

2. Under the law providing that in all school districts transportation shall be provided for resident elementary school pupils who live more than two miles from the school to which they are assigned, the distance should be computed by beginning at the door of the school house which would be the most accessible to the pupil in traveling from his home "by the nearest practicable route for travel accessible to such pupil," thence by the regularly used path to the center of the highway, thence along the center of the highway which is the nearest practicable route for travel accessible to such pupil to a point opposite the entrance to the curtilage of the residence of the pupil, (or the path or traveled way leading to the entrance to such curtilage as the case may be) thence to the entrance of the curtilage, along the path or traveled way to said entrance if the curtilage of the residence of the pupil does not extend to the highway.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1365.

TAX AND TAXATION—BOARD OF EDUCATION—PROPERTY NOT
USED EXCLUSIVELY FOR PUBLIC PURPOSES NOT EXEMPT FROM
TAXATION.

SYLLABUS:

Property owned by a board of education, acquired in anticipation of future needs of the schools and not used exclusively for any public purpose, is not exempt from taxation within the provisions of Section 2 of Article XII of the Constitution of Ohio.

COLUMBUS, OHIO, December 14, 1927.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—Some time ago you requested an opinion based upon the following statement of facts:

"The board of education of the city of Cleveland has filed application for exemption from taxation of certain real estate purchased by said board. This real estate is acquired in anticipation of future needs of the city schools. The property on which the board is asking exemption is not now used for school purposes. The question now arises as to whether, under the constitution and laws of the state, such property may be exempted from taxation.

You are kindly requested to advise the commission in this matter."

It is assumed that the board will at some future time use the property for school purposes and the property in question is either vacant ground or an income is derived therefrom.

Upon your request, opinion was at that time deferred until after the decision in our Supreme Court of the case of *Jones, Treasurer, vs. Conn, et al., Trustees*, which is reported in 116 O. S. 1, 155 N. E. 791, and is known as the "Marsh Foundation case." The Supreme Court did not determine this question, however, in its final decision.

A similar question was involved in the case of *Board of Education of the City of Cincinnati vs. Hess, Auditor*, in the common pleas court of Hamilton County, and as this was the identical question asked in your communication it was deemed advisable to await the decision of said case. This case has recently been decided. I am informed by the prosecuting attorney of Hamilton County that no opinion was written in said case.

The Constitution of Ohio provides, Section 2 of Article XII, that:

"Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds; stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money, excepting all bonds outstanding on the first day of January, 1913, of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and by the means of instruction in connection therewith, which bonds outstanding on the first day of January, 1913, shall be exempt from taxation but burying grounds, public school houses, houses used exclusively for public worship; institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; and laws may be passed to provide against the double taxation that results from the taxation of both the real estate and the mortgage or the debt secured thereby, or other lien upon it, but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law."

Section 5349, General Code, reads as follows:

"Public school houses, and houses used exclusively for public worship, the books and furniture therein and the ground attached to such building necessary for the proper occupancy, use and improvement thereof and not leased or otherwise used with a view to profit * * * and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. * * *"

Section 4759, General Code, reads as follows:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale or execution of other writ or order in the nature of an execution."

Under the decision in the case of *Wilson, Auditor, et al., vs. The Licking Aerie*, 104 O. S. 137, there is a distinct question presented as to whether Sections 5349 and 4759, General Code, are constitutional, inasmuch as the limitation in the present constitution, that such property must be used exclusively for a charitable purpose, is not found in either of said sections. The third paragraph of the syllabus of said case reads as follows:

"Section 5328, General Code, passed pursuant to the requirement of Section 2, Article XII of the Constitution, requires that 'all real or personal property in this state * * * shall be subject to taxation, except only

such property as may be expressly exempted therefrom.' The exemption must be clear and expressly stated in the statute and must be such only as the above section of the Constitution authorizes to be exempted."

While it is provided in said Section 4759, General Code, that real property vested in any board of education shall be exempt from taxation, the exemption must be such only as the Constitution authorizes to be exempted. Paragraph two of the syllabus of said case provides that:

"The provision in Section 2, Article XII of the Constitution, that institutions 'used exclusively for charitable purposes * * * may by general laws be exempted from taxation' does not authorize the general assembly to exempt from taxation the property of benevolent organizations not used exclusively for charitable purposes."

The inevitable conclusion is that the provision in Section 2, Article XII of the Constitution, that "public school houses * * * may by general laws be exempted from taxation" does not authorize the General Assembly to exempt from taxation the property invested in by boards of education not used exclusively for any public purpose. The question presented is whether or not it may be said that, as a matter of law, property acquired for a future public use, to-wit, to be devoted for school purposes, when necessity exists, is in contemplation of law "used exclusively for a public purpose."

This is the identical question raised in the Hamilton County Common Pleas Court in the case of *Board of Education vs. Hess, Auditor*, and the court therein held that said property acquired by the board of education for future building purposes and not used for any public purpose, was in contemplation of law not used exclusively for any public purpose.

It is therefore my opinion, based upon said decision, that the board of education of the city school district of Cleveland is not entitled to have said property exempted from taxation.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1366.

INHERITANCE TAX—REFUNDER DOES NOT BEAR INTEREST—ORDER
AND JUDGMENT OF COMMON PLEAS COURT ON APPEAL CERTIFIED TO PROBATE COURT FOR EXECUTION.

SYLLABUS:

1. *When the probate court determines the inheritance tax in an estate and an appeal is taken from the order of said court in sustaining or overruling exceptions filed to said order of determination the order and judgment of the common pleas court in said case should be certified to the probate court to be carried into execution.*
2. *When a refunding order is entered (other than a refunding order under Section 5343-1, General Code) the judgment against an estate for refunder should not bear interest.*

COLUMBUS, OHIO, December 14, 1927.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

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