

The intimation to the contrary in *Memphis Trust Co. vs. Speed*, 114 Tenn. 677, 691; 88 S. W. 321, is not to be followed in view of the express decision under the New York law, which is so similar to that of Ohio, and in view also of what is believed to be the correct principle, as above stated.

These conclusions make it necessary to consider only the further contention mentioned in the commission's letter, to the effect that having regard now to the \$10,000, which should be considered as net Ohio assets, there should be pro-rated against said amount "such a share of the general indebtedness of the decedent as the entire value of the bonds (\$60,000) bears to the whole estate." This claim is believed to be erroneous. The true principle is stated in *Matter of Porter*, 67 Misc. 19; 124 N. Y. Supp. 676; see also 132 N. Y. Supp. 1143, as follows:

"The deduction to be made for debts owing to non-resident creditors, mortuary expenses, commissions on property without the state, and other administration expenses in respect to such property, should be in the proportion which the net New York estate (after all deductions are made for debts owing to resident creditors, New York commissions, and New York administration expenses) bears to the entire gross estate wherever situated."

See also:

Matter of Browne, 127 App. Div. 941; 111 N. Y. Supp. 1111;

Matter of Kirtland, 94 Misc. 58; 157 N. Y. Supp. 378;

Matter of Raimbouville, N. Y. L. J., July 27, 1916.

That is to say, the amount to be compared to the gross value of the whole estate for the purpose of determining the proportion in which debts should be charged against the local assets is the net amount of local assets, and not the gross amount; for in arriving at the net amount of local assets the local charges have already been deducted. In this instance the \$50,000 local debt for which the assets were specifically pledged has been deducted once, and in addition thereto local administration expenses, if any, may fairly be deducted; but after these deductions are made the net balance which constitutes the Ohio assets is the amount which is to be compared to the gross value of the whole estate for the purpose of determining what proportion of debts due to foreign creditors should be charged against the Ohio assets.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2032.

WEIGHTS AND MEASURES—STATE INSPECTOR WITHOUT AUTHORITY TO CONFISCATE UNDER-WEIGHT ARTICLES.

A state inspector of weights and measures is without authority to confiscate under-weight articles.

COLUMBUS, OHIO, April 28, 1921.

HON. N. E. SHAW, *Secretary of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading thus:

"In a certain store the proprietor has a quantity of coffee which is put up in packages marked one pound.

These packages are all considerably under-weight. The transaction was made through inter-state shipment. Has an inspector of weights and measures authority to confiscate it?"

It is assumed that by "inspector of weights and measures" you refer to a state inspector appointed by you pursuant to the authority given the secretary of agriculture under sections 1087 G. C., 1089 G. C. and related sections.

The authority of a state inspector of weights and measures rests entirely upon statute, and if no statute can be found which expressly or by necessary implication confers upon him the right to confiscate under-weight articles, the conclusion is, of course, that no such right exists.

Section 7965-1 G. C., as amended in 107 O. L., 492, says:

"The secretary of agriculture or his deputy, or any other duly authorized sealer of weights and measures or his deputy, may inspect and test any weight, measure, balance or other weighing or measuring device, wherever the same is used or maintained for use, and if such weight, measure, balance or other weighing or measuring device is found to be false or fraudulent, or cannot be made to conform to the legal standard, the same shall be *condemned* and *confiscated* by the said sealer or deputy sealer."

This section was held constitutional in *Williams vs. Sandles*, 93 O. S. 92. Section 7965-2 G. C., as amended in 107 O. L. 492, says:

"The secretary of agriculture or any duly authorized sealer of weights and measures or his deputy, shall inspect and test any weights and measures, balances and weighing or measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities both as to correctness of weight or quantity and value indicated by them, the secretary or any sealer of weights and measures or his deputy shall seal such weights and measures, or balances and weighing and measuring devices as shall be tested and found correct, and, after ten days' notice, in writing, to the owner shall *condemn* or *seize* such as are found to be incorrect, and shall seal such weights and measures, balances, weighing and measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities only when correct, both in indications of weight or quantity and value, and shall *condemn* or *seize* such in which the graduations or indications are found to be false or inaccurately placed, either as to weight or quantity or value."

These sections, which appear to be the only sections of the code authorizing the state inspector to condemn or confiscate, authorize the confiscation of weights, measures, balances or other weighing devices found to be false or fraudulent, or which cannot be made to conform to legal standards. Said sections do not empower the inspector to condemn or confiscate the *thing weighed*.

Section 13128 G. C. (108 O. L., Part I, p. 556) says:

"Whoever puts up or packs goods or articles sold by weight or count into a sack, bag, barrel, case or package, or whoever puts up or fills a bottle, barrel, keg, drum, can or other container with any commodity sold or offered for sale by liquid measure, shall mark thereon in plain letters and figures the exact quantity of the contents thereof in terms of weight, measure or numerical count; provided, however, that reasonable tolerances

and variations and also exemptions as to small packages shall be established by rules made by the secretary of agriculture and shall conform to those of the federal law, and provided, further, that this act shall not apply to such packages or containers, weighed, put up, packed or filled in the presence of the customer.

Whoever, with intent to defraud, transfers a brand, mark or stamp placed upon a case or package by a manufacturer to another case or package, or with like intent, repacks a case or package so marked, branded or stamped, with goods or articles of quality inferior to those of such manufacturer shall be deemed guilty of a violation of this section.

Any article or commodity packed and sold by weight shall be sold by net weight only, and no wood, paper, burlap, cord, paraffin or other substance used for wrapping or packing, shall be included as a part of such commodity sold.

Provided, however, that nothing in this section shall prohibit making a reasonable separate charge for any wrapper or container used in packing or preparing such article or commodity for sale, if such be agreed to by the purchasers of such article or commodity at time of sale. Any person, firm, company, corporation or agent, who fails to comply with any provision of this act, shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00). * * *."

Said section has nothing whatever to say on the subject of confiscation of goods or articles not in conformity with its provisions. It is therefore unnecessary to discuss the further question of its applicability to packages concerned in a "transaction made through inter-state shipment," to use the phrase contained in your letter.

Your question is therefore answered in the negative.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2033.

ROADS AND HIGHWAYS—AMOUNT OF BONDS THAT MAY BE ISSUED BY TOWNSHIP ROAD DISTRICT IN ANY ONE YEAR WITHOUT VOTE OF PEOPLE—SECTION 3295 G. C. (106 O. L. 536) DOES NOT IMPOSE ON SAID DISTRICTS AS DEFINED IN SECTION 3298-25 TO 3298-53 G. C., THE LIMITATIONS UPON INDEBTEDNESS AS SET OUT IN SECTION 3939 ET SEQ. G. C.

Section 3295, G. C. (106 O. L. 536), does not impose on township road districts as defined in sections 3298-25 to 3298-53 G. C., the limitations upon indebtedness as set out in sections 3939 et seq., G. C. (Longworth Act). (Attention called to opinion of Supreme Court in State ex rel. Steller vs. Zangerle, 100 O. S., 414; and opinion Attorney General appearing in Opinions 1917, Vol. II, p. 1212.)

COLUMBUS, OHIO, April 28, 1921.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"I would like to have your opinion upon the limitation of the amount of bonds a township road district may issue in any one year without a vote of the people. This matter comes up by reason of the following: