

ital. If the tax was on the capital, the federal bonds would have to be deducted, but being upon the shares, *no such deduction is required, allowed or authorized.*"

The statutes now in force respecting the assessment of bank shares (sections 5407 to 5414 of the General Code) are substantially the same as those construed in this case. There is no express authority to deduct from the sum determined as representing the aggregate value of the shares anything excepting "the value of the real estate included in the statement of resources as it stands on the duplicate." (Section 5412). The tax being levied upon the shares, and not upon the property or assets of the bank as such, it follows on the reasoning of the case cited that the answer to the question submitted by the commission is in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2156.

TAXES AND TAXATION—INSTITUTION USED EXCLUSIVELY FOR CHARITABLE PURPOSES DISCUSSED—BEQUEST OF REAL ESTATE TO EXECUTORS IN TRUST TO CONVEY TO COUNTY COMMISSIONERS FOR PUBLIC CHILDREN'S HOME TO BE ERECTED ON LAND OR TO CONVEY TO CORPORATION NOT FOR PROFIT FOR ERECTING AND MAINTAINING CHILDREN'S HOME—WHEN BEQUEST TAXABLE—WHEN NOT TAXABLE.

A testator left certain real estate to his executors in trust to convey either to the board of county commissioners for the benefit of a public children's home to be erected on the land, or to a corporation not for profit for the purpose of erecting and maintaining a children's home and the conduct thereof;

HELD:

1. *So long as the executors retain title to the real property it continues to be subject to taxation.*

2. *Even after conveyance by the executors the property continues to be subject to taxation until it is devoted exclusively to the uses and purposes designated in the testator's will.*

COLUMBUS, OHIO, June 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission requests the opinion of this department as follows:

"L died testate December 25, 1920, leaving both personalty and realty. His will provides:

'I do therefore give for the charitable and benevolent purposes herein mentioned the residue and remainder of my estate to my executors hereinafter named, their successors and assigns, in trust to and for the several uses, intents and purposes mentioned and declared herein.'

The 'uses, intents and purposes' are hereby defined: After the payment of debts and costs of administration the executors are authorized to convey and transfer all the estate:

(a) To the board of county commissioners for the use and benefit of a county or district children's home to be erected on the land of the

testator and to be maintained and conducted as provided by the law of Ohio, or

(b) To a corporation, not for profit, which is to be organized for the erection and maintenance of a children's home and the conduct thereof, such transfer to this corporation to be made when the same has been formed.

Will you be good enough to advise the commission as to when the property of the testator, both real and personal, ceases to be taxable under the general tax laws of the state? Does it become non-taxable while in the hands of the executors, or does it continue to be subject to taxation until the time of transfer to the board of county commissioners or to the corporation which is to be formed and does it acquire its immunity from taxation immediately on such change of possession?"

One general principle which is of service in answering these questions is found in the constitution itself. Article XII, section 2, permits the following property to be exempted from taxation and, by necessary inference frequently declared by the courts, prohibits any other exemptions:

"institutions used exclusively for charitable purposes, public property used exclusively for any public purpose."

It cannot be said that the property covered by the item of the will quoted in the Commission's letter belongs, in the beneficial sense, either to the board of county commissioners or to the proposed corporation. It cannot belong to the corporation for it is not in existence. It does not yet belong beneficially to the county commissioners because of the discretion apparently vested in the trustees under the testator's will. So that even in a beneficial sense the fact of ownership does not exist so long as the executors, as such trustees, retain the ownership of the property. But under the constitution it is clear that even if ownership had vested in the commissioners or the corporation that would not be enough. It is not all public property that may be exempted from taxation, but only that which is used exclusively for a public purpose. It is not all property that is devoted to a charitable use, but such property as pertains to institutions *used* exclusively for charitable purposes only that may be exempted from taxation.

See—

Myers vs. Rose Institute, 92 O. S. 238;

Rose Institute vs. Myers, 92 O. S. 252.

In accordance with these principles the Commission's questions are answered as follows:

While in the hands of the executors the property continues to be subject to taxation. Even after formal transfer to the board of county commissioners or to the corporation which is to be formed immunity from taxation does not immediately ensue, but the property must be directly and exclusively devoted to and used for the designated purpose before it acquires that immunity. Thus, if the deed to the corporation not for profit to be organized, etc., is made immediately upon the organization of the corporation, the property will not become exempt upon the execution and delivery of the deed, but only when the use of the property for the purpose of the conduct of a children's home commences.

Respectfully,

JOHN G. PRICE,

Attorney-General.