

"The assets of an estate are 'the property in the hands of an heir, executor, administrator, or trustee, which is legally or equitably chargeable with the obligations which such heir, executor, administrator, or trustee, is, as such, required to discharge.' *Favorite vs. Booher's Admr.*, 17 Ohio State 558. Whatever may have been the definition affixed to the term 'assets' in the earlier history of the law, it means, in modern usage, as applied to decedents' estates, *property, real*, or personal, tangible or intangible, legal or equitable, which can be made available for, or may be appropriated to, the payment of debts. *District Township of Williams vs. District Tp. of Jackson*, 36 Iowa, 216; *Stanton vs. Lewis*, 26 Conn. 444, 447; 11 Am. & Eng. Ency. Law, 828, 829; 2 Cyc. 1111." (Italics mine.)

There does not appear to be anything in the new probate code to indicate that the legislature intended that the word "assets" should have a different meaning than that given to it by modern usage.

In passing, it may be stated that consideration has been given to the holding of the case of *Nolan, Exrx. vs. Kroll*, 37 O. App., 350, to the effect that in Ohio, real estate of a decedent descends directly to heirs or devisees and is not assets of the estate to be administered by the executor or administrator except when the personal estate in his hands will not pay all the debts of the deceased. However, inasmuch as the legislature in enacting section 10501-42, paragraph 48, must be held to have intended to include within its provisions the assets of estates of living persons as well as of deceased persons, under the interpretation of Opinion No. 1782, referred to herein, and as it did not define the term "assets," it would seem that for the purposes of such section, it intended the word "assets" to be considered in its ordinary meaning, viz., including real estate which is available for or may be appropriated to pay debts of the estate.

Hence, I am of the opinion, in specific answer to your question, that real estate which is available for or may be appropriated to the payment of the debts of an estate is an "asset" of such estate within the meaning of such word as used in paragraph 48 of section 10501-42, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3978.

VACANCY—CHAIRMAN COUNTY CENTRAL COMMITTEE WHO REMOVES FROM PRECINCT INELIGIBLE TO CONTINUE AS CHAIRMAN OF SAID COMMITTEE.

SYLLABUS:

The removal of the chairman of a county central committee from the precinct from which he was elected creates a vacancy in the office of chairman of such county central committee, since such person thereby ceases to be a member of such committee.

COLUMBUS, OHIO, February 26, 1935.

HON. GEORGE W. SECREST, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion as contained in the following letter over the signature of your assistant:

"I have been requested to secure your opinion on the following:

The members elect of the Democratic County Central Committee met for their election in 1934 in a legally called meeting for the purpose of organization. One Mr. B. was a member of the committee, having been chosen by the Democratic electors of the precinct in which he resided. The members of such committee proceeded to organize by the election of officers provided for by statute and the rules of the party. Mr. B. was elected chairman and entered upon the duties of his office. Sometime after his election Mr. B. removed from the precinct from which he was chosen.

The question now before the members of the County Committee, as well as Mr. B. himself, is whether or not his removal disqualified him to hold the office of chairman."

I presume from your letter that Mr. B. was elected chairman of the county central committee and that the preceding county central committee determined that members thereof should be elected from each precinct in the county rather than from each ward in each city and from each township in the county. Section 4785-63, General Code, provides with respect to this matter as follows:

"The controlling committees of each political party or organization shall be a state central committee, consisting of two members, one a man and one a woman, from each congressional district in the state; a county central committee, consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee may determine; and such district, city, township, or other committees as the rules of the party shall provide. * * *"

Section 4785-65, General Code, relating to vacancies in party controlling committees, expressly provides for the filling of a vacancy in the case of removal from the precinct from which a county central committeeman was chosen. This section provides as follows:

"All party controlling committees, the selection of which is herein provided for, shall serve from the date of the party primary in the even numbered year at which they were elected, until the date of the next party primary in the next even numbered year, and until their successors are selected. In case of vacancies caused by death, resignation or removal from the precinct or district from which a committeeman was chosen, the controlling, or if authorized, the executive committee, shall fill the vacancy for the unexpired term by a majority vote of the members of such committee."

In view of the foregoing section, I think it is clear that when a member of a county central committee removes from the precinct from which he was elected, his office as a member of such committee becomes vacant.

Having determined that the removal of the chairman disqualifies him from further membership in the county central committee, the question remains as to whether or not the chairman of the county central committee is required to be a member thereof. This matter was passed upon in an opinion of this office appearing in Opinions of the Attorney General for 1932, Vol. II, page 782, the syllabus of which is as follows:

"An elected county central committee may not legally select as its chairman a person not an elected member thereof."

Specifically answering your inquiry, it is my opinion that the removal of the chairman of a county central committee from the precinct from which he was elected creates a vacancy in the office of chairman of such county central committee, since such person thereby ceases to be a member of such committee.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3979.

CORPORATION—DEDUCTION FROM ARREARAGES ON FRANCHISE TAX
WHERE OVERCHARGE MADE.

SYLLABUS:

1. *If, after the examination of the books of the public utility or corporation provided for in section 5461 of the General Code, it is determined that, due to erroneous reports filed by such utility or corporation, there was an over-charge of franchise taxes for two years and an under-charge for three years, of the five year period provided for in said section, such over-charge may be deducted from the full arrearages for the three years and certification made to the State Auditor on such basis.*

2. *In such event, the application for refund for over-payment should not be presented to the Sundry Claims Board for settlement.*

COLUMBUS, OHIO, February 26, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of February 6 which reads as follows:

"The Tax Commission of Ohio is required to, by examination of franchise tax returns, determine whether or not the reporting corporation have completely returned all data to the Commission.

Examiners are sent out to examine the books of the corporations and go back five years in the examinations. We cite to you the following occurrence:

In examining over a period of *five* years, it was found that for *three* years the findings were against the corporation, ending in arrearages to be certified to the Auditor of State. In *two* of the years, it was found that the corporation had erroneously charged itself in its reports an over-payment of the franchise tax.

The question we would like to have an opinion on is whether or not when the final certification is made to the State Auditor for the arrearage charges for short payment, may the reconciliation be entered into by the Tax Commission by deducting the over-payments for the two years from the full finding of arrearages for the three years, or must the question of the refund of the over-payment be presented to the Sundry Claims Board for settlement?"

Section 5461 of the General Code of Ohio reads as follows: