

1253.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN
MERCER COUNTY.

COLUMBUS, OHIO, December 3, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1254.

TAX AND TAXATION—PERSONALTY OF NATIONAL BANK IN HANDS
OF RECEIVER NOT TAXABLE IN OHIO.

SYLLABUS:

State taxes may not legally be assessed upon the furniture, fixtures and other personal property of a national bank, either as against the bank or against a receiver appointed under the provisions of Section 5234 of the Revised Statutes of the United States, who has taken over the property and assets of such bank.

COLUMBUS, OHIO, December 4, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you submit the following:

“R. B. M., county treasurer, S. V. S., county auditor, and a special personal tax collector retained by the county commissioners, have advised me that the receiver of the First National Bank, Lewisville, Ohio, has refused to acknowledge, allow, and pay personal taxes assessed on the equipment and fixtures of said First National Bank.

The receiver, by way of explanation of his refusal to allow and pay said personal taxes, stated that the comptroller at Washington, D. C., had advised him that said taxes were illegal and not legally collectible from a national bank. For this reason same was not listed as an obligation of said bank and will not be paid.

A 50% dividend has already been paid by the receiver and another dividend will shortly become due. Today was the first I had ever been advised that there was any question ever raised as to the matter. The county auditor advises me that taxes of this nature have been assessed and paid by national banks for years here without any question. You will understand that the taxes above referred to are personal taxes on fixtures and equipment in said bank as same were returned by the cashier of said bank to the county auditor before said bank went into receivership.

In the light of the above state of affairs, kindly advise me whether said taxes as returned by said bank cashier are a valid lien against said national bank receiver and collection of same can be enforced at this late date.”

The question presented in your communication is whether certain tangible personal property of a national bank, to-wit, fixtures, furniture and other equipment, are subject to assessment for taxes in this state.

National banks have been uniformly held to be instrumentalities of the federal government, and such banks, their property or their shares of stock, may be taxed by the respective states in which such national banks are located only in the manner and subject to the conditions and restrictions provided by Congress. Among the many cases decided by the federal and state courts in which the principle above stated was recognized and applied, the following are noted: *Owensboro National Bank vs. Owensboro* 173 U. S. 664; *Des Moines National Bank vs. Fairweather*, 263 U. S. 103; *First National Bank vs. Anderson*, 269 U. S. 341; *First National Bank vs. Hartford*, 273 U. S. 548.

The court in its opinion, in the case of *First National Bank vs. Anderson*, supra, said:

“National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares, cannot be taxed under state authority except as congress consents and then only in conformity with the restrictions attached to its consent.”

The only power possessed by the states with respect to the taxation of national banks, their property or their shares of stock, is that conferred by Section 5219 of the Revised Statutes of the United States, as amended by the act of March 26, 1926, which section has been carried into the United States Code as Section 548 of Title 12. This section provides that, subject to the conditions and restrictions therein stated, the several states may (1) tax the shares of national banks or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof; or (3) tax such banks on their net income, or (4) according to or measured by their net income. Subject to an exception not here important, it is further provided by the section above noted that the imposition of any one of the four forms of taxation shall be in lieu of the others. This section further provides that nothing therein contained shall be construed to exempt the real property of national banks from taxation in any state or in any subdivision thereof to the same extent, according to its value as other real property is taxed. It will be noted there is nothing in the provisions of Section 5219 of the Revised Statutes of the United States that confers any authority on the states to tax personal property of national banks, whether such property be tangible or intangible in its nature.

Consistent with the principle above noted, it has been uniformly held that the states have no such power. *Rosenblatt vs. Johnston*, 104 U. S. 462; *People vs. Weaver*, 100 U. S. 539; *Covington City National Bank vs. Covington*, 21 Fed. 484; *People vs. National Bank*, 123 Calif. 53; *Clark vs. First National Bank*, 224 N. Y. S., 10.

In the case of *Covington City National Bank vs. Covington*, supra, it is expressly held that the furniture of national banks is exempt from state taxation for the reason that Congress has not permitted the taxation of the personal property of such banks.

It is noted from your communication that the precise question here presented is whether state taxes may be assessed and collected on fixtures and other equipment of a national bank which is in the hands of a receiver, appointed presumably by the Comptroller of the Currency, under the authority of Section 5234 of the Revised Statutes of the United States (Sec. 192, title 12, U. S. C. A.). Touching this question, it was held in the case of *Rosenblatt vs. Johnson*, supra, that the personal assets and property of an insolvent national bank in the hands of a receiver appointed by the Comptroller of the Currency, under the provisions of Section 5234 of the Revised Statutes, are exempt from taxation under state laws. The court in its opinion in this case, speaking through Chief Justice Waite, said:

“The single question in this case is, whether the personal assets and personal property of an insolvent national bank in the hands of a Receiver

appointed by the Comptroller of the Currency, in accordance with the provisions of Section 5234 of the Revised Statutes, are exempt from taxation under state laws; and we have no hesitation in saying that in our opinion they are. Such property and assets, in legal contemplation, still belong to the bank, though in the hands of a receiver, to be administered under the law. The Bank did not cease to exist on the appointment of the Receiver. Its corporate capacity continues until its affairs are finally wound up and its assets distributed. *Bk. of Bethel vs. Pahquioque Bk.*, 14 Wall. 398 (81 U. S., XX., 844); *Kennedy vs. Gibson*, 8 Wall., 506 (75 U. S., XIX., 479); *Bk. of Kennedy*, 17 Wall., 21 (84 U. S. XXI., 555). If the shares have any value they are taxable in the hands of the holder or owners under Section 5219 of the Revised Statutes, but the property held by the Receiver is exempt to the same extent it was before his appointment."

The above discussion has proceeded upon a consideration of the want of power on the part of the state to tax the personal property of a national bank as against the bank itself or as against a receiver appointed to take over its property and assets. In this connection it may be noted, however, that acting under the authority conferred upon it by Section 5219 of the Revised Statutes of the United States, the State of Ohio, through its Legislature, has provided only for taxing the real property of national banks in the name of the bank, and the shares of its stock in the hands of the owners thereof. See Sections 5408 and 5409, General Code. The personal property of a national bank, whether tangible or intangible, is included within the resources of the bank upon the statement of which the county auditor determines the assessable value of the shares of stock of such bank, which, as above noted, are taxable in the names of the stockholders. Section 5411 and 5412, General Code.

It follows from the considerations above noted that the questions presented in your communication should be answered in the negative.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1255.

MUNICIPALITY—AUTHORITY TO USE GASOLINE TAX MONEY TO
FILL IN CANAL BED AS INCIDENT TO STREET CONSTRUCTION.

SYLLABUS:

In the event a city has dedicated as a public street or boulevard, a portion of a canal lying within its borders, and intends to improve the same as a street, the city's portion of the gasoline tax may be used for the purpose of filling in the bed of said canal as an incident in connection with said street construction.

COLUMBUS, OHIO, December 4, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion, which reads as follows:

"Some years ago, the City of Toledo acquired a part of the Miami and Erie Canal lying between the City of Toledo and the Village of Maumee. The canal has been drained between these points, and the City of Toledo pro-