

542.

APPROVAL, NOTES OF KITTS HILL RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—\$7,741.000.

COLUMBUS, OHIO, April 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

543.

APPROVAL, NOTES OF WASHINGTON RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—\$12,038.00.

COLUMBUS, OHIO, April 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

544.

APPROVAL, NOTES OF EMPIRE VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—\$4,537.00.

COLUMBUS, OHIO, April 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

545.

APPROVAL, NOTES OF CHESTER RURAL SCHOOL DISTRICT, MEIGS COUNTY, OHIO—\$7,603.00.

COLUMBUS, OHIO, April 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

546.

TAXES—CERTIFICATE OF PAYMENT FROM COUNTY AUDITOR OR COUNTY TREASURER UNNECESSARY AT TIME OF FILING OF "PARTIAL ACCOUNT" BY EXECUTOR OR ADMINISTRATOR—WHEN SUCH CERTIFICATES NECESSARY—WHAT CERTIFICATES MUST CERTIFY.

SYLLABUS:

1. *By virtue of the provisions of Section 10509-176, General Code, it is not mandatory that the certificates of the county treasurer and county auditor, that*

all taxes charged against the estate of the decedent have been paid, be filed by the administrator or executor at the time of the filing of a "partial account" but such certificates must be filed at or before the time of the filing of the final account.

2. *The certificates of the county auditor and county treasurer filed with the probate court pursuant to the provisions of Section 10509-176, General Code, must certify that all taxes, including real estate taxes charged against property coming into the control of the executor, charged against the estate of the decedent have been paid.*

COLUMBUS, OHIO, April 11, 1933.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

"Our Probate Judge and County Treasurer are unable to determine whether a certificate from the County Treasurer showing that all taxes charged against the estate of a decedent have been paid, is a necessary voucher before the Court may approve the account of an executor or administrator under the following circumstances:

1. Where the executor or administrator files only a partial account rather than a final and distributive account.
2. Where the only unpaid taxes are real estate taxes and an executor sells under a power created in the Will to a buyer who assumes the taxes which are charged on the treasurer's books but not payable until after the executor files his final account.
3. Where an executor or an administrator holds real estate which it is necessary to sell to pay debts, but is required to file a partial account before such a sale is consummated.

We thought that your office has probably had this question under consideration and that you will already have an opinion concerning this matter. If you do not, we will be glad to have your unofficial expression concerning the matter at the present time, and your opinion later. The statute is not very clear and is hard to interpret under some of the above mentioned conditions."

Section 10509-81, General Code, makes provision for the payment of taxes from the estate of a decedent. Such statute reads:

"Taxes or penalty lawfully placed on a duplicate or added by the county auditor or the tax commission of Ohio because of a failure to make a return, or of making a false or incomplete return for taxation, shall be a debt of the decedent, to have the same priority and be paid as other taxes, and collectible out of the property of the estate either before or after distribution, by any means provided by law for collecting other taxes. No distribution, or payment of inferior debts or claims shall defeat such collection; but no such tax or penalty can be added before notice to the executor or administrator, and an opportunity is given him to be heard. All taxes omitted by the deceased must be charged on the tax lists and duplicate in his name."

Section 2650, General Code, provides that when any tax is paid the county treasurer shall give a receipt therefor, and Section 2651, General Code, prescribes the form of such receipt.

Section 10509-176, General Code, referred to in your inquiry, provides that the personal representative shall produce the vouchers for all debts paid by him. Such section reads:

"In rendering such account, every executor or administrator shall produce vouchers for debts and legacies paid, and for funeral charges and just and necessary expenses, together with certificates from the county treasurer and the county auditor showing that all returns for taxation have been made and that all taxes charged against the estate have been paid, which shall be filed with the account, and they, together with the account, be deposited and remain in the probate court."

The accounts referred to in such section are those provided in Section 10509-170, General Code, that is, an account within nine months after the appointment of the executor or administrator which may or may not be a complete accounting, and such further accounts each six months thereafter, as may be necessary until the final distribution of the estate and a complete accounting has been made by him of the settlement of the estate. The word "account" as used in this section evidently means "a complete accounting"; that is, what are commonly referred to as "a partial account" and as "a final account" are considered as one account. If this be the intent of the legislature, even though it has by the provisions of Section 10509-170, General Code, under certain conditions, authorized the administrator or executor to make his accounting by periodical rests, there would appear to be no language contained in the statute which would require such administrator or executor to file the certificate of the county auditor and county treasurer, as specified in such Section 10509-176, General Code, each time he files a partial accounting. Such intent is indicated from the language of the entire act, since there is no provision in such act requiring the personal representative to have paid all the taxes standing charged against the estate of the decedent before the nine months period specified in the statutes, for the filing of the first account has elapsed.

If such were not the intent of the legislature, if the decedent died after the day preceding the second Monday in April but before the first day of May, such statute would require that the executor at the time of filing his first partial account would not only have to produce the voucher evidencing payment of the taxes due and payable in June, after the decedent's death, but also vouchers evidencing the payment of the semi-annual installments of taxes due the following December and the next following June, for such taxes would become charged against the decedent in October next after the decedent's death. If the classified taxes had been assessed it would require the deposit of the voucher evidencing the payment thereof.

While Section 10509-170, General Code, apparently permits the filing of a final account at the end of the nine months period if the debts and assets of the estate have been fully paid (Adams & Hosford Ohio Probate Practice & Procedure, p. 793), I am unable to find any language in the probate code which requires him to do so. It is quite conceivable that the estate may be in litigation during such nine months period as by a will context, yet the language of Section 10509-176, General Code, is specific that an account must be filed "within

nine months after his appointment." I am therefore of the opinion that the word "account" as used in Section 10509-176, General Code, is used in the sense of "complete account" and that an executor is only required to file the certificate of the county auditor and county treasurer that all taxes standing charged against the decedent's estate have been paid, at the time of filing his final account.

Your inquiry presents another question, as to whether an executor may, in view of the provisions of the statutes, file his final account when he has sold a parcel of real estate to a purchaser who agreed to assume and pay as part of the purchase price the taxes standing charged thereon in the name of the decedent. Section 5680, General Code, contains the following language:

"Each person shall pay tax for the lands or town lots of which he is seized * * or which he has care of as guardian or executor."

Section 10509-176, General Code, specifically requires that there shall be filed with the account of the administrator or executor "certificates from the county treasurer and county auditor that all * * taxes charged against the estate have been paid." The language of this section is not limited to personal property taxes but includes all taxes. Section 5680, General Code, enjoins the executor to pay the real estate taxes on lands under his control. In the case of *Numm vs. Hubacher*, 25 O. App. 265, the Court of Appeals for Cuyahoga County held that the duty to file the vouchers was mandatory. Like reasoning would lead to the conclusion that the duty to file the certificates was mandatory. It would, therefore, appear that there is a duty upon an executor to file a certificate of the county treasurer and a certificate of the county auditor that all taxes charged against the estate coming under the control of the executor have been paid.

In view of my opinion as to your first and second inquiries, it is unnecessary to answer your third inquiry.

Specifically answering your inquiries it is my opinion that:

1. By virtue of the provisions of Section 10509-176, General Code, it is not mandatory that the certificates of the county treasurer and county auditor, that all taxes charged against the estate of the decedent have been paid, be filed by the administrator or executor at the time of the filing of a "partial account" but such certificates must be filed at or before the time of the filing of the final account.

2. The certificates of the county auditor and county treasurer filed with the probate court pursuant to the provisions of Section 10509-176, General Code, must certify that all taxes, including real estate taxes charged against property coming into control of the executor, charged against the estate of the decedent have been paid.

Respectfully,

JOHN W. BRICKER,

Attorney General.