however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto."

This section, while general in its terms as to the use of which road funds may be put, does not contain authority for the transfer of the administrative functions of one board to another.

You are therefore advised in specific answer to your inquiry, that where county commissioners have granted a petition for road improvement under sections 6906 et seq. G. C. they are not authorized either by section 6948-1 or elsewhere in the statutes, to enter into an arrangement with township trustees for the latter to do the improvement work by force account.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1559.

INHERITANCE TAX LAW—WHERE THERE IS A DEVISE TO A. FOR LIFE AND AT HIS DEATH TO HEIRS OF HIS BODY SECTION 5343 G. C. REQUIRES THAT CONTINGENT REMAINDERS BE VALUED ON HYPOTHESIS THAT IT WILL BECOME VESTED IN SINGLE HEIR OF H.'S BODY AS REMOTELY RELATED AS POSSIBLE TO TESTATOR.

Where there is a devise to A for life and at his death to the heirs of his body, section 5343 G. C. requires that the contingent remainder be valued on the hypothesis that it will become vested in a single heir of H's body as remotely related as possible to the testator.

COLUMBUS, OHIO, September 10, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have recently requested the opinion of this department upon the following question:

"L in his will makes the following provision:

'I give, devise and bequeath to my son, H, during the term of his natural life my home farm containing 130 acres, and at his death I give, devise and bequeath the same to the heirs of his body.'

On the death of L how shall inheritance tax be assessed against the remainder devised to the heirs of the body of H?"

The remainder inquired about is clearly contingent. The maxim of law and common sense is expressed in a Latin phrase, translated as follows:

"No one can be an heir of a living person."

Therefore, though H have children, yet unless such children or their issue survive H he will leave no "heirs of his body" and there will be no one to take the remainder under the will.

Lisle vs. Miller, 21 O. C. C. (N. S.) 317;
McCrea vs. McCrea, 22 O. C. C. (N. S.) 433.

In opinion No. 1323 given to the commission under date of June 8, 1920, the cases in Ohio were reviewed and it was determined that where a testator fails to make complete provision for the devolution of his property, so that upon failure of issue or other like contingency intestacy will arise, and the issue to whom the estate is to go are not in being at the testator's death, the effect is to vest estates immediately in the heirs at law of the testator, subject to be divested by the birth of issue. The reason underlying this holding is that in Ohio there is no possibility of the fee simple remaining in abeyance, but it must vest somewhere. The case now under consideration is a stronger one for the application of this principle than the one involved in that opinion; for here the mere birth of issue to H will not give rise to a vested remainder; there must at the death of H be heirs of his body surviving him in order that the will may operate.

But even if this principle is not applicable, section 5343 of the General Code produces a similar result so far as inheritance taxation is concerned. It is at least clear that a by-no-means remote contingency would be the vesting of these contingent remainders in a single remote heir at law of the testator.

In the one case the remainders would be regarded as vested in the heirs at law of the testator, of whom of course H would be one and of whom, too, there might be others. These vested remainders, subject to be divested by the survival of heirs of the body of H, would be immediately taxable but there would be no occasion for calling into play the application of section 5343.

In the other case, section 5343 would be called into play, but in determining the highest possible rate we would imagine, not the failure of surviving heirs of the body of H, but the devolution of the estate to one heir of the body of H; for this would conceivably produce a higher rate of taxation than to assume an intestacy.

Choice between the two methods of approach to the solution of the question is dictated, it is believed, by section 5343 of the General Code. That section is so framed as to operate as well upon estates vested subject to be divested as upon any other kind of estates dependent upon contingencies. Its language is:

> "When, upon any succession, the rights * * * of the successors are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, * * *."

In the instant case the right of an heir of the body of H depends for its *creation* upon the contingency that there will be such heir of the body of H; while the right of an heir at law of L, though vested, may be defeated by the same contingency.

It would seem therefore that the proper immediate taxation under section 5343 in the case submitted by you is to assume the birth and survival of an heir of the body of H as remotely related as possible to L, and to assume further that the entire remainder will become vested in this single person. In the event, then, of the failure of heirs of the body of H a proper adjustment can be made in the manner pointed out in previous opinions of this department.

Respectfully,
JOHN G. PRICE,
Attorney-General.