

do have the "legal title" since a deed has been properly executed, delivered to and received by them. However, that legal title is held in trust for the grantors on account of failure of consideration as hereinabove set forth.

The agreement upon which the conveyance was made to the trustees was clearly not divisible. The grantors did not intend or contemplate that they would pay from their property for aid furnished them by the township for a limited period, so far as the statement of facts discloses. They therefore have the right to a complete and unconditional return of their property. Upon admission of these parties to the county home, therefore, the county commissioners acquire the right to all of the property owned by them by virtue of Section 2548 of the General Code, above quoted. The question of the claim of the township trustees as against that of the county commissioners is disposed of by the concluding sentence of Section 2544 of the General Code, which reads as follows:

"The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

The foregoing conclusions eliminate the necessity of answering your question 4 in regard to whether or not the premises in question are liable to taxation while the trustees own the legal title to the same. However, it is my opinion that real estate held by the trustees of a township, which is not used for the purposes specified in Sections 5353-1, 5356 or some other section of the General Code, specifically exempting it from taxation, is subject to taxation while so held.

More specifically answering your questions, I am of the opinion that:

1. The trustees of Paulding Township in the case which you present have legal title to the lands in question, subject to the equitable right of the grantors to rescission and a reconveyance as above set forth.

2. Such trustees do not have an equitable interest in said lands or a claim against said property for reimbursement to the extent of the value of the aid heretofore given the grantors.

3. This inquiry is disposed of by the answer to question 2.

4. The premises in question are subject to taxation while held by the trustees for a purpose other than those specified in the sections of the General Code specifically providing for the exemption of township property from taxation.

In consideration of the foregoing, it is my suggestion that the county commissioners of Paulding County proceed to take possession of the property of Mr. and Mrs. S., pursuant to the provisions of Section 2548 of the General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2814.

TAX AND TAXATION—DELINQUENT TAXES—COLLECTION AFTER AUGUST SETTLEMENT—DISTRICT MAY NOT BORROW IN ANTICIPATION OF COLLECTION BEFORE JANUARY 1ST.

SYLLABUS:

Under the provisions of Section 2293-4, General Code, the taxing authorities of a taxing district may not prior to January 1, 1929, borrow money in anticipation of the collection of taxes remaining delinquent at the August settlement and collected prior to the February settlement.

COLUMBUS, OHIO, November 1, 1928.

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

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

"You are respectfully requested to furnish this department your written opinion upon the following matter: Section 2293-4, G. C., 112 O. L. 365, provides that in anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor. The section further provides that no subdivision shall borrow money or issue certificates in anticipation of the February settlement before January 1st of the year of such tax settlement. Numerous school districts and other subdivisions are confronted with a situation which embarrasses them financially by reason of the failure to collect taxes and therefore the failure of the subdivision to receive the amount of taxes estimated by the budget commission to be received.

Question: Under the provisions of the above mentioned section, may the taxing authorities of a taxing district prior to January 1st, 1929, borrow money in anticipation of the collection of taxes remaining delinquent at the August settlement and collected prior to the February settlement?"

In answering your inquiry consideration must first be given to the status of delinquent taxes collected after the August settlement and before the February settlement in any year. The delinquent taxes collected by the county treasurer after the August settlement are not distributed to the various taxing districts, but go into and become a part of the succeeding February settlement and are distributed with the other taxes which are included in said February settlement.

In an opinion dated December 2, 1927, to the prosecuting attorney, Akron, Ohio, Opinions of the Attorney General, page 2404, I held as stated in the syllabus that:

"After the August settlement between the county auditor and treasurer, taxes collected on the delinquent list are carried into the February settlement, and advancements under the provisions of Section 2692, General Code, may not be made thereon previous to January 1st."

Taxes delinquent at the August settlement but collected by the county treasurer between said August settlement and the succeeding February settlement have the same status as taxes regularly collected and forming a part of the February settlement, and are subject to the same inhibition as to advancements as taxes regularly collected.

Section 2293-4, General Code, reads as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appro-

riated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

It is clear that this section contains a direct inhibition against any taxing subdivision borrowing money or issuing certificates in anticipation of the February tax settlement before January first of the year of such tax settlements, and then only for the current fiscal year, which in this instance will be 1929. Advancements for 1929 cannot be made until after January first.

In view of the foregoing and specifically answering your question, it is my opinion that under the provisions of Section 2293-4, General Code, the taxing authorities of a taxing district may not prior to January 1, 1929, borrow money in anticipation of the collection of taxes remaining delinquent at the August settlement and collected prior to the February settlement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2815.

GASOLINE TAX—IMPORTER NOT LIABLE FOR TAX ON MOTOR VEHICLE FUEL IMPORTED INTO OHIO BY TANK STEAMERS AND SOLD IN TANK CAR LOTS—PURCHASERS LIABLE.

SYLLABUS:

Where a dealer ships motor vehicle fuel into Ohio by tank steamers and after unloading it into storage containers, sells said fuel to Ohio dealers in tank car lots, the importer is not liable but the Ohio purchasers from said importer are liable to the payment of the three cent tax.

COLUMBUS, OHIO, November 1, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

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

"X, an Ohio registered dealer in motor vehicle fuel, ships motor vehicle fuel by tank steamers from East Chicago, Indiana, via Lake Erie to Cleveland, Ohio. The motor vehicle fuel is emptied into storage facilities owned by X in Cleveland, then afterward loaded into tank cars and sold in such tank cars to other motor vehicle fuel dealers in Ohio. A question has arisen as to who is liable to the state for the Ohio 3 cent tax on the motor vehicle fuel, whether it is X or X's customers who purchase it in tank car lots.

We shall greatly appreciate your giving us your opinion in the matter at your earliest convenience."

The company in question evidently bases its claims to exemption upon the concluding sentence of Section 5526 of the General Code. This section defines the terms "motor vehicles" and "motor vehicle fuels" and provides as follows: