Note from the Attorney General's Office:

1928 Op. Att'y Gen. No. 28-3079 was overruled in part by 2007 Op. Att'y Gen. No. 2007-018 and questioned by 2010 Op. Att'y Gen. No. 2010-004.

3079.

FEEDING PRISONERS—COUNTY NOR STATE RESPONSIBLE FOR SUBSISTENCE OF FEDERAL PRISONERS—PROFITS ON SAME PAYABLE TO COUNTY TREASURY—AUTHORITY AND DUTIES OF SHERIFF DISCUSSED.

SYLLABUS:

1. *The State of Ohio is not, nor are counties in the State, responsible for the subsistence of Federal prisoners confined in a county jail, whether such prisoners are held on suspicion of having committed Federal offenses or whether they have been duly charged with crime.*

2. *A county sheriff who detains persons at the request of the United States Marshal, without first having procured a warrant for their arrest, does so on his own responsibility, and must either provide for the subsistence of such persons while being so held, or look to the United States Marshal or the United States Government for reimbursement for such subsistence.*

3. *There is no authority for a county sheriff to detain persons on suspicion of their having committed offenses punishable by Federal Law, nor for the detention and imprisonment of persons merely at the request of the United States Marshal, for a longer time than is reasonably necessary to obtain a legal warrant for their arrest. Any person arrested or detained without a warrant first having been procured for such arrest should be taken, as soon as reasonably possible, before a proper magistrate and a warrant procured, or he should be released.*

4. *Any "profit" made by a county sheriff by virtue of his contract with the Federal Government for the subsistence of Federal prisoners in his charge, is a perquisite of the office of sheriff and is received and collected by the sheriff for the sole use of the treasury of the county, and should be paid by the sheriff into the treasury of the county. In computing this "profit" it should be borne in mind that in subsisting Federal prisoners the sheriff is required to furnish not only food, but also articles of personal clothing, laundry work, medical attendance and nursing when necessary, and such articles as are necessary to provide the means for personal cleanliness of the prisoners, and that contracts with the Federal Government are made with this end in view.*

COLUMBUS, OHIO, December 29, 1928.

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

GENTLEMEN:—I am in receipt of your request for my opinion as follows:

"In a certain county in this state, the sheriff presents to the county commissioners the bills incurred by him in connection with the feeding of the prisoners in the county jail. The rate per day is determined by dividing the number of days of three meals into the total of the bills. About one-third of the total number of prisoners in the county jail are Federal prisoners. After deducting from the total the pro rata share for Federal prisoners, the balance is paid to the sheriff, who in turn pays the bills.

In a specific month the rate per day amounted to approximately 33c. The sheriff presents bills to the Federal Government for the support of Federal prisoners at a rate of 60c per day, thereby producing for himself a profit of approximately 27c per day on all Federal prisoners. Over a period of nine months the profits so accruing to the sheriff amounted to the sum of $11,589.54.

Question: (1) When an examiner of this department finds this condition, is it his duty to make a finding against the sheriff for the amount of this profit, and if so, in whose favor?

The United States Marshal in the district in which this county is located states that the Federal Government will not be responsible for the board of a person arrested by the sheriff and held in jail at the request of the United States Marshal for from one to three days before a warrant is served.

Question: (2) Who is responsible for the support of these persons from the day of arrest until the warrant is served?"

Section 2850, General Code, as amended by the 87th General Assembly (112 O. L. 62) reads as follows:

"The sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners or other persons confined in the jail, but at a rate not to exceed seventy-five cents per day of three meals each. The county commissioners shall allow the sheriff the actual cost but not to exceed seventy-five cents each day of three meals each for keeping and feeding any idiot or lunatic placed in the sheriff's charge. All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners. On the fifth day of each month the sheriff shall render to the county commissioners an itemized and accurate account, with all bills attached, showing the actual cost of keeping and feeding prisoners and other persons placed in his charge and the number of meals served to each such prisoner or other person during the preceding month. The number of days for which allowance shall be made shall be computed on the basis of one day for each three meals actually served. In counties where the daily average number of prisoners or other persons confined in the county jail during the year next preceding, as shown by the statistics compiled by the sheriff under the provisions of Sections 3158 and 3159 of the General Code, did not exceed twenty in number, the commissioners shall allow the sheriff not less than fifteen cents or more than twenty-five cents per meal. Such bills, when approved by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor. The sheriff shall furnish at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate. The jail register and the books of accounts, together with bills for the feeding of prisoners and other persons in the jail, shall be open to public inspection at all reasonable hours."

Section 2997, General Code, reads in part as follows:

"In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners, as provided by law, * * * ."

Section 3179, General Code, reads as follows:

"The sheriff shall receive prisoners charged with or convicted of crime committed to his custody by the authority of the United States, and keep them until discharged by due course of law. A prisoner committed for an offense by the authority of the United States shall be supported at the expense thereof during his confinement in jail. No greater compensation shall be charged by a sheriff for the subsistence of such prisoner, than is authorized by law to be charged for the subsistence of state prisoners. The commissioners of a county in which a prisoner so committed may be confined shall receive from

the United States one dollar per month for the use of the jail for each person so committed. A sheriff or jailer who neglects or refuses to perform the services and duties required of him by this section shall be liable to like penalties, forfeitures, and actions as if such prisoner had been committed under the authority of this state."

Since the enactment of the above statute, Section 2850, General Code, there has been rendered by this office a number of opinions construing its terms. In Opinion No. 361, rendered on April 21, 1927, and reported in Opinions of the Attorney General for that year, at page 612, it is held:

"Under the provisions of Amended Senate Bill No. 28 amending Section 2850, General Code, sheriffs in all counties are required to render on the fifth day of each calendar month an itemized and accurate account, with all bills attached, showing the actual cost of keeping and feeding prisoners and other persons placed in his charge and the number of meals served to each such prisoner or other person during the preceding month regardless of the number of prisoners confined in the county jail during the year next preceding.

* * *

Under the provisions of Amended Senate Bill No. 28 the sheriff is required to file with the county commissioners each month an itemized and accurate account with all bills attached showing the actual cost of keeping and feeding prisoners and other persons placed under his charge and the said bills when approved by the county commissioners shall be paid by them direct to the persons presenting the bills on warrants of the county auditor."

It is apparent, from the provisions of Section 3179, supra, that the entire matter of the subsistence of Federal prisoners in county jails is to be taken care of as provided by the statute; that is, that the sheriff is to receive and keep the prisoners and charge the Federal Government for their subsistence. The use of the jail, which is the only expense the county is put to in the matter, is to be paid for at the rate of $1.00 per month.

It is also apparent that the terms of Section 2997, supra, are not applicable to Federal prisoners, and that the county commissioners are not authorized to make allowances from county funds for the feeding and subsistence of Federal prisoners. The entire transaction with reference to the subsistence of Federal prisoners in county jails, other than one dollar per month which the commissioners are to receive for the use of the jail, is between the sheriff and the Federal Government.

In an opinion of this department, which may be found in the Annual Report of the Attorney General for 1912, Vol. I, page 318, the Attorney General after setting out the provisions of Sections 2850 and 2997, General Code, which were, so far as pertinent, the same then as now, as were also the provisions of Section 3179, General Code, said:

"The term 'prisoners' as used in each of the foregoing sections is not qualified. It is not limited to prisoners of the county or of the State of Ohio. It may include any prisoner who is lawfully confined in the county jail. It does not, however, include federal prisoners, because the manner of paying their subsistence is specially provided for in Section 3179, supra.

* * *

The county commissioners cannot make an allowance to a sheriff for boarding federal prisoners in the county jail."

It should be borne in mind that Section 2850, General Code, was enacted after the Supreme Court decided the case of *Kohler* vs. *Powell,* 115 O. S. 418, and the Legislature must be considered as having had in mind this decision when the statute was enacted. In fact there was incorporated in the statute the vital principle of the Kohler decision, to-wit:

"The sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners and other persons confined in the county jail."

The second section of the syllabus of the case of *Kohler* vs. *Powell,* supra, reads as follows:

"The sheriff has no right to collect from the county to reimburse himself for expenditures made or indebtedness incurred for feeding the prisoners confined in the county jail any sum in excess of such disbursement or indebtedness so incurred. The law does not permit the sheriff to secure a private personal profit out of the feeding of the prisoners confined in the jail."

There is no substantial difference between the provisions of the present statute and those of the former statute as interpreted by the Supreme Court, except that the present statute fixes a different maximum and minimum allowance that may be made by the commissioners for feeding prisoners and other persons confined in the county jail in the larger and smaller counties, whereas the former statute fixed the same maximum and minimum for all counties, and the further difference that after stating that only the actual cost of feeding and keeping the prisoners shall be allowed the sheriff, the Legislature attempted to provide means of determining what that actual cost really is, to the end that the accounts would show that the sheriff did not receive a personal profit, and for that purpose provided that the sheriff should do the buying and the commissioners pay the bills direct on warrants of the county auditor.

The obvious intent of the law is to protect the public funds of the county and this also is the purport of the decision of the Kohler case, wherein it is said:

"The sheriff has no right to collect from the county to reimburse himself for expenditures made or indebtedness incurred for feeding the prisoners in the county jail in any sum in excess of such disbursement or indebtedness so incurred."

The feeding and subsistence of Federal prisoners is not paid for from county funds. By the terms of Section 3179, General Code, the sheriff is required to receive persons charged with or convicted of crime committed to his custody by the authority of the United States, and keep them until discharged by due course of law. Such prisoners must be supported however, by the United States which shall pay the county one dollar per month per prisoner for the use of the jail.

The only provisions of law, so far as our state statutes are concerned regulating the amount to be paid by the United States Government for the subsistence of Federal prisoners and the use of the county jail for their confinement is that contained in Section 3179, General Code, supra. As to these provisions relating to the amount to be paid to the sheriff for the subsistence of the prisoners, it is said:

"No greater compensation shall be charged by a sheriff for the subsistence of such prisoners, than is authorized by law to be charged for the subsistence of state prisoners."

Strictly speaking, under the present law, no charge is made for the subsistence of state prisoners. The sheriff simply renders a statement at regular intervals of purchases made of articles necessary for keeping and feeding such prisoners and the county commissioners pay for such purchases in the manner provided by Sections 2850 and 2997, General Code. The language of Section 3179, General Code, bears the interpretation that the basis of the sheriff's reimbursement for the subsistence of Federal prisoners shall be the same as that for keeping state prisoners and other persons confined in the jail and that the reimbursement is to be on the basis of actual cost. The apparent intent of the statute is that the sheriff is not to receive a personal profit from the keeping and feeding of the prisoners.

The term "subsistence" however, includes more than the mere providing of food. This question was discussed in my former opinion reported in the Opinions of the Attorney General for 1927, at page 1041. The second branch of the syllabus of said opinion reads as follows:

"The word 'subsistence' as used in Section 3179, General Code, for which the sheriff is authorized to make a charge for federal prisoners includes not only the cost of furnishing the food for said prisoners but of furnishing articles of personal clothing, laundry work, medical attendance and nursing when necessary and such articles as are necessary to provide the means for personal cleanliness of the prisoners, but should not include the cost of fuel or warming the jail or such other articles as would be included among the furnishings of the jail."

Just what is furnished by a sheriff to Federal prisoners by way of food and other necessary articles going to the prisoner's subsistence, and the actual cost thereof are matters to be considered by the Federal Government in making contracts for their subsistence.

Section 699, of the Federal Criminal Code, reads as follows:

"The Attorney General shall contract with the managers or proper authorities having control of prisoners confined in state or territorial jails or penitentiaries under Section 696 of this title, for the imprisonment, subsistence, and proper employment of them, and shall give the court having jurisdiction of such offences notice of the jail or penitentiary where such prisoners will be confined."

In contracting with a sheriff for the subsistence of Federal prisoners, the Federal authorities have the guidance of Sections 3179 and 2850, General Code, to the effect that the sheriff is limited so far as the making of a charge is concerned to the actual cost of the subsistence of Federal prisoners in his charge, and no doubt do make their contracts in the light of these statutes. At least they have a right to.

In my former opinion, Opinions of the Attorney General for 1927, page 1041, at page 1046, I said:

"* * * I am of the opinion that there is no authority in law for making a charge to the federal government for keeping federal prisoners in the county jail on the basis of a flat rate per day and that charges should be made to cover the cost of the subsistence of federal prisoners in county jails

at the actual cost of such subsistence. That no charge can be made other than that of one dollar per month for each prisoner for the use of the jail and its permanent furnishings nor for the fuel necessary for heating the same, but that the sheriff may charge not only for food consumed by the prisoners and the cost of preparing it, but for such other items of expense as are personal to the prisoner himself, such as clothing, laundry, medical attendance and nursing when necessary, and the cost of providing for the personal cleanliness of the prisoner and that such charge must be on the basis of the actual cost of the things provided. The subsistence of federal prisoners in county jails calls for the furnishing of not only food, but all other things to properly support such prisoners. The sheriff is charged with the duty of providing this subsistence and the adjustment of the accounts for the cost of such subsistence is a matter between the sheriff and the federal government, acting through the Attorney General of the United States, pursuant to Section 699 of the Federal Code. * * * "

I am still of the opinion that there is no authority so far as the state law is concerned, for the sheriff to charge for the subsistence of Federal prisoners on the basis of a flat rate per day, or on any basis other than that of the actual cost of such subsistence. Neither, however, is there any authority for the state to limit the United States Government in its determination of what it may desire to pay for the subsistence of its prisoners while in state prisons; nor does the law as it now stands, prevent the sheriff from contracting for, as distinguished from charging for, the subsistence of federal prisoners in his custody on a different basis than that of actual cost. So far as the Federal Government is concerned it has delegated to its Attorney General the authority to contract for the subsistence of its prisoners in state and territorial jails, and so far as I have found, that authority is not limited by statute, and is governed by Section 699 of the Federal Criminal Code, supra.

I am of the opinion that under the present state of the law, a sheriff is not precluded from contracting with the Federal Government for the subsistence of Federal prisoners in his custody, on the basis of a flat rate per day, or on any basis satisfactory to the Federal Government. The question is if a contract of that kind is made and by reason thereof the sheriff makes a "profit" on subsisting Federal prisoners under the contract, whether or not he has a right to keep that "profit" or whether he must account for it.

By the terms of Section 2994, General Code, the salary for a sheriff is fixed. Section 2996, General Code, provides that such salary shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which the sheriff might collect and receive.

Section 2977, General Code, provides as follows:

"All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

In commenting on the above section, Judge Wanamaker in the case of *State ex rel, Enos* vs. *Stone,* 92 O. S. 63, at page 65, says:

"This section, as well as the sections following clearly indicates the settled purpose and fixed policy of the state to pay county officials a fixed lump sum, no matter what additional duties may be imposed on them from time to time, unless there be a clear purpose to add further compensation for such further duties."

It should be borne in mind in this connection that at the time the so-called "salary law" was enacted, the provisions requiring sheriffs to receive and keep Federal prisoners, and look to the Federal Government for the cost of their subsistence had long been in force.

In the case of *State of Ohio ex rel. Locher, Prosecuting Attorney,* vs. *Horner, et al.,* 6 O. N. P. (N. S.) page 449, where there was considered the question of the right of the county clerk to retain fees for services in matters pertaining to naturalization in accordance with a federal law with respect thereto, it was held:

"A county clerk is not entitled under the present Ohio salary law to retain as an emolument of his office one-half of the fees up to three thousand dollars received for services in matters pertaining to naturalization, but he must account to the state for such fees in the same manner as for fees received for services rendered under the laws of the state."

This case was not carried higher and has been accepted by lawyers and administrative officers as the settled law of the state. It is cited with approval by Judge Kunkle in the case of *Talbot* vs. *State,* 5 O. S. 262. In the Horner case the Court had under consideration the Federal law which provided for the collection of certain fees by county clerks in naturalization cases and provided further that of the fees collected, the county clerk is required to turn over a certain portion to the Bureau of Immigration and Naturalization. After citing the provisions of the salary law and Section 2997, General Code, and quoting at length from the case of *Mulcrevy & Fidelity & Deposit Company of Maryland* vs. *City and County of San Francisco,* 231 U. S. 669, the Court said:

"Can it be a fair construction to say that the United States Government undertook to regulate the domestic affairs of the state and to enact a law in variance with the public policy of any of the states? Or would it not be fairer to say that all the United States undertook to mean was that it prescribed what fees may be charged and collected by the clerk and that he must account for such part thereof as is not turned over to the Bureau of Immigration and Naturalization according to the laws of the various states? That the United States intended that in a state where the clerk is paid by fees, he gets the fees on naturalization cases and in a state where the clerk is paid by salary that he shall receive the fees as clerk and account for them to the proper public officer according to the laws of the state putting him on a salary basis. This construction seems to me to be the proper one."

I have no hesitancy in saying that the principles of law as enunciated by the Court in the Horner case, supra, are applicable here and that the sheriff would be required to account to the county for any profit received for the feeding of Federal prisoners if such profit arose by reason of any fees or emoluments which the sheriff was permitted or directed by law to collect.

I see no fundamental difference between the sheriff making a "profit" by reason of fees which he is permitted or directed by law to collect, and making that "profit" by reason of a contract which he is permitted by law to enter into in carrying out the prescribed duties of his office.

Coming now to the consideration of your second question, it appears that the terms of the contract between the sheriff in question and the United States Government does not provide for paying the sheriff for the subsistence of any prisoners except those upon whom warrants have been served, at least not for those who are held from one to three days before a warrant is procured. No doubt the United States Government would expect to pay for the subsistence of Federal prisoners who are held for such time as is reasonably necessary under the circumstances, to procure a warrant.

By the terms of Section 3179, General Code, a sheriff is not required to receive any Federal prisoners except those charged with or convicted of crime. Federal prisoners so committed shall be supported at the expense of the Federal Government. The State of Ohio or a county in the state is not under any circumstances, responsible for the support or subsistence of Federal prisoners. If a sheriff detains persons at the request of the United States Marshal until a warrant is served on them he does so on his own responsibility and if his contract with the Federal Government does not provide for his reimbursement for the subsistence of such persons he must necessarily pay for it himself, or look to the United States Marshal personally for reimbursement. In fact I know of no reason why a sheriff should detain persons for federal officers when no warrant has been issued for them. They are not lawfully charged with crime until a warrant is asked for and it takes but a short time to secure a warrant ordinarily when a suspect is arrested.

The practice of arresting persons on suspicion and holding them for from one to three days as you state until it suits the convenience of the authorities to obtain a legal warrant is apparently frowned upon by the United States Government by its refusal to be responsible for the board and keep of such persons. So far as any law of this state is concerned, the sheriff is not authorized to make arrests for offenses made so by Federal Law. Any arrests of that kind made by a sheriff are done by virtue of an arrangement with the United States Marshal or by authority of Federal Law.

Sections 13492 and 13493, General Code, read as follows:

> Sec. 13492. "A sheriff, deputy sheriff, constable, marshal, deputy marshal, watchman or police officer, shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained."
>
> Sec. 13493. "When a felony has been committed, any person without warrant, may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained. * * *"

Nowhere is there any authority in the statutes of Ohio for a sheriff to arrest for Federal offenses without first having procured a warrant, nor is there any authority for holding persons in jail for from one to three days without the issuing of a warrant whether they are suspected of Federal or State offenses. The law requires the procuring of a warrant within a reasonable time after a person is detained and it is doubtful whether from one to three days is a reasonable time under any circumstances.

In Ruling Case Law, Vol. II, page 800, where the matter of making arrests without warrant is discussed, it is said:

"The duty of the one making such an arrest to bring the prisoner before a magistrate or prosecuting officer that proceedings for the trial of the prisoner may be instituted, and that he may have an opportunity to give bail or otherwise procure his release is even more important than if a warrant had been issued before arrest."

In *Keefe* vs. *Hart,* 213 Mass. 476, it is said:

"The defendants had no right to detain the plaintiff to enable them to make a further investigation of the charge against him. It was their duty to bring him before the court as soon as reasonably could be done. * * * It cannot be said as a matter of law that their delay for an hour and a quarter was reasonable."

In *Von Arx.* vs. *Shafer, et al.,* 241, Federal, 649, it is said:

"A city marshal who imprisoned a person arrested by him and kept him in jail from one o'clock in the afternoon until ten o'clock the next day, without taking him before a magistrate in violation of Comp. Laws of Alaska, 1913, Section 2389 was liable in damages for false imprisonment."

In *Horness* vs. *Steele,* 159 Ind. 286, at page 296, it is said:

"An officer arresting without a warrant cannot justify his action in holding and detaining a prisoner for an unreasonable time before obtaining a warrant upon the ground that such a delay was necessary in order to investigate the case and procure evidence against the accused. A detention for such a purpose, if necessary, is properly within the jurisdiction of the justices of the peace before whom he may be charged with committing the offense."

In *Leger, et al.* vs. *Warren,* 62 O. S. 500, it is said:

"A person who has been arrested without a warrant cannot lawfully be held in custody for any longer period than is reasonably necessary to obtain a legal warrant for his detention. Where he is held for a longer period without such writ or other authority from a competent court, he has a right of action for false imprisonment against the officers or person who made the arrest and those by whom he has been so unlawfully held in custody."

I am therefore of the opinion, in specific answer to your questions:

1. Any "profit" made by a county sheriff by virtue of his contract with the Federal Government for the subsistence of Federal prisoners in his charge is a perquisite of the office of the sheriff and is received and collected by the sheriff for the sole use of the treasury of the county, and should be paid by the sheriff into the treasury of the county. If he does not do so a finding should be made accordingly. In computing this "profit" it should be borne in mind that in subsisting Federal prisoners the sheriff is required to furnish not only food, but also articles of personal clothing, laundry work, medical attendance and nursing when necessary and such articles as are necessary to provide the means for personal

cleanliness of the prisoners. Apparently in the case you refer to in your inquiry no consideration was given in computing the sheriff's so-called "profit" to anything but food.

2. The state or county is not under any circumstances, at any time, responsible for the support of Federal prisoners or persons held at the request of the United States Marshal under suspicion of having committed an offense under Federal Law. When persons are detained by the sheriff at the request of the United States Marshal, and without first having procured a warrant for the arrest and detention of such persons, the sheriff himself is responsible for their support during such detention, unless he by arrangement with the United States Marshal or the Federal Government, may look to either one or the other of these authorities for reimbursement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3080.

TAX AND TAXATION—CORRECTIONS OF OMMISSIONS IN PERSONAL PROPERTY—TAX RETURNS—LIMITATIONS ON EXAMINATION BY COUNTY AUDITOR OF ADMINISTRATOR DISCUSSED.

SYLLABUS:

Under the provisions, upon the conditions and within the limitations provided in Sections 5398 *and* 5399, *General Code, a county auditor in his examination of the administrator, where the deceased failed to include taxable property in his return, is limited to a period not exceeding the first five years next preceding the year in which the inquiries and corrections are made.*

COLUMBUS, OHIO, December 29, 1928.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

> "G. C. 5398 and 5399 make provisions for the County Auditor to examine the Administrator where the deceased has failed to include in his return taxable property * * * . Nothing herein shall authorize an inquiry into the listing of property or the return thereof for taxation or the collection of any tax or the penalty thereon for a period exceeding the first five years next preceeding the year in which the inquiries and corrections provided for in this act are made.
>
> The above paragraph is just a brief statement of G. C. 5398. Construing both 5398 and 5399 together I would like to know the opinion of the department on the following question:
>
> How many years back may the County Auditor go in examination of the administrator where the deceased failed to include taxable property in his return?
>
> The deceased died Oct. 31st, 1928, and the question is can the Auditor go back more than 5 years?"