

the wife of Otha L. Monroe, was not included in the clause in and by which the respective dower interests of said Anne M. Monroe and of Georgie P. Monroe, the wife of E. Paul Monroe, were to be released. In this connection, it is noted that the deed as drawn bears some indication of an intention to include the names of the respective wives of Otha L. Monroe and E. Paul Monroe in the granting clause of the deed, as well as in the habendum clause of said deed. Inasmuch, however, as the name of Anne M. Monroe does not appear in the granting clause of the deed, it will be necessary to have the same inserted in the clause of the deed in and by which her dower interest is to be released to the state of Ohio as the named grantee in this deed. The omission of her name in this clause of the deed was obviously an oversight and the same should be inserted therein by some person authorized to do so.

Upon examination of the contract encumbrance record No. 21, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the proper appropriation account to the credit of the Ohio Agricultural Experiment Station, to pay the purchase price of this property, which purchase price is the sum of \$800.00. I likewise find that the purchase of this property has been approved by the Controlling Board and that said Board has released from the appropriation account the money necessary to pay for the property.

With the exceptions above noted, the abstract of title and the other files relating to the purchase of this property are approved. Your department will, of course, see that the deed is corrected in the manner above indicated before the voucher is issued for the purchase price of this property and before said deed and the other files are submitted to the Auditor of State for the issue of a warrant on such voucher.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4852.

#### BOARD OF REVISION—APPEAL TO TAX COMMISSION ON DECISION OF COUNTY BOARD OF REVISION.

##### SYLLABUS:

*Upon appeal to the Tax Commission from the decision of a county board of revision under Sections 5610, et seq., General Code, in the event the Tax Commission is equally divided as to whether or not the decision of such county board of revision should be affirmed, such division constitutes an affirmance of the decision of the county board of revision.*

COLUMBUS, OHIO, October 31, 1935.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

“The Tax Commission of Ohio, in respect to the administration of Sections 5609-5610 G. C., desires your interpretation of these sections regarding procedure:

QUESTION: If after all proceedings of the above named sections have been concluded and an examiner sent to conduct the hearings on appeal, reports his findings and sets out his recommendations to the Commission, and said findings and recommendations of the examiner recommend a reduction or a change from the assessed value of the real estate under appeal as fixed and determined by the Board of Revision, and the vote of the members of the Commission is two for the recommendation and two against the recommendation of the examiner, what is the legal status in the matter resulting from such vote?

Does the assessed value remain as fixed by the Board of Revision, and should a journal entry be prepared by the commission to that effect?

Your interpretation of these sections, and the above question in particular, will be greatly appreciated.”

Sections 5610, et seq., General Code, secure the right of appeal from the decision of a county board of revision as to the valuation of property to the Tax Commission. After providing how such appeal shall be perfected, this section reads as follows:

“Such appeal may be heard by the commission in the county where the property is listed for taxation, or the commission may cause one or more of its examiners to be sent to such county, to conduct such hearing, which shall be held not more than sixty days from the notice of such appeal. Such examiners shall report their findings thereon to the state tax commission for its affirmation or rejection.”

Although the last sentence of the foregoing section would indicate that in the event a hearing is held by examiners of the Tax Commission, the action of the Tax Commission shall be either an affirmance or rejection of the report of the examiners, it must be remembered that the basic question under consideration by the Tax Commission in cases of this kind is whether or not a decision of the county board of revision shall stand or be modified. It is the

Tax Commission which has jurisdiction to act upon such appeal and not any examiner or examiners which may conduct a preliminary hearing. Such examiners are in somewhat the same position as a master commissioner appointed by a court to hear evidence and report his recommendations to the court. These views are substantiated by a consideration of Sections 5611 and 5611-1, General Code, which sections provide as follows:

“Sec. 5611. The tax commission of Ohio may hear the appeal on the record, minutes and evidence thus submitted or may in its discretion make other investigations with respect to the complaint. The commission shall ascertain and determine the true value in money of the property complained of and certify its action to the county auditor, who shall correct the tax list and duplicate in the manner provided by law for making corrections thereon,”

“Sec. 5611-1. Whenever the tax commission of Ohio determines the valuation, or liability, of property for taxation, whether in case of an original valuation or other original proceeding of such board, or in case of a determination of an appeal from the decision of a county board of revision, it shall, by registered mail, certify its action to the person in whose name the property is listed, or sought to be listed, at the same time and in the same form in which such action is certified to the county auditor, and such determination shall become final and conclusive for the current year, unless reversed, vacated, or modified as hereinafter provided.”

Having determined that the question before the Commission on appeal from a decision of a county board of revision under Sections 5610, et seq., General Code, is one of whether or not such decision should stand or be modified, regardless of whether or not the Tax Commission should see fit to have a hearing conducted by one or more of its examiners, your question is analogous, in principle at least, to those cases where a judgment of the Court of Appeals is taken to the Supreme Court for review and the Supreme Court is equally divided on the question of affirmance of the judgment of the Court of Appeals. Instances of this kind are not infrequent due to the occasional absence of one of the judges of the Supreme Court in the hearing and determination of cases. Under such circumstances, it is established that the judgment of the lower court must stand and the equal division of the Supreme Court constitutes an affirmance thereof. In *Central United National Bank vs. Hendler, et al.*, 127 O. S. 38, the entry is as follows:

“It appearing that the judges of the court are equally divided in opinion as to the merits of this case (the court now being constituted of but six judges) and are for that reason unable to agree upon

a judgment, and the entry of that fact constituting an affirmance of the judgment of the Court of Appeals, it is ordered that the defendants in error recover from plaintiff in error their costs herein expended."

To the same effect is *Gilvary vs. Cuyahoga Valley Ry. Co.*, at page 402 of the same volume, the entry of affirmance reading:

"It appearing that the judges of the court are equally divided in opinion as to the merits of this case (one judge not participating) and are for that reason unable to agree upon a judgment, and the entry of that fact constituting an affirmance of the judgment of the Court of Appeals, it is ordered that said judgment be affirmed."

Specifically answering your question, it is my opinion that upon appeal to the Tax Commission from the decision of a county board of revision under Sections 5610, et seq., General Code, in the event the Tax Commission is equally divided as to whether or not the decision of such county board of revision should be affirmed, such division constitutes an affirmance of the decision of the county board of revision.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4853.

APPROVAL, PROPOSED ARTICLES OF AGREEMENT FOR  
HIGHWAY IMPROVEMENT IN LUCAS COUNTY, OHIO  
—THE TOLEDO AND INDIANA RAILROAD COMPANY.

COLUMBUS, OHIO, November 1, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgement is made of your communication under date of October 29, 1935, submitting for my consideration the proposed articles of agreement to be entered into by and between The Toledo and Indiana Railroad Company and the Department of Highways, with reference to the widening and improvement of SH (ICH) No. 537, Section "A" (Dorr Street), Lucas County.

After consideration, it is my opinion that said agreement is in proper