

554.

INHERITANCE TAX LAW—SECTION 10654 G. C. CONSTRUED.

SYLLABUS:

The articles or cash enumerated in section 10654 G. C. are not to be considered a succession under the inheritance tax law.

COLUMBUS, OHIO, July 5, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your communication in which you ask for an opinion as follows:

“We direct your attention to section 10654 of the General Code as amended by Senate Bill No. 8' of the last session of the General Assembly. Will you be good enough to advise the commission if the property or cash which may pass in any estate by the terms of the section as now amended, is to be considered as constituting a 'succession' within the meaning of the inheritance tax act or if all that passes under the amended section is to be disregarded for inheritance tax purposes?”

The amendments made to section 10654 G. C. by the 85th General Assembly changed such specific terms as “sewing machines”, “bibles”, “cows” and “sheep” to the general terms of “household goods, live stock, tools” and “implements.” The total amount allowed in cash, when there are no articles to be selected, was increased to five hundred (\$500) dollars, together with wearing apparel, relics and ornaments worth two hundred (\$200) dollars.

That portion of the section exempting the property from administration was not changed. It reads: “The following property shall not be deemed assets or administered as such.” Therefore, the property named in the section after it was amended must be treated the same, so far as any exemptions are concerned, as the things enumerated therein before it was amended.

Articles enumerated in the statutes that go to the widow or the widow and children are not considered part of the decedent's estate, but rather as property disposed of in the course of administration. In the case *Re Page* 39 Misc. 220, 79 N. Y. Supp. 382, it was held that articles enumerated in the statute that go to the widow or the widow and children which the said statute declared “shall not be deemed assets” form no part of the decedent's estate, and are not subject to the transfer tax. The words in the New York statute are identical with those in section 10654 G. C., namely, “shall not be deemed assets.”

In the case of *Re Kennedy* (California Supreme Court), 29 L. R. A. (N. S.), 428, it was held that allowances set apart by the court to the family of a decedent pending administration are not within the provisions of a statute providing for a succession tax on property.

It would appear that the intent of the legislature in this state was to exempt allowances such as those provided in section 10654 and the usual yearly allowance fixed by the appraisers, from any succession tax, when we consider the enactment of section 5332-1. The inheritance tax law was enacted in 1919. In February, 1920, section 5332-1 G. C. was enacted. This section provides that all property set off for a year's allowance in excess of three thousand (\$3,000) dollars shall be

deemed a succession and taxable as such under the inheritance tax laws, and was enacted to prevent the taking advantage of the exemption of the year's allowance.

I am therefore of the opinion that in addition to the three thousand (\$3,000) dollars allowed in section 5332-1 G. C. as exempt from the inheritance tax succession, there must also be allowed those things or amounts set forth in section 10654 G. C.

Respectfully,
C. C. CRABBE,
Attorney General.

555.

WITNESS FEES—MISDEMEANOR CASES BEFORE JUSTICES, POLICE JUDGES AND MAYORS, WHERE WITNESS RESIDES OUTSIDE COUNTY, NOT ENTITLED TO MILEAGE—IN FELONY CASES WHEN PROPERLY SUBPOENAED, WITNESS MAY RECEIVE MILEAGE—FEES PAYABLE UNDER SECTION 3014 G. C. IRRESPECTIVE OF WHETHER STATE WINS OR LOSES—SECTIONS 3011, 3012, and 3014, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *Under the provisions of sections 3011, 3012 and 3014 of the General Code a witness attending a criminal trial under a subpoena in the Court of Common Pleas, justice's court, mayor's court or police court, entitled to receive one dollar for each day's attendance, and mileage at the rate of five cents per mile for the distance necessarily traveled from his place of residence to the place of giving testimony and return in those cases in which his attendance could have been compelled. The special enactments relating to municipal courts must be examined in each instance in order to determine what witness fees are properly charged therein.*
2. *In misdemeanor cases before justices, police judges and mayors, wherein the witness resides outside of the county, mileage cannot legally be paid.*
3. *In felony cases when properly subpoenaed the witness may receive mileage from his place of residence to the place of trial and return from anywhere in the state. The same is true of misdemeanor cases pending in the Court of Common Pleas.*
4. *Where a witness voluntarily reports to the court upon notice to do the same and receives a subpoena, under such circumstances he is entitled to his statutory mileage and fees and only when his attendance could have been required by compulsory process.*
5. *Where due to the postponement of the case under order of the court, it is necessary for a witness to make another trip, he is entitled to his fees and mileage for the second attendance.*
6. *Witness fees are payable as provided in section 3014 of the General Code irrespective of whether the state wins or loses, and it is not necessary to await the final determination of a proceeding in error in order that such fees may be paid.*
7. *An employe of the state attending a trial in line of his duty cannot receive mileage and also be paid his traveling expenses from the state. In the event mileage is collected it should be applied to such expense.*