

Chisholm case. Assuming that the contracts here in question are annuities, as the term is defined in this case, it remains to be determined whether they are annuities within the meaning of this term in the provisions of section 5389, General Code, determining the method of ascertaining the income yield on such contracts and if so whether the term "annuities," as used in this connection in section 5389, General Code, is limited by the further provisions of the section which refer to "obligations for periodical installment payments including both principal and interest, not separately charged and paid."

The contracts here in question were issued in consideration of certain stated sums of money and of property of a stated value paid or transferred to the obligor and in this sense these endowment contracts were and are purchased annuities. *Continental Illinois Bank and Trust Company vs. Blair, Commissioner of Internal Revenue*, 45 Fed. (2d) 345. Although in most cases of purchased annuities there is an amortization of both principal and interest until the principal is exhausted, I am inclined to the view that an annuity is sufficiently distinguished from an obligation to pay income, profits or interest by the fact that in an annuity contract the periodical payments are required to be made without reference to the amount of interest or other income or profits made by the obligor out of the principal which constitutes the purchase price of the annuity. In this view, the contracts here in question are annuities within the meaning of the applicable statutory provisions above noted; and, inasmuch as the annuities here in question were purchased by the payment and transfer to the obligor of certain principal sums, the income yield on these annuities for purposes of taxation in the year 1932 and in any subsequent year should be determined by taking four per centum of one-half of the principal used to purchase said respective annuities, as provided for in section 5389, General Code, above quoted.

This answers the question here presented; and, in this connection, I do not think that the fact that these annuity contracts may be subject to the operation of conditions subsequent therein provided in any way affects the present status of these contracts as annuities within the meaning of the provisions of the General Code providing for the taxation of the same. It does not appear that there has been any default by the obligor under these contracts and in this situation its title to the money and property which constitute the principal of the annuity contracts is as absolute as if the contracts were unconditional, and the present obligation of the college to make the annuity payments provided for is likewise absolute.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL, NOTES OF KEENE TOWNSHIP RURAL SCHOOL DISTRICT, COSHOCTON, OHIO, \$2,530.00.

COLUMBUS, OHIO, March 29, 1933.

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