It is impossible, therefore, for this department to say that the statutes or common usage in Ohio overrule the presumption of legislative intent, arising from the words used in the statute, namely, "the wife or widow of a son, the husband of a daughter", to the effect that if the "widower" or "husband relict" of a daughter had been intended to be embraced in this class, he would have been designated by some such appropriate term, inasmuch as the General Assembly has not failed specifically to mention in the same context the "widow of a son".

The only remaining point for consideration is one which has been frequently referred to in the opinions of this department interpreting the inheritance tax law, namely, that the law of 1919, being closely modeled after the New York transfer tax law, should receive such an interpretation as the latter law had been given by the courts of New York prior to the enactment of the Ohio law. This sound principle of statutory interpretation applies only when it is clear that there has been a virtual adoption by one state of a statute of another. Many of the provisions of the Ohio inheritance tax law of 1919 were so adopted from New York. This particular language, however, was not borrowed from that source, but follows language which was found in the former collateral inheritance tax law of Ohio. See section 5331 of the General Code of 1910, where the phrase "the wife or widow of a son, the husband of the daughter of the decedent" appears.

It seems to this department, therefore, that on this point the Ohio inheritance tax law should receive a local interpretation. Inasmuch then as the New York decision was based upon local policy and usage, and even so, scarcely commands respect; and inasmuch, further, that the language requiring interpretation originated in Ohio, and is to be construed without reference to decisions in other states, especially when they depend upon local policy and usage, it is the opinion of this department that the widower of a daughter is not comprised within the third class created by section 5334 of the General Code under the designation of "husband of a daughter", and not being mentioned elsewhere in that section, is a successor not entitled to any exemption, and to whose succession the seven per cent rate prescribed by section 5335 of the General Code applies.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3114.

JOINT HIGH SCHOOL—WHERE PUPIL RESIDES MORE THAN FOUR MILES FROM SUCH SCHOOL—TRANSPORTATION SHOULD BE PROVIDED BY BOARD OF EDUCATION OF DISTRICT IN WHICH CHILD LIVES——PERSONAL SERVICE ITEM OF TRANSPORTATION EXPENSE OF SCHOOL DISTRICT INCURRED, SHOULD BE REPORTED ONLY ONCE TO COUNTY AUDITOR—NO AUTHORITY TO PROVIDE FOR JOINT EXPENSE OF TRANSPORTATION COSTS—NOR FOR HIGH SCHOOL COMMITTEE IN CHARGE OF MANAGEMENT OF SUCH HIGH SCHOOL TO PROVIDE TRANSPORTATION OF PUPILS TO SUCH HIGH SCHOOL.

1. *Where a pupil attending a joint high school resides more than four miles from such joint high school, the transportation of the pupils to the joint high school should be provided by the board of education of the district in which the child lives* (7764).

2. *A school district furnishing transportation to any of its pupils to a joint high school which the district helps to maintain, should report the personal service item of transportation expense incurred, as provided in sections 7787 and 7600 G. C., and where such personal service item of transportation expense has been reported to the county auditor by the district which has made the transportation expense, such expenditure in a joint high school district should not be reported to the county auditor a second time, under the provisions of section 7671-1 G. C.*

3. *Under existing law there is no authority for boards of education in charge of districts constituting a joint high school district to provide for the joint expense of transportation costs to such high school, nor is there authority for the high school committee in charge of the management of such high school to provide transportation of high school pupils to such high school.*

COLUMBUS, OHIO, May 18, 1922.

HON. FRANK LEBLOND KLOEB, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Acknowledgement is made of the receipt of your inquiry of recent date in which you request the opinion of this department upon the following:

"The board of education of the village of Mendon, Mercer county, Ohio, and the board of education of Union township, Mercer county, Ohio, in which township the village of Mendon is situated, have for some years past and are now operating under the provisions of sections 7669, 7670 and 7671 G. C., and are jointly maintaining a high school in the village of Mendon.

The village of Mendon maintains its own grade school and Union township maintains its own rural grade schools, each independent of the other.

Section 7764-1, as interpreted by your opinion No. 2447, makes it the duty of a board of education to provide high school facilities in its district, or in lieu thereof, to transport its pupils of high school age to a high school in another district and makes this compulsory where the pupils live more than four miles from the high school.

Query: Must the two boards above referred to jointly provide the transportation for high school pupils living in Union township who reside more than four miles from the high school, or must the Union township board of education provide and pay for the transportation of such pupils to the Mendon high school. If this transportation must be paid jointly by the boards, upon what basis will the expense be divided between the two boards?"

Pertinent sections of the law bearing upon this case are:

Section 7764: The child in his attendance at school shall be subject to assignment * * * to the class in * * * high school * * * suited to his age and state of advancement within the school district, or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than * * * four miles from the school, if a high school * * *. The board of education of the *district in which the child lives* shall have power to furnish such transportation."

"*Section* 7764-1: Boards of education shall provide work in high school branches * * * at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

It is understood that the boards of education of the Mendon school district and the Union township rural school district, as well as the high school committee in charge of the Mendon-Union township joint high school, are desirous of being advised as to whether transportation cost incurred shall be paid jointly by the boards concerned or by the Union township board of education. Your question submitted is upon the transportation to high school of those pupils living in Union township, who reside more than four miles from the joint high school. It may be said that a rural school district which joins in the establishment and operation of a joint high school, as provided in section 7669 et seq., is complying with the statutes relative to the furnishing of work in high school branches (7764-1), especially for those pupils who live not more than four miles from such joint high school. A careful examination of the various sections upon transportation of high school pupils fails to show any mention as to the furnishing of transportation to a joint high school by boards of education, nor does there appear any specific authority for the high school committee described in section 7670 G. C. to provide for such transportation. The high school committee in charge of the joint high school is an agency acting for the boards of education concerned, limited in its authority to the management of a high school after the same has been established by boards of education in charge of districts described in section 7669 G. C.

Your attention is especially invited to the last sentence of section 7764 G. C., supra, which on the contrary says:

"The board of education of the district in which the child lives shall have power to furnish such transportation."

By reference to any of the other transportation sections in the law it will be found that in each and every instance the reference is to a board of education having authority to transport, and no authority for any transportation by a high school committee or joint transportation by two or more boards of education is found.

"Boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted." (Clark vs. Cook, 102 O. S., p.—, decided Nov. 22, 1921.)

More than likely the doubt which has arisen in your mind in this matter comes from the language of section 7671-1 G. C., a new supplemental section enacted by the 84th General Assembly as a part of Senate Bill 100, which went into effect August 5, 1921.

Section 7671-1 reads:

"In the case of every joint high school established and operating under the authority of sections 7669, 7670 and 7671, General Code, the county superintendent of schools shall certify on or before the first day of August of each year the teachers' payroll, the aggregate days of attendance, and

the personal service item of transportation costs in connection with such high school to the county auditor, who shall distribute the apportionments on account of teachers' salaries, aggregate days of attendance, and transportation of pupils in such high school as provided for in section 7600, General Code, to the school district in which it is located. The clerk of the board of education of said district, upon receipt of such distribution, shall draw a warrant for the amount of the same, countersigned by the president of the board of education, in favor of the treasurer of the joint high school committee. The amount so received by the treasurer of the high school committee shall be credited on his books to the districts on the basis of the proportional enrollment in the joint high school from each of the districts participating in support of the same."

The above section refers to the "transportation of pupils in such high school", that is, a joint high school, and the section was apparently prepared (and the author now admits it) on the basis that the high school committee had the power to transport pupils from the various school districts composing the joint high school district or make arrangements for such transportation in place of the "board of education of the district in which the child lives" (section 7764). The result is that a reference is made in section 7671-1 G. C. to a matter, the creation of which has not been provided for by law, and the mere reference to transportation of pupils "in such school" does not constitute an authorization of the high school committee in charge of such high school to furnish transportation or expend public funds for transportation in the place of the boards of education whose authority is clear on transportation questions, as appears in a number of sections of the General Code.

Section 7671-1, supra, says that the county superintendents shall certify (1) the teachers' payroll, (2) the aggregate days of attendance, and (3) the personal service item of transportation costs in connection with such high school, to the county auditor, on or before the first day of August of each year. The auditor shall then make the apportionment on account of these three items named "as provided for in section 7600 General Code" to the school district in which the joint high school is physically located. Thereupon the clerk of the board of education in the district where the high school is located shall draw a warrant for the amount of the distribution, countersigned by the president of the board of education of the district in which the high school is located, "in favor of the treasurer of the joint high school committee". Here again is a reference in section 7671-1 to a matter for the creation of which no further section of law is found authorizing it. That is to say, this is the only reference in the entire General Code to "the treasurer of the joint high school committee", there being no previous authority for the creation of such office in the joint high school committee. However, there is a reference in section 7671 G. C. which provides that the funds for the maintenance and support of a joint high school "must be placed in a separate fund in the treasury of the board of education in the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school." It would thus appear that the treasurer of the district in which the school house is located, being the ministerial officer in charge of the treasury of that district, would also be the treasurer of the joint high school committee. However, under section 4782 G. C. the duties of treasurer of a board of education are placed upon the clerk of the board of education in each and every district of the state, so the effect of section 7671-1, when practically carried out as regards the sentence under discussion, would be that the clerk of the board of education of the district in which the joint high school was located would draw a warrant in favor of

himself as the treasurer of the joint high school committee. The difficulty, however, as regards section 7671-1, appears in the closing sentence of such section, which reads:

> "The amount so received by the treasurer of the high school committee shall be credited on his books to the districts *on the basis of the proportional enrollment* in the joint high school from each of the districts participating in support of the same."

As pointed out heretofore, the third item of this amount received by the treasurer of the joint school committee through the county auditor's apportionment is that growing out of the "transportation of pupils in such high school." Here it appears that the basis of the apportionment shall be on "the proportional enrollment in the joint high school", while on the other hand section 7671 says:

> "The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts. * * * "

It would appear that the funds for "maintenance and support of such high school" would be affected very materially by the apportionment of the county auditor made under authority of section 7671-1, wherein credit is given to the joint high school district for the three items of teachers' payroll, aggregate days of attendance and personal service item of transportation, the distribution being made in the manner set forth in section 7600 G. C. It can hardly be conceived that the General Assembly intended that after a rural board of education in charge of a district, which constitutes a part of a joint high school district, had provided transportation for the pupils living in its district, as is required by law, where the pupil resides more than four miles from the high school furnished, the rural board having spent its money, the reimbursement for such personal service item of transportation cost should be credited in any degree to the other district which did not furnish transportation or spend any of its funds for the transportation of high school pupils. To illustrate, a rural school district joined to a village school district in the maintenance of a joint high school might have to transport twelve of its high school pupils under section 7764 and 7764-1 G. C., and would pay out its funds for such transportation; the village district not having any of its pupils living more than four miles from the high school would have no transportation cost on pupils residing in its district; in other words, one board would be spending all the transportation cost and the other board nothing, and yet under the last sentence of section 7671-1 G. C., if strictly construed in preference to other sections of the General Code, the reimbursement through the auditor's apportionment would give to the village district possibly more than half of the personal service item of transportation cost, especially in a case where the village furnished more pupils than did the rural school district constituting the other part of the joint high school district. It would appear, then, that this portion of section 7671-1 G. C. is unworkable in the light of other sections of the law, especially as regards transportation reimbursement, because, as indicated heretofore, the law-making body would hardly demand that a board of education should pay out transportation costs and then have credit given in an apportionment to another district which did not pay any of such transportation cost. Such an arrangement would be manifestly unfair to the district which had expended its funds for transportation and it certainly was not the contemplation of the General Assembly that such a condi-

tion should obtain. The law-making body has not treated specifically upon the transportation of high school pupils in a joint high school district other than the general sections on transportation that each school district shall be an entity unto itself as regards the furnishing of transportation to its own pupils. Thus in village districts which might be portions of a joint high school district there is never any transportation question at all because of short distances, while on the other hand in the township rural school district of normal area and distance the transportation question very frequently arises.

Section 7671-1 makes direct reference to section 7600 G. C. and the latter section, as amended in 109 O. L., 149, now reads:

> "After each semi-annual settlement with the county treasurer each county auditor shall immediately apportion school funds for his county. * * * The proceeds of such levy (2.65) upon property in the territory of the county outside of city and exempted village school districts shall be apportioned to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers * * * employed therein, and the expense of transporting pupils as shown by the reports required by law, and the balance according to the * * * aggregate days of attendance of pupils in such districts * * * *."

The question before us being one upon the expense of transportation, the important part of section 7600 G. C. is as follows:

> "The annual distribution attributed to expense of transportation of pupils shall be fifty per centum of the personal service expense incurred in such transportation."

The personal service expense is defined in section 7787 G. C. (108 O. L., Part 2, p. 1311) as falling within three classes, first, where the district owns the vehicle of transportation and means of locomotion, second where the district owns the vehicle of transportation but not the means of locomotion, and third, where the district owns neither the vehicle nor means of locomotion.

Section 7787 provides what fraction of the personal service expense incurred in transporting pupils may be computed in any of the three cases mentioned. The purpose of section 7787 G. C., in thus carefully arranging for the apportionment by the county auditor, is to give the board of education which pays out the money for the transportation furnished a chance to get it back, for section 7787 G. C. says:

> "The board of education of each district shall make a report to the county auditor on or before the first day of August in each year, containing a statement of * * * the personal service expense incurred in transporting pupils * * * *."

It would appear then that section 7671-1 G. C., as regards the reporting of the transportation cost in a joint high school district conflicts with other sections of the statutes heretofore discussed. The rule in cases of this kind has been well stated in 25 Ruling Case Law, the following being excerpted from sections 216 to 223, inclusive, under the subject of "statutes":

> "Another occasion for construing a statute is where uncertainty as to its meaning arises not alone from ambiguity of the language employed, but from the fact that giving a literal interpretation to the words will lead to

such unreasonable, unjust or absurd consequences as to compel a conviction that they could not have been intended by the legislature."
(Sec. 214.)

"(215) The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the *state of the law existent at the time of the enactment.*' * * *

"(222) The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where adherence to such strict letter would lead to *injustice, absurdity, or contradictory provisions.* * * * Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. * * * "

"(223) Where the literal construction of an act will produce results so extraordinary and unjust that they cannot be deemed to have been within the legislative intent, the general language of the act must be restricted so as to accomplish the general intent * * * ."

In conclusion it must be said that if the General Assembly desired that each of the districts composing a joint high school district should be allowed transportation expense (7787 G. C.), instead of such credit being given to the district which actually expended the funds for the cost of transportation, then more than likely the law-making body would have clearly indicated that a joint high school committee could furnish high school transportation or that there could be a joint cost between boards of education composing a joint high school district where the matter of expense of high school transportation to the joint high school was concerned.

In reply to your inquiry then you are advised that:

1. Where a pupil attending a joint high school resides more than four miles from such joint high school, the transportation of the pupils to the joint high school should be provided by the board of education of the district in which the child lives (7764).

2. A school district furnishing transportation to any of its pupils to a joint high school which the district helps to maintain, should report the personal service item of transportation expense incurred, as provided in 7787 and 7600 G. C., and where such personal service item of transportation expense has been reported to the county auditor by the district which has made the transportation expense, such expenditure in a joint high school district should not be reported to the county auditor a second time, under the provisions of section 7671-1 G. C.

3. Under existing law there is no authority for boards of education in charge of districts constituting a joint high school district to provide for the joint expense of transportation costs to such high school, nor is there authority for the high school committee in charge of the management of such high school to provide transportation of high school pupils to such high school.

Respectfully,
JOHN G. PRICE,
Attorney-General.