

**OPINION NO. 70-033****Syllabus:**

A conveyance constituting a distribution in kind of assets of a corporation to a stockholder as a part of a dissolution of a corporation in exchange for the stockholder's shares of such corporation constitutes payment of valuable consideration by the stockholder and such a transaction does not effect a reorganization of such corporation. Such conveyance does not qualify for exemption pursuant to Section 319.54 (F) (3) (g) or (m), Revised Code.

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**To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio**  
**By: Paul W. Brown, Attorney General, March 19, 1970**

Your letter of request reads in pertinent part as follows:

"The purpose of this letter is to request your opinion on the interpretation and application of paragraphs G and M in Section 319.54

(F) (3), exemptions to the payment of the real property transfer tax.

"This request is prompted by a recent conveyance wherein the Grantor was a corporation and the Grantee was the sole stockholder of the corporation. The deed of conveyance contained the following notation:

'This conveyance is a distribution in kind of assets of J B Land Company to its sole shareholder as a part of the dissolution of the J B Land Company.'

"The deed was accompanied with an application claiming exemption (M) and also exemption (G). The application for exemption presented added the phrase 'similar to' to exemption G and claimed it along with M.

"Specifically then, my question is whether an exemption is permissible under either exemption insofar as the conveyance is concerned."

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 ~~319.20.27~~ 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:

"\* \* \* \* \*

"(g) Pursuant to a reorganization of corporations or unincorporated associations;

"\* \* \* \* \*

"(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, but reasonably, in favor of the fee and tax and against exemption. Opinion No. 68-165, Opinions of the Attorney General for 1968.

The county auditor has the inherent authority, in receiving statements of value and administering Section 319.202 /319.20.27, Revised Code, and in collecting the permissive real property transfer tax authorized to be levied pursuant to Chapter 322, supra, to inquire into the facts and circumstances surrounding any and all transfers or conveyances claimed to be exempt under Division (F) (3) of Section 319.54, supra, in order to determine if the one claiming the exemption has affirmatively established his right to the exemption. Opinion No. 68-165, Opinions of the Attorney General for 1968.

The notation on the deed of conveyance, quoted in your letter of request, states that the conveyance constituted a distribution of corporate assets as a part of the dissolution of the corporation. The distribution did not effect a reorganization of the corporation and therefore such conveyance is not subject to exemption pursuant to Section 319.54 (F) (3) (g), Revised Code.

A stockholder and a corporation in which he owns shares are distinct persons in the law. Barsan v. Pioneer Savings & Loan Co., 77 Ohio Law Abs. (Ct. Appls.) 545, 550, cause remanded on other grounds, 163 Ohio St. 424 (1955). See also, 12 O. Jur. 2d, Corporations § 63, et seq.

The fact of dissolution indicates that the taxpayer exchanged his shares of the corporation for certain assets of the corporation. The shares of the corporation delivered to the corporation constitute valuable consideration for the conveyance of the corporate property and therefore the transfer is not subject to exemption pursuant to Section 319.54 (F) (3) (m), Revised Code.

I am therefore of the opinion and you are advised that a conveyance constituting a distribution in kind of assets of a corporation to a stockholder as a part of a dissolution of a corporation in exchange for the stockholder's shares of such corporation constitutes payment of valuable consideration by the stockholder and such a transaction does not effect a reorganization of such corporation. Such conveyance does not qualify for exemption pursuant to Section 319.54 (F) (3) (g) or (m), Revised Code.