

the State of Ohio providing for the co-operation of the county commissioners and the Director of Highways in the improvement of a portion Morral-Nevada-Northern Road, State Highway No. 524 by the construction of a bridge in the Village of Nevada, Wyandot County, Ohio, as provided in Section 1191 and related sections of the General Code.

Attached thereto is the certificate of the county auditor certifying that the money required for the payment of the cost of said improvement other than that part thereof assumed by the State, is in the treasury or in the process of collection and not appropriated for any other purpose. There is also attached the certificate of the auditor of the Department of Highways certifying that the money for the payment of the state's share of said improvement has been appropriated from the funds of the Department of Highways to the credit of Wyandot County. The certificate of the Director of Finance is also attached, certifying the availability of the money for the payment of the state's share of the proposed contract.

After careful examination, it is my opinion that said contract is in proper legal form and is a binding contract by and between the parties thereto for the purposes therein stated.

Accordingly, I hereby approve said contract as to form and legality and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2610.

TAX COMMISSION—EXCLUSIVE AUTHORITY TO RELEASE SECURITIES, DEPOSITS, ASSETS OR PROPERTY OF DECEDENT NOT LEGAL RESIDENT OF STATE AT TIME OF DECEASE—COUNTY AUDITOR DOES NOT HAVE SUCH AUTHORITY—LEGAL REPRESENTATIVE SHALL FILE PROPER APPLICATION FOR RELEASE OF PROPERTY.

SYLLABUS:

1. *A county auditor does not have authority, under the provisions of Section 5348-2 of the General Code, to release from the control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent who was not a legal resident of this state at the time of decease, because such authority is lodged solely and exclusively in the Tax Commission of Ohio.*

2. Upon the filing of a proper application with the Tax Commission of Ohio, by the legal representative of a decedent, who was not a legal resident of this state at the time of decease, for authority to transfer assets from the custody and control of a safe deposit company, trust company, corporation, bank or other institution, person or persons in possession or control or custody, in whole or in part, of such securities, deposit, assets or property belonging to or standing in the name of such non-resident decedent, the Tax Commission of Ohio has full, complete and sole authority to approve and consent to the transfer of such assets under the authority contained in Section 5348-2 of the General Code.

COLUMBUS, OHIO, June 17, 1938.

HON. HUGO ALEXANDER, *Prosecuting Attorney, Jefferson County, Steubenville, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, in which you request my opinion on the following:

"Enclosed please find copy of an application on file in the Auditor's office of our county, in which R. M., Administratrix of the Estate of W. K. M., who died a resident of Pennsylvania, is acting by virtue of an appointment from the Orphans' Court of Allegheny County, Pennsylvania, and asks that Seven Hundred Sixty-eight and 90/100 Dollars (\$768.90) on deposit in the National Exchange Bank & Trust Company of Steubenville, Ohio, be turned over to her as such Administratrix, without requiring the said National Exchange Bank & Trust Company, of Steubenville, Ohio, to retain any amount thereof for inheritance tax purposes in the State of Ohio.

The question asked herein is this: Can the Auditor of our county issue a release to the National Exchange Bank & Trust Company, of Steubenville, Ohio, consenting that they deliver the funds on deposit to the Administratrix without retaining a sufficient portion to pay any inheritance tax to the State of Ohio. In other words, should the Auditor, under the given circumstances, issue his release to the National Exchange Bank & Trust Company for payment to the Administratrix in Pennsylvania and then subsequently notify the taxing authorities of Pennsylvania of his action as mentioned in Section 5334-2 of the General Code of Ohio, or should a release be refused and a petition to determine inheritance tax filed before any release would be given. It is understood that there are no other assets

in the State of Ohio, than the assets mentioned in the application.”

The “Application for Consent to Transfer Assets in Possession or Control” reads as follows:

“Pittsburgh, Pennsylvania,
May 18, 1938.

To the Tax Commission of Ohio:

Application is hereby made in accordance with Section 5348-2 of the General Code, for the written consent of your Commission to deliver or transfer certain securities, deposits, assets or property of W. K. M., deceased, now in possession or control or custody in whole or in part of The National Exchange Bank & Trust Co. of Steubenville, Ohio.

The description and value of such securities, etc., as follows:

DESCRIPTION	VALUE
Savings Account	\$768.90

Such delivery or transfer is proposed to be made to the following: R. M., Administratrix of the Estate of W. K. M., deceased.

Decedent was a resident of the City of Pittsburgh, County of Allegheny, State of Pennsylvania, and his estate is in process of settlement in the Orphans’ Court of Allegheny County, Pennsylvania. The Ohio inheritance tax on the succession to the above described property has.....been paid.

R. M., Adminisratrix of the
Estate of W. K. M., deceased.

The State of Pennsylvania }
Allegheny County } ss.

R. M., the above named applicant, being duly sworn says that the statements contained in the foregoing application are true.

(Signed) R. M.

Sworn to and subscribed before me this 18th day of May, 1938.

Clyde E. Donaldson, N. P.”

Section 5348-2, of the General Code of Ohio, provides in part, as follows:

“* * * No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank or other institution, shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the Tax Commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the Tax Commission of Ohio may consent in writing to such delivery or transfer; and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons, from the obligation to give such notice or to retain such portion. The tax commission or the county auditor, personally or by representatives, may examine such securities, deposits or other assets at the time of such delivery or otherwise. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession of such securities, deposits, assets or property, and in addition thereto a penalty of not less than five hundred dollars or more than five thousand dollars; and the payment of such tax and interest thereon, or the penalty above prescribed, or both, may be enforced by action brought by the county treasurer in the name of the state in any court of competent jurisdiction.”

The “Application for Consent to Transfer Assets in Possession or Control” of the National Exchange Bank and Trust Company of Steubenville, was filed, by the administratrix of this estate, with the Auditor of Jefferson County and is directed to the Tax Commission of Ohio.

The only authority having jurisdiction to release the Ohio assets of this estate is the Tax Commission of Ohio. There is no authority on the part of the county auditor, as such to make a release of any of these assets of a non-resident decedent in this state. The question as to whether or not a tax is to be levied upon the succession to any property passing under the testate or intestate laws of this state or another state or country on property located within the state, at the time of the decedent's death, is to be determined by the Tax Commission of Ohio with which all applications for the determination of inheritance taxes on property located within this state must be filed.

Section 5334-2, of the General Code of Ohio, referred to in your communication, reads as follows:

“When the tax commission is required to release or transfer assets in an estate of a decedent not domiciled in this state or to do any act required by Sections 5331 to 5348-1 of the General Code with relation to such an estate as provided in this act, it shall immediately notify the proper taxing authority of the state in which such decedent was domiciled of the fact of the filing of the petition, the description of the decedent's property and the value thereof as set forth in the petition by causing a copy of same to be forwarded to such taxing authorities unless the executor, administrator, trustee or other interested person or persons acting for the estate of such decedent shall have filed with the petition proof that all death taxes, together with any interest or penalties thereon, due to the state of domicile of such decedent, or to any political subdivision therein, have been paid or secured, or a consent by the proper taxing authorities of the state of domicile to such transfer or release has been secured. It shall be the duty of the tax commission to cooperate with the domiciliary taxing authorities and to furnish them with such information as may be requested with respect to any such estate. The official or body charged with the administration of the death tax laws of the domiciliary state shall be deemed a creditor of the decedent and shall be entitled to sue in the courts of this state and to enforce such claim for taxes, penalties and/or interest due to such state or political subdivision. The provisions of this subdivision shall apply to the estate of the decedent not domiciled in this state only if the laws of his domicile contain a provision, of any nature, however expressed, whereby this state is given reasonable assurance of the collection of its death taxes, interest and penalties from the estates of decedents lying domiciled in this state. Provisions of this

subdivision shall be liberally construed in order to insure that the state of domicile of the decedent shall receive any death taxes, together with interest and penalties thereon, due it from such decedent's estate. For the purpose of this section, the word 'state' shall be construed to include any territory of the United States, the District of Columbia, and the Dominion of Canada or any province thereof."

It should be noted that under this section the only authority given for the release or transfer of any assets in an estate of a decedent not domiciled in this state, or to do any act required by Sections 5331 to 5348-14, of the General Code with relation to such an estate as provided in the Inheritance Tax Act is lodged definitely and exclusively in the Tax Commission of Ohio. The county auditor has no authority to make any release in the instant case, because there is no statutory authority which gives him the power to do so. This power rests solely and exclusively with the Tax Commission of Ohio.

Therefore, in specific answer to your question, it is my opinion:

1. A county auditor does not have authority, under the provisions of Section 5348-2 of the General Code, to release from control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent who was not a legal resident of this state at the time of decease, because such authority is lodged solely and exclusively in the Tax Commission of Ohio.

2. Upon the filing of a proper application with the Tax Commission of Ohio, by the legal representative of a decedent who was not a legal resident of this state at the time of decease, for authority to transfer assets from the custody and control of a safe deposit company, trust company, corporation, bank or other institution, person or persons in possession or control or custody, in whole or in part, of such securities, deposits, assets or property belonging to or standing in the name of such non-resident decedent, the Tax Commission of Ohio has full, complete and sole authority to approve and consent to the transfer of such assets under the authority contained in Section 5348-2 of the General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.