

form and I herewith return the same, together with the duplicate and triplicate copies thereof, with my approval endorsed thereon.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4654.

INTANGIBLE TAX—TAX AND TAXATION—DISTRIBUTIVE FEATURES
 OF ACT DISCUSSED WITH REFERENCE TO DECISION OF COURT
 OF APPEALS.

SYLLABUS:

In view of the decision of the Court of Appeals of Hamilton County in the case of Gorman, etc., vs. Friedlander, et al., rendered September 26, 1932, it is not only the right, but also the duty, of the proper officials in each county at once to distribute to the local subdivisions in the county entitled thereto under the provisions of sections 6, 7 and 8 of the intangible tax law, such portion of the advance payment of such tax, not exceeding such county's proportionate share thereof as is, under the terms of the law, retained in the county and distributable to such subdivisions, leaving any surplus funds over and above the county's distributable share, to abide further court action or legislation.

COLUMBUS, OHIO, September 27, 1932.

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

GENTLEMEN:—This acknowledges receipt of your letter of even date herewith, which is as follows:

“Since the decision of the Court of Appeals of Hamilton County in the case of *Gorman, etc., vs. Friedlander, et al.*, rendered September 26, 1932, some question has arisen with respect to the rights and obligations of county officials in connection with the distribution of the proceeds of the so-called intangible tax now held in county treasuries by reason of the pendency of such suit. I will appreciate your opinion upon the following question:

What, if any, portion of the proceeds of the advance payment of the so-called intangible taxes for the year 1932 are now distributable by county officials to the subdivisions to whom distribution is to be made pursuant to the provisions of sections 6, 7 and 8 of Amended Senate Bill No. 323, 89th General Assembly of Ohio?”

It is unnecessary, for the purposes of this opinion, to set forth in detail the provisions of the so-called intangible tax law which were subject to attack in the action to which you refer and which are involved in your question. It is sufficient to state that the action instituted by the Prosecuting Attorney of Hamilton County rendered it necessary to withhold distribution of the proceeds of this tax; and the decision of the Common Pleas Court, in which the action originated, held all the distributive sections of the law unconstitutional and, consequently,

there remained no valid provision of law for the distribution of taxes already collected.

The case was, however, appealed to the Court of Appeals, and that court, after hearing, rendered the decision to which you refer. This decision does not go to the lengths to which the Common Pleas Court went. The decision, which I have just received, holds unconstitutional a portion of the distributive sections only, to wit, that portion which provided for the payment through the state treasury of surplus funds in the county treasury to those counties where deficiencies were found to exist. It is only these portions which the Court of Appeals finds unconstitutional. The necessary inference is that, as to the remainder, the sections are constitutional.

Furthermore, and more particularly with reference to the question which you ask, the Court of Appeals in its opinion, said:

"It is the conclusion of this court, therefore, in view of the fact that some distribution of the entire fund shall be made that pending further legislative action that nothing said herein shall affect the right of the political subdivision involved to use that portion of the general fund designated as its proportionate share for local purposes and that the surplus shall be retained pending action of the legislature, which shall conform to the limitation imposed by the Constitution of the State of Ohio.

This is in conformity to the legislation in question, the only limitation therein being found in section 7 of the Act, where it is provided that 'no distribution of such fund shall be made by any county treasurer until the foregoing requirements of this section have been fully complied with.' This provision, we find, under the principles previously announced, to be unconstitutional and void.

While the lower court held sections 6, 7, and 8 invalid and unconstitutional in toto, we do not go to this extent, as these sections contain the authority for the county officials to make distribution to the local subdivisions and to such an extent these sections are valid and constitutional and such officers may proceed thereunder."

In view of this language, it appears to be not only the right, but also the duty, of the proper officials in each county at once to distribute to the local subdivisions in the county entitled thereto under the provisions of sections 6, 7 and 8 of the intangible tax law, such portion of the advance payment of such tax, not exceeding such county's proportionate share thereof as is, under the terms of the law, retained in the county and distributable to such subdivisions, leaving any surplus funds over and above the county's distributable share, to abide further court action or legislation.

Respectfully,

GILBERT BETTMAN,
Attorney General.