I am therefore of the opinion, in specific answer to your question, that when House Bill No. 108, passed at the regular session of the 90th General Assembly becomes effective, ninety days after such bill was filed in the office of the Secretary of State, the entry made by a probate judge providing for a discount of fees, under authority of section 10501-45, General Code, will be terminated and the probate judge shall charge the schedule of fees set forth in section 10501-42, General Code, as amended in House Bill No. 108 for the remainder of the year 1933.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1634.

MAYSVILLE BRIDGE—PORTION THEREOF, AND UPLAND CONNECTED THEREWITH LOCATED IN OHIO, TAXABLE AS REAL PROPERTY UNDER OHIO LAWS.

SYLLABUS:

That part of the bridge constructed by the Commonwealth of Kentucky across the Ohio River between Maysville, Kentucky, and Aberdeen, Ohio, and the upland connected therewith, which are located in Ohio, are taxable as real property under the laws of this state.

COLUMBUS, OHIO, September 27, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—At the request of the county auditor of Brown county, Ohio, you have submitted for my opinion the question as to whether that part of the Maysville bridge which is located in this state is subject to taxation. This bridge which is one extending across the Ohio River from Maysville, Kentucky, to Aberdeen, Brown County, Ohio, was constructed by the Commonwealth of Kentucky a year or more ago pursuant to the authority of an act of Congress; and, I assume, the question here presented relates to the taxation of that part of the bridge structure and the upland connected therewith which is located in the village of Aberdeen, Ohio.

With respect to this question, it may be noted that all real property in this state is subject to taxation except that which is expressly exempted by statutes enacted pursuant to constitutional provisions authorizing such exemption. As to this, Section 5328, General Code, provides that "all real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom." Section 5322, General Code, is material in the consideration of this question. This section provides as follows:

> "The terms 'real property' and 'land' as so used, include not only land itself, whether laid out in town lots or otherwise, with all things contained therein but also, unless otherwise specified, all buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging, or appertaining thereto."

That a bridge structure is to be considered as real property for the purposes of taxation is an established legal proposition. *The Sandusky Bay Co.* vs. *Fall, Treas.*, 41 O. App. 355; *State, ex rel. Delaware and Eaton Bridge Co.* vs. *Metz, Collector,* 21 N. J. Law 122; *Inhabitants of Kittery* vs. *Proprietors of Portsmouth Bridge Co.,* 78 Maine 93.

As above indicated, this proposition is somewhat elementary, and I assume that the question here presented arises wholly by reason of the fact that the bridge structure and lands connected therewith above referred to are owned by th Commonwealth of Kentucky, one of the sovereign states of the Union. As to this, it is pertinent to observe that in this state taxes are levied upon the corpus of real property, and not upon the titles by which the same may be held. *Village of St. Bernard* vs. *Kemper,* 60 O. S. 244. In this view the ownership of particular real property is not important except as such ownership is related to the question whether such property has been exempted from taxation by statutory provision. In this connection I am unable to perceive how the application of the principles above noted is affected by the fact that this property is owned by one of the other states of the Union. As to this, it is a principle likewise well established that when a state purchases or otherwise procures land in another state, it holds such lands as a subject and not as a sovereign. *Dodge* vs. *Briggs,* 27 Fed. 160; *Burbank* vs. *Fay,* 65 N. Y. 57. In the case last above cited, it was held that "where one State owns lands within the limits of another State, it occupies simply the position of a private proprietor, and its estate is subject to all the incidents of ordinary ownership." More immediately touching the question at hand, the Supreme Court of Kansas in the case of *State, ex rel. Taggart* vs. *Holcomb,* 85 Kans. 178, 50 L. R. A. (N. S.) 243, held:

> "When a state, or any of its municipalities, goes into another state and there acquires and uses property, it does not carry with it any of the attributes of sovereignty nor exercise of governmental power. It has no other or greater right there than any other private owner of property, and its property is subject to the taxation which the laws of that state impose."

In the case of *Susquehanna Canal Co.* vs. *Commonwealth of Pennsylvania,* 72 Pa. St. 72, which involved the power and authority of the Commonwealth of Pennsylvania to tax certain moneys and credits in that state due and owing to the State of Maryland as the property of said state, the court in its opinion broadly stated that "We cannot doubt the power of our legislature to tax the property of another state situated within Pennsylvania." And as a principle more immediately touching the question at hand, the court in its opinion in this case further said: "If the State of Maryland owned land in Pennsylvania, the power of the latter state to tax it could not be questioned; in fact it would be taxable by our general laws."

I am inclined to the view therefore that upon principle and upon authority as well, the operation of the laws of this state providing for the taxation of real property is not affected by the fact that the property here in question is owned by the state of Kentucky.

It is recognized, of course, that this bridge is used for the purposes of interstate commerce. This fact, however, does not affect the power and authority of the State of Ohio or of its political subdivisions to tax as property that part of the bridge structure which is located in this state and in such political subdivisions. In the case of *Henderson Bridge Co.* vs. *Henderson City,* 173 U. S. 592,

it was held that the City of Henderson, Ky., had authority to tax so much of the bridge property of the Henderson Bridge Company as was permanently located between low water mark on the Kentucky shore and low water mark on the Indiana shore of the Ohio River, across which the bridge in question was constructed. Touching the immediate question, the court in its opinion among other things said:

> "Nor does the fact that the bridge between low-water mark on either side of the river is used by the corporation controlling it for purposes of interstate commerce exempt it from taxation by the State within whose limits it is permanently located. The State cannot by its laws impose direct burdens upon the conduct of interstate commerce carried on over the bridge. But, as the decisions of this court show, it may subject to taxation property permanently located within its territorial limits and employed in such commerce by individuals and by private corporations. In *Covington etc. Bridge Co.* vs. *Kentucky,* 154 U. S. 204, 212, it was said: 'As matter of fact, the building of bridges over waters dividing two States is now usually done by Congressional sanction. Under this power the States may also tax the instruments of interstate commerce as it taxes other similar property, provided such tax is not laid upon the commerce itself.'"

By way of specific answer to the question submitted in your communication, I am of the opinion therefore that that part of the Maysville bridge and lands connected therewith owned by the Commonwealth of Kentucky in the village of Aberdeen, Brown County, Ohio, is taxable as real property in the name of said commonwealth.

In reaching this conclusion, I am not unmindful of the difficulties that may arise in the collection of taxes on this property in the event that Kentucky does not pay the same upon presentation of tax bills therefor. For, assuming as correct the somewhat doubtful proposition that taxes upon lands are personal debts of the taxpayer in whose name the lands are listed when the taxes accrue *(Creps* vs. *Baird,* 3 O. S. 278), it may be objected in an action by the county treasurer or by any of the political subdivisions entitled to the proceeds of taxes levied on this property that aside from the fact that the state of Kentucky could not be sued in such an action without its consent, the courts in Kentucky, state or federal, would not entertain an action of this kind. As to this, it is a well established principle that the courts of one of the states will not entertain an action to collect taxes levied and assessed under the laws of another state. *Moore, Treas.* vs. *Mitchell,* 30 Fed. (2d) 600, 281 U. S. 18; *Colorado* vs. *Harbeck,* 232 N. Y. 71. Again, since the recent amendment of Section 2667, General Code, the only statutory proceeding for the enforcement of tax liens on real property is by foreclosure on delinquent tax title certificate in the manner provided by Sections 5713, 5718 and 5719, General Code. This action is one in the name of the county treasurer and it is likewise apprehended that an action of this kind could not be maintained against the state of Kentucky to enforce the lien of delinquent taxes on this property. In this connection, it is to be noted, however, that under the laws of this state the lien on real property for taxes thereon is a lien held by the state of Ohio itself. Section 5671, General Code. *Wasteney* vs. *Schott, Treas.* 58 O. S. 410, 416. In this view it may well be that the State of Ohio upon general equitable principles could by appropriate action, enforce its lien for taxes on this property against the Commonwealth of Kentucky. I

do not deem it necessary to extend the discussion on this point as I assume that Kentucky as one of the sovereign states of the Union will pay without question whatever taxes are legally assessed on this property.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1635.

ATHLETIC EXHIBITIONS—BOXING AND/OR WRESTLING COMMISSIONS, CREATION, AUTHORITY AND SUPERVISION BY MUNICIPALITY — LICENSE FOR EXHIBITION — REVENUE DERIVED THEREFROM.

SYLLABUS:

The law-making body of either a charter or non-charter municipality may by ordinance create boxing and/or wrestling commissions with power to regulate, supervise and govern the holding of such athletic exhibitions. Council may confer upon a boxing and/or wrestling commission the power to issue permits or licenses for the holding of boxing or wrestling exhibitions and may also provide that a fee based on a percentage of the gross receipts be charged for the issuance of such permits or licenses. However, before a boxing exhibition can be held in a municipality so as to be subject to the regulation and supervision of a boxing commission created by council, written permission to hold a boxing exhibition first must be obtained from the mayor of the municipality as provided by section 12803.

All moneys collected in the exercise of its powers by a boxing and/or wrestling commission created by council of a charter municipality must be deposited as provided by either charter, ordinance or statute. A charter city, in the expenditure of money collected by a boxing and/or wrestling commission, is controlled and governed by the provisions of sections 5625-29 *to* 5625-33, *inclusive, and a charter municipality which has adopted any one of the plans of government described in sections* 3515-1 *to* 3515-44, *inclusive, is in addition to sections* 5625-29 *to* 5625-33, *inclusive, also subject to the provisions contained in sections* 3515-46, 3515-58 *and* 3515-63. *Moneys collected by a boxing and/or wrestling commission of a non-charter municipality must be paid to the treasurer of the municipality and can be expended only on appropriation of council. Council of a non-charter municipality by ordinance cannot provide that moneys collected by a boxing and/or wrestling commission shall be deposited in the name of the commission to be expended by that body as it may deem proper and necessary.*

Section 12803 *does not empower a mayor of a municipality to create or appoint a boxing commission or advisory board for the purpose of approving applications for permission to hold boxing exhibitions within a municipality or for the purpose of supervising and regulating such events after permission to hold the same has been granted by the mayor. Neither does section* 12803 *authorize the mayor of a municipality to charge a fee for granting permission to hold a boxing exhibition within a municipality.*

The power to appoint a boxing and/or wrestling commission may be conferred upon a mayor of either a charter or non-charter municipality by charter or ordinance.