the rights of the defendants. The money is primarily for the use of the county, for it is to be paid into the county treasury, and thence distributed."

It does not appear that the State of Ohio has suffered any loss in its funds by reason of the shortage of the county treasurer in the monies chargeable to him, nor that said county treasurer has at any time failed to pay into the state treasury money ascertained to be due the state, as he was required to do by the provisions of Sections 2688 and 2693, General Code.

In this connection, it is obvious that if the money represented by the certified check tendered by the surety company in payment of the shortage in the county treasurer's accounts should be covered into the state treasury, there would be no way of getting said money out of the state treasury for the purpose of paying the same to said county, or to any of the political subdivisions or taxing districts therein, without an appropriation for the purpose made by the Legislature.

I am of the opinion therefore, that any money paid by said surety company on said official bonds of the county treasurer should be paid into the county treasury of Lawrence County on a pay-in draft or order of the county auditor in the manner provided by Section 2645, General Code.

By way of specific answer to your question, I am of the opinion that the treasurer of the State of Ohio is not authorized to receive the check mentioned in your communication.

In any event the check of the surety company in the amount therein stated should not be accepted in full settlement of the liability of the surety companies on said official bonds, and that for the reason, as I am advised, the ascertained shortage of the county treasurer is in excess of the amount stated in the check referred to in your communication.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1742.

Y. M. C. A.—DISCUSSION OF EXEMPTION FROM TAXATION.

SYLLABUS:

1. *The amendment of Section* 5353, *General Code,* (110 *O. L.* 77) *does not require a modification in any way of the general conclusions arrived at in the opinion rendered by this department in* 1916, *Vol. II, page* 1640, *and such conclusions are still controlling.*

2. *The fact that the rooms in a building owned by the Y. M. C. A. when not occupied by members of said association are rented to the public to the extent that said rooms are not occupied by members of said association, does not classify said rooms as property leased for a profit so as to subject them to taxation.*

3. *The fact that a part of a Y. M. C. A. building owned by said association is devoted to the operation of a restaurant owned and managed directly by the association, but to which the public at large is admitted, and which derives a good part of its revenue from the public, does not classify the room or rooms in which*

said restaurant is so operated and managed as property leased for commercial purposes or for a profit and does not therefore subject said property to taxation.

COLUMBUS, OHIO, February 21, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

> "The Commission has authorized me to direct your attention to an opinion rendered by you respecting the liability to property taxation of real estate owned by a Young Men's Christian Association and which is to be found on pages 1640 et seq. of the opinions of the Attorney General for the year 1916.
>
> In view of the fact that Section 5353 of the General Code has been amended since that opinion was rendered, the commission desires to have your advice on the following points:
>
> 1. Does the amendment referred to require a modification in any way of the general conclusions arrived at in said opinion or are such conclusions still controlling?
>
> 2. Would your opinion that 'the rooms in the building rented to members as living rooms and fees charged therefor' are exempt, be modified should it appear that the rooms so rented are not limited to members but are open to the public generally, or at least to the extent to which the same are not occupied by members?
>
> 3. What is your opinion with regard to the taxability of a part of the building devoted to the operation of a restaurant owned and managed directly by the association but to which the public at large are admitted and which derives a good part of its revenue from the public?"

The Commission asked similar questions in 1924 and my predecessor under date of June 26, 1924, in a letter opinion stated:

> "As indicated in the department's said request, this question has frequently been considered by my predecessors, and it has uniformly been held by them that such associations, with certain exceptions, are exempt from taxation. The exceptions being where certain business rooms were leased for mercantile purposes with a view to profit."

Portions of the 1916 opinion referred to in the present request were quoted and it was then stated:

> "The opinion also reviews the former opinions of this department—all holding said associations exempt from taxation.
>
> In rendering said opinion in 1916 construing Section 5353, G. C., consideration was given to the Constitutional Amendment of 1912."

Said letter opinion then concludes as follows:

> "Upon an examination of the Ohio cases decided since said opinion was rendered, and cases of other jurisdictions, including the recent New York case of *Board of Foreign Missions of the M. E. Church* vs. *Board*

of Assessors of the City of Yonkers, 202 N. Y. Supplement, page 50, it is believed that this department is not warranted in over-ruling its former opinions, which hold that the property of the Y. M. C. A. is exempt from taxation, except such part of the property of said association as may be leased for commercial purposes."

Section 5353, General Code, previous to its amendment in 110 O. L. page 77, read as follows:

"Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions of public charity only, shall be exempt from taxation."

As amended it now reads as follows:

"Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation."

It is noted that the phrase "property belonging to institutions of public charity only" has been changed to read: "Property belonging to institutions used exclusively for charitable purposes." This amendment was made in conformity to the provisions of the Constitution of Ohio as amended in 1912, and in rendering said opinion in 1916, construing Section 5353, consideration was given to the constitutional amendment.

The 1916 opinion is based upon the following statement of facts:

"The Young Men's Christian Association of Springfield, Ohio, is a corporation not for profit organized under the laws of this state. It owns a tract of real estate on which a building stands, the value of both being probably $150,000.00. Said association conducts its affairs along the usual lines of such associations. It is supported largely by voluntary contributions, gifts and bequests for permanent endowment. It charges a membership fee ranging from $5.00 to $8.00 per year. There are two classes of members, active and associate. All active members must be at least eighteen years of age and a member in good standing of a Protestant Evangelical church, and pay such fees as are fixed by the board of directors, and sign the constitution. Associate members need not belong to any church or may belong to a church other than a Protestant Evangelical church, and enjoy all the privileges of the association except voting in the election of the directors. Only active members are allowed to vote for the directors. Worthy young men may be admitted as associate members of the association by the board of directors if said board of directors find that such young men are financially unable to pay the annual fee. Two of the rooms of the building are rented for commercial purposes, the income being used to support the association, and a number of rooms in the building are rented to members as living rooms and fees are charged therefor. Said association maintains reading rooms, swimming pool, baths,

pool and billiard tables. Night school for the use of its members is conducted in said building. Those who attend such school are required to pay if able."

Upon this statement of facts the opinion holds that "only that part of the property of the association named, which is rented for commercial purposes, said part being two rooms specified in your letter, should be placed upon the tax duplicate, and that the residue of said property is exempt under the provisions of Section 5353, General Code." The opinion further held:

"The institution named in your inquiry is one of public charity only, and its property is therefore exempt from taxation under the provisions of said Section 5353 aforesaid, except in the particulars noted."

Section 2, Article XII of the Ohio Constitution, reads as follows:

"Laws shall be passed, taxing by a uniform rule, * * * all real and personal property according to its true value in money * * *; institutions used exclusively for charitable purposes * * * may, by general laws, be exempted from taxation; * * *"

An examination of said opinion rendered in 1916 discloses that the conclusions are based upon the exclusive use made of the property in question for charitable purposes.

On page 1642 it is stated:

"It is the use of the property which renders it exempt or non-exempt, not the use of the income derived from it. I conclude that so much of said building as is rented for commercial purposes, said part being the two rooms specified, should be assessed by the proper officers for taxation purposes and placed on the tax duplicate.

In answer therefore to your first, second and fourth inquiries, I advise that only that part of the property of the association named which is rented for commercial purposes, said part being the two rooms specified in your letter, should be placed upon the tax duplicate, and that the residue of said property is exempt under the provisions of Section 5353 aforesaid."

In answer to your first inquiry I am therefore of the opinion that the amendment of Section 5353, 110 O. L. page 77, does not require a modification in any way of the general conclusions arrived at in said 1916 opinion and that said conclusions are still controlling.

Your next inquiry is:

"Would your opinion that 'the rooms in the building rented to members as living rooms and fees charged therefor' are exempt, be modified should it appear that the rooms so rented are not limited to members but are open to the public generally, or at least to the extent to which the same are not occupied by members?"

This same question was asked my predecessor in 1924, based upon the following:

"Part at least of the upper floors of the building will be devoted to rooming purposes, accommodations being provided at what would be fair charges for the services rendered. These rooms will be rented to members preferably, but the public generally and transients will also be admitted."

It was held that under the foregoing conditions the property would not be subject to taxation. It is noted that these rooms are ordinarily rented to members of the association and it is only occasionally that others occupy said rooms and it cannot reasonably be said that this occasional occupancy by others than members of the association would place them in the class of leased for profit and take the said property out of the class of that used exclusively for charitable purposes. Said 1916 opinion would therefore not require modification in this regard.

You also ask as follows:

"3. What is your opinion with regard to the taxability of a part of the building devoted to the operation of a restaurant owned and managed directly by the association but to which the public at large are admitted and which derives a good part of its revenue from the public?"

The Commission also asked this question in its said inquiry of 1924 and stated that "there is maintained in connection with the association and in the same building a restaurant and billiard room. The public is freely admitted to these rooms. The same services are rendered there as are generally rendered at any restaurant or billiard room and are charged for other commercial rents, a reduction being granted to patrons who are members of the association. It is estimated that some revenue will be derived from these two services which will be used for general association purposes."

My predecessor answered this question in his letter of June 26, 1924, holding that said restaurant and billiard room were not leased for profit and therefore were not subject to taxation. You state in your question that the restaurant is "owned and managed directly by the association." It is operated primarily for the benefit and convenience of the members of the association and the fact that non-members of the association are also served at said restaurant would not classify that part of the building devoted to the operation of the restaurant, as being leased for a profit, and it may be classified as used exclusively for charitable purposes.

The substantial change made in the amendment of Section 5353, General Code, 110 O. L. page 77, was that the exemption was changed from property belonging to institutions of public charity only to property belonging to institutions used exclusively for charitable purposes. As the 1916 opinion of this department, found in Vol. II, Opinions, Attorney General, 1916, at page 1640, is based upon the manner in which the property under consideration was used its conclusions are in conformity to Section 5353, General Code, as amended.

Specifically answering your questions it is my opinion that:

1. The amendment of Section 5353, General Code, 110 O. L. page 77, does not require a modification in any way of the general conclusions arrived at in the opinion rendered by this department in 1916 and such conclusions are still controlling.

2. The fact that the rooms in a building owned by the Y. M. C. A., when not occupied by members of said association, are rented to the public to the extent that said rooms are not occupied by members of said association, does not classify said rooms as property leased for a profit so as to subject them to taxation.

3. The fact that a part of a Y. M. C. A. building owned by said association is devoted to the operation of a restaurant owned and managed directly by the association, but to which the public at large is admitted, and which derives a good part of its revenue from the public, does not classify the room or rooms in which said restaurant is so operated and managed as property leased for commercial purposes or for a profit and does not therefore subject said property to taxation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1743.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM, IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, February 23, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—I have made a careful examination of an abstract of title with respect to certain lands situated in Nile Township, Scioto County, Ohio, and being more particularly described as follows:

"Being part of said Survey No. 15391-15450; beginning at two white oaks from which a jackoak 5 inches in diameter bear S. 88½° W. 26 links to S. W. corner to Survey No. 14157, thence S. 26° W. 116 poles to a pine on top of a ridge; thence along the ridge 70° E. 8 poles to a pine and a white oak; thence N. 43° E. 14 poles to a stone; thence S. 58° E. 11.6 poles to a jackoak and a black walnut; thence S. 51° E. 13½ poles to three pines; thence S. 76° E. 10.7 poles to three pines; N. 86° E. 14 poles to a stake; thence N. 85° 30′ W. 214.4 poles to a pine; thence N. 71° 45′ E. 11.6 poles to a hickory and jackoak; thence N. 61° E. 18 poles to a jackoak on a point; thence N. 66° 19.7 poles to a white oak; thence S. 79° E. 10 poles to a black oak; thence N. 67° E. 16 poles to a stake; thence N. 61° E. 59 poles to three hickories and a dogwood; easterly corner to Survey No. 14771; thence with one line thereof N. 39° 30′ E. 17 poles to three black oaks and a white oak; thence N. 47° E. 30′ down the hill 41½ poles to a stone on the line of Survey No. 13481; thence with one line thereof N. 76° W. 44.7 poles to a white oak, corner to Survey No. 13481 and corner to Survey No. 15720; thence with one line thereof N. 89° W. 50½ poles to a black oak and two dogwoods, thence S. 12° E. 30½ poles to a dogwood; thence S. 39° 30′ E. 50 poles to a black oak; thence S. 31° E. 13.6 poles to three black oaks and white oaks aforesaid; thence S. 39° W. 17.8 poles to three hickories and a dogwood; thence S. 78° W. 53.3 poles to a large flat gum and four dogwoods; thence N. 10° W. 30 poles to a white oak and