

As shown by the transcript, the county's share of the estimated cost and expense of this improvement was \$3,200.

The county commissioners are therefore attempting to issue bonds in excess of the authority granted them by the section of the General Code referred to.

I am therefore of the opinion that the bonds under consideration are not valid obligations of the county and advise the commission not to purchase the same.

The transcript is incomplete in other particulars, but in view of the defect referred to herein, it would be useless to attempt at this time to supply the additional information, as it will be necessary for the county commissioners to reduce the issue of bonds to an amount within the engineer's estimate of the county's share of the improvement before they can be again offered to the Department of Industrial Relations.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2568.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN COLUMBIANA, KNOX, WILLIAMS, PORTAGE AND HAMILTON COUNTIES, OHIO.

COLUMBUS, OHIO, November 10, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2569.

INHERITANCE TAX LAW—LIMITATION ON AMOUNT OF FEE PROBATE JUDGE MAY DRAW UNDER SECTION 5648-10a G. C. (109 O. L. 531) APPLIES TO OFFICIAL YEAR OF TERM OF PROBATE JUDGE—PAID FROM STATE'S SHARE OF UNDIVIDED INHERITANCE TAX FUND—IN LIEU OF ALL OTHER FEES.

1. *The year within which the limitation on the amount of fee a probate judge may draw under section 5648-10a of the General Code, as enacted in House Bill 286, Eighty-fourth General Assembly, is to be applied, is the official year of the term of the probate judge.*

2. *The probate judge is entitled to draw special inheritance tax fees only from the state's share of the undivided inheritance tax fund and from no other source.*

3. *The special fees provided for by section 5648-10a of the General Code as so enacted, are in lieu of all other fees which the probate judge would otherwise be entitled to charge and collect for services rendered in inheritance tax proceedings.*

COLUMBUS, OHIO, November 12, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You have requested the opinion of this department, as follows:

"The enactment of Amended Senate Bill No. 239 and House Bill No. 286 has raised the following questions concerning which we respectfully request your written opinion:

House Bill No. 286 provides that each probate judge shall be allowed a fee of \$5.00 in each inheritance tax proceeding in his court in which tax is assessed and collected and a fee of \$3.00 in each such proceeding in which no tax is found.

Question 1. What constitutes an inheritance tax proceeding in which no tax is found?

Question 2. May a probate judge make a finding in every estate which comes into his court, and if no inheritance tax is due charge the fee provided in this act, or can he only charge in such cases where application is made to determine whether or not taxes are due?

This act further provides that the amount paid to any probate judge under this section shall in no case exceed the sum of \$3,000.00 in any one year.

Question 3. What interpretation is to be placed on the words 'in any one year'? Does this mean a calendar year or the official year of the probate judge? In either event, how is the amount of the limitation to be determined for the balance of the calendar or official year after the taking effect of the act?

Question 4. In the event that there is not sufficient amount of taxes due the state in the county treasury to cover the fees of the probate judge provided in this section, can the probate judge receive the fees from any other source?

Section 5348-10 G. C. provides that such fees as are allowed by law to the probate judge for services performed under the provisions of this subdivision of this chapter shall be fixed in each case and certified by him on the order fixing the taxes.

Question 5. Are the fees provided in this section to be taxed by the probate judge and paid by the county auditor into the general county fund in addition to the fees allowed to the probate judge under House Bill No. 286 to be retained by him?"

The first two questions thus submitted are considered and answered in an opinion to Hon. Walter S. Ruff, prosecuting attorney, Canton, Ohio, a copy of which is enclosed herewith.

The third question may be answered without quotation of the section by the general remark that wherever limitations of this kind are placed upon the amount of fees or other special compensation receivable in a given year, the reference is taken to mean the official year, which is the year on which the compensation of the officer is based and computed. In other words, being a provision having to do with compensation, it is to receive the same interpretation as other similar provisions.

The fourth question is answered by an opinion to Hon. J. F. Henderson, prosecuting attorney, Ashland, Ohio, in which the source of the payment of these fees is pointed out. To the conclusions of this opinion must be added the remark that nowhere in the law is found any authority for recovering or receiving these fees from any other source than that provided for in the inheritance tax law. The conclusion therefore is that unless and until there is a sufficient amount in the state's share of the undivided inheritance tax moneys to cover the fees which the probate judge is entitled to draw under the new law, such fees cannot be drawn, though they may and should be taxed.

The fifth question is also covered in part by some of the discussion in the first opinion above referred to, enclosed herewith. In that opinion it is stated that the special fees for probate judges provided for in the new law are intended to compensate such judges for all services rendered by them in any capacity in connection with the determination of inheritance taxes. Therefore, and though the section does not specifically recite that such fees shall be receivable in lieu of any other fees to which the judge might have been entitled under the general provisions relating to the fees of probate judges, it is the opinion of this department that no such other fees may be drawn by a judge entitled to draw these new fees. This is so because the fee under the new law is expressly to be "for services performed by him (the probate judge) under the provisions of this chapter." This means that the fee attaches to any and all services of that character. It could not have been the intention of the legislature to authorize the taxation and collection of two fees for the same services. The principle to be applied is that the provisions of the new section 5348-10a constitute a special rule in regard to compensation for services in inheritance tax cases, and become an exception to the general provisions of the sections regulating the fees of probate judges as judicial and clerical officers. The fifth question is therefore to be answered in the negative.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2570.

BUILDING AND LOAN ASSOCIATIONS—GUARDIAN MAY NOT INVEST FUNDS OF HIS WARD IN CERTIFICATES OF DEPOSIT IN BUILDING AND LOAN ASSOCIATIONS.

A guardian subject to the control of an Ohio court may not invest the funds of his ward in a certificate of deposit in a building and loan association.

COLUMBUS, OHIO, November 14, 1921.

HON. HARRY G. GRAM, *Probate Judge, Springfield, Ohio.*

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

May a guardian lawfully invest funds belonging to his ward in a certificate of deposit in a building and loan association organized under the laws of Ohio?

Authority to make such investment is claimed under section 9648 of the General Code, which, with the preceding section, which must be quoted in order to complete the sense, is as follows:

"Sec. 9647. Such corporation shall have all the powers set forth in the following sections of this chapter."

"Sec. 9648. To receive money on deposits, and all persons, firms, corporations and courts, their agents, officers and appointees may make such deposits and stock deposits, but such corporation shall not pay interest thereon exceeding the legal rate. * * *"