

in Long Lake, thence in Long Lake, South 56 1/4 deg. East, 75 feet; thence South 33 3/4 deg. West, 75 feet to the place of beginning."

Upon examination of this lease, I find that the same has been properly executed by the Conservation Commissioner and by the lessee above named, by the hand of its commander, pursuant to the authority of a resolution duly adopted by the members of said Post under date of June 20, 1933.

Upon examination of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity with the statutory provisions relating to leases of this kind. I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1016.

CHECKS—NOT SUBJECT TO TAX ASSESSED BY SECTION 751 OF THE RESERVE ACT OF 1932 ENACTED BY CONGRESS, WHEN COLLECTED AND DISBURSED BY PROSECUTING ATTORNEY PURSUANT TO NON-SUPPORT STATUTES BY ORDER OF COMMON PLEAS COURT.

SYLLABUS:

When a prosecuting attorney, by direction of the court, collects and makes disbursement of funds collected by reason of the non-support statutes pursuant to the order of such common pleas court, such checks are not subject to the tax assessed by Section 751, of "The Revenue Act of 1932" enacted by Congress.

COLUMBUS, OHIO, July 5, 1933.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

"The Common Pleas Court has designated the Prosecuting Attorney of Washington County to receive, collect and pay out all money in non-support cases of the county. This work has been handled by the Prosecutor for seven or eight years past. He, of course, receives no extra compensation therefor, nor are there any funds appropriated especially for expense in carrying out these duties other than the regular appropriations for the Prosecutor's office in general. There are perhaps upwards of nearly a hundred cases of this kind. Also, checks are received from penal institutions, which represent the earnings of various convicts sent to prison for non-support of minor children, and these funds are handled and disbursed by the Prosecutor's office. It is the practice to deposit these funds in a special bank account and issue checks thereon.

The question now arises whether the recent Revenue Act requiring a two-cent tax on each check would apply to such an account as I

have described. Will you please let me have your opinion at an early date? Should you decide that the act would apply, I would be pleased to have your suggestions as to how this tax should be paid."

Your inquiry arises by reason of the language contained in Section 751 (a) of the Federal Revenue Act of 1932, which reads:

"There is hereby imposed a tax of 2 cents upon each of the following instruments, presented for payment on or after the 15th day after the date of the enactment of this Act and before July 1, 1934; Checks, drafts, or orders for the payment of money, drawn upon any bank, banker, or trust company; such tax to be paid by the maker or drawer."

There is, however, in the Constitution of the United States an implied inhibition or restriction against the taxation of state agencies by the federal government. *Willcuts vs. Bunn*, 282 U. S. 216, 75 L. Ed. 304; *Abbrosini vs. U. S.*, 187 U. S. 1, 47 L. Ed. 49; *Pollock vs. Farmers Loan & Trust Co.*, 157 U. S. 429, 39 L. Ed. 759; *Pollock vs. Farmers Loan & Trust Co.*, 158 U. S. 601, 39 L. Ed. 1108; *National Life Ins. Co. vs. U. S.*, 277 U. S. 508, 72 L. Ed. 968.

The Commissioner of Internal Revenue by virtue of the authority granted him in Section 773 of such act has issued regulations concerning the administration of such act. In the official bulletin of the Treasury Department "Regulations 42", page 17, Art. 36, I find the following language:

"The checks, drafts, or orders drawn by officers of the United States or of a State, county, or municipality, or of a foreign government, in their official capacities, against public funds, standing to their official credit and in furtherance of duties imposed upon them by law, are not subject to the tax."

Your inquiry is answered by such ruling if the funds in question are "public funds" within the meaning of such section.

In a letter of R. M. Estes, Deputy Commissioner of Internal Revenue under date of August 8, 1932, that department ruled that checks issued by referees or trustees in bankruptcy were not subject to the tax levied by such Section S T 595, XI-49-5908 p. 19.

Since the funds arise out of state court proceedings and you are disbursing the same by order of the common pleas court, equal reasoning would exempt them from taxation.

Specifically answering your inquiry it is my opinion that when a prosecuting attorney, by direction of the court, collects and makes disbursement of funds collected by reason of the non-support statutes pursuant to the order of such common pleas court, such checks are not subject to the tax assessed by Section 751, of "The Revenue Act of 1932" enacted by Congress.

Respectfully,

JOHN W. BRICKER,
Attorney General.