

filed with the Secretary of State April 16, 1925. said appropriation being made under the heading of Additions and Betterments, G 2, Auditorium, to Ohio University, in the amount of one hundred sixty thousand dollars (\$160,000.00), it being understood and agreed that the contractor must depend upon the proper administration of a fund donated by private individuals, and now under the control of the Auditor of State for the payment of the balance of said contract price."

Respectfully,
EDWARD C. TURNER,
Attorney General.

455.

MORTGAGE SECURING INSTALLMENT LOAN—WHEN STATUTE OF LIMITATIONS SET OUT IN SECTION 8546, GENERAL CODE, BEGINS TO RUN.

SYLLABUS:

1. *The twenty-one year period of limitations set out in Section 8546-2, General Code, begins to run in the case of a mortgage securing an installment loan from the last due date of the loan as the same may be computed from the terms of the mortgage as it appears on record.*

2. *The same rule applies where such installment mortgage contains a provision for acceleration of the due date of the loan in case of default in one or more of the installment payments, where the mortgagee does not upon such default proceed to enforce the terms of the mortgage but permits the mortgagor to continue to make the regular payments after such default.*

COLUMBUS, OHIO, May 6, 1927.

Department of Commerce, Division of Building and Loan Associations, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your communication dated May 4th, 1927, reading as follows:

"Section 8546-2 of the General Code of Ohio relates to the refileing of a mortgage 'remaining unsatisfied or unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage.'

In the case of installment loans in a building and loan association the principal sum due under the mortgage is reduced at certain intervals annually or semi-annually at which times interest is thereafter charged upon the reduced amount of the principal due.

Will you please advise just which date is to be used as a basis for determining the beginning of the twenty-one year period under this section?

Please advise also whether or not, in case of failure to make the prescribed payment or payments on the loan as required under the terms of the mortgage and no action is taken to enforce the terms of the mortgage contract providing that the loan thereupon becomes due and payable in full, and the company permits the borrower thereafter to continue to make the

regular prescribed payments on the loan, the due date on the mortgage would be held to be the time when such breach of contract took place.

As this law becomes effective July 16th next and may have some effect upon existing mortgages of building and loan associations it should be given attention prior to that time and your opinion at an early date will be appreciated."

The pertinent provisions of Section 8546-2, General Code, to which reference is made in your letter, are as follows:

"The record of any mortgage which remains unsatisfied or unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains unpaid, or has been extended or renewed; and as to subsequent bona fide purchasers, mortgagees and other persons dealing with such land for value, the lien of such mortgage shall be deemed to have expired;
* * * "

The portion of the statute above quoted makes the record of any mortgage, which remains unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof secured by said mortgage as shown in the record of such mortgage, of no effect as notice to any person dealing with the land that the debt secured remains unpaid or has been renewed or extended. As to subsequent bona fide purchasers, mortgagees and other persons without notice dealing with said land for value the lien of such mortgage is by the terms of said section deemed to have expired. Your attention is specifically directed to the wording of the section relative to the date when the twenty-one year period begins to run as follows:

"after the last due date of the principal sum or any part thereof * * *
as shown in the record of such mortgage."

There is a familiar principle that that is certain which can be made certain and that principle may well be applied here. In the case of an installment loan such as you refer to, where the amount of the principal secured by the mortgage, the date of the mortgage, the interest rate, the amount of the periodic installments, the method of applying the installments to the payment of principal and interest, etc., are all known, it becomes a simple matter of calculation in order to determine the "last due date" as shown in the record of such mortgage. In other words while the due date of the loan secured by the mortgage is not specifically set out in the case of an installment loan it can be determined by reference to the various terms of the mortgage, and it is my opinion that the twenty-one year period begins to run from the date as so determined.

In the second case you mention that of default in the installment payment or payments where the mortgage provides that upon such default the loan shall become due, and no action is taken to enforce the terms of the mortgage, but the mortgagee permits the borrower to continue making the regular payments, it is my opinion that the same rule would apply. The person dealing with the property secured by such mortgage whose rights might be affected by the mortgage would be bound only by the terms of the mortgage as it appeared on record and would not be required to look beyond "the last due date as shown in the record of such mortgage." In other words if it appeared from an examination of the record that more than twenty-one years had

elapsed since the last due date as mentioned in the mortgage, or as computed from information contained in the mortgage and the mortgage had not been refiled as provided in the latter part of Section 8546-2, General Code, a bona fide purchaser, mortgagee or other person without notice dealing with the land would not, in my opinion, be required to look beyond the facts as they appear on the record.

Answering your questions specifically, it is my opinion that the twenty-one year period of limitations set out in Section 8546-2, General Code, begins to run in the case of a mortgage securing an installment loan from the last due date of the loan as the same may be computed from the terms of the mortgage as it appears on record. It is further my opinion that the same rule applies where such installment mortgage contains a provision for acceleration of the due date of the loan in case of default in one or more of the installment payments, where the mortgage does not upon such default proceed to enforce the terms of the mortgage but permits the mortgagor to continue to make the regular payments after such default.

Respectfully,
EDWARD C. TURNER,
Attorney General.

456.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN
PREBLE COUNTY, I. C. H. NO. 1.

COLUMBUS, OHIO, May 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

457.

INHERITANCE TAX—HOUSE BILL NO. 484, MR. SULLIVAN, 87th.
GENERAL ASSEMBLY, DISCUSSED.

SYLLABUS:

1. Terms "estate tax" and "inheritance tax" interchangeable and specie of the genus death duties.
2. No constitutional objection to imposing additional inheritance tax in the wording of Federal estate tax as supplement to our present inheritance tax law and for purpose of taking advantage of Federal Revenue Act of 1926.
3. Section 7 of Article XII, Ohio Constitution, is an express authority for the graduation of death duties.
4. Exemptions from death duties can be made only within the limitations of Section 7 of Article XII.
5. Any taxes collected under Substitute House Bill 484 must be apportioned in conformity with Section 9 of Article XII, Ohio Constitution.
6. Legislature may lawfully discriminate between resident and non-resident decedents so long as non-resident is not charged more than resident.
7. Substitute House Bill 484 should contain its own machinery for arriving at net estate and should not attempt to adopt the regulations of the Commissioner of Internal Revenue.
8. Substitute House Bill 484 should adopt the present machinery for the collection of inheritance taxes and disposition of revenues.