nicipality at the time of the union was to be considered as a part of the total number of acres which the cemetery was authorized to use. In other words, the original act definitely limited the amount of land that such a cemetery could manage or hold to thirty acres. In the amendment the original act was repealed, and the acreage was changed from thirty to one hundred. It will be observed that no limit was set in the amended act as to the expenditures that could be made for such land, and the provision requiring that the lands previously held by the uniting bodies was to be considered a part of the acreage which was authorized to be purchased was completely omitted from the re-enactment. It would therefore seem logical to conclude that the legislature in its re-enactment purposely omitted this provision relating to lands acquired by deed of gift, etc. by the township or village prior to the uniting in an union cemetery, and that such land so held for the purposes of this statute are not now to be considered. When the legislature intended that the rule should apply, it was permitted to stand as a part of the laws of the state, when it was repealed, it must be assumed that it was its intention that the rule should have no further application.

In view of the foregoing, it is the opinion of this department that an union cemetery is limited in its power of acquisition by purchase or appropriation to one hundred acres of land for cemetery purposes, but that in the calculation of said acreage, no consideration need be given to lands acquired by methods other than purchase or appropriation.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3791.

INHERITANCE TAX LAW—WHERE X FOR VALUABLE CONSIDERATION CONVEYED REAL ESTATE TO A AND B, HUSBAND AND WIFE, AND TO SURVIVOR AND TO HEIRS AND ASSIGNS OF SUCH SURVIVOR, B DIED—SUCCESSION NOT TAXABLE.

Since June 5, 1919, *X for a valuable consideration conveyed certain real estate to A and B, husband and wife, and to the survivor and to the heirs and assigns of such survivor, B died.*

HELD. No succession taxable under the inheritance tax law of Ohio thereby arose.

COLUMBUS, OHIO, December 13, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission requests the advice of this department on the following question:

"Since June 5, 1919, X for a valuable consideration conveyed certain real estate to A and B, husband and wife, and to the survivor and to the heirs and assigns of such survivor. It does not appear that B, the wife, contributed any separate funds towards this purchase although the payments were made largely from what might be called family savings. B

died intestate on the first day of July, 1922. The question now presents itself as to whether or not any succession subject to inheritance tax has arisen in the land in question. Will you be good enough to advise us?"

In this case the estates of A and B while both were living were undivided half interests in the whole of the real estate for their joint lives with a contingent remainder to the survivor.

You refer to an opinion found on page 473 of the Opinions of the Attorney General for 1920 wherein a somewhat similar question is considered. In that opinion it was intimated that the remainder was vested. This is probably an inadvertence. The remainder is not vested in such a case because who is to take cannot be ascertained until the death of one of the tenants in common.

On the death of B, therefore, A acquired an estate in fee simple in the whole tract which he therefore did not have as remainderman or otherwise. This was not a succession from B because A did not succeed to anything that B had theretofore. Whether or not it is a taxable succession under the inheritance tax law of this state depends upon whether the law enlarges the class of ordinary successions so as to embrace devolutions of title of this character within the scope of its provisions.

In the opinion of this department the case is not within sub-paragraph 5 of section 5332 of the General Code, which applies only to technical joint estates as has been heretofore held. It is not within paragraph 3 of the same section because the original conveyance under which the estate arises is not shown to have been donative in character, and because, further, it does not vest in possession or enjoyment with respect to the death of the grantor or donor. It is not within paragraph 7 of the same section because the estate arising in A was not one that had passed to A subject to an estate determinable by the death of B.

No other provision of the inheritance tax law of 1919 has been found which would cover the case.

For these reasons, therefore, rather than for the particular reason referred to in the earlier opinion, this department advises that in its judgment no succession subject to inheritance tax has arisen in the land described in the Commission's letter.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3792.

BOARD OF LIBRARY TRUSTEES—AUTHORITY TO SELECT NECESSARY OFFICERS—POWERS AND DUTIES OF SUCH OFFICERS.—TO WHOM COUNTY AUDITOR SHOULD PAY PROCEEDS OF LEVY—CLERK OF BOARD OF EDUCATION—WHOM LIBRARY TRUSTEES MAY EMPLOY.

1. *The board of library trustees created under authority of sections 7635 et seq. of the General Code may select upon organization such officers as are nesessary for the transaction of the board's business, and the powers and duties of such officers may be prescribed by the said library trustees.*