

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.

3640.

TAXES AND TAXATION—HOLDERS OF LAND TRUST CERTIFICATES
NOT REQUIRED TO LIST SAID CERTIFICATES FOR TAXATION.

SYLLABUS:

Holders of land trust certificates issued under a declaration of trust executed by the Cleveland Trust Company of Cleveland, Ohio, as trustee, dated June 1, 1922, are not required to list said certificates for taxation.

COLUMBUS, OHIO, September 22, 1926.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgement is hereby made of your recent communication in which you enclose printed copy of an agreement and declaration of trust executed by the Cleveland Trust Company of Cleveland, Ohio, as trustee, and you inquire if "a trustee's certificate issued thereunder is subject to or exempt from general property tax." The declaration of trust which you submit is in the ordinary form, in which the Cleveland Trust Company makes declaration that it holds certain real estate situated in the city of Cleveland, Cuyahoga County, Ohio, in trust for holders of certain land trust certificates.

Said real estate is subject to a ninety-nine year lease from the Cleveland Trust Company to the Crowell & Little Securities Company. Sundry deeds and conveyances together with the aforesaid lease are filed for record in the recorder's office of Cuyahoga county. Said lease is renewable at the option of the lessee for periods of ninety-nine years perpetually from the Cleveland Trust Company to the Crowell & Little Securities Company with a rental payable thereunder of \$168,000 per annum in quarterly installments in advance.

The trustee in said declaration of trust acknowledges, declares, and agrees that the fee simple title and estate in and to said premises (subject, however, to such lease) and all of the trustees' right, title and interest in, to and under said lease and the rents to accrue thereunder, are held and shall be held by said The Cleveland Trust Company, in trust, upon and subject to the following trusts:

1st—The trustees shall hold the trust estate and the rents, issues, profits and proceeds thereof, for the sole and exclusive uses and benefit of the present and future holders of the certificates of equitable ownership issued thereunder, or from securities and interest, and will, from time to time, pay over to such holders thereof proportionate shares of the rents received in said leases within a reasonable time after the receipt thereof by the trustee;

2nd—The beneficial interest and ownership in the trust estate shall be divided into 2800 equal shares which shall be represented and evidenced by certificates of equitable ownership, and to be issued by the trustee;

3rd—No holder of any such certificate of equitable ownership shall have, as such, any legal title to the trust estate, but the interest of all such certificate holders shall be equitable only.

In the form of certificate of equitable ownership submitted, it is provided that the certificate and the beneficial ownership of the trust property represented thereby may be conveyed and transferred upon the books of the trustee by the holder thereof upon surrender of the certificate with the conveyance and assignment upon the reverse side thereof duly executed by the holder, and it is provided that said conveyance must be in the usual form for the execution and acknowledgment of a deed.

It will be noted that the trustee, the Cleveland Trust Company, makes declaration that it holds said trust real estate in trust for the holders of the certificates issued under and in conformity to said declaration; and that each certificate represents at least 1-2800 of the value of the entire issue of the certificates, and that each of said certificates represents an equitable interest in said land. The land, of course, is taxable to the trustee who holds the legal title. Said land is, therefore, not exempt from taxation and in this particular case the taxes are paid by the lessee, and the question, therefore, seems to be as to whether or not the holders of the aforesaid land trust certificates should list them for taxation.

The land trust certificate is exactly what its name implies—a certificate evidencing an interest in the equitable ownership of land held in trust, and is, therefore, a real estate investment. It is not in any sense a mortgage, a leasehold bond or note, but is an evidence of actual ownership in whatever property may be trustee¹ as a basis for the issuance of any particular series or designation of certificates. The certificate is merely an evidence of the holder's simple individual share in the ownership of large parcels of property.

As these certificates are merely an evidence of ownership they have, of course, no par value or other fixed nominal value. Nothing but custom and convenience govern the price at which the certificates are sold and the interest which accrues thereupon. As the land trust certificate is merely an evidence of ownership, there is, of course, no such thing as maturity; and as it is merely evidence of equitable ownership of real estate, no personal property taxes are payable thereon.

In the case of *Morrison vs. Manchester*, 58 N. H., 538, at page 563, it is stated that:

“When an owner has left his farm in trust for his widow and children, and the trustee holding the legal title without any beneficial interest pays the farm taxes and expenses out of the farm income, and pays the rest of the income to the widow and children, a second tax for the same amount is not assessed on the equitable title of the widow and children. For the purpose of taxation the legal title of the trustees and the equitable title of the widow and children are not more than the whole title, legal and equitable, which the testator had in his lifetime. If the testator, dividing the equitable title and beneficial interest into four shares, gave two shares to his widow and one share to each of his two children, directed the trustee to issue to them certificates as evidence of their respective rights in the trust property, the united title of the trustee and the widow and children would not be more than the title of the testator.”

In *Sears on Trust Estates in Business Companies*, it is stated in section 114, at page 168, that:

“It seems impossible to find any case maintaining or attempting to main-

tain the proposition that the legal and equitable interest in the same property may both be taxed, at least where trustee and beneficiaries reside in the same state. On the contrary, all theory of this being lawful as to capital stock and shares of stock of a corporation is that they are distinct and independent properties, there being a legal interest in the former, and a legal interest in the latter, that is to say, diverse legal interests in different things. In a trust there is a legal interest and its dependency, an equitable interest. If the latter is destroyed, a beneficiary ceases to be, but the property resumes the status it had before the subsidiary interest began."

It is therefore believed that the holders of the land trust certificates authorized under the aforesaid declaration of trust are not required to list them for taxation.

You further inquire if it would make any difference if the real estate in question was located outside of Ohio, or the trustee was a non-resident of this state; or if the trustee was a non-resident and the land was also without the state.

It is believed that the said statement of changed status would make no difference in our answer as before herein stated.

In *Sears Trust Estates*, page 168, it is stated that:

"Therefore it may be said that in the state where both trustees and *cestui que trust* reside one tax is all that may be imposed; and if they reside in different states, the tax is imposed where the property is held."

I am returning your copy of the declaration of trust.

Respectfully,
C. C. CRABBE,
Attorney General.

3641.

APPROVAL, BONDS OF OLMSTED TOWNSHIP RURAL SCHOOL DISTRICT, CUYAHOGA COUNTY, \$75,000.00.

COLUMBUS, OHIO, September 22, 1926.

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

3642.

APPROVAL, BONDS OF NORWICH TOWNSHIP SPECIAL RURAL SCHOOL DISTRICT NO. 1, FRANKLIN COUNTY, \$650.00.

COLUMBUS, OHIO, September 22, 1926.

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