

Part I, p. 709). This act afforded an alternative means of providing for deficiencies in school district treasuries and authorized the issuance of deficiency bonds to meet actual and anticipated deficiencies existing during the current fiscal year, which as to school districts was defined as extending to "the first day of March, 1921" (section 12). Action under this measure must have been initiated "not later than the first Monday in October, 1919 (section 2).

No similar measure was passed to provide for school districts at the adjourned session of the general assembly, no doubt for the reason that house bill 567 afforded "relief" for the period ending in March, 1921, at which time house bill 615 would commence to function by the production of revenue. In other words, house bill 567 is effective to cover the remainder of what you designate as "this year" and the first half of the next school year, but it is now too late to act under that measure.

Assuming that your thirteenth question is an inquiry as to whether or not any new measure like house bill 567 above referred to has been passed, it is to be answered in the negative.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1139.

TAXES AND TAXATION—CREDITS OF CORPORATION ARE TO BE ARRIVED AT FOR TAXATION PURPOSES IN SAME WAY AS ARE CREDITS OF NATURAL PERSON, DEBTS BEING DEDUCTED THEREFROM—UNPAID STOCK SUBSCRIPTIONS—THE HYDRAULIC PRESSED STEEL COMPANY.

*The credits of a corporation are to be arrived at for taxation purposes in the same way as are the credits of a natural person, debts being deducted therefrom; but such credits, together with the investments and moneys of the corporation, are to be considered as the "personal property" of such corporation for the purpose of situs and possibly some other similar purposes, but not for the purpose of affecting the question as to the deduction of debts. No difference exists between a corporate credit arising out of an unpaid stock subscription and any other corporate credit, the inference, if any, to be drawn from the inability of the subscriber to deduct the amount unpaid by him on his subscription from his legal claims and demands, for the purpose of arriving at his credits not being strong enough in the absence of other statutory provisions to justify any such distinction. A corporation may therefore deduct its debts from its unpaid stock subscriptions.*

COLUMBUS, OHIO, April 9, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—In the matter of the appeal of The Hydraulic Pressed Steel Company:

Very careful consideration has been given to the question involved in the above entitled matter referred to this department for an opinion. That question is the same one considered in the opinion of my predecessor, found in Opinions of Attorney-General for the year 1918, Volume I, p. 714, to which I have given my approval in opinion No. 642 addressed to the commission under date of September 22, 1919.

Restating the question in its broadest and most abstract terms, it is as follows:

“Are unpaid stock subscriptions of a corporation to be considered as ‘credits’ from which debts may be deducted for property taxation purposes in Ohio, or are they to be considered as ‘personal property’ and consequently not subject to deduction of debts for such purpose?”

The conclusion heretofore arrived at by this department based upon the language of sections 5325 and 5327 of the General Code, was that such claims were to be classed as personal property for purposes of taxation and that, therefore, debts could not be deducted from them in listing the personal property of a corporation for taxation.

Able and exhaustive briefs have been filed with the commission by counsel for the appellant. It seems that some question is suggested to the effect that under the particular form of contract entered into between The Hydraulic Pressed Steel Company and its employes looking toward the acquisition of shares of stock in the company by the employes, no absolute obligation on the part of the employe to pay for the stock assigned to him arises. This suggestion seems to be put forth as the predicate of an argument to the effect that so-called stock subscriptions of this class held by the company are not legal claims and demands in any sense and therefore should not be listed for taxation either as personal property or as credits. It is possible that such may be the effect of the contract; but inasmuch as this point is not pressed it will not be considered.

The care with which the more fundamental question above suggested has been examined by counsel has not only necessitated a re-examination of the question in this department, but has stimulated researches not undertaken by counsel themselves, as a result of which a conclusion contrary to that heretofore reached in this department has been arrived at, but for reasons not thus far fully suggested in the discussion of the question.

The reasoning of my predecessor in the opinion above referred to, in so far as it is based upon the language of the statutes mentioned, is not, it seems to me, successfully assailed in the briefs which have been submitted. For example, it is asserted in the briefs that the term “credits” has a fixed constitutional meaning and that that meaning is now embodied in section 5327 G. C., except in so far as the constitutional terms “moneys” and “investments” might justify exceptions to the scope of that definition. As authority for this proposition the case of *Hubbard vs. Brush*, 61 O. S., 252, is relied upon. It is not believed that this decision affords ground for the statement that the term “credits” is used in the constitution in such a manner as to require the general assembly to define it for administrative purposes as the net credit balance of the individual listing so as to justify the deduction of debts from gross claims and demands payable to him; rather, it is believed that the case goes no further than to hold that in the light of the long acquiescence in the definition now found in section 5327 G. C., the term “credits” in the constitution must be held elastic enough to permit the legislature to frame that definition.

In other words, the distinction which it is desired now to point out is between mandatory and permissive implications arising from the use of the word “credits” in the constitution.

Again, though the argument that the phrase “capital stock, undivided profits and all other means not forming a part of the capital stock of every company, whether incorporated or unincorporated,” can mean and refer only to what has been actually paid in to the coffers of the corporation or company and by it invested so as to constitute its “capital” in a somewhat limited sense is persuasive, and, as will be hereinafter pointed out, a somewhat similar view of the provision just quoted is believed to afford the keynote to the entire question; yet it must be admitted that the scope of that phrase as it occurs in section 5325 G. C. can not be limited to tangible property but must necessarily extend to things which would

otherwise be "credits" and "investments," on the one hand, as well as to what would otherwise be "real property" on the other hand.

In the first place, the scope of the phrase can not be limited to tangible things without doing great violence to the language of the section. If that were so there would be no necessity for having the phrase in the statute at all, as the preceding clause of the section exhausts the genus of tangible things in the following words:

"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 herein-before defined."

When after incorporating these words into the law, the legislature added the following clause, viz:

"Second, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated," etc.,

it must therefore have intended to go beyond the scope of the tangible, else the clause would have no meaning at all.

Indeed, as previously intimated, the second clause in order to be given any rational meaning must necessarily be held to widen the natural scope of the term "personal property" as previously defined in the same section, not only in the direction of including intangible interests but also in the opposite direction of including real interests.

Without prolonging the discussion at this point, I may say that I am still satisfied that this clause includes within its scope the claims and demands that would otherwise be the "credits" of a corporation.

Here a step aside may be taken to note the existence of article XIII, section 4 of the constitution, requiring in substance that the property of corporations shall forever be subject to taxation the same as that of individuals, together with its interpretation in *Trust Co. vs. Lander*, 62 O. S. 266. For reasons which will be pointed out in the course of this opinion, this point becomes relatively unimportant. I may say, however, that in my opinion this section of the constitution does not prohibit giving effect to that part of section 5325 now under discussion according to the plain tenor of its terms.

Returning to the thread of the discussion, it will be seen that the conclusion thus reached as to the natural scope of the language employed in section 5325 brings within that scope all corporate assets of whatsoever character. Thus far, the opinion of my predecessor stands, it is believed, on firm ground. At this point, however, a dilemma is encountered, the difficulties inherent in which were evidently felt by my predecessor, as will be apparent from language which will be quoted from his opinion. The dilemma may be stated as follows:

If it is true that all corporate assets are stamped as "personal property" by the second branch of the definition of that term as given in section 5325 G. C., then it must follow that all claims and demands of a corporation which would otherwise be "credits" as defined in section 5327 G. C. would be "personal property" because of the special definition now under consideration. Thus, it would seem as logical to hold that a mere claim for goods sold by a corporation would be just as much "personal property" of the corporation as any other kind of claim, and hence that no deduction of debts at all is allowable to a corporation as against its claims and demands for the purpose of making up its "credits" simply because all of its claims and demands are to be classed as "personal property" and not as "credits."

This dilemma is rendered the more difficult of solution by reason of the provision now found in section 5404 G. C., and which was embodied in the original tax law of 1859, to the effect that corporations must list for taxation all their personal property, "moneys and credits" within this state. Here the terms "credits" is evidently used in contradistinction to the term "personal property."

I have said that the dilemma thus raised is recognized in the previous opinion. This will be apparent from the following language which I quote from that opinion:

"I am aware that section 5325 includes within the category of things which are to constitute 'personal property' not merely the capital stock, but also all means not forming part of the capital stock of an incorporated company, and that section 5404 of the General Code requires a corporation, through its proper officers, to list for taxation, *inter alia*, its 'credits.'

I do not find it necessary in this opinion to decide the question thus suggested respecting the right of a corporation to deduct its debts from its general accounts receivable for the purpose of determining its taxable credits; but content myself with the statement, based as well upon section 5327 as upon section 5325, that unpaid subscriptions to the capital stock of a corporation are not to be treated as general credits of the corporation for the purpose of taxation."

The former opinion had, however, resolved the dilemma by distinguishing between claims of a corporation for unpaid stock subscriptions and other claims belonging to the corporation mainly on two grounds, which may now be restated as follows.

(1) The peculiar attribute of the corporation's claim to unpaid stock subscriptions arising, for example, out of its inability as against creditors to release such claims, etc., was pointed out as a possible basis for such distinction.

(2) The express provision of section 5327, to the effect that no subscription to the stock of a joint stock company may be considered as a debt for the purpose of deduction from the credits of a subscriber, was looked upon as evincing a legislative intention to the effect that the subscription as a claim accruing to the corporation should not be regarded as a "credit."

In the reconsideration which has been given to this question at this time another thought has been taken into account, viz., that the exemption from taxation of the shares of stock in the hands of the stockholders which is accorded to stockholders of Ohio corporations by other provisions of the statutes, together with the fact that a person may have the status of a subscriber for the purpose of receiving dividends without having fully paid for his shares, may constitute further ground for the distinction suggested by my predecessor.

As will be apparent, none of these points has met with final acceptance in this department, for reasons which will be presently stated. However, it will be observed that the first and third of them constitute arguments going to the foundation of legislative policy, and that the second only is an argument based upon the actual language of the statute. If, then, the second one fails the others become immaterial.

It is believed that the premise upon which the second of these two arguments is founded is sound, though an ingenious attempt to prove it unsound has been made in the briefs which have been filed. In those briefs it has been asserted that the phrase "joint stock company" as used in section 5327 is intended to be descriptive of a particular kind of corporation. Careful re-examination of all the statutes convinces me of the correctness of my predecessor's holding, to the effect that

this phrase when it was put into the statute in the first place meant, and still means, to refer to all corporations.

But it does not necessarily follow that because a subscription to the stock of a corporation may not be deducted from the legal claims and demands of the subscriber for the purpose of arriving at his taxable credits, the subscription as a claim or demand accruing to the corporation is therefore to be stamped as one from which the debts of the corporation may not be deducted. Nor did my predecessor so argue. His conclusion was based neither on section 5325 alone, as herebefore pointed out, nor on section 5327 alone, but rather upon the combination of both these sections and inferences which seemed to him appropriate to be drawn therefrom. Logically, such inferences do not follow, as is apparent on short reflection. But, of course, it is to be admitted that in the interpretation of statutes the main subject of inquiry is the legislative intent which may not have been fully expressed.

Careful analysis of the reasoning in the opinion of my predecessor shows that after all section 5325 is the ultimate basis of the conclusion expressed in that opinion, and that the provision of section 5327 which has just been discussed is in a way explanatory of the supposed intent of section 5325. I think it is fair to say that if any other meaning than the one suggested could be given to section 5325, the somewhat forced interpretation which my predecessor felt obliged to give to it would have to be rejected.

Without prolonging the discussion, then, of sections 5325 and 5327 standing by themselves from the angle of view heretofore taken, it may be well to state at once the present opinion of this department with respect to the proper interpretation of the sections. In order to do so it will be necessary to return for a moment to section 5325 and to reiterate the conclusion reached by my predecessor and herebefore reaffirmed, to the effect that that section does indeed constitute all the assets of a corporation its "personal property" *for some purpose*. The question which now arises is as to whether this somewhat artificial extension of the term "personal property" in section 5325 as applied to corporations was made for the purpose of constituting all corporate assets "personal property" *for all purposes*, including, *inter alia*, the removal of the privilege of deducting debts from legal claims and demands. My predecessor's conclusion was in the affirmative so far as stock subscriptions were concerned, and the reasons for that conclusion have been explained. In the course of that explanation it has been suggested that if the purpose of the artificial definition of the term "personal property" found in section 5325 can be clearly discovered, and if that purpose when so discovered appears not to relate to the matter of deduction of debts from legal claims and demands for the purpose of making up the sum of taxable credits, then and for that reason alone the conclusion of my predecessor must be rejected.

It is believed that an examination of related sections will show what was undoubtedly in the legislative mind when the artificial definition referred to was framed.

Reference may be made to section 5328 G. C., which was also a part of the first section of the tax law of 1859 (56 O. L. 175), along with the definitions now found in Chapter 1 of Title I, Part Second of the General Code. This section in its present form provides as follows:

"All real or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title."

It will be observed that this section, which is intended to define the property which is subject to taxation in Ohio, makes the test of taxability as to the so-called intangibles the residence of the owner in this state. This is evidently not intended to be applied to corporations at all, and certainly could not be applied to foreign corporations. We may now turn again to section 5404 G. C., which in its present form requires the principal accounting officer of a corporation to list for taxation "all the personal property thereof, and all real estate necessary to the daily operations of the company, moneys and credits of such company \* \* \* within the state." The question being as to what "moneys and credits" are "within the state," the answer to that question, should it depend upon section 5328 just quoted, would be that no moneys and credits of a foreign corporation at least could have their situs within the state. This point seems to have been overlooked in *Hubbard vs. Brush*, 61 O. S. 252, for in the opinion in that case it was assumed that what is now section 5404 of the General Code and what was then section 2744 of the Revised Statutes, is itself susceptible to the interpretation that moneys and credits arising out of business transacted within the state are to be regarded as "within the state" for the purposes of the section.

As will hereinafter be pointed out, this conclusion is correct, but the reason for it was not correctly stated in *Hubbard vs. Brush*. In fact, no statement of the reason for this holding will be found other than the mere conclusion at page 264, that

"the provisions of Section 2744 \* \* \* make it the duty of foreign corporations to list for taxation in this state, their choses in action where they are held within this state and grow out of the business they conduct herein."

In short, it is believed that while the section under consideration in that case does have this effect, the reason for it is to be found not in the section itself but in another place.

Going back to the taxation laws of 1859, we find that the section now under examination, being section 16 thereof, made it the duty of the proper officers of a corporation to "list for taxation \* \* \* all the personal property, which shall be held to include \* \* \* realty necessary to the daily running operations of the road, moneys and credits of such company or corporation within the state." In fact this was the form of the section when it was passed upon in *Hubbard vs. Brush*, supra, and in the case presently to be cited, and remained the form thereof until amendment in 102 Ohio Laws, p. 60. That is to say, originally and for a long period of time the phrase "personal property" as used in section 2744 R. S. was employed therein in a conventional sense, inclusive of moneys and credits and certain real estate. Being "personal property," its situs for taxation purposes under section 5328 would then be determined, not by the residence of the owner as in the case of other intangibles, but by the fact that according to some other criterion it might have location or situs within the state; and this is the real basis of the holding in *Hubbard vs. Brush*.

However, section 16 of the taxation act of 1859 and section 2744 of the Revised Statutes omitted the word "investments" from the category of intangible things that were to be considered as "personal property" so far as that section itself was concerned. This omission gives rise to the question determined in *Insurance Co. vs. Bowland*, 196 U. S. 611. It was argued that because of this omission the investments of a foreign corporation were not given any artificial situs in Ohio and therefore took their situs according to the rule *mobilia sequuntur personam* from the so-called domicile of the corporation, though held in Ohio. The supreme court of the United States, speaking through Mr. Justice Day, (an Ohio judge) held to

the contrary, the conclusion being based largely upon what is now section 5325 of the General Code and in particular the definition of "personal property" therein as applied to corporations. In other words, the supreme court laid hold of that definition for the purpose of assigning a situs to bonds belonging to a foreign corporation and held in Ohio when it could not use section 2744 of the Revised Statutes (now section 5404 of the General Code) for this purpose.

The intangible interests of a corporation held in Ohio and arising out of business transacted here or connected with that business are made "personal property" of such corporation by section 5325 G. C. for the purpose of the operation of section 5328 G. C. with respect to the property of the corporation. This is the intent manifested in the taxation act of 1859 and running through those parts of it which have been commented upon. In order to give expression to that intent in the form of a paraphrase of what is now section 5328 the following language might be employed as a substitute for that section :

"All real or personal property (including as to corporations moneys, credits and investments and in fact all means belonging to such corporations) in this state, and all moneys, credits, investments in bonds, stocks, or otherwise, of natural persons residing in this state, shall be subject to taxation."

Without giving to the definition in section 5325 this meaning the conclusion arrived at in *Insurance Co. vs. Bowland* would be impossible. Indeed without giving such meaning to the section there would be a conflict between section 5328 and section 5404 in its present form, though originally the two provisions did not conflict so sharply. But when the second clause of section 5325 is employed for this purpose all conflicts are removed and all the decisions of the supreme court on the subject of the taxation of the property of foreign corporations are harmonized.

It being established, then, that the credits of a corporation are to be considered as personal property for the purpose of assigning a situs thereto, the question now remains as to whether the section can be given the further effect of changing the nature of corporate credits in the sense of withdrawing corporations from the benefit of the section which authorizes debts to be deducted from legal claims and demands for the purpose of determining taxable credits. This is the ultimate question to be considered. Two possible views might be taken of the statutory phraseology. One is that the definition in section 5325 is so broad as to make all corporate assets "personal property" and to destroy all classifications of such assets for the purpose of taxation. This would simply make the definition of the term "credits" inapplicable to corporations, as well as the definition of the term "moneys" and all other definitions in the chapter. The other view is that corporate assets are constituted "personal property" by the second clause of section 5325 for a purpose which has been discerned and described, but that they still retain their proper categories and definitions for all other purposes. That is to say, the moneys of a corporation would still be moneys; the credits of a corporation would still be credits; and the real property of a corporation would still be real property; but they are all to be considered as "personal property" for the purpose of assigning an Ohio situs to them for taxation.

Choice between these two possible interpretations is not difficult. The latter is possibly compelled by section 4 of Article XIII of the constitution (see *Trust Co. vs. Lander*, 62 O. S. 266); but it is hardly necessary to go to the constitution in order to interpret a statute, if the statute itself is plain. Careful consideration of the taxation act of 1859, in which all the sections now under consideration first appeared as parts of a single act, leaves no doubt as to the legislative intent. For if it had been intended by the general assembly in 1859 that the assets of a corporation

should constitute its "personal property" for all purposes it would have been unnecessary and indeed improper for the assembly to have put in section 16 of that act (now section 5404 of the General Code) any reference to "moneys and credits." Section 16, therefore, shows that section 2 of the act was not intended to have the broad effect suggested by the first of the two possible meanings above described, but that the second of those meanings was in the mind of the legislature.

In this connection and out of its proper order the original form of what is now section 5328 may be quoted. It was as follows:

"All property, whether real or personal, in this state, all money, credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, \* \* \* shall be subject to taxation."

The form in which this section as section 1 of the act of 1859 was found in that act brings out rather more clearly than the present form of the section does some of the considerations which have been referred to.

Having arrived at this conclusion respecting the restricted scope and effect of the definition of the term "personal property" as applied to the assets of a corporation and found in section 5325 of the General Code, the further conclusion follows that the "credits" of a corporation are the same as those of an individual and that its bona fide debts may be deducted from its legal claims and demands in order to arrive at the sum of its taxable credits. This leaves section 5325 without influence on the present question and deprives the opinion of my predecessor of the principal ground on which it was based. There remains only the ground previously referred to in this opinion, which consists of an inference drawn from the fact that section 5327, in defining the term "credits" prohibits the deduction of amounts unpaid on subscriptions to the capital stock of corporations from the legal claims and demands of the subscriber in arriving at his taxable credits. Whatever inference may arise here, and indeed whatever may be the true meaning of this provision in section 5327, no conclusion as to the right of the corporation to deduct its debts from its claims and demands on amount of unpaid stock subscriptions can be predicated thereon. For this provision deals, not with the corporation but with the subscriber, and unless section 5325 be given a meaning other than that which is given to it by this opinion no warrant of law whatsoever exists for placing this or any other claim or demand of a corporation in a different category from the claims and demands of natural persons for the purpose of determining whether or not debts can be deducted therefrom in arriving at taxable credits.

For the reasons above stated, then, it is the opinion of this department that the credits of a corporation are to be arrived at for taxation purposes in the same way as are the credits of a natural person, debts being deducted therefrom; but that such credits, together with the investments and moneys of the corporation, are to be considered as the "personal property" of such corporation for the purpose of situs and possibly some other similar purposes, but not for the purpose of affecting the question as to the deduction of debts; that no difference exists between a corporate credit arising out of an unpaid stock subscription and any other corporate credit, the inference, if any, to be drawn from the inability of the subscriber to deduct the amount unpaid by him on his subscription from his legal claims and demands for the purpose of arriving at his credits not being strong enough in the absence of other statutory provisions to justify any such distinction; that a corporation may therefore deduct its debts from its unpaid stock subscriptions and that the opinion of my predecessor hereinbefore referred to should no longer be followed by the commission.

These conclusions being established, the appeal of The Hydraulic Pressed Steel



Company should be allowed and the correction of its personal property assessment should be made in accordance with the prayer of that appeal.

Respectfully,

JOHN G. PRICE,  
*Attorney-General*

1140.

ROADS AND HIGHWAYS—DEPUTY COUNTY SURVEYORS NOT ENTITLED TO RE-IMBURSEMENT FOR EXPENSES IN ATTENDING MEETING OF COUNTY SURVEYORS CALLED BY STATE HIGHWAY COMMISSIONER.

*Deputy county surveyors are not by virtue of section 1185-1 G. C. nor of section 2786 G. C. entitled to reimbursement for expenses incurred in attending a meeting of county surveyors called by the state highway commissioner as authorized by section 1185-1 G. C. (108 O. L. Part I, page 481).*

COLUMBUS, OHIO, April 9, 1920.

HON. VICTOR L. MANSFIELD—*Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“Herewith I am enclosing a copy of a notice sent to Mr. F. G. Blue, surveyor of Defiance county, Ohio, by Hon. A. R. Taylor, state highway commissioner. In connection with the same, I would like to have your opinion as to whether or not the deputies in the surveyor’s office are entitled to their necessary expenses attending the meeting called by the state highway commissioner? Three deputies from the county surveyor’s office attended this meeting and have filed statements for their necessary expenses in connection therewith, and the question has come up whether or not such expenses may be allowed by the county commissioners. I will kindly ask that you render an opinion covering this point.

The county surveyor also attended this meeting. You will observe that in the notice sent by the highway commissioner, he states that he would be pleased to have the chief road engineer of each department present at the meeting.”

With your letter you sent copy of the letter of the state highway commissioner directed to your county surveyor under date January 14, 1920, from which is quoted the following:

“As per authority given in Section 1185-1 of the General Code, I have decided to have a meeting of the county surveyors of the state on the evening of January 21, 1920. Also would be pleased to have the chief road engineer of each department present at the meeting.”

Said section 1185-1, as appearing in 108 O. L. Part I, at page 481, reads as follows:

“The state highway commissioner is authorized to call the county surveyors together once each year, for the purpose of conducting a conference or school in which the best methods of road building and other matters of interest may be discussed, and at which instructions may be given