

Your attention is directed to Opinion No. 1188, rendered by this office under date of October 22, 1927, and to Opinion No. 1190, of the same date, both of which opinions deal with the questions here involved, and which, I believe, will clear up any questions as to when sworn statements may be filed.

I note further in the sworn statement above that the blanks providing for information with respect to the owner's title have not been filled in. This omission is probably due to the fact that the parties have misconceived the purpose of the statement. If my assumptions of fact heretofore made are correct, the statement should have been sworn to by Ambrose, who should have stated that he himself was the owner and should have stated how title to the car was acquired. This should then have been filed with the clerk and thereafter a bill of sale in accordance with law should have been executed.

You will observe that I have assumed certain facts to exist as a predicate for the foregoing views which I have expressed. It may possibly be true that the sworn statement of ownership was executed by Major as the agent of Ambrose and in that event many of the criticisms hereinbefore set forth would be inapplicable. I feel, however, that if any agency existed, it should be expressed in the sworn statement, and also the statement of how the owner's title was acquired should be supplied.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2262.

TAX AND TAXATION—REAL PROPERTY EXEMPT FROM TAXATION
ON TAX LISTING DAY CANNOT BECOME TAXABLE DURING THE
YEAR.

SYLLABUS:

Where real property has been exempt from taxation for a number of years, and the causes that make it exempt cease to exist after the day preceding the second Monday in April, in any year, there is no authority in law for placing such property on the tax lists for the remainder of said year.

COLUMBUS, OHIO, June 20, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads:

“Mr. John A. Zangerle, county auditor, has requested me to obtain from you an opinion upon a question of such general importance that it should have an answer from a source of general authority.

The question is as to when property becomes assessable for taxation which has theretofore been exempt, but its charitable or public use terminates during the taxing year.

The specific instance upon which the auditor desires a ruling affects the property on the southwest corner of Euclid Avenue and East 18th Street in this city, for many years owned by the Euclid Avenue Baptist Association, which was the site of the Euclid Avenue Baptist Church. In the year 1923

the association executed a deed of the premises to John D. Rockefeller, Jr., which was put in escrow to abide the procurement of the necessary court order to sell the property. In the year 1926 tax listing day fell upon the 11th of April. The last church services held upon the premises in question occurred upon the 4th day of April preceding, and upon the 14th day of the same month the deed was delivered by the escrow agent to the grantee. The auditor listed the premises for taxation for the year 1926. The grantee contends that the premises were subject to the exemption for the entire year. A statement of length of the facts in the matter, together with a brief of counsel for the taxpayer on the subject, is enclosed herewith."

As stated, the facts are set out at length in the brief filed by counsel for the owner of the premises in question. It is unnecessary to set forth this statement in full, the pertinent parts thereof reading in part as follows :

" * * * On August 15, 1923, a deed executed by the Euclid Avenue Baptist Church to John D. Rockefeller, Jr., was placed in escrow. The terms of the escrow agreement are of record, being spread forth in the suit brought by the Euclid Avenue Baptist Church in the Common Pleas Court of Cuyahoga County, Ohio, for authority to sell said premises, said case being No. 210911 on the docket of said court. This escrow agreement provided that final payment should be made, the escrow closed and deed delivered, at the time of the vacation and delivery of possession of said premises by the church to Mr. Rockefeller.

(b) The deed was actually delivered out of escrow on April 14, 1926,
* * *

The final payment was made on April 13, 1926.

* * *

The escrow agreement provided that the delivery of the deed and the delivery of possession by the church to Mr. Rockefeller should be contemporaneous. And so it was in fact. The escrow agreement contemplated that the church would vacate some time in the year 1924; but the church had difficulty in acquiring all the property it needed for its new building, and as result of this and other delays in the building program repeated extensions were requested by the church and granted by Mr. Rockefeller, of which it is only necessary to prove the last extension, which was requested on February 11, 1926, and fixed as date of vacation May 1, 1926. * * *

The church, however, changed its plans and verbally requested that Mr. Rockefeller accept possession on April 12, 1926. Mr. Rockefeller consented to do this. Actual possession was not taken and keys were not surrendered until several days after April 12, giving the church an opportunity to remove its personal property. The organ and stained glass memorial windows were not removed for a considerable time thereafter, so that the principal significance of the request and agreement to take possession on April 12, 1926, was to fix as early a date as possible as of which adjustments should be made and the balance of the purchase price paid by Mr. Rockefeller to the church, which was then in need of money in connection with its building program. Nevertheless, we are content that the date of April 12th should be used as the date on which the church surrendered possession to Mr. Rockefeller.

Up to April 12, 1926, therefore, both the title and possession of the property was in the church. Another question that might be asked is: What

was the precise use made of these premises by the church up to April 12, 1926?

The last big services held in the old church were on April 4, 1926, (Easter Sunday), but minor church activities were conducted in the old church building on April 5th, 6th, 7th, 8th and 9th. * * *

The situation on April 11, 1926, therefore was that right up to that date all the main services were held by the church and practically all of the minor activities of the church were held in the old church property, that the services on April 11th were held in rented public auditoriums and that partly before and partly after April 11th the personal property of the church was permanently removed from the old church site to the new church buildings, in which all minor activities were thereafter conducted and in which all main services were held commencing some time after May 30th. No abandonment of the old building had been made on or before April 11th and the use thereof on April 11th, while not active, was nevertheless for the purposes of the church. * * * "

It appears that real estate then exempt from taxation was on the 14th day of April, 1926, transferred by deed to a grantee not in the exempt class. The county auditor listed said real estate for taxation for the year 1926, and the question is as to whether or not the exemption continued throughout the entire year.

In the case of *Myers vs. Aikins*, 8. O. C. C. 228, the third and fourth paragraphs of the headnotes read as follows:

"3. When a purely charitable institution sells by land contract its real property which has been exempt from taxation, and retains possession of the same until payments for the property are completed, and continues to devote the same to charitable uses until payments are completed, such vendors continue during such time, to be the owners of property under the taxing laws of the state, and the property while thus owned and used continues to be exempt from taxation under both paragraphs one and six of Section 2732.

4. Where real property has been exempt from taxation for a number of years, and the causes that make it exempt cease to exist longer, on July 1, 1893, there is no authority in law for placing such property on the tax lists for taxation before the year 1894."

At page 234 of the opinion it was said as follows:

" * * * To avoid keeping the run of these transfers by instruments which are not to be recorded, the state has provided by statute for following the legal title, and as a rule, especially in cases like this, assess the taxes against the one holding the legal title. By this arrangement the State regards the one holding such title the owner, the one to whom it belongs. This being so there was no authority for the auditor's placing the taxes against any one but the trustees who held the legal title and were the owners under the taxing laws, and those to whom the property belonged under the laws exempting the same from taxation. It follows that the property was exempt from taxation up to July 1, 1893. * * *

* * * As to *bona fide* sales when the vendor remains in possession after the contract of sale, the vendor is the owner. The State, by its laws for taxation, for obvious and expedient reasons, does not recognize the trust re-

lation *inter se* of vendor and vendee, but treats the vendor as the owner.
* * *

It is claimed that the general intent of the Constitution is that each parcel of property shall bear its just proportion of the burden of taxation; that this general rule was suspended by the laws of the State only while this property was used, or owned and used for purely charitable purposes. As soon as it was divorced from its charitable purposes, it at once came under the general rule again. That although it was improperly put on the tax lists, for the reason it was then exempt, yet if it was not thus exempt when this action was brought then the Court should leave it to bear its burden of taxation from July 1, 1893. This line of argument would lead to the conclusion, that if property becomes exempt after an assessment has become a lien upon it, then such taxes and lien should be removed from the same, without payment. It seems to us much more logical to say that if land becomes exempt from taxation after a tax becomes a lien on the same, that such taxes must be thereafter paid, for the reason that the State had fixed a time for the return of assessors, which is to be a guide to the Auditor in making up the tax lists, a time when the Auditor shall prepare the lists, and when the taxes shall become a lien. And these and other provisions of the law point clearly to a time when the status of real property is to be determined as to whether it is exempt or not. At this designated time this property was exempt. There is no provision of law for putting it on the tax lists until the next lists are made up."

In the case of *In the Matter of the Estate of Anna E. Harper, Deceased*, 26 O. N. P. (N. S.) 431, in the Probate Court of Tuscarawas County (affirmed by the Court of Common Pleas, June 6, 1927), in construing Section 5671, General Code, it was held that:

"Taxes on real estate, for the purpose of enforcing payment thereof, become a lien on the said real estate on the day preceding the second Monday of April of each year; but taxes on real estate do not accrue until October 1st of each year."

On page 433 of said opinion, it was stated that:

"It is well established that taxes due upon lands are a personal debt of him in whose name the lands are listed, when taxes *accrue*, as well as a lien upon the land; and also that taxes upon real estate *accruing* after the death of the owner and before a judicial sale are debts to be paid, but taxes *accruing* subsequent to a judicial sale are not debts of the decedent, which it is his right or duty to pay."

It was further said that Section 5671, General Code,

"does not relate to when taxes *accrue*. It simply fixes the lien of the state on a day in advance of the date the taxes accrue, and when the taxes are determined they relate back and become a lien on the day preceding the second Monday in April."

The court then continued:

"It would, therefore, follow that if an owner of real estate sold the same after the day preceding the second Monday in April and before October 1st,

by *quit-claim deed*, without any warranty of title, and nothing was said about taxes, the purchaser would be liable for the taxes that become a lien on the day preceding the second Monday in April.

But if an owner of real estate sold it after the day preceding the second Monday in April, and before October 1st, by warranty deed with the usual covenants, then a different situation obtains. In such cases, the taxes become a personal debt of the grantor because the lien attaches as of the day preceding the second Monday in April, and he is bound by his covenant of warranty to discharge all liens against the real estate.

The taxes that thus become the personal debt of the grantor, do not become such by any provisions of the statutes, but because he makes them a debt by contract."

There are no statutes definitely fixing a date as of which the taxable status of real property must or can be determined.

In the case of *The German Evangelical Protestant Cemetery vs. Brooks, Treas.*, 8 O. C. C. 439, the headnotes read as follows :

"Where lands were purchased by a cemetery association, as an addition to a tract already owned and used by it as a grave yard, or grounds for burying the dead, and some work was done thereon to prepare it for cemetery purposes, but the same was not platted, or lots therein sold, or any interments made therein until after the day preceding the second Monday of April, 1891, such lands are not exempted from taxation for the year 1891, and under the provisions of Sections 2732 or 3581, Revised Statutes."

At page 440 of the opinion it was said that :

"We are of the opinion that on the day on which the lien of the state for taxes levied for all purposes for the year 1891, attached to all real property subject to such taxes, viz., the day preceding the second Monday in April of that year, this tract of twenty-eight acres was not being used exclusively as a grave yard or grounds for burying the dead. At that time, although the title to the same was in the cemetery, it had not, in fact, been appropriated to that purpose. Though some preliminary work had been done on the grounds, the platting was not completed, and certainly no interment had been made therein, and before this the lien of the state, for the taxes, had attached to the land, and could not be avoided for that year by the subsequent use of the land for burial purposes."

The second Monday of April is used as a dividing line in Section 2591, General Code, which provides for deductions from valuations for injuring or destroying property, said section reading :

"Whenever, after the second Monday of April, and before the first day of October, in any year, it is made to appear to the county auditor, by the oath of the owner, or one of the owners, of a building or structure, land, orchard, timber, * * * is listed for taxation for the current year, and has been destroyed or injured by fire, * * * he shall investigate the matter, and deduct from the valuation of the property of the owner of such destroyed property, on the tax list for the current year * * * ."

Section 5609, General Code, which relates to the filing of complaints by taxpayers against the valuation of their property, provides in part as follows:

“ * * * The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached, or as of which liability for such year was determined, and liability for taxes, and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation or assessment as finally determined. * * * ”

In Cooley on Taxation, 4th Edition, Section 712, it is stated that:

“If property is not exempt on the tax day, it is liable to taxation for the fiscal year although it afterward becomes exempt.”

There are various statutes exempting property from taxation. Section 5349, General Code, is the general statute which exempts property from taxation and reads in part as follows:

“Public school houses, and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit * * * shall be exempt from taxation. * * * ”

Section 5570, General Code, provides that an assessor at the time of making an assessment of real property subject to taxation shall make a return of the exempted real estate.

Section 5570-1, General Code, provides that the county auditor shall make a list of exempted property and reads in part as follows:

“It shall be the duty of the county auditor to make a list of all the property, both real and personal, in his county, * * * which is exempted from taxation under Sections * * * 5349, * * * of the General Code. * * * ”

In each case in addition to the name of the owner such list shall show the value of the property exempted and a statement in brief form of the reason for or ground on which such exemption has been granted. It shall be corrected annually by adding thereto such items of property as may have been exempted during the year and by striking therefrom such items as shall have lost their right of exemption and which shall be entered on the taxable list. * * * ”

The section further provides that:

“no addition shall be made to such exempt lists nor additional items of property exempted under any of the sections enumerated herein without consent of the tax commission. * * * ”

In consideration of the foregoing it seems reasonable to conclude that the status of exempt property is fixed as exempt property for the current year as of the day preceding the second Monday in April.

Specifically answering your question it is my opinion that the status of the church property in question was fixed as property exempt from taxation, on the day pre-

ceding the second Monday of April for the year 1926, (April 11, 1926) and its said status was not changed by the conveyance by the church authorities on April 14, 1926, to a non-exempt grantee.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2263.

APPROVAL, ELEVEN GAME REFUGE LEASES.

COLUMBUS, OHIO, June 20, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letters of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval:

<i>No.</i>	<i>Name</i>	<i>Acres</i>
1119	Charles Bukhart, Wood County, Perrysburg Township-----	91
1120	Frank Eckel, Jr., Wood County, Perrysburg Township-----	70
1121	Fred J. & Lida Eckel, Wood County, Perrysburg Township-----	15
1122	The Ohio Oil Co., Wood County, Liberty Township-----	320
1126	Peter Heilman, Wood County, Perrysburg Township-----	80
1127	Wilson Kohl, Wood County, Perrysburg Township-----	25
1128	Frank M. Coppes, Darke County, Jackson Township-----	74
1129	R. H. Johnson, Darke County, Brown Township-----	119
1130	Wm. Coppes, Darke County, Jackson Township-----	20
1131	William H. Knoll, Darke County, Jackson Township-----	40
1132	James M. Coppes, Darke County, Jackson Township-----	120

I have examined said Leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2264.

APPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM A. JOHNSTON, IN SALEM TOWNSHIP, JEFFERSON COUNTY.

COLUMBUS, OHIO, June 21, 1928.

HON. CHAS. V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have resubmitted to this department an abstract of title and warranty deed of one William A. Johnston, covering a tract of Thirty-two and three-tenths (32.3) acres of land in Salem Township, Jefferson County, which the state proposes to purchase from said William A. Johnston for the purpose of establishing a game preserve.