

ORIGINAL

In the  
Supreme Court of Ohio

ANDERSON/MALTBIE PARTNERSHIP

and

LKH VICTORY CORP (dba CINCINNATI  
COLLEGE PREPARATORY ACADEMY)

Appellees,

v.

RICHARD A. LEVIN,  
Tax Commissioner of Ohio,

Appellant.

Case No. 2009-1671

Appeal from Ohio Board of Tax Appeals  
Case No. 2007-A-11

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REPLY BRIEF OF APPELLANT

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## A. Introduction/Summary

Appellee Anderson/Maltbie Partnership (“AMP”) wrongly implies that this case is about disparate treatment between schools run by private charter school organizations and schools run by Ohio school districts. AMP emphasizes that community charter schools are non-profit organizations that perform the same primary/secondary educational role that Ohio’s school districts perform. This observation, however, misses a fundamental and crucial point. The focus of tax exemption in R.C. 5709.07(A)(1) is not on public schools but instead on public schoolhouses, i.e., real property owned by the state and/or its political subdivisions. Thus, if AMP were to rent its commercial real estate even to an Ohio school-district lessee, rather than to a charter-school lessee, the tax-exemption result would be the same. Either way, AMP’s commercial real estate would **not** qualify for the “public schoolhouse” exemption or any other real property tax exemption.<sup>1</sup> Accordingly, this case is not about denying to an Ohio charter school lessee the potential benefits of a “public schoolhouse” exemption that would be enjoyed by an Ohio school district lessee. It is instead a case that is properly resolved by applying the plain meaning of the applicable exemption statute, R.C. 5709.07(A)(1).

Unless the BTA decision is reversed, AMP will have succeeded in advancing a highly anomalous, and heretofore universally rejected, interpretation of Ohio’s “public schoolhouse” exemption and the identical or substantially similar “public schoolhouse” exemptions enacted in several of Ohio’s sister States. AMP’s brief unsurprisingly sidesteps this reality. AMP ignores that, in Ohio, commercially owned real estate never has qualified for the “public schoolhouse” exemption enacted in 1852 and now codified in R.C. 5709.07(A)(1). The General Assembly

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<sup>1</sup> AMP’s lease of its commercial real estate to a school district lessee would not qualify its commercial real estate for the real property tax exemption afforded to Ohio school boards under R.C. 3313.44 because that exemption is limited only to real property **vested** in a board of education. And, under R.C. 3313.375, property held by a board of education under a lease-purchase agreement is not vested in the board of education until the end of the lease term.

enacted the exemption shortly after a new Ohio Constitution was adopted in 1851 to permit the General Assembly to grant real property tax exemptions relating to “public schoolhouses” and several other enumerated categories of real property. Article XII, Section 2 of the Ohio Constitution of 1851.<sup>2</sup>

As we detail below, in addition to the compelling Ohio case law we submitted in our initial merit brief, a substantial body of additional controlling Ohio case law requires reversal of the BTA’s decision. This body of dispositive precedent clearly and unequivocally establishes that the “public schoolhouse” exemption is an exemption limited to “public property,” i.e., property owned by the State or a political subdivision thereof.

Further, this Court’s following of precedent and reversing the BTA will not have any adverse affect on the long-standing exemptions afforded parochial school buildings and other school buildings owned and used by non-profit organizations to fulfill the charitable purposes of providing primary and secondary education. This Court’s case law further clarifies that parochial school buildings owned by the Catholic diocese and other real property owned by other non-profit organizations used for primary and secondary education properly qualify for the “charitable” property tax exemptions set forth in R.C. 5709.12 and .121. The common theme running through the judicial precedent concerning buildings and land used for primary and secondary education is that the non-profit nature of the owner and the owner’s lack of private

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<sup>2</sup> This Ohio constitutional provision is commonly referred to as the “Uniformity Clause,” which as originally adopted required Ohio property to be taxed uniformly but permitted the General Assembly to exempt certain enumerated classifications of property from taxation, including “public schoolhouses.” Accordingly, as an exception to uniform taxation, the General Assembly’s grant of exemption under these constitutional classifications requires a “strict construction” against the claim of exemption. *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St. 3d 496, 2006-Ohio-4966, ¶10 (citing *Cincinnati College v. State* (1850), 19 Ohio 110, 115); R.C. 5709.01(A)(codifying this constitutional requirement).

gain or profit are crucial criteria that must be met in order to qualify the real estate for exemption.

A uniform body of case law from other state taxing jurisdictions also provides compelling authority cementing the reasonableness and lawfulness of the Commissioner's denial of AMP's exemption claim here. The highest courts in at least five States, Illinois, New York, Texas, Wyoming, and Minnesota, have held that commercial real estate leased for profit by the owner/lessor thereof cannot qualify for "public schoolhouse" exemption. In all these cases, the statutory exemptions were identical or substantially similar to Ohio's "public schoolhouse" exemption.

By contrast, the Commissioner's thorough search of the case law could find **no** cases in any State granting real property tax exemption for commercial real estate that was leased for profit to a school lessee. In fact, our search revealed only one case, in Vermont, granting a real property exemption to a non-governmental owner of real property used as a school. Unlike Ohio's "public schoolhouse" exemption, however, Vermont's statutory "public schoolhouse" exemption expressly provided that property leased to a public school qualifies for exemption. Moreover, the owner in that case was a non-profit association, not a for-profit commercial business like AMP. Thus, that case hardly supports the BTA's unprecedented grant of exemption to AMP here.

There should be no mystery why there has been universal recognition that commercial real estate leased for profit fails to qualify under Ohio's and other States' similar "public schoolhouse" exemptions. The plain meaning of the statutory language of R.C. 5709.07(A)(1) refutes AMP's exemption claim in two fundamental ways. First, commercially owned real estate is *per se* not a "public schoolhouse" within the common and technical usage of that phrase. Second and independently, AMP's for-profit leasing of the commercial real estate to the charter

school lessee is plainly a disqualifying “lease” and “use” of the property “with a view to profit.” In its merit brief, AMP attempts to avoid the plain meaning of the relevant exemption criteria by ignoring, misapplying or misstating the relevant law.

When these deficiencies in AMP’s analysis are corrected, AMP is left with a wholly unsupported claim. For these reasons, as more fully detailed below, this Court should reverse the BTA’s decision and uphold the Commissioner’s denial of the exemption.

**B. Under its common and technical usage, the term “public schoolhouse” is a kind of “public property” and, thus, encompasses only such property that is owned by the State or a political subdivision thereof.**

*1. Under common usage of the term “public schoolhouse,” the exemption is limited to only those buildings that qualify as “public property.”*

AMP understandably makes no mention of the common usage of the term “public schoolhouse.” Under its ordinary meaning as set forth in any standard dictionary, the term “public schoolhouse” (emphasis added) means a kind of public building. See, e.g., Webster’s New World Dictionary (2<sup>nd</sup> College Ed. 1984) 1274 (defining the term “schoolhouse” as “a building used as a school”), T.C. R. Br. Appx. 7. By contrast, the term “school” may refer to either (1) a physical building at which teaching or learning takes place, or (2) a place or institution for teaching and learning. *Id.* at 1274 (defining “school” as either “a place or an institution for teaching or learning” or as “the building or buildings \*\*\* of any such establishments”).

Further, the conclusion that the phrase “public schoolhouse” refers to a kind of public property, rather than a kind of public institution, follows directly from the nature of the exemption: a real **property** tax exemption. Thus, applying the dictates of the most basic tenet of statutory interpretation, such common usage is controlling unless, at the time of its enactment, the term “public schoolhouse” had acquired a different technical usage. *Key Servs. Corp. v.*

*Zaino* (2002), 95 Ohio St. 3d 11, 14 (quoting R.C. 1.42 for the established principle that “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”)

A schoolhouse, therefore, is simply a particular type of property. If “public property” means property owned by the state or a political subdivision, it logically follows that a “public schoolhouse” means a schoolhouse owned by the state or a political subdivision. As detailed in the following Section C 2, the technical usage of the phrase “public schoolhouse,” as set forth in the Ohio case law, always has accorded with its common usage: as meaning a kind of public property owned by the State or a political subdivision thereof.

2. *The term “public schoolhouse,” as used for purposes of “public schoolhouse” exemptions and constitutional classifications pertaining to real property tax exemption, always has accorded with its common usage and embraces only such property that is owned by the State or a political subdivision thereof.*

a. **Under paragraph two of the syllabus law of *Gerke v. Purcell* (1874) 25 Ohio St. 229, the term “public schoolhouses” as contained in the real property tax exemption classification set forth in Section 2, Article XII of the Ohio Constitution of 1851 embraces only such property that is owned by the State or a political subdivision thereof and excludes privately owned property held with a view to profit.**

When the Ohio Constitution was adopted in 1851, the “Uniformity Clause” of Section 2, Article XII therein required the General Assembly to tax uniformly Ohio’s real and personal property, restricting the General Assembly’s power to enact tax exemptions to only certain enumerated categories of property, including exemptions for property relating to “public schoolhouses.” As this Court expressly held in *Gerke v. Purcell* (1874) 25 Ohio St. 229, the term “public schoolhouses” as used in Section 2, Article XII was limited to “public property,” i.e., property whose ownership was held by the State or a political subdivision thereof:

In section 2, article 12, of the constitution, which authorizes the general assembly to exempt from taxation the classes of property therein described, the word “public” is used, in some instances, to describe **the ownership of the property**, in others as merely descriptive of the use to which the property is applied. **As applied to school-houses, it is used in the former sense; and by “public school-houses” is meant such as belong to the public, and are designed for schools established and conducted under public authority.**

Id. at paragraph two of the syllabus (emphasis added).

The *Gerke* Court then went on to amplify this syllabus law by explaining that privately owned realty held for gain or profit did not qualify as a “public schoolhouse” within the meaning of Section 2, Article XII of the Ohio Constitution. Id. at 242-243. *Gerke* establishes that in 1851 (when the new Ohio Constitution was adopted) the term “public schoolhouse” had acquired both a common and technical usage as meaning public property owned by the State or political subdivision thereof, not property owned by private individuals.

- b. **Considerations of historical context require that the meaning of the term “public schoolhouse” for purposes of the Ohio Constitution also applies to that term as used by the General Assembly in enacting a “public schoolhouse” exemption the next year.**

When courts construe a statute or constitutional provision, “the object of the people in adopting it should be given effect; the polestar in the construction of constitutional, as well as legislative, provisions is the intention of the makers and adopters thereof.” *Castleberry v. Evatt* (1946), 147 Ohio St. 30, syllabus ¶1; see also *State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St. 3d 508, 513, 1996-Ohio-376 (same); see also *State of Ohio v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206 at ¶14 (rules of statutory construction generally apply to constitutional provisions). To determine intent, “[c]ourts review several factors, including the circumstances surrounding the legislative enactment, the history of the statute, the spirit of the statute (the ultimate results intended by adherence to the statutory scheme), and the public policy that induced the statute’s enactment.” *Toledo Edison Co.*, 76 Ohio St. 3d at 513-514 (internal

citations omitted); see also R.C. 1.49 (authorizing courts to consider the consequences of a particular construction, along with other factors, in evaluating an ambiguous statute's legislative intent).

Under these established principles of construction, therefore, the meaning of the term "public schoolhouse" as intended by the drafters of Section 2, Article XII of the Ohio Constitution of 1851 and the meaning of that term as used in the "public schoolhouse" exemption enacted the following year should be the same. Nonetheless, the Court's *Gerke* decision temporarily misstepped by failing to follow that course, a misstep that this Court corrected in *Watterson v. Halliday* (1907), 77 Ohio St. 150.

In ignoring the historical context of the exemption, the *Gerke* Court held that the General Assembly did not intend that the term "public schoolhouses" be given that same ordinary meaning that the drafters used in the Uniformity Clause. Instead, the Court held that the word "public" in the term "public schoolhouse" was intended to refer to the purpose to which the property was used, not to its ownership. 25 Ohio St. at 247.

Further, in addition to ignoring the historical context of the enactment, the Court committed two more errors in departing from the plain meaning of the term "public schoolhouses." First, the Court's rationale that refers to the assumed fact that at the time of the passage of the 1852 Act there were few, if any colleges, academies, and other institutions of learning owned by the public, 25 Ohio St. at 247, overlooked the fact that the term "public" was not used in reference to those entities in the Act at the time the term "public schoolhouse" was added. See 50 Ohio Laws at 137, T.C. R. Br. Appx. 9.

Second, the Court erroneously reasoned that, if "public schoolhouses" were to be given its common and technical usage as meaning property owned by the State, then the phrase "not

leased or otherwise used with a view to profit” would be meaningless. *Gerke*, 25 Ohio St. at 247 (“such entities are never established and carried on by the public with a view to profit”). But no law precluded the State or its political subdivisions from leasing real property to others.

The General Assembly addresses that very situation. Ohio’s real property tax exemption statutes expressly recognize that the State and its political subdivisions may own real property that is leased to others or otherwise is used with a view to profit. See, e.g., the criteria for real property tax exemption set forth in R.C. 5709.08 (requiring as a condition for exemption that the property not only be “public property,” but that it also must be “used exclusively for a public purpose”). Under the R.C. 5709.08 exemption, real property owned by the State or a political subdivision that is leased to a for-profit entity fails to qualify for exemption. See, e.g., *Parma Hts. v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818 (holding that city-owned real property leased to a for-profit ice rink failed to qualify for the R.C. 5709.08 exemption) and the cases cited therein.

In light of the foregoing deficiencies in the *Gerke* Court’s interpretation of the “public schoolhouse” exemption, it is hardly surprising that three subsequent decisions of this Court corrected these errors and repudiate the notion that the term “public schoolhouse” extends beyond property owned by the State or a political subdivision thereof. We discuss these three cases in the following three sub-sections of this brief.<sup>3</sup>

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<sup>3</sup> The *Gerke* Court’s different construction of the term “public schoolhouse” as used in the exemption statute from its use in the Constitution is even more inexplicable when one realizes that it was wholly unnecessary to the Court’s final conclusion: that the realty owned by the Cincinnati Catholic Diocese and used for parochial school purposes was exempt from real property taxation. The Court reasoned that the “institution of purely public charity” classification in the Section 2, Article XII of the Constitution was the classification applicable to the “public schoolhouse” statutory exemption. See paragraphs five and eight of the syllabus of *Gerke*. Yet, the Court much more reasonably could have relied on an entirely different statutory exemption enacted by the General Assembly under the “institution of purely public charity”

- c. Just four years after *Gerke*, the Court expressly held in *Weir v. Day* (1878), 35 Ohio St. 143, that the term “public schoolhouse” includes only schoolhouses owned by the boards of education, i.e., political subdivisions of the State.

The *Weir* Court impliedly overruled *Gerke*'s interpretation of the term “public schoolhouses” as used in the “public schoolhouse” exemption by holding that “all public schoolhouses are vested in the boards of education, in trust for the public or common schools \* \* \*.”: *Weir v. Day* (1878), 35 Ohio St. 143, 145. *Weir* follows the same common usage to interpret the statutory exemption that the *Gerke* Court itself applied to determine the constitutional meaning of the term “public schoolhouses.” AMP's brief fails to mention this established post-*Gerke* precedent. The Court then further repudiated *Gerke*'s erroneous statutory interpretation with two real property tax exemption cases.

- d. In 1883, this Court in *Gilmour v. Pelton*, affirmed without decision, a lower court's holding that the Cleveland Catholic Diocese real property used for parochial school purposes qualified for exemption under the “institution of purely public charity” exemption now contained in R.C. 5709.12 and .121, but was not exempt under the “public schoolhouse” exemption.

At issue in *Gerke* was whether the real property used for parochial school purposes and owned by the **Cincinnati** Roman Catholic Diocese (held in the name of the then-Cincinnati archbishop, John C. Purcell) qualified for real property tax exemption. In response to the successful outcome for the Cincinnati Diocese in *Gerke*, the **Cleveland** Catholic Diocese commenced a real property tax exemption action in Cuyahoga County on the same basic facts. Unsurprisingly given the Ohio Supreme Court's guidance in *Gerke*, the Cuyahoga County Common Pleas Court granted real property tax exemption for the property. *Gilmour v. Pelton* (Ohio C.P. 1877), 5 Ohio Dec. Rep. 447, 1877 Ohio Misc. LEXIS 16 (affirmed by the Ohio

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classification set forth in the 1852 Act. Namely, that Act provided an exemption for “[a]ll buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit.” 50 Ohio Laws at 137, T.C. R.Br. Appx. at 9.

Supreme Court without opinion), 1 Ohio B. 432, T.C. R.Br. Appx. 1-6. But in so doing, the court held that the “public schoolhouse” exemption was not the applicable exemption. Id. at \*11 (holding that “it is also clear that they [the schoolhouse buildings] are not exempt from taxation by virtue of the \*\*\* provision of the statute \*\*\* exempting ‘public school-houses,’ on the basis that “the supreme court of our own state having distinctly held that the ‘public school-houses’ therein described are school-houses that belong to the public, and are conducted under public authority”).

Instead, the *Gilmour* court determined that the proper statutory basis for exempting the property from real property taxation was the exemption for “[a]ll buildings belonging to institutions of purely public charity\*\*\*.” Id. at \*12. The court then devoted the remainder of its decision explaining why the parochial school property qualified under the “institution of purely public charity” exemption.

The subsequent appellate history of *Gilmour* reveals the Ohio Supreme Court’s implicit approval of *Gilmour*’s holding. By affirming *Gilmour* without decision, the Court tacitly endorsed *Gilmour*’s conclusion that the proper statutory exemption for parochial school buildings owned by the Catholic Diocese is the “institution of purely public charity” exemption, rather than the “public schoolhouse” exemption. Otherwise, the Court would have modified the *Gilmour* court’s analysis and holding concerning that issue. The Ohio Supreme Court’s tacit acceptance of the *Gilmour* trial court decision foreshadowed its subsequent express holding in *Watterson v. Halliday*, as detailed in the following sub-section.

- e. In applying the “public schoolhouse” exemption, this Court in *Watterson v. Halliday* rejected the *Gerke* Court’s erroneous statutory interpretation of the exemption and held that it is a “public property” exemption authorized under the “schoolhouse” classification of Section 2, Article XII of the Ohio Constitution of 1851 and, thus, is limited to property owned by the State or its political subdivisions.

In our opening merit brief we emphasized this Court’s decision in *Watterson*. T.C. Br. 11-12. Despite this emphasis, AMP’s merit brief mentions *Watterson* only once and AMP’s commentary concerning that case is limited to a seven-word parenthetical that mischaracterizes that case. AMP Br. 24 (describing *Watterson* merely as “addressing the precursor to R.C. 5709.12 and .121”). While it is true that *Watterson* does discuss the applicability of the real property tax exemption for “buildings belonging to institutions of purely public charity \*\*\*” (i.e., the predecessor statute to R.C. 5709.12 and .121), it also discusses in detail R.C. 5709.01(A)’s real property tax exemptions including the “house of public worship” exemption (presently codified in R.C. 5709.07(A)(2)) and the “public schoolhouse” exemption. In fact, the *Watterson* Court discussed *Gerke* in detail; its discussion reflects the understanding that the true reason *Gerke* determined the parochial school property to be exempt was because such schools were found to be institutions of purely public charity.

*Watterson* is dispositive here. As we emphasized in our initial brief, the *Watterson* Court expressly held that the basis for the “public schoolhouse” statutory exemption was the Ohio constitutional classification in Section 2, Article XII of the Ohio Constitution relating to “public schoolhouses.” Id. at 176-177. *Gerke* itself characterized the “public schoolhouses” classification in the Constitution as a “public property” classification limited to property owned by the State. See sub-section B. 2 a, supra. T.C. R.Br. 5. *Watterson* clearly and unequivocally holds that the “public schoolhouse” exemption is a “public property” exemption embracing only such property that is owned by the State or its political subdivisions.

- f. All State courts that have addressed “public schoolhouse” exemptions identical or substantially similar to Ohio’s unanimously have interpreted the term “public schoolhouse” as limited to real property owned by the State or its political subdivisions.

The *Watterson* Court’s holding that the “public schoolhouse” exemption is a “public property” exemption limited to property owned by the State or its political subdivisions accords with the uniform judicial interpretation that Ohio shares with the courts of each other State that has addressed the issue. Namely, the highest courts in at least three States, Illinois, Minnesota, and New York, all likewise have held that for purposes of real property tax exemption, the term “public schoolhouse” is limited to property owned by the State or a political subdivision thereof. All of these cases remain good law. This uniform persuasive authority is as follows:

***Illinois***

- (1) *People ex rel. Pavey v. Ryan* (Ill. 1891), 27 N.E. 1095 (holding that parochial school buildings owned by the Catholic church are not exempt under the “public schoolhouse” exemption because “public schoolhouses” “refer to the public school houses owned by the State, or the School Districts and Boards of Education organized under the school laws of the State”); and
- (2) *People ex rel. Thompson v. St. Francis Xavier Female Academy* (Ill. 1908), 84 N.E. 55 (citing *Pavey*’s holding with approval)

***Minnesota***

*In re Grace* (Minn. 1881), 8 N.W. 761 (holding that a Catholic-parish-owned schoolhouse and related realty were not owned by the State or its political subdivisions and, thus, were not a “public schoolhouse” within the meaning of the public schoolhouse exemption, but exempting such property as a “seminary” belonging to an institution of “purely public charity”)

***New York***

*Church of St. Monica v. Mayor, Aldermen & Commonalty* (N.Y. 1890), 23 N.E. 294 (denying a “schoolhouse” exemption to a Catholic-parish-owned school on the basis that the term “schoolhouse” was limited to buildings that “belong to the public school system of the city”)

The Commissioner’s thorough search of the case law reveals only one jurisdiction, Vermont, which has allowed an exemption for real estate leased by a private entity (a non-profit association) to a public school. *Experiment in Int’l Living v. Brattleboro* (Vt. 1968), 238 A.2d

782. Vermont's statutory exemption expressly provides that property "leased by \*\*\* public schools" qualifies for exemption. *Id.* at 785 (quoting 32 V.S.A. Sec. 3802(4)). This statutory exemption differs materially from those of Ohio and the other States with "public schoolhouse" exemptions. In sum, the case law of Ohio and elsewhere uniformly reflects that granting the real property tax exemption claim sought by AMP truly would be unprecedented and directly counter to the established real property tax exemption laws and policies throughout the United States.

**C. The common and technical usage of the term "public schoolhouses" to mean a kind of "public property" owned by the State or a political subdivision is buttressed by reading the exemption for such property in *pari materia* with the other exemptions set forth in the same section of the same enactment.**

In 1852, the Ohio General Assembly enacted real property tax exemptions in nine enumerated clauses, the first of which exempted the following property from taxation:

All **public school-houses**, and houses used exclusively for **public worship**, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment of the same, and not leased, or otherwise used with a view to profit. All **colleges, academies**; all endowments for their support; all **buildings connected with the same**, and all lands connected with public institutions of learning, not used with the view to profit. \* \* \*

50 Ohio Laws 135, 137 (section 3), T.C. R.Br. Appx. at 9-11 (emphasis added).

In 1859 and 1864, the General Assembly slightly modified the foregoing first clause by inserting the word "public" before the words "colleges" and "academies" and deleting certain other language not applicable here, as follows:

All **public school-houses** and houses used exclusively for **public worship**, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment of the same, and not leased or otherwise used with a view to profit; all **public colleges, public academies**, all **buildings connected with the same**, and all lands connected with public institutions of learning, not used with the view to profit. \* \* \*

See section 3 of the tax law of 1859, as amended March 21, 1864, 61 Ohio Laws 39, T.C. R. Br. Appx. 12-14 (emphasis added). Today, R.C. 5709.07(A) (1)-(4) sets forth substantially this same statutory exemption language as contained in the 1864 version.

As the underscored language of the various exemptions quoted above shows, the word “public” modifies certain nouns that are kinds of property and certain nouns that are not. Specifically, the term “public schoolhouses” is plainly a kind of public “property,” whereas the term “public worship” is plainly a kind of public activity and the terms “public colleges” and “public academies” are clearly kinds of “public institutions.” The different use of the modifier “public” shows the General Assembly’s manifest intent that the “public schoolhouse” exemption be interpreted as a “public property” exemption. Indeed, as we noted in our initial merit brief at 12, the *Watterson* Court expressly recognized that the “schoolhouse exemption” and the “house of public worship” exemption fundamentally differed from the “public colleges” exemption as follows:

**[S]chool houses and churches are not dealt with as “institutions of purely public charity,” but as what the clause asserts them to be, “public school houses, and houses used exclusively for public worship,” \*\*\*.**

*Watterson*, 77 Ohio St. at 179-180. (Emphasis and underlining added.)

Further, as we again emphasized in our initial merit brief at 13, this Court expressly affirmed the above-quoted holding of *Watterson* in distinguishing the narrower reach of the “public schoolhouse” and “house of public worship” exemptions relative to the “public college” exemption. *Denison University v. Board of Tax Appeals* (1965), 2 Ohio St.2d 17, 22 (noting that the General Assembly “used **entirely different** language” in enacting the “public colleges” exemption now contained in R.C. 5709.07(A)(4) from the language contained in the “public schoolhouse” and “house of public worship” exemptions)(citing *Watterson*).

In fact, because the “public colleges” exemption provides exemption for “all buildings connected with” a public college, it provides a far broader exemption than the “public schoolhouse” exemption. Thus, unlike the public schoolhouse exemption, this Court has interpreted the “public colleges” exemption to have no public ownership requirement. *Bexley Village, Ltd. v. Limbach* (1990), 68 Ohio App.3d 306, 311; and *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1; *Denison*, 2 Ohio St.2d at paragraph two of the syllabus. For this fundamental reason alone, AMP and the BTA below erred by relying on the “public college” exemption cases. *Denison*, *Cleveland State* and *Bexley Village* provide no support for AMP’s exemption claim here.

Similarly, because the word “public” modifies “worship,” the “house of public worship” exemption likewise contains no “public” ownership requirement; that exemption, too, is a broader exemption than the “public schoolhouse” exemption at issue.<sup>4</sup>

**D. In determining the meaning of the term “public schoolhouse” in R.C. 5709.07(A)(1), this Court may properly rely on the rationale and holdings of its cases under R.C. 5709.08, which uniformly have held that the term “public property” embraces only such property that is owned by the State or a political subdivision.**

This Court’s case law under the “public property used exclusively for public purposes” exemption in R.C. 5709.08 provides further compelling support for the Commissioner’s denial of exemption to the commercial real estate owned by AMP. In our initial merit brief, we quoted this Court’s controlling law that firmly establishes the captioned principle as bedrock Ohio real property exemption law. Namely, “**public property,**” within the meaning of that term as used in the state Constitution and the statutes exempting such property from taxation, **embraces only such property as is owned by the state or some political subdivision thereof,** and title to

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<sup>4</sup>Additionally, AMP and the BTA misread the “not leased or otherwise used with a view to profit” requirement of the “public schoolhouses” exemption, as we detailed in our opening brief and further amplify in Section E, *infra*.

which is vested directly in the state or one of its political subdivisions, or some person holding exclusively for the benefit of the state.” See, T.C.Br. 11-12 (emphasis added) (quoting *Dayton Metropolitan Hous. Auth. v. Evatt* (1944), 143 Ohio St. 10, paragraph one of the syllabus). As we also noted in our initial merit brief, this Court in *Columbus City School Dist. Bd. of Edn. v. Zaino* (2001), 90 Ohio St.3d 496, 499, recently followed with approval paragraph one of the syllabus of *Dayton Metropolitan*. Id.

AMP must admit that the commercial real estate at issue is not “owned by the state or some political subdivision thereof.” AMP’s exemption claim fails under the authority of *Dayton Metropolitan* and *Columbus City School Dist.* because the “public schoolhouse” exemption is properly characterized as an exemption of “public property” from real property taxation. In response, AMP argues that the syllabus law of *Dayton Metropolitan Housing*, as cited with approval in *Columbus City School Dist.*, is not apposite authority regarding any exemption except R.C. 5709.08 (which provides a real property tax exemption for “public property used exclusively for a public purpose”). See AMP Br. 25-27. In advancing the contention, however, AMP makes several fundamental errors.

AMP wrongly analyzes the rationale used by this Court in support of its holding that the term “public property” is limited to property owned by the State or its political subdivisions. AMP Br. 26-27. AMP quotes from *Carney v. Cleveland City School Dist. Pub. Library* (1959), 169 Ohio St. 65, 66-67 (an R.C. 5709.08 exemption case) and *Dayton Metropolitan*, and on that basis argues its commercial real estate should be exempt because the lease expenses incurred by CCPA are, at least in part, paid by the State. AMP wrongly suggests that, for that reason, granting an exemption for AMP’s commercial real estate would accord with the Court’s

observation in *Dayton Metropolitan* that “the product of one tax should not be made the subject of another.” AMP Br. 28 (quoting *Dayton Metropolitan*, 143 Ohio St. at 17).

AMP completely misreads *Dayton Metropolitan* and *Carney*. What AMP overlooks is that AMP itself is the owner of the property and the legal entity against whom the incidence of the real property tax is imposed. As is true of commercial leases generally, the consideration paid by a lessee to a commercial owner/lessor is a matter of contractual negotiations, not statutory law. Even with a detailed analysis of fair market rental value of AMP’s property (which AMP did not present in this case), it would be difficult to speculate about the extent to which CCPA, rather than AMP itself, would benefit if exemption were applicable to the commercial real estate at issue here. As this Court recently succinctly held, R.C. 5709.08 “is designed to help governmental bodies rather than private commercial interests.” *Parma Hts. v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818, ¶14.

By contrast, it is unnecessary to speculate concerning the benefit inuring to the State from the tax exemption when the State both owns realty and uses it for public purposes. If that property were not exempted, the State necessarily would bear the burden of the tax, while at the same time be the recipient of the tax revenues derived therefrom. Using the words of *Dayton Metropolitan Housing*, only when the government both owns and uses the property for public purposes would the lack of property tax exemption necessarily result in “the product of one tax” being made the “subject of another.” Thus, considering the quoted rationales of *Carney* and *Dayton Metropolitan* in proper context, they are entirely consistent with the *Dayton*

*Metropolitan* Court’s holding that the phrase “public property” embraces only such real property that is owned by the State or a political subdivision thereof.<sup>5</sup>

AMP’s argument that the Tax Commissioner’s construction of “public schoolhouse” would render R.C. 5709.07(A)(1) meaningless because such property would be exempt under R.C. 5709.08, ignores the fact that the General Assembly has enacted a number of specific exemption provisions dealing with particular types of public property. For example, R.C. 5709.10 exempts specific property which would also fall within the more general exemption for public property contained in R.C. 5709.08. Likewise, R.C. 5709.12 also contains an exemption for property belonging to counties, townships, or municipal corporations. Under AMP’s view, schoolhouses owned by boards of education would be exempt under R.C. 5709.08, not R.C. 5709.07(A)(1); thus, a schoolhouse owned by the state or a political subdivision would not be exempt as a public schoolhouse under R.C. 5709.07(A)(1). It is AMP’s construction that would be “unreasonable or absurd.” AMP Br. 25.

**E. Even if the “public schoolhouse” exemption were to be interpreted as a “public institution” exemption, as in *Gerke*, AMP’s for profit commercial leasing of the subject real estate constitutes a disqualifying “use with a view to profit” within the meaning of the exemption.**

In our initial brief, we detailed why AMP’s commercial real estate fails even if the Court were to apply *Gerke*’s statutory interpretation of the “public schoolhouse” exemption rather than *Watterson*’s. See T.C. Br. at 4-10. The *Gerke* Court emphasized that to qualify for exemption the property must be used “**to the exclusion of all idea of private gain or profit.**” *Id.* at 247 (emphasis added). In other words, the *Gerke* Court applied the plain meaning of the exemption

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<sup>5</sup> AMP’s argument proves far too much. As noted in the Introduction/Summary, *supra*, if an Ohio school district (through its Board of Education) were to lease the subject commercial real estate from AMP, the tax exemption result would be the same as the proper result here. Regardless of who its lessee happens to be, or how that lessee uses the property, AMP’s commercial real estate is not entitled to real property tax exemption under R.C. 5709.07(A)(1), R.C. 5709.08, or any other property tax exemption statute.

requirement that the property cannot be “leased or otherwise used with a view to profit.” AMP’s merit brief simply ignores this holding in *Gerke*.

AMP’s and the BTA’s attempted erasure of the “not leased or otherwise used with a view to profit” hinges on the notion that only the lessee’s use of the property for private gain or profit is relevant, but no such limitation on the scope of that requirement is expressed in the actual text. In implying such limitation on the scope of the requirement, AMP and the BTA impermissibly add words to the statute that were not enacted by the General Assembly and violate the “strict construction of exemption” principle as well. See T.C. Br. at 6, 16-17.

To support their interpretation, AMP and the BTA rely on a few recent BTA cases under the “house of public worship” exemption, but those BTA cases ignore a basic principle of real property taxation uniformly applied throughout the United States. As succinctly stated by the Wyoming Supreme Court: “Some statutes expressly limit the exemption to property ‘not leased or otherwise used with a view of profit.’ **Under such statutes, property leased to a religious body, and for which rent is paid, is not exempt.**” *Commissioners of Cambria Park v. Board of County Comm’rs* (Wyo. 1946), 174 P.2d 402 (quoting 51 Am. Jur. 594, § 616 and citing and discussing a substantial body of case law so holding). Numerous other decisions interpreting statutes limiting exemption to property “not leased or otherwise used with a view to profit,” or similar language, have likewise so held. See, e.g., *Malone-Hogan Hospital Clinic Foundation, Inc. v. Big Spring* (1956 Tex. App.), 288 S.W.2d 550 (noting that the Texas statutory exemption was borrowed from Ohio and is identical to it); *City of Dallas v. Cochran* (Tex. Civ. App. 1914), 166 S.W. 32 (holding that the owner/lessor’s “private gain” from its commercial lease of the premises to a church organization barred the exemption and that the manifest purpose and effect of the limitation was “to prevent the owners of property from taking advantage of the exemption

when any profit to them is derived from the property”); and *County of Hennepin v. Bell* (Minn. 1890), 45 N.W. 615.

In fact, the Tenth District Court of Appeals decision in *Taylor v. Anderson* (1930), 31 Ohio Law Reporter 567, T.C. Br. Appx. 16-19, that we discussed at length in our opening merit brief reflects that foregoing established principle. See T.C. Br. 15-16. In *Taylor*, the Tenth District was confronted with a far more difficult exemption question than presented by AMP here. Unlike in the present case where the applicant owner, AMP, is a for-profit commercial lessor, the applicant in *Taylor* was a non-profit religious organization that rented a church building to another church. The court held that under the requirement that the exemption was limited to only that property “not leased or otherwise used for profit,” the exemption must be denied. Rather than even attempt to address this precedent, AMP’s brief merely cites it and labels it “having no precedential value,” failing to acknowledge that it is a reported Court of Appeals decision. See AMP Br. 23, fn.11.

#### **F. Conclusion**

For all the above reasons, the BTA’s decision reversing the Commissioner’s denial of the “public schoolhouse” exemption for AMP’s commercial real estate should be reversed and the Commissioner’s final determination upheld.

Respectfully submitted,

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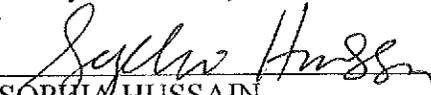
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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of Reply Brief of Appellant was served by regular U.S. mail upon Graham A. Bluhm, Eastman & Smith Ltd., One SeaGate, 24<sup>th</sup> Floor, P.O. Box 10032, Toledo, Ohio 43699, counsel for Appellees, on this 22<sup>nd</sup> day of February, 2010.

  
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SOPHIA HUSSAIN

In the  
**Supreme Court of Ohio**

ANDERSON/MALTBIE PARTNERSHIP

and

LKH VICTORY CORP (dba CINCINNATI  
COLLEGE PREPARATORY ACADEMY)

Appellees,

v.

RICHARD A. LEVIN,  
Tax Commissioner of Ohio,

Appellant.

Case No. 2009-1671

Appeal from Ohio Board of Tax Appeals  
Case No. 2007-A-11

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**APPENDIX TO  
REPLY BRIEF OF APPELLANT**

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**BISHOP GILMOUR v. PELTON, TREASURER.**

[NO NUMBER IN ORIGINAL]

STATE OF OHIO, COURT OF COMMON PLEAS, CUYAHOGA COUNTY

1877 Ohio Misc. LEXIS 16; 5 Ohio Dec. Reprint 447

1877, Decided

**SUBSEQUENT HISTORY:** [\*1] Decision of district court in this case was affirmed by supreme court, December 12, 1883, with entry: "We find no material difference between the facts in this case and those in *Gerke v. Purcell*, 25 Ohio St. 229, and therefore affirm the judgment below. No further report;" 1 O. B., 432.

**HEADNOTES**

**TAXATION OF CATHOLIC PROPERTY.**

This was a proceeding regarding the taxation of Catholic church, and the school property connected therewith, for general purposes; also, for special assessments made for improvements thereon.

*Held:* That under the statutes of Ohio they are institutions of purely public charity, and are free from all ordinary state, county or city taxation, but that all such property is subject to special assessments for improvements made for the benefit of such property.

**COUNSEL:** W. B. Saunders, for Plaintiff.

T. C. Ingersoll for Defendant.

**JUDGES:** JONES, J.

**OPINION BY:** JONES

**OPINION**

[\*\*27] JONES, J.

The plaintiff in this case, Richard Gilmour, who is the Catholic bishop of the diocese, filed his petition in this case in this court, January 17, 1876, against the defendant, Frederick W. Pelton, who is the treasurer of the county of Cuyahoga, for the purpose of obtaining a perpetual injunction restraining him from proceeding to collect the sum of \$ 3,930, as taxes alleged by the defendant to be due for the year 1875, on certain parochial school property, standing in the name of the bishop, but which taxes he insists were levied without any authority of law. At the commencement of this action, in pursu-

ance of its object, he obtained a temporary injunction against the collection of said taxes.

The plaintiff avers in his petition that he is the owner in fee simple [\*2] on certain trusts, more fully hereafter set forth, of five lots of land, with the appurtenances thereof, situated on the corner of Pearl and Division streets, in the city of Cleveland, to-wit: lots 1,072, 1,073, 1,074 and 1,075; also, that he owns, in the same manner and subject to the same trusts, two lots on the corner of Whitmon street, in said city, to-wit: 338 and 628; also, that he owns, in the same manner and subject to the same trusts, three lots on Superior and Lyman streets, in said city, to wit: lots 101, 102 and 103; also, that he owns, in the same manner and subject to the same trusts, sub-lots 7, 8 and 9, and 10 feet of lot No. 10, all on Superior street, near the cathedral, in said city; also, that he owns, in the same manner and on the same trust, sub-lot 96, situated on Superior street, near Dodge street, in said city; also, that he owns, in the same manner and subject to the same trusts, sub-lot No. 19 in Lyman's allotment, in said city.

He further avers and claims all of this property (except a portion of lot No. 102, which is occupied as a parsonage, and lots 101 and 102, occupied as church property), is now and for several years past has been used exclusively [\*3] for the purpose of holding therein public schools, which are open to the public free of charge, and that the same is used for the benevolent and charitable purpose of the free education of all the youth of the city who see fit to attend. He further avers that all of said property was paid for and buildings erected thereon by the voluntary contributions of the Catholics of the various parishes in which the several parochial schools are now situated, for the purpose of establishing such schools, which have since been supported by like voluntary and charitable donations and contributions. He avers that he, as the bishop of the said church, holds [\*\*28] the title to said property for the benefit of said parishes, and in trust for the membership and schools thereof, with no other personal interest therein or expectancy of gain therefrom than to carry out and forward the purposes of charity and education, for which the schools are estab-

lished; he insists that all the foregoing property so used for school purposes is wholly exempt from taxation, under the provisions of the constitution and the laws of the state of Ohio, and that the assessment of any taxes thereon is wholly illegal and [\*4] void; but that notwithstanding this fact, he alleges, the defendant, as such treasurer, is about to proceed to enforce the collection of the same by distraint and other processes of law, to his great detriment and serious injury of said schools.

He, therefore, prays this court to restrain him from collecting the same, and for such other and further relief as may be just and equitable.

The defendant, Frederick W. Pelton, files an answer to this petition, in which he admits that the plaintiff is the owner of the various tracts of land described in the petition, but denies that the plaintiff holds them, or any of them, subject to any trust, expressed or implied; he avers that the plaintiff holds them all at his own will, with absolute power to sell or dispose of them for such purposes as to him may seem best; that he is not in any way accountable to any person, congregation or court within the state of Ohio or the United States for the manner in which he may use or dispose of the same, and that he is in fact only accountable for any use or the disposition of the same to the Roman Pontiff, his acknowledged superior in spiritual and temporal affairs, and to the ecclesiastical council [\*5] of the church, organized under the authority of the Pope of Rome. He further avers that said property has never been publicly *dedicated* to the use of said schools, that it has never been granted *by deed* to or for said schools, and that it is not in fact held or used exclusively for such schools nor for any purpose of a "purely public charity."

He denies that the school lots and houses are paid for by the voluntary contributions of those who were interested in the education of youth; or that they are supported by the charity of those whose funds contributed to the purchase of the same. He further denies that said schools are entirely charitable or that said property is used strictly for the purpose of charity or for the education of all who see fit to attend. He avers that said schools are furnished by the bishop with certain means at his disposal in a spirit of avowed hostility to the public schools of the state, and to prevent Catholic children and the children of Catholic parents from being exposed by instruction in the public schools to those principles of free toleration, etc., which the constitution of the state was ordained to establish, and that they are [\*\*29] [\*6] maintained chiefly with the design and purpose of strengthening the power of the Catholic church and in open antagonism to the public policy of the state of Ohio. He also denies that any of the property is exempt from taxation, or that there is now due on said property for the general taxes, appertaining to the state, county and city

purposes, any such sum as \$ 3,930; but he says a very large proportion of such sum of \$ 3,930 standing on the tax duplicate is for *special assessments* for main sewers, district sewers, grading, paving, etc., and for which all property benefited thereby is liable, regardless of all exemptions from ordinary taxations.

The reply of the plaintiff to this answer of the defendant denies all of his affirmative allegations.

Under the allegations of these pleading a very wide door was necessarily opened for the admission of testimony, and a large amount of testimony introduced having but a slight or remote bearing upon what finally appears to be the vital question in the case.

We have not been troubled, however, with conflicting evidence, as the testimony consisted of the evidence of the bishop himself, of the several priests who supervise and have knowledge [\*7] of the schools, together with documentary evidence in regard to the genuineness of which there is apparently no contention, such as the Pope's Encyclical letter, the decrees of the National Councils of Baltimore, the provincial Councils of Cincinnati, the Lenten Pastoral of the Bishop, and his controversial letters on the school system, written to the *Herald* in 1873.

There is, therefore, no substantial dispute as to the facts about these schools, the manner in which the money is raised with which to build and support them, the purposes to be subserved by them, and the method and instruction adopted therein.

The following is a brief synopsis of the most material portions of the facts as shown by the evidence:

*First*--It appears that about 6,000 children of the city are receiving instructions in these schools without expense to the state.

*Second*--That these children are almost, if not exclusively, the children of Catholic parents.

*Third*--That the conduct of the school is generally under the direction of the priest, who employs and dismisses teachers, pays their salaries, and, in case of opposition from the lay members, the bishop is entitled to settle any dispute; [\*8] and appeals may also be made to the councils and to the pope.

*Fourth*--That the schools are open to the public, alike to Protestant and Catholic on the same terms.

*Fifth*--That these schools, though the title of the property is in the bishop, are wholly acquired, paid for and supported by the voluntary donations of the congregations of the respective [\*\*30] parishes of the church, except that parents of children, who attend are *expected*, but not *required*, to contribute for tuition from twenty-

five to thirty cents per month, but whether they pay or do not their right to attend school is unimpaired.

*Sixth*--That these contributions which are said to be voluntary amount to but a small portion of the actual current expense of maintaining them, after the purchase of the lands and erection of the building.

*Seventh*--That none of the school property in question is used by the bishop or the people, or in any way used or leased for the purpose of personal or pecuniary gain, nor does any income arise therefrom.

*Eighth*--At these schools, in addition to the usual branches of secular education, instruction is given in the catechism, religious and Bible history is [\*9] taught to the children "from a Catholic standpoint;" the schools are opened and closed with prayer each day, and the apostolic creed is recited by the pupils. It is said, however, that peculiarly Catholic exercises are not required by the rules of non-Catholics.

*Ninth*--These schools are probably established by the several congregations under the impetus of the actions of the Councils of Baltimore, and the general teachings of the church, for the general purpose of instructing youth of their congregations in the principles of the Catholic faith and morals, along with the general literature, and because they considered that the common methods of education fostered heresy in the minds of Catholic children, and because they considered the books in common use had a tendency to impugn the principles of the Catholic faith, falsely set forth the dogmas of the church and to breed contempt and hatred for the Catholic faith.

*Tenth*--It also appears that the parents of Catholic children are subject to church discipline for refusing without good reason to send their children to these schools. The several provisions of the constitution of the state of Ohio, and the statutes passed in pursuance [\*10] thereof, bearing on the general question, are as follows: Article XII., section 2 of the constitution of the state of Ohio provides that "laws shall be passed taxing all monies, lands, etc., etc., \* \* \* but burying-grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, \* \* \* may by general laws be exempted from taxation," etc.

Section 7, article I. of the constitution provides that "no preference shall be given by law to any religious society, nor shall any interference with rights of conscience be permitted," also that religion, morality and knowledge, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

[\*\*31] Section 2 of article VI. of the constitution provides for the establishment by the state "of a thorough and efficient system of common schools throughout the state."

The statute of 1864, amendatory of the statute of 1850, Swan and Sayler, page 761, provides for the exemption from taxation of various kinds [\*11] of property, to-wit:

*First*--All public school-houses, etc.

*Second*--All houses used exclusively for public worship, etc.

*Third*--For graveyards, etc.

*Fourth*--United States property.

*Fifth*--Court houses, jails, etc.

*Sixth*--Houses for the support of the poor.

*Seventh*--"All buildings belonging to institutions of purely public charity, together with the land occupied by said institution not leased or otherwise used with a view to profit."

It is perfectly clear from the contemplation of these provisions and the facts in regard to these parochial schools and school-houses of the Catholic church that they are not "public school-houses" within the meaning of article XII, section 2 of the constitution, authorizing the legislature to exempt them from taxation, and it is also clear that they are not exempt from taxation by virtue of the similar provision of the statute made in pursuance of such authority, exempting "public school-houses," the supreme court of our own state having distinctly held that the "public school-houses" therein described are school-houses that belong to the public, and are conducted under public authority.

But this school property in [\*12] question is claimed by the plaintiff to be exempt from taxation under the subdivision of the statute of 1874, already quoted in pursuance of the authority, of article XII, section 2, which exempted "all buildings belonging to institutions of purely public charity, together with the land occupied by such institution not leased or otherwise used with a view to profit," etc.

The real question in this case is, are these schools exempt under the last quoted provision of the law? The defendant in this case insists:

*First*--That these parochial schools are not institutions of charity; that they are not purely public in their character, and, therefore, the provisions of the statute have no applicability, and that they are not exempted from taxation by reason thereof; and

*Second*--The defendant earnestly insists that the spirit and purposes in which these schools originated and are conducted, and the manner of conducting them to carry out such spirit and purposes, is so opposed to the public policy of the state that they are not and ought not to be exempt from taxation.

[\*\*32] I will first briefly examine the latter objection before proceeding to discuss the applicability of the [\*13] statutory and constitutional provisions. The real question before us is what property the state of Ohio, by its lawfully enacted statutes, has in fact actually exempted from taxation, and is not a question what laws she ought to pass or what property she ought to exempt. That a thing is "opposed to public policy" is often said in a sentimental or oratorical way, but we have only to concern ourselves with things that are opposed to the public policy in the legal sense of the term, and which are in some way tainted with illegality of origin, purpose or tendency, or are a breach of public morality. It is not easy to perceive what force there could be in an argument against exemption drawn from its supposed opposition to public policy, if the property shall be found to be actually exempt by the plain provision of the statute; and if not actually exempt by the plain provision of the statute, it would, of course, be taxable, although it were in entire harmony with the public policy of the state. With what force could it be claimed that the public policy of the state would *forbid* the exemption of property from taxation which a public statute of the state, made in pursuance of the constitution, [\*14] should in express terms actually exempt from taxation?

But if we proceed to analyze the question further and inquire how, why and in what respect the establishment of these schools is in any legal sense opposed to the public policy it is opposed to, or what part of the public policy of the state, or what particular part of the public policy of the state it is that forbids their establishment within its limits, we are certainly left without satisfactory response or definite information. Can it be claimed that the establishment of these schools is opposed to the religious public policy of the state? Clearly not, for the reason that the state has no religious policy to oppose or be opposed. As a state it is neither Catholic, Protestant, Jewish nor Christian. It protects and is bound to protect all equally and impartially, but does not specially uphold or encourage any one kind of religion above another. On the contrary, the constitution provides that "no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted."

It is plain then that it can not be any particular religious policy of the state that these schools are [\*15] opposed to.

Let us then inquire what civil public policy of the state these schools are opposed to, or what portion of its civil policy in regard to the establishment of public schools forbids the existence of these Catholic parochial schools, and how the establishment of such schools place them, or those who establish them, in opposition to the public policy of the state in that behalf? It certainly can not be claimed that it is the public [\*\*\*33] policy of the state that the children of the state shall not receive any education in any other school than in one of the public schools established by itself; no such policy as that is hinted at in any of the statutes of the state. If this policy were actually established by statute and in harmony with the constitution, all private schools and colleges in the state would be liable to be abolished by such a public policy. Neither do we think that it can be truthfully claimed that it is the public policy of the state that children shall not be taught religious faith and morals in addition to secular instruction, either in the public or private schools in the state. A discretion over this subject is veiled in the public school authorities, [\*16] which, if reasonably exercised, is not to be supervised by the courts of the state, and the idea that the public policy of the state is opposed to religious instruction in the private schools is wholly without foundation. I can not see, then, that in the establishment and conduct of these parochial schools any statute of the state is violated, that public morality or the policy of any law is infringed upon, or that any opposition to the laws of the land is therein taught or encouraged in any way.

Not only this, but it is clearly apparent that if these schools, because they are established by Catholic influences chiefly, and in pursuance of Catholic purposes, are so opposed to the public policy of the state that a trust can not be enforced or a general statute of the state allowed to operate in their favor, that the argument is equally strong and conclusive against allowing the statute exempting church property to operate to exempt it so far as Catholic church property is concerned, for surely their schools can not be opposed to public policy in the legal sense, and their church itself be in harmony with the same public policy.

Yet it has not been claimed in the state, so far as I [\*17] know, that Catholic church property is not exempt, nor that the proper reading of the constitution would be, "All houses used exclusively for public worship are exempt from taxation except Catholic churches, which are opposed to public policy."

Neither is it apparent why, if we reach the conclusion that they are clearly opposed to the public policy of the state in the legal sense, or, if either of them is forbidden by the same policy, they should not both be prohibited and their unlawful practices, if any they have, suppressed by statute law. There is no logical stopping place

short of this, if in any legal sense of the word, the claims that they are opposed to the general public policy of the state has had any solid foundation under his feet.

It also seems further to be claimed that the fact that the bishop holds the legal title to all the school property (and as the defendant claims with absolute power of alienation and conversion), [\*\*34] has something to do with this question or with the exemption of the property from taxation, under the statutes of the state. From the evidence in the case it clearly appears that Bishop Gil-mour is merely the trustee holding the legal title [\*18] to the school and church property for the benefit of the schools, parishes and congregations, whose money purchased it, and for whose use as school and church property it was designed and contributed, and that he has no right whatever, either under the laws of the church or the laws of the state to convert it to their uses without their consent, and I have no doubt whatever that a court of equity has the same jurisdiction in a case like this, and has the same power to enforce the faithful execution of this trust in behalf of the *cestui que* trusts as it has of any other trust involving the rights of persons and property.

But besides this, under the exempting clauses of the statute pertaining to churches or public charities, the title to the property is not an essential element, but it is the character of the institution and the uses to which it is put that regulates its exemption. The supreme court in the Bishop Purcell case says: "If the property is appropriated to the support of a charity which is purely public, we see no good reason why the legislature may not exempt it from taxation without reference to the manner in which the legal title is held, and without regard to the [\*19] form or character of the organization adopted to administer the charity."

There is no statute of the state forbidding a bishop or other officer of this church or any other church from holding the legal title to property in trust for the use of a public charity or otherwise. It can not truthfully be said, therefore, that it is so against the public policy of the state for the title of the property to be held by the plaintiff in this case, as in any way to legally affect the question of its exemption from taxation. I think we must therefore dismiss as inadmissible in law and unsupported by testimony, the claim of the defendant that the establishment and maintenance of these schools is, in any legal sense, opposed to the public policy of the state, the property in question is for that reason deprived of any privilege of the statute of exemptions if on a fair construction it applies to the case.

The state of Ohio has undoubtedly the legal right to tax, or exempt from taxation all the church, school, and charitable property, or any proportion of it that it may see fit. The question is, what has it done? Let us now pro-

ceed then to examine and ascertain whether the school property in question [\*20] has been actually exempted from taxation by the statutes of the state, under the clause exempting property of "institutions of purely public charity."

[\*\*35] And the first question that arises is, is the establishment and maintenance of these schools a charity within the meaning of the provisions of the statute in question? "The meaning of the word charity in its legal sense is different from the signification it ordinarily bears. In its legal sense it not only includes gifts for the benefit of the poor, but also endowments for the advancement of learning, or of the institutions for the encouragement of science and art, and it is said for any other useful or public purpose." 3 Step. Com., 229.

In the Harvard College case, 12th Grey, 594, it was held that gifts "designed to promote the public good by the encouragement of learning, science, or useful arts, without reference to the poor, is a charity."

In the great leading case of Jackson v. Wendell Phillips in 96 Mass. 539, 14 Allen 539, it was held that "A charity is a gift or gifts to be applied consistently with existent laws for the benefit of any number of persons, either by bringing their minds or hearts under [\*21] the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by erecting or maintaining public buildings or otherwise lessening the burdens of government. And we think there is no doubt that it is universally admitted in this country that gifts and donations for the promotion, support, or endowment of religious or educational establishments are to be considered as charities regardless of the sects or denominations with which they may be specially connected."

From these definitions of charity and the authorities above quoted, which are substantially recognized as sound and correct by our own supreme court in the case already quoted, I have no doubt that the establishment and the maintenance of these schools chiefly by means of public contributions and gifts, is clearly within the statute in question.

2. The next question in this case is, are they charities that are purely public in their character? The uncontradicted testimony in the case shows that these schools are open to the public without distinction as to religion or sect, on the same equal terms; and it is of no consequence so far as this question is concerned that very few Protestants [\*22] or others than Catholics have ever availed themselves of the privilege of attending. A hospital for the education in the principles of homoeopathic medicine opened to the public, would be no less public because allopathists or eclectics wholly refused to attend.

A Presbyterian church is no less a place of public worship because Baptists, Catholics, Unitarians or Jews may not choose to worship therein. And our supreme court, in discussing a similar case, says: "For the purpose of determining the public nature of the charity it is not material through what particular [\*36] form the charity may be administered, if it established and maintained for the benefit of the public, and so constituted that the public can make it available. This is all that is required." 25 *Ohio St.* 217, 224.

They further say "that in such a case the charity is to be regarded as purely public;" also "that when private property is appropriated for the support of education for the benefit of the public without any view to profit, it constitutes a charity that is purely public; when the charity is public the exclusion of all idea of private gain or profit is equivalent in effect to the force of [\*23] the 'purely,' as applied to public charity in the constitution." 25 *O. S.*

In the same case it is further said: "The circumstances that the use of property is free is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public and the right to its enjoyment is open to the public upon equal terms, the use will be public whether compensation be exacted or not."

It distinctly appears from the proofs in the case that these schools are not carried on for private gain or profit. That the total receipts from tuition do not pay over one tenth of the current expenses of the same, neither are the premises leased with a view to profit, no money whatever being received for their use, for any purpose or from any source.

I can come, then, to no other conclusion than that these school premises are exempt from taxation under the existing statutes of the state, as to all ordinary taxes for state, county, and city purposes, on the ground that they are institutions of purely public charity, as will be seen from quotations already made. This is not the first time this question has been adjudicated in Ohio. On the contrary, I think that [\*24] substantially all the questions involved in this case were in a similar case tried in Cincinnati before the superior court of that city, in a case brought by Archbishop Purcell against the treasurer of Hamilton county, to enjoin the collection of taxes on school, church and parsonage property. The injunction was sustained in that court, and the case went to the supreme court on error. The Reporter's statement of the case, as it was in the supreme court, is as follows, viz: "The schools are distributed among the different parishes of the Catholic church, the average attendance in these

schools is about 15,000 children, a leading purpose is to educate the children of Catholic parents so as to keep them within the fold of the Catholic church; accordingly religious services, such as are required by the Catholic church, form a part, although a small part, of the daily exercises of the school. At those exercises the children of Catholic parents are expected, and other children are merely permitted, to be present; schools are opened for all denominations, and the instruction is substantially [\*37] gratuitous. Small contributions of twenty-five or fifty cents a month are expected from [\*25] parents, but the aggregate amount of these contributions is small. The schools are supported substantially out of the revenue of the church. They are not carried on with a view to profit."

This is substantially the very case we have before us now, and in that case the supreme court, on the facts, as set forth above, held that the property was exempt as constituting a purely public charity within the meaning of the constitutional provision. This decision was made by the unanimous concurrence of the five judges of that court, and I know of no reason why it should not be considered as authoritatively settling that question, and it is under the same construction we have given to the words "purely public charity" that numerous literary and theological institutions and seminaries in this state under the control of the various denominations each, as Methodists, Presbyterians, Baptists, Episcopalians, etc., wholly or partially endowed by charity, or built up by voluntary contributions, are now and always have been held exempt from taxation, as that clause in the constitution is the only one authorizing the exemption of such property.

But one other question remains to be passed on in this [\*26] case, and that is, whether the statute in question exempts this school property from the special assessments as well as the taxes for general purposes? Of the sum of \$ 3,930 sought to be enjoined in this case, only about \$ 1,000 is for the general taxes for state, county and city purposes, and the balance is for special assessments for sewers, paving, etc. I regard it as settled, by numerous authorities, that for special assessments, they not going to the state, but being levied and collected for improvements made for the special benefit of the property itself, the property is liable, regardless of the general exemption. This doctrine is sustained by 46 *N.Y.* 506; 8 *R.I.* 474; 116 *Mass.* 181; 5 *Hun* 442, and other authorities in various states. The injunction heretofore granted in this case is sustained and made perpetual so far as the general taxes are concerned, and the petition is dismissed, and the injunction is dissolved so far as the same embraced special assessments for the benefit of the property itself.

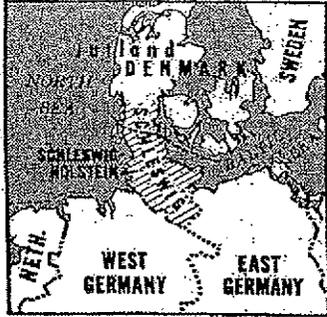
SECOND COLLEGE EDITION

**WEBSTER'S  
NEW WORLD  
DICTIONARY**  
OF THE AMERICAN LANGUAGE

DAVID B. GURALNIK, *Editor in Chief*

PRENTICE HALL PRESS

**Schles-wig** (shles/wig; G. shlās/viH) region in the S Jutland peninsula, divided between Denmark & West Germany. Dan. name, SLESVIG



**Schles-wig-Hol-stein** (-hōl/stin; G. -hōl/sh'tin) state of N West Germany, at the base of the Jutland peninsula: 6,046 sq. mi.; pop. 2,439,000; cap. Kiel

**Schlie-mann** (shlē/män), Hein-rieh (hīn/viH) 1822-90; Ger. archaeologist

**schlie-ren** (shlir'an) n. pl., sing. -re (-ə) [G., lit., streaks, akin to SLUR] 1. small streaks or masses in igneous rocks, differing in composition from the main rock but blending gradually into it 2. Optics regions in a translucent medium, as a fluid, that have a different density and consequently a different index of refraction than the medium and that can be photographed as shadows produced by the refraction of light passed through these regions

**\*schlock** (shlök) n. [via Yid. < G. schlacke, dregs] [Slang] anything cheap or inferior; trash —adj. [Slang] cheap; inferior; also **schlocky**

**\*schlock-meis-ter** (-mis'tar) n. [prec. + G. meister, master] [Slang] a person who deals in shoddy goods; specif., a writer, movie maker, etc. who produces kitsch

**\*schmaltz** (shmolts, shmälts) n. [via Yid. < G. schmaltz, lit., rendered fat, akin to schmelsen, to melt; see SMELT] [Slang] 1. highly sentimental and banal music, literature, etc. 2. such sentimentalism Also sp. **schmaltz** —**schmaltzy** adj. **schmaltz'er**, **schmaltz'er**

**schmaltz herring** herring caught just before spawning, when it has much fat

**\*schmear**, **schmeer** (shmir) n. [via Yid. < G. schmiere, to smear] [Slang] 1. some matter or activity with all its related features 2. a bribe

**Schmidt system** (shmit) [after B. Schmidt (1879-1935), G. astronomer] an optical system, used in certain wide-angle reflecting telescopes, having a concave, spherical mirror whose aberration is neutralized by a correcting lens

**\*schmo** (shmö) n., pl. **schmoes**, **schmos** [schmoe

**\*schmooze** (shmōōz) vi. **schmoozed**, **schmooz'ing** [schmoos (shmōōs)

**\*schmuck** (shmuk) n. [

**Schna-bel** (shnā/bəl), Ar-tur (är'toor) 1882-1951; Austrian pianist & composer

**schnapps** (shnāps, shnaps) n., pl. **schnapps** [G., a dram, nip < Du. snaps, lit., a gulp, mouthful < snappen, to SNAP] 1. same as HOLLANDS 2. any strong alcoholic liquor Also sp. **schnaps**

**schnau-zer** (shnōu'zər) n. [G. < schnausen, to snarl, growl < schnauze, SNOUT] any of three breeds of sturdy, active dog with a close, wiry coat and bushy eyebrows and beard, orig. bred in Germany

**\*schnit-zel** (shnit'səl) n. [G., lit., a shaving, dim. of schmitz, a piece cut off < MIEG, sniz, akin to OE. snithan, to cut, chop < IE. base \*sneit-, whence Czech snět, a branch] a cutlet, esp. of veal

**Schnitz-ler** (shnits'lər), Ar-thur (är'toor) 1862-1931; Austrian playwright & novelist

**\*schnook** (shnook) n. [

**schnor-rer** (shnōr'ər) n. [

**schnoz-zle** (shnāz'zəl) n. [via Yid. < G. schnauze, akin to SNOUT] [Slang] the nose; also **schnoz**

**schol-ar** (skāl'ər) n. [ME. scolar < OE. scolere or OFr. escoler, both < ML. < LL. scholaris, relating to a school < L. schola, a SCHOOL] 1. a learned person 2. a specialist in a particular branch of learning, esp. in the humanities 2. a student given scholarship aid 3. any student or pupil —SYN. see PUPIL

**schol-ar-ly** (-lē) adj. 1. of or characteristic of scholars 2. having or showing much knowledge, accuracy, and critical ability 3. devoted to learning; studious

**schol-ar-ship** (-ship) n. 1. the quality of knowledge and learning shown by a student; standard of academic work 2. a) the systematized knowledge of a learned man,



SCHNAUZER (17-20 in. high at shoulder)

exhibiting accuracy, critical ability, and thoroughness; erudition b) the knowledge attained by scholars, collectively 3. a specific gift of money or other aid, as by a foundation, to help a student continue his studies

**scho-las-tic** (skō-las'tik) adj. [L. scholasticus < Gr. scholastikos < scholazein, to devote one's leisure to study, be at leisure < scholē; see SCHOOL] 1. of schools, colleges, universities, students, teachers, and studies; educational; academic 2. [also S-] of or characteristic of scholasticism 3. pedantic, dogmatic, formal, etc. 4. of secondary schools [scholastic football games] Also **scho-las-ti-cal** —n. 1. a student or scholar, esp. in a scholasticate 2. [also S-] same as SCHOOLMAN (sense 1) 3. a person who is devoted to logical subtleties and quibblings; pedant 4. [also S-] a person who favors Scholasticism —**scho-las-ti-cal-ly** adv.

**scho-las-ti-cate** (-tə-kāt', -kit) n. R.C.Ch. a school for seminarians, esp. Jesuit seminarians

**scho-las-ti-cism** (-tə-siz'm) n. 1. [often S-] the system of logic, philosophy, and theology of medieval university scholars, or schoolmen, from the 10th to the 15th century, based upon Aristotelian logic, the writings of the early Christian fathers, and the authority of tradition and dogma 2. an insistence upon traditional doctrines and methods

**scho-li-ast** (skō'lē-ast) n. [ModL. scholiasta < MGr. scholiastes < scholazein, to comment < Gr. scholion; SCHOLIUM] one who writes marginal notes and comments; esp., an ancient interpreter and annotator of the classics —**scho-li-ast'ic** adj.

**scho-li-um** (skō'lē-əm) n., pl. -li-a (-ə), -li-ums [ML. < Gr. scholion < scholē; see SCHOOL] 1. a marginal note or commentary, esp. on the text of a Greek or Latin writer 2. a note added or following, meant to illustrate or develop a point in the text, as in mathematics

**Schön-berg** (shōn'bērg, shōn'berk; G. shōn'berk), Arnold 1874-1951; U.S. composer, born in Austria

**school** (skool) n. [ME. scole < OE. scol < L. schola, school < Gr. scholē, leisure, that in which leisure is employed, discussion; philosophy, school < IE. base \*seǵh-, to hold fast, overcome; cf. SCHEME] 1. a place or institution for teaching and learning; establishment for education; specif., a) an institution for teaching children b) a place for training and instruction in some special field, skill, etc. [a dancing school] \*c) a college or university d) in the Middle Ages, a seminary of logic, metaphysics, and theology 2. the building or buildings; classrooms, laboratories, etc. of any such establishment 3. all the students, or pupils, and teachers at any such establishment 4. the period of instruction at any such establishment; regular session of teaching [the date when school begins] 5. a) attendance at a school [to miss school for a week] \*b) the process of formal training and instruction at a school; formal education; schooling 6. any situation, set of circumstances, or experiences through which one gains knowledge, training, or discipline [the school of hard knocks] 7. a particular division of an institution of learning, esp. of a university [the school of law] 8. a) a group of people held together by the same teachings, beliefs, opinions, methods, etc.; followers or disciples of a particular teacher, leader, or creed [the Impressionist school] b) a group of artists associated with a specified place [the Barbizon school] 9. a way of life; style of customs, manners, etc. [a gentleman of the old school] —vt. 1. to train, as at school; teach; instruct; educate 2. to discipline or control 3. [Archaic] to reprimand —adj. 1. of a school or schools 2. [Obs.] of the schoolmen (sense 1) —go to school *Golf* to learn, from observation of another's putt, the peculiarities of a particular green —SYN. see TEACH

**school** (skool) n. [Du., a crowd, school of fish; see SHOAL] a large number of fish or water animals of the same kind swimming or feeding together —vi. to move together in a school, as fish, whales, etc. —SYN. see GROUP

**school age** 1. the age at which a child may or must be sent to school 2. the years during which attendance at school is required or customary —**school-age** adj.

**school board** a group of people, elected or appointed, who are in charge of local public schools

**school-book** (skool/'book) n. a book used for study in schools; textbook

**school-boy** (-boi) n. a boy attending school

**school bus** a vehicle used for transporting students to or from a school or on school-related trips

**school-child** (-child) n., pl. -child'ren (-chil'drən) a child attending school

**School-craft** (skōl/'kraft), Henry Rowe (rō) 1793-1864; U.S. ethnologist

**school day** 1. any day on which school is in session 2. the time, during any day, when school is in session

**school district** an area, with specified limits, established for administering a local public school or schools

**school-fel-low** (-fel'ō) n. same as SCHOOLMATE.

**school-girl** (-gɜrl) n. a girl attending school

**school guard** a person whose duty it is to escort children across streets near schools

**school-house** (-hous) n. a building used as a school

**school-ing** (-in) n. 1. training or education; esp., formal instruction at school; education 2. cost of instruction and living at school 3. [Archaic] disciplinary correction

**school-man** (-man; for 2, often -man') n., pl. -men (-mən; for 2, often -men') 1. [often S-] any of the medieval uni-

Sec. 6. That the commissioners in such adjoining county, shall be made parties to such suit by subpoena, as in other cases in chancery; and if such court shall find that the boundary line, to ascertain which such suit is commenced, is not sufficiently ascertained, or that the officers of such adjoining county disregard the true boundary line, said court shall appoint a surveyor, who shall not be a resident of either of such counties, to ascertain and survey such boundary line, and report the same to said court; which report shall be conclusive between such counties as to the true boundary line, unless, for good cause shown, the same shall be set aside; and unless such survey is set aside, as aforesaid, said court shall order a record of the same to be made, and a copy of such record to be transferred to the auditor of each of such counties, and shall order and decree that said line be established as the true boundary line between such counties, and shall enforce such decree by injunction, attachment or otherwise, against the officers of either of said counties disregarding the same.

Commissioners to be made parties.

Disinterested surveyor may be appointed, &c.

Sec. 7. That said court may make such decrees as to taxes previously collected by either of such counties within the true boundary of the territory actually in the other, as may be just and right.

Decree as to taxes.

JAMES C. JOHNSON,

*Speaker of the House of Representatives.*

WILLIAM MEDILL,

*President of the Senate.*

April 9, 1852.

#### AN ACT

For the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That all property, whether real or personal, in this State, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, and the property of all banks or banking companies, now existing, or hereafter created, and of all bankers, except such as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property, for that purpose, in the manner prescribed by this act.

All property to be listed.

be held to mean and include gold and silver coin, and bank notes in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money, on demand. The term "credits," wherever used in this act, shall be held to mean and include every claim or demand for money, labor or other valuable thing due or to become due, including book accounts, and every annuity or sum of money receivable at stated periods, and all money invested in property of any kind which is secured by deed, mortgage or otherwise, which the person holding such deed or mortgage or evidence of claim, is bound by any lease, contract or agreement to reconvey, release or assign, upon the payment of any specific sum or sums; Provided, that pensions receivable from the United States, or from any of them, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act.

### PROPERTY EXEMPT FROM TAXATION.

SEC. 3. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

1st. All public school houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such building necessary for the proper occupancy, use and enjoyment of the same, and not leased, or otherwise used with a view to profit; All colleges, academies; all endowments made for their support; all buildings connected with the same, and all lands connected with institutions of learning; not used with a view to profit. This provision shall not extend to leasehold estates, of real property held under the authority of any college or university of learning of this state.

2d. All lands used exclusively as grave yards, or grounds for burying the dead, except such as are held by any person or persons, company or corporation, with a view to profit, or for the purpose of speculation in the sale thereof.

3d. All property, whether real or personal, belonging exclusively to this state, or the United States.

4th. All buildings belonging to counties, used for holding courts, for jails, or for county offices, with the ground, not exceeding in any county ten acres, on which such buildings are erected.

5th. All lands, houses and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

6th. All buildings belonging to institutions of purely public charity, together with the land actually occupied by such in-

Property exempt from taxation.

School houses, colleges, &c.

Burying grounds.

State or U. S. property.

County property.

Poor houses, &c.

Public charities.

stitutions not leased or otherwise used with a view to profit; and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

Fire companies.

7th. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meetings of fire companies, whether belonging to any town, or to any fire company organized therein.

Markets, public squares, &c.

8th. All market houses, public squares, or other public grounds, town or township houses or halls, used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to such town.

Personal property, in value two hundred dollars.

9th. Each individual in this state, shall be allowed to hold, exempt from taxation, personal property of any description, not exceeding in value two hundred dollars. No person shall be required to list a greater portion of any credits than he believes will be received, or can be collected; nor any greater portion of any obligation given to secure the payment of rent, than the amount of rent that shall have accrued on the lease, and shall remain unpaid at the time of such listing. No person shall be required to include in his statement as a part of the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property, of any company or corporation which is required to list or return its capital and property for taxation in this state. The taxes upon banks, banking companies, and all other joint stock companies or corporations of whatsoever kind, levied and collected in pursuance of the provisions of this act, shall be in lieu of any taxes which such bank or banking company, or other joint stock company or corporation, was by former laws required to pay.

#### BY WHOM, WHERE, AND IN WHAT MANNER PROPERTY SHALL BE LISTED.

Who are required to list property.

SEC. 4. Every person of full age and sound mind, not a married woman, shall list the real property of which he is the owner, situate in the county in which he resides, the personal property of which he is the owner, and all the moneys in his possession; and he shall also list all moneys invested, loaned or otherwise controlled by him, as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited subject to his order, check or draft, and credits due from, or owing by any person or persons, body corporate or politic, whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor child, idiot or lunatic,

act to provide for the reorganization, supervision, and maintenance of common schools," passed March 14, 1853, sections six and eight of "an act to amend and supplementary to the act aforesaid," passed April 17, 1857, section four of "an act prescribing the rates of taxation for state, county, township, city, and other purposes," passed April 30, 1862, and "an act to prohibit members of boards of education from receiving compensation for their services," passed April 29, 1862, and that so much of section nine of "an act prescribing the rates of taxation for state, county, township, city, and other purposes," passed April 30, 1862, as reads as follows, to wit: "That the amount of taxes hereafter to be assessed to defray the expenses for school and school-house purposes, shall not in any one year exceed two and one-half mills," be and the same are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its passage.

JAMES R. HUBBELL,  
*Speaker of the House of Representatives.*  
CHARLES ANDERSON,  
*President of the Senate.*

March 18, 1864.

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AN ACT

59 O. L. 3.

To amend the fifth section of an act entitled "an act to authorize the banks temporarily to suspend specie payments, and to receive and pay out United States demand notes," passed January 16th, 1862.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the fifth section of an act entitled "an act to authorize the banks temporarily to suspend specie payments, and to receive and pay out United States demand notes," passed January 16th, 1862, be amended so as to read as follows:

What notes  
state and  
county treas-  
urers shall re-  
ceive and pay  
out.

Sec. 5. The notes of the United States, the notes of the solvent national banks organized under the act of congress, approved February 25, 1863, and the notes of solvent banks of this state, shall be received by the several county treasurers, and the treasurer of state, and the same disbursed by them, in payment of all legal demands on state and county treasuries.

Sec. 2. That original section five, which by this act is amended, be and the same is hereby repealed.

Sec. 3. That this act shall take effect and be in force from and after its passage.

JAMES R. HUBBELL,  
*Speaker of the House of Representatives.*  
CHARLES ANDERSON,  
*President of the Senate.*

March 21, 1864.

## AN ACT

To amend section three of "an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money," passed April 5, 1859.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the third section of the act entitled as aforesaid, be and hereby is amended so as to read as follows :

Sec. 3. That all property described in this section to the extent herein limited, shall be exempt from taxation, that is to say :

1st. All public school-houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit ; all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning, not used with a view to profit. This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning of this state : provided, nevertheless, that all leaseholds or other estates or property whatsoever, real or personal, the rents, issues, profits and income of which have been or hereafter shall be given to any city, town, village, school district or sub-district, in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, are and shall be exempt from taxation so long as such property, or the rents, issues, profits and income thereof shall be used and applied exclusively for the support of free education by such city, town, village, district or sub-district.

Public property exempt from taxation.

2d. All lands used exclusively as graveyards or grounds for burying the dead, except such as are held by any person, or persons, company or corporation, with a view to profit, or for the purpose of speculating in the sale thereof.

Proviso.

3d. All property, whether real or personal, belonging exclusively to the state or the United States.

4th. All buildings belonging to counties, used for holding courts, for jails, or for county offices, with the ground, not exceeding, in any county, ten acres, on which such buildings are erected.

5th. All lands, houses, and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

6th. All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

7th. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meeting of fire companies, whether belonging to any town or to any fire company organized therein.

8th. All market-houses, public squares, or other public grounds, town or township houses or halls, used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to such town.

9th. Each individual in this state may hold exempt from taxation personal property of any description of which said individual is the actual owner, not exceeding fifty dollars in value ; no person shall be

Fifty dollars of personal property exempt.

required to list a greater portion of any credits than he believes will be received, or can be collected, nor any greater portion of any obligation given to secure the payment of rent, than the amount of rent that shall have accrued on the lease, and shall remain unpaid at the time of such listing; no person shall be required to include in his statement as a part of the personal property, moneys, credits, investments in bonds, stock, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this state. The taxes upon banks, banking companies, and all other joint stock companies, or corporations, of whatever kind, levied and collected in pursuance of the provisions of this act, shall be in lieu of any taxes which such banks or banking company, or other joint stock company was, by former laws, required to pay.

SEC. 2. That section three of the act entitled as aforesaid, be and the same is hereby repealed; and this act shall take effect from its passage.

JAMES R. HUBBELL,  
*Speaker of the House of Representatives.*  
CHARLES ANDERSON,  
*President of the Senate.*

March 21, 1864.

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AN ACT

Concerning the mode of trial in certain criminal cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That when two or more persons are jointly indicted for any offense, the punishment whereof is imprisonment in the penitentiary, each person so indicted shall, on application to the court for that purpose, be separately tried.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES R. HUBBELL,  
*Speaker of the House of Representatives.*  
CHARLES ANDERSON,  
*President of the Senate.*

March 23, 1864.

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AN ACT

Making appropriations for the year 1864.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the following sums in addition to former appropriations, be and the same are hereby appropriated, out of any money belonging to the general revenue, to be paid according to law, viz:

STATE SALARIES AND EXPENSES.

Appropriations.

Officers in state departments.

For the payment of the salaries of the governor, auditor of state, secretary of state, treasurer of state, attorney general, comptroller of the treasury, commissioner of common schools, commissioner of statistics, librarian,