Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3030.

INHERITANCE TAX LAW—LITIGATION INVOLVING ASSETS OF ESTATE INSTITUTED SUBSEQUENT TO EXPIRATION OF YEAR AFTER DEATH OF DECEDENT—WHAT RATE OF INTEREST CHARGEABLE AFTER EXPIRATION OF YEAR ON INHERITANCE TAXES SUBSEQUENTLY DETERMINED.

Where litigation involving the assets of the estate of a decedent is not instituted until subsequent to the expiration of the year after the death of the decedent, and such litigation was not the result of a claim asserted prior to the expiration of the year, but which those interested in the estate could not bring to litigation until after the expiration of the year, interest at the rate of eight per cent per annum from the expiration of the year must be charged and collected on the inheritance taxes subsequently determined on such estate.

COLUMBUS, OHIO, April 25, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission has requested the opinion of this department on the following question:

> "H. died on January 3, 1920. On September 10, 1921, litigation involving the assets of the estate was begun which necessarily held up administration and was not disposed of until March 2, 1922. Application for determination of inheritance tax was filed March 25, 1922, and adjudication was made thereon. In so far as this commission can learn no conditions existed prior to September 10, 1921, which would have prevented the institution and prosecution of a proceeding to fix the tax or its payment if fixed.
>
> Will you be good enough to advise the Commission as to the rate of interest to be charged in this case? Does the 8% rate run from January 3, 1921, and, having so begun to run, does it continue during the entire interval which elapsed up until the date of payment? Or should interest be charged at the rate of 8% from January 3, 1921, to September 10, 1921, and should the rate then be reduced to 5% for the interval between the last mentioned date and the conclusion of the litigation then begun, and does it then revert to the 8% rate? Or should the 5% rate be permitted from January 3, 1921, up until the conclusion of the litigation?"

The statute requiring interpretation is section 5338 of the General Code, which provides in part as follows:

> "If such taxes are not paid within one year after the accrual thereof, interest at the rate of eight per centum per annum shall thereafter be charged and collected thereon; unless by reason of claims made upon the

estate, necessary litigation, or other unavoidable causes of delay, such taxes cannot be determined and paid as hereinbefore provided, in which case interest at the rate of five per centum per annum shall be charged upon such taxes from the expiration of one year after the accrual thereof until the cause of such delay is removed, after which eight per centum shall be charged."

It may be said at the outset that the determination of the question of unavoidable cause of delay may and should be made by the Probate Court, which by virtue of section 5340

"shall have jurisdiction to hear and determine the questions arising under the provisions of this subdivision of this chapter."

Though there is no more explicit provision in the act, it is believed that the proper practice is to have a finding as to delay incorporated in the order determining the tax; it is not believed that the county auditor and the county treasurer, who are respectively to charge and to collect the taxes, are vested with any power to determine such questions.

For the foregoing reasons, it is believed, therefore, that if the Probate Court should find that an unavoidable cause of delay had intervened, and fix the date of its removal, that would be conclusive, in the absence of exceptions. Assuming, however, that the Commission is submitting the inquiry at the request of some Probate Judge who has not determined the question, or that the Commission is considering the expediency of filing exceptions to a determination already made, the question will be further considered.

In so considering, it will be assumed that the litigation commenced on September 10, 1921, was not threatened at any time during the first year ensuing after the accrual of the tax; or if threatened in the sense that the condition was known that the litigation was in respect of its institution within the control of the administrator or other persons interested in the settlement of the estate. For if the litigation was threatened during the first year of administration, and for any reason the administrator, executor or other interested persons could not bring the threat to a head in the form of litigation, then it is believed that the mere fact that the suit was not filed until after the expiration of the year was immaterial.

On these assumptions then, it is believed that the statute permits of but one answer to the question submitted, and that the first alternative suggested by the Commission embodies that answer. The words of the statute are as follows:

"If such taxes are not paid within one year * * * interest at the rate of eight per centum per annum shall thereafter be charged and collected * * *; unless by reason of * * * unavoidable causes of delay, such taxes cannot be determined and paid *as hereinbefore provided,* in which case interest at the rate of five per centum per annum may be charged until the cause of such delay is removed. * * *"

Attention is called to the words "as hereinbefore provided." They unquestionably relate to payment within one year; for they can have no other meaning. Putting these words in the place of the relative the antecedents of which they are, we have the following:

"Unless by reason of * * * unavoidable causes of delay, such taxes cannot be determined and paid *within one year after the accrual thereof* * * *."

That is to say, the only case in which interest at the rate of five per cent per annum is to be charged for failure to pay within the first year is that of an unavoidable cause, delaying and preventing payment within the first year.

It is accordingly the opinion of this department that in the case submitted, and upon the assumption above made (but not otherwise), the eight per cent rate runs from January 3, 1921, and continues to run, notwithstanding the subsequent institution of litigation. No hardship results from this rule, as it is believed that it is almost inconceivable that the persons interested in the determination of the tax would be powerless to institute litigation to determine the validity of a known claim against the estate or involving the settlement thereof.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3031.

GRISWOLD ACT—WHEN BONDS ARE NOT YET "ISSUED" WITHIN MEANING OF SECTION 2295-12 G. C.—GRISWOLD ACT APPLIES ON JANUARY 1, 1922, AND LEGISLATION MUST BE RE-FORMED SO AS TO CONFORM MATURITY OF ISSUE TO PROVISIONS OF SAID ACT IF BONDS NOT ISSUED PRIOR TO ABOVE DATE.

Bonds authorized by a vote of the people, the issuance of which is provided for by legislation of council, which have been offered to the local sinking fund trustees and the Industrial Commission of Ohio and rejected, and offered at public sale after due advertisement, and not sold for want of bidders, are not yet "issued" within the meaning of section 14 *of the Griswold act (section* 2295-12 *G. C.) nor do such bonds become "issued" by reason of having been printed, signed and sealed, and in the hands of the mayor and other municipal officers authorized under the circumstances to dispose of them at private sale, so long as no part of the bonds thus authorized to be issued have been disposed of. Accordingly, where the situation is as above stated on January* 1, 1922, *the Griswold act applies, and legislation must be re-formed so as to conform the maturity of the issue to the provisions of the act.*

COLUMBUS, OHIO, April 25, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You request the opinion of this department upon a question submitted by the clerk of council of the city of Elyria. The clerk writes a lengthy letter, from which the following may be quoted:

> "A somewhat similar question has now come up with reference to another issue of bonds of the city of Elyria known as water works bonds, series "V," but the facts in connection with this issue are sufficiently different to differentiate this question from the one submitted heretofore, so that we feel warranted in asking you to submit this question also to the Attorney-General's office.
>
> On February 3, 1919, the Council of the city of Elyria duly passed Resolution No. 1569 providing for the submission to the electors of the city of the question of whether or not the city should issue bonds in the amount of $1,000,000 for the purpose of enlarging, improving, etc., the water works system of the city. No details as to maturities, rate of interest or how the