

Middletown is a court of record (G. C. section 1579-183) the costs of said court are fixed by General Code section 2900 et seq. in so far as such costs are applicable thereto.

It should be considered in connection herewith that S. B. No. 14 (section 3005 G. C.) an act providing for costs in municipal courts and standardizing costs therein, is now the law governing costs and fees in municipal courts.

While the legislative expression in the Middletown municipal court act is not definite, yet reading the whole act and in view of General Code section 2898 et seq. it is clear that it was intended that costs should be collected in the municipal court of Middletown, Ohio.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2155.

BANKS AND BANKING—HOW TO DETERMINE VALUE OF SHARES OF BANK STOCK UNDER PROVISIONS OF SECTION 5412 G. C.—NOT PROPER TO DEDUCT FROM AGGREGATE VALUE, THE VALUE OF NON-TAXABLE SECURITIES.

In determininig the value of the shares of bank stock under the provisions of section 5412 of the General Code, it is not proper to deduct from the aggregate value of such shares the value of non-taxable securities.

COLUMBUS, OHIO, June 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission requests the opinion of this department upon the following question:

“In determining the value of the shares of bank stock under the provisions of section 5412 of the General Code is it proper to deduct from the aggregate value of such shares the value of non-taxable securities?”

This question seems to be definitely determined in the case of *Cleveland Trust Co. vs. Lander*, 62 O. S., 266. In the opinion in that case, per Burket, J., the following is found:

“It is also urged that when section 5219 mentions ‘other moneyed capital in the hands of individuals,’ it means other taxable moneyed capital, and that as federal bonds are not taxable they should be deducted from the return of the bank before fixing the amount from which to ascertain the value of each share, and *People vs. Commissioners*, 4 Wallace, 244, 256, and *Mercantile Bank vs. New York*, 121 U. S. 138, are cited and relied upon. These cases do say that the phrase means ‘other taxable moneyed capital.’ But conceding that to be the meaning, it does not aid the cause of the plaintiff in error. Certainly the meaning is ‘taxable capital,’ because if it meant non-taxable capital, the shares of national banks could not be taxed at all. And here lies the distinction, the tax is upon the shares, and not upon the cap-

ital. If the tax was on the capital, the federal bonds would have to be deducted, but being upon the shares, *no such deduction is required, allowed or authorized.*"

The statutes now in force respecting the assessment of bank shares (sections 5407 to 5414 of the General Code) are substantially the same as those construed in this case. There is no express authority to deduct from the sum determined as representing the aggregate value of the shares anything excepting "the value of the real estate included in the statement of resources as it stands on the duplicate." (Section 5412). The tax being levied upon the shares, and not upon the property or assets of the bank as such, it follows on the reasoning of the case cited that the answer to the question submitted by the commission is in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2156.

TAXES AND TAXATION—INSTITUTION USED EXCLUSIVELY FOR CHARITABLE PURPOSES DISCUSSED—BEQUEST OF REAL ESTATE TO EXECUTORS IN TRUST TO CONVEY TO COUNTY COMMISSIONERS FOR PUBLIC CHILDREN'S HOME TO BE ERECTED ON LAND OR TO CONVEY TO CORPORATION NOT FOR PROFIT FOR ERECTING AND MAINTAINING CHILDREN'S HOME—WHEN BEQUEST TAXABLE—WHEN NOT TAXABLE.

A testator left certain real estate to his executors in trust to convey either to the board of county commissioners for the benefit of a public children's home to be erected on the land, or to a corporation not for profit for the purpose of erecting and maintaining a children's home and the conduct thereof;

HELD:

1. *So long as the executors retain title to the real property it continues to be subject to taxation.*

2. *Even after conveyance by the executors the property continues to be subject to taxation until it is devoted exclusively to the uses and purposes designated in the testator's will.*

COLUMBUS, OHIO, June 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission requests the opinion of this department as follows:

"L died testate December 25, 1920, leaving both personalty and realty. His will provides:

'I do therefore give for the charitable and benevolent purposes herein mentioned the residue and remainder of my estate to my executors hereinafter named, their successors and assigns, in trust to and for the several uses, intents and purposes mentioned and declared herein.'

The 'uses, intents and purposes' are hereby defined: After the payment of debts and costs of administration the executors are authorized to convey and transfer all the estate:

(a) To the board of county commissioners for the use and benefit of a county or district children's home to be erected on the land of the