

territory, and what was apparently desired by the general assembly in conferring privileges upon electors in school territory desiring to be transferred, would not obtain at all.

You are therefore advised, in answer to your questions, that:

1. Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.

2. Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2433.

INHERITANCE TAX LAW—SAID TAX NOT ASSESSABLE IN THIS STATE ON SUCCESSION TO STOCK OWNED BY NON-RESIDENT DECEDENT IN CORPORATION ORGANIZED AND EXISTING UNDER LAWS OF ANOTHER STATE BUT WHICH DOES BUSINESS AND OWNS REAL ESTATE IN OHIO.

*Inheritance tax cannot be assessed in this state on a succession to stock owned by a non-resident decedent in a corporation organized and existing under the laws of another state but which does business and owns real estate in Ohio.*

COLUMBUS, OHIO, September 21, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—You request the opinion of this department upon the following question:

“Will you kindly advise whether or not inheritance tax can be assessed in this state on the succession to stock owned by a non-resident decedent in a corporation organized and existing under the laws of the state of New Jersey but which does business and owns real estate in Ohio?”

The inheritance tax law of this state contains the following provisions:

“Sec. 5331. As used in this subdivision of this chapter:

1. The words ‘estate’ and ‘property’ include everything capable of ownership, or any interest therein or income therefrom, whether tangible or intangible, and except as to real estate, whether within or without this state, which passes to any one person, institution or corporation, from any one person, whether by a single succession or not.

2. 'Succession' means the passing of property in possession or enjoyment, present or future.

3. 'Within this state,' when predicated of tangible property, means physically located within this state; when predicated of intangible property, that the succession thereto is, for any purpose, subject to, or governed by the law of this state. \* \* \*

"Sec. 5332. A tax is hereby levied upon the succession to any property passing, in trust or otherwise, to or for the use of a person, institution or corporation, in the following cases:

1. When the succession is by will or by the intestate laws of this state from a person who was a resident of this state at the time of his death.

2. When the succession is by will or by the intestate laws of this state or another state or country, to property within this state, from a person who was not a resident of this state at the time of his death.

3. When the succession is to property from a resident, or to property within this state from a non-resident, by deed, grant, sale, assignment or gift, made without a valuable consideration substantially equivalent in money or money's worth to the full value of such property;

(a) In contemplation of the death of the grantor, vendor, assignor, or donor, or

(b) Intended to take effect in possession or enjoyment at or after such death. \* \* \*"

"Sec. 5348-14. The tax on the succession to intangible property or tangible personal property not within this state from a resident of this state shall be deemed to have originated in the municipal corporation or township in which the decedent resided.

The municipal corporation or township in which the tax on the succession to the intangible property of a non-resident accruing under the provisions of this subdivision of this chapter, shall be deemed to have originated, shall be determined as follows:

1. In the case of shares of stock in a corporation organized or existing under the laws of this state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation has its principal place of business in this state. \* \* \*"

Analysis of these sections requires us first to determine whether a share of stock is to be regarded as tangible or intangible property. The answer to this question is more or less obvious in itself, but is made certain for the purposes of the Ohio law by the provisions of section 5348-14 above quoted, which of itself classifies each share of stock as intangible property.

It follows from this, without further argument, that the place where the tangible property belonging to the corporation itself is located is immaterial; for it is not that property which passes. In respect to that property there has been no succession; but the transfer which has taken place relates to the intangible property known as a share of stock.

Inasmuch as the decedent in the case submitted was a non-resident of this state, it now becomes necessary to determine whether the shares of stock of a foreign corporation having property in this state are "property within this state" for inheritance tax purposes; for section 5332 of the General Code makes it plain that where the succession was from a non-resident

the tax is only to be applied when the property is within this state. The property being intangible, the rule for determining whether it is within this state or not is furnished by subsection 3 of section 5331 above quoted, and we must inquire whether the succession to the share of stock is for any purpose subject to or governed by a law of this state.

It is to be borne in mind that the share of stock itself is not physically present within this state; that the corporate books and records are presumably kept at an office outside of this state, and that the decedent was a non-resident. There could therefore be no recourse to any court of this state for the purpose of enforcing any direct or collateral rights growing out of the succession by death; and if a foreign court should be called upon to determine the course of that succession or any collateral rights growing out of it, it is inconceivable that any Ohio law would be applied by that court. It would not be the Ohio corporation law because the organic law of the corporation is that of New Jersey, and for very obvious reasons it would not be the Ohio law of administration or of descent or distribution.

None of these conclusions is altered by the fact that the company does business in this state and has property here. True, these circumstances have required the corporation to comply with certain regulatory laws of the state before being entitled to do business, but these laws exhaust their force upon the corporation itself as an entity, and in nowise affect, under any possible circumstances, the devolution of the property right involved in its shares of stock nor the effective enforcement and protection of such rights.

Therefore, on principle, it does not seem difficult to answer the commission's question in the negative.

Text writers on the subject of inheritance taxes make the statement that several states claim inheritance tax on stock of non-residents in corporations not organized under their laws but owning property within the state. See Blakemore and Bancroft, section 197; Gleason and Otis, page 320. No case has been found, however, in which this claim has been sustained. The only possible theory on which it could be sustained is stated in the work last cited, as follows:

"On the theory that a certificate of stock is a mere muniment of title, like a title deed, not the stock itself, but mere evidence of its ownership \* \* \*."

This theory probably owes its origin to a dictum of Gray, J., in re: Bronson, 150 N. Y. 1, in which he used the following language:

"The shareholders are persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to all the properties acquired and appurtenant, but it holds them for the pecuniary benefit of those persons who hold the capital stock."

This dictum, however, is not only erroneous as a description of the legal relations existing between a corporation and its stockholders with respect to the property of the corporation, but it has apparently been repudiated by the same learned judge in a later New York case (In re: Palmer, 183 N. Y. 238), wherein he said:

"A share of capital stock represents the distinct interest which its holder has in the corporation, and his right to participate in the distribution of the net earnings of the corporation \* \* \* or in that of its assets, upon a dissolution \* \* \*. They evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest, regarded as an entity, and is unapportionable with reference to the situs of the corporate properties. The tax, imposed by the state upon the transfer of such property, \* \* \* is not upon the property which passes; it is upon the right of succession to it. The transfer tax act operates upon that general right to succeed to the interest of the deceased in the corporation, and it is inconceivable that the value of the interest, upon which the tax is computed, is determinable by the location of the corporate properties."

But quite apart from the vacillations of the eminent jurist whose opinions have been quoted upon the question, it is clear that the Ohio inheritance tax law cannot be stretched to cover a case like that which the commission submits, because the theory which would justify such an application of it would virtually stamp the succession to a share of stock as one in and to tangible property, viz., that belonging to the corporation and located in Ohio; whereas our statute classes such a succession as we have seen as one to intangible property.

For all the foregoing reasons, the commission is advised that in the opinion of this department inheritance tax cannot be assessed in this state on a succession to stock owned by a non-resident decedent in a corporation organized and existing under the laws of another state but which does business and owns real estate in Ohio.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2434.

APPROVAL, ARTICLES OF INCORPORATION, THE CAPITAL SAVINGS  
LIFE INSURANCE COMPANY, COLUMBUS, OHIO.

COLUMBUS, OHIO, September 22, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The articles of incorporation of the Capital Savings Life Insurance Company, Columbus, Ohio, are herewith returned to you with my approval endorsed thereon.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2435.

APPROVAL, DEFICIENCY BONDS OF MONROE TOWNSHIP RURAL  
SCHOOL DISTRICT IN AMOUNT OF \$12,000.

COLUMBUS, OHIO, September 22, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*