

died intestate on the first day of July, 1922. The question now presents itself as to whether or not any succession subject to inheritance tax has arisen in the land in question. Will you be good enough to advise us?"

In this case the estates of A and B while both were living were undivided half interests in the whole of the real estate for their joint lives with a contingent remainder to the survivor.

You refer to an opinion found on page 473 of the Opinions of the Attorney General for 1920 wherein a somewhat similar question is considered. In that opinion it was intimated that the remainder was vested. This is probably an inadvertence. The remainder is not vested in such a case because who is to take cannot be ascertained until the death of one of the tenants in common.

On the death of B, therefore, A acquired an estate in fee simple in the whole tract which he therefore did not have as remainderman or otherwise. This was not a succession from B because A did not succeed to anything that B had theretofore. Whether or not it is a taxable succession under the inheritance tax law of this state depends upon whether the law enlarges the class of ordinary successions so as to embrace devolutions of title of this character within the scope of its provisions.

In the opinion of this department the case is not within sub-paragraph 5 of section 5332 of the General Code, which applies only to technical joint estates as has been heretofore held. It is not within paragraph 3 of the same section because the original conveyance under which the estate arises is not shown to have been donative in character, and because, further, it does not vest in possession or enjoyment with respect to the death of the grantor or donor. It is not within paragraph 7 of the same section because the estate arising in A was not one that had passed to A subject to an estate determinable by the death of B.

No other provision of the inheritance tax law of 1919 has been found which would cover the case.

For these reasons, therefore, rather than for the particular reason referred to in the earlier opinion, this department advises that in its judgment no succession subject to inheritance tax has arisen in the land described in the Commission's letter.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3792.

BOARD OF LIBRARY TRUSTEES—AUTHORITY TO SELECT NECESSARY OFFICERS—POWERS AND DUTIES OF SUCH OFFICERS.—TO WHOM COUNTY AUDITOR SHOULD PAY PROCEEDS OF LEVY—CLERK OF BOARD OF EDUCATION—WHOM LIBRARY TRUSTEES MAY EMPLOY.

1. *The board of library trustees created under authority of sections 7635 et seq. of the General Code may select upon organization such officers as are necessary for the transaction of the board's business, and the powers and duties of such officers may be prescribed by the said library trustees.*

2. *The county auditor may not legally pay the proceeds of the levy made by the board of education under section 7639 G. C., as amended 109 O. L., 237, to the treasurer selected by the board of library trustees, or directly deposit such fund with the public depository provided by section 7640-1 G. C., without the written order of the board of education as provided by section 4769 G. C., but should in compliance with section 2689 G. C., pay the proceeds of said tax levy to the clerk of the board of education, who is the treasurer of the school district.*

3. *The said board of library trustees may legally employ persons in capacities other than librarians and assistant librarians and may if they see fit combine the duties of the several officers, selected by them for the transaction of said board's business.*

COLUMBUS, OHIO, December 14, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your letter of recent date reading as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following questions involving the interpretation of sections 7635 to 7640-1 G. C., providing for the operation of a school library under the management and control of a board of seven trustees appointed by the board of education.

Question 1. May a board of library trustees select a president and secretary?

Question 2. May such library board select a treasurer to have charge of the funds under the control of the board?

Question 3. If a board of trustees has power to select its own treasurer, what are his powers and duties?

Question 4. May the county auditor legally pay the proceeds of the levy made by the board of education under section 7639 G. C., as amended, 109 O. L. 237, to the treasurer selected by the library board of trustees?

Question 5. May the county auditor pay such moneys directly to the depositories created by the library board under section 7640-1 of the General Code?

Question 6. May the library board legally employ persons in capacities other than librarians and assistant librarians?

Question 7. If the treasurer may be selected by the board of library trustees, may such treasurer also be librarian?

Question 8. May the secretary or any other employe act as treasurer?

Question 9. If a treasurer may not be appointed by a library board, who is the treasurer of the library fund?”

Pertinent to your first question it may be noted that the statutes make no specific provision for such officers as president or secretary for the board of library trustees functioning under sections 7635 et seq. of the General Code. Section 7640 G. C., however, clearly implies that said board is to have such officers. This section reads:

“The proceeds of such tax will constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, signed by the president and secretary thereof.”

It would seem evident from the language employed in the above section, as well as other pertinent sections providing for the establishment of the board of library trustees in question, that the legislative intent presumes that the board of library trustees is to proceed to its own organization and the selection of such officers as may be deemed necessary for the transaction of the ordinary business of said board. It is equally true that no provision is made by statute for the office of treasurer of said library board, however, since such an officer is seemingly required for the general activities of the board by the implication of sections 7637, 7640 and 7640-1 G. C. it is reasonable to conclude the legislative intent of leaving the selection of this officer to the discretion of said library trustees. While the law makes no provision as to the bond of a treasurer of said board in case such an officer is appointed, it would seem that ordinary prudence would require the board to bond this officer in a sum sufficient to protect the funds and property placed in his custody. It would follow from the above reasoning that your first and second questions are to be answered in the affirmative.

Relative to your third question, it is believed that in the event the board of library trustees appoints a treasurer, the powers and duties of such an officer may be properly defined and determined by the said library board, limited of course by other general provisions of law pertinent to such matters.

It is thought a negative answer should be returned to your fourth question, since the law makes no provision for such a procedure. In this respect Section 2689 G. C., provides:

“Immediately after each semi-annual settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city treasurer, or other proper officer thereof, all moneys in the county treasury belonging to such township, city, village, or school district.”

It would seem that this section requires the payment by the county treasurer upon warrant of the auditor, of all money in the county treasury belonging to the school district, to the treasurer or proper officer thereof. Since the funds raised by levy under Section 7639 G. C., belong to the school district making the levy, it follows that the clerk of the board of education who is made treasurer of the school district under Section 4782 G. C., is the proper authority designated by statute to receive said funds, and it would seem to follow that the library fund provided for by the tax levy under Section 7639, should be deposited by this officer with other funds belonging to the board of education in conformity to Section 7604 et seq. of the General Code and properly credited to the account of the library trustees as provided by law. Thus it would seem that while the library trustees may appoint

a treasurer for the ordinary purposes of said board, such officer is not the legal recipient of the fund raised by the levy under Section 7639 G. C., and since Section 2689 G. C., requires payment of such a fund by the county treasurer to the treasurer or proper officer of the taxing district it follows that there is no authority in the auditor to directly contract with a depository for the deposit of said fund. The conclusion reached obviously answers your fifth question in the negative.

Answer to your sixth question is thought to be in the affirmative, since the power delegated to the library trustees under section 7637 G. C., to own and control property in its own name, carries with it the implied power to do those things necessary for the proper use and preservation of such property, and it is presumed in many instances the employment of persons in capacities other than librarians and assistants, would be a necessary exercise of this implied power. It would follow then that your sixth question should be answered in the affirmative.

It is believed question seven may be briefly answered in the affirmative since no reasons are stated tending to show any incompatibility between the two offices, and no reason can be seen from your general statement why the duties of a librarian may not be joined with those of a treasurer, should the library trustees see fit to combine such offices.

Similar reasoning concludes an affirmative answer to your eighth question.

Relative to your ninth question it has been previously indicated that while the board of library trustees may select a treasurer for certain lawful purposes, this officer in the capacity of treasurer is not the treasurer of the school district. The clerk of the board of education, however, is the treasurer, and proper officer of the taxing district, and apparently is the lawful authority to receive from the county treasurer the library fund raised by the levy made under 7639 G. C., from which it follows that the Clerk of the Board of Education is the treasurer of the library fund for the purpose at least of depositing the same as required by law with the public depository, and after this act has been consummated the depository in a sense becomes the custodian or treasurer of the library fund, paying the same out upon proper order from the library trustees.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3793.

INHERITANCE TAX LAW—JOINT ACCOUNT CREATED IN 1902 IN
NEW YORK WITH CERTAIN TRUST COMPANY IN CERTAIN SE-
CURITIES INCLUDING STOCKS OF OHIO CORPORATIONS FOR C.
A. S. AND E. B. S. AND SURVIVOR OF THEM AS JOINT TENANTS—
C. A. S. DIED IN 1921—TAXATION.

C. A. S. and E. B. S. both of New York, created in 1902 a joint account with a certain trust company in that state in certain securities, including stocks of Ohio corporations for "C. A. S. and E. B. S. and the survivor of them as joint tenants." C. A. S. died in 1921.

HELD, assuming that the property was in reality the joint property of C. A. S. and E. B. S., a taxable succession in E. B. S. to the extent of half the value of