

the date of making application for admission, who are disabled by disease, wounds or otherwise, and by reason of such disability incapable of earning their living, and all soldiers of the national guard of Ohio who heretofore have lost or hereafter may lose an arm, or leg, or his sight, or may become permanently disabled from any cause, while in the line and discharge of duty, and are not able to support themselves, may be admitted to the home under such rules and regulations as its board of trustees adopts."

It should be noted that the above section indicates that when the legislature intended members of the Ohio National Guard to be included within the terms of a relief section they have specifically mentioned them therein.

It follows from the above discussion that since section 2934, General Code, relative to who are entitled to benefits of relief to be allowed by a soldiers' relief commission under the provisions of sections 2930 to 2941, General Code, includes "soldiers, sailors and marines" without specifically mentioning members of the Ohio National Guard, and taking into consideration the definition of soldiers contained in section 2949, General Code, which is in *pari materia* with section 2934, and in view of the fact that the legislature when intending that the members of the Ohio National Guard should participate in the benefits of a relief section specifically mentions the same, I am of the opinion that members and former members of the Ohio National Guard who were not mustered into federal service are not entitled to the benefits of relief to be allowed by the soldiers' relief commission under the provisions of sections 2930 to 2941, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4457.

LEASEHOLD—HELD BY ADJUTANT GENERAL—LEGISLATURE MUST AUTHORIZE DISPOSAL OF SUCH INTEREST—PROPERTY SO HELD NOT SUBJECT TO TAXATION.

**SYLLABUS:**

1. *Where, in connection with the execution of an indenture of lease, and as an inducement therefor, the Adjutant General of Ohio, as lessee, receives a written agreement from the lessor, which authorizes him, as such lessee, to purchase the leased property for a stipulated sum, and receives as a credit on such purchase price the amount of the rentals paid after deducting therefrom the taxes, assessments, insurance premiums, trustees' fees and interest on the unpaid portion of the purchase price, such agreement or certificate constitutes property, and may not be surrendered by the Adjutant General without authority from the legislature.*

2. *Where the Adjutant General is the lessee under written indenture of lease, for a period of two years, which indenture gives to the Adjutant General the right to renew such lease for like periods, indefinitely, the Adjutant General is not liable for the taxes assessed against the leased property, even though the county*

*auditor may have placed the assessment against such real estate on the tax list in the name of the State of Ohio.*

COLUMBUS, OHIO, June 28, 1932.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion, containing enclosures, which request is as follows:

“For your information, there are transmitted herewith the following:

(1) A copy of the agreement establishing the Cavalry Association Realty Trust.

(2) A copy of a Certificate of Subordinate Interest in the property which is the subject of said Trust.

(3) A statement of the account of the trustee in said Trust, showing the extent to which the general shares have been redeemed.

(4) Copies of leases of the trust property to the State of Ohio for armory purposes.

(5) A letter from the Auditor of Lucas County stating that the property so leased is listed for taxation in the name of the State of Ohio.

This department had no knowledge of the fact that this property had been listed for taxation in the name of the state until recently, when a notice of delinquent taxes was received by the Department of Finance. The property has been abandoned for armory purposes, and the trustee has requested the surrender of the certificate of subordinate interest. An opinion is requested as to:

(1) Whether the surrender of the certificate of subordinate interest would affect injuriously the property rights of the state.

(2) If such surrender is deemed advisable, what is the proper procedure to be followed in effecting the same?

(3) Whether the state is properly chargeable with the taxes on said property.”

An examination of the enclosed documents discloses that on November 6, 1923, the Ottawa Park Riding Club Company conveyed certain real estate to a trustee for a purported consideration of \$30,000.00, which was not at that time paid. The trustee thereupon issued to such grantor three hundred “general shares in the trust, each having a redeemable value of \$100.00.” The trustee at the same time was to, and presumably did, execute another certificate, referred to as a “subordinate certificate” “which shall not participate in any distribution of earnings or corpus of the trust estate until after the redemption of the above mentioned general shares.” Each general share was to receive dividends “out of the surplus earnings of the trust” in the amount of six dollars per share, per annum, cumulatively.

The trustee was given the exclusive power to manage, control, lease, contract to sell, sell and dispose of the trust property. He was to pay first the taxes, insurance premiums and any other charges against the trust property, including trustees’ fees and repairs to the property out of the proceeds arising from the trust property. The trust deed specifically provides that the cestui que trustent are not liable for calls, whether for operating expenses or otherwise.

The trust deed further provides that the trust shall automatically terminate

in ten years from the date thereof, that upon termination of the trust, whether at the expiration thereof, or by agreement of the parties, the property shall be sold and the proceeds applied:

1. To payment of taxes, assessments, and expenses of the trust, whether advanced by the trustee or otherwise, and expenses of the trustee.
2. To the payment of \$100.00 per share and accumulated dividends to the holders of the "general shares."
3. Payment of expense of improvements.
4. Remainder to the holder of the "subordinate certificate."

It further appears that the "subordinate certificate" was to be delivered to the Adjutant General of Ohio, upon his execution of a lease on the premises "upon terms already agreed upon."

An examination of the leases executed by the Adjutant General of Ohio, discloses that such leases are for a period of two years, renewable for like periods upon thirty days written notice to the trustee until said real estate becomes the property of the State of Ohio, in accordance with a trust agreement above referred to, dated November 6, 1923. No obligation for the payment of money on the part of the lessee is contained in such indenture, except for the rental "from funds appropriated by the State of Ohio for such purpose." Three of such two year indentures of lease were executed, the last of which by its terms, expired December 31, 1929.

I am informed that during the year 1929 the State of Ohio acquired other property for the uses and purposes for which the leased property was used, and had no further use for the leased premises.

The language of the enclosed documents sets forth a clear and distinct agreement between the parties which, at the time of the execution thereof, was capable of being performed. The Adjutant General of Ohio, has the authority, as lessee, to lease premises for the purposes set forth in the indenture of lease. (Section 5238, General Code.) He, likewise, has the authority to receive gifts or donations of property "for the purpose of aiding in the acquisition of grounds or the purchase, building, furnishing or maintaining of an armory or other building for military purposes." (Section 5239, General Code.) There can be but little doubt that the purpose of the execution and delivery of the "subordinate certificate" to the Adjutant General was to aid him in the acquisition of grounds for military purposes, since the trust indenture specifically provides that from rentals received, after payment of expenses, such as taxes, carrying charges, interest on "general shares" etc., the general shares shall be retired and not reissued, thus increasing the value of the "subordinate certificate" and further, since the owner of the "subordinate certificate" was given the option at any time to purchase the entire interest and terminate the trust.

The term "property" is a word of broad signfication, meaning in law, any right or interest having pecuniary value protected by law. See 50 Corpus Juris, 729; *Boylston Coal Company vs. Rautenbush*, 237 Ill. Ap. 550, 559; *International News Service vs. Associated Press*, 248 U. S., 215.

I am therefore of the opinion that the "subordinate certificate" whatever else it may be, is property, within the contemplation of law, and may be disposed of by the Adjutant General only in the manner provided by law. I do not find any provisions of law authorizing the disposition of any interest in real estate by him unless he has first been given specific authority to make such disposal by the leg-

islature. Since the Adjutant General has no powers except such as have been given him by the legislature, I must conclude that he has no authority to abandon the property rights of the state in and to the "subordinate certificate."

It must be borne in mind, however, that the trust indenture through which the "subordinate certificate" was issued, specifically authorizes the trustee to sell and convey the property forming the subject of the trust, and distribute the proceeds as above set forth, and if in making such sale, he is unable to make a sale for an amount sufficient to pay anything to the State of Ohio on the "subordinate certificate" the state would have no cause to complain, since its rights are all subject to the terms and conditions of the trust indenture.

In reply to your third inquiry, as to whether the state is properly chargeable with the taxes on such property, I call your attention to the language of the trust indenture which provides that the taxes shall be paid by the trustee, from the rents. There is no agreement in the trust indenture, requiring the State of Ohio to pay the taxes on the property. The language of the indentures of lease provides that no obligation is created by them except for the payment of rental from funds appropriated by the legislature for that purpose. It is, therefore, evident that unless the obligation to pay the taxes is created by statute it does not exist, since the agreement of the parties is that they are to be paid by the lessor.

Section 5330, General Code, authorizes the county auditor to tax leasehold estates to the lessee, when the property when not so leased, would be exempt from taxation, that is the fee is owned by the state, a municipality, a board of education, etc. Such section makes provision for taxation in the name of the lessee in a situation which is the exact converse of that presented by your inquiry. Such section is therefore not applicable to the question presented by your inquiry. I am unable to find any provision of the statutes making the state liable for the taxes in question. As stated in the first paragraph of the syllabus of *Straub vs. Hilker*, 24 O. App., 90, "All taxes are statutory, and the method of collection and enforcement, being a part of the statute, must be followed." It therefore follows that there is no obligation on the part of the state to pay the taxes in question.

Specifically answering your inquiries, I am of the opinion that:

1. Where, in connection with the execution of an indenture of lease, and as an inducement therefor, the Adjutant General of Ohio, as lessee, receives a written agreement from the lessor, which authorizes him, as such lessee, to purchase the leased property for a stipulated sum, and receives as a credit on such purchase price the amount of the rentals paid after deducting therefrom the taxes, assessments, insurance premiums, trustees fees and interest on the unpaid portion of the purchase price, such agreement or certificate constitutes property, and may not be surrendered by the Adjutant General without authority from the legislature.

2. Where the Adjutant General is the lessee under written indenture of lease for a period of two years, which indenture gives to the Adjutant General the right to renew such lease for like periods, indefinitely, the Adjutant General is not liable for the taxes assessed against the leased property, even though the county auditor may have placed the assessment against such real estate on the tax list in the name of the State of Ohio.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*