tracts, and finding said contracts and bonds in compliance with law, I have this day noted my approval thereon.

Said contracts and bonds, and all other data transmitted to me in this connection, I am this day filing with the auditor of state.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2094.

TAXES AND TAXATION—MERE FACT THAT STOCK DEPOSITS ARE PERMITTED TO BE WITHDRAWN ON DEMAND IS NOT OF ITSELF SUFFICIENT TO REQUIRE STOCK DEPOSITOR IN BUILDING AND LOAN ASSOCIATION TO LIST HIS INTEREST AS "MONEYS" INSTEAD OF AS "CREDITS" UNDER SECTION 9675 G. C.—WHEN SAME SHOULD BE LISTED AS "MONEYS".

The mere fact that stock deposits are permitted to be withdrawn on demand is not of itself sufficient to require a stock depositor in a building and loan association to list his interest as "moneys" instead of as "credits" under section 9675 of the General Code; but if the actual course of business dealings on the part of the association in relation to such depositor is that interest is allowed as "interest" on such deposits, and withdrawals are permitted on the basis of principal and interest, without regard to actual dividends declared or losses sustained, then such deposits so withdrawable on demand should be listed as "moneys", even though an outward form of stock deposits may have been given to them.

COLUMBUS, OHIO, May 24, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission has recently requested the opinion of this department as to how what is called "running stock" of a building and loan company is to be listed for taxation.

It appears from other papers submitted with the commission's request that "running stock" is the term used to describe the following arrangement:

A person subscribes to a given number of shares of stock of the building and loan assaciation and is permitted to pay out the face value of the shares in installments, for which payments a receipt is given in a pass book. Whenever the payments equal the face value of the whole or a fraction of a share a certificate is issued. At the same time, however, the person thus subscribing is entitled at any time to withdraw from the association an amount of money equal to his payments and cancel his stock subscription. On such withdrawal he is credited with dividends up to the amount of the fractional share represented by his payments, and charged with the proportionate share of the association's loss, if any, during the time that he was a subscriber.

Authority to issue stock in this manner is granted to building and loan associations by section 9649 of the General Code, which provides as follows:

> "To issue stock to members on such terms and conditions as the constitution and by-laws provide. Each member may vote his stock in whole or fractional shares, as the constitution and by-laws provide, but no person shall vote more than twenty shares in any such corporation in his own

right, nor have the right to cumulate his votes. But every subscriber for stock in accordance with the constitution of the association, may vote the amount of stock so subscribed for, in no event to exceed twenty shares."

Section 9648 of the General Code authorizes building and loan associations "to receive money on deposit", and in specifically authorizing a receipt of deposits from any and all persons the section speaks of "such deposits" and "stock deposits".

Section 9651 of the General Code authorizes such associations:

"To permit members to withdraw all or part of their stock deposits, at such times, and upon such terms, as the constitution and by-laws provide. Any member, however, who withdraws his entire stock deposits, or whose stock has matured, shall be entitled to receive all dues paid in and dividends declared thereon, less all fines or other assessments, and less the pro rata share of all losses, if any have occurred."

Section 9653 of the General Code authorizes such associations

"To cancel shares and parts of shares of stock upon which the credits have been withdrawn * * *, and re-issue them as new stock."

Section 9675 of the General Code provides as follows:

"The shares and loans advanced to its members, shall be exempt from taxation, except that shares of stock upon which no loans have been made or money advanced by the company, shall be considered and held as credits. The members individually shall list for taxation the number of shares held by them, and the true value thereof in money, on the day preceding the second Monday in April each year, and they shall be assessed at such valuation for taxation and taxes as other property."

This section, the constitutionality of which is assumed for the purposes of this opinion, fully answers the commission's question. It is clear that the chapter of which section 9675 is a part authorizes deposits on stock to be withdrawn and the stock canceled at any time if the by-laws so provide; so that a given association may dispense with any notice or other formalities in the withdrawal of stock deposits, if it desires to do so. The mere fact, therefore, that no such notice or other legal formality is required for the withdrawal of stock deposits is not of itself evidence to show that the stock subscription is to be ignored and the money on deposit is to be treated as "money" within the meaning of section 5326 of the General Code because it is a "deposit which the person owning * * * is entitled to withdraw in money on demand." From the viewpoint of substance, the transaction does resemble the deposit of money, and from the viewpoint of form it bears a resemblance also to an investment in stock, as defined by section 5324 of the General Code. But always assuming the constitutionality of section 9675, the effect of that section is to place the interest of the stock depositor in the category of "credits". Of course, the difference between classing such interest either as an investment in stock or money on deposit, on the one hand, and regarding it as a credit, on the other hand, is that his legal bona fide debts could not be deducted in the one case and may be deducted in the other.

But in order that the benefits of section 9675 may be obtained the statutes must be complied with; and if it is clear that the form of a "running stock" subscription is used to color a transaction which amounts in reality to a deposit of moneys, and that deposit is withdrawable upon demand, then it would be taxable as money. In

the first place, it is possible to conceive of such a transaction being entered into otherwise than in good faith, though if all the statutory requirements are met it does not seem possible that such a conclusion could be successfully established. Therefore, the importance of any such consideration is very slight. In the second place, however, what happens on withdrawal may be looked to to determine the exact nature of the transaction. If in point of fact a particular person, who appears on the surface to be a holder of "running stock", when he withdraws all or a part of his so-called stock deposits receives interest only, or his principal without interest, and is neither credited with any dividends declared nor charged with any losses incurred, this fact would be conclusive to show that the real transaction was a money deposit and not a stock deposit, even though the outward form of a stock deposit may have been used by the parties. This is clear from the very nature of stock itself, and from the express provisions of section 9651 of the General Code, above quoted. If, therefore, the taxing authorities have proof that any building and loan association is paying interest as "interest" upon deposits having the outward form of stock deposits, and is permitting withdrawals to be made on that basis, then such taxing authorities would be justified in requiring the so-called stock depositors of such building and loan association to list their deposits as moneys, if such deposits were permitted to be withdrawn on demand.

The opinion of this department is, therefore, that the mere fact that stock deposits are permitted to be withdrawn on demand is not of itself sufficient to require a stock depositor in a building and loan association to list his interest as "moneys" instead of as "credits" under section 9675 of the General Code; but if the actual course of business dealings on the part of the association in relation to such depositor is that interest is allowed as "interest" on such deposits, and withdrawals are permitted on the basis of principal and interest, without regard to actual dividends declared or losses sustained, then such deposits so withdrawable on demand should be listed as "moneys", even though an outward form of stock deposits may have been given to them.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2095.

STATE BOARD OF EMBALMING EXAMINERS—CONSISTS OF THREE MEMBERS.

The state board of embalming examiners, under laws now in force, consists of three members, and the governor is without authority to appoint two additional members to take the places formerly occupied by the two ex-officio advisory members. 1917 *Opinion Attorney-General, Vol. II, page* 1808, *approved and followed.*

COLUMBUS, OHIO, May 24, 1921.

HON. HARRY L. DAVIS, *Governor of Ohio, Columbus, Ohio.*

DEAR GOVERNOR:—Your letter of recent date relative to the number of members constituting the state board of embalming examiners, and the number that may be appointed by the governor, was duly received.

Sections 1335 and 1336 G. C. provide in substance that there shall be a state board of embalming examiners consisting of five members, of which board the