Section 2845 has been amended (108 O. L., Pt. II, 1214) since the 1916 opinion, but the portion material to your question was not changed. The section is not entirely free from ambiguity. It is subject to the interpretation that the phrase "of real estate" refers to the word "execution" as well as to "decree" and "sale". No cases involving poundage resulting from the sale of chattel property on execution have come to my attention, although there have been a number of cases, not in point on the present question, involving the sale of real estate. This is a slight indication against the view taken by this office in 1916, although it is very far from being conclusive.

The reason for allowing poundage was stated in the case of *Major* vs. *Coal Company,* 76 O. S. 200, 209. The court said that poundage was allowed "as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity". Under the court's reasoning, there is no justification for distinguishing between money received from the sale of chattels and that received from real estate.

It has also come to my attention that poundage has been collected in some counties upon sums received from the sale of chattel property. In the absence of judicial decisions to the contrary, this long continued administrative practice should be accorded some weight and should not be overturned in the absence of clear language in the statute.

I am therefore of the opinion that a sheriff can charge poundage as a result of handling money from the sale of chattel property on execution.

Respectfully,
JOHN W. BRICKER,
Attorney General.

104.

APPROVAL, NOTES OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$7,500.00.

COLUMBUS, OHIO, February 4, 1933.

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

105.

TAX AND TAXATION—PROPERTY PURCHASED BY BENEFICIARY OF WAR RISK INSURANCE POLICY—NOT EXEMPT FROM TAXATION.

SYLLABUS:

Real property is subject to the state's general property tax, although purchased by a beneficiary with money received from the United States government as the proceeds of a war risk insurance policy. The exemption from taxation contained in the War Risk Insurance Act (38 *U. S. C. A., sec.* 454) *does not include such property.*

COLUMBUS, OHIO, February 6, 1933.

HON. C. WOOD BOWEN, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"The beneficiary of a war risk insurance policy of a deceased veteran, has purchased real estate solely from the proceeds of said policy. Is that real estate subject to general taxes?

I cannot find any direct ruling from your office on this question nor any case in the courts of Ohio. North Carolina, Kansas and Alabama have held the property taxable while Georgia holds it not taxable.

We would appreciate your opinion in the matter."

Neither article XII, section 2 of the Ohio Constitution nor the statutes of this state relating to taxation exempt the property in question. I must therefore refer to the applicable Federal law.

The War Risk Insurance Act, as amended (Act, June 7, 1924, c320, sec. 22, 43 Stat. 607, 613; 38 U. S. C. A., sec. 454), provides inter alia that:

"The compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, * * * shall be exempt from all taxation * * *."

When the state levies a general property tax upon land regardless of the origin of the purchase money, it does not tax "compensation" or "insurance" or "allowance" for maintenance and support. The terms within the statutory inhibition against taxation refer to *money* received from the United States government and not to land, securities or other property purchased therewith. In the case of *McIntosh* vs. *Aubery,* 185 U. S. 122, 46 L. ed. 834, holding real estate purchased by a pensioner of the United States government with pension money not exempt from taxation, Mr. Justice McKenna said (at page 125) that:

"* * * real estate is not money due, and that real estate is not money at all would seem, if real distinctions be required, as obvious enough, without explanation."

In *State* vs. *Wright,* 140 So. 584 (Ala.), the court held that land purchased for a World War veteran's use with money received from the government was subject to state taxation. This language appears in the opinion (at pp. 584-585):

"It is a well-settled rule of statutory interpretation, that provisions for exemption from taxation must be construed strictissimi juris, and claims of exemption not clearly within the import of the language of the statute must be rejected. (Citing cases.)

When this rule of interpretation is applied to the quoted sections of the statute, it is clear that the exemption applies only to 'compensation, insurance and maintenance and support allowance,' 'adjustment certificates,' and 'sums payable' under the act of Congress, and does not extend to privately owned property purchased with money arising from such sources, and which was at the time of its purchase within the jurisdiction of the state and subject to its powers of taxation. *McCulloch* vs. *Maryland,* 4 Wheat. 316, 4 L. Ed. 579; *Martin* vs. *Guilford County,* 201 N. C. 63, 158 S. E. 847; *State ex rel. Smith, Attorney General* vs. *Board of Com'rs of Shawnee County,* 132 Kan. 233, 294 P. 915; *Beers* vs. *Langenfeld,* 149 Iowa, 581, 128 N. W. 847; *Charles Bednar* vs. *C. D. Carroll, as Treas., etc.,* 138 Iowa, 338, 116 N. W. 315."

I am well aware that the Supreme Court of Georgia in the case of *Rucker* vs. *Merck,* 172 Ga. 793, held land purchased with the proceeds of war risk insurance not subject to the state's general property tax although the taxing statutes of Georgia provide for no such exemption. The court construed the exemption in the Federal statute "from all taxation" as sufficiently broad to include the land in question. I cannot agree with that conclusion.

If the benefit of the exemption does not cease at the latest when the proceeds are converted into other property, I am unable to define the limits of the exemption. Under the Georgia rule if land purchased with war risk insurance money is sold, are these proceeds non-taxable? Or if the proceeds are reinvested in securities, are they free from a state intangible tax? Or if the land originally purchased with the tax money is mortgaged to obtain borrowed money, is the land still free from taxation? Congress has not expressed an intent to invade the domain of state legislation in respect to exemptions which would be the result if all these questions should be answered in the affirmative.

In *State, ex rel.,* vs. *Board of Commissioners of Shawnee County,* 132 Kans. 233, 294 Pac. 915, the term "payable" in the exemption provision was construed to mean "due or to become due." It follows from this construction that the insurance money itself after payment thereof by the government is no longer "payable." It was thus held that corporate securities purchased by a guardian for minor beneficiaries with war risk insurance money paid by the government were not exempt from taxation. Under the Kansas court's construction, the exemption is for the protection of the beneficiary until the money is delivered to him by the government. The Supreme Court of the United States denied a writ of certiorari in this case. 283 U. S. 855, 51 S. C. 648, 75 L. ed. 1462.

The question of the taxability of the actual money paid and the question whether delivery to the guardian is delivery to the beneficiary, present in the Kansas case, are not involved in your problem. Therefore, it is now unnecessary for me to discuss them. I need only express the opinion that Congress has manifested no intention to exempt from the state's general property tax real estate purchased by the beneficiary with money received from war risk insurance.

This opinion is in accord with the decision in the case of *Martin* vs. *Guilford County,* 201 N. C. 63, 158 S. E. 847, where the question before the court was precisely the one which you have presented to me. The court in its opinion said (158 S. E. at p. 849):

> "In the instant case, the sum of money which was payable to plaintiff as a veteran of the World War, under the Act of Congress, as compensation, insurance, and maintenance and support allowance, has been paid to him; he has acquired full and unrestricted title to the money, free from any control over the same by the government of the United States; he has invested it, as he had a right to do, in the purchase of a lot of land and an automobile, which are subject to taxation by Guilford county, under the laws of this state."

I concur in the following language of the opinion in the Shawnee case, supra (294 Pac. at page 917):

> "It will be conceded that statutes relating to pensions should be liberally construed with a view of promoting their objects, but this liberality of construction must necessarily relate to remuneration of such

beneficiaries as are entitled thereto from the government, and cannot be said to set at naught general rules of construction as they affect such an important matter as taxation. The general rule relating to exemption from taxation cannot be nullified by a liberal construction to promote the object of the federal law granting pensions to beneficiaries. An exemption from taxation must never be presumed or assumed. It is the right of the state in the interest of the whole community, unless it is plainly waived or relinquished, and all such tax exemption statutes must be strictly construed."

I can add only this: If the present law as to exemptions works a hardship in some cases, the remedy is legislative.

Respectfully,
JOHN W. BRICKER,
Attorney General.

106.

PAROLE — OHIO PENITENTIARY AND REFORMATORY — WHEN PRISONERS ELIGIBLE FOR PAROLE OR FINAL RELEASE—SINCE ENACTMENT OF SECTION 2166-1 G. C. SENTENCES ARE INDEFINITE—ELIGIBILITY OF SECOND DEGREE MURDERER FOR PAROLE.

SYLLABUS:

1. *The Board of Parole has authority to allow an inmate of the Ohio State Reformatory to go out on parole before he has served the minimum term fixed by law for the felony of which the prisoner was convicted. However, the Board of Parole cannot terminate a sentence of such an inmate by granting a final release until he has served, either by actual or constructive imprisonment, at least the minimum term of imprisonment fixed by law for the felony.*

2. *The Board of Parole cannot grant a final release to a prisoner sentenced to the Ohio Penitentiary until the prisoner has served, by actual or constructive imprisonment, at least the minimum term provided by law for the felony of which the prisoner was convicted.*

3. *Where a trial judge, as authorized by section* 2166 *prior to its repeal and re-enactment in* 1931, *sentenced a person to serve a minimum term of imprisonment equal to the maximum term of imprisonment fixed by law for the offense of robbery, to wit, twenty-five years, such sentence, by virtue of the provisions of section* 2166-1, *becomes an indefinite sentence of ten to twenty-five years and the prisoner is entitled to the benefits of sections* 2210, 2166 *and* 2169.

4. *A life termer convicted and sentenced for the crime of murder in the second degree since the enactment of section* 2210-1 *is eligible for parole at the end of fifteen years' imprisonment, as provided by that statute, and not at the end of ten years' imprisonment, as provided by section* 2169.

COLUMBUS, OHIO, FEBRUARY 6, 1933.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows: