

tract is signed, that funds be made available and be appropriated and certified to, for the purpose of taking care of the refunds as they became due? This question, while suggested need not be discussed here, in view of the conclusion already stated that the village is without authority to enter into the contract.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1702.

TAX LISTING DAY—WHERE CORPORATION ACTS AS AGENT FOR ANOTHER CORPORATION—WHERE CORPORATION ACTS AS AGENT OF INDIVIDUAL—WHERE INDIVIDUAL IS AGENT OF CORPORATION.

1. *If an incorporated company has in its possession or under its control as agent property belonging to another corporation, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Under section 5370 the listing should be made not by the agent corporation but by the owner corporation.*

2. *If an incorporated company has property in its possession or under its control as agent belonging to an individual, such property should be listed by the agent company as of the day preceding the second Monday of April, and not as of the first day of January.*

3. *If an individual has in his possession or under his control as agent property belonging to an incorporated company, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Return should be made by the principal officer of the corporation rather than by the agent; with possible exceptions in the cases of agents having control of investments and of receivers, which are not considered.*

COLUMBUS, OHIO, December 11, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The commission requests the opinion of this department upon the following questions, all based upon the provisions of sections 5366-1, 5372-1 and 5404-1 of the General Code:

“1. If an incorporated company has in its possession or under its control as agent property belonging to another corporation, should the corporation having the property in its possession or under its control list the same as of the first day of January or as of the day preceding the second Monday of April?

2. If an incorporated company has property in its possession or under its control as agent belonging to an individual, should it list such property as of the first day of January or as of the day preceding the second Monday of April?

3. If an individual has in his possession or under his control as agent property belonging to an incorporated company should he list such property as of the day preceding the second Monday of April or as of the first day of January?”

The sections referred to by the commission are as follows:

"Sec. 5366-1. The listing of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be made between the second Monday of April and the first Monday of June, annually.

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 in this act 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 incorporated and unincorporated banks, nor the returns made by incorporated companies, \* \* \*." (108 O. L. 131).

"Sec. 5372-1. Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise in the possession or control of a person as \* \* \* trustee, executor, administrator, assignee, \* \* \*

agent, attorney, or otherwise, 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 \* \* \* trustee, executor, administrator, assignee, \* \* \* agent, attorney or other person, adding to such name words briefly indicating the capacity in which such person has possession of or otherwise controls said property, and the name of the person, estate, firm, company, \* \* \* or corporation to whom it belongs; \* \* \*."

"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." (108 O. L. 132).

Prior to the amendments of 1919 above quoted, the property of incorporated companies was listed as of the same date as the property of natural persons. The question, of course, is as to the effect of these amendments, the paramount policy of which is clear enough, viz., to substitute the first day of January as the day as of which the property of incorporated companies should be listed. If the amendment of section 5366-1 stood by itself it would be difficult to carry such a policy to its logical extreme, because the new exception introduced into that section is phrased as follows:

"nor the returns *made by* incorporated companies."

In other words, the exception does not extend to the returns *of the property of* incorporated companies, but merely to returns made by incorporated companies. From this it might be argued, on the one hand, that wherever under the law a person other than an incorporated company is under the duty of listing in a representative capacity property belonging to an incorporated company, he should continue to list it as of the date named in section 5366-1, namely, the day preceding the second Monday of April; whereas, on the other hand, it could be argued that wherever a corporation in the capacity of agent for a natural person is called upon to list property for taxation, such listing should be made not as of the day

preceding the second Monday of April, but as of some other time not expressed in the section itself.

However, it is perfectly proper to construe together the amendments made in section 5366-1 and the newly enacted section, 5404-1, inasmuch as they both appear in the same brief act of the general assembly, which must be presumed to have been animated by a single intent. Therefore, we are at liberty to look to section 5404-1 for further evidence of the meaning of both sections. That section enacts that all the listing and valuation of the personal property of corporations, including their manufacturers' and merchants' stocks, shall be as of the first day of January. This provision is literally of different import from the exception found in section 5366-1. On the one hand, it requires all corporate property to be listed, valued and ascertained as of the first day of January, regardless of who makes the return or the listing. In the second place, it does not provide that a return made by a corporation of property in its possession belonging to another shall be made as of the first day of January.

From the viewpoint of strict logic it is impossible to reconcile these two provisions. It is not, however, difficult to determine which one of them shall be given effect, if they must be found to be irreconcilable. The purpose of the exception in section 5366-1 is merely to withdraw from the scope of its operative provisions cases provided for elsewhere. We are not to impute to the general assembly an intention to leave unprovided for the time of listing as to any case in which property is required to be listed for taxation; this we would have to do if we were to give controlling effect to the exception, for if we read the language "the returns made by incorporated companies" so as to include returns made by such companies as agents, etc. for individuals, then there would be no provision in the statutes as to the time at which such returns should be made; for section 5404-1 does not purport to deal with such cases.

Without prolonging the argument it is sufficient to state that it is the conclusion of this department that the phrase "the returns made by incorporated companies" in section 5366-1 being, as it is, merely an exception, and not in the nature of a positive provision for anything, should be construed consistently with section 5404-1, which is to be regarded as the controlling provision. That is to say, the phrase is to be read as if it were equivalent to the expression "nor the returns governed by section 5404-1 of the General Code." In this connection it is only proper to point out that section 5372-1 does not purport to be a regulation of the day as of which property shall be listed and valued; it simply enacts that property in the possession of a person other than its owner in a representative capacity on the day preceding the second Monday of April shall be listed by such representative. This section was not expressly amended by the act found in 108 O. L., Part I, p. 131; its effect will be presently considered, but it is mentioned at this point for the purpose of stating that its existence has no effect upon the question just determined.

The conclusions thus reached require us now to consider what the scope of section 5404-1, which is the controlling section, may be. It will be observed that it occurs in the context with section 5404 of the General Code, which provides in part as follows:

"The president, secretary, and principal accounting officer of every incorporated company, \* \* \* 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."

This section is broad enough on its face to require the proper corporate officer to list for taxation all the personal property of the company within the state, whether it is in the legal possession of agents or not. It does not, however, apply to corporations whose property is in the hands of receivers. This is made apparent by the provisions of section 5370 of the General Code, which has not been amended recently. It provides in part as follows:

“Each person of full age and sound mind shall list \* \* \* all moneys in his possession, all moneys invested, loaned, or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation, \* \* \*. The property of \* \* \* corporations whose assets are in the hands of receivers, by such receivers; of a company, firm or corporation, by the president or principal accounting officer, partner or agent thereof; \* \* \*.”

Some question exists under this section as to whether moneys invested and controlled by an agent or attorney for a corporation are to be included in the return to be made by the president or other principal officer of the incorporated company under section 5404 of the General Code. This question is not necessarily involved in the specific cases which you submit, and will be reserved for future consideration should occasion arise. Section 5370 does make it clear, however, that the return of a receiver of a corporation is not to be made under section 5404 of the General Code; whereas, generally speaking, all other corporate property is to be returned by the principal officer under that section, whether some one else is required to list it or not.

These facts are mentioned because the most natural scope to give to section 5404-1 is to read it in connection with section 5404; that it, to read section 5404-1 as if it said that the returns made under the preceding section (5404) should be made as of the first day of January and valuation thereof should be made as of the same date. The question of receiverships is not necessarily involved in the cases submitted by you, and may well be reserved for further consideration. It will be assumed that when the commission speaks in its first and third questions of property in the possession of one person or one corporation as agent for another corporation, the commission means to refer to tangible personal property held in the simple capacity of an agent; and this opinion will proceed upon the basis of that assumption.

Now section 5404-1, as well as section 5404, is very broad in its scope. The first named section purports to deal with “all the listing and valuation of the personal property \* \* \* of incorporated companies.” That is to say, the section is not limited to a particular kind of listing and valuation of such property, but extends to all listings and all valuations of such property. On the other hand, the section is narrow in that it does not refer to all listings to be made by incorporated companies, but merely to all listings of the property of incorporated companies by whomsoever made. It follows, and it is the opinion of this department, that section 5404-1 relates to any and all listings and valuations, by whomsoever made, of property belonging to corporations, with the possible exception of property in the hands of receivers and money in the hands of an attorney or agent authorized to invest and reinvest, which are not considered.

It is also the opinion of this department that section 5404-1 does not refer to all returns which an incorporated company might be required to make, but only to such returns which it is required to make of its own property.

Section 5372-1, as has been noted, remains to be considered. It will be sufficient to say of this section that section 5404-1, interpreted as it has been, constitutes an exception to it so far as time is concerned. It would not be exactly accurate to

say that an implied repeal of section 5372-1 has resulted from the enactment of section 5404-1, but rather that the special case provided for in section 5404-1 is taken, so far as its necessities require, out of the general rule embodied in section 5372-1.

These principles require the following answers to the commission's specific questions:

(1) If an incorporated company has in its possession or under its control as agent property belonging to another corporation, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Under section 5370 the listing should be made not by the agent corporation but by the owner corporation.

(2) If an incorporated company has property in its possession or under its control as agent belonging to an individual, such property should be listed by the agent company as of the day preceding the second Monday of April, and not as of the first day of January.

(3). If an individual has in his possession or under his control as agent property belonging to an incorporated company, such property should be listed as of the first day of January rather than as of the day preceding the second Monday of April. Return should be made by the principal officer of the corporation rather than by the agent; with possible exceptions in the cases of agents having control of investments and of receivers, which are not considered.

- Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1703.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE—DEPUTY REAL ESTATE ASSESSOR.

*The office of township trustee and the position of deputy real estate assessor are compatible.*

COLUMBUS, OHIO, December 11, 1920.

HON. WATSON H. GREGG, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—In your communication of recent date you make the following request:

“Please let me have your opinion as to whether or not a township trustee can legally act as an appraiser of real estate. The county auditor desires to appoint a trustee to appraise real estate in his township, beginning about the middle of January, 1921, and I am not sure whether the two positions are compatible.”

Under the provisions of section 5548 G. C., 108 O. L., Part I, page 558, the county auditor is the real estate assessor for the purpose of taxation of all the real estate situated in his county, performing such duties under the supervision of the state tax commission. The county auditor in connection with his duties as real estate assessor is empowered to appoint and employ such experts, deputies and employes as he deems necessary to perform such duties.