

in bank are there held subject to the requirements and regulations of section 5348-2 G. C.

In connection with one of the hypotheses above discussed paragraph 5 of section 5332 G. C. may also be considered. It provides that

"Whenever property is held by two or more persons jointly, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right by the death of one of them shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the enhanced value of the whole property belonged absolutely to the deceased person, and had been by him bequeathed to the survivor or survivors by will."

This section would seem to apply. It has not been heretofore mentioned because it was also in the New York law considered in the *Orvis* case, supra (see Sec. 220, par. 7, last amended Chap. 26, Laws of 1919), and was not commented upon by the court in the case cited except to be characterized as "irrelevant."

Respectfully,

JOHN G. PRICE,
Attorney-General.

1022.

INHERITANCE TAX LAW—SAFETY DEPOSIT BOX—WHERE LEASED
IN JOINT NAMES OF DECEASED HUSBAND AND SURVIVING
WIFE—PACKAGES FOUND MARKED WITH NAME OF CORPORATION—HOW EXAMINATION OF BOX SHOULD PROCEED.

Where upon the examination of the contents of a safety deposit box leased in the joint names of a deceased husband and his surviving wife packages are found marked with the names of the wife and of a corporation in which the decedent was interested respectively, and the representative of the decedent's estate objects to breaking the seals on such packages so that their contents may be inspected, it is at least the better practice, and probably the only safe course in law, for the taxing authorities to use the machinery of an appraisal or of a hearing in the probate court without appraisal, both of which involve the exercise of power to subpoena witnesses and compel their attendance and the production of books and papers, in order to ascertain what the contents of such packages actually were.

COLUMBUS, OHIO, February 26, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your letter of December 18th submitting for the opinion of this department the following:

"In the administration of the inheritance tax act this commission has conferred powers on certain auditors in the larger centers of population to act for and represent the commission in granting consents for the transfer of assets under the terms of section 5348-2. In this connection the auditor is frequently called upon to be present at the opening of safety deposit boxes. In one county which we have in mind, the practice is specifically as follows:

The auditor's representative will go to the safety deposit box and have the

same opened in the presence of a representative of the estate and representative of the bank and himself. He first lists all property apparently belonging to the deceased and property which is not especially marked. He then opens all envelopes endorsed with the name of any person other than the deceased, enumerates their contents, making a notation as to the endorsement on the envelope and then replaces them in their original container and the same is in turn replaced in the safety deposit box. The probate court requires all these to be listed in the inventory with the notation to the effect that they were found in the envelope endorsed '----- etc.' Then the executor is required to make an application in the proceedings in the probate court setting forth in rather complete detail all of the facts especially that certain property was found in a certain envelope endorsed with the name other than that of the deceased. This application must be supported by affidavit and some times by oral testimony in court. If such a showing is made as to justify a belief that the property in fact did not belong to the deceased, the prosecuting attorney prepares an entry which the probate court makes finding that the property is not the property of the estate and authorizing the executor to strike it from the inventory, and authorizing both the executor and the bank to transfer the envelope and its contents to the claimant.

A specific case has now arisen in which the facts are as follows:

Application has been made for consent to transfer assets of G. P. A., deceased. There is a safety deposit box which was leased in the joint named of G. P. A. and A. A., his wife. When opened it is found to contain a great number of papers and envelopes, all of the latter being sealed. Some of these envelopes were endorsed with the name of the decedent, some with the name of A. A. and others with the name of a corporation in which the decedent had an interest. When the auditor indicated his intention of opening the envelopes endorsed with the name A. A. and with the name of the corporation the attorney representing the estate made objection and refused to allow the auditor to proceed.

As this situation is bound to arise in connection with many estates this commission desires to have your advice and instruction as to a proper course to be followed under such circumstances. In particular we want to know what are the rights of the auditor as a representative of the commission in this case. What is the proper course for him to follow?"

I take it from the above statement of facts that the county auditor is acting as the representative of the tax commission or in his own right in examining "such securities, deposits or other assets at the time of such delivery or otherwise" (section 5348-2), and that no appraisal under sections 5341 et seq. of the inheritance tax law is under way. If that is the case, it would seem that the auditor and the commission have proceeded as far as they are entitled to proceed under section 5348-2. In the first place, the safety deposit box was, as you put it, leased in the joint names of "G. P. A. and A. A., his wife." Its contents therefore did not presumably belong to G. P. A., exclusively, so that the finding of a packet endorsed in the name of "A. A." there in is not such a circumstance as would entitle the commission or the auditor to examine the contents of the packet under section 5348-2. The case is slightly different with respect to the package endorsed with the name of the corporation, but even here the endorsement constitutes a declaration that the contents of the package were the property of the corporation. The utmost that can be done under section 5348-2 is to examine the securities, deposits or other assets belonging to or standing in the name of the decedent or belonging to or standing in the joint names of the decedent and one or more persons, and to withhold consent to the delivery by the corporation or other depository of the

securities, assets or other property so belonging to the decedent or belonging to or standing in the name of the decedent and one or more other persons, until such examination is had. However, when the conditions of the section are complied with the corporation and the other interested parties are entitled as of right to the consent. (Matter of Rock, 98 Miscellaneous, 544).

Without, however, definitely deciding that no further steps should be taken under section 5348-2, permit me to call attention to another course which seems free from doubt and by following which the taxing authorities should be able to ascertain whether or not the contents of these two packages contained evidences of property belonging to the decedent and therefore subject to the tax.

It is within the power of the commission to apply for an appraisalment under section 5341. On such application the probate court is required to direct the auditor to make an appraisalment. The auditor in his capacity as appraiser may issue subpoenas and compel the attendance of witnesses and the production of books and papers. These powers would seem to be ample to the ends suggested.

If it is not desired that the expense and delay of a formal appraisalment by the auditor be incurred, the commission, acting through the auditor or otherwise, may by appropriate action call the attention of the probate court to the suspected existence of property belonging to the decedent and not shown in the inventory of the estate, if the property in question is not so shown. Thereupon the probate court may, of course, exercise the powers above referred to in the securing of evidence bearing upon the question.

In other words, the examination of the contents of the safety deposit box has at least disclosed the existence of these packages and raised the suspicion that they contain evidence of assets belonging to the decedent. If the representatives of the decedent's estate object to such immediate examination of the contents as will at once resolve all doubts, the other means above suggested remain open to the taxing authorities to arrive at the facts in the matter.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1023.

COURT STENOGRAPHER—MAY LEGALLY SERVE AS STENOGRAPHER
FOR PROSECUTING ATTORNEY—QUALIFICATION—COMPENSATION.

A court stenographer may legally serve as a prosecuting attorney's stenographer, providing that it is physically possible to properly perform the duties of both positions, and such stenographer under such circumstances is entitled to receive additional compensation from funds allowed to the prosecuting attorney for the payment of a stenographer.

COLUMBUS, OHIO, February 26, 1920.

HON. V. W. FILLIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your inquiry of recent date is as follows:

“Could the court stenographer, drawing a salary from the county in such capacity, at the same time serve as the prosecuting attorney's stenographer and draw a salary from the county for such additional service?”

Your inquiry raises the issue as to whether or not the positions of court stenographer and a prosecuting attorney's stenographer are incompatible under the law.