OPINION NO. 69-126

Syllabus:

1. Although the owner of a building located on leased land has the right of removal, for purposes of taxation the land and the lessee's building should be carried on the real estate tax list and duplicate as real property and land pursuant to Section 5701.02, Revised Code. (Opinion No. 66-089, Opinions of the Attorney General for 1966, approved and followed.)

2. The county auditor pursuant to Section 5713.03, Revised Code, must include in the taxable value of a lot, tract, or parcel of real estate the value of the buildings and improvements on the real estate.

3. The county auditor should send out only one tax bill, to the owner of the real property and land; no separate tax bill should be sent to the owner of a building located on leased land who has the right of removal.

To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio
By: Paul W. Brown, Attorney General, September 25, 1969

I have your request for my opinion on the following fact situation: The city of Coshocton owns cottage sites along the east side of Coshocton Lake which it leases to private individuals for a term of five years. The cottages are owned by the individuals who according to the terms of the lease (Section (C) (2)), which you have supplied me, have the right to remove the cottages at the expiration of the lease. Based upon Opinions Nos. 66-089 and 66-090, Opinions of the Attorney General for 1966, your office informed the Coshocton County Auditor that he had an obligation to carry the real property on the tax duplicate in the name of

the owner (city) and not to be concerned with the collection of real estate taxes from the lessee. Prior to this time the Auditor had sent out separate tax bills to the cottage owners (lessees) and to the city of Coshocton (lessor). Specifically your question is whether separate tax bills are to be sent to the city and to the lessee or is just one tax bill to be sent to the city? Your situation differs from that discussed in the 1966 opinions, supra, only in that there is public ownership of the land rather than private ownership.

The Ohio Supreme Court in an early case, Cincinnati College v. Yeatman, Auditor, 30 Ohio St. 276 (1876), held that a permanent leasehold in the second story of a building was sufficient to create a separate estate in land and thus was liable to taxation in the name of the owner, according to its true value in money. The "lessee" was therefore an owner and his interest taxable as real property.

In the case of Reed v. County Board of Revision of Fairfield County, et al., 152 Ohio St. 207 (1949), the Court held that cottages owned by individuals and erected on land leased from the state were real property as defined by the applicable statute rather than personal property. The Court stated in branches numbers 3 and 4 of the syllabus:

> "3. Even if a structure or building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of 'real property' as that term is defined in Section 5322, General Code, unless the General Assembly has otherwise specified.
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> "4. A cottage, erected on land leased from the state and situated on the banks of Buckeye Lake, is a structure or building located on land and is, therefore, real property within the definition of that term in Section 5322, General Code."

See also Parkbrook Golf Corp. v. Donahue, Tax Commr., 6 Ohio St. 2d 198 (1966).

This office has consistently held that in situations where the lessee leases a building for a definite term or owns a building on leased land which it has the right to remove, only one tax bill is to be sent out and that is to the owner of the land. Such bill is to include the value of any improvements; see Opinion No. 1852, Opinions of the Attorney General for 1921, Vol. I, page 124; Opinion No. 3453, Opinions of the Attorney General for 1938, page 2349; Opinion No. 5841, Opinions of the Attorney General for 1943, page 89; plus the 1966 Opinions Nos. 66-089 and 66-090, supra.

A question has been raised of possible conflict between the opinions and cases cited above and the case of City of Toledo v. Jenkins, et al., 143 Ohio St. 141 (1944). In that case "A" built a building on land owned by "B." "A" then leased the building to "B." The Court held the land owned by "B" to be exempt from taxation and stated that the building annexed to the realty in

the way it was was essentially real estate. The Court then went on to state:

> "* * * The county auditor therefore correctly placed the building on the tax duplicate as real property separately from the land; but should have listed the structure in the name of * * * [A]."
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> (page 158) (Bracketed matter added)

Admittedly at first blush the opinions and cases cited previously may appear to be at odds with Toledo v. Jenkins, supra; however a review of the theory in these cases will show them to be in accord.

The criteria for distinguishing between personalty and realty was first set forth in the case of Teaff v. Hewitt, 1 Ohio St. 511 (1853). This case set forth that one of the criteria for determining what is realty is the intention of the party making the annexation to make it a permanent accession to the freehold. Thus if there is no intention to make a permanent accession to the freehold, as between the owner of the land and the person making the accession, the property would be personalty. However while an object may be personalty between the lessor and lessee, it need not be personalty, but may be realty as regards a third person; see Holland Furnace Co. v. The Trumbull Savings & Loan Co., 135 Ohio St. 48 (1939); Case Manufacturing Co. v. Garven, 45 Ohio St. 289 (1887). This concept is set forth as regards property taxation in Section 5713.03, Revised Code, which reads in pertinent part as follows:

> "The county auditor * * * shall determine * * * the taxable value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon * * *
>
> "* * * He shall record * * * the value of each building, structure, or improvement to land, which value shall be included as a part of the value of each tract, lot, or parcel of real property."

Going back to Cincinnati College v. Yeatman, supra, that portion of the building which was permanently leased was a separate real property interest and therefore listable as such; see Section 5713.04, Revised Code. In Reed v. Board of Revision, supra, the cottages, while personalty between the cottage owners and the leasing authority, were real property for tax purposes, but not a separate realty interest, because the owners had no intention of the cottages' becoming permanently annexed to the land. Therefore the cottages were listable only on the landowners' duplicates.

In Toledo v. Jenkins, supra, the hangar there in question had the aspects of real property as between the lessor and the lessee of the land to which it was annexed. Therefore the hangar was real property and the Mevon Corporation, the owner, had a separably listable real property interest.

In your particular situation, since there is no intention on the part of the cottage owners that the cottages should become permanently annexed to the land, the cottages are personalty as

between the city and the owners. However, since the cottages are placed upon the land they are real property as respects taxation. Because the owners' interests do not represent realty they are not separately listable.

Therefore, it is my opinion and you are hereby advised that:

1. Although the owner of a building located on leased land has the right of removal, for purposes of taxation the land and the lessee's building should be carried on the real estate tax list and duplicate as real property and land pursuant to Section 5701.02, Revised Code. (Opinion No. 66-089, Opinions of the Attorney General for 1966, approved and followed.)

2. The county auditor pursuant to Section 5713.03, Revised Code, must include in the taxable value of a lot, tract, or parcel of real estate the value of the buildings and improvements on the real estate.

3. The county auditor should send out only one tax bill, to the owner of the real property and land; no separate tax bill should be sent to the owner of a building located on leased land who has the right of removal.