to petition common pleas courts to be appointed receivers ex officio of the rents and profits of lands on which an installment of tax or assessment had been delinquent for more than six months. Such appointment being made, the court may order the delinquent taxes together with penalties etc., to be satisfied out of such rents and profits.

Although buffeted about on a stormy sea of financial difficulties, the assembly did, nevertheless, find time during the special sessions to pass some "non tax" legislation of general interest. A few of these acts will be mentioned here, but no attempt has been made to classify them either according to their subject matter or degree of importance.

The Act defining and fixing the punishment for certain acts relating to kidnapping is worthy of note. Under its provisions a person who kills or causes the death of another while kidnapping or attempting to kidnap such other person, or while he has such other person in his possession is guilty of first de-

gree murder, whether the death is caused during the period of detention or after. Furthermore it makes no difference whether the death is caused by violence or personal injury, threats of death or great bodily harm, exposure to weather or disease, neglect or failure to provide proper food, clothing, or medical attention, or any other means. Where a kidnapping occurs in another state a person who sends, brings, or causes the kidnapped person to be sent or brought into the state is deemed to have committed the offense here and shall be punished according to the laws of this state. The act of confining or imprisoning a kidnapped person with knowledge is punishable by imprisonment for not less than five nor more than thirty years. The same penalty is attached to the making of threats for purposes of extortion by any method whatever, to kidnap, kill, maim, or wound a person related by blood, marriage, or adoption to the person to whom the threat is communicated.

The "Housing Authority Law" authorizes the creation by the State housing board of a public authority to aid in housing families of low incomes, eliminating unsanitary conditions, and otherwise promoting public health, safety, etc. This public authority—consisting of boards of five members established in various communities—is given broad powers to accomplish the purposes for which it is to be created.

The Act relating to Mutual Savings Banks provides for the incorporation, organization, and regulation of such "Savings Societies" authorizes existing societies to incorporate thereunder; permits all such societies to become members of Federal Reserve System, to issue notes and debentures, and to procure benefits of insurance of bank deposits provided by Congress.

The Act authorizing the Tax Commission to create a bureau of research and statistics to study the operation of Ohio taxation and revenue laws, the probable effect of changing such laws, and the possible enactment of measures providing for other forms of taxation should achieve a desirable result. The beneficial possibilities of such an organization will, no doubt, be admitted even by those who feel tempted to say that the measure seems to be in the nature of an afterthought.

It is hoped that this brief summary will convey to the readers at least a general idea of legislative activity in Ohio during the past year, and indicate the desirability of making a

more complete study of the frequent changes in the law which are constantly being made by the general assembly.

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## IS THE MILK BUSINESS AFFECTED WITH A PUBLIC INTEREST?

On June 22, 1933, Governor George White of Ohio approved the Milk Marketing Act, establishing a Milk Marketing Commission to regulate the production, and distribution of bottled milk in Ohio. (115 Ohio Laws, page 288, Section 1080, 1-23, Ohio General Code). This Act has been upheld in a recent Cuyahoga Court of Appeals decision, *Glover Meadow Creamery Co. vs. National Dairy Products Corp.* 40 O. L. R. 57, decided March 26, 1934. In the above case, the defendant sought to have dissolved an injunction restraining it from continuing unfair business practices in the sale and distribution of milk. The defendant contended that the questions of monopolistic control, unfair competition, and price fixing are for the newly created Milk Marketing Commission to decide. The court of appeals dissolved the injunction, and declared the Milk Marketing Act constitutional. The dissolution of the injunction by the court, on the ground that the commission was the proper body of first instance, upheld the power granted the commission to decide all issues arising out of the milk industry. However, if a person or corporation, who is a party to a complaint filed with the commission, is dissatisfied with the commission's ruling, he may by a petition in error proceed to the Common Pleas court of any county in Ohio. (Section 1080-10, General Code).

The Ohio Milk Law was passed as emergency legislation and is to expire July, 1935, if not renewed. The Ohio Act is similar to the New York Milk Control Act. (Article 25, 300-319, New York Laws 1933). The New York Act expired March 31, 1934, and has been renewed. The only difference in the Acts of N. Y. and Ohio, is that the New York Board of Control had regulatory power over the entire dairy industry, while the Ohio act is limited to the regulation of bottled milk.

The question arises as to the constitutionality of the price fixing power granted to the commissions by legislation in New York and Ohio. *The Clover Meadow Creamery Co. v. National Dairy Products*, supra, was the first case in Ohio where the court upheld the regulatory feature of the Ohio Milk Marketing Act, regulating trade practices. Price fixing power was not involved, as this point was not raised. The question now arises, if the commission can regulate monopolistic control, and unfair practices, can it also fix prices of milk to be paid the producer, and the price to be paid by the consumer?

The decision that led the Cuyahoga Court of Appeals to declare the Milk Marketing Act of Ohio constitutional was *Nebbia v. New York* 291 U. S. 502, 54-Sup. Ct. 505. The *Nebbia* Case was decided March 5, 1934. It was only three weeks after the United States Supreme Court declared the