

**OPINION NO. 72-085****Syllabus:**

A conveyance of property to a wholly-owned subsidiary corporation which is not pursuant to an order of a court of competent jurisdiction, is not exempt from taxation under Section 319.54 (F) (3) (g), Revised Code, as being a "reorganization."

---

To: Stephan M. Gabalac, Pros. Atty., Summit County, Akron, Ohio  
By: William J. Brown, Attorney General, September 28, 1972

I have your predecessor's request for my opinion, which reads as follows:

"Is a conveyance of property from a corporation to a wholly owned subsidiary corporation exempted from taxation under Subparagraph G, Section 319.54 as being a 'reorganization'?"

In connection with your inquiry you note that the transaction in question involves the transfer of a newspaper from being a division of a group of newspapers to a separate subsidiary of the same group of newspapers.

County real property transfers are taxed pursuant to the provisions of Chapter 322, Revised Code. Section 322.01 (B), Revised Code, excludes from the coverage of that Chapter any transfer of real property which is exempted from the county auditor's fees by the provisions of Section 319.54 (F)(3), Revised Code. That Section provides in pertinent part:

"(F) The county auditor shall charge and receive fees as follows:

" \* \* \* \* \*"

"(3) For receiving statements of value and administering Section 319.202 of the Revised Code, one dollar, or ten cents per hundred dollars for each one hundred dollars or fraction thereof of the value of real property transferred, whichever is greater, except no fee shall be charged when the transfer is made:

" \* \* \* \* \*"

"(g) Pursuant to a reorganization of corporations or unincorporated associations;

" \* \* \* \* \*"

The sole issue here is, therefore, whether the transfer in this case constitutes a corporate reorganization within the meaning of this portion of Section 319.54. If it is such a reorganization, it is exempt from taxation under the coverage of Chapter 322. If it is not a reorganization, it is not exempt.

A prior Attorney General's Opinion, Opinion No. 68-165, Opinions of the Attorney General for 1965, bears on the exemptions granted by Section 319.54 (F)(3), and provides:

"The statutory exemptions provided in Division (F)(3) of Section 319.54, supra, exempting certain transfers and deeds from the transfer fee and permissive county real property transfer tax, should be construed strictly, but reasonably, in favor of the fee and tax against exemption." (Emphasis added.)

The present Ohio Corporation Law (Chapter 17, Revised Code), enacted in 1955, recognizes only one method of corporate reorganization, that accomplished pursuant to a decree or order of a court of competent jurisdiction. Section 1701.75, Revised Code, states in part:

"(A) A corporation, a plan of reorganization of which shall have been confirmed by the decree or order of a court of competent jurisdiction pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, may put into effect and carry out the plan and the decrees and orders of the court relative thereto, and may take any proceeding

and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such authority may be exercised, and such proceedings and acts may be taken or done, as directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the reorganization proceedings (or a majority thereof), or if none shall have been appointed, by designated officers of the corporation, or by a master or other representative appointed by the court, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

"(B) A corporation, in the manner provided in division (A) of this section, but without limiting the generality thereof, may: amend its articles in any respect; amend or repeal its regulations or adopt new regulations; name, constitute, reconstitute, classify, or reclassify its directors and appoint directors and officers in place of or in addition to some or all of the directors or officers then in office; make any lawful change in its stated capital; make a determination of the fair value to the corporation of its assets; transfer all or a part of its assets; merge; consolidate; remove or appoint a statutory agent; authorize the granting of option rights in respect of shares and other securities; authorize the issuing of notes, bonds, and other evidences of indebtedness, whether or not convertible into shares or other securities; lease its property to any corporation; dissolve; or effect any other change authorized by this chapter."

(Emphasis added.)

Chapter 17 makes no provision for the voluntary reorganization of a corporation. Indeed, the enactment of the current Ohio Corporation Law repealed former Section 1701.19, Revised Code, which had provided for reorganization by mere alteration of corporate amendments. Thus the term "reorganization", as it is used in Section 319.54 (F) (3) (g), can have only one meaning, that is, a reorganization which is accomplished pursuant to the order of a court of competent jurisdiction.

In specific answer to your question it is my opinion, and you are so advised, that a conveyance of property to a wholly-owned subsidiary corporation which is not pursuant to an order of a court of competent jurisdiction, is not exempt from taxation under Section 319.54 (F) (3) (g), Revised Code, as being a "reorganization."