judge, and tried according to the provisions of this chapter, and, if found guilty, shall be punished in the manner provided for by law."

It will be noted that "in all such cases", the defendant is tried upon affidavit filed with the clerk of the judge exercising the juvenile jurisdiction, rather than upon information or indictment. So that if our premise is true—namely that section 13562 G. C. was intended to apply only to criminal cases originating in the court of common pleas upon indictment—no authority exists to appoint and compensate an attorney assisting the prosecuting attorney in the trial of any of the cases mentioned in section 1683-1 G. C., even where such case is tried in the common pleas court acting as a juvenile court.

If it should be contended that the construction herein given to section 13562 G. C. is an illiberal and technical one, the answer is that matters involving expenditure of moneys raised by taxation are to be narrowly scrutinized, and where doubt exists as to the legality of such expenditures, the doubt is to be resolved in favor of the taxpayer and against the claimant. As said in State vs. Maharry, 97 O. S. 272:

> "All public * * * moneys * * * constitute a public trust fund * * *. *Said trust fund can be disbursed only by clear authority of law.*"

It is, therefore, the view of this department that section 13562 G. C. does not authorize the common pleas court, acting as the juvenile court, to appoint an attorney to assist the prosecuting attorney in the trial of a case brought in said juvenile court under the provisions of the juvenile act.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1852.

TAXES AND TAXATION—LEASE FOR TERM OF YEARS IS NOT A SEPARATELY TAXABLE INTEREST IN LAND UNDER PROPERTY TAXATION LAWS OF THIS STATE.

An ordinary lease for a term of years is not a separately taxable interest in land under the property taxation laws of this state.

COLUMBUS, OHIO, February 11, 1921.

HON. DONALD KIRKPATRICK, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date requesting the opinion of this department upon the following question:

> "On May 1, 1913, A leased to B certain downtown business property in the city of Springfield, Ohio. The lease was a fifteen year lease expiring May 1, 1928. B agreed to pay $4,000 per annum as rental. The lease was assignable. B is not charged in the lease with any taxes or assessments that may be charged against A, the lessor. In 1913 A's property was on the county tax duplicate for $56,860.00. In 1920 Clark county had a reappraisement of land values. A's land and buildings were placed on the tax duplicate for $92,150.00. A's property, if it were to be leased today, would rent for at least $8,000 per annum.

Is the leasehold of B taxable under the laws of Ohio, and should its value be listed on the duplicate for the purpose of taxation in the name of B and chargeable to B and separate from A's fee?"

The answer to this question is in the negative. In this state the taxation of real property under existing statutes is, with very few exceptions, *in rem*. The land is taxed as such, regardless of the different estates or interests therein. That is to say, A may have the ultimate fee in a tract of land, B a life estate therein, C a leasehold, D a mortgage, etc.; yet for purposes of taxation there is but a single thing to be listed, viz.: the tract. The question as to whose name shall be entered on the auditor's tax list and the treasurer's duplicate as that of the "owner" is another and different question, not involved in your statement of facts.

Pertinent statutes which establish this conclusion and also indicate certain exceptions are as follows:

"Sec. 5322. The terms 'real property' and 'land' as so used, include not only land itself, whether laid out in town lots or otherwise, with all things contained therein but also, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto."

"Sec. 5330. Whenever lands belonging to the state, a municipal corporation, religious, scientific or benevolent society or institution, whether incorporated or unincorporated, or to trustees for free education only, or held by the state in trust, are held under lease for a term of years renewable forever and not subject to revaluation, such lands shall be considered, for all purposes of taxation, as the property of the lessees and shall be assessed in their names. Whenever school and ministerial lands are held under perpetual lease subject to revaluation, the interest of such lessees in such lands shall be subject to taxation. In determining the value for purposes of taxation of such leasehold interest, the true value in money of the land shall be ascertained, the annual rent reserved in the lease shall be capitalized on a six per centum basis and that sum deducted from the true value of the land in money; the result so obtained plus the value of all of the improvements upon such land shall be the appraised taxable value of such leasehold interest.

Whenever such school or ministerial lands are held under lease for terms of years renewable forever, whether subject to revaluation or not, such lands shall for all purposes of special assessment for improvements benefiting such land be considered as the property of the lessee. Whenever such lands are held on leases for terms not renewable forever, such lands shall be subject to special assessments benefiting such lands, which shall be paid out of the annual rents accruing to the trust.

Whenever it appears that the net annual rents or earnings accruing from such lands will be insufficient to pay the sum of such assessment as the same becomes payable, the state supervisor of school and ministerial lands, upon the request of the trustees in local charge of such lands shall issue and sell notes for the sum so required, payable in such number of years as will be required for the net rents to meet the whole sum of such assessment, and bearing interest at not more than five per centum per annum as the state supervisor shall determine. But such notes shall not be sold for less than par. Such notes and interest thereon shall be a lien upon the rents or earnings of the proceeds of any sale of such lands so assessed, and the sum of such notes and interest shall be paid out of such rents or earnings or proceeds of such sale by the state supervisor."

"Sec. 5554. The county auditor, in all cases, from the best sources of information within his reach, shall determine, as near as practicable, the true value of each separate tract and lot of real property in each and every district, according to the rules prescribed by this chapter for valuing real property. He shall note in his plat-book, separately, the value of all dwelling houses, mills and other buildings, which exceed one hundred dollars in value, on any tract or plat of land not incorporated, or on any land or lot of land included in a municipal corporation, which shall be carried out as a part of the value of such tract. He shall also enter therein the number of acres of arable or plow land, meadow and pasture land, and wood and uncultivated land, in each tract, as near as possible."

"Sec. 5560. Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, 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."

"Sec. 5680. Each person shall pay tax for the land or town lots of which he is seized for life, or in dower, or which he has care of as guardian or executor. He shall also pay tax for the lands or town lots which he has care of as agent or attorney, if he has sufficient funds of the principal in his hands.

"Sec. 5681. Each person holding lands shall pay the tax assessed thereon each year, but an agent or attorney shall not be required to pay such taxes, unless sufficient money of his principal is in his hands to pay them."

"Sec. 5682. Each person owning lands, may authorize or consent to the payment by another, of the taxes levied upon such lands. A person so paying such taxes shall first obtain from the owner or owners of such lands a certificate of authority to pay them, signed in the presence of two witnesses, and acknowledged before an officer authorized to administer oaths. Such certificate shall contain an accurate description of the property as shown by the tax duplicate, the amount of the taxes levied thereon, the year for which they were levied, the name of the person authorized to pay them, and the date of the payment thereof."

"Sec. 5688. If any person, seized of lands in dower or for life, neglects to pay the taxes thereon, so that such lands are sold for the payment thereof, and within one year after such sale does not redeem them, according to law, he shall forfeit to the person or persons next entitled to such lands in remainder or reversion, all the estate which he has in such lands. The remainder man or reversioner may redeem the lands in like manner as other lands are redeemed after having been sold for taxes. The person, so neglecting, shall be liable to the persons next entitled to the estate for all damages such persons have sustained by such neglect."

"Sec. 5689. A person having a lien upon real estate may pay the taxes which are a lien thereon, and the amount so paid, from the time of payment, shall be a lien upon such real estate in preference to all other liens. The money so paid may be recovered by action for money paid for his use against the person or persons liable for the payment of the taxes."

"Sec. 5690. When a tract of land is owned by two or more persons, as joint tenants, copartners, or tenants in common, and one or more of them has paid the tax, or tax and penalty, charged or chargeable on his or their proportion of such tract, and one or more of those remaining has failed to

pay his or their proportion of the tax, or tax and penalty, charged or chargeable on said land, and partition of the land is made between them, the tax, or tax and penalty, so paid, shall be deemed to have been paid on the proportion of such tract, set off to the person or persons, who paid his or their proportion of the tax, or tax and penalty."

"Sec. 8597. Permanent lease-hold estates, renewable forever, shall be subject to the same law of descent as estates in fee are subject to by the provisions of this chapter."

"Sec. 2573. On application and presentation of title, with the affidavits required by law, or the proper order of a court, the county auditor shall transfer any land or town lot or part thereof or minerals therein or mineral rights thereto, charged with taxes on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, or minerals therein or mineral rights thereto, as charged in the tax list is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made. The auditor shall indorse on the deed or other evidences of title presented to him that the proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto."

The foregoing is not a complete catalogue of the sections which might be referred to, but it is believed that nothing material to the present inquiry has been omitted. The only exception to the general principle above laid down which are made expressly by the statutes cited, are the cases of mineral rights in land, which are to be separately assessed, and lands held under lease for a term exceeding fifteen years and belong to exempt owners (Section 5330). It has been held, however, that the effect of section 8597, above quoted, together with the other sections which have been mentioned, is to make permanent leasehold estates, renewable forever, equivalent to freehold estates for the purpose of taxation. This is not really an exception to the rule laid down, but is equivalent merely to saying that the permanent lessee is to be treated as the owner rather than the owner of the technical fee or ground rent. In this respect the decision is merely in line with sections 5680 and 5688, above quoted, which impose the duty of paying taxes upon owners of life estates. No similar duty is imposed by law upon lessees of ordinary estates for years; hence the practice, departed from in the case about which you inquire, of inserting a covenant to pay taxes in such leases. Even if there were such a section, however, it would not affect the question raised by you, which is as to whether or not there should be separate assessments of the interest of the lessee and the interest of the owner in fee, respectively.

It may be repeated, then, that save as to mineral rights, etc., and with the exception based upon the case of *Cincinnati College vs. Yeatman,* 30 O. S. 276, which was peculiar in that the perpetual leasehold therein involved was such that it made a horizontal division of the tract instead of a perpendicular one, there is to be no separation of an entire tract for the purpose of the assessment of real property taxes.

You are advised therefore that under the facts stated by you B's leasehold is not taxable as land or an interest therein. That it is not taxable as personal property appears from section 5325 of the General Code, which provides that:

"The term 'personal property' as so used, includes first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of a parcel of real property, as hereinbefore defined; * * *."

There being no other provision for its taxation, the conclusion is that it is not taxable at all. A more accurate way of putting it, however, would be to say that its value is reached through the appraisement of the land itself. The appraiser does not estimate the value of the whole land and subtract therefrom the value of the leasehold; but he shuts his eyes to the fact that there is a lease, under circumstances like those described by you.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1853.

BANKS AND BANKING—UNCERTIFIED CHECKS OUTSTANDING ON TAX LISTING DAY MAY NOT BE DEDUCTED FROM ACTUAL BANK BALANCE OF THE DRAWER FOR PURPOSE OF TAXATION.

Uncertified checks outstanding on tax listing day may not be deducted from the actual bank balance of the drawer in arriving at his "moneys in bank" for the purpose of taxation.

COLUMBUS, OHIO, February 11, 1921.

HON. ROBERT E. MARSHALL, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department, as follows:

> "On April 8, 1920, A had in bank to his credit a sum of money and issued and delivered on said date his checks, one to B for $1,880.00 and the other to C for $900.00 in payment of accounts that he owed them. This transaction was in absolute good faith in payment of goods bought by A of B and C. Taxes attached on April 11, 1920, and before the checks had been presented by B and C at the bank for payment, or in any event before they got back to the bank on which they were drawn. The question is should A return for taxation the $2,780.00 for which he had issued checks to B and C?
>
> When we ask this question we are aware of the decision in Insurance Company vs. Hynicka, 5 O. N. P. (N. S.) 255, but think this case is clearly distinguished from the Insurance Company-Hynicka case in that in the case about which we are inquiring the checks were actually issued and delivered, whereas in the Insurance case the checks had simply been written and had never been torn from the check book, sent out or delivered.
>
> We should very much appreciate hearing from you on the matter?"

Whether you have correctly interpreted the facts in *Insurance Co.* vs. *Hynicka,* the case cited, is doubted. It is true that the opinion of the superior court, reported in 5 N. P. (N. S.) 255, uses the following language:

> "The checks drawn were not used, and the drawing of them did not therefore deplete the balance or in any way affect moneys on hand."

In another place in the same opinion, however, the court speaks of the checks as "outstanding checks."