

became merged in the higher title which then vested in her. At the death of A therefore no dower interest arose in B. The question is different from that recently considered by this department in which it was pointed out that a merger of dower in a higher estate as a result of what happened at the death of the decedent could not affect the question of the deduction of dower for inheritance tax purposes; for here the merger occurred prior to the death of the decedent, when B's dower right was merely inchoate, whereas vested dower is a thing which can never arise in the very nature of things until the death of the owner of the property. Regardless, therefore, of whether A died intestate or under other circumstances mentioned in the commissioner's letter, it is the opinion of this department that B's dower interest is not to be deducted in the case inquired about.

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

1753.

BOARD OF EDUCATION—A BOND BEARING INTEREST AT 5 PER CENT CONTINUES TO BEAR INTEREST AT THAT RATE AFTER MATURITY UNTIL PAID THOUGH DEFAULT IS MADE THEREON AT MATURITY—INTEREST COUPONS IF PRESENTED AND UNPAID AT MATURITY BEAR INTEREST AT SIX PER CENT—SINKING FUND TRUSTEES MAY APPLY GENERAL SINKING FUND BALANCES TO PAYMENT OF PAST DUE AND UNPAID BOND AND INTEREST COUPONS—MAY NOT BORROW MONEY UNDER SECTION 5656 G. C. AT RATE OF INTEREST EXCEEDING SIX PER CENT—MAY BORROW MONEY UNDER SECTION 5656 G. C. TO EXTEND TIME OF PAYMENT OF ANY INDEBTEDNESS.

1. *In the absence of a stipulation, express or implied to the contrary, a bond bearing interest at five per cent continues to bear interest at that rate after maturity until paid, though default is made thereon at maturity. Interest coupons if presented and unpaid at maturity bear interest at six per cent.*

2. *A board of education or sinking fund commissioners of a school district may apply general sinking fund balances to the payment of past due and unpaid bond and interest coupons, in preference to applying such moneys on the bonds and interest coupons maturing in the fiscal year for which tax levies were made.*

3. *A board of education may not borrow money under section 5656 at a rate of interest exceeding six per cent.*

4. *A board of education may borrow money under section 5656 G. C. for the purpose of extending the time of payment of any indebtedness whatever, regardless of the fund in which the indebtedness exists.*

COLUMBUS, OHIO, December 30, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You have submitted to this department the following request for opinion:

*"In May, 1919, the board of education filed with the county auditor, as required by law, an annual budget, specifying among other things the sum*

of \$4,155.42 as the bond and interest fund as being necessary to retire the bonds and interest coupons. By some error the county auditor gave an incorrect valuation of \$2,941,000, in place of the correct valuation of \$1,662,000. The tax commission made the tax rate from this false valuation, but apportioned funds on the basis of the true valuation, which resulted in only a portion of the needed money being allowed the board of education.

The board of education was able to pay the bond and interest coupons maturing March 1, 1920, but had to repudiate in part the bond and interest coupons maturing October 1, 1920, which deficit amounts to \$1,555.52.

The county auditor has added to the budget filed in May 1920, the sum of \$1,500, approximately, which will make it possible for the board of education eventually to meet the repudiated bond and interest coupons.

Will you render an opinion on the following questions arising from the above mentioned conditions:

1. Will the repudiated bond and interest coupons bear interest from date of maturity to date of payment? If so, at what rate? (The bonds bear 5 per cent).

2. Shall the money received in March 1921 be applied on payment of the repudiated bond and interest coupons which matured on October 1, 1920, or on those maturing on March 1, 1921?

3. Can the board of education pay interest in excess of 6 per cent (Sec. 5656 G. C.), if unable to borrow money for these bonds or for payment of teachers' salaries at 6 per cent?

4. Can the board of education borrow money for any other fund than the tuition fund?"

Your first question is answered by the provisions of sections 8303 and 8305 of the General Code. They are as follows:

"Sec. 8303. The parties to a bond, bill, promissory note, or other instrument of writing for the forbearance or payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding eight per cent per annum, payable annually."

"Sec. 8305. In cases other than those provided for in the next two preceding sections, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, or settlement between parties, upon all verbal contracts entered into and upon all judgments, decrees and orders of any judicial tribunal for the payment of money arising out of a contract, or other transaction, the creditor shall be entitled to interest at the rate of six per cent per annum, and no more."

The first question to be considered is as to whether or not section 8303 applies to any part of the interest to be computed. More specifically, this question concerns the rate of interest on the unpaid bond after maturity; for the bond itself is an instrument stipulating for interest at a given rate, whereas the interest coupons have no stipulation as to interest on the sum contracted to be paid.

In *Monnet vs. Sturges*, 25 O. S. 384, the per curiam opinion of the court says that:

"It is \* \* \* well settled that a contract to pay a specified rate of interest, is a contract to pay interest at that rate until the principal debt is paid, and not merely for the time the note is to run."

In *Marietta Iron Works vs. Lottimer*, 25 O. S. 621, the same conclusion was reached after an examination of the interest statute as it then stood, it being substantially equivalent to the sections above quoted.

Both of these cases, however, were cases in which the stipulated rate of interest was higher than the so-called "legal rate" of six per cent. Neither of them decides that section 8303 or the principle which it embodies applies when the stipulated rate of interest is less than six per cent. These cases are, however, sufficient to dispose of one possible view as to the rate of interest to be borne by a contract calling for the payment of money with interest after the maturity of the obligation. The possibilities are:

(1) That the interest rate after maturity of the principal obligation, in the absence of stipulations to the contrary, must be the statutory rate.

This view has some logic to support it, but must be dismissed because of the cases cited.

(2) That the contract rate governs if it is higher than the statutory rate, but not if it is lower than that rate. (See argument of counsel in *Iron Works vs. Lottimer*, *supra*, with cases cited.)

(3) That in the absence of express or clearly implied contract provisions to the contrary, the conventional rate continues until payment of the principal obligation.

The dicta in the decisions in the above cited cases point to this conclusion.

Leading authorities, such as *Cyc.* and *Ruling Case Law*, fail to state the second of the above positions, indicating that the division of authority is between the first and third. The first having been expressly repudiated in Ohio, it is the opinion of this department that unless a different conclusion is necessitated by some express stipulation of the bond, the rate of interest on the bond itself, that is, the principal sum of the debt witnessed by the bond, will be that stipulated for, to-wit, five per cent until the bond is paid.

It is otherwise, however, with the interest coupons. These coupons are separate promises to pay money at particular times, and being broken the law awards interest as damages and the governing section is section 8305 of the General Code. The interest on the interest coupons is therefore six per cent.

In answering this question it has not only been assumed that the bond does not contain stipulations which negative the rule above announced, but also that the school district has been put in default by the presentation of the bonds and interest coupons.

Your second question may be answered by the statement that it is lawful for the board of education or its sinking fund commissioners (if the district has such a board of sinking fund commissioners) to apply the money received in March, 1921, first on the payment of the repudiated bond and interest coupons which matured in October, 1920. This is because the tax levies made for interest and sinking fund purposes are to be applied generally to the extinguishment of the bonded debt and interest, and not particularly to the debt and interest maturing in a given fiscal year. The theory of the sinking fund is that the fund is a unit for which taxes are levied, rather than that each year's maturing obligations constitute a particular object of the levy.

Your third question involves consideration of section 5656 of the General Code, which is applicable, for under this section money may be borrowed for the purpose of extending the time of payment of any indebtedness which from its limits of taxation the board of education is unable to pay at maturity, regardless of the

character of the indebtedness, provided it is a binding obligation of the district. This statement answers your fourth question. Section 5656, however, stipulates that the rate of interest on bonds or notes issued under favor of its authority shall not exceed six per cent. There is no other authority in a board of education to borrow money for purposes of this kind. Your third question is therefore answered in the negative, and your fourth question by the statement that a board of education may borrow money under section 5656 for the purpose of extending the time of payment of any indebtedness whatever, whether that indebtedness was incurred by reason of a failure of revenue in the tuition fund or in any other fund against which lawful obligations have been incurred.

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

1754.

INHERITANCE TAX LAW—BEQUEST TO TRUSTEES FOR FOUNDING OR AIDING AN INDUSTRIAL SCHOOL TO BE OPEN TO ALL ON SAME TERMS AND NOT OPERATED FOR PROFIT IS EXEMPT FROM SAID TAX.

*A bequest to trustees for the purpose of founding or aiding an industrial school, to be open to all on the same terms and not to be operated for profit, is exempt from inheritance taxation, though not as one made for the use of a "public institution of learning."*

COLUMBUS, OHIO, December 30, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—In its letter of recent date the commission encloses a copy of item 10 of the will of one George John Record, of Ashtabula county, and inquires whether the school provided for therein is a public institution of learning within the purview of section 5334 of the General Code.

Said section 5334 enumerates among the exempted successions those passing to or for the use of "public institutions of learning" and "an institution for purposes only of public charity, carried on in whole or in substantial part within this state."

In the opinion of this department, the school provided for by said item 10, which is to be established through the medium of a trustee for certain stipulated purposes, preferably in connection with one or another of certain named municipalities, but if such municipalities do not accept then as a private institution, is not such a public institution of learning as section 5334 contemplates. The opinion of this department is that in order to be "public" an "institution of learning" must be maintained by the public. It is remotely possible that this trust may inure to the benefit of some public institution in this sense, but taking the item as a whole it does not appear that there is any vested use in a public institution or institutions as such.

It is, however, the opinion of this department that the institution which the testator contemplates as the beneficiary of this item would be an institution of public charity. While the item is not explicit on this point, it is to be gathered from its provisions as a whole that the testator does not contemplate that the