

the first place, it is possible to conceive of such a transaction being entered into otherwise than in good faith, though if all the statutory requirements are met it does not seem possible that such a conclusion could be successfully established. Therefore, the importance of any such consideration is very slight. In the second place, however, what happens on withdrawal may be looked to to determine the exact nature of the transaction. If in point of fact a particular person, who appears on the surface to be a holder of "running stock", when he withdraws all or a part of his so-called stock deposits receives interest only, or his principal without interest, and is neither credited with any dividends declared nor charged with any losses incurred, this fact would be conclusive to show that the real transaction was a money deposit and not a stock deposit, even though the outward form of a stock deposit may have been used by the parties. This is clear from the very nature of stock itself, and from the express provisions of section 9651 of the General Code, above quoted. If, therefore, the taxing authorities have proof that any building and loan association is paying interest as "interest" upon deposits having the outward form of stock deposits, and is permitting withdrawals to be made on that basis, then such taxing authorities would be justified in requiring the so-called stock depositors of such building and loan association to list their deposits as moneys, if such deposits were permitted to be withdrawn on demand.

The opinion of this department is, therefore, that the mere fact that stock deposits are permitted to be withdrawn on demand is not of itself sufficient to require a stock depositor in a building and loan association to list his interest as "moneys" instead of as "credits" under section 9675 of the General Code; but if the actual course of business dealings on the part of the association in relation to such depositor is that interest is allowed as "interest" on such deposits, and withdrawals are permitted on the basis of principal and interest, without regard to actual dividends declared or losses sustained, then such deposits so withdrawable on demand should be listed as "moneys", even though an outward form of stock deposits may have been given to them.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2095.

STATE BOARD OF EMBALMING EXAMINERS—CONSISTS OF THREE MEMBERS.

The state board of embalming examiners, under laws now in force, consists of three members, and the governor is without authority to appoint two additional members to take the places formerly occupied by the two ex-officio advisory members. 1917 Opinion Attorney-General, Vol. II, page 1808, approved and followed.

COLUMBUS, OHIO, May 24, 1921.

HON. HARRY L. DAVIS, Governor of Ohio, Columbus, Ohio.

DEAR GOVERNOR:—Your letter of recent date relative to the number of members constituting the state board of embalming examiners, and the number that may be appointed by the governor, was duly received.

Sections 1335 and 1336 G. C. provide in substance that there shall be a state board of embalming examiners consisting of five members, of which board the

president and secretary of the state board of health shall be "ex-officio advisory members", and that the "other three members" shall be appointed by the governor; that before the first day of July, 1917, the governor may appoint a member to serve for a term of three years from the first day of July, 1917, and that each year thereafter the governor may appoint one member of the board to serve for a term of three years from the first day of July of the year of said appointment.

Section 1337 G. C. provides that the governor may remove an "appointed member" of the board for neglect of duty, incompetency or immoral conduct, and also that in filling a vacancy caused by death, resignation or removal from office, the governor may appoint a competent person to fill the unexpired term.

Section 1338 G. C. provides that two members shall constitute a quorum at all meetings of the board.

It is further provided in section 1339 G. C. that each "appointed member" of the board, except the secretary-treasurer thereof, shall receive a certain per diem, and reasonable and necessary traveling expenses while discharging the actual duties of the office, and that the secretary-treasurer shall receive an annual salary to be fixed by the board, etc.

Without quoting, because of their length, the sections of the General Code creating the state board of embalming examiners and prescribing its powers and duties (sections 1335 to 1348-1 G. C.), it is sufficient to say that they recognize and make a clear distinction between the two "ex-officio advisory members" on the one hand, and the "other three" or "appointed members" on the other hand, and that the power of the governor with respect to the appointment of members is confined to the members falling within the latter class of members, and that no provision whatever was made for, and no authority conferred upon the governor with respect to, the appointment of "ex-officio advisory members" in any event. In other words, the authority of the governor, as already indicated, is confined to the appointment of the "other three members", and to the filling of vacancies caused by the death, resignation or removal from office of such members only.

Subsequent to the enactment of sections 1335 et seq. G. C., hereinabove referred to, the legislature of this state enacted certain legislation, the effect of which was to abolish the state board of health and the offices of president and secretary thereof, but without making any provision whereby any other person or officer might be substituted for and discharge the duties theretofore vested in the president and secretary as ex-officio members of the state board of embalming examiners. In other words, by reason of the abolition of the old state board of health, and the creation of a state department of health, there is now no president and secretary of the state board of health to act as ex-officio advisory members of the state board of embalming examiners, and until such time as the legislature shall make provision for two new ex-officio advisory members, or for the appointment of two other members to make up a board composed of five members as was originally provided for, you are advised, in conformity to the opinion of the former Attorney-General reported in 1917 Opinions of Attorney-General, Vol. II, page 1808, that:

"The state board of embalming examiners consists of only three members, one to be appointed each year for a term of three years, and as the terms of the present members expire."

In the opinion just referred to, the history of the legislation creating the state board of embalming examiners, and abolishing the old state board of health, and creating in place of the latter a new state department of health, is set forth at length, and the conclusion therein reached and expressed is the only one warranted under the present state of the statutory law on the subject.

It has been suggested for consideration in this connection that the effect of the subsequent legislation abolishing the state board of health, was to create two vacancies in the state board of embalming examiners, and by reason thereof the governor would be justified in filling the vacancies so created by appointment. I am unable to accept this suggestion for the reason that, in my judgment, the repeal of the laws creating the old state board of health had the effect of creating a state board of embalming examiners of three members, rather than that of creating a vacancy in the board as originally constituted; and even if the subsequent legislation had the effect suggested, there is no law which confers upon the governor the power of filling the vacancy so created,—the power of the governor with respect to filling vacancies, so far as the embalming examiners act is concerned, being confined to vacancies caused by death, resignation or removal from office for causes specified in section 1337 G. C., and there being no general statute on the subject of vacancies which is applicable to the present situation.

You are therefore advised that, in my opinion, the opinion of the former Attorney-General hereinabove referred to correctly interprets the statutory laws of this state governing the state board of embalming examiners.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2096.

TAXES AND TAXATION—COUNTY TREASURERS HAVE AUTHORITY TO COLLECT DELINQUENT PERSONAL TAXES—DUTY OF PROSECUTING ATTORNEY TO ADVISE TREASURER—NO AUTHORITY FOR EMPLOYMENT OF PERSONS TO BRING SUIT FOR COLLECTION OF SAID TAXES—WHEN COLLECTORS MAY BE EMPLOYED BY TREASURERS TO ASSIST IN COLLECTION OF DELINQUENT PERSONAL TAXES.

1. *Ample authority of law is conferred upon county treasurers for the collection of delinquent personal taxes, by the provisions of sections 5694, 5695, 2658, 5697 and 5698 of the General Code, and in the prosecution of suits for the collection of said taxes, it is the duty of the prosecuting attorney to render legal advice to such treasurer, when so requested.*

2. *There is no authority of law for the employment of persons to bring suit for the collection of delinquent personal taxes, and the authority of the county treasurer in this regard may not be delegated to others.*

3. *Under the provisions of section 5696 G. C. collectors whose services are not required in a legal capacity may be employed by county treasurers to assist in the collection of delinquent personal taxes.*

COLUMBUS, OHIO, May 24, 1921.

HON. ROGER D. HAY, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter reading as follows:

“The treasurer of Defiance county, Ohio, and myself would like to have an opinion from your office in regard to the following:

There is a large amount of delinquent personal tax on the duplicate