

ment of Public Welfare, and G. H. Moehlman, of Norwalk, Ohio. This contract covers the construction and completion of General Contract for Storeroom, Cold Storage, Kitchen and Equipment for Cleveland State Hospital, Cleveland, Ohio, as set forth in Item No. 1 and Item No. 6 Alternate G-3 of the Revised Form of Proposal dated May 20, 1930. Said contract calls for an expenditure of seventy thousand four hundred dollars (\$70,400.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the President thereof, that in accordance with Section 4 of House Bill 203, 88th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 88th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Seaboard Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2087.

TAX AND TAXATION—TAXATION OF MUNICIPAL AIRPORTS AND VARIOUS EQUIPMENT USED IN CONNECTION THEREWITH, DISCUSSED.

SYLLABUS:

Various questions relating to the taxation of municipal airports and the lands and equipment therein contained, and of airplanes and other personal property used in connection therewith, considered and discussed.

COLUMBUS, OHIO, July 14, 1930.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your communication inclosing therewith a communication received by you from Hon. A. J. Thatcher, County Auditor of Franklin County, Ohio, in which a number of questions are asked relating to the taxation of the lands and property of the Columbus airport or used in connection therewith. The communication of the county auditor above referred to is as follows:

“The City of Columbus has purchased land to be used as an airport. It leases to different private corporations definite parts of the land. On this land these corporations erect buildings necessary in the use of airplanes. In some cases these corporations are not serving as connecting transportation lines between one and another railroad. In other cases they are so serving and are at least part, owned by such railroads.

Are such corporations of either class, carrying passengers, freight and mail, public utilities to be valued for taxation by you, or are they in like

position to any other class of business which is valued for taxation by the County Auditor?

Is this land in use (not occupied by the buildings of such corporation) as the necessary space in which the airplanes may alight or take off, a part of such utility or taxable part, or is it to be exempt from taxation as roadways in parks used for traffic are exempt as park ground?

As to the matter of the commercial airplanes themselves, owned by the leasing corporations or coming into and leaving the airport by lease agreements with such corporations; where and in whose name are these taxable?

1. As personal property owned by a one day visitor in the city and thus not taxable here?

2. As personal property owned by a permanent citizen or corporation of Franklin County?

3. As part of the assets of a public utility valued by your body as a going concern, the value and taxes to be distributed over the different taxing districts through which the transportation service plies?

This you do on telephone and telegraph utilities on the basis of wire installation in each district and on track mileage as to railroads. As to the basis for airplane is to me a puzzler.

As to buildings and equipment erected and installed by the city to house concessions sold to individuals or corporations or to house city employes, charged with the duty of supervising all these things, as also conditions appertaining to any housing of passengers, airship personel, etc., are these taxable or exempt when conducted by the city?

Has a city authority to secure land, erect and equip stations, provide accommodations for airplanes, steam trains, electric cars, bus, as also to their passengers, visitors, freight and mail as it has to provide water, electricity or gas, maintaining such service by charges therefor or profit on things sold by it and be exempt as to the whole from taxation?

If by contract or lease provisions the structures and equipment placed upon the city's ground for airplane service are to be the property of the city in event of service abandonment, would such property together with the land used, be then subject to exemption, tho in use by private corporations at either loss or profit?

Airports are new things raising new questions to be decided now in view of early necessity to act, as to taxation; as existing law require. Your early study and decision as to these questions will be appreciated."

There are not sufficient facts stated in the communication of the county auditor with respect to the several questions presented by him to enable me to make a categorical answer to these questions.

The Columbus airport and the lands and improvements included therein, acquired and constructed by the City of Columbus, were so acquired, established and constructed under the authority of Section 4 of Article XVIII of the State Constitution and of Section 3939, General Code. Section 3939, General Code, provides among other things that:

"Each municipal corporation in addition to other powers conferred by law shall have power. * * *

To purchase or condemn land necessary for landing fields, either within or without the limits of a municipality, for aircraft and transportation terminals and uses associated therewith or incident thereto, and the right of way for connections with highways, electric, steam and interurban railroads, and to

improve and equip the same with structures necessary or appropriate for such purposes.”

This airport so acquired and established, has the status of a public utility. Touching this point the Supreme Court of this state in the case of *State, ex rel. Chandler vs. Jackson*, 121 O. S. 186, held:

“The authority given to municipalities in this state by Section 3939, General Code, to purchase or condemn land necessary for landing fields for aircraft and transportation terminals and rights of way for connection with highways and railways gives to such establishments the character of public utilities and all laws applicable to municipally owned utilities are applicable thereto.”

Aside from the fact that said airport is municipally owned public property, air transportation lines and companies are not included within the class of public utilities mentioned in Section 5417, General Code, the property of which is assessed for taxation by the Tax Commission of Ohio on the unit rule basis under the authority of Sections 5419, et seq., General Code. And if any of the lands of the Columbus airport are subject to taxation, such lands are to be assessed for taxes by the county auditor rather than by the Tax Commission of Ohio.

With respect to the question here suggested, Section 2 of Article XII of the State Constitution provides among other things that laws shall be passed taxing by uniform rule all real and personal property according to its true value in money but that public property used exclusively for any public purpose may by general laws be exempted from taxation.

Under the authority thus conferred by the constitutional provision above noted, the Legislature has enacted statutory provisions which have been carried into the General Code as Sections 5351 and 5356.

Section 5351, General Code, provides:

“Real or personal property belonging exclusively to the State or United States, and public property used for a public purpose shall be exempt from taxation.”

Section 5356, General Code, provides in part as follows:

“Market houses, public squares, or other public grounds of a city, village or township, houses or halls used exclusively for public purposes or erected by taxation for such purposes, notwithstanding that parts thereof may be lawfully leased, * * * shall be exempt from taxation.”

The provisions of Sections 5351 and 5356, General Code, above quoted, should be construed so as to comport with the limitation imposed by the constitutional provision above noted; and although consistent with said constitutional provisions, utilities and other property owned by municipal corporations are exempt from taxation when the same are devoted to public use, the ownership of lands by municipal corporations does not exempt such lands from taxation unless they are used in exercise of a municipal function and this is true although such lands are leased by the municipality and money thus realized is applied to a public purpose. *Wilson, Auditor, vs. Licking Aerie*, 104 O. S. 137; *City of Cincinnati vs. Lewis, Auditor*, 66 O. S. 49.

The Supreme Court in its opinion in the latter case, said:

“The policy of this state has its foundation in Section 2 of Article 12 of

the Constitution which describes the property which shall be taxed as well as that which may, by general laws, be exempted from taxation: 'Laws shall be passed, taxing by uniform rule * * * all real estate and personal property; but * * * public property used exclusively for any public purpose, * * * may, by general laws, be exempted from taxation.' That the public ownership of property was not alone thought sufficient to exempt it from taxation is made obvious by the requirement that an exclusive use for a public purpose shall coincide with such ownership."

In the case of *City of Cincinnati vs. Lewis, Auditor*, supra, the property under consideration was a farm which had been purchased by the city for the purpose of locating and constructing thereon a reservoir for use in connection with the city water works, but this plan had been abandoned and other lands acquired for the purpose, and this farm was then rented and used for farming purposes. The court held that it was taxable for the reason that the same was not being used in the exercise of a municipal function.

In the case of *City of Cincinnati vs. Hynicka, Treasurer*, 9 N. P. (N. S.), 273, affirmed by the Supreme Court without opinion, 84 O. S. 446, wharf and market place property owned by the city which had been leased to coal companies and railroads, and used entirely for private purposes, was held to be taxable.

So in this case, if any part of the lands of the Columbus Airport are leased to private corporations, to be used for the construction thereon of hangars or other buildings by such private corporations to be used in the conduct of private air transportation business, such lands so leased will thereby cease to be used by the City of Columbus, in the exercise of a municipal function and will be liable for taxes at the lawful valuation placed thereon by the county auditor. Whether in such case the land so leased will be assessed for taxation against the City of Columbus or against private corporations leasing the same, depends upon the term of the lease.

With respect to this question, Section 5330, General Code, provides among other things, that whenever lands belonging to a municipal corporation are held under lease for a term of years renewable forever and not subject to revaluation, such lands shall be considered, for all purposes of taxation, as the property of the lessee, and shall be assessed in his name.

If the terms of the lease in question call for the application of this provision of Section 5330, General Code, the lands covered by such lease will be taxable only to the interest of the lessee therein. *Zumstein vs. Mining Company*, 54 O. S., 264.

If buildings are erected upon lands so leased under contracts or agreements whereby such buildings do not become part of the land, but remain the property of the private corporations erecting the same, the land so leased may be listed for taxation in the name of the city and the buildings may be entered in the name of the respective private corporations owning the same. See *Cincinnati College vs. Yeatman*, 30 O. S. 276.

With respect to the taxation of the personal property of such private corporations leasing lands from the city, and constructing buildings thereon for use in the conduct of air line transportation business, it is to be observed that although the business conducted by such private corporations may, and probably will be such as to give such corporations the character of public utilities, they will not be public utilities within the provisions of Sections 5419 et seq., General Code, relating to the assessment of public utilities for property taxation. In this connection it may be said that the only public utilities which are assessed for property taxation by the Tax Commission of Ohio in the manner provided by Sections 5419 et seq., General Code, are the particular kinds of public utilities designated in Sections 5416, General Code, except that conceivably an air transportation line might conduct its business so as to bring it within the definition of an express company under the provisions of Section 5416, General Code, and as such make its property assessable for taxation as

the property of a public utility. Generally speaking, however, the property of such private corporations engaged in air line transportation business would be returned and assessed for taxation as is the property of other private corporations under the provisions of Sections 5404 et seq., General Code.

The situs of the personal property of such private corporations, including airplanes owned by them, will depend primarily upon the legal residence of such corporations. If a particular private corporation engaged in such business is incorporated and organized under the laws of the State of Ohio, it may be stated generally that all of its personal property will be taxable in this state except personal property which is permanently located and used in some other state. On the other hand, if the corporation is incorporated and organized under the laws of a state other than Ohio, it may be stated generally that the only personal property of such corporation that will be taxable in this state will be such tangible personal property as is permanently located and used in this state, and such intangible property, such as credits, as may accrue and arise out of the business conducted in this state. See *New York vs. Miller*, 202 U. S. 584; *Union Refrigerator Transit Company vs. Kentucky*, 199 U. S. 194; and *Hubbard vs. Brush*, 61 O. S. 252.

With respect to the assessment of the personal property of such private corporation as may be taxable in this state, under the rules above mentioned, such property should be listed in accordance with the requirements of Section 5371, General Code, which as to personal property other than merchants' and manufacturers' stock and personal property upon farms, provides that personal property, moneys, credits and investments, except as otherwise specially provided, shall be listed in the township, city or village in which the person to be charged with taxes thereon resides at the time of the listing thereof, if such person resides within the county where the property is listed, and if not, then in the township, city or village where the property is when listed. *State ex rel. Stanton vs. Zangerle, Auditor*, 117 O. S., 436.

By way of answer to further questions presented in the communication of the county auditor, above quoted, I am inclined to the view that the construction by the city of buildings on lands of the airport to house employes of the city who may be employed at the airport, or to be rented to persons who may operate concessions at the airport for the accommodation of the public, will not affect the exemption of such property from taxation, nor make the same liable for taxes either in the name of the city or of the persons to whom such buildings may be rented.

By way of further answer to the said communication, and the questions therein contained, I am of the opinion that none of the other activities of the city with respect to the proposed use of said airport and the lands therein contained, mentioned in said connection, will make such airport property taxable, with the exception of such definite portions of the land of said airport which are leased to private persons or corporations for definite terms or in perpetuity, in the manner and for the purposes hereinabove discussed, which lands so leased, will be taxable for the reasons and upon the authorities above noted.

Respectfully,
GILBERT BETTMAN,
Attorney General.