1898.

INHERITANCE TAX LAW—OIL LEASES COVERING LANDS LYING IN KENTUCKY AND OKLAHOMA BELONGING TO ESTATE OF DECEDENT WHO WAS RESIDENT OF OHIO NOT SUBJECT TO SAID TAX.

Oil leases covering lands lying in Kentucky and Oklahoma, and belonging to the estate of a decedent who was a resident of Ohio, are not subject to inheritance tax in this state.

COLUMBUS, OHIO, March 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of the commission's letter of recent date requesting the opinion of this department, as follows:

> "A dies a resident of Ohio. Among the assets of his estate are certain oil leases covering lands lying in Kentucky and Oklahoma. Are these leases subject to inheritance tax in this state?
>
> We have no information on the point but we presume that these contracts provide for the payment of rent on the usual royalty basis."

In the absence of specific information to the contrary, it will be assumed that the assets which the commission describes as "oil leases" constitute interests in the lands to which they relate. As such it is clear that the succession to them is not subject to inheritance tax in this state. The simplest way of putting the principle which it is believed governs such cases is to say that while such interests at the most are "chattels real," and hence are "personal property," yet they constitute what are known as "immovables" and their devolution at death is therefore governed by the law of the place where the property to which they relate, itself immovable, is situated.

Paragraph 1 of section 5331 of the General Code seems to recognize the general principle when it provides that:

> "The words 'estate' and 'property' include everything capable of ownership, or any interest therein or income therefrom, whether tangible or intangible, and, *except as to real estate,* whether within or without this state, * * *.";

and when it provides further that:

> "'Within this state,' when predicated of tangible property, means physically located within this state; when predicated of intangible property, that the succession thereto is, for any purpose, subject to, or governed by the law of this state."

It seems to be a fair interpretation of the first of these quoted paragraphs that an interest in real estate not located in this state does not constitute "property"; and even if this is not so, and such an interest is to be regarded as "intangible property," it would still have to appear that the succession to such interest is "for any purpose, subject to, or governed by the law of this state." It is impossible to conceive of the law of this state as applying in any way to the succession to these leaseholds. As evidence of the policy of our statutes of descent and distribution, section 8597 of the General Code, declaring that:

> "Permanent lease-hold estates, renewable forever, shall be subject to the

same law of descent as estates in fee are subject to by the provisions of this chapter,"

may be referred to. It is clear from the other "provisions of this chapter," such as section 8573, for example, that all permanent lease-hold estates, renewable forever, in lands located in Ohio are affected by this section, and that no permanent lease-hold estate, renewable forever, in lands located outside of Ohio is affected by it. But the principle really lies deeper than the statutes of the state, and is found in the statement above made, to the effect that the law of the state or country where the land is situated determines the succession to all interests in or to land.

Moreover, it is difficult to conceive of any kind of an "oil lease" which would not amount to an interest in or income arising from land, even though not operative to create an interest in the oil in place, as such.

Matter of Althouse, 71 N. Y. Supp. 445; 168 N. Y. 670;
Matter of Rosenbaum, N. Y. L. J. Aug. 7, 1913;
McCammon vs. Cooper, 69 O. S. 366.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1899.

FARMERS' INSTITUTE—TOWNSHIP TRUSTEES NOT AUTHORIZED TO EXPEND FUNDS TO RENT HALL FOR ACCOMMODATION OF SUCH AN INSTITUTE.

Township trustees are not authorized to expend the funds of the township to rent a hall for the accommodation of a farmers' institute.

COLUMBUS, OHIO, March 9, 1921.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication in which you request my opinion, which reads, in part, as follows:

"The board of township trustees of Grafton township, this county, have asked me to write you for your opinion as to whether or not the board has the right to rent of the Belden Farmers' Club and Social Organization in their township the club's hall, for the purpose of holding township meetings and also for the purpose of holding farmers' institute. Grafton township now has a small town hall.

I have advised the trustees that in my opinion they cannot legally expend money to rent the hall of the Belden Farmers' Club for their township or institute purposes in view of the fact that they now have a town hall, even though it may be small and not as convenient for their use as the club's hall. However, they wish me to get your opinion."

Section 3397 G. C. provides:

"After such affirmative vote, the trustees may make all needful contracts for the purchase of a site, and the erection, or the improvement or