State ex rel. vs. *Commissioners,* 8 N. P. (n. s.) 231, 20 O. D. (N. P.) 879; affirmed *Ireton* vs. *State ex rel.,* 12 C. C. (n. s.) 202; 21 O. C. D. 212, 412; affirmed without opinion in *Ireton* vs. *State,* 81 O. S. 562; *State ex rel.* vs. *Kraft,* 19 O. A. R. 454, 456; *Peter* vs. *Parkinson, Treas.* 83 O. S. 36, 49; *Jones, Auditor,* vs. *Commissioners of Lucas County,* 57 O. S. 189; *Elder* vs. *Smith, Auditor et al.,* 103 O. S. 369, 370; *State ex rel. Copeland* vs. *State Medical Board,* 103 O. S. 369, 370; *Civil Service Commission* vs. *State, ex rel.,* 127 O. S. 261.

Consequently, in view of this well established rule of public law, it is my opinion, in answer to your inquiry, that the Registrar of Motor Vehicles does not have authority, after issuing a valid order of revocation, to suspend or revoke such order, except in accordance with the provisions of Section 6298-14, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5022.

PROBATE COURT — EXECUTORS AND ADMINISTRATORS NOT REQUIRED TO PRODUCE CERTIFICATE SHOWING ALL PERSONAL PROPERTY TAXES PAID WHEN.

SYLLABUS:

Under section 10509-176, *General Code* (116 *O. L.* 401), *effective September* 2, 1935, *the probate court may not legally require that executors or administrators, in filing their final account, produce a certificate from the county treasurer and county auditor showing that all returns for personal property taxation have been made and that all personal property taxes charged against the estate have been paid.*

COLUMBUS, OHIO, December 19, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

"Our probate judge, auditor and treasurer would like to have an opinion on the following:

By virtue of Section 10509-176 before it was amended, the Probate Court required of executors and administrators a certificate from the auditor's and treasurer's offices showing that all personal property taxes had been paid.

The clause in the old statute under which this was done read as follows:

'Together with certificates from the county treasurer and from the county auditor, showing that all returns for taxation have been made and that all taxes charged against the estate have been paid.'

The omission of this part of the statute is the only change in the statute.

The question therefore is, shall the Probate Court require, under that part of the amended statute which reads ' * * * every executor or administrator shall produce vouchers for debts * * * ', that a certificate from the auditor's and treasurer's offices of the county, showing that all *personal* property taxes have been paid."

In order to establish the intent of the General Assembly with reference to your matter, it is necessary to review briefly the status of the law relating thereto prior to the passage of Amended Senate Bill No. 116 of the 91st General Assembly, regular session (116 O. L. 385-405), effective September 2, 1935, which amended and repealed some sections relating to the practice and procedure in the Probate Court, and enacted some supplemental sections.

The present probate code revising, consolidating and codifying the probate laws of Ohio, was enacted by the legislature in 1931 (Amended Senate Bill No. 10, 114 O. L. 320-481), effective January 1, 1932. The subject matter of what is now known as section 10509-176, General Code, had previous thereto been identically contained in the former section 10830, General Code, repealed by such act.

Section 10509-176, General Code, as it read when enacted in Amended Senate Bill No. 10 (114 O. L. 440) was as follows:

"In rendering such account, every executor or administrator shall produce vouchers for debts and legacies paid, and for funeral charges and just and necessary expenses, which shall be filed with the account, and they, together with the account, be deposited and remain in the probate court."

Former section 10830, General Code, as indicated above, had for years prior to 1932 read exactly the same.

Later in the regular session of the 89th General Assembly, after the passage of Amended Senate Bill No. 10, the legislature enacted Amended Senate Bill No. 323 (114 O. L. 714-783), providing for the levy of taxes

on intangible personal property at classified rates and for the assessment of tangible personal property for taxation, and amended section 10509-176, General Code, as it had been enacted in Amended Senate Bill No. 10, and provided by section 5 of such act (Amended Senate Bill No. 23) that section 10509-176, General Code, as amended therein, take effect on January 2, 1932 (see 114 O. L. 777, next to last paragraph). Section 10509-176, General Code, thus read one day after the date the new probate code passed by Amended Senate Bill No. 10 went into effect, as follows:

> "In rendering such account, every executor or administrator shall produce vouchers for debts and legacies paid, and for funeral charges and just and necessary expenses, together with certificates from the county treasurer and the county auditor showing that all returns for taxation have been made and that all taxes charged against the estate have been paid, which shall be filed with the account, and they, together with the account, be deposited and remain in the probate court."

It will thus be seen that beginning one day after the effective date of the laws relating to probate procedure, section 10509-176, General Code, required that every executor or administrator in rendering a *final* account (as interpreted by opinion No. 546 of the Attorney General, rendered April 11, 1933, *Opinions of the Attorney General for* 1933, Vol. 1, page 495, hereinafter referred to) must, first, produce vouchers for *debts* and legacies paid and for funeral charges and just and necessary expenses; and, secondly, *certificates* from the county treasurer and the county auditor showing that all returns for taxation had been made and that all taxes (including real estate taxes as interpreted also by the Attorney General in the opinion above referred to) charged against the estate had been paid.

The Attorney General's opinion, just referred to, held, as disclosed by the syllabus:

> "1. By virtue of the provisions of Section 10509-176, General Code, it is not mandatory that the certificates of the county treasurer and county auditor, that all taxes charged against the estate of the decedent have been paid, be filed by the administrator or executor at the time of the filing of a 'partial account' but such certificates must be filed at or before the time of the filing of the final account.
>
> 2. The certificates of the county auditor and county treasurer filed with the probate court pursuant to the provisions of Section 10509-176, General Code, must certify that all taxes, including real estate taxes charged against property coming into the control

of the executor, charged against the estate of the decedent have been paid."

On June 15, 1935, some two years after the rendition of the foregoing opinion of the Attorney General, the Common Pleas Court of Cuyahoga County, in the case of *In re Estate of Kastelic,* No. 424534, reported in 3 Ohio Opinions, 165, *Ohio Law Reporter,* July 22, 1935, and 19 Abstract, 109, *Ohio Law Abstract,* July 20, 1935, held that under the status of the law at that time (June 15, 1935), an executor or administrator need not produce a certificate from the county treasurer and the county auditor showing that all *real estate* taxes had been paid, in filing his final account. The court stated in the course of its opinion that *real estate* taxes as such are not charges or *debts* against an estate. It had been a well known fact that for some time previous thereto probate courts throughout the State had differed on the question of whether or not real estate taxes were *debts* of an estate.

At the time that the foregoing case was pending before the Common Pleas Court, which was some time after the Probate Court of Cuyahoga County in the said Kastelic case had held that real estate taxes were *debts,* the legislature amended sections 10509-121 and 10509-176, General Code, by the passage of Amended Senate Bill No. 116 (116 O. L. 385-405), relating to the practice and procedure in the Probate Court. Prior to amendment of section 10509-121, General Code, in Amended Senate Bill No. 116, such section had provided from the time it was enacted in Amended Senate Bill No. 10, 1931 (114 O. L. 428-429):

"Every executor or administrator shall proceed with diligence to pay the debts of the deceased, applying the assets in the following order:

* * * * * * * * *

4. Public rates and taxes.

* * * ."

As already stated, the 91st General Assembly in Amended Senate Bill No. 116 amended both section 10509-121, General Code, and 10509-176, General Code, which amendments became effective September 2, 1935.

Section 10509-121, General Code, was amended (116 O. L. 399) to insert the words "personal property" before the word "taxes" in paragraph 4 quoted, supra, and to add the sentence thereto, "Any devisee taking any real estate under a devise in any will or an heir taking under the statutes of descent, shall take the same subject to all taxes, penalties and assessments which are a lien against such real estate."

Section 10509-176, General Code, was amended (116 O. L. 401) to eliminate the words which you have quoted in your letter.

From the foregoing, it seems likely that the legislature in amending section 10509-121, General Code, as it did (116 O. L. 399), must have intended solely to remove real estate taxes from consideration as *debts* against an estate. It also seems clear that in eliminating the clause which you quote in your communication from 10509-176, the legislature must have intended solely to eliminate the necessity of an administrator or executor obtaining the certificate from the county treasurer and from the county auditor, both in respect to personal property taxes as well as real estate taxes.

While personal property taxes are still a *debt* against an estate, under the language of section 10509-121, General Code, as amended, and section 10509-81, General Code, (which was mentioned in *Opinions of the Attorney General for* 1933, Vol. I, page 495, already referred to) real estate taxes are no longer deemed a debt against an estate.

The conclusion just reached, viz., that the legislature by its amendment in 1935, already referred to, intended to eliminate the necessity for an executor or administrator to produce a certificate from the county treasurer and the county auditor showing that all returns for taxation had been made and that all taxes (both real and personal) had been paid, finds support by a reference to the text "Ohio Probate Practice", *Addams and Hosford,* 2nd Edition, published October 1, 1935. On pages 875 and 876 of such text book, under the quotation of section 10509-176, General Code, (as amended in 1935), it is stated:

> "This section, as effective January 1, 1932, was the same as former G. C. §10830, except that after the words 'necessary expenses' the following was added: 'together with certificates from the county treasurer and the county auditor showing that all returns for taxation have been made and that all taxes charged against the estate have been paid.'
>
> In 1935 the legislature amended this section and restored it so that it is the same as former G. C. §10830.
>
> * * * * * * * * *
>
> As this section existed from January 1, 1932, until September 2, 1935, there was considerable difference of opinion as to whether or not it was necessary to file with the account certificates showing that taxes which had accrued on real property of the decedent at the time of his death had been paid. Many probate courts held that it was necessary to file such certificates regarding real estate taxes with the account. However, the common pleas court of Cuyahoga county held that the provisions of G. C. §10509-176 and related sections did not require that a certificate of the county auditor and county treasurer be filed showing that the real estate taxes charged

against the estate had been paid, before the final account may be approved.

It will be noted, however, that under this section as it is now effective, certificates showing the payment of either real property taxes or personal property taxes are no longer required.

Under this section as it existed between January 1, 1932, and September 2, 1935, the attorney general rendered an opinion that by virtue of this section, it was not mandatory that the certificates of the county treasurer and county auditor, that all taxes charged against the estate of the decedent had been paid, be filed by the administrator or executor at the time of the filing of a 'partial account' but such certificates must be filed at or before the time of the filing of the final account.

The attorney general had also rendered another opinion in which he had held that the certificates of the county auditor and county treasurer filed with the probate court pursuant to this section, must certify that all taxes, including real estate taxes charged against property coming into the control of the executor, charged against the estate of the decedent has been paid." (Italics the writer's).

Thus, while personal property taxes are still a *debt* against an estate, and undoubtedly every administrator and executor in filing his final account must produce vouchers for debts paid (including personal property taxes) under the first portion of section 10509-176, General Code, as amended, yet there is no longer a requirement that an executor or administrator produce a *certificate* from the county treasurer and county auditor that the personal property taxes have been paid.

I am therefore of the opinion, in specific answer to your question, that the Probate Court may not legally require that every administrator or executor shall produce a certificate from the county auditor and county treasurer showing that all personal property taxes have been paid, by reason of the language contained in section 10509-176, General Code, as amended (116 O. L. 401) that "in rendering such account, every executor or administrator shall produce vouchers for debts * * * paid."

Respectfully,

JOHN W. BRICKER,

Attorney General.

5023.

APPROVAL, BONDS OF WREN VILLAGE SCHOOL DISTRICT, VAN WERT COUNTY, OHIO, $10,000.00.

COLUMBUS, OHIO, December 19, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5024.

DISAPPROVAL, ABSTRACT OF TITLE, ETC., TO LAND IN HOCKING TOWNSHIP, FAIRFIELD COUNTY, OHIO—EDWARD J. SMITH.

COLUMBUS, OHIO, December 19, 1935.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM:—This is to acknowledge the receipt of a recent communication from your department over the signature of the Assistant Director of Public Welfare submitting for my examination and approval an abstract of title, warranty deed form, contract encumbrance record No. 7 and Controlling Board certificate relating to the proposed purchase by the state of Ohio of a tract of land owned of record by one Edward J. Smith in Hocking Township, Fairfield County, Ohio. This tract of land is more particularly described in the caption of the abstract of title and in the deed form of the deed to be executed by Edward J. Smith and by Elizabeth Smith, his wife, conveying this property to the state of Ohio, as follows:

> Being a part of the east half of the southeast quarter of Section No. 23, Township No. 14 of Range No. 19, beginning at the north-east corner of said quarter section; thence West along the half section line to a point where the center line of the Lancaster Traction and Power Company's right of way as at present located, intersects said half section line; thence south along the center line of said company's said right-of-way to a point where said center line intersects the south boundary line of said quarter section; thence east along said South boundary line, being the south line of said section, to the south-east corner of said quarter section; thence North along the east line of said quarter section to the place of beginning, containing forty-two (42) acres more or less.