

2056.

APPROVAL, BONDS OF YORK TOWNSHIP RURAL SCHOOL DISTRICT
IN AMOUNT OF \$100,000 FOR ERECTION OF SCHOOL BUILDING.

COLUMBUS, OHIO, May 9, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2057.

APPROVAL, REFUNDING BONDS OF MILTON TOWNSHIP RURAL
SCHOOL DISTRICT, WOOD COUNTY, IN AMOUNT OF \$14,000.

COLUMBUS, OHIO, May 10, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2058.

TAXES AND TAXATION—MONEYS IN HANDS OF EXECUTOR OR
ADMINISTRATOR AFTER FILING OF HIS FINAL ACCOUNT BUT
BEFORE DISTRIBUTION MUST BE LISTED FOR TAXATION BY
EXECUTOR OR ADMINISTRATOR.

Money in the hands of an executor or administrator of the estate of a deceased person, after the filing of his final account but before distribution, must be listed for taxation by the executor or administrator, and not by the legatees or distributees.

COLUMBUS, OHIO, May 10, 1921.

HON. RALPH NORPELL, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—You have requested the opinion of this department upon the following question:

“The following procedure has been more or less practiced here in reference to returning for taxation the money belonging to estates where the final account, before distribution has been filed prior to the tax return date and the distribution made after the tax return date:

For the administrator or executor to not return the money for taxation on the theory that it was subject to an order of the court and should be returned by the heirs.

I should like, at your convenience, your opinion as to whether money in the hands of an administrator or an executor on the Sunday preceding the second Monday in April, where the final account, except distribution, had been filed before that date but the distribution not yet actually made, should be returned by such administrator or executor.”

The statute (section 5370 G. C.) requires the "property of * * * an estate of a deceased person * * * to be listed by his executor or administrator." The authorities seem uniform to the effect that under statutes like this, property actually in the hands of an executor or administrator must be listed by him, and that the duty of the distributees and legatees to list does not arise until distribution is actually made to them. In other words, the fact that their respective shares are ascertained by the final account does not give rise to an obligation on their part to list the property which still remains in the hands of the executor. Such property is personal property; the legal title to it is vested in the executor, and is transferred only upon delivery through distribution. When the respective shares are certain, it is arguable that the executor is a mere trustee, but this does not help the case for the executor, as the same section above referred to requires the property "of a person for whose benefit property is held in trust" to be listed "by the trustees." It is also arguable, though certainly not on grounds consistent with the last suggestion, that the relation between the executor and the distributees is that of debtor and creditor. This, however, does not help the executor, though it might impose a duty upon the distributees or legatees; for if one has money in the bank and owes a sum equal to its amount, yet he must list the money in the bank without deduction on account of the debts, which can only be deducted from credits.

This department is therefore unable to find any basis on which to justify the position that after the filing of a final account, but before distribution, money in the possession of executors or administrators of the estates of deceased persons should be listed by the legatees and distributees, instead of by the executor or administrator. There seems to be no express adjudication upon the exact point in Ohio, though *Greeg vs. Hammond*, 4 N. P. (N. S.) 214, is somewhat analogous and tends to sustain the position herein taken. The rule, however, is generally stated in the form in which it has been expressed in this opinion. See 37 Cyc., 794.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2059.

POOR RELIEF—LEVY OF SIX-TENTHS OF MILL IN SECTION 2530 G. C. IS NOT EXEMPT FROM LIMITATIONS OF TEN AND FIFTEEN MILLS PROVIDED BY SECTION 5649-2 ET SEQ. G. C.

The levy of six-tenths of a mill mentioned in section 2530 G. C. is not exempt from the limitations of ten and fifteen mills provided by sections 5649-2 et seq. G. C.

COLUMBUS, OHIO, May 10, 1921.

HON. MARY KATHERINE DAVEY, *Prosecuting Attorney, Logan, Ohio.*

DEAR MADAM :—You have recently written to this department as follows :

"I should like an opinion from your office on the following matter :

Does section 2530 of the General Code authorize the county commissioners to levy a tax of not exceeding six-tenths of a mill outside of the ten mill limitation or the fifteen mill limitation when the funds applicable for the support of the poor are inadequate?