from fifteen hundred dollars ($1500) to two thousand dollars ($2,000) per pair. Said foxes therefore come within the term personal property.

Article 12, Section 2 of the Ohio Constitution reads:

> "Laws shall be passed taxing by uniform rule, * * * personal property according to its true value in money, * * * ."

Section 5325 of the General Code provides:

> "The term 'personal property' as so used, includes first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of a parcel of real property, * * * ."

Section 5328 of the General Code reads:

> "All real or personal property in this state, belonging to individuals or corporations, * * * of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, * * * shall be entered on the list of taxable property as prescribed in this title."

It is evident that these silver foxes so reared, maintained and confined are the personal property of their owner and as such come within the statutory definition of property subject to taxation.

Specifically answering your question, it is my opinion that the foxes in question should be listed for taxation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

482.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN BELMONT, GALLIA, GEAUGA, MEIGS, MONROE AND MORGAN COUNTIES.

COLUMBUS, OHIO, May 12, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

483.

BOARD OF EDUCATION—MAY ALLOW SCHOOL BUILDING TO BE USED FOR RELIGIOUS EXERCISES.

SYLLABUS:

1. *When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to permit the use of the school building therein for the holding of religious exercises, when such use does not interfere*

with the use of the building for strictly school purposes, such permission may lawfully be granted even though such religious exercises are conducted under the auspices of some particular religious society.

2. *Whether or not a board of education will permit a school building to be so used is a matter solely within the discretion of such board, which discretion will not be interfered with by the courts, except in a case of gross abuse thereof; and it goes without saying that the exclusive authority to permit such a use vested by law in the board includes the power to prohibit the same.*

COLUMBUS, OHIO, May 12, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "You are respectfully requested to furnish this department with your written opinion upon the following question. May a board of education prohibit the use of a school building for sectarian religious purposes when such use does not interfere with the use of the school property for school purposes? See Section 7622 to 7622-3 of the General Code."

Section 7622, General Code, reads as follows:

> "When, in the judgement of a board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of the school-houses for such purposes. The board of education of a school district in its discretion may authorize the opening of such school-houses for any other lawful purposes. But nothing herein shall authorize a board of education to rent or lease a school-house when such rental or lease in any wise interferes with the public schools in such district, or for any purpose other than is authorized in this chapter."

It will be observed from the provisions of the section quoted above that school houses can only be used for the incidental purposes therein enumerated when *in the judgement of the board of education* it will be for the advantage of the children residing in the district.

School houses are provided primarily for school purposes and their use is not permitted for any other purpose except as the authorities in charge may be authorized to and do permit their use for some incidental purpose as provided by law. So that the occasion for the board of education to prohibit the use of a school house for any purpose, as you have stated in your inquiry, would never arise only as it might withhold permission for such use.

There is clearly sufficient warrant in the statute, if it be a valid enactment, for boards of education to permit a school building to be used for the holding of religious exercises. Your inquiry therefore leads us to consider two questions: **First, whether the statute is valid; second,** whether or not under the statute "sectarian religious exercises" may be permitted in such school building.

There is a wide diversity of opinion as to whether or not school houses may be used for conducting religious meetings and there are many authorities on either side of the question. Ruling Case Law, volume 24, under the title "Schools," at section 126, says:

"There is some conflict of authority as to whether school directors may permit a school house to be used for religious purposes outside of school hours. The better doctrine is that they have no such authority."

However, the authorities cited under the section just quoted do not bear out the text. The later authorities seem to uphold the principle that, where the religious services are such as not to interfere with the use of the building as a school and are so infrequent as not to turn the building into a place of worship and do not impose any appreciable expense upon the taxpayers, the use of the school building for the holding of such services will not be interfered with by the courts.

Some of the authorities holding against allowing the school building to be used for the holding of religious exercises base their holding on the proposition that to permit the use of a school building for such purposes or for any purpose other than school purposes is a diversion of the school property from its primary purpose. Others hold that it is an invasion of constitutional rights in contravention of the familiar provisions contained in most state constitutions to the effect that no person shall be required to contribute by way of taxes for the maintenance of any form of worship.

In the absence of statute it would seem to be very doubtful at least whether a board of education would be justified in allowing the use of a school building for any other purpose than for strictly school purposes.

In this state and elsewhere it has been repeatedly held that boards of education have only such powers as are specifically granted to them, yet when authority is granted to them for any purpose the discretion thereby granted is very broad and statutes granting such authority are more often liberally construed than otherwise.

The Supreme Court of Ohio in the case of *Brannon et al. vs. Board of Education, et al.* 99 O. S. 369, with reference to this feature of the law held in the syllabus as follows:

"A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.

A court will not restrain the board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority."

It will thus be seen that the authority of a board of education under Section 7622, supra, is very broad with respect to the matters thereby left to its judgment and the terms of this statute *leave to the board the entire discretion* of determining whether or not it will be for the advantage of the children residing in the district to allow the use of the school house for any of the enumerated purposes set out in the statute.

In an opinion of this department found in Opinions of the Attorney General for 1920, Volume II, page 885, it is said:

"Broadly speaking, the policy of the law in all secular educational activities and moral uplift work is centered in and about the public schools and it also favors what is known as community center work, as is evidenced in Section 7622, et seq., wherein ample authority is conferred upon a board of education to provide for the use of school grounds and buildings

for educational, civic, social or recreational meetings and entertainments."

Section 7 of Article I of the Constitution of Ohio provides as follows:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools, and the means of instruction."

Similar provisions may be found in the constitutions of most states. The constitution of the state of Iowa provides that no person shall be compelled to pay tithes or taxes for building or repairing places of worship or for the maintenance of any minister or ministry. Under this provision the courts of Iowa have held that the electors of a school district may legally permit the use of the school house for religious purposes. *Townsend vs. Hogan,* 35 Iowa 194; *Davis vs. Boget,* 55 Iowa 11.

Under a somewhat similar constitutional provision in Illinois it is held in the case of *Nichols vs. School Directors,* 93 Ill. 61, that a statute authorizing school directors to grant the temporary use of public school houses, when not occupied for school purposes, for religious, literary or other meetings and for evening and Sunday Schools, was constitutional.

In the Nichols case it was sought to enjoin the school authorities from allowing a school building to be used for religious meetings for the reason that the complainant claimed that his constitutional rights were invaded in that he as a tax-payer in the district was compelled to contribute toward the maintenance of a house of worship in contravention of the constitutional provisions of the Constitution of Illinois. In the course of the opinion the court said:

"In what manner, from the holding of religious meetings in the school house, complainant is going to be compelled to aid in furnishing a house of worship and for holding religious meetings, as he complains in his bill, he does not show. We can only imagine that possibly, at some future time, he might as a tax-payer be made to contribute to the expense of repairs rendered necessary from wear and use of the building in the holding of religious meetings. A single holding of a religious meeting in the school house might, in that way, cause damage in some degree to the building, upon the idea that continual dripping wears away stone, but the injury would be inappreciable. As respects any individual pecuniary expense which might be in this way involved, we think that consideration may be properly disposed of under the maxim *de minimis non curat lex.*

The thing contemplated by the constitutional provision first above named was a prohibition upon the legislature to pass any law by which a person should be compelled without his consent to contribute to the support of any ministry or place of worship.

> Such a matter as the subject of complaint here, we do not regard as within its purview."

Coming now to the discussion of the proposition of whether or not school buildings may be used for the holding of "*sectarian* religious exercises", it is difficult to say just what is meant by sectarian religious purposes.

Religion in its broad sense means any system of faith, doctrine and worship. It is sometimes broadly defined as a belief in an invisible power and in that sense would include all religions. The word sectarian as defined by Webster means "pertaining to a sect or sects; bigoted, attached to the tenets and interests of a denomination." A sect has also been defined as a class of people believing in a certain religious creed. *Hale vs. Everett,* 53 N. H. 9. In the case of *State vs. District Board of Education,* 76 Wis. 177, the court defined sect as meaning people believing in the same religious doctrine who are more or less closely associated or organized to advance such doctrine and increase the number of believers therein.

It is pretty hard to conceive of strictly non-sectarian religious exercises. We often have community religious services and school buildings have been used for Sunday School purposes where members of the several denominations of the Christian Church have joined in community religious services, but even then it cannot be said that such services were wholly non-sectarian. While the courts in some states as well as the federal courts have declared this to be a Christian country, the courts of other states have not gone so far in their declarations upon this subject. The courts of Pennsylvania, for instance, have said that Christianity was a part of the common law of Pennsylvania. Even there, however, the courts hesitated in giving the idea full force and effect in its application to laws for Sunday observance and similar regulations.

On the other hand, the courts of Ohio have said that, while Christianity may, as is said by Lord Coke, be a part of the common law of England, and that while the common law of England so far as it is reasonable in itself and suitable to the conditions and business of our people and consistent with the letter and spirit of our federal and state constitutions and statutes has been and is followed by our courts, yet because of the provision of our Constitution granting freedom of conscience, neither Christianity nor any other system of religion is a part of the law of this state. *Bloom vs. Richards,* 2 O. S. 387.

As it would serve no good purpose further to extend the discussion of this subject, it is sufficient to say that it is well settled, in Ohio at least, that the word religion or religions as used in our constitution and laws enacted in pursuance thereof, does not have a narrow significance, but is as universal and comprehensive as are the beliefs of man. This subject is exhaustively treated by the Supreme Court of Ohio in the case of *Board of Education vs. Minor,* 23 O. S. 211. The principles therein set out have never been questioned. It is there said that:

> "Religion means the religion of man and not the religion of any class of men."

If the holding of religious exercises in a public school building by some particular sect or denomination is the using of public property for sectarian religious purposes the same objection might be made to chaplains in the legislature or our penal institutions, and it has been well recognized that such chaplains from time to time may be Jewish Rabbis, Catholic Priests or Protestant Ministers and no one has ever thought of making any objection to them on that account. Our constitution as will be noted from the provisions of Article I, Section 7, supra, specifically forbids the giving of preference to any religious

societies and specifically enjoins upon the legislature the duty of passing laws to protect every religious denomination. From these provisions it is apparent that the law of Ohio recognizes no particular religion except the religion of man as spoken of in the case of *Minor vs. Board of Education,* supra.

To my mind, the use of a school building to a limited extent, for religious purposes is not a diversion of school property from its primary purpose. Religion is a part of our civilization and is therefore of necessity a part of our education. The discussion of religion and its relation to our civilization ought to be educational and beneficial; and when the Constitution provides that religion, morality and knowledge are essential to good government it links the three together in such a way as to indicate that each is related to the other and each a part of the other. There could be no valid objection to the use of school property for educational or moral uplift work and no objection should be made to its use for the furtherance of religious teachings.

Bearing in mind the provisions of Section 7622, supra, authorizing school boards in the exercise of their discretion to permit the use of school buildings for the holding of religious exercises and the constitutional provision that no preference shall be given by law to any religious society, I am of the opinion that, when *in the judgment of a board of education* it will be for the advantage of the children residing in a school district to permit the use of the school building for the holding of religious exercises therein such permission may lawfully be granted, even though the religious exercises conducted therein be under the auspices of some particular religious denomination.

Whether or not a board of education will permit a school building to be so used is a matter solely *within the discretion of such board,* which discretion will not be interfered with by the courts, except in a case of gross abuse thereof; and it goes without saying that the exclusive authority to permit such a use vested by law in the board includes the power to prohibit the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

484.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN COSHOCTON, GALLIA, GUERNSEY, MONROE, MORGAN, PERRY AND PORTAGE COUNTIES.

COLUMBUS, OHIO, May 12, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.