

## OPINION NO. 70-126

**Syllabus:**

If a parent corporation transfers real property to its wholly-owned subsidiary at net book value and treats it as a contribution to capital, such transaction is not exempt from the conveyance fee or transfer tax under Section 319.54 (F) (3), Revised Code.

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**To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio**  
**By: Paul W. Brown, Attorney General, September 10, 1970**

I have your request for my opinion which asks:

"If a parent corporation transfers real property to its wholly owned subsidiary at net book value and treats it as a contribution to capital, is this transaction exempt under Section 319.54 (F) (3) O.R.C.?"

For purposes of clarification, any county real property transfer tax would be pursuant to the provisions of Chapter 322, Revised Code. Section 319.54, Revised Code, relates to certain compensation for services of the county auditor based upon various tax revenues collected by the county.

For purposes of your inquiry, Section 319.54, supra, reads in pertinent part:

"(F) The county auditor shall charge and receive fees as follows:

\* \* \* \* \*

"(3) For receiving statements of value and administering Section 319.202 ~~319.202~~ of the Revised Code, one dollar, or ten cents per hundred dollars for each one hundred dollars or fraction thereof of the value of real property transferred, whichever is greater, except no fee shall be charged when the transfer is made:

\* \* \* \* \*

"(h) By a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock;

\* \* \* \* \*

"(m) To or from a person when no consideration is paid or to be paid for the real estate and the transaction is not a gift;

\* \* \* \* \*

The statutory exemptions provided in Division (F) (3) of Section 319.54, supra, exempting certain transfers and deeds from the transfer fee and permissive county real property transfer tax, should be construed strictly, in favor of the fee and tax and against exemption. National Tube Co. v. Glander, Tax Commr., 157 Ohio St. 407 (1952).

Subsection (h), supra, which grants an exemption for a transfer of real estate from a subsidiary corporation to a parent corporation, cannot be construed to exempt a transfer of real estate from a parent corporation to a subsidiary corporation. In fact, the significant absence of a provision providing such an exemption would appear determinative of the issue. As the court said in Madjorous v. The State of Ohio, 113 Ohio St. 427, 433 (1925):

"\* \* \* The Ohio Legislature having dealt with the subject, and having made certain provisions and certain exceptions thereto, it will be presumed that the Legislature has exhausted the legislative intent, and that it has not intended the practice to be extended further than the plain import of the statutes already enacted. The well-known maxim, expressio unius est exclusio alterius, applies."

If an exemption for a transfer of real estate from a parent corporation to a subsidiary corporation had been intended, it would have been stated in the statute.

Nor can subsection (m), supra, be construed to exempt a transfer of real estate from a parent corporation to a subsidiary corporation. Subsection (m), supra, grants an exemption only if no consideration is paid or to be paid for the real estate and the transaction is not a gift. The transfer of the real estate from the parent corporation to the subsidiary corporation imputes a consideration or benefit flowing in some manner from the sub-

subsidiary corporation to the parent corporation, which will be necessarily reflected on the books of the parent corporation. Consequently, a strict construction in favor of the tax and against the exemption would result in no exemption being granted for such a transfer.

It is therefore my opinion, and you are hereby advised, that if a parent corporation transfers real property to its wholly-owned subsidiary at net book value and treats it as a contribution to capital, such transaction is not exempt from the conveyance fee or transfer tax under Section 319.54 (F)(3), Revised Code.