2202.

WHERE TOWNSHIP OWNS REAL ESTATE LYING WITHIN MUNICIPAL CORPORATION—LIABLE FOR STREET ASSESSMENT LEVIED BY MUNICIPALITY—SPECIFIC CASE.

Where a township owns property lying within a municipal corporation, Held, under the facts set out in the opinion that the township is liable for an assessment levied against such property by the municipality for street improvement.

COLUMBUS, OHIO, June 28, 1921.

HON. C. A. MAXWELL, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—You have recently submitted for the opinion of this department the following:

> "The original plat of the town of Frazeysburg in this county was laid out in 1827 and a square 165 feet by 165 feet is shown and called on this plat 'public square.' At that time there was no village corporation and the ground covered by the plat was under the control of Jackson township. The village of Frazeysburg was incorporated November 9, 1868, and included all of the former plat and all territory within one quarter mile distance to each of the lines of the old plat. When the village was incorporated the piece of ground formerly marked 'public square,' was designated 'school house lot,' on plat.
>
> In 1871 the members of the board of education under the belief that they were the owners of the above ground, deeded a portion thereof to the trustees of Jackson township. In 1876 the village officers gave a 99 year lease for the entire square to the trustees of Jackson township. Since that time the township trustees have been exercising control over a building located on said square, leasing it to different lodges and using it as a township hall.
>
> Recently the village of Frazeysburg improved one of the streets bordering on this square and are attempting to assess a proportionate part of the costs and expense of the improvement against the trustees of Jackson township. The question has been submitted to me by the trustees of Jackson township as to whether they have sufficient title to the property to be chargeable with an assessment thereon, and if so, are they liable to the village of Frazeysburg for the assessment for this improvement? The assessment has been certified over to the county auditor against the trustees of Jackson township, and they wish to know whether they are compelled to pay this assessment or not."

The question whether public property as such is exempt from assessment on account of local improvements has been quite fully discussed in two opinions of this department, one dated January 21, 1916, and found in Opinions of Attorney-General, 1916, Vol. 1, page 102, and the other dated November 15, 1916, found in Opinions of Attorney-General, 1916, Vol. II, page 1779, the conclusion reached in both of said opinions being that land owned by a municipality lying outside of municipal limits and used in the one case for a garbage disposal plant and in the other case in connection with a waterworks system, is subject to an assessment for highway improvement. Applying the same principle to the facts which you set out, it is clear that the mere fact

that property may be owned by a township does not exempt it from assessment.

In the case which you have stated, it is not believed that technical questions as to title are the controlling consideration. The fact remains that the trustees of Jackson township are exercising control over the property in question under color of title at least. Evidently, the village of Frazeysburg is not claiming title, because it has recognized the title in the township by levying an assessment against the property as township property. It further appears that the township is actually making use of the property and deriving income therefrom, in that they are leasing a building thereon to lodges and using it themselves as a township hall. Assuredly, on the plainest of principles of equity as well as upon the ground of estoppel, the trustees cannot have the benefit of the exercise of ownership for one purpose and deny ownership for another purpose.

For the reasons thus briefly stated, the conclusion of this department is that the township trustees are liable for the assessment in question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2203.

INHERITANCE TAX LAW—WHERE TESTATOR DIRECTS HIS EXECUTOR SHALL PAY ALL TAXES ASSESSED AGAINST SUCCESSIONS OF HIS ESTATE OUT OF RESIDUARY ASSETS AS GENERAL DEBT OR CLAIM, NO DEDUCTION SHOULD BE MADE IN APPRAISING RESIDUARY ESTATE FOR AMOUNT OF TAXES ON SPECIFIC LEGACIES SO DIRECTED TO BE PAID—NO ADDITION SHOULD BE MADE TO VALUE OF SPECIFIC LEGACIES ON ACCOUNT OF PROVISION THAT TAX SHALL BE SO PAID.

Where a testator directs that his executor shall pay all inheritance taxes assessed against the successions of his estate out of the residuary assets as a general debt or claim, no deduction should be made in appraising the residuary estate for the amount of taxes on specific devises and legacies so directed to be paid; and no addition should be made to the value of the specific devises and legacies on account of the provision that the tax shall be so paid.

COLUMBUS, OHIO, June 29, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission has requested the opinion of this department upon the following question:

> "Richard Roe in his will directs that his executor shall pay all inheritance taxes assessed against the successions of his estate out of the residuary assets as a general debt or claim. The will further contains a bequest to X, who is not related to the testator, of a quantity of jewelry having a value of $5,000.00. The tax on this is $350.00. By the direction in the will X gets the benefit not only of the bequest of the jewelry but also of the further payment of the amount stated. On the determination of tax, should the court make the assessment on the value of the jewelry alone, or should he also include the sum of $350.00 as a succession of which X gets the benefit?"