Doubtless said section 6921-1 was enacted to correct the situation pointed out by the Supreme court in the case of State ex rel. Trustees vs. Zangerle, Auditor, 100 O. S., 414 (advance sheets Ohio Law Bulletin, April 26, 1920), wherein it was held in effect that townships in issuing bonds for road improvement purposes, must resort to sections 3298-15d and 3298-15e to the exclusion of section 3295 G. C.

In the light of the foregoing, you are advised that subject to the consent of the municipality, whether city or village (section 6949 G. C.), township trustees may under authority of section 6921 G. C. enter into an agreement with county commissioners for the improvement of city or village streets lying along the line of intercounty highways and county roads, and for the purposes of such agreement may make use of funds arising from levy under section 3298-15d G. C., and that authority to make such use is not affected by the fact that the trustees have also made the road district tax levy mentioned in section 3298-44 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1548.

INHERITANCE TAX LAW—SUCCESSION TO STOCK IN CORPORATION CONSOLIDATED UNDER LAWS OF THIS AND OTHER STATES—PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE—HOW JURISDICTION DETERMINED AND TAX COMPUTED.

In case of the succession to stock in a corporation consolidated under the laws of this and other states and having its principal place of business in another state:

1. *The inheritance tax law of this state applies to the succession to such stock.*

2. *The probate court of the county in which the general office of the company in this state is located, or of any county in which the company has property in this state, has jurisdiction to determine the tax.*

3. *The stock should be appraised at such proportion of its market value as is determined by the proportion of the entire property of the company located in Ohio, due allowance being made for the location of particular property in this and other states; in other words, substantially the same process of apportionment should be followed as is followed by the tax commission in the appraisement of interstate public utility property for property tax purposes.*

4. *It is the duty of such consolidated company to fix one general office in this state. Where such office is located, in case formal action has not been taken, is a question of fact to be determined by the court which determines the tax. The location of such principal office determines the district of origination of the tax for the purpose of section* 5348-14 *of the General Code.*

COLUMBUS, OHIO, September 7, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

> "The ABC Ry. Co. is a consolidated corporation organized in Ohio as well as in other states but does not maintain any principal place of business in this state although about 45 per cent of its property is located in Ohio.
>
> X, a nonresident of this state, owns at the time of death certificates of

stock in such railway company, having a market value of $50,000. Application is filed with this commission to have the Ohio inheritance tax determined on said stock. Will you be good enough to advise us where, that is, in what probate court the application should be filed by us and where the inheritance tax assessed against the successions arising from said certificate of stock shall be deemed to have originated? Please advise us also whether in the determination of such tax we can consider any more than 45 per cent of the value of said certificate being the part of the value proportionate to the share of the Ohio property in said corporation."

This department is at a loss to understand how the facts stated in the commission's communication can legally exist. Consolidated corporations of this kind are subject to the provisions of the following section of the General Code:

"Sec. 9043. As soon as convenient after the consolidation, the new company shall establish a principal office at some point in this state on the line of its road, but may change it at pleasure. Public notice of such establishment or change shall be given in some newspaper. This section and other laws respecting the residence of directors of corporations, the keeping of a principal or general office, and the records of corporations, shall not apply to consolidated railroad companies formed by the consolidation of a company or companies created by or existing under the laws of this state and any other state or states, with a railroad company or companies of this state or of any other state. The election for directors of such consolidated companies may be held at the principal office of the company, whether located in this or any other state under the laws of which the consolidated company was created. But at least two directors of such consolidated company must be residents of this state, and a general office of the company maintained within this state, of which notice shall be given as above provided."

The purport of this section is that while it does not require *the* principal office of the corporation where its stock books and records are kept to be maintained in this state, yet it not only does not dispense with but expressly makes the requirement that *a* general office of the company be maintained within this state. While this statute has not been construed, it seems a reasonable interpretation of it to say that it is not satisfied by the mere maintenance of local offices, such as ticket offices at different points in the state, but refers to the selection of some particular place in this state and the giving of public notice thereof as a general office.

The possibility is thus suggested of there being in fact a general office of the company in this state. If so, it is believed that the location of such general office would determine the district of origin of the tax within the meaning of section 5348-14 of the General Code, which provides that:

"In the case of shares of stock in a corporation organized or existing under the laws of this state, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation has its principal place of business in this state."

Even though the section quoted has not been complied with it is quite possible that the company, if applied to with a citation of the section, might select such a general office. In the determination of the inheritance tax it is the opinion of this department that the location of such office is a question of fact, so that failure to comply with section 9043 of the General Code would not prevent the due adminis-

tration of the inheritance tax law. This observation answers one of the questions submitted in your letter.

Another of your questions relates to the valuation of the stock. On this point it is believed that the cases arising in other states having similar laws should be followed. New York, for example, the inheritance tax law of which is very similar to that of Ohio in that neither has express provision for such cases, holds that shares of stock in a consolidated corporation existing under the laws of several states, including New York, are subject to inheritance taxation under the laws of that state, but not at their full value. The rule is that the appraising authority is required fairly and equitably to determine how much of the property of the corporation is located within the state and to apply the ratio so ascertained to the whole value of the stock.

Similar holding is made in Massachusetts and New Hampshire.

See—Matter of Cooley, 186 N. Y. 220;
Matter of Thayer, 192 N. Y. 430;
Kingsbury vs. Chapin, 196 Mass. 533;
Gardiner vs. Carter, 74 N. H. 507.

As to the exact method of apportionment these decisions do not lay down any hard and fast rule. The Cooley case suggested apportionment on the basis of the miles of track of the consolidated railroad corporation. The Thayer case held that such rule was properly deviated from in cases in which valuable property belonging to the company had a definite and fixed situs in one or the other of the states.

All the cases, however, refer to the analogy of the property taxation statutes, under which, in various forms, interstate property is valued as a unit subject to apportionment. In the Thayer case, for example, the successful counsel cited to the court the case of Fargo vs. Hart, 193 U. S. 490, and though not referred to in the brief opinion of the court, it undoubtedly furnished the analogy upon which the court proceeded.

In short, the rule as it exists requires the commission to apply by analogy the method of apportionment employed by the commission under sections 5420 et seq. of the General Code in determining the value of the property of public utilities to be assessed and taxed as property within this state. It would not do to say that the commission is absolutely bound by this analogy, but the commission should follow the same principles. The commission undoubtedly has data in its office from which it can determine what portion of the property of the ABC Railway Company is taxed on the unit plan in Ohio; the safest advice for the commission to give to the appraising authority would be based upon such data; and this department must advise that any great deviation from the proportion so ascertained, such as the appraisement of the stock at its full market value, would under the decisions cited be erroneous.

The most difficult of the three questions submitted by the commission has been reserved to the last. The facts stated in the commission's letter show that the corporate books and records are not kept in the state of Ohio, so that a transfer of the stock in this state will not be necessary. From this it might be argued that the succession to the stock is not taxable at all and that the stock does not constitute property in this state; moreover, from the same fact arises the difficulty of determining what probate court in Ohio has jurisdiction to determine the tax. The latter difficulty would disappear, of course, if there were other Ohio assets than the stock mentioned by the commission, which other assets most likely would by their nature suggest the proper court. It will be assumed, however, that there are no such other assets.

As to the effect of the fact that the company's books and records are not kept

within this state and its real principal office is not here maintained upon the taxability of the stock, it would seem that that question is foreclosed in favor of the state by the authorities cited. In each of the court of appeals cases from New York which have been mentioned the stock books of the company were not kept in the state of New York; nor was the principal managerial office of the consolidated company maintained in that state; yet the court of appeals held the succession to the stock to be taxable, subject to the rule of apportionment above described. In neither case was the question of jurisdiction discussed or even raised. Both cases originated in the surrogate's court of the county of New York. Quite possibly there were other assets definitely located in New York sufficient to give that surrogate jurisdiction.

The inheritance tax law vests jurisdiction to determine the tax in "the probate court of any county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent, * * * or to give ancillary letters thereon." In this connection it is obvious that the jurisdiction of the particular court to determine the tax depends upon its jurisdiction in a proper case to issue ancillary letters testamentary or of administration, upon the estate of the decedent. No case has been found in this state upon the point or any point analogous thereto. The general principle upon which the jurisdiction of the courts of a state, or the particular courts thereof, to grant ancillary letters depends is, of course, familiar; it is that the presence of assets within the territorial jurisdiction of the court is sufficient.

Section 10604 of the General Code, granting such jurisdiction to the probate courts of this state, is merely declaratory of such general principles when it states, in part, that.

> "When a person dies intestate in any other state or country, leaving an estate to be administered within this state, administration thereof shall be granted by the probate court of a county in which there is any estate to be administered. The administration first lawfully granted, in the last mentioned case, shall extend to *all the estate of the deceased,* within the state; and exclude the jurisdiction of any other court."

The courts of New York, cases from which have been previously cited in this opinion, have applied administration and inheritance tax statutes to questions very much like that involved in the commission's inquiry by holding that the location of corporate stocks as assets for the purpose of determining the jurisdiction of the courts of the state, and of particular courts of that state, is to be determined by the location of the property of the corporation, rather than the location of the principal office thereof.

Matter of Fitch, 160 N. Y. 87.

The following is quoted from the opinion of Chief Justice Parker in that case:

> "The property consisted of 348 shares of the capital stock of the Consolidated Gas Company of New York. * * *
>
> The legislature might have provided that where a non-resident dies owning stock in a New York corporation, the surrogate of the county where the company has its principal place of business shall have power to impose the tax upon the decedent's interest in the corporation, but it did not do so, and the appellant insists that the facts appearing in the petition in this record do not bring the matter within the jurisdiction of the surrogate's

court under any reasonable construction of the statute. So much of the statute as is material in a discussion of the question reads as follows:" (The court here quotes the jurisdiction provision of the inheritance tax law of New York, which is almost identical with that of Ohio).

" * * * * *

The jurisdiction of the court is to be determined by the answer to the question: Had the court power to issue letters? * * *

Section 2476 of the Code provides as follows:" (The court here quotes a provision of the administration code of New York which is substantially identical with the above quoted from the Ohio statutes) * * *

It is our view * * * that the Taxable Transfer Act and the sections of the Code providing for the granting of letters testamentary and administration, or of ancillary letters, should be read together as if constituting one enactment. Thus reading them, the taxing provisions of the act and the provisions providing the machinery for collection of the tax are in perfect harmony, and that which is held to be property within the meaning of that portion of the statute which provides that a tax shall be imposed upon its transfer, is also property for the purpose of conferring upon the surrogate's court jurisdiction to impose the tax. But if the Taxable Transfer Act and the sections of the Code relating to the issue of letters testamentary and of administration be not read together as one enactment, we are, nevertheless, of the opinion that the interest which the decedent had in the Consolidated Gas Company must be held to be property within the meaning of the word as used in the section of the Code (supra).

In Bronson's Case (150 N. Y. 1) * * * as to shares in the corporation (owned by a non-resident decedent) the court said: 'Shareholders are persons who are interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise. The corporation has a legal title to all the properties acquired and appurtenant; but it holds them for the pecuniary benefit of those persons who hold the capital stock. * * * Each share represents a distinct interest in the whole of the corporate property. * * *' * * * * *

The court having decided that in such a case as this the property of the shareholder is where the corporate property is, it is quite difficult to see how an assertion to the effect that such a property is not property within the meaning of section 2476 of the Code, can be supported. It is true that in this case * * * the legatee was apparently content to accept the certificates of stock, and the corporation to transfer them on its books, so that all parties were satisfied. But it might easily have been otherwise had the Consolidated Gas Company refused to transfer the shares on its books, * * * Mrs. Fitch's executor could not have compelled this transfer, for a foreign executor cannot, in his representative capacity, maintain an action * * * in this state. * * *

Again, a situation might have been presented during the period of administration, where the executor would have deemed it his duty to apply * * * in behalf of the stockholder's common law right of inspection of the books of the corporation * * *. Or it might happen that during the period of administration the directors of the corporation, * * * would execute the promissory notes of the corporation payable to one of their number, * * *.

Other illustrations might be cited showing how, in its practical everyday working out, the interest in corporate property, independent of the certificate itself, is treated as property for the purposes of administration.

Whether letters shall be granted presents a question of judicial discretion, not of jurisdiction, * * *."

While the illustrations cited by the learned Chief Justice would seem to require the intervention of courts having jurisdiction over the managerial officers at the principal place of business of the company; yet it will be observed that the underlying theory of the case is that the location of the corporate property within the jurisdiction of the court makes shares of stock in the corporation assets to be administered upon. With this case before it, it is easy to appreciate how the court of appeals of New York in the other and later cases which have been cited found no difficulty with the question of jurisdiction, when confronted with the case of stock in consolidated corporations having their principal place of business outside the state.

No case has been found in Ohio which is inconsistent with the reasoning of the case just cited. It is the opinion of this department that that case, in connection with the other cases mentioned in this opinion, should be followed, as it is a case arising under statutes substantially identical with those of Ohio. To follow it would be to afford jurisdiction to the probate court of any county in which a consolidated company might have property; and the court first assuming jurisdiction would retain it to the exclusion of all other courts which might have assumed jurisdiction in the first instance.

It would seem also that if a general office were designated under the statute referred to in the former portion of this opinion, the probate court of the county in which such general office was located would have jurisdiction; most likely, however, such general office would be located in a county in which the company had other property.

In conclusion it is the opinion of this department that in case of the succession to stock in a corporation consolidated under the laws of this and other states and having its principal place of business in another state:

(1) The inheritance tax law of this state applies to the succession to such stock.

(2) The probate court of the county in which the general office of the company in this state is located, or of any county in which the company has property in this state, has jurisdiction to determine the tax.

(3) The stock should be appraised at such proportion of its market value as is determined by the proportion of the entire property of the company located in Ohio, due allowance being made for the location of particular property in this and other states; in other words, substantially the same process of apportionment should be followed as is followed by the tax commission in the appraisement of interstate public utility property for property tax purposes.

(4) It is the duty of such consolidated company to fix one general office in this state. Where such office is located, in case formal action has not been taken, is a question of fact to be determined by the court which determines the tax. The location of such principal office determines the district of origination of the tax for the purposes of section 5348-14 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.