

pation of the collection of assessments and all of the assessments collected for the improvement shall be applied to the payment of the notes and interest thereon until both are fully paid; and thereafter said assessments shall be applied to the payment of said bonds and interest thereon. Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication."

It will be noted that in governing the issue and sale of bonds under this section that such bonds are issued with all the restrictions and limitations with respect to the issuance and sale of other bonds. This would restrict the amount of interest on such bonds to six per cent.

However, in referring to the notes issued in anticipation of the levy of special assessments or the issuance of bonds under this section no restriction is made as to the rate of interest.

Other similar sections relating to the issuing of notes or of certificates of indebtedness limit the amount of the interest which may be charged to six per cent and this is the only exception which I have been able to find.

Section 3914 of the General Code, prior to the amendment in 110 Ohio Laws, page 456, was amended in 109 Ohio Laws, page 340, and with reference to the bonds and notes provided as follows:

"In the issuance and sale of such bonds or notes, the municipality shall be governed by all the restrictions and limitations with respect to the issuance and sale of other bonds or notes, and the assessments as paid shall be applied to the liquidation of such bonds or notes."

The fact that this section prior to the last amendment did restrict the interest on such notes to six per cent and in the last amendment restricts only the interest on the bond, and is silent with reference to the interest rate for the notes, would lead to the conclusion that the legislature thereby intended to remove the restriction as to notes issued under this section.

Further, the fact that in all other instances notes or certificates of indebtedness are restricted in their rates of interest, would lead to the conclusion that by not restricting in this section the restriction was removed by the legislature.

You are therefore advised that under section 3914 of the General Code that the rate of interest which may be fixed by the council for notes issued under this section is not restricted to six per cent.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

3912.

LAND TRUST CERTIFICATES—MAY NOT BE INCLUDED IN DEDUCTION FOR REAL ESTATE UNDER SECTION 5412 G. C.

**SYLLABUS:**

*In assessing the shares of a bank for taxation, county auditors may not include in the deduction for real estate under section 5412, General Code, land trust certificates.*

COLUMBUS, OHIO, December 24, 1926.

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

DEAR SIRS:—This will acknowledge receipt of the commission's recent communication inclosing a request from Mr. John A. Zangerle, Auditor of Cuyahoga county, which reads:

"In assessing the shares of a bank for taxation, may we include in the deduction for real estate under section 5412, land trust certificates, i. e., certificates from a trustee showing an equitable ownership in real estate, the legal title of which is owned in fee by the trustee?"

Section 5411, General Code, provides that:

"The cashier of each incorporated bank, and the cashier, manager or owner of each unincorporated bank, shall return to the auditor of the county in which such bank is located, between the first and Second Mondays of May, annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank at the close of business on the Wednesday next preceding the said second Monday, with a full statement of the names and residences of the stockholders therein, the number of shares held by each and the par value of each share, and of the amount of capital employed by unincorporated banks not divided into shares, and the name, residence and proportional interest of each owner of such bank."

Section 5412, General Code, provides that:

"Upon receiving such report the county auditor shall fix the total value of the shares of such banks, and the value of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, each according to their true value in money, and deduct from the aggregate sum so found, of each, the value of the real estate included in the statement of resources as it stands on the duplicate."

It will be noted that the real estate, the value of which is to be deducted, is the real estate that appears on the tax duplicate; or, as stated in section 5412, "as it stands on the duplicate."

In an opinion of this department rendered September 22, 1926, to The Tax Commission of Ohio, it was held in substance, that a land trust certificate is exactly what its name implies—a certificate evidencing an interest in the equitable ownership of land held in trust. As the legal title to the land is in the trustee, said land appears on the tax duplicate in the name of said trustee and he pays the taxes due thereon. It was therefore held that holders of land trust certificates are not required to list them for taxation. As said certificates are not listed for taxation, they do not appear on the tax duplicate. Since it is the value as shown on the tax duplicate that is deducted under the provisions of section 5412, General Code, it is evident that said certificates are not included within the real estate mentioned in said section.

Section 5409, in taxing the real estate of a bank, provides that:

"The real estate of a bank or banking association shall be taxed in the place where it is located, in like manner as the real estate of persons is taxed."

It is evident that as section 5409 provides for taxing the real estate of banks "as the real estate of persons is taxed", the provision of section 5412 for deducting the value of the real estate "as it stands on the duplicate", was enacted to avoid double taxation of said real estate.

As land trust certificates are not listed for taxation, they do not appear on the tax duplicate to be taxed "as the real estate of persons is taxed" and no deduction is necessary in order to avoid double taxation.

This position in regard to the valuation on the duplicate is sustained in the recent case of *Commissioners vs. Bank*, 113 O. S., page 43, where the court say:

"Section 5412, General Code, provides that from the aggregate sum constituting the value of the shares 'the value of the real estate included in the statement of resources as it stands on the duplicate' should be deducted. This clause is somewhat confusing since the value as it stands on the tax duplicate may or may not be included in the statement of resources. Since we cannot believe that it was the legislative purpose to attach various values upon assessed real estate, we are of the opinion that, in fixing the value of bank shares under the provisions of section 5412, General Code, the county auditor should disregard the value of real estate appearing on the books of the bank and fix the value thereof as assessed on the tax duplicate. From the aggregate sum thus obtained the value of the real estate as it stands on the duplicate should be deducted. The purpose of said section is the ascertainment of the value of the shares without regard to book value of real estate, which has been made a separate subject for taxation under our tax laws."

And after further discussing the authorities, the court at page 45, concludes that:

"It is impossible to escape the conclusion that under the act as originally passed, which is substantially the same as that found in our present law, the county auditor is required to regard the duplicate value only in ascertaining the value of bank shares."

It may reasonably be assumed that these certificates will be issued frequently by trustees holding the legal title to land situated outside this state, and it is certain that such certificates could not be deducted. *Cooley on Taxation*, Vol. 3, Sec. 988, states that:

"Many statutes provide that in valuing shares of stock or of the shares of stock in banks, including national banks, there shall be deducted the value of real property of the corporation already taxed within the state \* \* \*; but there can be no deduction for real estate situated outside the state."

In view of the foregoing discussion and consideration of authorities, it is the opinion of this department that in assessing the shares of a bank for taxation, county auditors may not include in the deduction for real estate, under section 5412 General Code, land trust certificates.

Respectfully,

C. C. CRABBE,

*Attorney-General.*

3913:

REAL ESTATE—NOTICE REQUIRED TO BE GIVEN BY COUNTY AUDITOR  
IN THE YEAR OF A GENERAL REAPPRAISEMENT IS THE ONE PROVIDED FOR IN SECTION 5606 G. C.

SYLLABUS:

*The only notice required to be given by the County Auditor of the County Board of Revision in the year of a general reappraisal as provided in section 5548 of the General Code, is the notice required by section 5606, unless the Board of Revision shall increase the valuation on complaint.*

COLUMBUS, OHIO, December 24, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"Is a County Auditor or a County Board of Revision required to give