8. Lease No. 2177, made by Bertha A. and Mabel A. Taylor for 269 acres of land in Plain Township, Franklin County, Ohio.

9. Lease No. 2178, made by Clare H. Taylor for 147 acres of land in Plain Township, Franklin County, Ohio.

Finding the same to be executed in proper legal form, I have attached my signature thereto in approval.

You have also submitted State Game Refuge Lease and Order No. 2174. Said lease is purported to be made by George W. Crile and William E. Lower, as individuals, and by Mary Helen McBride and the Central United National Bank of Cleveland, successors to the Central National Bank of Cleveland, Trustees under the Last Will and Testament of Donald McBride, deceased, of Cleveland.

Said lease is executed in proper legal form. However, not having been furnished with a copy of the Last Will and Testament of said Donald McBride, deceased, I am not undertaking to pass upon the right and power of said trustees to make said lease. Accordingly, my name is endorsed upon said lease in approval only of its form of execution.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4675.

MORTGAGE RETIREMENT STOCK—NOT TAXABLE AS DEPOSITS OR AS SHARES OF STOCK IN FINANCIAL INSTITUTIONS.

SYLLABUS:

Shares of stock issued by a building and loan association to a member to whom a loan is made by the association to the full amount of the par value of the stock thus issued, are not withdrawals in money within the meaning of section 5324, *General Code, and the same cannot be taxed either as deposits or as shares of stock in a financial institution, under the provisions of sections* 5328-1, 5406, 5408 *and* 5412, *General Code.*

COLUMBUS, OHIO, October 8, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

> "This day the Commission, by resolution, authorized a request to the Attorney General for formal opinion relative to the taxation of mortgage retirement stock in financial institutions.
>
> The Commission has been treating mortgage retirement stock as a deposit within the meaning of Section 5324 G. C., and taxing it at two mills accordingly. It has been contended by the various building and loan companies that such mortgage retirement stock is not subject to the two mill tax."

Although, under the statutory provisions governing building and loan associations in this state, such associations are authorized to make loans to non-members, as well as to members of such associations, I assume that the case here

presented is one with respect to a borrowing member and that the kind of stock referred to in your communication is stock issued by a building and loan association at the time a loan is made to the member to the full amount of the par value of the stock thus issued. With respect to shares of stock of this kind and the status of a member to whom such stock is issued by a building and loan association, the Supreme Court of this state in the case of *Eversmann, Receiver,* vs. *Schmitt,* 53 O. S. 174, said:

> "A borrowing member is one who receives in advance the par value of his shares, and agrees in consideration of such advance to pay the weekly dues on the shares and the interest on the loan, until the dues paid and the dividend declared and not paid, are equal to the par value of his shares. He then ceases to be a member and is entitled to a cancellation of the mortgage given to secure the obligations arising from the loan."

The question presented in your communication is whether loan stock of the kind above referred to issued by a building and loan association is taxable as a deposit or otherwise under the provisions of the intangible tax law enacted as Amended Senate Bill No. 323 by the 89th General Assembly. Prior to the enactment of the act above referred to, no provision was made by law for the taxation of loan stock owned and held by members of building and loan associations, while other stock issued by such associations was taxed as a credit in the hands of the member owning and holding the same. Sec. 9675, G. C. This section of the General Code was repealed in the enactment of the intangible tax law, and the answer to your question must be found in the relevant provisions of said law and in pertinent sections of the General Code found in the chapter relating to building and loan associations.

Under the provisions of section 5407 to 5414, inclusive, of the General Code, as said sections have been amended or enacted in the intangible tax law, building and loan associations, as institutions receiving deposits and loaning money, are classified as "financial institutions" for purposes of taxation; and by these sections provision is made for taxing shares of stock in such institutions and deposits of money received by them, in the manner therein provided. Section 5408, General Code, provides that all the shares of the stockholders in a financial institution, located in this state, incorporated or organized under the laws of the state or of the United States, the capital stock of which is divided into shares, excepting such as are defined as "deposits" in section 5324, General Code, shall be listed and assessed at the book value thereof, and taxed in the county where such financial institution is located. By section 5412, General Code, it is provided that the shares of stock in such financial institution and the amount of taxable deposits therein shall be assessed in the name of such financial institution. By this section it is provided that shares of stock in a financial institution shall be listed for taxation at the aggregate amount of the capital, the surplus or reserve fund and the undivided profits as shown by the report which the financial institution is required to make to the county auditor under the provisions of section 5411, General Code. It is to be noted, however, that section 5412, General Code, contains the following further provision:

> "In the case of an incorporated financial institution all of whose shares constitute deposits as defined in section 5324 of the General Code

such assessment of shares shall exclude the capital stock thereof as so shown but shall include the surplus or reserve and undivided profits so shown."

Obviously, the first question here presented for consideration is whether shares of stock of the kind referred to in your communication issued by a building and loan association are deposits within the meaning of section 5324, General Code, above referred to, and, as such, are to be assessed in the name of the building and loan association issuing such stock.

Section 5324, General Code, provides:

"The term 'deposits' as so used, includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificates of running or other withdrawable stock, or otherwise, excepting (1) unearned premiums and surrender values under policies of insurance, and (2) such deposits in financial institutions outside of this state as yield annual income by way of interest or dividends in excess of four per centum of the principal sum so withdrawable."

It will be noted from the provisions of the section of the General Code above quoted that "running or other withdrawable stock" is included within the definition of the term "deposits" for purposes of taxation.

Inasmuch as loan stock of the kind here under consideration is matured by weekly or monthly installment payments and by dividends credited thereto, such stock is, perhaps, to be considered as running stock as distinguished from paid-up or permanent stock which has been issued by many building and loan associations under the provisions of section 9649, General Code, which authorizes a building and loan association to issue stock to members upon certificates or upon written subscription on such terms and conditions as the constitution and by-laws provide. However, I am inclined to the view that the only kind of stock issued by a building and loan association that is to be classed as a "deposit" for purposes of taxation, is such stock as is withdrawable stock within the meaning of these terms as used in section 5324, General Code. Under the provisions of section 9648, General Code, a building and loan association is authorized to receive deposits and "stock deposits" made by all persons, firms, corporations and courts and by their agents, officers and appointees; and by section 9651, General Code, a building and loan association is authorized to permit members to withdraw all or part of their "stock deposits", at such times, and upon such terms, as the constitution and by-laws provide. This section further provides that any member who withdraws his entire stock deposit, or whose stock has matured, shall be entitled to receive all dues paid in and dividends declared thereon, less all fines or other assessments, and less the pro rata share of all losses, if any have occurred. By section 9653, General Code, it is provided that a building and loan association shall have power and authority "to cancel shares and parts of shares of stock upon which the credits have been withdrawn, or upon which loans have been repaid, and re-issue them as new stock". From the provisions of this section, it appears that the only shares of loan stock that a building and loan association is authorized to cancel are those upon which the loan made by the association to the member holding such shares has been paid;

and from this it is to be inferred that loan stock is not withdrawable stock within the meaning of these terms as used in Section 5324, General Code, but that these terms refer to running or deposit stock which is withdrawable under the provisions of section 9651, General Code, above referred to. It seems quite clear that this was the view of the legislature in the enactment of section 5328-1, General Code, which section provides generally for the taxation of the different classes of intangible personal property. In this section, "deposits" and "non-withdrawable shares of stock of financial institutions" are distinguished and separate provisions are made subjecting to taxation each of these classes of intangible personal property.

The above quoted provisions of section 5412, General Code, seem to contemplate that there may be some building and loan associations all of the shares of stock of which constitute deposits for purposes of taxation. This language, found in section 5412, General Code, presents some difficulties in the consideration of the question here presented. I assume, however, that the most that can be said of these provisions of section 5412, General Code, is that they are a legislative recognition of the fact that the only kind of stock issued by some building and loans associations is running or deposit stock. In any view, however, I am unable to find in this language any inference that loan stock is to be considered withdrawable, or that any stock other than withdrawable stock is to be included within the term "deposits", as this term is defined in section 5324, General Code. In the consideration of this question, I am not unmindful of the fact that some building and loans associations issuing mortgage retirement stock may by rule or practice provide for the cancellation of this stock in such manner as to make the same, in a sense, withdrawable. That is, the building and loan association, upon the maturity of mortgage retirement stock held by a borrower, may, and sometimes, does, issue a check payable to the holder of such mortgage retirement stock in the full amount of the par value of such shares. By this transaction, the matured shares of stock are canceled or retired on the books of the association; and then the check thus issued to the holder of such stock is endorsed by him as the payee named in the check and delivered back to the association for the purpose of thereby effecting a discharge and cancellation of the mortgage loan. However, this is all a mere matter of bookkeeping by the particular building and loan association, and obviously the retirement and cancellation of the stock and the discharge and cancellation of the mortgage loan on the books of the association could be effected just as well by entry, without any delivery to the holder of a check covering the par value of such shares. Indeed, as to this matter, it seems that the maturity of mortgage retirement stock in and of itself has the effect of canceling the stock. *Eversmann, Receiver,* vs, *Schmitt, supra.* In any event, it is not to be presumed that the legislature, in the enactment of the statutes above noted providing for the taxation of withdrawable shares and deposits, had any knowledge of the fact that some building and loan associations, as a matter of bookkeeping practice, effected the cancellation of mortgage retirement stock on maturity by giving the holder of such shares of stock a check therefor which was immediately endorsed back to the association. As a matter of common knowledge, it may be assumed, however, that the legislature, in the enactment of the statutory provisions here under consideration, did have knowledge of the fact that many, if not all, of the building and loan associations in this state had issued running or deposit stock; and that it was this kind of stock, and this only, which the legislature intended to include within the meaning of the term "deposits" for purposes of taxation.

It follows from the observations above made and the conclusions there

reached that shares of mortgage loan stock issued by a building and loan association to a member at the time the association makes a loan to him upon such stock are not to be taxed as deposits under the provisions of sections 5328-1 and 5412, General Code; and, inasmuch as under the provisions of section 5323, General Code, such shares of stock, as shares in a financial institution, cannot be taxed as investments in the hands of the owner and holder of such shares, the same can be taxed, if at all, only as non-withdrawable shares of stock in a financial institution. As to this, it is noted that section 5328-1, General Code, by its express terms, makes non-withdrawable shares of stock of financial institutions subject to taxation; while section 5408, General Code, provides for the listing and assessment of all of the shares of stockholders in financial institutions located in this state, excepting only such withdrawable shares as are defined as deposits under the provisions of section 5324, General Code. From this, it might be argued that since shares of mortgage retirement stock are not withdrawable and are not, for this reason, taxable as deposits, such shares of stock are included within the meaning of the term "non-withdrawable shares of stock of financial institutions" as used in section 5328-1, General Code, and that as such the same are taxable in the manner provided by sections 5408 and 5412, General Code.

In this as in every other question involving the construction of statutory provisions, it is our duty to give effect to the intention of the legislature, as such intention may be found in the language employed and the apparent purpose to be subserved by such statutory provisions; and such construction of these various statutory provisions relating to the question should be adopted as will give effect to the object to be attained. *Cochrel* vs. *Robinson,* 113 O. S. 526, 527. With respect to financial institutions having capital stock, including within the term state and national banks and building and loan associations, the incidence of the tax is upon the shares of stock of such banks or associations, and, for obvious reasons, is not upon the property and assets of such institutions either directly or indirectly upon the capital, surplus or reserve and undivided profits of such banks or associations. However, under the provisions of section 5412, General Code, the taxable shares of every financial institution are determined by the aggregate amount of the capital, the surplus or reserve and the undivided profits of the institution. From this consideration, it appears that the only shares of stock of a building and loan association which the legislature intended to tax as stock are such shares as, in common with shares of stock in state and national banks, have a value reflected and determined by the amount of the capital, surplus or reserve and the undivided profits of the institution. It seems quite clear that shares of mortgage retirement stock issued by a borrower at the time the building and loan association makes a loan to him, do not come within this category. At the time of their issue, shares of mortgage retirement stock have only a nominal value, and this is so without reference to the amount of the capital, surplus or reserve or undivided profits of the association at the time such shares of stock are issued. The only things that give value to shares of stock of this kind are the weekly or monthly payments of money made by the holder of such shares to the association, as dues or otherwise, and the dividends credited thereto. And, as above noted, as soon as such shares of stock have been matured, they are subject to cancellation.

It follows from this that the legislature, in the enactment of the statutory provisions above noted, could not have intended to include shares of mortgage retirement stock within the meaning of the term "non-withdrawable shares of stock of financial institutions" as found in section 5328-1, General Code, and to

thereby make the same subject to taxation the same as are the shares of stock of national and state banks. In so far as the terms of this section and of sections 5408 and 5412, General Code, can have any application to shares of stock issued by a building and loan association, they obviously apply only to permanent and non-retirable shares of stock which many building and loan associations have issued under the apparent authority of section 9649, General Code.

I am therefore of the opinion that shares of mortgage loan stock, issued by a building and loan association to a borrower at the time the association makes a mortgage loan to him, are not taxable either as deposits or as stock.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4676.

BANK—TAXATION UNDER INTANGIBLE TAX—WHAT INCLUDED WITHIN TERM TAXABLE DEPOSITS—HOW BOOK VALUE OF SHARES OF BANK DETERMINED.

SYLLABUS:

1. *The words "taxable deposits" as used in the so-called "Intangible Tax Law" include certificates of deposit, whether negotiable or non-negotiable, certified checks, accounts deposited with a bank for a particular purpose, such as escrow, sinking fund, bond and coupon accounts and deposits created by deposit of checks on other banks against which the depositor has the right to draw.*

2. *The term "taxable deposits" as used in the so-called "Intangible Tax Law" does not include checks endorsed to a bank for collection, or those in which the title to the check does not pass to the bank, and against which the depositor does not have the right to draw, or sums of money deposited by the bank with its own checking department against which dividend checks have been drawn but have not yet been presented for payment on tax listing day.*

3. *When a bank maintains its accounting records as required by section* 710-111, *General Code, such corporation in determining the book value of its shares, may not deduct from the capital and surplus reserves for taxes, whether due and payable, but when it has set up a reserve at the direction of the Superintendent of Banks, who had directed that a certain sum be either deducted from its assets or a reserve be set up equal to such sum, such item of reserve should be considered and deducted from the value of the bank's investment assets in determining the book value of the shares of the bank for the purposes of taxation.*

COLUMBUS, OHIO, October 8, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your recent request for opinion over the signature of Hon Geo. C. Braden, reads as follows:

> "The Commission has directed me, by formal resolution, to request your opinion relative to certain items arising in the taxation of banks under the provisions of Sections 5406 to 5414, General Code, inclusive.