

"That notice shall be published once each week for four consecutive weeks, the last publication to be at least eight days next preceding the day for opening the bids, in such newspaper or newspapers and in such form and with such phraseology as the state building commission shall order."

You are therefore advised that the provisions of section 2314 et seq. G. C. (107 O. L. 453) apply to the erection or construction of the ornamental gateway referred to in your letter, and should be complied with by your commission.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1786.

INHERITANCE TAX LAW—VALUE OF SUCCESSIONS ARISING BY DEVISE OR BEQUEST OF LIFE ESTATE TO ONE PERSON IS DETERMINED ACCORDING TO EXPECTANCY OF LIFE OF LIFE TENANT, REGARDLESS OF ACCIDENTAL DEATH OF LIFE TENANT OCCURRING PRIOR TO DETERMINATION OF TAX.

The value of successions arising by virtue of the devise or bequest of a life estate to one person, remainder to another, is to be determined for inheritance tax purposes according to the expectancy of life of the life tenant, regardless of the accidental death of the life tenant occurring prior to the determination of the tax.

COLUMBUS, OHIO, January 14, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission's letter of December 30th to this department is as follows:

"A by will bequeathed \$10,000 to X for life with remainder to Y. At the time of the death of the testator X had an expectancy of life of some twenty years but as a matter of fact met death in an accident before any application had been filed to determine inheritance tax in connection with the estate of A. The usual rule in such cases is to consider only theoretical values. But in a case of this sort what course should be adopted by the court in the determination of tax? Should it be determined without regard to the sudden death of X, or should that fact be taken into consideration in the determination of the tax assessed either against the life estate or against the remainder passing to Y?"

Section 5342 of the General Code provides, in part, as follows:

"The value of a future or limited estate, income, interest or annuity for any life or lives in being, or of any dower interest or other estate or interest upon which any estate or interest the succession to which is taxable under this chapter is limited, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest shall be five per centum per annum. * * *"

It is not deemed necessary to decide whether this sentence imposes upon the appraising authorities a hard and fast rule which can under no circumstances be departed from. It is sufficient to state that no good reason appears for believing that the case which the Commission states is not within the spirit as well as within the letter of the section. The cardinal rule of valuation is that expressed in section 5341, which provides that the governing value shall be "its actual market value as of the date of the accrual of the tax, except as hereinafter provided, and subject to the rules hereinafter prescribed." The provision quoted at the outset of this opinion is one of the "rules hereinafter prescribed," but it does not make for the interests to which it relates any different rule with respect to the date as of which the appraisal shall be made than that set forth in the general provision last above quoted. Therefore, the only thing which can be considered in a case of this kind is the value of the life interest at the time of the testator's death. Subsequent events can never justify a departure from that rule. Abundant authority might be cited upon this proposition.

In the case stated, X at the death of A had an interest the value of which depended upon his expectancy of life. That value as it stood at the death of A is in nowise affected by the untimely death of X.

As an instance of a case which would raise the only question which it is believed could be raised under section 5342 of the General Code, there might be mentioned a case in which the life interest passed to or was dependent upon the life of a person who at the death of the testator was himself in such physical condition as to make the interest obviously less valuable than an interest for his expectancy of life. That is to say, if the value of an estate for the life of X were in question and it was known that X was on his deathbed with an incurable disease, this fact might well justify departure from the statutory rule, because it would certainly affect the selling value of the interest at the date of the testator's death. No such question is raised in the Commission's letter, and no opinion is expressed upon the point just mentioned.

It is the opinion of this department, therefore, that in the case stated the value of the several interests should be determined without regard to the fact of the sudden death of X prior to the determination of the tax.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1787.

BOARD OF EDUCATION—SPECIAL ELECTION—WHEN BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS SHOULD SET DATE FOR HOLDING ELECTION IN VIEW OF ABSENT VOTERS LAW—WHEN SUCH BALLOTS SHOULD BE PREPARED—AT LEAST FORTY DAYS SHOULD BE ALLOWED TO LAPSE BETWEEN TIME OF CALLING SUCH ELECTION AND ELECTION DAY ITSELF.

1. *Where a board of education, or other body authorized to call a special election under the statutes, passes a resolution providing for such special election, and thereafter certifies such resolution to the board of deputy state supervisors of elections, such board, in setting the time of the election, should take cognizance of the existence of the absent voters law and the provisions of section 5080-1, relative to the rights of certain committees to witness the count, where a question or proposition has been submitted.*