

festly it would be unfair and unjust to permit the delinquents to escape their liability on account of this neglect. We are of the opinion that while the act itself, that is to say the act of reading the list, is mandatory and imperative, the time of the performance of the act is directory merely. While it was their duty to read it at the time prescribed by the statute, having failed in that it is still their duty to read it at the earliest moment thereafter, when their attention is called to it, and the provisions of section 5696 cannot be nullified by the neglect of the commissioners to perform their duty at the time required "

The syllabus of the above mentioned case reads as follows:

"1. By virtue of section 5696, General Code, the duty to publicly read the list of persons delinquent in the payment of taxes on personal property is mandatory.

2. The requirement of that section that the reading of the list occur at each September session of the board of county commissioners is directory merely, and the board of commissioners having failed to read the list during the September session it is their duty to read the list at a later date."

You are therefore advised upon the authority of the foregoing case that if the delinquent list is read at a session other than the September session, the county commissioners may legally authorize the treasurer to employ collectors.

Respectfully,

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

1024.

TAXATION—SHARES OF STOCK IN JOINT STOCK LAND BANK SUBJECT TO TAXATION IN THIS STATE AS SHARES OF NATIONAL BANKS ARE TAXED.

SYLLABUS:—

*Shares of stock in joint stock land banks are subject to taxation in this state as the shares of national banks are taxed.*

COLUMBUS, OHIO, December 22, 1923.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication in which you enclose a letter from Hon. John A. Zangerle, Auditor of Cuyahoga County, Ohio, with reference to the taxation of shares of stock of joint stock land bank companies located in the city of Cleveland.

You also request me to advise the Commission whether such shares of stock are subject to taxation in this state as the shares of national banks are taxed.

You suggest that the answer to this question will involve an interpretation of section 9256 as amended in March, 1922, and section 9334 of the Federal statutes; also sections 5407 et seq. of the General Code of Ohio.

Congress has authorized the taxation of national banking associations by the respective states. Section 5219 of the Revised Statutes of the United States, as amended March 4, 1923, reads as follows:

"The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits."

Section 9334, Barnes' Federal Code, (Act of July 17, 1916, C 245 Sec. 26, 39 Stat 380), provides as follows:

"Every federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from federal, state, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to federal land banks, or to joint stock land banks \* \* \*."

*Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 5219 of the Revised Statutes of United States with reference to the shares of national banking associations"*

It is evident from the express provisions of the foregoing federal statutes that authority and power are granted to the states by Congress to tax the shares of joint stock land banks in any such bank in the valuation of the personal property of the owner or holder of such shares.

Are "joint stock land banks" as authorized by Congress, banks within the meaning of the tax laws of the state of Ohio? Joint stock land banks are recognized as banks. They are incorporated as banks, organized as banks, and perform the functions of banks.

The second paragraph of the syllabus in the case of *Smith v. Kansas City Title & Trust Company et al.*, 255 U. S. Reports 180, reads as follows:

"The provisions of the Federal Farm Loan Act of July 17, 1916, C. 245, 39 Stat., 360, amended January 18, 1918, C. 9, 40 Stat., 431, making the Federal Land Banks and *Joint Stock Land Banks* established thereunder *depositories* of public money, when designated by the Secretary of the Treasury, authorizing their employment as financial agents of the government, requiring them to perform, as such depositories and agents, such reasonable duties as may be laid upon them, and authorizing them to purchase government bonds; justifying their creation as an exercise of the constitutional power of congress."

and in rendering opinion, Mr. Justice Day used the following language:

"That Congress has seen fit in making these *banks* fiscal agencies and depositories of public moneys, to grant to them *banking powers* of a limited character, in no wise detracts from the authority of Congress to use them for the governmental purposes named, if it sees fit to do so. A bank may

be organized with or without the authority to issue currency, it may be authorized to receive deposits in only a limited way. Speaking generally, a bank is a moneyed institution to facilitate the borrowing, lending, and caring for money."

The following Ohio statutes authorize the taxation of banks:

Section 5328 G. C.:

"All real or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title."

Section 5407 G. C.;

"A company, association, or person, not incorporated under a law of this state or of the United States, for banking purposes, who keeps an office or other place of business, and engages in the business of lending money, receiving money on deposit, buying and selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit, is a bank, or banker, within the meaning of this chapter."

Section 5408 G. C.;

"All the shares of the stockholders in an incorporated bank or banking association, located in this state, incorporated or organized under the laws of this state or of the United States, and all the shares of the stockholders in an unincorporated bank, located in this state, the capital stock of which is divided into shares held by the owners of such bank, and the capital employed, or the property representing it, in an unincorporated bank the capital stock of which is not divided into shares, located in this state, shall be listed at the true value in money, and taxed only in the city, ward, or village where such bank is located."

While I have found no decisions covering this particular point, yet it seems evident that the joint stock land banks come within the provisions of section 5408 of the General Code of Ohio.

Section 5219, Revised Statutes of the U. S. authorizes the legislatures of the several states to determine and direct the manner and place of taxing all the shares of national banking associations located within the respective states.

In the act authorizing joint stock land banks (Sec. 9334 Barnes' Federal Code), it is provided that:

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the bank is located. \* \* \*"

In the above mentioned case of *Smith vs Kansas City Title & Trust Company et al.*, 255 U. S. Reports page 180, joint stock land banks are classed as banks, with banking powers.

The Ohio statute, section 5408 G. C., provides that:

*"All the shares of the stockholders in an incorporated bank or banking association, located in this state, incorporated or organized under the laws of this state or of the United States \* \* \* shall be listed at the true value in money and taxed \* \* \* where such bank is located."*

A joint stock land bank is "an incorporated bank or banking association, with banking powers," it is "located in this state," it is "incorporated under the laws of the United States" and it therefore comes within the provisions of section 5408 of the General Code of Ohio.

It is therefore the opinion of this department that shares of stock in joint stock land banks are subject to taxation in this state as the shares of national banks are taxed.

Respectfully,

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

1025.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE BUFFALO FORGE COMPANY OF BUFFALO, N. Y., FOR FURNISHING AND DELIVERY OF ONE (1) FORCED DRAFT MOTOR DRIVEN FAN FOR POWER HOUSE AT OHIO STATE UNIVERSITY AT COST OF \$2,238.00.

COLUMBUS, OHIO, December 22, 1923.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works in behalf of the Board of Trustees of Ohio State University and The Buffalo Forge Company of Buffalo, N. Y. This contract covers the furnishing and delivery of One (1) Forced Draft Motor Driven Fan for Power House at Ohio State University and calls for an expenditure of \$2,238.00.

Finding said contract 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,

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

1026.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE C. W. BRYANT COMPANY OF COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF MOVING OF FOUR WINGS OF PRESENT SWINE BUILDING AT OHIO STATE FAIR GROUNDS, COLUMBUS, OHIO, AT COST OF \$3,450.00. SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.