2779.

APPROVAL, REFUNDING BONDS OF SALEM CITY SCHOOL DISTRICT IN AMOUNT OF $45,000.

COLUMBUS, OHIO, January 11, 1922.

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

2780.

INHERITANCE TAX LAW—WHERE TESTATOR DIRECTS HIS EXECUTOR TO HAVE MASSES READ FOR REPOSE OF TESTATOR'S SOUL —WHEN SUCH EXPENSE IS PERMISSIBLE DEDUCTION FROM PERSONAL ESTATE FOR INHERITANCE TAX PURPOSES.

Where a testator directs his executor to have masses read for the repose of the testator's soul, the expenditures of the executor under such a request, if not extravagant, are a permissible deduction from the personal estate for inheritance tax purposes; the quantity of service specified by the testator is prima facie reasonable.

COLUMBUS, OHIO, January 11, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of the Commission's letter of recent date requesting the opinion of this department, as follows:

> "Under date of April 3, 1920, in opinion No. 1126 to be found on page 388 of Volume I of your printed opinions for the year 1920, you advised us that a bequest for masses is subject to inheritance tax. This morning a will has been submitted to the commission for its consideration which contains the following item:
>
> 'I desire that my executor, hereinafter named, shall have two hundred masses read for the repose of my soul.'
>
> Inasmuch as this item is merely a direction to the executor to incur a liability after death, should not the court distinguish between such a form of will and that in which a certain specified amount is bequeathed to a priest or other ecclesiastical dignitary directly for a similar object?"

It is not necessary to refer to the previous opinion mentioned in the Commission's request. It is well settled in this state and elsewhere that a bequest to a particular ecclesiastical dignitary as consideration for the service of saying masses for the repose of the testator's soul is a taxable succession. The question presented in the Commission's letter is new, however, and is by no means dependent upon the same principle as that upon which the answer to the former question was based. The direction to the executor to have a designated number of masses read may be likened to a similar direction to have a certain form of funeral ceremony performed, a certain kind of lot in a cemetery purchased, or a certain tombstone or mausoleum erected at a given expense. Directions of this sort have been the subject of other opinions of this department to the Commission, and the general principle which runs through the cases in the several states has been laid down to the effect that reasonable expenditures of this kind are proper charges against the per-

sonal estate in the hands of the executor and proper deductions from the value of that estate for the purpose of determining inheritance tax. As to what is and is not "reasonable" no very definite standard exists, but the station in life of the testator, his religious beliefs and the like may, in the opinion of this department, be taken into account as criteria by which to determine the question of reasonableness. The presumption is that the amount or quantity of mortuary services and the like specified by the testator is reasonable, though this presumption may be refuted.

Morrow vs. Durant, 130 Iowa 437.

Though the question is a new one, this department is of opinion that no distinction can be drawn between a direction of the kind quoted in the Commission's letter and one of the other kind last above mentioned; they all have to do with charging the estate of the testator with expenditures on account of conformation to customs and beliefs which the civilization and religious faith of the decedent and his community inculcated in him. It could be argued, of course, that all rites and ceremonies connected with the burial of the dead are superfluous and unnecessary and that a man's creditors and his successors should not be deprived of any part of his estate because of such expenditures. The law, however, allows for such beliefs and customs so long as the expenditures are in accord with them and are not extravagant and unreasonable.

On the other hand, it is equally clear that much depends upon the way in which the testator provides for such things. A bequest to a builder of monuments in consideration of a monument to be erected would, on principles laid down in former opinions, be taxable as a specific bequest; so also, a bequest to a cemetery corporation, unless it constitutes an institution of purely public charity. But a direction to the executor to do those things which are customarily done after the death of the testator to fulfill the dictates of the conscience and faith of the testator and conform to the customs of civilized society may be made the predicate of a deduction. The cases have drawn the line here.

For the foregoing reasons, it is the opinion of this department that reasonable expenses incurred by an executor under a direction such as that quoted in the Commission's letter would be proper deductions from the value of the personal estate of the testator for inheritance tax purposes.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2781.

APPROVAL, CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORTION OF THE UNION MUTUAL INSURANCE COMPANY, HAMILTON, OHIO.

COLUMBUS, OHIO, January 12, 1922.

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

DEAR SIR:—I return herewith to you the certificate of amendment to the articles of incorporation of The Union Mutual Insurance Company of Hamilton, Ohio, with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.