

cleanliness of the prisoners. Apparently in the case you refer to in your inquiry no consideration was given in computing the sheriff's so-called "profit" to anything but food.

2. The state or county is not under any circumstances, at any time, responsible for the support of Federal prisoners or persons held at the request of the United States Marshal under suspicion of having committed an offense under Federal Law. When persons are detained by the sheriff at the request of the United States Marshal, and without first having procured a warrant for the arrest and detention of such persons, the sheriff himself is responsible for their support during such detention, unless he by arrangement with the United States Marshal or the Federal Government, may look to either one or the other of these authorities for reimbursement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3080.

TAX AND TAXATION—CORRECTIONS OF OMISSIONS IN PERSONAL PROPERTY—TAX RETURNS—LIMITATIONS ON EXAMINATION BY COUNTY AUDITOR OF ADMINISTRATOR DISCUSSED.

SYLLABUS:

Under the provisions, upon the conditions and within the limitations provided in Sections 5398 and 5399, General Code, a county auditor in his examination of the administrator, where the deceased failed to include taxable property in his return, is limited to a period not exceeding the first five years next preceding the year in which the inquiries and corrections are made.

COLUMBUS, OHIO, December 29, 1928.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"G. C. 5398 and 5399 make provisions for the County Auditor to examine the Administrator where the deceased has failed to include in his return taxable property * * *. Nothing herein shall authorize an inquiry into the listing of property or the return thereof for taxation or the collection of any tax or the penalty thereon for a period exceeding the first five years next preceding the year in which the inquiries and corrections provided for in this act are made.

The above paragraph is just a brief statement of G. C. 5398. Construing both 5398 and 5399 together I would like to know the opinion of the department on the following question:

How many years back may the County Auditor go in examination of the administrator where the deceased failed to include taxable property in his return?

The deceased died Oct. 31st, 1928, and the question is can the Auditor go back more than 5 years?"

Section 5398, General Code, to which you call attention as amended (111 O. L. 250) reads in part as follows:

"If a county auditor believes or has reason to believe that a person, required by law to list property or make a return thereof for taxation, has made a false return, or has evaded making a return, or has withheld from, or failed to include in such return any taxable property, either tangible or intangible, required by law to be listed, he shall call such person before him for examination, by giving notice in writing of the time and place when such examination shall be had, to the person, if living, or to his legal representative, if he be dead. Such notice may be served either personally or by registered letter directed and mailed to the last known post office address of the person sought to be served. In addition to the current tax year the examination may include the returns of the same person for prior years beginning with 1921. It may be adjourned to any other time or place if the same becomes necessary for the furtherance of the investigation. The auditor may examine under oath the person whose return is being investigated. He may issue subpoenas and compel the production of books and papers and the attendance of all persons whom he thinks have knowledge of the property which was or should have been included in such return and may examine such person on oath with regard thereto. If, upon such hearing, or examination, the auditor finds that the person so required by law to list property or to make a return thereof for taxation, has made a false return or has evaded making a return, or has withheld from or failed to include in, such return or statement any taxable property, either tangible or intangible, required by law to be listed, he shall determine as nearly as practicable the true amount or value of the personal property, moneys, credits and investments which such person failed to return or upon which he should have been, but was not, taxed for the year 1921, or for any year or years subsequent thereto, up to and including the year 1925.

He shall assess the sum so omitted for any of said years at the rate of taxation belonging to such year and enter the amount accordingly on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes. He shall also determine as nearly as practicable the true amount or value of the personal property, moneys, credits and investments which such person failed to return or upon which he should have been, but was not, taxed for the year 1926 or for any year or years thereafter.

To the amount so ascertained for any of said years he shall add fifty per cent, assess the omitted sum so increased by said penalty at the rate of taxation belonging to such year, and accordingly enter the amount on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes.

If the auditor finds for the year 1926 or for any year thereafter that the error or omission was made without intention to mislead, deceive or defraud for the purpose of evading taxation on the part of the person whose duty it was to make the return, he may remit any penalty for such year, but no such penalty shall be remitted unless such person shall first pay to the county all taxes lawfully due and payable within sixty days after the amount of said lawful taxes are determined and placed on the tax list. Nothing herein shall authorize an inquiry into the listing of property

or the return thereof for taxation or the collection of any tax or the penalty thereon for a period exceeding the first five years next preceding the year in which the inquiries and corrections provided for in this act are made. * * *

Under the provisions of this section, when the county auditor has reason to believe that property either tangible or intangible required by law to be listed for taxation has not been listed, he shall call the owner of such property before him for examination, or if the owner of such property be not living, then he may call the legal representative of such deceased person, for examination. It is then provided that in addition to the current tax year the examination may include the returns of the same person for prior years beginning with 1921.

If the auditor finds that the person so required by law to list property or to make a return thereof for taxation has made a false return or has evaded making a return, or has withheld from, or failed to include in such return or statement any taxable property required by law to be listed, the auditor shall determine the true amount or value of the personal property which such person failed to return or upon which he should have been, but was not taxed, for the year 1921, or for any year or years subsequent thereto, up to and including the year 1925.

This section also provides that the county auditor shall determine as nearly as practicable, the true amount or value of the personal property which such person failed to return and was not taxed for the year 1926, or for any year or years thereafter.

While said section mentions the years 1921, 1925 and 1926, yet said years have no application at the present time for the reason that said section expressly provides that nothing in said section shall authorize the county auditor to make an inquiry into the listing of property or the return thereof for taxation or the collection of any tax or the penalty thereon for a period exceeding the first five years next preceding the year in which the inquiry and corrections provided for in said act are made. It is therefore evident that under the provisions and limitations contained in Section 5398, General Code, the county auditor in examination of the administrator is limited to the period embracing the first five years next preceding the year in which the inquiries are made.

Section 5399, General Code, reads in part, as follows:

"If any person required to list property, or make a return thereof for taxation to the assessor or county auditor, or to a board, officer, or person, other than a board composed of officers of more than one county, in the year nineteen hundred and eleven, or in any year or years thereafter fails to make a return or statement, or if such person makes a return or statement of only a portion of his taxable property, and fails to make a return as to the remainder thereof, or if he fails to return his taxable property or part thereof, according to the true value thereof in money, as provided by law, the county auditor for each year as to such property omitted and as to property not returned or taxed according to its true value in money, shall ascertain as near as practicable the true amount of personal property, moneys, credits and investments that such person ought to have returned or listed, and the true value at which it should have been taxed in his county for not exceeding the five years next preceding the year in which the inquiries and corrections provided for in this section and in the next preceding and the next two succeeding sections are made and not in any event prior to the year nineteen hundred and eleven, and multiply the

omitted sum or sums by the rate of taxation belonging to said year or years, and accordingly enter the amount on the tax lists in his office, giving a certificate therefor to the county treasurer, who shall collect it as other taxes. * * *

This section provides that for each year as to such property omitted and as to property not returned or taxed according to its true value in money, the county auditor shall ascertain as nearly as practicable the true amount of personal property, moneys, credits and investments that such person ought to have returned or listed and the true value at which it should have been taxed in his county for not exceeding the five years next preceding the year in which the inquiries and corrections provided in this section are made. This section mentions the year 1911 as the maximum limit to which the auditor could investigate a listing of personal property but it also contains the express provision that the county auditor's examination and corrections are limited to the first five years next preceding the year in which the inquiries and corrections provided for in this section are made.

It is therefore clear that under the provisions and limitations of Section 5399, General Code, the county auditor is limited in his examination of the administrator to the five years next preceding the year in which his inquiries and corrections are made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3081.

BOARD OF EDUCATION—TRANSFER OF TERRITORY FROM SCHOOL DISTRICT IN ONE COUNTY TO CONTIGUOUS SCHOOL DISTRICT—WHEN COMPLETE—WHEN OBLIGATIONS BEGIN—EQUITABLE DISTRIBUTION OF FUNDS WITHIN DISCRETION OF ANNEXING BOARD.

SYLLABUS:

1. *A transfer of territory from a school district in one county school district to a contiguous county school district is not complete until the board of education of the county school district to which the transfer is being made makes an equitable division of the funds and indebtedness between the two districts involved.*
2. *A board of education of a school district to which territory is transferred does not become obligated to assume charge of the education of the children residing in the territory transferred, until the transfer is complete.*
3. *The making of an equitable distribution of funds and indebtedness between two school districts, when a part of the territory of one district is annexed to another, is purely within the discretion of the board of education charged by law with the duty of making this equitable distribution, and in the absence of fraud or abuse of discretion the distribution as made by such board of education will be final.*

COLUMBUS, OHIO, December 31, 1928.

HON. JAY S. McDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion as follows: