

contingent in fact, it is not so in form so that the principle laid down in *Linton vs. Leacock, supra*, will make of it a technical vested remainder for life; but that this principle can not be so applied when the estate is contingent both in form and in fact.

See generally—Kales on Future Interests; 1 L. R. A., 434. Note.

Here the expression of contingency in the will itself is very strong, the words "if" and "in that event" both conditioning the gift. These are words of condition and not of time, and the better view would seem to be in accordance with the commission's assumption that this is indeed a contingent remainder.

It is now to be observed that the remainder is not only contingent in amount but also in person. In the first place, the value of the estate as a contingent remainder for life can not be ascertained until it vests. In the second place, it may never vest at all. The case is not one in which there is any certainty as to the ultimate vesting. Therefore, on principles which have been developed in a previous opinion to the commission, it would seem that the tax on these contingent remainders for life does not accrue immediately and should not now be assessed.

Greater difficulty is encountered in dealing with the effect of this situation upon the appraisalment of the vested interests of the children. You do not ask this question, but it seems present on the facts and it will be considered before finally disposing of any part of your fifth question. On the one hand, section 5342 would seem to require the estates of the children, being now vested, to be immediately taxed as vested remainders after the life estates of their respective parents, who are children of the testator, without any allowance for the contingent life estate in one-third of the real estate which is given to their other respective parents. This also would seem to be taxation at the "highest possible rate" within the meaning of section 5343, for to ignore the intermediate life estates to the respective consorts of the children of the testator would eliminate one set of exemptions and thus enhance the value of the estates passing to the remaindermen. The only embarrassment arises from the fact that it might also be contended that the contingent remainders for life should also be taxed immediately at the highest possible rate. This requires an interpretation of section 5343, which it is believed is to be applied in the way already intimated, viz., by eliminating from consideration at the present time the contingent life estates, and taxing the remainders to the children as vested remainders in fee after the life estates of their other parents, subject to the process above outlined, in the event of the survival of the consorts who are entitled to the contingent life estates.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1324.

BOARD OF EDUCATION—WITHOUT AUTHORITY TO ACCEPT COMMERCIAL INSTRUMENTS KNOWN AS "TRADE ACCEPTANCES" IN PAYMENT FOR GOODS PURCHASED.

Boards of education are without authority to accept commercial instruments known as "trade acceptances" in payment for goods purchased, such action being contrary to the provisions of sections 5660 and 5661 G. C. and beyond the powers of such officers.

COLUMBUS, OHIO, June 9, 1920.

HON. SAMUEL DOEFLE, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of a letter from your office,

signed by Mr. R. A. Baskin, assistant prosecuting attorney, in which it is desired to know whether or not boards of education "may accept so-called 'trade acceptances' in payment of goods purchased."

The term "trade acceptance" is defined in section 710-124 of the new Ohio banking code (house bill 200), the following definition occurring in such section on page 112, 108 O. L., part 1:

"The term 'trade acceptance' to mean a draft or bill of exchange issued or drawn for agricultural, industrial or commercial purposes or the proceeds of which have been used or are to be used for such purposes, but such definition shall not include notes, drafts, or bills of exchange covering merely investments, or issued or drawn for the purpose of carrying or trading in stocks, bonds or other investment securities, except bonds and notes of the government of the United States. * * *"

In several other sections of the banking code the trade acceptance is treated upon as regards the method of using the same in banking circles.

A "trade acceptance" is defined by the federal reserve board in regulation A. series of 1917, as a draft or bill of exchange drawn by the seller on the purchaser of goods (construed to include goods, wares, merchandise or agricultural products, including live stock) and a bill of exchange, within the meaning of this regulation is defined as an unconditional order in writing addressed by one person to another, other than a banker, signed by the person giving it, requiring the person to whom it is addressed to pay, in the United States, at a fixed or determinable future time, a sum certain in dollars to the order of a specified person.

To be eligible for purchase by or discount at a Federal reserve bank, a trade acceptance should present prima facie evidence that it is drawn by the seller on the purchase of goods sold and must have a maturity at time of purchase or discount of not more than 90 days, excepting that if drawn for agricultural purposes or against sale of live stock it may have a maturity at time of discount of not more than six months.

The Federal Reserve Bank of Cleveland, in an official statement, defines the system of trade acceptance as being the substitution of time drafts drawn by the seller or the buyer of merchandise at the time of sale for the present system of "open book accounts," and that the trade acceptance itself is a draft with a certain maturity drawn by a seller on a buyer for a fixed or determinable sum of money, representing the purchase price of goods, payable to order and bearing across its face the unqualified and unconditional acceptance of the buyer.

An investigation of the subject indicates that in order to stabilize the credit system of the country following the war, the Federal reserve banking system is encouraging the use of the trade acceptance to take the place of the old system of open book accounts, and it can thus be understood as to why a firm might ask a board of education to give a trade acceptance for goods which have been purchased, inasmuch as trade acceptances for the same goods may have been received or requested of other purchasers, aside from boards of education.

You attach with your letter a sample of the trade acceptance form which has been presented to boards of education in your county by sellers of goods to such boards of education. The Federal Reserve Bank of New York is authority for the statement that the trade acceptance plan is not a new scheme or method, as it was used somewhat in the early history of our country.

The whole purpose of the encouragement of the trade acceptance, as an incident in the commercial transactions, seems to be to have such trade acceptance take the place in a large degree of the open book account in business transactions. Continuing the Federal Reserve Bank of New York says:

"Their use will be a check on overbuying as the buyer's ability promptly to meet his obligations when they come due will tend to control the volume of his purchases. The retailer using a trade acceptance will have a better standing if called upon to make a statement, especially with bankers, because 'acceptances payable' are more favorably regarded than 'accounts payable.'
* * * * *

"The retailer will have a stronger sense of responsibility toward his obligations if he agrees to definite periods of payment and knowing the exact dates the trade acceptance becomes due, he can arrange to meet these obligations.
* * * * *

"The Federal Reserve Board, recognizing the advantages of the 'trade acceptance,' has authorized special, low rates of discount for this class of paper, and all Federal Reserve banks in establishing rates have made a rate generally one-half ($\frac{1}{2}$) of one per cent. lower for trade acceptances than the rate for promissory notes."

Thus we find that the "trade acceptance" is recognized in the Federal Banking System administration, and also specifically recognized in the new Ohio Banking Code, and your question is whether a board of education, under the statutes of Ohio, can make use of this form of commercial transaction the same as an individual, a firm or a corporation who may have purchased the same kind of goods from the seller.

Bearing upon this point, your attention is invited to the provisions of section 5660 G. C., which provides that:

"The commissioners of a county, the trustees of a township and the board of education of a school district, shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection, and not appropriated for any other purpose; money to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury and in the appropriate fund. Such certificate shall be filed and forthwith recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, is fully discharged from the contract, agreement or obligation, or as long as the order or resolution is in force."

Section 5661 also provides:

"All contracts, agreements or obligations, and orders or resolutions entered into or passed contrary to the provisions of the next preceding section, shall be void, but such section shall not apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education."

The meaning of the above two sections is that a board of education is not permitted to enter into any contract or create any obligation involving the expenditure of money unless the certificate required in section 5660 G. C. is prepared. It is also provided that all contracts and agreements which are not accompanied by action in the preparation of such certificate shall be null and void unless it is in the question of

employment of teachers and school employes. In the case at hand it is understood that the trade acceptance which the board of education was asked to sign is for goods purchased and the real fact of the matter is that a trade acceptance of course could not be used in the matter of the employment entered for the reason that the element of *goods purchased or sold must always enter into the make-up of the trade acceptance.* That is to say, it is a lien in a sense on the goods themselves, which latter are supposed to be the chattels which give the trade acceptance its commercial and banking value.

“The authority of the board of education like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising the powers vested in them are resolved against them.” (Board of Education vs. Best, 52 O. S., 152).

A careful reading of sections 5660 and 5661 G. C. shows at once that the “trade acceptance” would have no legal status unless the accompanying certificate had been made out and spread upon the records of the board, for the law contemplates that boards of education must make out this certificate, stating that the money is in the treasury or in process of collection. If the money is in the treasury, there seemingly is no occasion for a book account or at least for the trade acceptance which is presumed to take the place of the book account. But aside from the impediments of section 5660, the belief is entertained that incurring the additional liabilities attached to the acceptance of negotiable instruments in connection with such purchases by public officers is not contemplated or authorized by laws providing for such purchases. To incur such liability the authority must be clear and specific and no such authority is found in the statutes relating to such board. Again, no authority is found in either sections 5656 G. C. or 5658 G. C., which sections treat upon the borrowing power of boards of education, because these two sections can only be used where it is desired to change but not increase the indebtedness in amount and where the board is unable to pay at maturity.

In the case of a trade acceptance the maturity has not arrived and the status of maturity is 60 or 90 days away, and thus no authority for the use of a trade acceptance is found within the borrowing provisions of section 5656 G. C.

The contemplation of the law that boards of education should be governed by sections 5660 and 5668 G. C., in the purchase of goods, fails to reveal any authority for a board of education making use of the commercial paper known as the “trade acceptance” in its buying transactions.

Respectfully,
JOHN G. PRICE,
Attorney-General.