

In apparent recognition of this principle, the Supreme Court of this state in the case of *Cassidy vs. Ellerhorst, supra*, held that shares of stock in a foreign corporation and municipal bonds issued in a state other than Ohio owned by a resident of the state of Kentucky, but kept by him in a bank in the city of Cincinnati, Ohio, were not taxable in this state, although it appeared that the owner of said property in his life time conducted his business in this state. In the case of *Tax Commission of Ohio vs. The Farmers Loan and Trust Co.*, 119 O. S. 410, it was held that bonds of Ohio municipalities held by a person not a resident of this state at the time of his death, and which descend or are bequeathed to a person not a resident of Ohio, are not "within the state" within the meaning of Sections 5331 and 5332 of the General Code, and therefore not subject to the inheritance tax laws of this state. Both of the cases just cited related to inheritance taxes under Ohio inheritance tax laws, but obviously the fundamental principle involved is no different in application to property taxes.

It is noted, however, that the decision of the court in the case of *Cassidy vs. Ellerhorst, supra*, is predicated upon the assumption that the securities there in question were not employed in commercial transactions within this state at the time of the death of the person owning such property.

Giving effect to the principles above noted to the particular questions submitted in the communication of the county auditor, you are advised that the property here in question may be subjected to taxation by the State of Delaware, though no part of the business of the Brunswick Company is transacted in that state. *Cream of Wheat Co. vs. County of Grand Forks*, 253 U. S. 325. Further upon the considerations above noted, and assuming that the securities and bank deposit referred to in said communication are not employed in the conduct of the company's business in this state or otherwise used by it in commercial transactions here, I am of the opinion that said property is not subject to taxation in this state.

It is not stated in the communication of the county auditor where the certificate of the shares of stock or the certificate of deposit or other evidence of the money deposited in bank, is held; but inasmuch as these things are but evidences of the property involved to a consideration of the questions presented, it is immaterial where the evidences of such property are held. *Cassidy vs. Ellerhorst, supra*.

Respectfully,

GILBERT BETTMAN,  
Attorney General.

---

1392.

#### CRIMINAL LAW—WHEN INFORMATION TO BE FILED IN PROBATE COURT BY PROSECUTING ATTORNEY—EXCEPTIONS.

##### SYLLABUS:

*Where a prosecuting attorney elects to prosecute a case in the Probate Court, which has been returned to the Common Pleas Court by a justice of the peace or other officer, he must file an information by virtue of the provisions of Section 13425-1 of the General Code, except in cases where the statutes authorize the filing of an affidavit.*

COLUMBUS, OHIO, January 13, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you make the following inquiry:

"Is the prosecuting attorney, after he has certified a criminal case from the Common Pleas to the Probate Court, electing to proceed in the latter court, before indictment, obliged to file an information to supplant the affidavit, transcript and return of recognizance in such cases, in order to secure the trial of such case?"

Section 13425-1 of the General Code provides as follows:

"An indictment is not required in cases in which the Probate Court has criminal jurisdiction. Except as otherwise provided by statute the prosecuting attorney shall forthwith file an information in such court setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon."

Originally under the act defining the jurisdiction and regulation of the practices of the Probate Courts, it was necessary that a prosecution should originate in a proceeding before some officer who could hear the testimony and decide the sufficiency of the charges in order to confer jurisdiction upon the Probate Court. After jurisdiction was conferred in this manner, it was necessary for the prosecuting attorney to file an information in the Probate Court, which information took the place of an indictment. Prior to 1856, the prosecuting attorney was not authorized to file an information originally in the Probate Court without a preliminary hearing before an examining court. In 1856 (53 O. L. 137), the Legislature authorized the prosecuting attorney to file an information originally in the Probate Court without a preliminary hearing before an examining magistrate.

While the statutes pertaining to criminal procedure in the Probate Court have been amended from time to time, nevertheless the practice of filing an information in the Probate Court in cases originating before an examining magistrate has continued in force. The provisions of Section 13425-1 of the General Code apply to cases originating in such a manner.

That an information is to be filed in the Probate Court in cases in which the original examination was had before a justice of the peace or mayor, is borne out to a great extent by the provisions of Section 13425-2 of the General Code, which provide as follows:

"The Probate Court shall not quash an information filed by the prosecuting attorney because of a defect or error in the papers or proceedings of a justice of the peace or mayor before whom the original examination was held."

The language of this section indicates very clearly that an information is to be filed by the prosecuting attorney even though the proceedings originated before a justice of the peace or mayor. While Section 13425-1 of the General Code provides "except as otherwise provided by statute, the prosecuting attorney shall forthwith file an information," the words "except as otherwise provided" do not refer to cases wherein the prosecuting attorney elects to prosecute in the Probate Court, as provided in Section 13425-15 of the General Code, but refer to cases in which the statutes permit that an affidavit may be filed instead of an information.

In specific answer to your inquiry, I am of the opinion that where a prosecuting attorney elects to prosecute a case in the Probate Court, which has been returned to the Common Pleas Court by a justice of the peace or other officer, he must file an information by virtue of the provisions of Section 13425-1 of the General Code, except in cases where the statutes authorize the filing of an affidavit.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*