

lished shortly before. This view is further augmented by the fact that provision had already been made in section 2457-3 (103 O. L., 830) several years before for the organization and maintenance of civic and social centers throughout the county by the board of county commissioners, who have authority to levy taxes, and thus there was no occasion for a duplication of this county activity by the county board of education, and in none of the laws enacted since that time has authority been given to the county board of education to establish social and recreational work from a county standpoint or levy taxes for such purpose, and you are therefore advised that sections 7622-4 and 7622-7, supplemental sections appearing in House Bill 549 (106 O. L., 552) have no reference to the county board of education, but the sections refer to those local boards of education which have control of the use of school buildings. This being true as to general expenditures, it is at once apparent that the county board of education could not purchase, operate and maintain a moving picture machine under authority of sections 7622-4 and 7622-7 of the General Code.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3116.

TAXES AND TAXATION—WHERE AN INCORPORATED CHARITABLE INSTITUTION PURCHASES REAL ESTATE THE TITLE OF WHICH IS TAKEN IN NAME OF INDIVIDUAL TRUSTEE FOR PURPOSE OF FACILITATING MORTGAGE LOAN—SAME EXEMPT FROM TAXATION UNDER SECTION 5353 G. C.

Where an incorporated charitable institution purchases property the title of which is taken in the name of an individual trustee for the purpose of facilitating a mortgage loan, the property is exempt from taxation under section 5353 of the General Code.

COLUMBUS, OHIO, May 18, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission submits a letter from the auditor of Cuyahoga county, together with an application for exemption of the property of The Good-Will Industries of Cleveland, and the declaration of trust under which the legal title to that property is held by an individual in trust for The Good-Will Industries, a corporation not for profit, which as recited in the preamble to the declaration of trust, furnished the purchase money. The commission requests advice on the question embodied in the letter of the auditor.

The facts stated in the application for exemption seem to disclose the public charitable nature of the enterprise conducted by this property. The letter of the county auditor does not seem to question this point, but does raise the question as to whether the manner in which the title is held precludes the allowance of the exemption under section 5353 G. C. which provides that "property belonging to institutions of public charity only shall be exempt from taxation".

This question seems to be settled in Ohio by *Gerke vs. Purcell*, 25 O. S. 229, followed in *Waterson vs. Halliday*, 77 O. S. 150. In both of these cases the ques-

tion involved was as to the right to exemption of property the legal title of which was held by a dignitary of the Roman Catholic Church in trust for specific charitable purposes. The court held that certain of the objects were so conducted as to be institutions of purely public charity while others were not. The following language in the opinion of the first case shows its reasoning:

“Laying out of view the nature of the organization by which the charity is administered, the property in question stands on the same footing as the property devoted to the support of colleges and other higher institutions of learning not founded by the state. All of these institutions stand, as respects their claim to exemption from taxation under the constitution, on the ground of their being institutions of purely public charity. If property is appropriated to the support of a charity which is purely public, we see no good reason why the legislature may not exempt it from taxation, without reference to the manner in which the legal title is held, and without regard to the form or character of the organization adopted to administer the charity. To illustrate: If the organization by which these schools are maintained were incorporated, no question could be made as to the existence of authority to exempt their property from taxation. Now, if the property is appropriated to the same public uses, and the same ends are accomplished, we see no constitutional obstacle to prevent the legislature from exempting it as fully without incorporation as with it. What the legislature might accomplish indirectly, through the intervention of a corporation—a thing of its own creation—it may accomplish directly. Nor is it essential to the existence of an institution as an organization that it should be constituted under corporate or legislative authority. *In re the Manchester College*, 19 Eng. L. & Eq. 404.”

Applying that language to the facts in the case, it is impossible to avoid the conclusion that the holding of the legal title by a trustee for the benefit of an organized institution does not preclude the claim for exemption. To be sure, in the case cited the trustee was an official of the church, while the parochial schools, the property of which was held to be exempt, were not incorporated. But the law of Ohio does not recognize an archbishop as a corporation sole, and the quality of his legal tenure is the same as that of any other individual. In the present case the facts in this respect are in a way reversed, in that the institution is incorporated, but the title is held by a private individual sustaining no perceptible official relation to any religious or charitable body. This difference, however, does not create a legal distinction.

The principle which has to be applied in the opinion of this department is that laid down in *Rose Institute vs Myers*, 92 O. S. 252. In the opinion of Nichols, C. J., at page 266, the following language appears:

“(1) It is the use of the property which renders it exempt or non-exempt, not the use of the income derived from it.

(2) The exemption is not a release *in personam* but a release *in rem*, and the *res* to which the release applies must be found and identified by the officer or no exemption can be recognized.”

Another way of putting the idea that it is the use of the property that determines the exemption is to say that the beneficial ownership of the property

and its use by the trustee or beneficial owners controls the right to exemption and not the character of the trustee, especially where the trust is necessary for the purpose of securing a mortgage. In fact, the trust deed may be considered of little more than a mortgage, and has that effect in law and equity.

Accordingly, it is the opinion of this department that so far as the question arising from the tenure of the legal title of the property of The Good-Will Industries of Cleveland is concerned, such property is exempt from taxation under section 5353 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3117.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS, HANCOCK, ALLEN, COLUMBIANA, HOLMES, COSHOCTON, SANDUSKY, VINTON AND AUGLAIZE COUNTIES.

COLUMBUS, OHIO, May 18, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

3118.

APPROVAL, REFUNDING BONDS, HILLSBORO VILLAGE SCHOOL DISTRICT, HIGHLAND COUNTY, IN AMOUNT OF \$8,992.86.

COLUMBUS, OHIO, May 19, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re: Refunding bonds of Hillsboro village school district, Highland county, in the amount of \$8,992.86, being 1 bond payable in 1 installment of \$992.86 and 8 installments of \$1,000 each—6 per cent.

GENTLEMEN:—I have examined the transcript of the proceedings of the board of education and other officers of Hillsboro village school district, Highland county, relative to the above bond issue and find the same regular and in conformity with the provisions of the General Code.

I am of the opinion that a bond for said issue with combined principal and interest coupons attached, drawn in accordance with the bond resolution authorizing the same and in compliance with the resolution of the Industrial Commission adopted under authority of section 1465-58a G. C. will, upon delivery, constitute a valid and binding obligation of said school district.

Since the adoption of the resolution of purchase of the above bonds by the Industrial Commission, the board of education in order to comply with the pro-