good and indefeasible fee simple title to the above tract of land, subject only to the outstanding dower interest of Alice DeWitt Munday and to the taxes on said property above stated.

In the former opinion of this department, above mentioned, the warranty deed then tendered by Harold Herndon DeWitt was disapproved, for the reason that he had not yet attained his majority, under the laws of the State of Ohio, and that the proceedings in the District Court of Potter County, Texas, in which a decree was made removing the disabilities of said Harold Herndon DeWitt as a minor, were not effective to make him sui juris with respect to the conveyance of land owned by him in Ohio. Said Harold Herndon DeWitt attained his majority in June, 1929, and on the 13th day of July, 1929, the deed here in question was executed and acknowledged by him in Henry County, Illinois. Said deed was also executed and acknowledged by said Alice DeWitt Munday at her home in El Paso County, Colorado, and an examination of said deed, besides showing that the same has been properly executed and acknowledged by said grantors also shows that the same is in form sufficient to convey to the State of Ohio a fee simple title to the tracts of land here under investigation, free and clear of all encumbrances whatsoever.

An examination of encumbrance estimate No. 4771, shows that the same has been properly executed and that there are sufficient balances in a proper appropriation account, sufficient to pay the purchase price of said property. It likewise appears that the necessary money for the purchase of this property has been released by the Controlling Board.

I am herewith returning, with my approval, said abstract of title, warranty deed, encumbrance estimate No. 4771, and Controlling Board's certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

736.

LAND TRUST CERTIFICATES—INCLUDED IN BANK'S STATEMENT OF RESOURCES—SUCH ITEMS NOT DEDUCTIBLE BY COUNTY AUDITOR FROM TOTAL VALUE OF SHARES.

SYLLABUS:

Where land trust certificates owned by a bank are set forth by it in its statement of resources, neither the real value of such land trust certificates nor the proportionate amount of the tax upon the real estate which is the subject of the trust, can be deducted by the auditor from the total value of the shares of such bank.

COLUMBUS, OHIO, August 13, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

> "We are enclosing a letter and request for an opinion from Mr. Z., auditor of Cuyahoga County. We are sending all the information that has been given our office and will kindly request the return of this material for our files."

The letter referred to in your communication is as follows:

"In valuing the shares of a bank, we have been confronted with the following problem on which we respectfully request an opinion.

Included in the Statement of Resources, under real estate, there appears in the analyzation of this account the following: Capital investment of $200,000 or a 3/15 interest in the property, the fee of which does not appear in the name of the bank.

As the capital investment is included in the book value of real estate, would we be permitted to deduct from the value of the shares, under Section 5412 as real estate, this investment? For example, we are enclosing some of the deductions claimed by the bank, which are of the same nature.

County	City	
Cuyahoga	Cleveland	—24/650 interest in the Ulmer Building located at the northwest corner of the Public Square with a frontage of approximately 130 ft. on the Public Square and 89 ft. on Rockwell Avenue $24,455.00
Cuyahoga	Cleveland	—20/1000 interest in six parcels of land located as follows: 115 ft. on Chester, 130 ft. on E. 21. 116 ft. on Chester, 120 ft. on E. 22. 116 ft. on Chester, 320 ft. on E. 23. 116 ft. on Chester, 120 ft. on E. 23. 200 ft. on E. 24 $19,950.00
Cuyahoga	Cleveland	—10/5750 interest in the Cleveland Terminal Tower Building. (Air rights only) $10,462.50
Franklin	Columbus	—Interest in land and building with a frontage on South High St., of approximately 94 ft. $670,112.50
TOTAL		$724,980.00

In view of the above descriptions, would you distinguish between these and regular Land Trust Certificates, on which a former ruling was made by the Attorney General, in December, 1926, that Land Trust Certificates were not a deductible item?"

The statement of resources of the bank under the heading, real estate, shows a fractional interest in the Ulmer Building, a fractional interest in six parcels of land and a fractional interest in the Cleveland Terminal Tower Building, all located in Cleveland, Ohio, and an interest in land and building fronting on South High Street, Columbus, Ohio. Said interest in the property, however, does not appear upon the tax duplicate of the cities as it is stated the fee "does not appear in the name of the bank," and your question is as to whether the interests in the real estate are deductible under Section 5412, General Code, as real estate, in determining the value of the capital stock.

It is evident, from the description of these so-called interests in real estate, that they are in reality investments in land trust certificates and the bank is seeking to have the deduction made on the theory that such certificates represent real estate of the bank within the purview of Section 5412 of the General Code. That section reads as follows:

"Upon receiving such report the county auditor shall fix the total value of the shares of such banks, and the value of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, each, according to their true value in money, and deduct

from the aggregate sum so found, of each, the value of the real estate included in the statement of resources as it stands on the duplicate. Thereupon he shall make and transmit to the annual state board of equalization for banks a copy of the report so made by the cashier, manager or owner with the valuation of such shares or property representing capital employed as so fixed by the auditor."

The question for determination is, accordingly, whether such certificates constitute real estate within the meaning of this section. It may be observed at the outset that there is no constitutional inhibition which requires the deduction of real estate in the manner set forth by the section. While it is perhaps true that the Legislature may have been motivated in making this provision by the fact there apparently would be double taxation, if the value of the real estate were included, yet the double taxation is rather apparent than real. This conclusion must be reached when it is borne in mind that the auditor is not valuing the capital of the bank for the purpose of taxing it in the name of the bank, but that valuation is used merely as the measure for determining the value of the shares. The tax upon these shares is paid by the bank, but the payment is made for and on behalf of the shareholders.

It is a familiar principle that no double taxation exists where a corporation is taxed upon its property and a shareholder is likewise taxed upon the value of the shares, which value is largely dependent upon the valuation of the property taxed in the name of the corporation. Since the power to include the value of the real estate for the purposes of determining the value of the shares exists, the question of the intention of the Legislature may be determined unhampered by any considerations of constitutional right to any deduction.

The language of Section 5412, supra, permitting the deduction of the value of the real estate included in the statement of resources as it stands on the duplicate, first made its appearance in the law in an act of the Legislature passed in 1867 (64 Ohio Laws, page 204). Even prior to that time a similar deduction had been permitted although in different language. At the time these provisions were originally enacted, there existed no authority in banks to invest in real estate except such real estate as was necessary to enable the bank to provide itself with quarters and such as was necessarily acquired in order to prevent a loss. The sections governing investment in real estate were those which were the predecessors of Section 710-108 of the General Code which now reads:

"A bank may purchase, lease, hold and convey real estate only as follows:

(a) A building or quarters therein, or lands whereon is erected or may be erected a building or buildings useful for the transaction of its business and from portions of which, not required for its use, a revenue may be derived, but the cost of such building or buildings and the lands whereon they are erected, in no case shall exceed sixty per cent of its paid-in capital and surplus:

(b) Such as is mortgaged or conveyed to it in good faith by way of security for loans made by or money due to such corporation:

(c) Such as has been purchased by it at sales upon the foreclosure of mortgages owned by it, or on judgments or decrees obtained or rendered for debts due to it, or in settlements effected to secure such debts. All real property referred to in this paragraph shall be sold by such bank within five years after it is vested therein, unless upon application by the board of directors, the Superintendent of Banks extends the time within such sales shall be made."

This is the only provision of law which authorizes the acquisition by a bank of real estate as such.

It appears to be clear that in permitting the deduction, the Legislature at the time of the enactment of Section 5412, had in mind real estate of this character only, since there existed no other authority for real estate investment.

Since then, however, the right of investment of funds of a savings bank and trust company has been extended to include securities which were not originally authorized. Section 710-140, General Code, now provides in part as follows:

> "A savings bank may invest its funds in:
>
> (d) Ground rents or certificates or participation or beneficial ownership in improved lands under lease for a period of not less than twenty-five years from the date thereof, and conditioned that the lessee shall pay all taxes and assessments thereon and keep and maintain said premises in full and complete repair, with insurance in an amount equal to the insurable value of the improvements thereon, provided that the aggregate par amount of such rents or certificates shall not exceed the value of the land nor sixty per cent of the total value of the land and improvements. But nothing in this section contained shall prevent the investment in such rents or certificates in unimproved lands, where by the terms of the lease thereof the construction of a new building thereon is provided for and funds have been deposited or will be deposited from the proceeds of the sale of such rents or certificates sufficient for the cost of such construction, and conditioned that such construction shall begin within six months thereafter and that the funds so deposited shall be paid out to meet the cost of such construction as the work progresses and for no other purpose."

By the terms of Section 710-166 of the Code, like authority of investment is extended to trust companies.

It is to be observed that the essential feature of the authorization contained in Section 710-140 is the authority to make an investment as distinguished from the authority to purchase real estate, which is separately given by Section 710-108, supra. That is to say, land trust certificates are classified along with other securities as investments upon which a return to the bank is anticipated. This is clear from the qualification placed around the right to invest therein. A bank could not invest, under this authority, in a certificate of beneficial ownership in property which was not producing income, and I accordingly feel that in this instance the equitable title to the real estate which, it is true, resides in the owner of the land trust certificate, is of merely incidental importance and is treated merely as protecting the income which is constituted the fundamental reason for the investment.

The distinction made in the banking laws, while not wholly dispositive of your question, is at least persuasive in reaching a conclusion as to the intention of the Legislature in the description of the deduction permissible under Section 5412, supra. This distinction, however, coupled with the fact that investments of this character were authorized at the time of the original enactment of Section 5412, leads me to the conclusion that it was not the intention of the Legislature, nor should the language used be interpreted, to permit the deduction of anything other than the real estate of the bank standing upon the duplicate in its name, or in other words, only such real estate as the bank is authorized to acquire by virtue of Section 710-108, supra.

I am quite aware that there exists a possible ambiguity, but the conclusion I reach is, I believe, that which expresses the real intention of the Legislature. This conclusion is substantiated by the fact that a similar conclusion was reached by my predecessor in an opinion to your Commission, found in Opinions of the Attorney

General for 1926 at page 565. By that opinion an administrative practice was established which has since been followed, and the Supreme Court has quite recently ruled in the case of *State ex rel* vs. *Brown*, 121 O. S. 73, reported in Ohio Bar for July 9, 1929, as stated by the Court in that opinion:

> "It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission* vs. *Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745, (L. R. A., 1916B, 1277). See, also, 36 Cyc., 1140, and 25 Ruling Case Law, 1043, and cases cited."

The administrative interpretation in this state has apparently been acquiesced in until the present time and this lends force to the views which I have hereinabove expressed.

I am therefore of the opinion that where land trust certificates owned by a bank are set forth by it in its statement of resources, neither the real value of such land trust certificates nor the proportionate amount of the tax upon the real estate which is the subject of the trust, can be deducted by the auditor from the total value of the shares of such bank.

Respectfully,
GILBERT BETTMAN,
Attorney General.

737.

SHERIFF'S FEES—RECEIVING AND DISCHARGING FROM COUNTY JAIL DEFENDANT IN MAYOR'S COURT—TAXED AS COSTS AGAINST DEFENDANT.

SYLLABUS:

When a city is without a jail and a prisoner is received into the county jail under the provisions of Section 4564, General Code, by the sheriff pending trial in the mayor's court, the sheriff's fees for receiving and discharging a prisoner, as provided for in Section 2845 of the General Code, should be taxed as costs and collected from the defendant in the event of conviction, whether the same is a state or ordinance case.

COLUMBUS, OHIO, August 13, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads:

> "Section 2845, General Code, provides fees for the county sheriff; among others, for receiving a prisoner, fifty cents; and for discharging or surrendering a prisoner, fifty cents, to be charged but once in each case.
>
> Section 4564, G. C., provides in part that any corporation not provided with a work house or other jail shall be allowed for the purpose of imprisonment the use of the jail of the county at the expense of the corporation until it is provided with a prison, etc.