

such motion for the payment of a legal claim against the board was not carried.

Specifically answering your question, it is my opinion: that, a second was required to the motion made by the vice-president of the Board of Education of Green Township, at its meeting; that, the president, as a member of the board, was permitted to second the motion; that, when a vote was called for upon the motion and the president and vice-president voted in favor of the same, but the remaining three members present answered "not voting" when each of their names were called, it was not a compliance with Section 4752, *supra*; and that, such motion for the payment of a legal claim against the board, was not carried.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

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CORPORATIONS—PERSONAL PROPERTY TAX RETURN —
SALE OF ASSETS—TAX RATE—ASSESSMENT.

SYLLABUS:

A corporation which filed its personal property tax return as of January 1, 1930, and subsequently sold its entire assets on March 15, 1930, is liable for the full amount of tax assessed against it for that year on a rate established by the proper taxing officials subsequent to such tax listing date.

COLUMBUS, OHIO, April 15, 1937.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: This will acknowledge receipt of your inquiry of recent date, written by your assistant, in which you state as follows:

"Will you provide this office with a written opinion on the following?"

We have a case in this County, the facts of which are as follows: A corporation doing business in Marion County filed its personal property tax return January 1st, 1930, and subsequently, on March 15, 1930, sold its entire assets. The question now arises as to how much personal property tax for the year 1930 the corporation must pay.

This proposition resolves itself down to the question: Is the personal property tax paid for the year preceding listing date or the year beginning with the listing date?

So far as this office is able to find, there is no statute hitting directly on this question and a perusal of all other statutes concerning personal property tax gives rise to very good argument for both propositions."

The law covering the requirement for the January 1, 1930, personal property tax returns, of a corporation, is contained in Sections 5404 and 5401-1 of the General Code, in effect at that time, which read as follows:

Sec. 5404. "The president, secretary, and principal accounting officer of every incorporated company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by a law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property thereof, and all real estate necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the true value in money."

Sec. 5404-1. "All the listing and valuation of the personal property, moneys, credits, investments in stocks, bonds, joint stock companies, and all the averages of the stocks of merchandise and material used as a manufacturer, of such incorporated companies, shall be listed, valued and ascertained as of the first day of January, annually.

All such listings together with all supplementary forms and all information necessary in the proper fixing of such values for taxation, shall be filed with the county auditor on or before the first day of March, annually."

In Opinions of the Attorney General for 1920, Vol. I, page 109, is found the following statement:

"It is well known that the majority of the corporations doing business in the State and having taxable property therein conduct their accounting on the basis of the calendar year and that for the purpose of their own convenience, as for Federal income tax purposes, inventories are taken and balance sheets are struck off *as of the end of the calendar year.*"

Sections 5382 and 5385 of the General Code, then in effect, required

the valuation of certain merchandise and the listing of personal property by manufacturers "by taking the amount in value on hand, as nearly as possible, *in each month of the next preceding year in which he has been engaged in business*" and in case of a manufacturer the average amount "he has had on hand *during the year next previous to listing day*, annually, if he has been engaged in such manufacturing business so long, and if not, then during the time he has been so engaged."

In the case of *Shotwell vs. Moore*, 129 U. S. 590, the court said:

"The State of Ohio, like many and perhaps most of the other states, collects from the business and property subject to taxation *for the year preceeding the specified date*, the elements of an assessment of a tax to be paid by the taxpayer for the year succeeding that date * * * ."

The corporation in question has apparently complied with the general tax laws of this state, in so far as it was necessary for it to prepare, list and file its personal property tax return as of January 1, 1930.

In specific answer to your inquiry, and from a review of the authorities cited herein, it is my opinion that the corporation in question is subject to the payment of personal property taxes for the full amount assessed against it for 1930, made pursuant to its personal property tax return filed as of January 1, 1930. The fact that it sold its entire assets as of March 15, 1930, would have no effect on the liability of the corporation for the payment of taxes on the valuation of its personal property as listed for taxation as of January 1, 1930.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

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PROPOSED LAW AND SUMMARY OF SAME UNDER SECTION
4785-175, GENERAL CODE.

COLUMBUS, OHIO, April 15, 1937.

MR. VERNON WEYGANDT, *Attorney at Law*, 403 Flatiron Bldg., Akron, Ohio.

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a