

may be a distinct advantage to the pupils and taxpayers of the district and also be beneficial to the state institution in connection with its teachers' training facilities. The burden is cast upon the board of education which suspends a school, to provide adequate advantages to the pupils of a suspended school and it is in view of this end that the statute specifies the method of procedure in the event of a suspension. However, when said board assigns said pupils to a school which provides a course of study suitable for said pupils and affords equal or better opportunities than would be afforded by the assignment of said pupils to another rural school, this is a substantial compliance with the requirements of the law. Undoubtedly under such an arrangement the pupils could not be subjected to any great inconvenience or hardships on account of being transported an unreasonable distance, as compared with the distance they would be transported if assigned to another school, by reason of such an arrangement between the board of education and the state institution.

In conclusion, it is the opinion of this department that if a board of education suspends a one-room elementary school and assigns the pupils of the territory to a school maintained by a state normal college with the approval and consent of the governing powers of said institution, which said school furnishes the proper course of study for such pupils, and affords equal educational advantages to those they would have received had they been assigned to another school, and such pupils in being transported to said school are not subjected to unreasonable inconvenience or hardship, such an arrangement is a substantial compliance with the requirements of section 7730 G. C.

It follows that the transportation of the pupils under such an arrangement should be at the expense of the township rural school district.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1126.

INHERITANCE TAX—BEQUEST TO BISHOP OF CATHOLIC DIOCESE FOR EDUCATION OF CANDIDATES FOR PRIESTHOOD SUBJECT TO TAX—WHEN BEQUEST TO CHURCH AUXILIARY SOCIETY SUBJECT TO TAX—BEQUEST TO RELIGIOUS ORDER FOR RELIEF OF POOR EXEMPT FROM TAX—BEQUEST FOR MASSES FOR REPOSE OF TESTATOR'S SOUL SUBJECT TO TAX.

A bequest to the bishop of a Catholic diocese for the purpose of education of candidates for the priesthood is subject to inheritance tax.

A bequest to a church auxiliary society, the purpose of which society is to beautify the altar of the church, is subject to the inheritance tax, though the society also relieves need and distress among its own members only.

A bequest to a religious order for the relief of the poor is exempt from inheritance taxation.

A bequest for masses for the repose of the testator's soul is subject to the inheritance tax.

COLUMBUS, OHIO, April 3, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date requesting an early opinion upon the following questions:

“M. D. died leaving an estate subject to inheritance tax. Her will contains the following provisions:

Item 1. I give and bequeath to Right Reverend James Joseph Hartley, Catholic bishop of Columbus, Ohio, and his successor in office, seventy-one (71) shares of the common stock, of the Columbus Light and Power company, of Columbus, Ohio, to be used by him and his successor in office in the education of candidates to the Holy priesthood of the diocese of Columbus, subject to certain restrictions hereinafter mentioned.

Item 2. I give and bequeath to the Altar society of St. Joseph's cathedral of Columbus, Ohio, thirty-one (31) shares of the preferred stock of the Ohio Cities Gas company, to be invested and so kept, and the income thereof to be used in perpetuity, subject to certain restrictions hereinafter mentioned.

Item 3. I give and bequeath to The Dominican Sisters of the Sick Poor and their successors in office all my shares of the common stock of the Ohio Cities Gas company to be invested and so kept, and the income thereof to be used in perpetuity, subject to certain restrictions hereinafter mentioned.

Item 6. I desire and will, that there be paid to Rev. Father M. M. Meara, or his successor as pastor of St. Joseph's cathedral, Columbus, Ohio, the sum of four hundred (\$400.00) dollars, to be used for masses for the repose of my soul.

Item 7. I give and bequeath to Right Reverend James Joseph Hartley, Catholic bishop, of Columbus, Ohio, or his successor in office, all the residue of my estate, to be used by him and his successor in office for the purpose of educating of candidates to the Holy priesthood of the diocese of Columbus, subject to the certain restrictions hereinafter mentioned.'

The value of the legacy to the Altar society mentioned above has been determined to be \$2,480.00.

The value of the bequest to Bishop Hartley has been determined to be \$982.60.

The value of the bequest to the Dominican Sisters has been determined to be \$1,189.00.

Although your predecessors in office have passed on a number of similar bequests under the collateral inheritance tax law, yet until the present no cases have arisen requiring action by this commission under the act of June 5, 1919.

We, therefore, respectfully submit to you for your advice the question as to whether or not the legacies set forth are subject to or exempt from inheritance tax under the law now in force.

I may add that our information is that the chief functions of the Altar society mentioned are to beautify the church edifice with flowers and take care of the linen, etc., used therein, but in addition the society takes care of its own sick and needy members."

Section 5332 G. C. formerly provided as follows:

"The provisions of the next preceding section shall not apply to property, or interests in property, transmitted to the state of Ohio under the intestate laws of the state, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for purpose only of public charity or other exclusively public purposes. The property, or interests in prop-

erty so transmitted or embraced in such devise, bequest, transfer or conveyance shall be exempt from all inheritance and other taxes while used exclusively for any of such purposes."

Section 5334 G. C. (108 O. L. 561) provides:

"The succession to any property passing to or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this state, shall not be subject to the provisions of the next preceding section. Successions passing to other persons shall be subject to the provisions of said section to the extent only of the value of the property transferred above the following exemptions: * * *"

Save with respect to the elimination of the words "in this state" and the substitution therefor of the words "carried on in whole or in substantial part in this state" the section has not been essentially changed. Accordingly previous rulings of this department, if correct at the time when made, under the original section, are equally applicable to questions of the kind now raised.

Specifically the same distinction now exists as always existed between a religious institution as a church and a charitable institution; and between "public" charity and charity more restricted so as not to be public. Moreover, the same ruling applies to the present statute that applied to the former statute in that the beneficiary of the inheritance must be an "institution." Applying these tests to the questions submitted the following answers are produced.

(1) The first item is taxable. Waiving the question as to whether the bishop may be regarded as an "institution"—and doubtless he is, as he holds legal title for the church as an institution (*Watterson vs. Halliday*, 77 O. S. 150), it appears that the purpose of the gift is not that of public education, but that though in a sense charitable, its benefits are to be restricted to candidates for the priesthood. It is assumed that in order to claim benefits of the gift or of the educational advantages which it is intended to promote, an individual would have to be a member of the church. This serves to distinguish the case from *Little vs. Seminary*, 72 O. S. 417, where though the institution was a theological seminary engaged in the training of young men for the gospel ministry and was controlled by the church, yet the statement of facts disclosed that the institution was free and open to all upon the same conditions and that the conditions did not include membership in the United Presbyterian church of North America, which was the denomination in control of the seminary.

In like manner the parochial school case, *Gerke vs. Purcell*, 25 O. S. 229, is to be distinguished.

The cases cited related to property taxes, but the principles are also applicable to questions of this character.

(2) The devise to the Altar society is taxable. The primary purpose of this organization, as appears from your statement of facts, is to beautify the altar of the cathedral and care for it. You mention a subsidiary purpose of affording relief to the members of the society. This is not public charity on principles that are familiar to the commission.

(3) The third item makes a bequest which is exempt. *Humphreys vs. Little Sisters of the Poor*, 29 O. S. 201.

(4) The bequest for masses is taxable. In *re Brinkman*, 38 W. L. B., 304.

(5) The answer to the question respecting item 1 likewise covers item 7, which is of the same character.

The necessity for haste makes it impracticable to discuss the questions further; nor in the interest of brevity has citation of all the previous opinions of this department, which are in accord with the conclusions herein, been made. See, however, Opinions of the Attorney-General for 1915, Vol. I, page 493, which covers many, if not all, of these questions.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1127.

APPROVAL, BONDS OF LAKEWOOD CITY SCHOOL DISTRICT IN
AMOUNT OF \$75,000.

COLUMBUS, OHIO, April 3, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1128.

APPROVAL, DEFICIENCY BONDS OF GALION CITY SCHOOL DISTRICT
IN AMOUNT OF \$36,000.

COLUMBUS, OHIO, April 6, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1129.

APPROVAL, BONDS OF McDONALD VILLAGE SCHOOL DISTRICT,
TRUMBULL COUNTY, IN AMOUNT OF \$50,000.

COLUMBUS, OHIO, April 6, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1130.

APPROVAL, BONDS OF VILLAGE OF KENT IN AMOUNT OF \$29,968.44,
STREET IMPROVEMENTS.

COLUMBUS, OHIO, April 6, 1920.

Industrial Commission of Ohio, Columbus, Ohio.