

2. The members of the board of education for the newly created Geneva-on-the-Lake Village School District should be elected at the first election held for the election of municipal officers for the village which may be the regular election in November, 1927, or a special election held for the purpose within six months after May 2, 1927. In the event a board of education is not elected for the Geneva-on-the-Lake Village School District at the time the village municipal officers are elected, the county commissioners of Ashtabula County should appoint a board of education for such district and the members so appointed will serve until their successors are elected and qualified.

3. Tax moneys arising from tax levies made by the Geneva Township Rural Board of Education and distributed at the August, 1927, semi-annual settlement of taxes should be paid to the Geneva Township Rural Board of Education. The proceeds of levies made after May 2, 1927, should be paid to the district making the levy.

4. The property lying within the village of Geneva-on-the-Lake will not continue to help retire bonds issued by the Geneva Township Rural Board of Education prior to the incorporation of the new village. The proceeds of district school tax levies made prior to such incorporation accrue to the Geneva Township Board of Education even though payable after the date of the incorporation of the village.

5. In view of the answer to your fourth question, your fifth question does not require an answer.

In conclusion, I might state that inasmuch as the newly created Geneva-on-the-Lake Village School District will only have approximately twelve pupils and this territory had been served before the incorporation by the rural district, it would seem in the interests of economy and good management for the county board of education to take some action under the provisions of Section 4692 of the General Code.

Respectfully,

EDWARD C. TURNER,  
*Attorney-General.*

692.

RECEIVER—LIQUIDATING RECEIVER NOT SUBJECT TO TERMS OF SECTION 5404-1, GENERAL CODE—RETURN FOR TAXATION OF PERSONAL PROPERTY.

SYLLABUS:

*A liquidating receiver of the assets of a corporation is not within the terms nor the effect of Section 5404-1, General Code, requiring personal property returns of incorporated companies to be made as of the first day of January. He is, however, subject to Section 5372-1 General Code, requiring receivers, assignees and other similar officers, to list for taxation property held or controlled by them for others (including a corporation) on the day preceding the second Monday of April.*

COLUMBUS, OHIO, July 6, 1927.

HON. CHAS. P. TAFT, *2d, Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication with which you inclose a letter from the county auditor of Hamilton County, Ohio, which reads as follows:

“In connection with the personal property tax return made by the Receivers of the Virginia-Carolina Chemical Company as of January 1, 1926, we wish to present the following facts and ask that you secure an opinion from

the Prosecuting Attorney, or from the Attorney General of the State, as to whether or not we are correct in our contention that the return of these Receivers should have been as of the second Monday in April, 1926, on the basis of individuals, rather than as of January 1, 1926, on the basis of a corporation.

In March, 1924, Steel Cities Chemical Company brought suit against Virginia-Carolina Chemical Company in the U. S. District Court in New Jersey asking among other things for the appointment of a receiver, and a receiver was duly appointed, and ancillary proceedings were instituted in the U. S. District Court for the Southern District of Ohio, Western Division, at Cincinnati, resulting in the appointment of ancillary receivers in this jurisdiction. The same procedure was followed in several other jurisdictions, with the result that the business of Virginia-Carolina Chemical Company was split up into several different parts, each operated separately by receivers, but, by the reciprocity of the different courts, these receivers were permitted to do business with each other so that the business as a whole would not be wrecked.

On June 19, 1924, The Central Union Trust Company of New York, as trustee for bond holders of Virginia-Carolina Chemical Company, brought foreclosure proceedings in the U. S. District Court in New Jersey because of default of the Company on outstanding bonds. Again ancillary proceedings for the same purpose were brought in this jurisdiction, the prayer of the petition being that receivers should be appointed, 'to operate the property and business of the defendant, to preserve the same until sale, and to receive and hold all earnings, income and profits of said property and business for the sole use and benefit of the plaintiff (i. e., the Trust Company) and of the holders of the first mortgage bonds.'

In accordance with this prayer these same receivers were appointed in foreclosure in New Jersey and also in this jurisdiction, and the receivership, by special order, was extended to cover both cases. From that time on the receivers ceased to operate on behalf of the corporation, but were operating for the benefit of the mortgage bondholders pending a sale of the property of the corporation. This was made still more clear by amended and supplemental foreclosure bills filed in July, 1925, in all jurisdictions setting out still further default with respect to mortgage indebtedness.

In due course a special master was appointed to make findings as to the property covered by the mortgage and, after his report in December, 1925, The Central Union Trust Company filed its petition in the New Jersey Court, asking for a foreclosure and sale of all of the property of Virginia-Carolina Chemical Company. This sale was ordered on December 28, 1925, and included all the property in this jurisdiction, stating specifically that all the rents, earnings and profits were for the benefit of the bondholders.

As quickly as proceedings could be taken, the local jurisdiction followed with an ancillary decree of sale, and actual sale of all the assets was made shortly thereafter.

It would thus appear that on January 1, 1926, all assets in the hands of the receivers of Virginia-Carolina Chemical Company were not held as a corporation, but were held for the benefit of the mortgage bondholders pending ultimate distribution under a sale already ordered. Virginia-Carolina Chemical Company had ceased to operate as a corporation and the Receivers, who were individuals, represented individual bondholders.

All these matters are of record in case No. E-361 U. S. District Court, Southern District of Ohio, Western Division.

Attention is specifically called to Section 5372-1 General Code of Ohio, the material part of which reads as follows:

'Personal property ----- in the possession or control of a person ----- as receiver ----- on the day preceding the second Monday of April in any year, on account of any ----- corporation ----- shall ----- be listed by the person having the possession or control thereof and be entered upon the tax list and duplicate in the name of such ----- receiver ----- adding to such name words briefly indicating the capacity in which such person has possession or ----- controls property, and the name of the ----- corporation to whom it belongs'.

We respectfully request a ruling to the effect that the tax return should be on an individual basis as of the second Monday in April, 1926, and we respectfully request further that, pending a ruling to this effect, the payment of the tax assessed on the basis of January 1, 1926, be permitted to be made under protest, or be held in abeyance."

It is unnecessary again to quote Section 5372-1, General Code, quoted in part in your letter.

The case of *Morrow, Receiver, vs. Hess, Auditor*, was decided by the Supreme Court of Ohio on May 11, 1927, and the question before the court was whether the assets of an insolvent firm, in the hands of a receiver for the purposes of liquidation and distribution only, should be listed by such receiver for the purpose of taxation. This question was answered in the affirmative by the lower courts, the receiver contending that he should not be required to return said property for taxation. The court after quoting the pertinent provisions of Section 5372-1, General Code, said:

"The provisions of this statute are broad and comprehensive and require the listing of property by a receiver having possession thereof upon tax listing day; no distinction being made between property which is then a portion of a going concern being operated under order of court and assets then in the hands of a receiver for the purpose of liquidation and distribution. There can be no doubt of the power of the Legislature to require receivers, trustees and assignees to make return of and pay the taxes upon property in their possession."

In the case of *In Re The Patent Wood Keg Company*, 13 N. P. (N. S.) Reports, page 321, it was held that:

"Where a corporation is in court for the purpose of dissolution, the receiver thereof will return for taxation the personalty so coming into his hands and will be required to pay taxes on the real estate belonging to the corporation due and to become due, for the current calendar year."

In this case the court proceedings had been taken, a sale had been ordered, and the receiver was merely holding the property, still the property of the corporation, for the benefit of the creditors who were eventually to receive it. The corporation in this case was dissolved February 7, 1912, all the property real and personal of said corporation was in the hands of a receiver—subject to the order of the court. The court further held that:

"The receiver herein will be required to return the personal property of his estate as of the day preceding the second Monday of April, 1912."

Section 5404-1, General Code, as amended, 110 Ohio Laws, 382, reads:

"All the listing and valuation of the personal property, moneys, credits, investments in stocks, bonds, joint stock companies, or otherwise, of incorporated companies, and all the averages of the stocks of merchandise and material used as a manufacturer of such incorporated companies, shall be listed, valued and ascertained as of the first day of January, annually."

It was held by my predecessor in Opinions of the Attorney General, 1920, at page 227, that:

"A liquidating receiver of the assets of a corporation is not within the terms nor the effect of Section 5404-1 G. C., requiring personal property returns of incorporated companies to be made as of the first day of January. He is, however, subject to Section 5372-1 G. C., requiring receivers, assignees and other similar officers to list for taxation property held or controlled by them for others (including a corporation) on the day preceding the second Monday of April."

This opinion was rendered to the Tax Commission of Ohio in answer to the question:

"Is the receiver for a corporation required to file a return of the personal property of the corporation for taxation as of the first day of January, or as of the day preceding the second Monday in April?"

In answering this question it was stated that:

"Section 5404-1, G. C., which changes the time as of which certain personal property returns shall be made from the day preceding the second Monday of April to the first day of January, refers to 'incorporated companies' only (108 Ohio Laws, Part I, 131-132). Moreover, the code number chosen by the general assembly for the newly enacted section further evinces an intention to make this section a part of the group of the statutes beginning with Section 5404 of the General Code and dealing exclusively with returns made by incorporated companies.

For most obvious reasons a return made by a 'corporation' must be made by some human being acting for the corporation. The language of Section 5404 imposes this duty, as follows:

'The president, secretary, and principal acting officer of every incorporate company \* \* \* shall list for taxation, verified by an oath of the person so listing, etc.'

\* \* \* \* \*

A receiver appointed by a court is neither an officer nor an agent of the corporation and does not come appropriately within the class of persons indicated, if not fully expressed, by the enumeration found in the statute.

Moreover, as pointed out by counsel, the case of receivers is expressly dealt with in the statute, Section 5372-1, which provides in part that:

(Here the statute is quoted.)

This section is not expressly repealed or amended by the legislation of 1919, and I am unable to find any such inconsistency between the two sections as to work any partial implied repeal of the earlier one by the enactment of the

latter one. In fact prior to the enactment of Section 5404-1 the true legal situation was that a receiver for a company reported, not under Section 5404, et seq., G. C., but under Section 5372, thereof.

It follows that the contention of counsel is correct, and that the receiver should list the property in his possession in such capacity as of the day preceding the second Monday of April. \* \* \* The conclusion was reached that after the enactment of Section 5372-1, assignees and receivers, whether continuing the business under order of court or engaged in winding up the liquidating assets, are required to list for taxation the property in their possession on listing day.

\* \* \* \* \*

Accordingly, it is my opinion that in the case under consideration the receiver is not obliged to list the personal property and other assets in his possession for taxation as of the first day of January, and may lawfully proceed at the present time to make distribution; but should any property remain in his possession or subject to his control as receiver on the day preceding the second Monday of April, it will be his duty at that time to list such property for taxation in the manner pointed out by Section 5372-1, G. C."

It is therefore my opinion that the return of personal property for taxation by the Receivers of the Virginia-Carolina Chemical Company should be made under the provisions of Section 5372-1, General Code, as of the day preceding the second Monday in April, 1926, and not under the provisions of Section 5404-1, General Code, as of the first day of January, 1926.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

693.

BOARDS OF EDUCATION—NOMINATION OF CANDIDATES FOR BOARD  
—DIFFERENT SCHOOL DISTRICTS DISCUSSED—PRIMARY LAW  
IN RELATION TO NOMINATION OF SCHOOL BOARD MEMBERS.

*SYLLABUS:*

1. *Under the provisions of Section 4997, General Code, nominations of candidates for the office of member of the board of education shall be made by nominating papers duly signed by not less than twenty-five electors of the school district, of either sex, for each candidate to be nominated in village districts, and in city school districts by not less than two per cent. of the electors voting at the next preceding general school election in such city school district.*
2. *Under the provisions of Section 4728-1, General Code, nominations of candidates for the office of member of the county board of education shall be made by petition signed by petitioners who shall be qualified electors residing in the county school district, not less in number than one per cent. of the electors voting at the last preceding election for members of local boards of education in the districts within the county school district, and not less in number than twenty-five in any case.*
3. *Under the provisions of Section 4951-1, General Code, nomination of candidates for member of the board of education is expressly exempted from the operation of the primary election law.*