F. W. Taylor, water front in front of Taylor's lot, west shore of West Reservoir ---------- 100.00

Village of West Carrollton, M. & E. Canal---------- 200.00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3782.

APPROVAL, BONDS OF DESHLER VILLAGE SCHOOL DISTRICT, HENRY COUNTY, $17,000, FOR CONSTRUCTION OF NEW FIRE PROOF SCHOOL BUILDING.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, December 6, 1922.

3783.

TAXES AND TAXATION—LANDS ATTACHED TO HOUSES USED EXCLUSIVELY FOR PUBLIC WORSHIP ARE NECESSARY FOR PROPER OCCUPANCY, USE AND ENJOYMENT OF SUCH HOUSES AND SUCH LANDS ARE EXEMPT FROM TAXATION—SEE SECTION 5349 G. C.

Under section 5349 General Code, lands attached to houses used exclusively for public worship which are necessary for the proper occupancy, use and enjoyment of such houses, are exempt from taxation. On the principle announced in Treasurer vs. Bank, 47 O. S., 503, and Hubbard vs. Brush, 61 O. S., 252, such statute cannot now be regarded as repugnant to section 12, Article 2. On the facts stated it cannot be said that the ground attached to the church is not necessary to the proper occupancy, use and enjoyment of the church.

NOTE:

This Rather novel question was raised by the application of the Plymouth Church of Shaker Heights for an exemption of the ground attached to its church in Shaker Heights. The auditor of Cuyahoga County referred the matter to the state tax commission for ruling, as to whether or not such land could be exempted as necessary for the proper occupancy, use and enjoyment of the church, and raised the further question as to whether any land, even the land upon which the church

stood, could be exempted under the constitution. It appears that the question had never been raised before and the opinion of the Attorney General is consistent with the established practice followed since the adoption of the constitution.

COLUMBUS, OHIO, December 6, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission recently sent to this department a letter addressed to the Commission by the auditor of Cuyahoga County, together with certain exhibits pertaining to an application for exemption of certain real estate from taxation, which discloses the following facts:

The proprietors of a certain real estate subdivision set aside for church purposes all the lots in a triangular space bounded by three intersecting streets and afterwards conveyed such lots for a nominal consideration to the church society. The conveyance restricts the use of the entire block to church purposes for a period of ninety-nine years. The society originally built a small wooden church in the center of the tract and is now completing a larger brick church, which occupies a part of several of the lots, but leaves others unoccupied by the building. The planting of trees and shrubbery, with possibly other landscaping effects designed to give the church a setting in unison with the plan of the subdivision as a whole, is in process. That plan, as stated by the president of the board of trustees of the church, is "to give the village and semi-country effect to everything." No part of the church property is leased or otherwise used for profit and when completed with the appearance of a village church yard, will have no other use. The application is for the exemption of the whole tract, consisting of approximately six acres of ground. The question raised in the mind of the auditor by the application is as to how much of the land, if any, as distinguished from the church building, is exempt from taxation when used in this manner for church purposes.

Section 2, Article 12, of the Constitution, and section 5349 General Code, govern such exemptions. The constitutional provision, after providing for the taxation by uniform rule of all property, uses this language:

> "But *** public school houses, *houses* used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose *** may, by general laws, be exempted from taxation."

Section 5349 provides in part that:

> " *** Houses used exclusively for public worship, the books and furniture therein and *the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof, and not leased or otherwise used with a view to profit,* *** shall be exempt from taxation."

The difference in phraseology in the constitutional provision and in the statute is quite apparent. The subject of exemption in the former is "houses" and not "houses *** and grounds" etc., as it is in the statute. This difference, as shown in the correspondence, is the cause of the auditor's intimation that section 5349 is unconstitutional. The proposition at the bottom of the auditor's question is that the statute may not go further in the way of exemptions than the permissive provisions in the constitution and that the constitutional provision, permitting the ex-

emption of the *house* only will not justify statutory exemption of the *ground* upon which the house stands, or necessary land adjacent thereto.

Perhaps this part of our question should be considered first. Reading section 2, Article 12, literally, without reference to its legislative interpretation, as shown in the history of this statute, would furnish strong warrant for the auditor's apprehension. The object of interpretation is to ascertain the intention of the law-making body, whether that body consists of the people in adopting constitutional amendments, or the General Assembly in the enactment of legislation. It is equally well settled that in case of uncertainty, the spirit is to prevail over the letter. When section 2, Article 12, was adopted, did the people in the use of the term "houses" mean only the house of worship, as distinguished from such house and such land as was necessary for its proper use and enjoyment? It would be profitable to consider how this provision was understood at the time of its adoption. It will be noted that the means of exemption is that it shall be "by general laws," that is, laws passed by the General Assembly of the state, having general application as distinguished from local or special acts applying only to special facts. If the General Assembly, at or near the time of the adoption of the amendment, interpreted this term in the constitutional provisions, this will be of great assistance.

In Raffner vs. Hamilton, 12 Dec. Rep., 571, and in many other cases, it has been held that an interpretation of a constitutional provision by the legislature, cotemporaneous with the adoption of the constitution, is of great weight. It has been held that long continuous contemporaneous practical interpretations on the part of the administrative officers and acquiescence on the part of the public, in cases of doubt, is of very great weight, though not absolutely controlling. See State ex rel. Smith vs. State, 71 O. S., 13.

Section 5349 was passed immediately after the adoption of the constitution and has thus been in force more than a half century. The officers charged with its enforcement have not given it the strict interpretation which would have to be given if merely the houses or the land upon which they stand are to be exempted. The legislature, in its contemporaneous interpretation of the term "houses" clearly shows that at that time the legislative body, which under the constitution had to provide the means of exemption, had no doubt as to how it understood that term. In enacting 5349 at that time it very clearly negatived the idea of exempting the building itself and taxing the land upon which it stood. It went further. In positive terms it provided not merely for the exemption of the land upon which the building stood, and not merely the land necessary for the use and occupation, but it provided also for the exemption of such lands as were necessary for the *proper enjoyment* of the church building. This much is clear. This interpretation by the General Assembly has been followed by the administrative officers and has been acquiesced in by the taxpayers and the public in general from the time of the adoption until the present time. It would be hard to imagine a stronger case of cotemporaneous and long continued interpretation on the part of officials and acquiescence on the part of the public.

The situation presented here is quite similar in principle to another situation which arose under other provisions of section 2, Article 12. That same article provided for the taxation of "all moneys, credits," etc., with no provision for the deduction of debts from moneys or credits. In 1852, the year following the adoption of the constitution, the legislature passed an act providing for the deduction of debts from credits. Shortly after this the Supreme Court, in Exchange Bank vs. Hines, 3 O. S., 1, held this act unconstitutional because the constitution itself made no provisions for such deductions. Judge Ranney wrote a dissenting opinion, which

the legislature followed rather than the majority opinion, as the legislature a short time after this decision re-enacted practically the same act, providing again for the deduction of such debts. This act was not challenged, was in force and remained in effect for thirty years or more before it again came before the courts.

In Treasurer vs. Bank, 47 O. S., 503, the supreme court, referring to its former decision holding a similar law unconstitutional, noted the legislative interpretation, saying:

> "But more than thirty years ago the term (credits) received a legislative exposition which has ever since remained undisturbed. Much deference is certainly due to the legislative construction—if deliberately given—as to the meaning of the language used in the constitution and although it may not be conclusive upon the judicial tribunal, it is nevertheless entitled to great weight."

The court acquiesced in the legislative interpretation and held the second act constitutional, notwithstanding its former adverse decision. Later in Hubbard vs. Brush, 61 O. S., 252, 266, this holding was reaffirmed. The court referring again to Bank vs. Hines, supra, and the re-enactment of the statute permitting the deduction of debts, said:

> "And ever since, a period of more than forty years, that legislative definition has been acquiesced in and *Bank* vs. *Hines* *** has been ignored."

In the light of these cases, would it be reasonable to expect the supreme court, at this late date, to hold this statute unconstitutional?

This department can come to other conclusion but that on reason and authority section 5349 cannot now be regarded as unconstitutional but must be taken at its full face value. This effectively disposes of any contention that the house of worship itself *may* be exempted but that the land upon which it stands, and lands connected therewith necessary for the proper use and enjoyment of the building, *may not* be exempted.

Returning now to the provisions of section 5349 we find the dominant idea, viz., that such houses and necessary lands are not to be taxed, clearly expressed. There is no ambiguity in this respect and hence no room for interpretation. However, there is some uncertainty as to who is to determine what lands are necessary for the proper occupancy, use and enjoyment of the church building. In this connection certainly no refinement of reason is necessary to get the primary purpose of the legislature in this section and that an unduly strict or strained construction of the statute that would defeat its purpose is not to be followed. The legislature may be presumed to have had the whole constitution before it in contemplation when enacting this provision. In Section 7, article 1, as far back as 1802, when the first constitution was adopted, the constitution makers agreed that:

> "religion, morality and knowledge, however, being essential to good government, *it shall be the duty* of the General Assembly to pass suitable laws to protect every religious denomination in the peaceful enjoyment of its own mode of public worship."

To the legislature could also be attributed the common knowledge that it would be difficult, if not impossible, to make a standard—an unvarying rule. What would

be necessary for the proper occupancy, use and enjoyment of one church in one particular locality, under certain circumstances, may not be necessary or at all suitable for another church in another locality where different environment, different religious and social customs and taste prevailed. It is not unreasonable to suppose that because of the particularity with which the legislature dealt with the subject it considered this matter of the determination of appropriate accessories or instrumentalities of worship as more or less related to the choice of *mode of worship itself*. The right to make the former can hardly be entirely disassociated from the right to choose the latter, which right was so clearly guaranteed in section 7 of Article 6.

It is the opinion of this department that the question of necessity of such lands for the proper occupancy, use and enjoyment of the church building is, in the first instance, in the official governmental body of the church or congregation itself. In the acquisition of land for church purposes the people who acquire it, and build and support the church, determine the question of necessity in the first instance and in the absence of such unusual circumstances as show lack of good faith, their decision as to necessity should not be disturbed unless, of course, the land is "leased or otherwise used with a view to profit," as provided in section 5349. This latter provision furnishes the key to the full understanding of this section. My information is that this has been the unquestioned practice throughout the state since the adoption of the constitution and that this question has never been passed upon by this department or decided by any of the courts. The conclusion to which this department has come in this matter is further strengthened by the belief that the courts would not sustain the narrower view of this section. It is probably unnecessary to add that in case this land is in any way leased or otherwise used for profit, or later used for other than church purposes, it may be placed on the tax duplicate and that in extreme cases the power of the taxing officials will be sufficient to prevent abuses.

The county auditor is the official who must apply these principles to given facts, exercising and acting upon his judgment as to such facts. In case an exemption is denied the relief of an aggrieved applicant lies in final and authorative adjudication in the courts. However, in view of the auditor's request in the present case and to furnish a general rule, it may be stated that, on the facts as presented, this department is unable to say that the land surrounding this church is not necessary for its proper occupancy, use and enjoyment.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3784.

APPROVAL, REFUNDING BONDS OF ZANE RURAL SCHOOL DISTRICT, LOGAN COUNTY, $7,000.

COLUMBUS, OHIO, December 11, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.