

law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, and site for any of the same."

While your inquiry does not apparently contemplate the incurring of a debt, it should be borne in mind that under the provisions of Section 2293-17, General Code, 112 O. L. 372, township trustees are prohibited from incurring any indebtedness for the purpose of constructing a township hall without a vote of the electors.

In specific answer to your question, therefore, and in view of the provisions of the General Code as hereinabove considered, I am of the opinion that, for the purpose of constructing a township hall, township trustees are authorized to expend a sum not exceeding two thousand dollars from the general township fund without a vote of the electors; that such township trustees may not incur any indebtedness for such purpose unless authorized by vote of the electors under the provisions of Section 2293-17, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

331.

EXEMPTION FROM TAXATION—SUCCESSORS TO HALF NIECES AND
HALF NEPHEWS SUBJECT TO \$500 EXEMPTION.

SYLLABUS:

Successions to half nieces and half nephews are subject to the five hundred dollar exemption allowable under paragraph 3 of Section 5334 of the General Code.

COLUMBUS, OHIO, April 22, 1929.

HON. J. CARL MARSHALL, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of the receipt of your recent communication which reads:

"May I submit for opinion the following question: Are successions to half nieces and half nephews exempt under paragraph three (3), of Section 5334, of the General Code?"

Statement of Facts.

Under the will of a certain decedent, a bequest was made to a half niece and a half nephew. The deceased also made bequests to certain nieces and nephews. So much of the family tree as is necessary is as follows: The mother of the deceased, who is the grandmother of the nieces and nephews and half nieces and half nephew mentioned in the will, by her first marriage had two children; both children after becoming of age married and had children who are the half niece and half nephew mentioned in the will. Later, the mother of the decedent and grandmother of the half niece and half nephew and nieces and nephews married again and of this union there were three children including this decedent. The decedent's two brothers married

and had children who are the nieces and nephews mentioned in the will. Thus, you will see that the nieces and nephews and half niece and half nephew had the same grandmother and are, of course, blood kin. For your convenience I call your attention to the following opinions of The Attorney General: 1920, Vol. I, p. 177; 1920, Vol. II, p. 1155; and 1922, Vol. I, p. 94."

Section 5334, General Code, to which you refer, reads as follows:

"The succession to any property passing to or for the use of the state of Ohio or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning within this state, or institution of learning within any state of the United States which state does not impose an inheritance, estate or transfer tax on property given, devised or bequeathed by a resident thereof to an institution of learning within this state, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this state, shall not be subject to the provisions of the preceding sections of this subdivision of this chapter. Successions passing to other persons shall be subject to the provisions of said sections to the extent only of the value of the property transferred above the following exemptions:

1. When the property passes to or for the use of the wife or a child of the decedent who is a minor at the death of the decedent, the exemption shall be five thousand dollars.

2. When the property passes to or for the use of the father, mother, husband, adult child or other lineal descendant of the decedent, or an adopted child, or person recognized by the decedent as an adopted child and designated by such decedent as a legal heir under the provisions of a statute of this or any other state or country, or the lineal descendants thereof, or a lineal descendant of an adopted child, the exemption shall be three thousand five hundred dollars.

3. When the property passes to or for the use of a brother, or sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars."

Paragraph 3 of said section provides for the exemption of five hundred dollars to a brother, sister, niece or nephew. No mention is made of half brother or half sister or of half niece or half nephew, and your question is as to whether the words "niece" and "nephew" as used in said paragraph may be construed to include "half niece" and "half nephew."

Paragraph 3 has frequently been construed in opinions from this office. In an opinion found in Opinions of the Attorney General for 1920, Vol. I, page 177, the then Attorney General was answering the question of the Tax Commission as to whether the words "brother" and "sister" as found in paragraph 3 of Section 5334 of the General Code included half brothers and half sisters and it is stated in the syllabus that:

"The words 'brother' and 'sister' as found in paragraph 3 of Section 5334 of the General Code (the inheritance tax law) include half-brothers and half-sisters."

After quoting paragraph 3 the opinion states:

"It might be pertinent to quote the entire section, but it is believed suffi-

cient to remark that nowhere in that section nor in the entire law is any mention made of a distinction between relatives of the whole blood and relatives of the half blood.

The inheritance tax laws of other states contain similar provisions but, curiously enough, no authority seems to be available upon the precise question.

However, in a remote sense at least the inheritance tax law is in *pari materia* with the statutes of descent and distribution. In the latter sections, quotation of which may be omitted, we find use made of the terms 'brothers and sisters of the intestate who are of the blood of the ancestor from whom the estate came.' (Sec. 8573); 'brothers and sisters of such ancestors' (Sec. 8573); 'brothers and sisters of the half-blood of the intestate * * * though such brothers and sisters are not of the blood of the ancestor from whom the estate came.' (Sec. 8573) 'half-brothers and sisters of the intestate' (Sec. 8573); 'brothers or sisters of the intestate of the whole blood' (Sec. 8574); 'brothers and sisters of the half-blood' (Sec. 8574); 'brothers and sisters of any such husband or wife' (Sec. 8576); 'brothers and sisters of such intestate' (Sec. 8577); 'brothers and sisters of such deceased husband or wife' (Sec. 8577).

It would seem to be clear even at a glance that in the above named sections the phrase 'brothers and sisters,' *when not qualified*, includes brothers and sisters of the half-blood as well as those of the whole blood. In other words, though for certain purposes the general assembly has chosen to discriminate between the whole blood and the half-blood, yet this discrimination is always effected by means of qualifying the words 'brothers and sisters' by the addition of other words. Hence, the conclusion seems reasonable that in dealing with inheritance the legislature has used the simple words 'brother and sister' to include both the half-blood and the whole blood. This has been the judicial interpretation of these sections.

Cliver vs. Sanders, 8 O. S. 502;

White vs. White, 19 O. S. 531;

Stockton vs. Frazier, 81 O. S. 227.

The syllabus in the last cited case is as follows:

'The half-brothers and half-sisters of the ancestor are included in the words, "brothers and sisters of such ancestors," in the fifth subdivision of Section 4158, Revised Statutes, prescribing the order of descent of ancestral real estate.'

The opinion of Judge Summers in the case contains an interesting commentary upon the philosophical justification (or lack of it) for making any distinction between the half-blood and the whole blood (see pp. 236' et seq.).

Lexicographic definitions are as follows:

'*Brother*':

'a male person who has the same father and mother with another person, or who has one of them.'

(Webster).

'a male person having the same *parent* or parents as another or others.'

(Standard Dictionary).

These definitions, which purport to state the natural meaning of such terms, have been followed under statutes of descent and distribution in

Anderson vs. Bell, 140 Ind. 375; 29 L. R. A. 541;

State vs. Guiton, 51 La. Ann. 155;

Lynch vs. Lynch, 132 Cal. 214;

Sheffield vs. Lovering, 12 Mass. 490;

Rowley vs. Stray, 32 Mich. 70;
Clay vs. Cousins, 17 Ky. 75;
Marlow vs. King, 17 Texas 177.

A contrary result was reached under Johnson's definition in *Lawson vs. Perdriaux*, 1 McCord 456.

It is supposed that a careful examination would disclose an expansion of the usage with respect to these terms. It is quite possible that the term 'brother' or 'sister' may have been originally used in the registered sense; but it is clear from the foregoing authorities that, at least in America, present usage of these terms, unqualified, imports the broader and more liberal meaning.

For these reasons, it is the opinion of this department that the words 'brother' and 'sister' as found in paragraph 3 of Section 5334 of the General Code include half-brothers and half-sisters."

The foregoing opinion was rendered in 1920 and I have not found that it has been overruled or modified and neither have I found any decisions of the courts of this state or elsewhere placing a different construction upon said paragraph 3 of Section 5334, or the words "brother" or "sister" as used therein.

It is believed that the reasoning in said foregoing opinion and the authorities cited therein, in construing the words "brother" and "sister," are by analogy applicable to the construction of the words "niece" and "nephew" appearing in the same sentence in paragraph 3 of Section 5334, General Code.

It is therefore concluded that the words "niece" and "nephew," when not qualified, include a niece and nephew of the half-blood as well as those of the whole blood. And it seems reasonable that the Legislature in dealing with inheritance taxes used the words "niece" and "nephew" in this sense.

You also call my attention to an opinion of my predecessor found in Opinions of the Attorney General for 1920, Vol. II, p. 1155, and also to an opinion in Opinions of the Attorney General for 1922, Vol. I, p. 94. These opinions, however, are not applicable to the instant case as the first deals with another portion of paragraph 3 and the second one construes grand nieces and grand nephews.

I am informed by the Tax Commission that the exemption of five hundred dollars provided in paragraph 3 of Section 5334, has been allowed to a half niece or a half nephew the same as to nieces and nephews in accordance with said opinion of 1920 construing the words "brother" and "sister" to include "half brother" and "half sister."

Based upon the reasoning in the 1920 opinion and the authorities therein cited, it is my opinion, specifically answering your question, that successions to half nieces and half nephews are subject to the five hundred dollar exemption allowable under paragraph 3 of Section 5334 of the General Code.

Respectfully,
 GILBERT BETTMAN,
Attorney General.