1019.

AMERICANIZATION ACT—NOT A VIOLATION OF CONSTITUTION—ACT DOES NOT TERMINATE AT TIME OF FINAL ADJOURNMENT OF 83rd GENERAL ASSEMBLY—CONTINUES UNTIL JANUARY 1, 1921.

1. *The provision of section 27 of Article II of the state constitution that no appointing power shall be exercised by the General Assembly, except as prescribed in that and other provisions of the constitution, was not violated by the enactment of the act of May* 9, 1919, (108 *O. L., Part I, p.* 539), *entitled "An Act to provide for the development of Americanization work and to encourage the patriotic education and assimilation of foreign born residents."*

2. *The existence and authority of the Americanization Committee created by the act referred to did not terminate at the time of the final adjournment of the 83rd General Assembly but, pursuant to the terms of the act, the committee will continue until January* 1, 1921.

COLUMBUS, OHIO, February 25, 1920.

The Americanization Committee, Columbus, Ohio.

GENTLEMEN—Hon. O. T. Corson, State Director of your Committee, has addressed a communication to this department relative to the constitutionality and effect of an act passed by the 83rd general assembly on May 9, 1919, approved by the governor on June 5, 1919 (108 O. L., Part I, p. 539), and entitled, "An act to provide for the development of Americanization work and to encourage the patriotic education and assimilation of foreign born residents."

Section 1 of the act provides that the joint committee on German propaganda of the Senate and House, together with the superintendent of public instruction, shall be continued as an Americanization committee, for the purpose of carrying on the Americanization and patriotic education work begun by the Council of National Defense, and of co-operating with the agencies of the federal government in furthering the study and application of Americanization and patriotic education work in this state.

The duties and authority of the committee are set forth in section 3 of the act substantially as follows: To formulate and promote programs for Americanization and patriotic education work; to co-operate with the federal agencies in the promotion of Americanization and patriotic education; to aid in the correlation of aims and work carried on by local bodies and private individuals and organizations; to study the plans and methods which are proposed or which are in use in such work; to employ such lawful methods as will tend to bring into sympathetic and mutually helpful relations the state and its residents of foreign origin; to protect immigrants from exploitation and abuse, stimulate their acquisition and mastery of the English language, and to develop their understanding of American government, institutions and ideals, and, in general, to promote their assimilation and naturalization; and, for the purposes above stated, to co-operate with other offices, boards, bureaus, commissions, and departments of the state, and with all public agencies, federal, state and municipal.

The committee is empowered by section 4 of the act to choose its own chairman, and to employ a director and such assistants as may be necessary, and to define their duties and fix their compensation.

For the purpose of carrying out the provisions of the act, the sum of twenty-five thousand dollars is appropriated out of the moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated. See section 5.

Section 2 of the act expressly provides that the committee shall terminate its existence January 1, 1921.

The alleged unconstitutionality of this act appears to be based upon the erroneous hypotheses, first, that the general assembly, in providing for the membership of the committee, violated section 27 of Article II of the State Constitution, which provides that no appointing power shall be exercised by the general assembly, and, second, that the general assembly is without authority to create a committee with power and authority to exist and act after its final adjournment.

(1) *Section 27 of Article II of the State Constitution not violated.*

The constitutional provision referred to reads as follows:

> "The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the general assembly, except as prescribed in this constitution, and in the election of the United States senators; and in these cases the vote shall be taken '*viva voce.*' "

In Gleason v. Cleveland, 49 O. S., 431, it was held that the constitutional inhibition was against the appointment of *officers* by the general assembly, and did not apply to the appointment of members of a committee or commission created for the accomplishment of a particular purpose and whose functions end with the accomplishment of that purpose; and that person clothed with such temporary functions are not regarded as officers within the meaning of the constitution.

In the opinion, at page 437, the court, after disposing of certain other objections made to the law then under consideration, said:

> "But it also seems clear from the previous decisions of this court, that the members composing this commission, are not officers within the meaning of section 27, article 2, of the constitution, denying to the legislature the power of appointment to office. Walker v. Cincinnati, 21 Ohio St. 14, 50.
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> They are created for the accomplishment of a particular purpose—the erection of a monument, and their functions end with the accomplishment of that purpose. It was held in the case just cited, that persons clothed with such temporary functions are not regarded as officers within the meaning of the constitution."

An examination of the act under consideration will disclose that the members of the Americanization Committee are not officers, within the constitutional sense. They have not been vested with any portion of the sovereignty of the state; they are members of a committee created for the accomplishment of a particular purpose, and their functions are but temporary.

No useful purpose will be served by citing and reviewing in this opinion the cases defining the term "office" or "officers," for as Spear, J., so aptly and correctly said in State v. Hunt, 84 O. S., 143, 149, the definitions are multitudinous, not to say multifarious, and so varied that the ingenious mind may find support for almost any proposition relating to the general subject which the necessities of his case may deem to demand. One definition, however, in particular, which seems to have met with general favor perhaps, is that an office is a public position to which a portion of the sovereignty of the country attaches, and which is exercised for the benefit of the public. Surely, no one will contend that the act involved in this opinion attempts to clothe the members of the Americanization committee with any portion of the sovereignty of the state.

It follows, therefore, that the general assembly in creating and providing for the

membership of the Americanization Committee did not violate section 27 of Article II of the State Constitution.

(2) *Existence and authority of Americanization Committee extends until January* 1, 1921.

The Americanization Committee was created and vested with certain duties and authority by an act duly enacted by the general assembly as a whole, and not by a resolution adopted by the house or senate, or by a joint resolution adopted by both houses.

In State vs. Guilbert, 75 O. S., 1, the court held that under the state constitution, as then in force, neither branch of the general assembly had authority to appoint a select investigating committee for general legislative purposes, and also that the general assembly as a whole was without authority to confer such authority upon a single branch. Since that decision, however, the constitution has been amended (see Article II, section 8, adopted 1912), so as to confer authority upon each house to obtain through committees information affecting legislative action under consideration or in contemplation, etc.

State vs. Guilbert, supra, does not deny the authority of the general assembly, acting as a whole, and by an act duly enacted, to create or authorize the appointment of a committee for the accomplishment of a particular purpose, and to provide for or designate its membership, and clothe such members with temporary functions extending beyond final adjournment. On the contrary, a careful examination and analysis of the opinion will disclose that it inclines toward the view that if the select committee there involved had been created or authorized by a legislative act instead of by a resolution, the authority of the committee to act after final adjournment would have been sustained. See pages 48, 49 and 50.

In State vs. Gayman, 11 C. C. (N. S.) 257, also decided prior to the constitutional amendment of 1912, the authority of an investigating committee appointed under a joint resolution to act after the final adjournment of the general assembly, was directly involved and decided. In the opinion the court apparently draws a distinction between a committee appointed under authority of an act of the general assembly duly enacted under its constitutional authority to legislate, and one appointed under authority of a joint resolution—sustaining the authority in the former instance, but denying it in the latter—as follows:

> "An act duly passed by the general assembly is a complete exercise of the power to legislate; but a resolution to investigate for the purpose of further legislation, passed by the same body, is the exercise of a right incident to that power, and if the power itself be surrendered, the incidental right goes with it.
>
> When the general assembly adjourned *sine die*, its purpose to use the information in aid of legislation could no longer be carried out, and while it could order the information to be transmitted to its successor, it could not form or express a purpose for nor impose its own upon its successor."

State vs. Gayman, supra, was affirmed by the supreme court without report (see 79 O. S. 445), two of the judges concurring "on the sole ground that the committee appointed under the joint resolution had no power to act after the final adjournment of the legislature which could not reconvene of its own motion."

In my opinion, the act creating the Americanization committee and vesting it with authority to act until it's termination on January 1, 1921, is a valid exercise of the legislative power vested in the general assembly by section 1 of Article II of the State Constitution. The power so vested in the general assembly, where no federal

question is involved, is subject only to (a) the veto power of the governor, (b) the power reserved to the people under the initiative and referendum provisions of the constitution (none of which powers were invoked or exercised in this case), and (c) to certain other provisions of the same instrument which qualify or restrict its exercise, which are inapplicable to the present inquiry; and since it is the well established law of this state that an act of the general assembly will not be set aside or held for naught unless found to be in irreconcilable conflict with the constitution, the act referred to must be sustained. Mason vs. State, 58 O. S. 30; Gum Co. vs. Laylin, 66 O. S. 578; Cass vs. Dillon, 2 O. S. 607, and cases therein cited; see also cases digested in 2 Page's Ohio Digest, pp. 2936 et seq.

Whether or not the existence of a committee appointed under authority of section 8 of Article II of the State Constitution as amended in 1912, to obtain information affecting legislation under consideration or in contemplation, terminates at the final adjournment of the session of the general assembly at which it was created, is not before me for consideration at this time, and no opinion is expressed with respect thereto.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1020.

TAXES AND TAXATION—WHERE PARTNERSHIP OWNS STOCK OF MERCHANDISE ON FIRST DAY OF JANUARY AND ON NINTH DAY OF JANUARY SELLS STOCK TO INCORPORATED COMPANY—WHO MAKES RETURN FOR TAXATION AND AS OF WHAT DATE.

Where a partnership owned a stock of merchandise on the first day of January and on the ninth day of January sold the stock to an incorporated company, no return of such stock on the average basis or otherwise will be required of the incorporated company for the year 1920; *but the partnership will be required to take the stock in question into account in listing its merchant's stock for the year ending on the day preceding the second Monday of April,* 1920.

COLUMBUS, OHIO, February 26, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—In a letter of recent date you request the opinion of this department on the following question:

> "A partnership owns a stock of merchandise on the first day of January and on the 9th day of January it sells the stock to an incorporated company. Will the partnership or the incorporated company be required to return this property for taxation for the year 1920 and, if so, as of what date?"

By reason of the enactment of section 5404-1 G. C. (108 O. L., Part I, 131-132) the corporation was required to make its return for the year 1920 "as of the first day of January" (interpreted in a recent opinion of this department to mean as of the close of business on December 31, 1919). Accordingly, the stock of merchandise inquired about would not enter into the personal return of the corporation.

Section 5404-1 does not apply to partnerships. Section 5366-1 G. C., amended in the same act, governs such cases and provides that the listing shall be made as of the day preceding the second Monday of April annually. On the day preceding the second Monday of April, 1920, the partnership will not be the owner of the stock of