

of property, supplies or fire insurance" as provided by Section 12910 of the General Code and so be criminally liable if the contract were to be made.

The mere fact that Section 12910, General Code, does not use the words "*directly or indirectly*" makes no substantial difference in my judgment so far as the answer to your inquiry is concerned, because if the board member in this case is interested at all, that interest is a direct interest, and he would be amenable to both statutes.

Certainly the board member would have a direct and substantial interest though small, in the financial affairs of the corporation of which he is a stockholder. That interest is pecuniary in its nature even though no profits have heretofore been made by the corporation. It no doubt has hopes of making some profit in the future, or at least of making up the loss which it has already suffered else it would not be in the field for business, and even if it never shows a profit and has no hopes of so doing each stockholder is pecuniarily interested to the extent of conserving as much of the original capital as possible.

It seems clear to me that the board member of whom you speak must certainly be said to have a pecuniary interest in the contract which the board proposes to make. The mere fact that the interest is small, can make no difference.

Under a similar statute, a member of the board of public works of the city of Cincinnati was prosecuted for having become interested in a contract for the purchase of property for the use of the city. In that case, viz., *Doll vs. The State*, 45 O. S. 445, the court said in the second paragraph of the syllabus:

"To become so interested in the contract, it is not necessary that he make profits on the same. But it is sufficient, if while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and receives the same or part thereof, or has some pecuniary interest or share in the contract."

I am therefore of the opinion, that a board of education is prohibited, by virtue of Section 4757 of the General Code, from entering into a contract for the purchase of coal with a corporation, of which one of the members of the board of education is a stockholder, even though the member has only one share of stock and the corporation that is selling the coal is being operated at a loss. If such a contract should be entered into the contract would be void, and the board member who is a stockholder in the corporation with whom such void contract is made would, if he affirmatively participated in the proceedings of the board when the contract was made, be subject to prosecution under Section 12910, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

765.

INHERITANCE TAX—FEES OF PROBATE JUDGE.

SYLLABUS:

No additional proceeding is required under the provisions of enacted House Bill No. 484, and the probate judge is not entitled to additional fees, but is limited to the fees under the

original inheritance tax law of 1919 and amendments thereof, namely the fees defined in Sections 5348-10a (5348-11) General Code.

COLUMBUS, OHIO, July 22, 1927.

Tax Commission of Ohio, Columbus, Ohio.

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

“Section 5335-4, as enacted at the recent session of the General Assembly, provides that the tax levied under Sections 5335-1 et seq. ‘shall be administered, collected and paid in the same manner as is provided for the administration, collection and payment of the tax levied under Section 5332.’

Apparently this contemplates an application, a proceeding thereon and an entry the same as is required under the inheritance tax act of 1919 and the amendments thereto.

We have been asked by a probate judge to advise him as to the costs which he is entitled to charge in this additional proceeding. The commission before answering desires to have your opinion as to whether or not Section 5348-10a (5348-11) applies and if the judges in the new proceeding now provided for are entitled to charge and retain the fees as in that section prescribed. If not so entitled, what costs are taxable?”

Enacted House Bill No. 484 entitled An Act to supplement Section 5335 of the General Code by the enactment of supplemental Sections 5335-1, 5335-2, 5335-3 and 5335-4, General Code, relating to the rates of inheritance tax, reads as follows:

“Section 1. That supplementary Sections 5335-1, 5335-2 and 5335-3 of the General Code be enacted to read as follows:

Sec. 5335-1. In addition to the tax levied under Section 5332 of the General Code of Ohio, there is hereby levied an additional tax upon the transfer at death of the estates of resident decedents of an amount equal to eighty per centum of the tax imposed by title III of the act of congress approved February 26, 1926, known as the ‘Revenue Act of 1926’, the rates contained in the said act of congress being as follows:

One per centum of the amount of the net estate not in excess of \$50,000; two per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000; three per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000 * * *

Sec. 5335-2. The rules and regulations for determining the amount of the net estate upon which the tax imposed by Section 5335-1 shall be based, shall in so far as applicable be the same rules and regulations adopted by the Commissioner of Internal Revenue for determining the net estate under the act of congress known as the ‘Revenue Act of 1926.’

Sec. 5335-3. The tax imposed on any estate by Section 5335-1 shall be credited with the amount of the tax levied on successions from such estate under the provisions of Section 5332 at the rates provided in Section 5335 and with the amount of any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States or the District of Columbia in respect of any property included in the gross estate. In no event shall the tax payable under Section 5335-1 exceed the amount, if any, by which the

maximum credit allowable to the estate against the United States estate tax exceeds the credits provided for in the preceding sentence of this section.

Sec. 5335-4. The additional tax levied under Section 5335-1 shall be deemed to have originated in the municipal corporation or township in which the decedent resided and shall be disposed of in accordance with the provisions of Section 5348-11. Said additional tax shall be administered, collected and paid in the same manner as is provided for the administration, collection and payment of the tax levied under Section 5332."

Section 5332 of the General Code provides for the levying of a tax upon the succession to any property passing in trust or otherwise to or for the use of a person, in stipulation or corporation, when the succession is by will or under the laws of descent or under the powers of appointment.

It is noted that under the provisions of Section 5335-1, General Code, a tax in addition to the tax levied under Section 5332, General Code is levied upon the estate of resident decedents.

Section 5335-4 provides that the additional tax levied under Section 5335-1 shall be deemed to have originated, etc. It is therefore apparent that within the terms of the enacted bill provision is made for a new and additional tax separate and distinct from the original tax provision in Section 5332, General Code.

The Commission's inquiry is as to whether or not Section 5348-10a (Section 5348-11) applies, and if probate judges in administering this additional tax, are entitled to charge and retain the fees defined in said section.

Section 5335-4, General Code, as enacted by the 87th General Assembly provides that the tax levied under Sections 5335-1, et seq.;

"shall be administered, collected and paid in the same manner as is provided for the administration, collection and payment of the tax levied under Section 5332."

Under the original inheritance tax act of 1919 and the amendments thereto the procedure is for the filing of an application, proceedings upon said application and a final entry determining the amount of the tax, by whom payable and the distribution thereof when paid.

As this new and additional tax is to be administered, collected and paid in the same manner as is provided for administration, collection and payment of the tax levied under Section 5332, it seems evident that the provisions of said Section 5348-10a (5348-11) apply. Said Section 5348-10a provides as follows:

"For services performed by him under the provisions of this chapter each probate judge shall be allowed a fee of five dollars in each inheritance tax proceeding in his court in which tax is assessed and collected and a fee of three dollars in each such proceeding in which no such tax is found, which fees shall be allowed and paid to such judges after the other costs in such proceedings are paid, but are to be retained by them personally as compensation for the performance by them of the additional duties imposed on them by this chapter. Provided, always, however, that the amount paid to any probate judge under this section shall in no case exceed the sum of three thousand dollars in any year."

Under the code numbering of the newly enacted sections they become a part of Title I, Chapter 2, and it is noted that the probate judges' fees are allowed in each inheritance tax proceeding for the additional duties imposed on them by this chapter.

It is therefore my opinion that no additional proceeding is required under the provisions of enacted House Bill No. 484, and the probate judge is not entitled to additional fees, but is limited to the fees under the original inheritance tax law of 1919 and amendments thereof, namely, the fees defined in Section 5348-10a (5348-11) General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

766.

OHIO STATE LIBRARY—DUTY OF AUDITOR OF STATE TO MAKE INVENTORY.

SYLLABUS:

It is the duty of the auditor of state at this time to make an inventory of all the properties, supplies, furniture, credits and moneys and other things belonging to the state of Ohio in the State Library and under the control of the State Librarian and the State Library Board.

COLUMBUS, OHIO, July 22, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“The State Library Board, through its chairman Vernon M. Riegel, has requested this office to make an inventory of all properties, supplies, furniture, credits and moneys heretofore in possession of Herbert S. Hirshberg, State Librarian, in order that Mr. C. B. Galbreath, selected by said State Library Board as State Librarian, may assume the custody of the properties under the State Library Board.

Question: In view of the fact that the records of this office show that C. B. Galbreath holds an executive position under the Ohio State Archaeological and Historical Society, which requires much of his time and for which he is paid a salary of \$4,000.00 per annum from the State Treasury, shall I recognize his said employment, or selection, by the State Library Board as State Librarian and make the check required of this office by Section 273-1 and Section 273-2 of the General Code?

I shall await your advice before proceeding in said matter.”

Your question is whether or not you should make an inventory of all the properties, supplies, furniture, credits and moneys and other things belonging to the State of Ohio because the State Library Board has discharged the former librarian.

Sections 273-1 and 273-2 of the General Code read as follows:

“Sec. 273-1. The auditor of state, not more than twenty days nor less than ten days, prior to the expiration of the term of office of any state official, who is the head of a department, shall send an accountant to the office of such retiring state official for the purpose of making an inventory of all properties,