

This makes it possible for the board of education of the county school district to make provisions for the contingency of employing legal counsel in proper cases.

Therefore, the reasoning of the former opinion of this department is no longer applicable because provision has been made for funds from which such expenses might be paid. See Opinions of Attorney General, 1917, Volume I, p. 270.

It is therefore my opinion that

(1) A board of education of a county school district, a rural school district or a village school district may employ an attorney only in cases in which the prosecuting attorney refuses to act, or is not required to act as provided in Section 4761 of the General Code, or in which there is litigation between the board of education of such school district and the county or a county officer.

(2) A board of education of a city school district may employ an attorney only in cases in which there is a conflict of interests between the city and the city school district, or in cases where the city solicitor refuses to act.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1175.

TAXATION—EXEMPTION OF INSTITUTIONS “USED EXCLUSIVELY FOR CHARITABLE PURPOSES”, DISCUSSED—SECTION 2, ARTICLE XII, OHIO CONSTITUTION AND SECTION 5328, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *The provision in Section 2, Article XII of the Constitution that institutions “used exclusively for charitable purposes \* \* \* may, by general laws be exempted from taxation,” does not authorize the General Assembly to exempt from taxation the property of benevolent organizations not used exclusively for charitable purposes.*

2. *Section 5328, General Code, passed pursuant to the requirement of Section 2, Article XII of the Constitution, requires that, “all real or personal property in this state \* \* \* shall be subject to taxation, except only such property as may be expressly exempted therefrom.” The exemption must be clearly and expressly stated in the statute and must be such only as the above section of the Constitution authorizes to be exempted.*

COLUMBUS, OHIO, October 20, 1927.

HON. W. P. TUCKER, *Prosecuting Attorney, West Union, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Lodge No. 43, F. & A. M. of West Union, Ohio, owns its own Lodge Home, the same of course being real estate.

The Lodge has permitted the tax on same to run, forfeited, under the belief that such property is not subject to taxation.

I have a certificate from the Auditor of State, to foreclose the tax lien on said property.

The Members of said Lodge say that they will rely on your opinion of the matter.

Hence I am submitting the matter to you.”

The question of the liability to taxation of said real estate requires a consideration of the constitutional and statutory provisions applicable thereto. The pertinent part of Section 2, Article XII of the Constitution is as follows:

"Laws shall be passed, taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money \* \* \*; *institutions used exclusively for charitable purposes*, public property used exclusively for any public purpose and personal property, to an amount not exceeding in value five hundred dollars for each individual, may, by general laws, be exempted from taxation: \* \* \*" (Italics the writer's.)

This section enjoins the legislature to enact laws taxing by a uniform rule all property at its true value in money with the right to exempt the property specified. This section is a limitation on the general power to tax conferred by the first section of Article II of the Constitution, and unless tax laws have been enacted which include the property here in question, it is not taxed.

Section 5328, General Code, passed pursuant to the mandatory requirement of Section 2, Article XII of the Constitution, just referred to, contains the following provision:

"All real estate or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stock or otherwise, of persons residing in this state, shall be subject to taxation except only such property as may be expressly exempted therefrom."

It will thus be seen that any exemption must be clearly and expressly stated in the statute.

In *Lee, Treas., vs. Sturges*, 46 O. S. 153, it was said at page 159:

"\* \* \* for every presumption is in favor of that construction of the law which gives effect to the requirement of the section of the constitution referred to,"

and, further, that:

"where an exception or exemption is claimed, the intention of the general assembly to except must be expressed in clear and unambiguous terms. \* \* \*

At the outset every presumption is against it. A well-founded doubt is fatal to the claim. It is only where the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported. \* \* \* Intent to confer immunity from taxation must be clear beyond a reasonable doubt, for, as in case of a claim of grant, nothing can be taken against the state by presumption or inference."

In view of the constitutional and statutory provisions above set forth and the decisions of the courts construing them, is the real estate of said Lodge No. 43 F. & A. M. exempt from taxation?

In the case of *Wilson, Aud., et al. vs. The Licking Aerie F. O. E.*, 104 O. S. 137, the defendant in error, plaintiff below, sought to restrain the levying and collection of taxes on real estate owned by it in the city of Newark, alleging that it was a purely secret benevolent organization maintaining a lodge system devoted exclusively to benevolent and charitable purposes. The petition averred that the auditor had entered on the duplicate of the county the real estate described therein and had assessed against

it certain taxes, and had certified said duplicate to the county treasurer for collection. It was then alleged that the acts of the officers in attempting to collect said taxes were unauthorized and in violation of law and the Constitution of Ohio, and that the assessment was in violation of Section 2 of Article XII of the Constitution as amended September 3, 1912, and of Section 5364, General Code.

The answer admitted that the plaintiff was a corporation not for profit, organized under the laws of the State of Ohio, and that it was the owner of the real estate described in the petition, and that unless restrained, the treasurer would proceed to collect the taxes. Johnson, J., in the opinion stated as follows:

“The defendant in error contends that its real estate described in the petition is exempt from taxation by the provisions of Sections 5364 and 5353, General Code.

The pertinent part of Section 5364 is as follows: ‘Real or personal property belonging to \* \* \* a religious or secret benevolent organization maintaining a lodge system \* \* \* shall not be taxable, and the trustees of any such organizations shall not be required to return or list such property for taxation.’

Section 5353, General Code, reads: ‘Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor. or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions of public charity only, shall be exempt from taxation.’

Section 2, Article XII of the Constitution, prior to the amendment in September, 1912, contained the following provisions: ‘Laws shall be passed, taxing by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money \* \* \* but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, \* \* \* may, by general laws, be exempted from taxation.’

In September, 1912, that section of the constitution was amended. The amendment changed the phrase ‘institutions of purely public charity’ and substituted for it the phrase ‘institutions used exclusively for charitable purposes’, and provided that they may, by general laws, ‘be exempted from taxation.’ ”

Section 5364 was repealed, and Section 5353, General Code, was amended, 110 O. L. page 77, so as to read:

“\* \* \* property belonging to institutions used exclusively for charitable purposes, shall be exempt from taxation.”

It is evident that the real estate in question is not exempt from taxation unless it is used exclusively for charitable purposes.

There being nothing in your communication to indicate that said real estate is in any manner used for charitable purposes, I assume that it does not come within the constitutional exception, and is, therefore, taxable.

In view of the constitutional and statutory provisions, and the decisions of the court construing them, it is my opinion that:

(1) The provision in Section 2, Article XII of the Constitution that institutions "used exclusively for charitable purposes \* \* \* may, by general laws be exempted from taxation," does not authorize the General Assembly to exempt from taxation the property of benevolent organizations not used exclusively for charitable purposes.

(2) Section 5328, General Code, passed pursuant to the requirement of Section 2, Article XII of the Constitution, requires that, "all real or personal property in this state \* \* \* shall be subject to taxation, except only such property as may be expressly exempted therefrom." The exemption must be clearly and expressly stated in the statute and must be such only as the above section of the Constitution authorizes to be exempted.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1176.

DISAPPROVAL, BONDS OF THE VILLAGE OF BAY, CUYAHOGA COUNTY,  
OHIO—\$10,111.20.

COLUMBUS, OHIO, October 20, 1927.

Re: Bonds of the Village of Bay, Cuyahoga county, \$10,111.20.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—An examination of the transcript pertaining to the above issue of bonds reveals that on May 3, 1927, the council of the Village of Bay, passed a resolution, bearing number 1619, wherein it was resolved that a sidewalk of stone flagging be constructed on the east and west sides of Woodland Road from Lake Road south to Oakland Road and in accordance with the plans and specifications therefor on file in the office of the clerk of the village; that the clerk of the council be required to serve a notice of the passage of this resolution, as required by law.

Section 3814, General Code, provides as follows:

"When it is deemed necessary by a municipality to make a public improvement to be paid for in whole or in part by special assessments, council shall declare the necessity thereof by resolution, three-fourths of the members elected thereto concurring, except as otherwise herein provided. Such resolution shall be published as other resolutions, but shall take effect upon its first publication."

Section 3815, General Code, provides, in part as follows:

"Such resolution shall determine the general nature of the improvement, what shall be the grade of the street, alley, or other public place to be improved, the grade or elevation of the curbs, and shall approve the plans, specifications, estimates and profiles for the proposed improvement. In such resolution council shall also determine the method of the assessment, the mode of payment and whether or not bonds shall be issued in anticipa-