4250.

DOMESTIC INSURANCE COMPANY—TAX AND TAXATION—HOW SUCH COMPANY TAXED UNDER NEW INTANGIBLE TAX LAW—VARIOUS RELATED QUESTIONS DISCUSSED.

SYLLABUS:

1. *In computing the capital and surplus of a domestic insurance company with capital, or the surplus of such a company without capital, for the purpose of taxation under the provisions of section* 5414-8, *et seq., of the General Code, so much of the assets as is invested in bonds or other securities of the United States, securities issued by dependencies of the United States, bonds issued by federal land banks and joint stock land banks, all bonds outstanding on the first day of January,* 1913, *of the state of Ohio or of any city, village, county or township in said state, or which have been issued in behalf of the public schools of Ohio, which bonds were outstanding on the first day of January,* 1913, *and all bonds of this state issued for the world war compensation fund must be deducted.*

2. *The amount of reinsurance carried and reported by a domestic insurance company required to maintain and report its reserve can not be added to the amount of insurance reserve reported by such company for the purpose of increasing the liabilities of the company for the purpose of computing the capital and surplus or surplus thereof.*

3. *For the purpose of computing the capital and surplus or surplus of a domestic insurance company for the purpose of taxation, no deduction may be made for investments in shares of Ohio bank or building and loan deposits.*

4. *Contingency reserve funds, set aside by domestic insurance companies for catastrophes or to meet fluctuations of investment values, can not be deducted in ascertaining the capital and surplus or surplus for the purposes of taxation.*

5. *So-called non-admitted assets, consisting of securities in which an insurance company is unauthorized to invest, constitute a part of the assets of an insurance company in the computation, for the purpose of taxation, of the capital and surplus or surplus of such company.*

6. *Real estate of an insurance company must be included as a part of the assets thereof in computing the capital and surplus or surplus for the purpose of taxation.*

COLUMBUS, OHIO, April 14, 1932.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you in which you request my opinion on a number of questions relating to the taxation of domestic insurance companies as defined by the provisions of section 5414-8, General Code, as enacted in and by Amended Senate Bill No. 323, passed by the 89th General Assembly. The questions presented in your communication and to which this opinion is addressed are as follows:

> "1. Assuming the basis of tax is the net worth of the Insurance Company after deducting actual liabilities, and also the reserved for unearned premium liabilities which is set aside for contingent claims growing out of policies, and for the payment of dividends, is it permissible

to deduct non-taxable securities owned by such Insurance Company from the taxable amount of capital and net surplus so computed?

2. Do the below quoted provisions of Section 5414-9 require the reserve and unearned premium liabilities to be computed as provided by law *without deduction for reinsurance in force, reinsurance recoverable, or similar items?*

'Including in such liabilities (1) the reserve and unearned premium liabilities computed as provided by law, *the same being the amount of debts of an Insurance Company by reason of its outstanding policies in gross.*'

3. Fraternal Societies are not required by law to set up any insurance reserve, nor does the annual statement blank provide for it, the result being that a surplus is shown which is misleading. Would these Societies be allowed a credit should this reserve be set up?

4. Is the Total Book Value of Real Estate deductible from the taxable amount of Capital and Surplus?

5. Are non-taxable securities, such as Government Bonds, Federal and Joint Stock Land Banks, Ohio Municipals issued prior to 1913, and Ohio War Compensation Bonds, deductible from the taxable amount of Capital and Surplus?

6. Would Securities, issued by dependencies of the United States Government, such as the insular possessions of Philippine Islands, be inincluded in the above non-taxable classifications?

7. Are Ohio Bank Stocks, owned by Domestic Insurance Companies, which are permitted under Ohio Laws to so invest their funds, deductible from the taxable amount of Capital and Surplus?

8. Are deposits in Building & Loan Companies and Banks deductible from the taxable amount of Capital and Surplus?

9. Are Bonds issued by Foreign Governments, which form of investments are not permitted under the Laws of Ohio, and call for deduction under Assets not Admitted, although by this exaction the Surplus of the Company would necessarily be reduced in like amounts, subject to tax?

10. Are Contingency Reserve Funds, set aside for catastrophes or for fluctuation of investment values, which have been permitted heretofore and known not to be for actual Liabilities, but for something that might occur in the future, subject to tax?

11. Under authority of Section 5414-12, General Code of Ohio, the Superintendent of Insurance is required to certify the approved Annual Statement of a Domestic Insurance Company, should the Superintendent certify a given Surplus composed of items of authorized and other items of unauthorized investments, both of which have a taxable valuation?"

As indicated by some of the questions presented in your communication, the tax on domestic insurance companies provided for by the new personal tax law is not a direct tax upon the property of such insurance companies but is a tax upon the capital and surplus of such companies to be determined from reports filed with the superintendent of insurance.

Section 5328-1, General Code, which provides generally for the taxation of intangible personal property and for the entry of the same upon the classified tax

list and duplicate of the county, makes specific provision for the taxation of the capital and surplus of domestic insurance companies.

Sections 5414-9 and 5414-10, General Code, are pertinent in the consideration of the questions presented in your communication. These sections provide as follows:

Section 5414-9.

"The capital and surplus of a domestic insurance company having capital divided into shares and the surplus of a domestic insurance company not having capital divided into shares shall be listed and assessed in the name of and against the company in the county where its actual principal place of business is located at the value thereof as reported by the company in its annual statement for the preceding year filed with and approved by the superintendent of insurance setting forth the admitted assets and the liabilities of the company, including in such liabilities (1) the reserve and unearned premium liabilities computed as provided by law, the same being the amount of debts of an insurance company by reason of its outstanding policies in gross, (2) amounts set apart for the payment of dividends to policy holders, and all actual liabilities set forth in the annual statement."

Section 5414-10.

"The real estate of a domestic insurance company shall be taxed in the place where it is located, in like manner as the real estate of other persons is taxed; but the tax provided for in this chapter shall be in lieu of all other taxes on the other property and assets of such domestic insurance company and of all other taxes, charges and excises on or against such domestic insurance companies, and of all other taxes on or against the stockholders, members or policy-holders of such company by reason of their stock or other interest in such insurance company, excepting with respect to annuities, or with respect to the right to receive the proceeds of a policy payable after the maturity thereof in installments or left with the company at interest; and this chapter shall not be construed as assessing any tax on or against any foreign insurance company or to affect any tax of any foreign insurance company under any laws of this state."

By section 5414-12, General Code, it is provided that on or before the first Monday of May of each year the superintendent of insurance shall certify to the Tax Commission of Ohio the amount of the capital and surplus of each domestic insurance company having capital divided into shares and the surplus of each domestic insurance company not having capital divided into shares, as the same shall be reported in the annual statement of the company and approved by the superintendent of insurance, and that he shall further certify to the tax commission the name of the county wherein the actual principal place of business of such insurance company is located. Section 5414-13, General Code, provides that on or before the first Monday of June in each year the tax commission of Ohio shall certify to each county auditor the assessment of the capital and surplus or of the surplus, as the case may be, of each domestic insurance company located in his county, such certificate to show the amount of capital and surplus or of surplus, as the case may be, so certified by the superintendent of insurance. This section further provides that the county auditor shall place the amount so certified on the classified tax list and duplicate in the county in the respective names of the

insurance companies against which such taxes shall be assessed, and that such taxes, assessed at the rate provided for in section 5638, General Code, shall be paid by the insurance company at the time and in the manner other taxes on the classified list are required to be paid.

Although, as above noted, the tax on domestic insurance companies is not one laid directly on the property of such companies but is a tax on the capital and surplus of such companies having capital divided into shares, and upon the surplus of such companies that do not have capital divided into shares, such tax is clearly a property tax as distinguished from a franchise or privilege tax or other form of excise taxes. In this view, it is to be noted with respect to the first question presented in your communication and other related questions therein stated, that the capital and surplus or the surplus, as the case may be, of a domestic insurance company can not be taxed in so far as the same is invested in property which the legislature could not legally tax. *New York* vs. *Tax etc., Commissioners,* 2 Black 260, 17 U. S. (L. Ed.) 451; *Bank Tax Case,* 2 Wall. 200, 17 U. S. (L. Ed.) 793. In Cooley on Taxation (Fourth Edition), Vol. 2, section 888, it is said:

> "If a tax on capital or capital stock is deemed to be a property tax rather than an excise tax, then of course it cannot be imposed upon such stock so far as represented by property which the state could not lawfully tax, since what is forbidden directly cannot be accomplished indirectly; and such property cannot be indirectly reached by a tax on its capital without deducting the value of the nontaxable property. In other words, in valuing the capital stock, there must be a deduction of the amount represented by such nontaxable property. This includes not only property expressly exempted by the constitution, statute or charter, but also property impliedly exempt from state taxation because a federal agency,—such as United States bonds or patents,—or because permanently located outside the state so as not to be subject to the jurisdiction of the state to tax."

Giving effect to the rule above stated to the specific questions presented in your communication, it must be held that the legislature in the enactment of a property tax of this kind had no constitutional power and authority to levy a tax upon that part of the capital and surplus of a domestic insurance company which is invested in bonds or other securities of the United States. See also *State of Missouri, ex rel. Missouri Insurance Company,* vs. *Gehner,* 281 U. S. 313; *Northwestern Mutual Life Insurance Company* vs. *Wisconsin,* 275 U. S. 136.

In this connection, it is noted that one of the questions presented in your communication is whether securities issued by dependencies of the United States government, such as the Philippine Islands, are entitled to exemption from the tax here in question. In this connection, it is to be observed that the Philippine Islands as a territory of the United States is in a sense an agency of the federal government in the performance of governmental functions, and on this consideration bonds issued by the Philippine Islands are exempt from state taxation. *Farmers' and Mechanics Savings Bank of Minneapolis* vs. *State of Minnesota,* 232 U. S. 516. Moreover, it is noted that under the act of congress under date of February 6, 1905 (United States Statute at Large, Public Laws, Vol. 33, page 689), all bonds issued by the government of the Philippine Islands, or by its authority, are exempt from taxation by the United States, or by any state, or by any county, municipality or other political subdivision of any state or territory of the United States. It follows therefore that investments of domestic insurance companies in bonds of the

Philippine Islands or other territorial possessions of the United States are to be excluded in determining the capital and surplus of such insurance companies for purposes of taxation under the statutory provisions above quoted.

One of the questions is whether investments made by a domestic insurance company in bonds issued by federal land banks and joint stock land banks are to be deducted in computing the capital and surplus of such domestic insurance company. Section 26 of the Farm Loan Act of July 17, 1916 (U. S. C., title 12, section 931), provides that farm loan bonds issued by federal land banks or joint stock land banks shall, as instrumentalities of the United States government, be exempt from federal, state, municipal and local taxation. It follows from this, that the state has no authority to tax these bonds, and that investments made by an insurance company therein should be deducted in computing the capital and surplus of such company.

With respect to the other securities referred to in your communication, particularly in question No. 3 therein submitted, it is noted that by the self-executing provisions of section 2 of article XII of the state constitution all bonds outstanding on the first day of January, 1913, of the state of Ohio or of any city, village, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the first day of January, 1913, and all bonds issued for the world war compensation fund, shall be exempt from taxation. Inasmuch as the tax here in question is a property tax, the securities above referred to exempted by section 2 of article XII of the state constitution should, to the extent of the money invested therein, be excluded in determining the capital and surplus of the insurance company for the purpose of assessing this tax.

With respect to the second question stated in your communication, it is noted that section 5414-9, General Code, above quoted, provides that the reserve of an insurance company, computed as provided by law, shall be excluded as a liability of the insurance company in determining the capital and surplus of the company for tax purposes. As I interpret your question, it is whether the amount of reinsurance in force or recoverable effected by said company on risks insured by it can be added to the amount of reserve proper carried and reported by the company, thereby increasing the liabilities of the company in the computation of the capital and surplus or surplus, as the case may be, of such company. Section 9362, General Code, applicable to life insurance companies, provides that the directors, managers or officers of any company organized under the laws of this state shall not, directly or indirectly, make or pay a dividend, or pay any interest, bonus, or other allowances in lieu thereof, to its stockholders, except from surplus funds after setting aside an amount equal to the reserve on all its outstanding risks and policies, calculated by what is known as the American Experience Table, with interest at four per cent per annum, or by such higher standard or standards as the company may have adopted, and the unearned premiums on all personal accident and sickness insurance in force effected by such company. By section 9363, General Code, it is provided that such company in its annual report to the superintendent of insurance shall include therein a statement of the amount of reserve on all policies in force, calculated by the American Experience Table of Mortality, with interest at four per cent per annum, or by such other higher standard or standards as the company may have adopted, together with a statement of the unearned premiums on all personal accident and sickness insurance effected by the company and then in force. In the case of *Hess, Auditor,* vs. *Insurance Company,* 116 O. S. 416, 419, the court defined the reserve of an insurance company here referred to as follows:

"It is a fund created as a result of the method of fixing and determining the policy premiums, and is the accumulation of premiums resulting from the collection of a higher rate than is necessary to meet actual losses occurring in the earlier policy years when costs are relatively low, in order to continue a level or equal premium and still create and maintain a fund sufficient to meet losses, which are sure to occur in later years of higher mortality."

The court in its opinion in this case further said:

"It is obvious that under the level premium plan all payments during the earlier years must be held for the purpose of making up the deficiencies of later years. The premiums which thus come to the company must be placed in a fund to the credit of the policy holders until needed, as of course it will be a later time. The fund thus created is a trust fund and must be held and treated as such, and not otherwise used. This is a statutory requirement in this state as it is in practically all of the states."

I assume from your question, as is known to be the fact, that some insurance companies, required to maintain and report the reserve provided for in the sections of the General Code above quoted, make a reduction in the reserve carried by them to the extent of the amount of reinsurance effected by them on their outstanding policies, with the result that a less amount of reserve is carried in the reports of such companies to the state superintendent of insurance than would be the case if such companies had not reinsured their policy risks or parts of the same.

Whatever may be said with respect to the question of the legal authority of such insurance companies to thus reduce the amount of reserve carried and reported by them, it is certain that reinsurance is not the insurance reserve contemplated and provided for by sections 9362 and 9363, General Code, nor is it the reserve referred to in section 5414-9, General Code, as an item to be included in the liabilities of the company in the computation of the capital and surplus or surplus of such company. I am accordingly of the opinion that the amount of reinsurance carried and reported by a domestic insurance company required to maintain and report its insurance reserve, can not be added to the amount of insurance reserve reported by such company for the purpose of increasing the liabilities of the company for the purpose of computing the capital and surplus or surplus of such company.

With respect to your third question, it may be observed that a fraternal benefit society which does not maintain a reserve for any purpose and does not, of course, report the same to the superintendent of insurance in any manner, is not entitled to set up as a liability an amount of money which would be equal to the required reserve if such reserve were required and set up.

Under subsection 2 of section 9466, General Code, a fraternal benefit society may grant to its members extended and paid up protection if it shows by its annual valuation reported to the superintendent of insurance under section 9484, General Code, that it is accumulating and maintaining the reserve necessary for such extended and paid up protection policies. Inasmuch as the question whether a particular fraternal benefit society is issuing extended or paid up insurance and is, therefore, authorized and required to maintain the reserve mentioned in subsection 2 of section 9466, General Code, can not, perhaps, be determined until the

valuation report of such society is filed with the superintendent of insurance, the consideration of this question will be deferred until the valuation reports of all of such societies have been filed.

You further inquire as to whether moneys invested by a domestic insurance company in shares of stock issued by an Ohio bank are to be deducted in ascertaining the capital and surplus of such insurance company. Shares of stock in an Ohio bank are not, as separate items of intangible property, taxable in the hands of the individual owner and holder thereof, for the reason that under the provisions of section 5407, et seq., General Code, such shares are taxed at the source and, under the provisions of section 5323, General Code, are excepted from the definition of investments such as are taxable under the provisions of section 5328-1, General Code. However, such shares of stock when owned by a domestic insurance company are nevertheless property and assets of the insurance company and, in the absence of statutory provision authorizing the deduction of the value of such shares, they constitute a part of the capital and surplus of such insurance company. There is no statutory provision of this kind and you are accordingly advised that moneys of a domestic insurance company invested in shares of stock in an Ohio bank may not be deducted in ascertaining the capital and surplus of such insurance company. With respect to the eighth question presented in your communication, it is to be observed that although deposits made in building and loan associations and in banks in this state are normally taxed at the source and, for this reason, are not separately taxable to the depositor, such deposits when made by a domestic insurance company are, by section 5406 of the General Code, not taxed at the source and, hence, are not taxed except as they constitute a part of the property and assets of the company. Accordingly, they are to be included in ascertaining the capital and surplus of the company.

You further inquire as to whether contingency reserve funds set aside by domestic insurance companies for catastrophes or to meet fluctuations of investment values are to be included in ascertaining the capital and surplus of such companies. With respect to this question, it is to be noted that under the provisions of section 5414-9, General Code, the only items of money or other assets of the insurance company that are to be included as liabilities of the company in ascertaining the net capital and surplus of the company subject to the tax provided for are actual liabilities and (1) reserve and unearned premium liabilities and (2) amounts set apart for the payment of dividends to policy holders. In the absence of express statutory authority, contingent liabilities are not deductible under statutes providing for a tax upon the capital or capital stock of insurance companies. *People, ex rel., National Surety Company,* vs. *Pitner,* 166 N. Y. 129; *Trenton* vs. *Standard Fire Insurance Company,* 77 N. J. L. 757; *City of Yale* vs. *Michigan Farmers Mutual Fire Insurance Company,* 179 Mich. 254. I am of the opinion, therefore, that the contingency reserve funds referred to in this question are to be included as a part of the capital and surplus of insurance companies for the purpose of this tax.

With respect to your ninth question, it is to be observed that bonds issued by foreign governments are not exempt from taxation in the hands of resident owners in this state, and that although such bonds are not a form of authorized investment of the funds of an insurance company organized under the laws of this state, such bonds when owned and held by the insurance company are a part of its property and assets. Being a part of the property and assets of the insurance company, such bonds are to be included as a part of the capital and surplus or surplus, as the case may be, of the insurance company, unless some statutory

provision either expressly or impliedly requires their deduction. I assume from your question that investments made by insurance companies in bonds issued by foreign governments are listed as non-admitted assets in the reports which insurance companies are required to make to the superintendent of insurance under the provisions of section 9363 and 9590, General Code. This question, as well as the eleventh question above stated, doubtless arises from the provision of section 5414-9, General Code, that the capital and surplus of a domestic insurance company having capital divided into shares and the surplus of a domestic insurance company not having capital divided into shares shall be listed and assessed against the company at the value thereof as reported by the company in its annual statement for the preceding year filed with and *approved* by the superintendent of insurance setting forth the *admitted* assets and the liabilities of the company. As above indicated, bonds issued by foreign governments and other so-called non-admitted assets in which an insurance company has invested its funds are as much assets of the company for tax purposes as is any other non-exempt property owned by it; and the same will have to be computed as a part of the capital and surplus or surplus, as the case may be, of the insurance company unless some valid statute authorizes the deduction of such non-admitted assets. There is no statutory provision which in terms authorizes or directs such deduction to be made. To construe the provisions of section 5414-9, General Code, so as to authorize the superintendent of insurance to include only *admitted* assets so-called in his computation of the capital and surplus or surplus of insurance companies would have the effect of exempting from taxation a large amount of property owned by insurance companies without any warrant therefor, and with respect to financial institutions and other corporations taxed on a stock or capital basis would be an unreasonable classification of property which would put a premium upon the violation of law by insurance companies in the investment of their funds. I conclude, therefore, by way of specific answer to the ninth and eleventh questions above stated, that bonds and other securities of a domestic insurance company which are not otherwise exempt from taxation should be included in the computation of the capital and surplus of such insurance company although they may not be securities in which the insurance company could lawfully invest its funds, and are for this reason reported by it as non-admitted assets.

In your fourth question above stated, you request my opinion as to whether the value of real estate owned by a domestic insurance company is to be deducted in ascertaining the capital and surplus of the company. This question is one of some difficulty. It will be noted from the provisions of section 5414-10, General Code, above quoted, that the real estate of a domestic insurance company is to be taxed in the place where it is located, in like manner as the real estate of other persons is taxed, and that the tax on the capital and the surplus of the insurance company provided for is to be in lieu of *all other* taxes on the *other* property and assets of such insurance company. Although, as above noted, the real estate of a domestic insurance company is to be separately taxed as such in the name of the insurance company, such real estate obviously constitutes a part of the total property and assets of the company; and unless this statute is construed so as to require a deduction of the same, such real esatte would be a part of the capital and surplus or surplus, as the case may be, of the insurance company upon which the tax here provided for is assessed. This would, however, present the case of a double taxation of this property for it seems quite clear that where capital and surplus of a corporation is taxed as such and the amount or value of such capital and surplus is represented by real estate which

is otherwise taxed, there would be double taxation of such real estate to the extent of the value thereof, unless the value of such real estate is deducted in determining the capital and surplus to be taxed. In Cooley on Taxation (Fourth Edition), Vol. 1, section 244, it is said:

> "If the capital or capital stock, and also the property in which such capital is invested, be both taxed, there is obnoxious double taxation."

It is also stated in this authority that "where real estate is taxed separately, a corporation can not be assessed on the part of its capital stock invested in real estate." The following cases support this rule:

Hemstead County vs. *Hemstead County Bank,* 73 Ark. 515;
McCornick & Co. vs. *Bassett,* 49 Ut. 444;
Lewiston Water & Power Co. vs. *Asotin County,* 24 Wash. 371;
East Livermore vs. *Banking Company,* 103 Me. 418.

Touching this question, the Supreme Court of the United States in its opinion in the case of *Tennessee* vs. *Whitworth,* 117 U. S. 129, said:

> "And it is no doubt within the power of a state, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall, as far as practicable, be laid equally on all; and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect, but, if they do, it is because the Legislature has unmistakably so enacted. All presumptions are against such an imposition."

No question under the Constitution of the United States is presented by the double taxation of property by a state. *Fort Smith Lumber Company* vs. *State of Arkansas,* 251 U. S. 532; *Baker, Receiver,* vs. *Druesedow,* 263 U. S. 137. The further question involved, therefore, with respect to this matter, is whether the statute here under consideration manifests the intention of the legislaure to tax the capital and surplus of insurance companies without deduction of the value of real estate owned by such companies and which is otherwise separately assessed, and whether such construction violates any provision in the constitution of this state.

In the consideration of the question of the intention of the legislature in the enactment of this statute, its intention to include real estate of a domestic insurance company which is otherwise taxed in the computation of the capital and surplus of the company is manifested by the fact that no provision is made for the deduction of either the assessed or book value of such real estate from the capital and surplus of the company as otherwise determined. The above quoted provisions of section 5414-10, General Code, with respect to the taxation of the real estate of domestic insurance companies and with respect to the exclusive operation of the capital and surplus tax as to other taxes on the property and assets of the company, are identical with those with respect to the real estate and other property of financial institutions and dealers in intangibles which are taxed on a stock and capital basis respectively. Under section 5412, General Code, relating to the taxation of the shares of stock in banks prior to the amendment of said section in the enactment of Amended Senate Bill 323, express provision was made for the deduction of the value of real estate included in the statement of the re-

sources of the bank from the total value of the shares of the bank as computed by the county auditor on the aggregate capital and surplus of the bank. In the amendment of section 5412, General Code, in the act above referred to, this provision for the deduction of the valuation of real estate of banks and other financial institutions separately taxed as such was repealed; and, in my opinion, the legislature in the enactment of the statutory provisions now found in Amended Senate Bill 323 relating to the taxation of financial institutions, dealers in intangibles and domestic insurance companies, has clearly manifested an intention to include the real estate of such companies as a part of their total assets in determining the value or amount of the stock, capital or capital and surplus to be taxed.

Inasmuch as the provisions of section 2 of article XII of the constitution still require a real property to be taxed by uniform rule, it is obvious that this construction of the statutory provisions above noted presents a serious constitutional question. However, it is no part of your duty or of mine to consider and decide questions of this kind; and as an administrative officer it will be your duty to compute the capital and surplus of domestic insurance companies by including therein the value of real estate owned by such companies even though such real estate is separately taxed as such.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4251.

CIVIL SERVICE COMMISSION—ESTABLISHING A DISTRICT COTERMINOUS WITH BOUNDARIES OF A COUNTY—COUNTY COMMISSIONERS MAY NOT PAY COMPENSATION OF PERSON IN CHARGE.

SYLLABUS:

Where the state civil service commission establishes a district, the boundaries of which are coterminous with the boundaries of a county, and places an assistant in charge of such district, as provided by section 486-20, *General Code, the board of commissioners of said county has no authority to pay the compensation of such assistant or any part of the expenses of such office, but the only way in which the cost of such work can be paid by the county commissioners is where the local civil service commission of the largest municipality in such county is designated by the state commission, as its agent, for the purpose of carrying out the provisions of the civil service act, as provided by section* 486-5, *General Code.*

COLUMBUS, OHIO, April 15, 1932.

The State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

> "Recently upon the request of the Hamilton County Commissioners, this Commission, acting under the provisions of Section 486-20, G. C., agreed to fix Hamilton County as a civil service district, and to place in charge of such district an assistant to the State Civil Service Commis-