

However, that this adversary relation is more technical than real appears from the fact that the president of the board of park commissioners is an ex officio member of the city planning commission. It is apparent upon an examination of all the sections that co-operation rather than a system of checks and balances is the aim of the law relating to the city planning commission. Its function is rather advisory, to be exercised by way of recommendation than anything else.

However this may be, and though there may be some degree of incompatibility between the position of member of the city planning commission and the position of any member of the board of park commissioners, save the president thereof, yet the same degree of incompatibility, if any, can scarcely be said to carry through to the subordinates of the board and the commission respectively. The positions which it is designed to combine in one person are not really offices at all. Neither position has any independent functions by virtue of statute and the incumbent of neither can exercise any powers, nor is he charged with any duties as a result of direct grant or imposition by the law of the state. So the function of an engineer of the board of park commissioners on the one hand and the engineer and executive secretary of the city planning commission on the other hand is to carry out the instruction of a superior. Really the doctrine of incompatibility of offices does not apply at all because no offices are involved.

No reason appears, therefore, for holding the positions legally incompatible. The arrangement is purely one which is to exist at the will of the respective employing authorities. As such it is one which in the opinion of this department each of them is authorized to make.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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3628.

INHERITANCE TAX LAW—WHERE A DEVEISED ALL OF HIS ESTATE TO HIS WIDOW FOR LIFE, REMAINDER TO HIS CHILDREN, WIDOW TO HAVE POWER OF SALE AND IN EVENT OF ITS EXERCISE SHE WOULD TAKE ONLY HER DOWER IN REAL ESTATE AND DISTRIBUTIVE SHARE OF PERSONALTY AND REMAINDERS OF CHILDREN TO VEST IMMEDIATELY—TAX DETERMINED UPON LIFE ESTATE IN WIDOW WITH REMAINDERS TO CHILDREN.

*A devised and bequeathed all of his estate to his widow for life, the remainder to his children, but provided that his widow should have a power of sale with respect to any of the property, and in the event of its exercise she was to take instead of such life estate, her dower in the real estate and distributive share of the personalty, and the remainders of the children were immediately to vest.*

*HELD, section 5344 of the General Code governs the appraisement of the successions for inheritance tax purposes, and the contingency with respect to the exercise of the power of sale is to be ignored for such purposes.*

COLUMBUS, OHIO, September 23, 1922.

*Tax Commission of Ohio, Columbus, Ohio.*

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

"A died testate leaving B his widow and three children, C, D and E. After the payment of debts there was left in personalty for distribution the sum of \$50,000.00 and in realty the sum of \$100,000.00. In his will he made alternative provisions for the widow. By one of these he devised all his net estate to her for life with remainder to the children. By the other he gave her power at any time to sell and convey the property but provided that in case she does so she shall only take a dower interest in the real estate and the statutory distributive share out of his personalty, the remainder passing at once to the children.

The will was probated in the usual manner and the widow elected to take under the will but it cannot be now ascertained as to her ultimate intention with regard to her power of sale.

How should inheritance tax be determined?

A careful reading of the Commission's letter has produced in this department the impression that the provisions for the widow referred to therein are really not alternative. It would seem that under this will there passes at once to the widow a life estate in both real and personal property with the remainder to the children, and that the succession is not dependent upon any election; but that if at any time she undertakes to sell and convey any part of the property under her power to do so, her life estate will thereby be divested or reduced to the dower interest, and the distributive shares in the remainder will to that extent be accelerated.

If this interpretation of the will as described in the Commission's letter is correct, it would be the opinion of this department that the case is governed by the last sentence of section 5344 of the General Code providing that

"an estate for life \* \* \* which can be divested by the act \* \* \* of the legatee, or devisee, shall be appraised and taxed as if there were no possibility of any such divesting."

Under this provision, of course, the inheritance tax should be determined as upon a life estate in the widow with the remainders over to the children.

This department will be pleased to receive the advice of the Commission as to the correctness of its interpretation of the will, and to reconsider the question if it has fallen into error in this matter.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*