mate expenditure for the furnishing of high school facilities for its resident pupils.

If a school district has resident pupils that attend high school in an adjoining district, under circumstances requiring it to pay tuition for those pupils, and it determines that it wishes to also provide transportation for those pupils, there would seem to be no substantial difference between its furnishing that transportation in a conveyance of its own or contracting with the board which maintains the high school for the furnishing of the transportation. If the board of the pupil's residence does not determine to furnish transportation for the pupil, and the pupil pays his own transportation the situation would be practically the same.

In most instances, at least, it is some advantage to a school board maintaining a high school to secure the attendance of outside pupils, and thereby supplement its school funds by the tuition received from those pupils. If, in the opinion of the board of education, it is practicable and advisable to permit those pupils to use its transportation facilities, I am of the opinion that it is not an abuse of discretion, and not beyond its power to do so, especially, if to permit those pupils the use of its school conveyance does not so crowd the conveyance as to interfere with the transportation facilities provided for its resident pupils.

The charge to be made for this transportation depends on the circumstances. It should be proportionate to the cost of furnishing the transportation and should not be made with a view to profit but with a view only to covering the actual cost.

I am therefore of the opinion, in specific answer to your question, that under the circumstances outlined in your inquiry, the East Union Board of Education has a right to permit the pupils in question to use the transportation facilities provided for the resident pupils of East Union Township Rural School District, provided to do so does not interfere with the use of those facilities by the pupils who are residents of the district. The amount of the charge to be made for the use of those transportation facilities to be based upon the proportionate cost thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4184.

CHECK—DEPOSITED WITH BANK FOR COLLECTION—HELD BY BANK ON TAX LISTING DAY—SHOULD BE RETURNED FOR TAXATION AS "OTHER INTANGIBLE PROPERTY."

SYLLABUS:

An individual engaged in business sells goods to a customer for the price of $1,060.00 *cash, and enters the item among his accounts receivable. On the day prior to tax listing day, the individual receives the customer's check for the full amount, drawn on the customer's bank in another city. He takes the check to his own bank in Ohio, which declines to credit his account therewith, but accepts the check, endorsed for collection, and carries the item in a separate account as agent or trustee, in which condition the transaction stands on listing day. Held: That assuming said check to be good and that the same is paid upon presentation and passed to the*

credit of the depositor upon clearance, such check should be returned for taxation by the owner and depositor of the check as "other intangible property."

COLUMBUS, OHIO, March 25, 1932.

Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt from you of a communication which reads as follows:

> "You are respectfully requested to render the Tax Commission of Ohio your written opinion upon the following question, which has been encountered in formulating the blanks for tax returns under the new system:
>
> Question 1. An individual engaged in business sells goods to a customer for the price of $1,060.00 cash, and enters the item among his accounts receivable. On the day prior to tax listing day, the individual receives the customer's check for the full amount, drawn on the customer's bank in another city. He takes the check to his own bank in Ohio, which declines to credit his account therewith, but accepts the check, endorsed for collection, and carries the item in a separate account as agent or trustee, in which condition the transaction stands on listing day. How should the matter be treated for taxation purposes.
>
> (a) As a deposit, taxable at the source? It would seem not, as the relation of debtor and creditor does not exist as between the bank and its customer.
>
> (b) As an account receivable, subject to deduction for accounts payable, and the net amount taxable to the creditor? or
>
> (c) As 'other taxable intangibles,' viz., an uncollected check belonging beneficially to the individual, and to be listed by him?
>
> (d) As 'other taxable intangibles,' viz., an uncollected check, but returnable separately by the bank as fiduciary (trustee of a chose other than an investment.) See fourth paragraph of Section 5370."

The primary question presented in your communication is whether or not the amount due and owing to the individual referred to arising out of the sale of said bill of goods and covered by the uncollected check of the customer in the hands of the bank on tax listing day is to be returned for taxation, (1) as a deposit, (2) as an account receivable and potential credit, or (3) as "other taxable intangible," under the Intangible Tax Law enacted by the 89th General Assembly, as amended in Senate Bill No. 323.

Section 5328-1, General Code, provides in part as follows:

> "All moneys, credits, investments, deposits and other intangible property of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted in this title."

It thus appears that each and all of the above noted classes of intangible property are subject to taxation. Inasmuch, however, as the same provisions of law do not apply as to the manner in which these different classes of intangible property shall be returned for taxation, as to the time of which the same shall be

listed, or as to the rates that they shall bear, it is important to note how the item here in question is to be classified.

It is quite clear that the item here in question is not a deposit within the meaning of this law. Section 5324, General Code, as amended in said act, provides, so far as the same is pertinent to the consideration of the question here presented, as follows:

> "The term 'deposits' as so used, includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificates of running or other withdrawable stock, or otherwise."

It appears from the facts stated in your communication that the check here in question was received by the bank only for the purpose of collection. In this situation, the courts are practically unanimous in holding that the title to paper thus received or deposited does not pass to the bank, and that such deposit does not create the relation of debtor and creditor as between the bank and the depositor. In 3 R. C. L., page 524, section 152, it is said:

> "When a check or other commercial paper is deposited in bank indorsed for collection, or where there is a definite understanding that such is the purpose of the parties at the time of deposit, there is no question that the title to the paper remains in the depositor. So checks deposited as checks do not give rise to the relation of debtor and creditor, and the title to them remains in the depositor, the bank merely acting as an agent of the depositor for the purpose of collection."

The same rule is stated in the case of *Jones* vs. *Kilbreth,* 49 O. S. 401.

Whether the amount due to the individual referred to in your communication, arising out of the sale of said bill of goods and covered by the customer's check, still has the status of an account receivable on tax listing day, depends upon the effect of the receipt of said check which for the purpose in question is assumed to be a good check drawn upon a solvent bank. It appears from the facts stated in your communication that the bill of goods here in question was sold to the customer *for cash.* In the case of *Hodgson* vs. *Barrett,* 33 O. S. 63, it was held:

> "Where goods are sold for cash, delivery and payment are concurrent conditions of the sale."

The court in this case further held:

> "Where payment is made by a check, drawn by the purchaser on his banker, this is a mere mode of making a cash payment, and not the acceptance of a security. Such payment is conditional only, and if the check upon due presentation is dishonored, the vendor's right to retake the goods from the purchaser remains in full force."

In this connection, however, it is pertinent to note a rule with respect to payments made by check, which rule is stated in 21 R. C. L., page 70, section 69, as follows:

"Payment by bill or check becomes absolute payment of the debt when the check is paid on presentation. On such payment of the check, the debt is deemed to have been discharged from the time the check was given."

In the case of *McFadden* vs. *Follrath,* 114 Minn. 85, 87, it is said:

"Payment by check becomes absolute payment of the debt when the check is paid upon presentation. Upon such payment of the check, the debt is deemed to have been discharged from the time the check was given. *Downey* vs. *Hicks,* 14 How. 240, 14 L. ed. 404; *Strong* vs. *Ten Cent T. B. & S. Assn.,* 189 Pa. St. 406, 42 Atl. 46."

In the case of *Jacobson* vs. *Bentzler,* 127 Wis. 566, it was held:

"The acceptance of a check on a bank is in the nature of a conditional payment, which becomes complete when accepted, and when the amount due thereon is actually paid, such payment relates back to the time of its delivery."

In the case of *Hooker* vs. *Burr,* 137 Calif. 663, 668, the court, in its opinion, said:

"In general mercantile and commercial transactions a check, after all, is but a convenient form of transferring money, and operates either as payment absolute or payment conditional, as the parties themselves intend. *(Savings and Loan Society* vs. *Burnett,* 106 Cal. 514; *Comptoir etc.* vs. *Dresbach,* 78 Cal. 15.) But in all such transactions where a check is received as conditional payment the payment becomes absolute and relates to the date of the delivery of the check when its recipient actually cashes it."

In the case of *Tonnar* vs. *Wade,* 153 Miss. 723, it was held:

"Generally, a check becomes absolute payment of a debt when check is paid on presentation, and on such payment debt is deemed to have been discharged from date check was given."

In the case of *Hunter* vs. *Wetsell,* 84 N. Y. 549, it was held that a check given by the buyer to the seller at the time of the sale, which check was thereafter duly presented and paid, constituted a payment at the time of the sale within the meaning of the statute of frauds. The court, in its opinion, said:

"It is said, however, that the actual payment of the money, as distinguished from the delivery of the check, was not 'at the time' of the contract, but at some later period. We do not know accurately when the check was paid. It may have been the same day. It may have been within a very few moments. It may not have been until the next day. We are not to presume, for the purpose of making the contract invalid, that it was held beyond the natural and ordinary time. In such event, it is a very narrow construction to say that the payment was not made at the time of the contract. * * * It would be an entirely reasonable and just construction to say that the delivery of the check and its presentment and payment constitute one continuous transaction, and should be taken as such without reference to the ordinary delay attendant upon turning the check into money."

See also on this point, *Jones* vs. *Wattles,* 66 Nebr. 533, *Case* vs. *Kramer,* 34 Mont. 142.

Whether the item here in question is to be considered as an account receivable or as "other intangible property," for purposes of taxation, the same is to be returned as of the first day of January, the actual return of the taxpayer being made thereafter between the 15th day of February and the 31st day of March. It would appear therefore that at the time the taxpayer returns this item for taxation the check which was given to the taxpayer by the customer in payment for the bill of goods referred to in your communication had the effect of discharging the customer's indebtedness for said bill of goods from the time said check was received, which on the facts stated in your communication, was before tax listing day. It follows from this that the item in question can not be classified as an account receivable on tax listing day, but that the check which was uncollected on tax listing day should be returned as other intangible property.

In the consideration of the second question presented in your communication it is noted that under the provisions of section 5370, General Code, as amended by the personal tax law, each person is required to return all the taxable property of which he is the owner excepting that required by this section or by the regulations of the commission to be returned for him by a fiduciary. Although on the facts above stated, the bank receiving this check for collection is, in a sense, the agent of the person depositing the check, the bank is not in this case such agent as makes it a fiduciary under the provisions of this section of the General Code; and it will be the duty of the owner depositing the check to return the same as "other intangible proyerty."

Respectfully,

GILBERT BETTMAN,

Attorney General.

4185.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF KATE McMAHON, IN JEFFERSON AND GREEN TOWNSHIPS, ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, March 25, 1932.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter submitting for my analysis an abstract of title and other relevant papers relating to the proposed purchase of a 265.92 acre tract of land in Jefferson and Green Townships, Adams County, Ohio, from one Kate McMahon. At the time negotiations were first made by the state to purchase said property, one C. W. G. Hannah was the alleged owner. In the interim said property was conveyed by said Hannah to said Kate McMahon who now proposes to deed said property to the state of Ohio.

The abstract of title begins by reciting that:

> "The following is an abstract of property conveyed by C. R. Himes, et al., and W. W. White, sheriff of Adams County, Ohio, to C. W. G. Hannah, in two deeds: one deed conveying three tracts of land, recorded