

surviving child (assuming no alienation of his estate in fee in the meanwhile), such heirs would not receive the fee in the second half under the will of the present testator.

In other words, in the usual course of nature the two children will not die at the same time, and it is possible that one may be the heir of the other. On the other hand, it is more remotely possible that they will both die at the same time, leaving a single person remotely related to the testator as their common heir. Even in that event resort to presumptions might establish the legal conclusion that the possible single ultimate remainder-man would receive part of his estate under the testator's will and part from the presumed survivor by virtue of the statutes of descent and distribution operating upon the estate of that survivor.

Bearing in mind that section 5343 of the General Code is to be applied by imagining a *possible* contingency, it is believed that the highest possible rate would be obtained by assuming the death of the first child without heirs other than the other child, which, as to the remainder after the life estate of the first child, would add the value of that remainder to the taxable interest of the second child; then let it be assumed that the surviving child dies leaving a single heir remotely related to the testator; this assumption will place the remainder after the life estate of the second child in the seven per cent class.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1578.

ROADS AND HIGHWAYS—AUTOMOBILE REGISTRATION LAW—WHEN FUNDS MENTIONED IN SECTION 6309-2 G. C. (108 O. L. 1083) MAY BE USED IN IMPROVEMENT OF CURBS AND GUTTERS.

The funds mentioned in section 6309-2 G. C. (108 O. L. Part II, p. 1083) may be used in the improvement of curbs and gutters, provided that their existing foundation is used in whole or in substantial part as the sub-surface of the improvement.

COLUMBUS, OHIO, September 20, 1920.

HON. CHARLES M. CALDWELL, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

“Please refer to section 6309-2, as amended in House Bill No. 573.

Subdivision 2 provides that fees collected on account of automobile registration shall constitute a fund to be used for the maintenance and repair of public roads and streets. ‘Maintenance and Repair’ as defined by this section, ‘includes all work done upon any public road or highway, or upon any street, in which the existing foundation thereof is used as the sub-surface of the improvement thereof, in whole or in substantial part.’

Can these funds be used by village for the purpose of repairing and re-laying the gutter and constructing the curb at the outer edge of sidewalks?

It has been the custom of the village to construct the curb and gutter, the property owner constructing the sidewalk. In other words, the village takes care of the street from curb to curb, including the curb, leaving the sidewalk to the property owner.”

The section to which you refer appears in 108 O. L. (Pt. II, p. 1083), and is part of the Act authorizing a tax on the operation of motor vehicles. The section reads in part:

“Sec. 6309-2. The revenue collected under the provisions of this chapter shall be distributed as follows:

* * * * *

(2) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. Such moneys shall be paid into the treasury of the proper county as provided herein and distributed as are other taxes. In the treasuries of such municipal corporations and counties, such moneys shall continue a fund which shall be used for the maintenance and repair of public roads and highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. ‘Maintenance and repair’ as used in this section, includes all work done upon any public road or highway, or upon any street, in which the existing foundation thereof is used as the sub-surface of the improvement thereof, in whole or in substantial part.

* * * * *

Strictly speaking, the term “street” embraces the area between property line and property line. However, as commonly understood, the term denotes particularly the portion of the traveled way that is used principally for vehicles; and as a matter of general practice, the improvement of such latter portion is denoted “street improvement” and is conducted separately from sidewalk improvement. The improvement of curb and gutter is as a rule included in street improvement rather than in sidewalk improvement.

In the light of these practical considerations, you are advised that curbs and gutters are to be treated as part of the street for the purposes mentioned in section 6309-2, and that the funds mentioned in said section may be used for the improvement of curbs and gutters, provided that their existing foundation is used in whole or in substantial part as the sub-surface of the improvement.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1579.

ROADS AND HIGHWAYS—AUTOMOBILE LICENSE LAW—MONEY ACCRUING TO COUNTY TREASURY UNDER SECTION 6309-2 (108 O. L. 1083) MAY NOT BE TURNED OVER TO TOWNSHIP TRUSTEES FOR USE BY LATTER IN ROAD MAINTENANCE AND REPAIR.

Moneys accruing to the county treasury under section 6309-2 G. C. (108 O. L. Part II, 1083) may not be turned over in whole or in part to township trustees for use by the latter in road maintenance and repair.

COLUMBUS, OHIO, September 20, 1920.

HON. C. A. WELDON, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“Will you please advise me whether the money paid into the county