statute, Acts 1857, p. 63. And that although, in point of fact, more than two-thirds of the council voted for the ordinance, yet that would not make that valid which would otherwise have been invalid; and further, that section 68 of the statute, conferring the power upon the council, by a two-thirds vote, to order improvements, is not valid because of its uncertainty.

As to the first branch of the argument, we think that the fact, that two-thirds of the council voted for the ordinance, makes it binding, although the proceedings on the part of the petitioners, upon the point involved, may not have conformed to, and fully met the provisions of the statute; that is, if section 68 is valid." * * *

(Here the court continues the opinion to the effect that section 68 is valid)

This ruling has been followed in later Indiana cases: McEnerney vs. Town of Sullivan, 125 Indiana, 407; 25 N. E. 540; Daly vs. Higman, 43 Indiana App., 356; 87 N. E. 669.

It is not a valid objection to the conclusion above stated that the commissioners may in fact or in theory have been influenced in their findings by a belief that fifty-one per cent of land owners had signed a petition. It is sufficient answer to such an objection that the findings of the commissioners do not have reference to the petition, but to the public utility of the improvement (sections 6907, 6910, 6917);—in short, the question is one of jurisdiction or authority to order the improvement, and that jurisdiction attaches in either of two ways: (a) upon the filing of the property owners' petition, followed by a finding in favor of the public utility of the improvement by at least a majority of the commissioners, or (b) upon a like finding concurred in by the three commissioners whether a petition has been filed or not.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1699.

INHERITANCE TAX LAW—SUCCESSIONS—WHERE BOY AND GIRL TAKEN INTO HOME OF AUNT AND UNCLE AND REMAIN DURING ENTIRE CHILDHOOD—WHEN ENTITLED TO EXEMPTION UNDER CERTAIN STATEMENT OF FACTS.

Where a boy and girl are taken into the home of their aunt and remain with her and her husband during their entire childhood, receiving the equivalent of parental care, support and provision for education from them, and returning the equivalent of filial service, obedience and affection therefor, a relation exists which, if established more than ten years prior to the death of the husband of the aunt, makes such children, though then of age, come within the five hundred dollar exemption class provided by paragraph 3 of section 5334 G. C. (a part of the inheritance tax law), irrespective of the question as to whether or not they sustain toward them the relation of "nephew" and "niece," respectively.

COLUMBUS, OHIO, December 10, 1920.

HON. WALTER B. MOORE, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—You have submitted for opinion the following question:

"W. S. M. and M. M. were husband and wife; W. G. and L. G. were

children of a deceased sister of M. M. (being a niece and nephew respectively of W. S. M. by marriage.)

W. G. and L. G. were taken into the home of W. S. M. and M. M. when quite small, and remained there until L. G. married about twenty years ago when she left their home for a home of her own. W. G. remained with them until in September of this year when the survivor, W. S. M., died leaving a will devising his property to his 'nephew' W. G., and his 'niece' L. G. M. M. deceased about seven years ago.

The relationship of W. G. and L. G. to the testator W. S. M., as stated above, being through his wife M. M.

Under the above circumstances, do W. G. and L. G. come in as 'nephew' and 'niece' under the third sub-paragraph of Sec. 5334 of the General Code of Ohio, as found in Vol. 108, Ohio Laws, Part I, at pp. 564-565?"

The following quotation may be made from the inheritance tax law:

"Sec. 5334. * * * Successions passing to other persons shall be subject to the provisions of said sections to the extent only of the value of the property transferred above the following exemptions:

* * * * *

3. When the property passes to or for the use of a brother, or sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars."

I doubt very seriously whether the relationship of the persons described in your letter to the decedent is that of nephew and niece. It will be observed that under the section as quoted relationships by affinity are dealt with expressly. Thus, though children of the decedent have been dealt with earlier in the section, paragraph 3 makes separate and special provision for the "wife or widow of a son, the husband of a daughter of the decedent." It is believed fair to follow the analogies of the statutes of descent and distribution, and if this is done the words "niece" and "nephew" in paragraph 3 of section 5334 should be strictly construed and limited to their exact meaning.

It is not necessary to decide this question finally under your statement of facts, however, for it would appear that, if the facts as you state them are true, W. G. and L. G. sustained to W. S. M. the relation described as "the mutually acknowledged relation of a parent." The nature of the acknowledgment of which the statute speaks has been made the subject of several decisions in New York, the inheritance tax law of which contains a similar provision. It is there held that the form of address employed between the parties is immaterial, so that where a child lived with its aunt and uncle for thirty years and was reared by them, the relation described by the statute might exist, although she always addressed them as "aunt" and "uncle," respectively. The court said:

"We think it would be difficult to find a stronger case of a person taking, without formal adoption, a friend or relative into his household standing to such person *in loco parentis* or as a parent and receives in return filial affection and service, than is presented by the case at bar. It is objected that the appellant did not address her uncle and aunt as father and mother, nor did they call her daughter. This is of but slight importance. To give effect to it would be to sacrifice conduct and acts to appellations

which are often the result of accident. Had the appellant been an entire stranger both in blood and affinity it is probable that she would have called the testator and his wife father and mother; but still other terms denoting affection might have been used."

See also: Matter of Bolton, 210 N. Y. 618;
Matter of Butler, 58 Hun. 400;
Matter of Stilwell, 34 N. Y. Supp. 1123;
Matter of Nicol, 91 Hun. 134;
Matter of Wheeler, 1 Misc. 450.

These cases all show the liberal attitude taken by the courts of New York in the interpretation of this section—an interpretation which on familiar principles ought to be followed by the courts of Ohio in dealing with a provision adopted from the statute law of another state.

From these reasons it would appear that whether treated as "nephew" and "niece" or as children "to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent," the successions taken by W. G. and L. G. are to be subject to a five hundred dollar exemption in each case.

It is observed that you do not expressly state that the decedent and his wife supported and educated these children. This fact has been assumed from your statement that the children "were taken into the home of W. S. M. and M. M." and from the further statement that "W. G. remained with them until * * * W. S. M. died." These facts would, of course, have to be shown in order to sustain the conclusion above reached, for it is possible that the aunt and her husband merely acted as guardians of the children, in which event the other conclusion would follow.

If the facts are not as clear as this opinion has assumed that they are from your statement of them, further consideration may be necessary as to the question of the meaning of the words "nephew" and "niece."

Should you require further advice in this particular be assured that this department would be pleased to consider that question further.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1700.

BLUE SKY LAW—A MUNICIPAL CORPORATION OR TAXING SUBDIVISION OF ANOTHER STATE IS NOT INCLUDED IN EXPRESSION "ANY COMPANY" AS USED IN SECTION 6373-14 G. C.

A municipal corporation or taxing subdivision of another state is not included in the expression "any company" as used in section 6373-14 G. C.

COLUMBUS, OHIO, December 11, 1920.

Department of Securities, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date relative to the applicability of section 6373-14 G. C. to certain bonds issued by the city of Norman, Oklahoma, was duly received.

The facts, as I gather them from your letter, are as follows:

The city of Norman is a taxing subdivision of the state of Oklahoma, and the