

3497.

CORPORATION—IN RECEIVERSHIP PRIOR TO JANUARY 1, 1931—
PERSONALTY AND ASSETS TURNED INTO CASH ON JANUARY
15, 1931—WHEN AND WHERE RECEIVER SHOULD LIST SUCH
CASH.

SYLLABUS:

1. *Where the personal property and assets of a corporation passed into the custody and control of a receiver duly appointed by a court of competent jurisdiction, prior to the first day of January, 1931, it was the duty of the receiver to list said property for taxation for the year 1931; and such property should have been listed by said receiver as of the day preceding the second Monday of April, 1931, if the same was in his custody and control on said date.*

2. *If prior to the day preceding the second Monday of April, 1931, the personal property and assets of such corporation were sold by the receiver, the money representing the proceeds of such sale should be listed for taxation in the county where such receiver resided at the time such money as property of the corporation was required to be listed.*

COLUMBUS, OHIO, August 12, 1931.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of a communication from you, which reads as follows:

“The Commission is desirous of having your formal opinion as to the time and place of listing property under the following circumstances:

A petition for the dissolution of The X Retail Stores Co., a corporation, was filed in the Common Pleas Court of Franklin County by stockholders on the 17th day of December, 1930. A receiver was appointed on that day pending dissolution. On December 30, 1930, the court put on its journal entry dissolving the corporation.

On the first day of January, 1931, The X Company had personal property in sixteen different counties in this State upon which property the company had been paying personal property taxes to the respective locations. On January 15, 1931, all of the assets of the company were sold and the cash derived therefrom turned over to B, the receiver residing in Columbus, by virtue of an order of the Federal Judge for this district.

We inquire specifically whether B, the receiver and the liquidating agent for the company, is required to file in the various counties in which personal property was located a return of said property as of January 1, 1931, notwithstanding the order of dissolution entered on December 30, 1930, or whether said receiver should return in Franklin County as an individual such funds as may be in his possession on April 12, 1931.”

The provisions of section 5366-1, General Code, and those of section 5404-1, General Code, are pertinent in the consideration of the questions presented in your communication. These sections of the General Code read as follows:

Sec. 5366-1. “The listing of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, except the stock in trade of transient persons, shall be made between the second

Monday of April and the first Monday of May annually, except as otherwise provided.

The listing and valuation of all such property for taxation shall be made as of the day preceding the second Monday of April, annually, and all personal property, moneys, credits, and investments except as otherwise provided by law shall be listed and valued with respect to the ownership thereof on said date and in the place where then taxable, provided that the provisions of this section shall not apply to the return of the resources and liabilities of banks, nor the returns made by incorporated companies, nor in any case where property is required to be returned for taxation to, or to be valued by the tax commission of Ohio; nor in any case where the liability of any person or of any property to taxation is required to be originally determined by the tax commission of Ohio."

Sec. 5404-1. "All the listing and valuation of the personal property, moneys, credits, investments in stocks, bonds, joint stock companies, or otherwise, of incorporated 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."

From the provisions of section 5366-1, General Code, quoted above, it will be observed that, subject to the exceptions therein noted, one of which is that with respect to tax returns made by incorporated companies, all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be made as of the day preceding the second Monday of April, annually.

By section 5404, General Code, it is provided that the president, secretary and principal accounting officer of every incorporated company, except banks or corporations whose taxation is specifically provided for, shall list for taxation, verified by the oath of the person so listing, all the personal property of such incorporated company and all real estate necessary to the daily operations of the company, moneys and credits of such corporation within the state, at the true value thereof in money. Section 5404-1, General Code, likewise above quoted, provides that the personal property of incorporated companies, including averages of stocks of merchandise and material used for manufacturing purposes, shall be listed, valued and ascertained as of the first day of January, annually. However, on the first day of January, 1931, as of which date the corporation referred to in your communication would otherwise, under the provisions of section 5404 and 5404-1, General Code, have been required to list the property here in question, the property and assets of said corporation were in the hands of a receiver therefore appointed for said corporation by the United States District Court for the Southern District of Ohio. In this situation, section 5370, General Code, provides that the property of a corporation, the assets of which are in the hands of a receiver, shall be listed for taxation by such receiver. The provisions of section 5372-1, General Code, are somewhat more specific in their application to the questions here presented on the facts stated in your communication. The pertinent provisions of this section of the General Code are as follows:

"Personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise in the possession or control of a * * receiver * * on the day preceding the second Monday of April in any year, on account of any person or persons, company, firm, partnership, association or corporation, shall * * be listed by the person having the possession or control thereof and be entered upon the tax lists and duplicate in the name of such * * receiver."

Speaking with reference to the terms of section 5372-1, above quoted, the Supreme Court, in its opinion in the case of *Morrow, Receiver, vs. Hess, Auditor*, 116 O. S. 439, 440, said:

"The provisions of this statute are broad and comprehensive and require the listing of property by a receiver having possession thereof upon tax-listing day; no distinction being made between property which is then a portion of a going concern being operated under order of court and assets then in the hands of a receiver for the purpose of liquidation and distribution."

Section 5372-1, General Code, does not in express terms provide that the property of a corporation in the hands of a receiver shall be listed for taxation as of the second Monday of April in any year; inasmuch, however, as that which is plainly implied in the language of a statute is as much a part of it as that which is expressed (*Doyle vs. Doyle*, 50 O. S. 330), I am of the opinion, upon a consideration of the provisions of this section as well as of the more general provisions of section 5366-1, General Code, above quoted, that it was the duty of the receiver of the corporation referred to in your communication to list the property and assets of such corporation for taxation; and that such property and assets of said corporation should have been listed by said receiver as of the day preceding the second Monday of April, 1931, if any property of the corporation remained in his hands on said date.

Touching the question here presented with respect to the place where the property and assets of the corporation should have been returned for purposes of taxation, the provisions of section 5371, General Code, are noted. This section reads as follows:

"A person required to list property, on behalf of others, shall list it in the township, city, or village in which he would be required to list it if such property were his own. He shall list it separately from his own, specifying in each case the name of the person, estate, company, or corporation, to whom it belongs. Merchants' and manufacturers' stock, and personal property upon farms shall be listed in the township, city or village in which it is situated. All other personal property, moneys, credits, and investments, except as otherwise specially provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon resides at the time of the listing thereof, if such person resides within the county where the property is listed, and if not, then in the township, city, or village where the property is when listed."

In the application of the provisions of this section of the General Code to the question at hand, it is noted, from the facts stated in your communication, that on January 15, 1931, all of the assets of the company were sold and that the proceeds of such sale or sales were turned over to the receiver who resided

in the city of Columbus, Ohio. Since, under the provisions of section 5371, General Code, quoted above, a person required to list property on behalf of others is required to list it in the township, city or village in which he would be required to list such property if it were his own, and the property here in question, to wit, money, is such property as, under the terms of this section of the General Code, is required to be listed in the city in which the person listing the same resides, it follows that such moneys as were possessed by the receiver of the corporation here in question on the day preceding the second Monday of April, 1931, should have been returned for taxation by him as of that date in Franklin County where said receiver resided.

Under the provisions of section 5366, General Code, said receiver had until the first day of May, 1931, to return for purposes of taxation moneys in his hands on the date above indicated, as the proceeds of the sale of the property of said corporation; and if he failed to list said property as required by the statutory provisions above noted in this opinion, it is the duty of the auditor of Franklin County to list the same.

Some of the sections of the General Code above referred to have been amended in the enactment of later tax measures by the 89th General Assembly. These sections, however, have been quoted and discussed as they read at the time of their application to the facts which gave rise to the questions presented in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3498.

APPROVAL, BONDS OF MARION TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, August 12, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3499.

APPROVAL, BONDS OF GUERNSEY COUNTY, OHIO—\$24,000.00.

COLUMBUS, OHIO, August 12, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3500.

TRAFFIC LIGHTS—COUNTY COMMISSIONERS MAY NOT COOPERATE WITH A MUNICIPALITY IN THEIR ERECTION AND MAINTENANCE WITH SUCH MUNICIPALITY.

SYLLABUS:

There is no legal authority permitting county commissioners to cooperate with a municipality in the erection and maintenance of traffic lights within municipalities.

COLUMBUS, OHIO, August 12, 1931.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion which reads as follows: