for school purposes but only to the combined maximum limitation of fifteen mills for all purposes, it is still doubtful if the board of education can by taxation secure sufficient funds to pay interest and sinking fund charges and at the same time continue the proper operation of its schools.

I therefore advise that you decline to accept the bonds under consideration.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1909.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN SCIOTO COUNTY.

COLUMBUS, OHIO, March 10, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1910.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN HOCKING, WYANDOT AND ASHLAND COUNTIES.

COLUMBUS, OHIO, March 10, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1911.

INHERITANCE TAX LAW—WHERE A. BEQUEATHS TO SANATORIUM COMPANY ONE THOUSAND DOLLARS PER ANNUM IN CONSIDERATION OF CARE TO BE FURNISHED B., AN INVALID SISTER OF A., DURING REMAINDER OF HER LIFE—SUCH SUCCESSION TAXABLE.

A. bequeaths to a sanatorium company $1,000 *per annum in consideration of care to be furnished to B., the invalid sister of A., during the remainder of her life; HELD:*

A taxable succession to the sanatorium company.

COLUMBUS, OHIO, March 11, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of the commission's recent letter requesting the opinion of this department, as follows:

"A. and B. are brother and sister, the latter being a confirmed invalid. A. in his lifetime entered into an agreement with a sanatorium company by

which he agrees to pay such company at the rate of $1,000 per annum for taking care of B. He further in his will bequeaths the same annual sum to such company to be paid to it so long as it shall perform the same services for B., and declares such payment to be a lien on his real estate.

Are such annual payments taxable as a succession under the inheritance tax law? If so, to whom? Does it make any difference whether the agreement above referred to was in writing or oral? Would it make any difference in your conclusion if there had been no agreement at all?"

It is believed that the principles developed in previous opinions of this department furnish an answer to these questions, and that citation of further authorities is unnecessary. The commission's letter does not disclose whether the contract between A. and the sanatorium company was expressly made to cover the whole life of B., and thus to bind A's estate. In that event, of course, if the contract is valid (and inasmuch as it *might* be fully performed within one year if B. should die within one year from the time it was made, it does not seem to be within the statute of frauds) A's estate is obligated to pay the sanatorium company one thousand dollars per year so long as B. lives. Such an obligation would give rise to rights in the sanatorium company against the estate of A. independently of the will. Such contract, however, would be wholly executory as to each annual installment of service and payment.

But A. has made a bequest which in terms appears to be in the form of an annuity for the life of B., conditioned upon the performance of services. This creates a succession by will, and, as pointed out in the preceding opinion, no exception is made, save in the case of certain bequests against which costs of administration may be charged, in favor of testamentary successions based upon a consideration either past or consisting of future services to be performed. Consequently it is taxable. If the taxable successor renounces the legacy, and elects to stand upon such contractual rights as he or it may have, no tax will, of course, be payable. But if the legacy is accepted the tax attaches as a necessary incident thereto, regardless of the question of consideration. In this simple view of the case it would not make any difference so far as the question of taxability is concerned, whether there was any valid agreement dehors the will or not, though the existence of such a valid agreement might make a material difference with respect to the successor's rights.

The only remaining question is the second one which the commission submits, namely, as to who is to be regarded as the successor of the taxable legacy. The direct taker is, of course, the sanatorium company. B. is, however, the beneficiary of the service which this company is to render. If the company were a trustee to apply the annuity to the support of B., B. would have to be regarded as the beneficial successor. This does not, however, appear to be the situation. The benefit which B. is to receive is to consist of the services to be performed by the sanatorium company; it does not amount to a direct interest in the thousand dollar annuity. That interest is to go exclusively to the sanatorium company, and its service to B. is the consideration which it is to render for the annuity.

It is therefore the opinion of this department that the annuity described in the commission's letter is fully taxable as a succession to the sanatorium company.

Respectfully,

JOHN G. PRICE,

Attorney-General.