

bution of \$10,000 toward the expense fund. The grants made by the general assembly appearing in the act are definite and specific and there is no authority in law for the furnishing of the printing, paper and binding needed by the state teachers' retirement system out of any state funds or appropriations, but such costs are a charge against the expense fund of such retirement system and should be paid by the retirement board from the expense fund created in section 7896-56 G. C., and if such expense fund is at any time depleted and not sufficient to take care of any claims against it, the retirement board should be governed by the mandate appearing in section 7896-56d and pay such deficits by transfers of moneys from the guarantee fund to the expense fund.

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

2030.

BANKS AND BANKING—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO BORROW MONEY AT RATE OF INTEREST IN EXCESS OF SIX PER CENTUM UNDER SECTION 2434 G. C.

*Under the provisions of section 2434 G. C. the county commissioners cannot borrow money at a rate of interest in excess of six per cent.*

COLUMBUS, OHIO, April 28, 1921.

HON. HARRY BRITTON, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—Your communication of recent date reads, in part, as follows:

"I am directed by the county commissioners of this county to get your opinion on the following question:

At the present time the commissioners have money borrowed from various banks in the county at six per cent interest, and at the present time the infirmary fund is very low and the commissioners cannot pay the employes of the infirmary from this fund, and the banks of this county will not loan money at a rate of interest less than seven per cent. Would it be possible for the county commissioners to borrow money for infirmary purposes at a rate of seven per cent interest?"

Section 2434 G. C., to which you refer, provides, among other things, that the county commissioners may borrow money "for the relief of the poor \* \* \* at a rate of interest not to exceed six per cent," as stated in your letter.

In considering your inquiry it will be observed that one of the outstanding principles of Ohio jurisprudence is that money cannot be disbursed from the public treasury except by clear authority of law. See *State ex rel. vs. Maharry*, 97 O. S. 272. It further has been held that when the statute places a limitation upon the amount of money that may be expended for a given purpose the contractual power of an officer or board is likewise fixed by such statutory limitation. See *State ex rel. vs. Pierce*, 96 O. S. 44.

In the case you mention, where money is borrowed under the provisions of section 2434 G. C., the commissioners issue the bonds of the county to secure the

payment of the principal and interest. Of course, such interest must be paid from the public treasury.

In view of the plain provisions of the statute which inhibit borrowing at a rate of interest in excess of six per cent, together with the established rules of the courts relative to the expenditure of public funds, heretofore referred to, it follows that the commissioners are without authority to enter into a contract for interest at a higher rate than authorized by the statute.

Your inquiry, therefore, must be answered in the negative.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

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2031.

INHERITANCE TAX LAW—WHERE SOLE PROPERTY OF NON-RESIDENT DECEDENT IN OHIO CONSISTS OF BONDS WORTH \$60,000.00 PLEDGED TO SECURE PAYMENT OF AN OHIO DEBT IN AMOUNT OF \$50,000.00—WHOLE OHIO DEBT SHOULD BE DEDUCTED FROM GROSS VALUE OF BONDS FOR PURPOSE OF DETERMINING NET OHIO ASSETS—DETERMINATION OF PERMISSIBLE DEDUCTIONS AGAINST GROSS VALUE OF ESTATE.

*Where the sole property of a non-resident decedent in Ohio consists of bonds worth \$60,000, pledged to secure the payment of an Ohio debt in the amount of \$50,000, the whole Ohio debt should be deducted from the gross value of the bonds for the purpose of determining the net Ohio assets. Other permissible deductions against such gross value for the purpose of arriving at such net assets are Ohio administration expenses, etc.*

*Other debts and expenses are chargeable against the net Ohio assets in the proportion which the net value of the Ohio assets bears to the gross value of the entire estate.*

*These principles apply though prior to adjudication the local debt is paid out of foreign assets, instead of applying the pledged bonds to the payment thereof.*

COLUMBUS, OHIO, April 28, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Some time ago the commission submitted to this department the following question:

“A died intestate a resident of New York state owning property there and having certain outstanding obligations there. At the time of death he was indebted to a bank in Ohio in the sum of \$50,000. As collateral security for the payment of this loan he had deposited with the bank bonds worth \$60,000, which it is agreed are subject to inheritance tax in Ohio.

In determining such tax it is claimed on behalf of the estate that the full debt to the Ohio bank should be deducted from the value of the bonds, that for tax purposes in this state the court should consider only the excess of the value of the local assets after the local debt and that even as against this excess balance there should be prorated such a share of the general