

by the 89th General Assembly, is superseded by the latter act, and the county treasurer is not entitled to be reimbursed for the expenses incurred in establishing tax receiving offices other than in the treasurer's office unless such expenses are not in excess of what the cost of collection would have been had all the taxes been collected from the treasurer's office.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4535.

APPROVAL, AGREEMENT FOR CONSTRUCTION OF DRAINAGE LINE
IN FRANKLIN COUNTY, OHIO—THE NEW YORK CENTRAL RAIL-
ROAD COMPANY.

COLUMBUS, OHIO, July 30, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a proposed agreement by and between the Director of Highways and The New York Central Railroad Company covering the construction of a drainage line to be constructed in connection with the project to drain State Highway No. 1, Franklin County, Section A-1-a, Route No. 40, at its junction with Enlow Road, which said project is more fully described in said proposed agreement.

After consideration, it is my opinion that said proposed agreement is in proper legal form and when properly executed will constitute a binding contract.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4536.

INHERITANCE TAX LAW—HOW COUNTY SHALL ALLOCATE RE-
FUNDER OF TAXES WHEN GENERAL FUND OF VILLAGE IS IN-
SUFFICIENT TO PAY VILLAGE'S SHARE.

SYLLABUS:

1. The words "at the next semi-annual settlement of such undivided general taxes", used in Section 5348-12, General Code, do not limit the time at which the county treasurer may make the deduction authorized by such section, but merely designate the fund from which such deduction may be made.

2. Where, by reason of an excessive payment of inheritance taxes by a taxpayer, a refunder order has been issued by the Tax Commission of Ohio, after the disbursement of such fund to the municipality and the state, which order has been honored by the county treasurer and paid from the undivided inheritance tax funds in the hands of the county treasurer pursuant to the provisions of Section 5348-12, General Code, and by authority of such section the undivided inheritance tax fund has been reimbursed from the general fund in the treasurer's possession he is then authorized to reimburse the deficiency thus caused in the general fund by such reimbursement by applying the proceeds of levies for the general revenue fund

of the municipality receiving a portion of the taxes so ordered refunded, first collected by the county treasurer, and if such deficiency is in excess of the amount for which the county treasurer is obligated to account to the village at the semi-annual settlement next following the payment of such warrant, the county treasurer should deduct from subsequent settlements until such deficiency is reimbursed.

COLUMBUS, OHIO, August 1, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“On August 14, 1931, you rendered Opinion No. 3507 to this Department, on a question submitted to you at the request of the Solicitor of the Village of Hudson, Summit County, Ohio. The syllabus of this opinion reads as follows:

‘Where, after inheritance taxes on successions to the estate of a deceased person have been determined by the probate court and paid into the county treasury and have been distributed in the manner provided by section 5348-11, General Code, as enacted by the act of May 8, 1919, 108 O. L., Part I, 575, a refunder order for a part of such inheritance taxes has been made by the probate court and approved by the Tax Commission of the State of Ohio, the executor of the estate of such deceased person, who paid such inheritance taxes, is entitled to the payment of such refunder order, to the full amount thereof, out of the undivided inheritance tax funds of the county; and upon such payment, the county auditor of the county is required to reimburse the undivided inheritance tax fund of the county, to the extent of the amount of such refunder chargeable against a village in the county receiving its share of the inheritance taxes so paid in, by executing his warrant in this amount in favor of the county treasurer against the undivided tax moneys in the county treasury; which general tax moneys of the county are to be reimbursed at the time of the next semi-annual settlement by deducting from the amount of general tax moneys which will be due to such village the amount paid from the undivided tax moneys of the county for and on account of that part of said inheritance tax refunder chargeable to such village.’

The estate of J. W. E. is entitled to a refund of inheritance taxes of about \$35,000 chargeable to the Village of Hudson, while the revenue of the Village from taxes is approximately \$5,000 per annum, so that if the amount of the refund is charged to the Village at successive tax settlements until the entire amount is repaid, the Village will be without any general tax revenue for seven years.

The last phrase in Section 5348-12, G. C., reads as follows:

‘* * and in either case at the next semi-annual settlement of such undivided general taxes the amount of such warrant shall be deducted from the distribution of taxes of each municipal corporation or township and charged against the proceeds of levies for the general revenue fund of such municipal corporation or township.’

It is therefore requested by the Solicitor of Hudson that the following question be submitted to you for your written opinion:

Whether, under Section 5348-12 of the General Code, of Ohio, the

proceeds of the general revenue of the village are subject to repayment to the county treasurer of the amount of inheritance taxes refunded until the amount of the deficiency has been entirely paid, or whether only one charge can be made against the general revenue of the village?"

The facts in your request are supplemental to those contained in a similar request for opinion, in reply to which I rendered an opinion under date of August 14, 1931, bearing number 3507.

The statutes dealing with the method of completing a refunder of taxes of the type referred to in your inquiry, are apparently incomplete, when a situation arises in which the balance due to a municipality in the undivided inheritance tax fund and the balance in the general fund due to such municipality are, in the aggregate, unequal to such municipality's proportion of such refund. Such statutes, in so far as relevant to this question, read:

Sec. 5339. "* * On receipt by the tax commission of a copy of such refunding order it may make an order confirming the same and transmit it to the probate court, which order and a copy of the refunder shall be filed by the court with the county auditor *who shall thereupon draw his warrant for the proper amount of the refund which warrant shall be paid by the county treasurer out of any moneys in his hands to the credit of inheritance taxes.* * *" (Italics, the writer's.)

Sec. 5348-12. "At each semi-annual settlement provided for under this subdivision of this chapter, the county auditor shall certify to the auditor of any other county in which may be located in whole or in part, any municipal corporation or township, to which any part of the taxes collected under this subdivision of this chapter, and not previously accounted for, is due, a statement of the amount of such taxes due to each municipal corporation or township in such county entitled to share in the distribution thereof. The amount respectively due upon such settlement to each such municipal corporation or township, and to each municipality and township in the county in which the taxes are collected shall be paid upon the warrant of the county auditor to the treasurer or other proper officer of such municipal corporation or township. The amount of any refunder chargeable against any such municipal corporation or township at the time of making such settlement, shall be adjusted in determining the amount due to such municipal corporation or township at such settlement; provided, however, that if the municipal corporation or township against which such refunder is chargeable is not entitled to share in the fund to be distributed at such settlement, the county auditor shall draw his warrant for the amount thereof in favor of the county treasurer payable from any undivided general taxes in the possession of such treasurer, unless such municipal corporation or township is located in another county, in which event the county auditor shall issue a certificate for such amount to the auditor of the proper county, who shall draw a like warrant therefor payable from any undivided general taxes in the possession of the treasurer of such county; and in either case at the next semi-annual settlement of such undivided general taxes, the amount of such warrant shall be deducted from the distribution of taxes of such municipal corporation or township and charged against the proceeds of levies for the general revenue fund of such municipal corporation or township."

In Opinion 3507 it was held that in so far as the personal representative is concerned, he is entitled to be paid the amount of the refunder from the undivided inheritance tax fund in the hands of the county treasurer of Summit County, regardless of the fact that municipalities and subdivisions other than the Village of Hudson were ultimately entitled thereto. (See page 8 of Opinion No. 3507). Although you do not definitely so state, in your letter, I assume that such disbursement to the executor has been made by the county treasurer.

The question remaining is: In what manner may this divided inheritance fund be reimbursed, when the credit of the village of Hudson to such fund combined with the amount in the general revenue fund in the hands of the county treasurer, to the credit of the general revenue fund of such village is less than the amount chargeable to such village?

If the statutes above quoted, are given a strict literal interpretation, no provision would be found therein which would remedy the error. These sections prescribe the procedure of reimbursing the undivided inheritance tax fund of the county for repayment to a taxpayer of funds wrongfully received by the village. The rule of construction of statutes relating to procedure is well stated in the first paragraph of the syllabus of *Wellston Iron Furnace Co. vs. Rinehart*, 108 O. S., 117:

"All statutes relating to procedure are remedial in their nature and should be liberally construed and applied to effect their respective purposes."

See also *Vance vs. Davis*, 107 O. S., 577; *County of Miami vs. Dayton*, 92 O. S., 215.

In the first paragraph of the syllabus of *State ex rel. Maher vs. Baker*, 88 O. S., 165, the court held:

"Remedial statutes should be liberally construed so as to furnish all the remedy and accomplish all the purposes intended by the statutes."

In 2 Lewis' Sutherland Statutory Construction, Section 589, "Liberal Construction" is defined as follows:

"A statute extends no further than it expresses the legislative will. When it is held to embrace a case which is within its spirit, though not within its letter, it is not meant that the courts have authority to extend a statute to cases for which it does not by its words provide, or beyond the sense of its language. A statute is a written law, and it cannot be construed to have a sense and spirit not deducible from its provisions. It is a general rule that courts must find the intent of the legislature in the statute itself. Unless some ground can be found in the statute for restraining or enlarging the meaning of its general words, they must receive a general construction; the courts cannot arbitrarily subtract from or add thereto. The modern doctrine is that to construe a statute liberally or according to its equity in nothing more than to give effect to it according to the intention of the law-maker, as indicated by its terms and purposes. This construction may be carried beyond the natural import of the words when essential to answer the evident purpose of the act; so it may restrain the general words to exclude a case not within that purpose."

The evident purpose sought to be attained by the legislature is to take the funds wrongfully received by a municipality or subdivision from it, and place such funds back in the hands of the taxpayer from whom such funds were wrongfully exacted. The county treasurer, by authority of statute, has paid out certain funds to the village. The legislature has, in Section 5348-12, General Code, prescribed a specific method by virtue of which the undivided inheritance tax fund in the hands of the county treasurer may be reimbursed to the extent that such fund is to be allocated to the village, and further to the extent of the amount in the undivided general tax fund to the credit of such village.

The only matter considered in this opinion is that concerning the method of reimbursement of the undivided inheritance tax fund after payment therefrom to the taxpayer of the amount of the refunder ordered by the Tax Commission. The semi-annual settlements referred to in Section 5348-12, General Code, between the county treasurer and the county auditor are made on the 25th day of February and the 20th day of August, in each year. (Section 5348-9, General Code). The proviso in Section 5348-12, General Code, as applicable to the facts in question, requires the county auditor at the time of such semi-annual settlement next following the payment of the refund to the taxpayer, to draw a warrant on the county treasurer "payable from any undivided general taxes in the possession of such treasurer." The evident purpose of this warrant is to reimburse the undivided inheritance fund to the extent necessary in order to make proper distribution of such funds to the villages and state as are entitled thereto.

The deficiency would thereupon exist in the undivided general tax fund rather than in the undivided inheritance tax fund. The statute (Section 5348-12, General Code) then provides that "at the next semi-annual settlement of such undivided general taxes, the amount of such warrant (the warrant drawn on the general fund) shall be deducted from the distribution of taxes of such municipal corporation * * and charged against the proceeds of levies for the general revenue fund of such municipal corporation * * * and charged against the proceeds of levies for the general revenue fund of such municipal corporation. * *"

Your request for opinion presents the additional circumstance that the entire amount which would be in possession of the county treasurer of "the proceeds for the general revenue fund of such municipal corporation" is grossly less than the deficiency. It is self-evident that the language of the statute, if given a strict interpretation, makes no provision for such case. This statute is a statute prescribing a method of procedure and as stated in the first paragraph of the syllabus of *Wellston Iron Furnace Company vs. Rinehart*, 108 O. S., 117:

"All statutes relating to procedure are remedial in their nature and should be liberally construed and applied to effect their respective purposes."

It is highly improbable that the legislature intended to permit a township or municipality to become unjustly enriched by reason of the order of refunder made by the Tax Commission. Such result would necessarily follow if the language of the section were construed to limit the application of the funds of the municipality toward the repayment of such deficiency to the amount in the hands of the county treasurer to the credit of such municipality's general revenue fund at the immediate next semi-annual settlement between the county treasurer and the county auditor. It is more to be presumed that the legislative intent was that the taxpayers should be immediately paid from the undivided inheritance fund, regardless of who might be subsequently entitled to share in its distribu-

tion and since each township or municipality might not annually share in its distribution, the shortage should be transferred to the general fund, and there definitely allocated. That is, where any municipality had received from the inheritance tax fund an amount to which it was not entitled by reason of a subsequent refunder order, such amount was to be deducted from subsequent general fund taxes due to it. While this may work a hardship in the case presented in your inquiry, it would work an injustice when otherwise construed, which I do not believe was within the legislative intent.

Upon the facts presented in your inquiry, it is evident that since the taxes levied for the general fund of the municipality each year are only \$5,000.00, the county treasurer could never at the time of any single semi-annual settlement, have in such fund an amount from which he could deduct the sum of \$35,000.00. It is never to be presumed that the legislature intended to require an impossibility. The language of the statute, if strictly construed, would require the county treasurer to deduct the sum of \$35,000.00 from a possible settlement of \$2,500.00. This rule of construction is stated by the court in the opinion of the case of *Hill vs. Micham*, 116 O. S., 549:

“the construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume. *Butzman vs. Whitbeck*, 42 Ohio St., 223. It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent. *Moore vs. Given*, 39 Ohio St., 661.

A statute is never to be understood as requiring an impossibility, if such a result can be avoided by any fair and reasonable construction. *Fishing in the River Thames*, 12 Coke's Reports, 89, 77 English Reports, Rep., 1365.”

It is probable that the intent of the legislature was merely to designate the fund from which the general revenue fund might be renewed after the transfer authorized by Section 5348-12, General Code. I do not believe that the legislature intended to designate a time at which the transfer *must* be made, as distinguished from any other time.

It is generally held by the courts that where the legislature enacts a statute designating a time for the doing of an act by a public official, such provision is directory and not mandatory. *In re. Chagrin Falls*, 91 O. S., 309; *Fry vs. Booth*, 19 O. S., 25; *Montgomery vs. Henry*, 144 Ala., 629; 1 L. R. A., 656. If such be the intent of the legislature, the apparent absurdity, impossibility of performance and injustice of the statute disappear.

In specific answer to your inquiries, it is my opinion that:

First, the words, “at the next semi-annual settlement of such undivided general taxes”, used in Section 5348-12, General Code, do not limit the time at which the county treasurer may make the deduction authorized by such section, but merely designate the fund from which such deduction may be made.

Second, where, by reason of an excessive payment of inheritance taxes by a taxpayer, a refunder order has been issued by the Tax Commission of Ohio, after the disbursement of such fund to the municipality and the state, which order has been honored by the county treasurer and paid from the undivided inheritance tax funds in the hands of the county treasurer pursuant to the provisions of Section 5348-12, General Code, and by authority of such section and the undivided

inheritance tax fund has been reimbursed from the general fund in the treasurer's possession he is then authorized to reimburse the deficiency thus caused in the general fund by such reimbursement by applying the proceeds of levies for the general revenue fund of the municipality receiving a portion of the taxes so ordered refunded, first collected by the county treasurer, and if such deficiency is in excess of the amount for which the county treasurer is obligated to account to the village at the semi-annual settlement next following the payment of such warrant, the county treasurer should deduct from subsequent settlements until such deficiency is reimbursed.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4537.

CRIMINAL LAW—COURT MAY REQUIRE SEPARATE INDETERMINATE SENTENCES TO BE SERVED CUMULATIVELY—SUCH SENTENCES NOT VOID AS BEING INDEFINITE AND UNCERTAIN.

SYLLABUS:

A court in a criminal case has the power to sentence a person convicted of four separate felonies to serve four separate indeterminate sentences and to require that the sentences be served cumulatively.

Indeterminate sentences that are to be served cumulatively are not void for being indefinite or uncertain when the judgment of the court imposing such sentences provides that one sentence is to commence when another terminates.

COLUMBUS, OHIO, August 1, 1932.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads as follows:

"I am asking for an opinion and interpretation of General Code No. 2166 as passed by the legislature on April 10, 1931, pertaining to the sentencing of persons to the Ohio Penitentiary.

I had a criminal case in which the defendant was sentenced by the Common Pleas Court on four indictments for four separate and distinct felonies. In his first sentence, the Court made the same an indeterminate period to the Ohio Penitentiary. In his second sentence the Court also made a sentence for an indeterminate period of time but such sentence to be consecutive to and cumulative with the sentence in the first case. The Court's sentence in the third case was also for an indeterminate period of time and was consecutive to and cumulative with the first two sentences. The sentence in the fourth case was similar to the others.

Part of Section 2166 reads as follows:

'If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced, and for the purpose of this chapter, he shall be held to be serving one continuous term of imprisonment.'

My query is whether the sentencing Court, since the passage of