pal limits, but rather for the purpose of charging the municipality with cleaning out and repair of only so much of the ditch as might benefit lands owned by the municipality itself. Stating this proposition in another form, the intention of the quoted language was to give the municipality the same status, and to charge it with the same duty, as to municipally owned lands, as applies to any other owner in respect to his lands.

Moreover, it is to be noted that said sections 6505 to 6508 make no distinction as between townships in which a municipality is in whole or in part located, and those not embracing the whole or part of a municipality. It follows that the powers and duties of ditch supervisors extend to that part of a ditch, and the lands benefited thereby, as lie within the confines of a municipality situate within the township in which the ditch supervisor is serving as such. See in this connection an opinion of this department, Vol. 2, Report of the Attorney General 1911-1912, page 1321. The general rule just stated is possibly subject to an exception in case the corporate limits of a municipality become identical with those of a township. See Annual Reports of the Attorney General for 1913, Vol. 2, page 1650.

In view of what has been said, it is the conclusion of this department that ditch supervisors are fully empowered to carry out the same procedure as to that part of the ditch in question within the municipality as would apply to that part of a ditch outside of a municipality.

The foregoing, it is believed, will answer your question for practical purposes. It is possible that a procedure on the assessment plan might be carried out by the municipality itself entirely independent of the ditch supervisor. See an opinion of this department of date June 10, 1919, Opinions of the Attorney General for 1919, Vol. 1, page 626; see also section 3889 G. C. However, the opinion just cited, in so far as it discussed the assessment plan, dealt more with the improvement of a street or a public place by the construction of a ditch, than with the direct question of a ditch which might have been constructed primarily for the benefit of adjacent lands. Hence to go into the question of whether the assessment procedure provided by sections 3812 et esq. is available in the case you have at hand, would require additional data as to the location of the ditch in question and the purpose of its original construction. Therefore no opinion as to the availability of procedure under sections 3812 et seq., in the case you describe, is here expressed.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3630.

TAXES AND TAXATION—WHERE CHURCH SOCIETY LEASES TRACT OF LAND OWNED BY IT FOR OIL—AGREED RENT AND ROYALTY —PROCEEDS OF SUCH OIL LEASE APPLIED TO SUPPORT OF CHURCH—HOW TAXED.

A church society leases a tract of land owned by it for oil at an agreed rent from year to year during the term of the lease and a royalty on the oil to be obtained. The proceeds of such oil lease are applied to the support of the church.

HELD, (1) *that the land so leased is subject to taxation against the church as an entity and at a valuation including both the value of the fee of the soil and that of the oil in place, unless the latter can be separately valued on the prin-*

ciple of Library Association v. Pelton, 34 O. S. 253, in which event the value of the surface should be exempted.

(2) *Credits for due and unpaid royalties are taxable.*

COLUMBUS, OHIO, September 23, 1922.

HON. MARY K. DAVEY, *Prosecuting Attorney, Logan, Ohio.*

MY DEAR MISS DAVEY:—You recently requested the advice of this department upon the following question:

> "Whether a church association which has leased part of the church land for oil must pay taxes on the one-eighth royalty it receives from the leasing of said land for oil?
>
> It would seem from Section 5349 of the General Code that such royalty would not be exempt, but the Board of Trustees will not be satisfied without an opinion from your department.
>
> They claim that the royalty obtained is not used for profit, but is used for the exclusive use and benefit of the church, but in my opinion it is the leasing of the ground for profit which is covered by said section."

Section 5349 of the General Code provides in part as follows:

> " * * houses used exclusively for public worship, * * * and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit * * *, shall be exempt from taxation. * * *"

It is worthy of note that the same section authorizes leaseholds, or other estates or property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools, etc., to be exempt from taxation. The inclusion of this language in the section bears upon the interpretation of the phrase "not used with a view to profit" in the context immediately under examination.

In this same connection, and quite aside from the point just mentioned, it is the established law of this state that the mere fact that the rents and profits of real estate are applied to the endowment of an institution of public charity or church, or to its support, is not sufficient to entitle the property to exemption.

> Kenyon College 1. Schnebley, 12 O. C. C. (N. S.) 1; State ex rel. Cappeller, 8 Dec. Reprint, 219; Rose Institute vs. Myers, 92 O. S. 252.

Without elaborating on this point, it is the opinion of this department that if real estate belonging to a church society or a college is so leased or used as to produce revenue, it is subject to taxation, even though the revenue so produced is applied exclusively to the support of the institution which owns the land and does not inure to the private pecuniary benefit of any person.

The question remains as to whether the fact that the real estate in question has been leased by the church in consideration of payment of certain rent, plus a roy-

alty of one-eighth of the proceeds of the oil, as stated in your subsequent letter, makes the land itself subject to taxation. It is impossible to escape this question on the facts submitted, though your question is limited as to whether or not the oil royalty is taxable to the church as a separate property.

Section 5560 of the General Code governs the listing of real estate. It provides, among other things, that

> "* * * where the fee of the soil of a tract, parcel or lot of land, is in any person * * * and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."

In Jones v. Wood, 1 N. P. 155, S. O. 9 C. C. 960, 54 O. S. 627, it was held that the phrase "the right to minerals therein" as used in this section, which has not been amended for some time, "means the title which severs them from the soil or remaining land." This case holds that an ordinary "oil lease" so-called, of the general character mentioned in your several letters does not amount to such a severance of the minerals in place as to authorize or require the separate listing of the respective interests of the lessor and the lessee. On this point the Circuit Court disagreed with the Common Pleas Court and was in turn affirmed by the Supreme Court. On the authority of the cases which seem from the information furnished to apply, the auditor would not be authorized to make a separate listing of the mineral rights in such land in ordinary cases.

Section 5562 of the General Code provides merely for the annual revision of the value of taxable land on account of the discovery or exhaustion of mineral resources thereon. This section, together with the implications naturally arising from section 5560 of the General Code makes it appear that the mere fact that the tract of land contains minerals, is not sufficient to authorize a separate listing of mineral rights unless circumstances exist which require or justify such separate listing in the names of different owners.

It is likewise the opinion of this department that royalties due and unpaid constitute "credits" which are taxable though owing to a church, and though when collected the proceeds thereof will be applied to the support of the church. This is for the simple reason that there is no statute exempting such credits from taxation, and that if there were it would be of doubtful constitutionality in view of the repeated holdings of the Supreme Court to the effect that a church is not "an institution of purely public charity."

Applying strictly all that has been said respecting the land it would follow that the church would have to be considered as the owner of land which though attached to a church building and necessary to its use and occupation, is nevertheless leased with a view to profit. Thus the conclusion would be forced that the land is taxable —a conclusion fortified by the fact that the constitution does not expressly authorize the exemption from taxation of any church property excepting the "house of public worship" itself.

But there remains to be considered the doctrine of Library Association vs. Pelton, 34 O. S. 253. In this case the Supreme Court apparently approved and ordered a division of a building for tax exemption purposes into parts that did not otherwise appear as such upon the tax list and duplicate of the county, and for which partition there was no direct statutory authority. On the authority of this case then, it would be possible to value the mineral rights separately, though the case is not

one within the direct statutory authority of section 5560 of the General Code as previously stated. In other words, if the value of the minerals to the church can be ascertained, that value can be subtracted from the value of the whole tract and placed on the tax duplicate, the remainder in value of the tract remaining on the exempt list. This, as you will perceive, is not exactly the same thing as taxing the royalty. Rather it is taxing so much of the land (in value) as is leased with a view to profit; that is, the oil and gas in the land and the right to use the surface for the purpose of exploring for and extracting them. This would require an ascertainment of the hypothetical value of a conveyance of the oil and gas in place, which is perhaps a difficult or impossible thing to do, because in the industries affected it is not customary to take such conveyance. It can be gotten at, however, in an indirect way by applying the principles on which undeveloped oil and gas lands are being assessed with a view to their oil and gas properties.

This department does not feel at all assured that the suggestion just made is practicable, but it is as far in the direction of according some exemption to the real estate in question as can safely be gone. If the method suggested proves impracticable, the only alternative in this regard is to treat the lot (as distinguished from the building) as taxable in its entirety because "leased or otherwise used with a view to profit."

Respectfully,
JOHN G. PRICE,
Attorney-General.

3631.

ASSESSMENTS—SEPARATELY OWNED MINERAL RIGHTS PERTAINING TO TRACT OF LAND THE SURFACE OF WHICH ABUTS UPON ROAD IMPROVEMENT, CONSTITUTE REAL ESTATE ABUTTING UPON SUCH IMPROVEMENT.

Separately owned mineral rights pertaining to a tract of land the surface of which abuts upon a road improvement, constitute real estate abutting upon such improvement.

COLUMBUS, OHIO, September 23, 1922.

HON. WILLIAM T. DIXON, JR, *Prosecuting Attorney, St. Clairsville, Ohio.*

DEAR SIR:—You have requested the opinion of this department upon the following question:

> "The Township Trustees of Warren Township have submitted to us the question of their right to place an assessment upon the real estate abutting on the improvement of the Barnesville-Hendrysburg Road, and whether that assessment may be placed on coal lands separately owned from the surface.
>
> The coal lands are partly being developed and partly not being mined by various parties other than the owners of the surface.
>
> Kindly let us have your opinion as to whether or not the Trustees have a right to place an assessment against the coal land separately owned from the surface which abut the improvement."