elapsed since the last due date as mentioned in the mortgage, or as computed from information contained in the mortgage and the mortgage had not been refiled as provided in the latter part of Section 8546-2, General Code, a bona fide purchaser, mortgagee or other person without notice dealing with the land would not, in my opinion, be required to look beyond the facts as they appear on the record.

Answering your questions specifically, it is my opinion that the twenty-one year period of limitations set out in Section 8546-2, General Code, begins to run in the case of a mortgage securing an installment loan from the last due date of the loan as the same may be computed from the terms of the mortgage as it appears on record. It is further my opinion that the same rule applies where such installment mortgage contains a provision for acceleration of the due date of the loan in case of default in one or more of the installment payments, where the mortgage does not upon such default proceed to enforce the terms of the mortgage but permits the mortgagor to continue to make the regular payments after such default.

Respectfully,
EDWARD C. TURNER.
*Attorney General.*

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456.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN PREBLE COUNTY, I. C. H. NO. 1.

COLUMBUS, OHIO, May 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

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457.

INHERITANCE TAX—HOUSE BILL NO. 484, MR. SULLIVAN, 87th. GENERAL ASSEMBLY, DISCUSSED.

*SYLLABUS:*

1. *Terms "estate tax" and "inheritance tax" interchangeable and specie of the genus death duties.*

2. *No constitutional objection to imposing additional inheritance tax in the wording of Federal estate tax as supplement to our present inheritance tax law and for purpose of taking advantage of Federal Revenue Act of* 1926.

3. *Section 7 of Article XII, Ohio Constitution, is an express authority for the graduation of death duties.*

4. *Exemptions from death duties can be made only within the limitations of Section 7 of Article XII.*

5. *Any taxes collected under Substitute House Bill* 484 *must be apportioned in conformity with Section 9 of Article XII, Ohio Constitution.*

6. *Legislature may lawfully discriminate between resident and non-resident decedents so long as non-resident is not charged more than resident.*

7. *Substitute House Bill* 484 *should contain its own machinery for arriving at net estate and should not attempt to adopt the regulations of the Commissioner of Internal Revenue.*

8. *Substitute House Bill* 484 *should adopt the present machinery for the collection of inheritance taxes and disposition of revenues.*

*9. Substitute House Bill 484 must conform to Sections 7 and 9 of Article XII, Ohio Constitution.*

COLUMBUS, OHIO, May 6, 1927.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge your request for my opinion as to the validity of Substitute House Bill No. 484, Mr. Sullivan.

This bill, if enacted into law in its present form, would levy a tax upon the transfer at death of the estate of resident decedents in an amount equal to eighty per centum of the tax imposed by the Federal Government under the Revenue Act of 1926. The second section of the bill provides that the Rules and Regulations adopted by the Commissioner of Internal Revenue, for determining the net estate under the Revenue Act of 1926, shall be used in determining the amount of the net estate upon which the tax in the first section of the bill shall be based. The third section provides in substance that after the computation of the tax provided in the first section, such tax shall be credited with the amount of the tax levied on successions from the particular estate under the inheritance tax law as it exists today and also the amount of any other estate, inheritance, legacy or succession taxes actually paid to any state, territory, etc., in respect of any of the property included in the gross estate. The last sentence of the third section is as follows:

> "In no event shall the tax payable under Section 5335-1 exceed the amount, if any, by which the maximum credit allowable to the estate against the United States Estate Tax exceeds the credits provided for in the preceding sentence of this section."

From the language just quoted, it appears that the intent of the bill is that no estate shall be taxed in a greater aggregate amount than may, under the various existing laws, now be validly assessed against it.

The Federal Revenue Act of 1926 provides for a credit allowed in the computation of the Federal tax and it is apparent that the present bill seeks to take advantage of this provision of the federal law. This provision is found in the supplement to Barnes Federal Code for 1926 and is contained in paragraph 5585 (b). Its language is as follows:

> "The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy or succession taxes actually paid to any state or territory or the District of Columbia in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed eighty per centum of the tax imposed by this section and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by Section 304 (Acts June 2, 1924, c. 234, par. 301, 43 Stat. 303, Feb. 26, 1926, c. 27, par. 301, 44 Stat. 9)."

In plain words, therefore, the state of Ohio in this bill is seeking to divert to its coffers so much of the moneys which would otherwise be payable to the Federal Government as is permitted under the section of the Revenue Act of 1926, just quoted. Obviously, this will entail no additional taxation upon any particular estate, but will merely augment the state's revenue to the extent permitted by Congress.

If the conclusions herein could be arrived at through the rules of pure logic,

the difficulty would not be great, but as remarked by that eminent scholar, Mr. Justice Holmes, in the case of New York Trust Co., vs. Eisner, 256 U. S. 346 (65 L. ed. 981) in discussing a claimed distinction of death duties between the Federal estate tax of 1926 and a succession or inheritance tax, said:

"Upon this point a page of history is worth a volume of logic."

The history of death duties is well traced in each of two opinions of the Supreme Court of the United States, the first by Mr. Justice McKenna in 1897 in the case of Magoun vs. Illinois Trust & Savings Bank, 170 U. S. 283-287, and the second by Mr. Justice White in 1899 in the case of Knowlton vs. Moore, 178 U. S. 41.

Quoting first from the language of Mr. Justice McKenna:

"Legacy and inheritance taxes are not new in our laws. They have existed in Pennsylvania for over sixty years and have been enacted in other states. They are not new in the laws of other countries. In State vs. Alston, 94 Tenn. 674, Judge Wilkes gave a short history of them as follows:

'Such taxes were recognized by the Roman law. Gibbon's Decline and Fall of the Roman Empire, Vol. 1, pp. 163-4. They were adopted in England in 1780 and have been much extended since that date. Dowell's History of Taxation in England, 148; Acts 20 George III, chap. 28; 45 George III, chap. 28; 16 and 17 Victoria, chap. 51; Green & Craft, 2 H. Bl. 30; Hill vs. Atkinson, 2 Merivale 45. Such taxes are now in force generally in the countries of Europe. (Review of Reviews, Feb., 1893). In the United States they were enacted in Pennsylvania in 1826; Maryland 1844, Delaware 1869; West Virginia 1887 and still more recently in Connecticut, New Jersey, Ohio, Maine, Massachusetts 1891; Tennessee 1891, chapter 25 now repealed by chapter 174, acts 1893. They were adopted in North Carolina in 1846 but repealed in 1883. Were enacted in Virginia in 1844, repealed in 1855, re-enacted in 1863, repealed in 1884.'

Other states have also enacted them, Minnesota by constitutional provisions.

The constitutionality of the taxes has been declared and the principles upon which they are based explained in United States vs. Parkins, 163 U. S. 625, 628; Strode vs. Commonwealth, 52 Penn. St. 181; Byre vs. Jacob, 14 Grat. 422; Schoolfield vs. Lynchburg, 78 Va. 366; State vs. Dalrymple, 70 Md. 294; Clapp vs. Mason, 94 U. S. 589; In Re Merriam's Estate, 141 N.Y. 479; State vs. Hamlin, 86 Me. 495; State vs. Alston, 94 Tenn. 674; In Re Wilmerding, 117 Calif. 281; Dos Passos Collateral Inheritance Tax, 20; Minot vs. Winthrop, 162 Mass. 113; Gelsthorpe vs. Furnell, 51 Pac. 267; see also Scholey vs. Rew, 23 Wall. 331.

It is not necessary to review these cases, or to state at length the reasoning by which they are supported. They are based on two principles: (1) An inheritance tax is not one on property, but one on the succession. (2) The right to take property by devise or descent is a creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation."

Mr. Justice White, after tracing the history of death duties in England and making reference to similar duties in Germany and France, said:

> "A retrospective study of the death duty laws enacted in our own country, national and state, will show that they rest upon the same fundamental conception which has caused the adoption of like statutes in other countries; and especially in their national development do they substantially conform to the evolution of the system in England."

Mr. Justice White then begins to trace the history of the Federal enactments from the Act of July 6, 1797 on through.

The mode of collection, as shown by Chapter XI of that Act was through stamps. The rates varied with the amount of the estate and the stamp duties were laid on the receipts evidencing the payment of the legacies or distributive shares in personal property and the amount was, like the English legacy tax, charged upon the legacies and not upon the residue of the personal estate.

In referring to the Act of July 1, 1862, wherein a legacy tax was again enacted, Mr. Justice White said (p. 51):

> "But in the same chapter was contained still another form of death duty. By Section 194 a probate duty, proportioned to the amount of the estate and to be paid by way of stamps, was levied. The result of the Act of 1862, therefore, was to cause the death duties imposed by Congress to clearly resemble those then existing in England; that is, first a legacy tax, chargeable against each legacy or distributive share, and a probate duty, chargeable against the mass of the estate. * * *
>
> The Act of 1864, however, added in separate sections a duty on the passing of real estate, in substantial harmony with the principle of the succession tax expressed in the English Succession Duty Act. Thus it came to pass that the system of death duties prevailing in England and that adopted by Congress—leaving out of view the differences in rates and the administrative provisions—were substantially identical and of a three-fold nature, that is, a probate duty charged upon the whole estate, a legacy duty charged upon each legacy or distributive share of personalty, and a succession duty charged against each interest in the real property. * * *
>
> The identity of the conception embodied in the Act of 1864 was that existing in England and was observed in this court in Scholey vs. Rew, 23 Wall. 349, where, in holding that the subject matter of the assessment of a succession tax was the devolution of the estate or the right to become beneficially entitled to the same, et cetera. * * * "

After reviewing the history, Mr. Justice White said (p. 55):

> "Thus, looking over the whole field and considering death duties in the order in which we have reviewed them, that is, in the Roman and ancient law, in that of modern France, Germany and other continental countries, in England and those of her colonies where such laws have been enacted, in the legislation of the United States and the several states of the Union, the following appears:
>
> Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing an estate or a succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death

is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested. * * *

Confusion of thought may arise unless it be always remembered that, fundamentally considered, it is the power to transmit or the transmission or receipt of property by death which is the subject levied upon by all death duties. The qualification of such taxes as privilege taxes, or describing them as levied on a privilege, may also produce misconception, unless the import of these words be accurately understood. They have been used where the power of a state government to levy a particular form of inheritance or legacy tax has in some instances been assailed because of a constitutional limitation on the taxing power. Under these circumstances the question has arisen whether, because of the power of the state to regulate the transmission of property by death, there did not therefore exist a less trammeled right to tax inheritances and legacies than obtain as to other subject-matters of taxation, and, upon the affirmative view having been adopted, a tax upon inheritance or legacies for this reason has been spoken of as a privilege taxation, or a tax on privileges. The conception, then, as to the privilege, whilst conceding fully that the occasion of the transmission or receipt of property by death is a usual subject of taxing power, yet maintains that a wider discretion or privilege is vested in the state because of the right to regulate. Courts which maintain this view have therefore trusted death duties as disenthralled from limitations which would otherwise apply if the privilege of regulation did not exist. The authorities which maintain this doctrine have already been referred to in the citation which we have made from Magoun vs. Illinois Trust Co. * * *

All courts and all governments, however, as we have already shown, concede that the transmission of property occasioned by death, although differing from the tax on property as such, is nevertheless a usual subject of taxation."

Some of the textbook writers have endeavored to point out a distinction between estate taxes and inheritance taxes, that is, between the privilege to transmit and the privilege to receive. However, all of them admit that these terms are both embraced under the generic term of death duties.

In the case of Wonderly vs. Tax Commission, 112 O. S. 242, Judge Day said:

"Marked lines of demarcation may be noted between the right to *transmit* and the right to *receive* an estate. The Federal estate tax is imposed on the entire estate without regard to beneficiaries. It is an excise tax on the right of a decedent to pass his estate to his heirs or devisees or legatees. Sometimes this is called a tax on the right to transfer.

There has also been confusion in the use of the words 'transfer' and 'succession.'

The Ohio statute defines 'succession' as meaning '*the passing of property* in possession or enjoyment, present, or future.'"

After discussing the New York law in cases, Judge Day said (p. 243):

"Is not the conclusion irresistible that the same process or act of the 'passing of property' from a decedent to an heir or beneficiary, which we call in Ohio a succession, is labelled transfer in New York and Illinois? * * *

We can not concede the distinction, whether the basic idea be called

'transfer tax' or 'succession tax,' for the succession tax is after all not a tax imposed on property but it is a privilege tax on the right of taking property from another, whether by will or devolution, as a matter of law. In Re Morris' Estate, 138 N. C. 259 states the proposition as follows:

'The tax is variously called an inheritance tax, a legacy tax, a transfer tax, and a succession duty. * * *'

So that by whatever name this tax is called, the principle of this privilege is the same, and it is the result of legislative act. * * *

We are, however, unwilling to recognize the distinction between a transfer tax and a succession tax, as claimed by the plaintiff in error."

In the case of Harvard College vs. State, 106 O. S. 314, Judge Wanamaker, in his dissenting opinion in discussing Section 7 of Article XII, said:

"Laymen, as well as lawyers, reading this provision of the Constitution, would unhesitatingly say that the legislature may pass an estate tax but when they undertake to apply it, they must apply it equally to all estates and to each and every part thereof, save and except they may exempt 'not exceeding twenty thousand dollars.'"

In their work on Inheritance Taxation, Fourth Edition, Gleason & Otis find trouble in the use of the title of their work. In chapter 1 part 2, under the term of definition they say:

"While the generic term 'inheritance taxation' has been used for convenience as the title of this work, it is confessedly inaccurate. The subject covered within the scope of the present edition is 'all forms of taxation that have to do directly or indirectly with the taxation of the estates of decedents and their beneficiaries.'

It has been found necessary in the scientific development of the subject to deal with Federal estate taxation as separate and distinct, while taxation between state jurisdictions is more specifically the subject now to be dealt with, though there will, of necessity, be constant reference to the Federal tax.

Perhaps the whole subject would more aptly be described as 'transfer taxes' but there are many such taxes such as sales taxes and various excise duties which come within that term and yet have nothing to do with what are generally understood to be inheritance taxes.

The definition which has seemed to the authors most concise and comprehensive is that given in the earlier editions of this work:

'A tax levied upon any form of donative transfer from the dead to the living, or by the living in contemplation of or effective at death.'"

While a subject may be scientifically developed ex post facto, yet law subjects do not necessarily develop scientifically. Law is a living thing and develops under the necessities and points of view of succeeding generations. Death duties have received various names and whether we call them inheritance taxes, succession taxes, estate taxes, transmission taxes or transfer taxes, these terms all mean the same thing, to-wit, death duties.

Prior to the enactment of Section 7 of Article XII, the Supreme Court of Ohio, in 1895, in the case of State vs. Ferris, 53 O. S. 314, held that the legislature had the power under Section 1 Article II of the Ohio Constitution to levy an excise tax on the right or privilege of receiving or succeeding to property. **The act of the legislature there under consideration** was held invalid for the reason that it attempted to grant certain exemptions and contain a graduated

scale of taxation, which was said to violate Section 2 of Article I of the Constitution of Ohio.

In 1897, the question of inheritance taxes came before the Supreme Court of Ohio again in the case of Hagerty vs. State, 55 O. S. 613, in which case it was held:

> "The Act of April 20, 1894, amending 'an act imposing a collateral inheritance tax' is not repugnant to any provision of the Constitution because of its discrimination among collateral kindred."

There was no graduation of the taxes to be levied nor was there an exemption in excess of that recognized by Section 2 of Article XII of the Constitution.

In 1904, the matter of inheritance taxes again came before the Supreme Court of Ohio in the case of State vs. Guilbert, 70 O. S. 229, the third and fifth branches of the syllabus in this case reading:

> "3. The Act of April 25, 1904 entitled 'An Act to impose a tax upon the right to succeed or inherit property,' being a tax not upon property but upon the right to inherit or succeed to property, the power to enact the same is not affected by the limitations of Section 2 of Article XII of the Constitution.
>
> 5. The Act of April 25, 1904, imposing a tax upon the right to succeed to or inherit property is not in conflict with the Constitution or bill of rights because of the exemption therein contained and is a valid law."

The Act of April 25, 1904 contained an exemption of Three Thousand Dollars. The case was decided by four judges. The remaining two judges (Price and Davis) strongly dissented because the graduation of the taxes to be levied violated the rule of uniformity and because the Act exempted from taxation property not exceeding Three Thousand Dollars. Both of these judges relied in their dissenting opinions upon the case of State vs. Ferris, supra, while Judge Spear, who spoke for the majority of the court, in the course of his opinion said:

> "This seems to have been the view of the learned judge who reported the Ferris case. He was of the opinion that: 'The Constitution must be regarded as consistent with itself throughout and as Section 2 of Article XII permits an exemption from taxation of personal property not exceeding two hundred dollars, a construction of Section 2 of the bill of rights is thereby evinced to the effect that in taxation of subjects other than property, an exemption up to two hundred dollars in value would be regarded as for the equal protection and benefit of the people.' This conclusion was, however, not assented to by a majority of the court at that time and is not assented to by the majority now."

Notwithstanding this language of that splendid judge, we find that the third branch of the syllabus of the Ferris case is inconsistent with his statements.

Under Rule VI of the Rules of Practice of the Supreme Court, as journalized by that court in January, 1858, and ever since in effect, the syllabus states the law of the case. Ordinarily when the Supreme Court overrules a prior case it does so specifically.

The case of State vs. Ferris has never been specifically overruled. The case of State vs. Guilbert is inconsistent and irreconcilable with the case of State vs. Ferris. The case of State vs. Ferris has been cited and relied upon in a number of cases by the Supreme Court, while the case of State vs. Guilbert has never been cited but once and that on a matter not important here.

Thus we come to the state of law at the time of the Constitutional Convention in 1912, at which time there was proposed Section 7 of Article XII of the Constitution, which was later adopted and which reads as follows:

> "Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation."

The following language of Chief Justice Nichols in the case of State vs. Carrel, 99 O. S. 220-223, 224 and 225, while obiter dictum in the case, is enlightening historically:

> "Section 7 of this Article is a new product and is in no sense a limitation of power, being rather a special grant, and has to do with taxation on inheritances.
>
> Its incorporation in the Constitution may be said to have been induced by the decision of this court in the case of State ex rel. vs. Ferris, Judge, 53 O. S. 314, and to make perfectly clear not so much that the general assembly might provide for the levy of taxes on the right to receive inheritances but that such tax might be of graduated or progressive type, and furthermore that an exemption of the smaller inheritances might be authorized.
>
> Section 8 of the same Article providing for the taxation of incomes, for the same reason can not be said to be a limitation of power, nor can it be said to be equivalent to a conclusion that without such express grant incomes might not be the subject of taxation. It is much more likely that the incorporation of this new section by the Constitutional Convention of 1912 was occasioned by a desire on the part of its members that the method of levying taxes on incomes should be precisely similar to the taxation of inheritances in so far as it might relate to graduation of rates and exemptions.
>
> At this point it is proper to say that taxation of incomes or inheritance is not the imposition of direct taxes on property per se but is rather in the nature of an excise tax. * * *
>
> A majority of this court are of the opinion that there is no constitutional limitation resting upon the authority of the general assembly to levy a tax on property of every kind and character, except that it must be uniform and according to its true value in money. Nor is there even this limitation on its power to provide for the levy of taxes on incomes, inheritances and franchises, including the imposition of excise taxes.
>
> We are likewise of the opinion that the power to levy taxes on these several subjects comes from the grant in Section 1, Article II, and that there was no necessity for the inclusion in the Constitution of new Sections 7, 8 and 10, Article XII, except for the purpose of providing for the graduated method of levying such taxes and for the permissive feature of exemption of the lesser inheritances and incomes."

In the case of Tax Commission vs. Lamprecht, 107 O. S. 547, Chief Justice Marshall said:

> "If it is a tax upon the right or privilege, the language of the court

in State vs. Ferris, 53 O. S. 314 is pertinent: 'The value of the right to receive is in direct proportion to the value of the property received.'"

The language last above quoted was used by Judge Burket at two different places in the opinion in the Ferris case but in each instance as an argument against the graduation of the tax and the exemption of part of an estate.

From this study of the history of death duties, I come to the following conclusions:

(1) That while there may be a distinction in terms, there is none in principle between the Federal estate tax and the Ohio inheritance tax.

(2) That Section 7 of Article XII is a limitation on the power to make exemptions.

(3) That Section 7 of Article XII is an express authority for the graduation of death duties by whatever name called.

(4) That an apportionment of the tax collected must be made in accordance with Section 9 of Article XII, hereinafter quoted.

A State Constitution is generally understood to be a limitation upon the powers of the legislature. In other words, the legislature may do anything not forbidden by the Constitution. I have used the word "authorization" above for the reason that in the Ferris case, which has never been reversed but which has been cited many times with apparent approval, it was held that under Section 2 of Article I of the Constitution, the legislature was forbidden to discriminate in the matter of rates, that is, to graduate rates, or to make any exemption of property from taxation greater than that authorized by Section 2 of Article XII.

I am further strengthened in this view by the doctrine of law referred to in the maxim "expressio unius est exclusio alterius," which means that the expression of one thing is the exclusion of another.

Under this doctrine, and especially under our own history of death duties, I am of the opinion that the Constitutional Convention having acted thereon and the people having ratified the action in respect of death duties, we must now enact all death duties in conformity with the provisions of said Sections 7 and 9 if there is to be any exemption or graduation of the rates. In other words, while Section 1 of Article II may still be looked to as the authority for the levying of excise taxes, yet when we come to graduating death duties or to exempting a part of the estate from such duties, we must look to said Section 7 of Article XII.

The title to the substituted bill, as shown by page 18 of the Senate Journal for Wednesday, April 20, is:

"To supplement Section 5335 of the General Code by the enactment of Supplemental Sections 5335-1, 5335-2 and 5335-3, relating to the rates of inheritance tax."

To my mind this is a legislative interpretation of the tax as an inheritance tax and of the same genus as is referred to in Section 7 of Article XII of the Constitution of Ohio. Notwithstanding its character as supplementary to our existing inheritance tax law, I feel that there should be some reference showing that the distribution should be the same as that of other inheritance taxes. Bear in mind that the distribution must be made, I think, in accordance with Section 9 of Article XII, which provides:

"Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originated."

It is my opinion that the term "inheritance tax," as used in this last quoted section, is generic in character and includes all death duties.

I call your attention to the fact that the proposed law is applicable by its terms only to resident decedents. It may be urged that this is an unwarranted discrimination against residents. This raises the question of the right of the legislature to make classifications in the imposition of excise taxes. The courts generally sustain such classifications and they must be clearly unreasonable before the courts will set them aside.

In Gleason & Otis on Inheritance Taxation, Fourth Edition, page 282, it is said:

> "With these exceptions, a classification by residence is valid, and a state may tax residents and exempt non-residents from the tax as to some or all of their property within the jurisdiction. This is one of the most common classifications known to inheritance taxation and does not seem to have ever been challenged."

The second section of the bill proposes to adopt the rules and regulations of the Commissioner of Internal Revenue for determining the net estate under the Revenue Act of 1926 as a basis for the determination of the net estate upon which the tax imposed by the first section shall be based.

As I have heretofore indicated, I am of the opinion that the exemption of such taxes is regulated by Section 7 of Article XII of the Ohio Constitution.

Further, it may be urged that this second section of the proposed bill is a delegation of a legislative authority.

While I am inclined to the belief that it is permissible to make the measure of the tax dependent upon the existence or non-existence of certain extraneous facts (see 12 Corpus Juris 842), yet on account of the regulations as to exemptions contained in Section 7 of Article XII of the Ohio Constitution, and the question which may be raised of delegation, I am of the opinion that this law should set forth in full the machinery for the determination of the tax.

I have had the laws which have been passed by several of the states with the same end in view examined. While I find that certain of these enactments follow the plan of our proposed law and adopt the resolutions of the Commissioner of Internal Revenue, others, such as New York, set forth in full the machinery for the determination of the tax. I think the New York practice is not only to be preferred but under our Constitution is required.

You will note that the bill is silent as to any machinery for the collection of the tax imposed and also fails to indicate the disposition or division of the revenues derived therefrom. This can be cured by an apt reference to the existing law.

My conclusions are summarized as follows.

(1) While the nomenclature "estate tax" and "inheritance tax" may technically indicate different features of death duties, yet the history of the use of these terms convinces me that they are interchangeable and not themselves generic, and as said by the late Chief Justice White:

> "Laws of this nature rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit or the transmission from the dead to the living on which such taxes are more immediately rested."

(2) I therefore see no constitutional objection to imposing an additional inheritance tax in the wording of the Federal estate tax when the bill for the purpose is enacted as a supplement to our inheritance tax law and for the purpose of taking advantage of the provisions of the Federal Revenue Act of 1926.

(3) Section 7 of Article XII is an express authority for the graduation of such a tax.

(4) Exemptions can be made only within the limitations of said Section 7 of Article XII.

(5) The taxes collected under such bill must be apportioned in conformity with Section 9 of Article XII of the Ohio Constitution.

(6) The discrimination between resident and non-resident decedents may lawfully be made under the legislative authority to classify.

(7) The bill should contain its own machinery or method for arriving at the net estate, rather than by adopting the regulations of the Commissioner of Internal Revenue, as has been proposed in Section 2.

(8) The bill should adopt the present machinery for the collection of inheritance taxes and the method of disposition of the revenues derived therefrom, as set forth in the present inheritance tax law. This may be done by an apt reference to the administrative provisions of the present law.

(9) Finally, it should be kept in mind at all times in the adoption of this legislation that it must be in conformity with Sections 7 and 9 of Article XII of the Ohio Constitution.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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458.

SAME AS OPINION NUMBER 457.

COLUMBUS, OHIO, May 6, 1927.

HON. MARTIN S. DODD, *Speaker Pro Tempore, House of Representatives, Columbus, Ohio.*

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459.

APPROVAL, NOTE OF MORROW VILLAGE SCHOOL DISTRICT, WARREN COUNTY, $2,880.00.

COLUMBUS, OHIO, May 6, 1927.

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

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460.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN ADAMS, ATHENS, ASHTABULA, BELMONT, CLERMONT, DELAWARE, GEAUGA, HIGHLAND, HOCKING, HOLMES, JEFFERSON, LOGAN, MADISON, MEIGS, MONROE, MUSKINGUM, NOBLE, ROSS, SCIOTO AND VINTON COUNTIES.

COLUMBUS, OHIO, May 6, 1927.

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