

question is involved, is subject only to (a) the veto power of the governor, (b) the power reserved to the people under the initiative and referendum provisions of the constitution (none of which powers were invoked or exercised in this case), and (c) to certain other provisions of the same instrument which qualify or restrict its exercise, which are inapplicable to the present inquiry; and since it is the well established law of this state that an act of the general assembly will not be set aside or held for naught unless found to be in irreconcilable conflict with the constitution, the act referred to must be sustained. *Mason vs. State*, 58 O. S. 30; *Gum Co. vs. Laylin*, 66 O. S. 578; *Cass vs. Dillon*, 2 O. S. 607, and cases therein cited; see also cases digested in 2 Page's Ohio Digest, pp. 2936 et seq.

Whether or not the existence of a committee appointed under authority of section 8 of Article II of the State Constitution as amended in 1912, to obtain information affecting legislation under consideration or in contemplation, terminates at the final adjournment of the session of the general assembly at which it was created, is not before me for consideration at this time, and no opinion is expressed with respect thereto.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1020.

**TAXES AND TAXATION—WHERE PARTNERSHIP OWNS STOCK OF MERCHANDISE ON FIRST DAY OF JANUARY AND ON NINTH DAY OF JANUARY SELLS STOCK TO INCORPORATED COMPANY—WHO MAKES RETURN FOR TAXATION AND AS OF WHAT DATE.**

*Where a partnership owned a stock of merchandise on the first day of January and on the ninth day of January sold the stock to an incorporated company, no return of such stock on the average basis or otherwise will be required of the incorporated company for the year 1920; but the partnership will be required to take the stock in question into account in listing its merchant's stock for the year ending on the day preceding the second Monday of April, 1920.*

COLUMBUS, OHIO, February 26, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—In a letter of recent date you request the opinion of this department on the following question:

“A partnership owns a stock of merchandise on the first day of January and on the 9th day of January it sells the stock to an incorporated company. Will the partnership or the incorporated company be required to return this property for taxation for the year 1920 and, if so, as of what date?”

By reason of the enactment of section 5404-1 G. C. (108 O. L., Part I, 131-132) the corporation was required to make its return for the year 1920 “as of the first day of January” (interpreted in a recent opinion of this department to mean as of the close of business on December 31, 1919). Accordingly, the stock of merchandise inquired about would not enter into the personal return of the corporation.

Section 5404-1 does not apply to partnerships. Section 5366-1 G. C., amended in the same act, governs such cases and provides that the listing shall be made as of the day preceding the second Monday of April annually. On the day preceding the second Monday of April, 1920, the partnership will not be the owner of the stock of

merchandise in question, and if its duty to make any listing in respect of the stock of merchandise depended upon that fact, it would be clear that such stock would not be required to be listed at all for the year 1920 by the statutes of Ohio in their present condition.

However, other provision of the General Code now in force must be taken into account. I refer to sections 5381 and 5382, which provide as follows:

"Sec. 5381. A person who owns \* \* \* property within this state, with authority to sell it, which has been purchased \* \* \* with a view to being sold at an advanced price or profit, \* \* \* is a merchant.

Sec. 5382. When a person is required by this chapter to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant. In estimating the value thereof, he shall take as the criterion the average value of such property, as provided in the next preceding section, which he has had from time to time in his possession or under his control during the year next previous to the time of making such statement, if he has been engaged in business so long, and if not, then during such time as he has been so engaged. Such average shall be ascertained by taking the amount in value on hand, as nearly as possible, in each month of the next preceding year in which he has been engaged in business, adding together such amounts and dividing the aggregate amount thereof by the number of months that he has been in business during such year."

Under the sections last above quoted an answer is readily afforded to your question, if it be assumed that the partnership on the day preceding the second Monday of April will still be engaged in the business of a merchant, as defined by these sections. In such event, the stock of goods, though disposed of during the year, will have to enter into the computation of the average value of all the property pertaining to the business of the partnership as a merchant during the year. That is to say, so much of the stock as was on hand in the possession or ownership of the partnership on a given day of each month would enter into the total merchandise on hand on that day; though after the particular stock was disposed of it would of course cease to enter into the monthly average.

The form in which your question is asked suggests the probability that the facts will be as assumed for the purpose of the conclusion just reached. That is, you speak of the partnership as still existing and presumably still doing business after having disposed of the stock of goods. Accordingly, this opinion will be limited to the facts so assumed.

It may be added that section 5387, which provides that

"When a person commences business as a merchant or manufacturer after the day preceding the second Monday of April in any year, the average value of whose personal property employed in such business has not been previously entered on the proper assessor's list for taxation, such person shall report to the auditor of the county the probable average value of the personal property by him intended to be employed in such business until the day preceding the second Monday of April thereafter."

can scarcely be applied so as to require the corporation to list this stock of goods, inasmuch as it only applies to the commencement of business after the day preceding the second Monday of April in any year. Whether the word "person" is broad enough to include corporations or not is therefore a question which is not raised by the facts. There is no showing that the corporation was just commencing business as a merchant

when it purchased the stock of goods, and the purchase was made prior to the day preceding the second Monday of April.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1021.

INHERITANCE TAX LAW—PARTNERSHIP—WHERE DEATH OF PARTNER OCCURS WHOSE PARTNERSHIP AGREEMENT SPECIFICALLY PROVIDES AGAINST DISSOLVING OF FIRM BY DEATH OF PARTNER—SUCCESSION TAXABLE.

*In the event of the death of a partner in a firm whose partnership agreement specifically provides that the partnership shall not be dissolved by the death of a partner, a taxable succession under the inheritance tax law occurs in respect of the interest of the deceased partner on either of two hypotheses:*

1. *That the partnership agreement merely prevents the dissolution of the partnership without providing for any particular disposition of the interest of the decedent.*

2. *That the partnership agreement goes so far as to dispose of the interest of the decedent to the surviving partner or partners.*

*In either event, the taxable succession consists of an interest in partnership property, and funds of the partnership on deposit in a bank are subject to the provisions of section 5348-2 G. C.*

COLUMBUS, OHIO, February 26, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I have your letter of recent date requesting the opinion of this department upon the following question:

“In the event of the death of a partner in a firm whose partnership agreement specifically provides that the partnership shall not be dissolved by the death of a partner, may a bank permit continued control by the surviving partner or partners of the contents of a safe deposit box standing in the name of the partnership? Or must the consent of this commission be obtained under the provisions of section 5348-2 of the General Code?”

Section 5348-2 G. C., in so far as material in connection with this question, declares that a custodian of

“assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons,” shall not “deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer.”