

States Statutes which make it a criminal offense to convey letters or packets out of the mail.

3. When instructions are given to transmit such information by express and such instructions are complied with, the giving thereof constitutes a violation of the afore-said statutes.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3977.

ESTATE—"ASSETS" AS USED IN SECTION 10501-42 G. C., INCLUDES REAL ESTATE AVAILABLE FOR PAYMENT OF DEBTS OF ESTATE.

SYLLABUS:

The term "assets" as used in paragraph 48 of section 10501-42, General Code, in connection with the word "estates," includes real estate which is available for or may be appropriated to the payment of the debts of an estate.

COLUMBUS, OHIO, February 25, 1935.

HON. THOMAS G. JOHNSON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads:

"A question has come up in our Probate Court here in Brown County which has been referred to me. The question is this: Is real estate an asset of the estate in computing court costs under Section 10501-42-48 of the General Code of Ohio?"

Section 10501-42, General Code, a section of the new probate code, provides, so far as pertinent, as follows:

"The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings:

1. For deposit of will\$1.00

* * * * *

48. Providing, however, that in estates the *assets* of which do not exceed five hundred dollars in value the total fees of the probate judge chargeable against such estate shall not exceed10.00."

You inquire as to the meaning of the word "assets" underscored in the above quoted statute. An examination of the General Code does not reveal any definition of such word as used in such section or other related sections of the new probate code.

It is a general principle of law that the legislature is presumed to have used words in statutes in their generally accepted meaning, unless there appears in the context or surrounding circumstances something clearly justifying a different use or meaning. *Lewis' Sutherland Statutory Construction*, 2nd Ed., Vol. 2, Section 389, pages 747, 748:

Kiefer vs. State, 106 O. S. 285, 289; *Industrial Commission vs. Roth*, 98 O. S. 34, 39; *Shafer vs. Streicher*, 105 O. S. 528, 533, 534; and *Schario vs. State*, 105 O. S. 535.

In the first paragraph of the syllabus of the last mentioned case, it is stated:

"1. The language of the law, constitutional or statutory, should be given the ordinary and usual meaning of the words and phrases employed."

It is to be noted that the legislature has used the word "assets" in section 10501-42, General Code, in connection with the word "estate."

In my opinion No. 1782, rendered October 26, 1933, and reported in Opinions of the Attorney General for 1933, Vol. III, page 1651, the word "estate" used in paragraph 48 of section 10501-42, General Code, was construed. It was held in the syllabus as follows:

"The word 'estate' as used in Subsection 48 of Section 10501-42 of the General Code, refers both to the estates of deceased persons as well as to estates of living persons in guardianship or trusteeship proceedings under proper jurisdiction of the probate court, where the assets of such estates do not exceed five hundred dollars in value. As a consequence, the ten dollar limitation contained in Sub-section 48 of Section 10501-42, General Code, applies to the total amount of fees chargeable by a probate judge against such estates, the assets of which do not exceed five hundred dollars in value, regardless of the nature or number of independent proceedings which may be involved in the administration of such estates."

Webster's New International Dictionary, in defining the word "assets" in connection with its use with the word "estate" says:

"Assets

* * *

* * *

b. *The entire property, of all sorts, of an insolvent or bankrupt, or of a person, association, corporation, or estate, applicable or subject to the payment of his or its debts. * * ** (Italics mine)

Hence the ordinary accepted meaning of the word "assets" in connection with the word "estate" is "the entire property of all kinds of the estate applicable to the payment of its debts." Obviously real property as well as personal property is included within the ordinary meaning of the word "assets."

In the case of *Mutual Life Ins. Co. of New York vs. Farmers' and Merchants Nat. Bank of Cadiz, Ohio, et al.*, 173 Fed. Rep., 390, decided by the Federal Circuit Court of the United States, for the Southern District of Ohio, Eastern Division, on September 16, 1909, it was stated in the third paragraph of the syllabus:

"3. The term 'assets' in modern usage, as applied to decedents' estates, means property, *real* or personal, tangible or intangible, legal or equitable, which can be made available for, or may be appropriated to, the payment of debts."

In the opinion, by Judge Sater, at page 397, it is stated:

"The assets of an estate are 'the property in the hands of an heir, executor, administrator, or trustee, which is legally or equitably chargeable with the obligations which such heir, executor, administrator, or trustee, is, as such, required to discharge.' *Favorite vs. Booher's Admr.*, 17 Ohio State 558. Whatever may have been the definition affixed to the term 'assets' in the earlier history of the law, it means, in modern usage, as applied to decedents' estates, *property, real*, or personal, tangible or intangible, legal or equitable, which can be made available for, or may be appropriated to, the payment of debts. *District Township of Williams vs. District Tp. of Jackson*, 36 Iowa, 216; *Stanton vs. Lewis*, 26 Conn. 444, 447; 11 Am. & Eng. Ency. Law, 828, 829; 2 Cyc. 1111." (Italics mine.)

There does not appear to be anything in the new probate code to indicate that the legislature intended that the word "assets" should have a different meaning than that given to it by modern usage.

In passing, it may be stated that consideration has been given to the holding of the case of *Nolan, Exrx. vs. Kroll*, 37 O. App., 350, to the effect that in Ohio, real estate of a decedent descends directly to heirs or devisees and is not assets of the estate to be administered by the executor or administrator except when the personal estate in his hands will not pay all the debts of the deceased. However, inasmuch as the legislature in enacting section 10501-42, paragraph 48, must be held to have intended to include within its provisions the assets of estates of living persons as well as of deceased persons, under the interpretation of Opinion No. 1782, referred to herein, and as it did not define the term "assets," it would seem that for the purposes of such section, it intended the word "assets" to be considered in its ordinary meaning, viz., including real estate which is available for or may be appropriated to pay debts of the estate.

Hence, I am of the opinion, in specific answer to your question, that real estate which is available for or may be appropriated to the payment of the debts of an estate is an "asset" of such estate within the meaning of such word as used in paragraph 48 of section 10501-42, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3978.

VACANCY—CHAIRMAN COUNTY CENTRAL COMMITTEE WHO REMOVES FROM PRECINCT INELIGIBLE TO CONTINUE AS CHAIRMAN OF SAID COMMITTEE.

SYLLABUS:

The removal of the chairman of a county central committee from the precinct from which he was elected creates a vacancy in the office of chairman of such county central committee, since such person thereby ceases to be a member of such committee.

COLUMBUS, OHIO, February 26, 1935.

HON. GEORGE W. SECREST, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion as contained in the following letter over the signature of your assistant: