

proposed employment by your county commissioner, provided that such employment will not make it physically impossible for him to perform his duties as county commissioner.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1997.

INHERITANCE TAX LAW—WHAT ARE TAXABLE SUCCESSIONS UNDER WILL WHERE ALL PROPERTY PLACED IN HANDS OF TRUSTEE WITH AUTHORITY TO PAY ENTIRE INCOME TO SON OF TESTATOR AND TO INVADÉ PRINCIPAL IN EVENT SAME IS NECESSARY FOR SUPPORT OF BENEFICIARY—WHERE SON'S FUNERAL EXPENSES TO BE PAID OUT OF FUND—RESIDUE DISTRIBUTED TO HEIRS AT LAW OF BENEFICIARY OF ISSUE OTHERWISE NEXT OF KIN OF TESTATOR.

R. died testate. By his will he placed all his property in the hands of a trustee with authority to pay the entire income thereon to the son of the testator or to expend the income for the benefit of such son during his, the son's, natural life. The trustee is clothed also with power to invade the principal in the event that it becomes necessary to do so for the support of the beneficiary. At the son's death his funeral expenses are to be paid out of the fund. The residue is then to be distributed to the heirs at law of the beneficiary, if he should leave any legitimate issue, but if no such issue is left then it is to pass to the next of kin of the testator;

HELD:

- (1) *The beneficial interest of the son is to be appraised as a life estate.*
- (2) *The charge on account of funeral expenses is to be valued by setting aside a reasonable sum for that purpose at its present worth.*
- (3) *The contingent remainder is to be immediately taxed in the seven per cent class by virtue of section 5343 of the General Code.*

COLUMBUS, OHIO, April 13, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission has requested the opinion of this department as to the manner in which the inheritance tax shall be assessed in connection with successions under a will of which the following is a description:

"R. died testate. By his will he placed all his property in the hands of a trustee with authority to pay the entire income thereon to the son of the testator or to expend the income for the benefit of such son during his, the son's, natural life. The trustee is clothed also with power to invade the principal in the event that it becomes necessary to do so for the support of the beneficiary. At the son's death his funeral expenses are to be paid out of the fund.

The residue is then to be distributed to the heirs at law of the beneficiary, if he should leave any legitimate issue, but if no such issue is left then it is to pass to the next of kin of the testator."

The equitable life estate is, on principles established by previous opinions of this department, to be valued as a life estate, the power to invade the principal for the

support or benefit of the beneficiary being ignored. While this power to invade the principal generally is to be ignored, however, it seems that the funeral expenses are a charge on the fund. The charge appears to be a direct one, rather than merely a power in the trustee. It is the opinion of this department, therefore, that the present worth of a reasonable sum for funeral expenses of the life tenant, computed on the basis of his expectancy of life, should be subtracted from the contingent remainder. This amount should be added to the taxable value otherwise ascertained of the equitable life estate, inasmuch as it is a benefit to the estate of the life tenant.

The remainders are contingent. One possibility is that the beneficiary will leave legitimate issue. In that event, of course, his issue so left would be a direct descendant of the testator, as the beneficiary is the testator's son. But it is also possible, and may be very probable, that the beneficiary will not leave legitimate issue, in which event the contingent remainder is to vest in the next of kin of the testator. A possibility here by no means remote is that the next of kin of the testator may turn out to be a person so distantly related to the testator as to bring the whole remainder within the seven per cent class.

Without repeating the reasoning which has been expressed in previous opinions of this department, the conclusion of the department is that the contingent remainder should be immediately taxed at the seven per cent rate in accordance with section 5343 of the General Code. The case does not appear to be one for postponement of the accrual of the tax under section 5336 of the General Code, it appearing that "the actual market value" of the contingent remainder as a whole can "be ascertained at the time of" the death of the testator, such ascertainment being made by appraising the life interest on the basis commanded by section 5342 of the General Code and the charge on account of the funeral expenses in the manner suggested herein.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1998.

BOARD OF EDUCATION—UNDER PROVISIONS OF SECTION 7625 G. C. RESOLUTION MUST STATE PURPOSE FOR WHICH BOND ISSUE SUBMITTED—HOW PROCEEDS EXPENDED—WHERE RESOLUTION PROVIDES FOR PURCHASE OF LAND TO ERECT SCHOOL BUILDING—CANNOT PURCHASE TWO SITES AND ERECT TWO BUILDINGS—WHERE RESOLUTION MAKES NO MENTION OF REPAIRING SCHOOL BUILDING—MONEYS CANNOT PROPERLY BE USED FOR SAID PURPOSE.

1. *Under the provisions of section 7625 G. C. the board of education in its resolution must state the purpose for which a bond issue is to be submitted. The proceeds arising from such a bond issue must be expended strictly in accord with the provisions of such resolution.*

2. *Where the resolution provides that it is for the purpose of purchasing land to erect a school building, it cannot be construed to authorize the purchase of two sites and the erection of two school buildings.*