

enlargement of a town hall. They shall have control of any town hall belonging to the township, and from time to time, may lease so much thereof as may not be needed for township purposes, by the year or for shorter periods, to private persons, or for lectures or exhibitions, in all cases having the rent paid in advance or fully secured. The rents received may be used for the repair or improvement of the hall so far as needed, and the balance for general township purposes."

It is assumed from the statement of facts that the hall owned by the township is suitable for township purposes. To be such, of course, does not require that it be as convenient as some other hall may be for its purposes.

The section above quoted authorizes the trustees, under certain conditions therein defined, to improve or enlarge a hall which is owned by the township. However, as you indicate, there is no provision in the statutes, either express or implied, which authorizes the trustees to rent a hall under the circumstances which you relate.

It will be observed that it is not a proper function of the trustees to expend funds for the accommodation of a farmers' institute. Sections 9916 to 9921-6, inclusive, which provide for the governing of such enterprises, do not authorize the township trustees to assume such responsibility, but rather such expenses as are permitted to be borne by the county or state.

In an opinion issued by the Attorney-General, found in the Opinions of the Attorney-General for the year 1915, at page 717, it was held:

"Township trustees may not lawfully expend township moneys in the enlargement of a township hall in order to provide a place for the temporary detention of persons accused of crime."

It is believed that by analogy the above determination will apply to the question under consideration.

You are therefore advised that this department concurs with the conclusion which you state you have reached in connection with this controversy.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1900.

TAX DUPLICATE—COUNTY COMMISSIONERS MAY NOT, IN "MODIFYING" FINDING OF COUNTY AUDITOR THAT REAL ESTATE IN SEVERAL TAXING DISTRICTS IN COUNTY IS ON DUPLICATE AT ITS TRUE VALUE IN MONEY, ORDER PERCENTAGE INCREASES OR REDUCTIONS IN DUPLICATE VALUES AS THEY APPEAR—REAPPRAISEMENT NECESSARY—STATE EX. REL. TAX COMMISSION VS. W. C. MILLS, COUNTY AUDITOR, CLARK COUNTY, 103 O. S.

The county commissioners, acting under section 5548 G. C., may not, in "modifying" a finding of the county auditor that the real estate in the several taxing districts in the county is on the duplicate at its true value in money, order percentage increases or reductions in the duplicate values as they appear. If their order disagrees with such a finding of the auditor, a reappraisalment of the real estate so affected by such an order must be made.

COLUMBUS, OHIO, March 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of the commission's recent letter requesting the opinion of this department on an inquiry submitted by the auditor of Clark

county. The auditor presents a certified copy of a resolution adopted by the county commissioners of the county, as follows:

"In the matter of the hearing on the county auditor's finding of real estate values to be assessed.

Mr. Mills moved the adoption of the following resolution:

WHEREAS, The auditor of Clark county, Ohio, on the 24th day of January, 1921, in compliance with the provisions of Section 5548 G. C. of Ohio, has certified to this board that he has examined the real estate duplicate of Clark county, Ohio, for the purpose of ascertaining whether the real property in the several taxing districts of the county is on the duplicate for the purpose of taxation; and

WHEREAS, The auditor of Clark county, Ohio, on the said date certified to this board the fact to be that the real property in the several taxing districts of the county is on the duplicate for its true value in money; and

WHEREAS, Under resolution of January 19th, 1921, this commission fixed the time for hearing on said finding of said county auditor in the matter of the assessed valuations of real estate of Clark county; and

WHEREAS, It appears to the board of county commissioners that proper notice has been given by publication of a hearing on said assessed valuations according to law; and

WHEREAS, The certain parties interested in the real estate assessed valuations in the several taxing districts in the county have appeared before this board representing organizations and land owners within the county presenting evidence and argument in favor of the rejection of said finding of said county auditor and asking for a horizontal decrease on the present assessed valuations on the land in each township, village, ward or assessment district of the said county; and

WHEREAS, The board of county commissioners after due consideration in the matter, having heard said evidence and arguments in favor and against the rejection of said finding of the county auditor and in favor of the horizontal decrease in the assessed valuations to the extent of ten per cent (10%) off of said land valuations on the land of each said taxing districts in the county, is in favor of the rejection of said finding and horizontal decrease of ten per cent (10%) on said assessed valuations as asked for by parties interested herein; now, therefore, be it

RESOLVED, That the finding of the auditor of Clark county filed with this board of county commissioners on the 24th of January, 1921, wherein was found that the real property in each township, village, ward and assessment district in the county is assessed for taxation at its true value in money is hereby rejected and the county auditor of Clark county, Ohio, is hereby ordered to decrease the assessed valuations on all lands in the several townships, villages, wards or assessment districts of the county to the extent of ten per cent (10%) of the assessed land valuations for the year 1920 and to place upon the duplicate for the year 1921 all lands in the several townships, villages, wards, or assessment districts in the county at a decrease of ten per cent (10%) off of the land valuations of 1920.

Mr. Mellinger seconded the resolution and the roll being called upon its adoption the vote resulted as follows: Mr. Stewart, nay; Mr. Mellinger, aye; Mr. Mills, aye.

I hereby certify that the above is a true copy of the entry on the commissioners' journal 'S,' pages 321 and 322, of Monday, February 7th, 1921.

In testimony whereof I have hereunto signed my name and fixed the seal of the county auditor of Clark county, Ohio, this 28th day of February, 1921.

[SEAL]

(Signed)

W. C. MILLS,
County Auditor."

On February 10, 1921, the foregoing resolution was amended as follows:

"WHEREAS, On Monday, February 7th, 1921, this board issued an order to the county auditor to decrease the assessed valuations on all lands in the several townships, villages, wards or assessment districts in the county to the extent of ten per cent (10%) on the year 1920 and to place upon the duplicate of 1921 all lands of the several townships, villages, wards or assessment districts in the county at a decrease of ten per cent (10%) off of the land valuations of 1920; now, therefore, be it

RESOLVED, That this order of the county commissioners of Clark county on the 7th day of February, 1921, be revised to read 'to decrease the assessed valuations on all real estate in the several townships, villages, wards or assessment districts in the county to the extent of ten per cent (10%) on the assessed real estate valuations for the year 1920 and to be placed on the duplicate for the year 1921 all real estate in the several townships, villages, wards or assessment districts in the county at a decrease of ten per cent (10%) off of the real estate valuations of 1920.'

Mr. Mellinger seconded the resolution and the roll being called upon its adoption resulted as follows: Mr. Stewart, nay; Mr. Mellinger, aye; Mr. Mills, aye.

I hereby certify that the above is a true copy of the entry on the commissioners' journal 'S,' page 325, of Thursday, February 10th, 1921.

In testimony whereof I have hereunto signed my name and fixed the seal of the county auditor of Clark county, Ohio, this 28th day of February, 1921.

[SEAL]

(Signed)

W. C. MILLS,
County Auditor."

The auditor having expressed a desire to be instructed as to his duties in the matter, the commission has formulated the following specific question for the advice of this department:

"Kindly advise this commission as to the powers and duties of the county auditor in view of the resolution adopted by the county commissioners under the provisions of section 5548 G. C. Is he required to make the reduction ordered or to make a reassessment of the real estate in his county as provided under this section?"

The resolution shows on its face that the proceedings were had under section 5548 of the General Code, from which the following quotations are made:

"Each county is made the unit for assessing real estate for taxation purposes. The county auditor in addition to his other duties, shall be the assessor for all the real estate in his county for purposes of taxation, ***.

Annually between the first day of January and the first day of February, the county auditor shall ascertain whether the real estate in each township, village, ward or city is assessed for taxation in the aggregate at its true value in money, as the same then appears on the tax duplicate. If he finds that it is assessed at its true value in money, in any such township, village, ward, or city, he shall, subject to the provisions hereinafter made, enter such valuation upon the tax list and duplicate for the current year. In such event, and unless he finds that such property is not assessed at its true value in money, in each such subdivision, such assessments shall constitute the valuation for taxation for the current year, subject to the provisions hereinafter made. Said county auditor shall submit his findings concerning the valuation of such real estate to the board of county commissioners of his county, and said board shall, at a hearing fixed within not less than ten nor more than twenty days thereafter, *confirm, modify, or set aside* the same by order entered on the journal of said board. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county. If by such order it be determined that the real estate in any such subdivision is not on the duplicate at its true value in money, then such county auditor shall proceed to assess such real estate in such subdivision or subdivisions. * * *"

It appears from the certificate that the resolution above set forth was entered on the journal of the commissioners. It may therefore be regarded as an effort of the commissioners to execute the power in them vested by the sections above quoted, to "confirm, modify or set aside" the finding of the county auditor "by order entered on the journal of said board." Part of the section just quoted expressly vests in the commissioners power to take any one of three different actions. There is no question as to what sort of an action would be a confirmation of the auditor's findings, nor as to what would be a setting aside of such findings. The action attempted by the commissioners suggests that they may have considered themselves authorized to take that action by the presence in the section of the word "modify." It is believed, however, that this view is erroneous. The section goes on to provide what shall be done if the commissioners by their order determine "that the real estate in any such subdivision is not on the duplicate at its true value in money," which is that "such county auditor shall proceed to assess such real estate in such subdivision or subdivisions." It is therefore impossible to draw from the word "modify" as used in the section the inference that the commissioners are thereby authorized themselves to change property valuations. The true meaning of the word "modify" becomes quickly apparent when it is remembered that the auditor is to make his finding, not for the county as a whole, but for "each township, village, ward or city" in the county. Yet he is to submit at one time all of his "findings concerning the valuation of such real estate." It is clear therefore that a "modification" by the commissioners of the auditor's "findings" may at least take the form of an approval of the auditor's conclusions as to some townships, villages, wards or cities, and a disapproval as to others. For if they confirm his findings they will agree with him in toto; if they set aside his findings they will disagree with him altogether. But by modifying his findings they agree with him in part and disagree in part. To the extent that they disagree with a finding made by him as to any taxing district that the property therein is on the duplicate at its true value in money, they lay the foundation for the application of the sentence in the section which reads:

"If by such order it be determined that the real estate in any such subdivision is not on the duplicate at its true value in money, then such county auditor shall proceed to assess such real estate in such subdivision or subdivisions."

If, however, the auditor should be of the opinion that a reassessment is necessary in some township or townships, etc. and the commissioners should be of the contrary opinion, then their modification would take the form of an order determining that the real estate in such subdivision or subdivisions is on the duplicate at its true value in money, in which event the condition mentioned in the sentence above quoted would not exist and no assessment would be made.

There is, however, no warrant of authority in the section for any direct action changing valuations by the commissioners themselves. All the commissioners can do is to find that the property in a given township, etc., is not on the duplicate at its true value in money. Such a finding requires a reassessment.

The resolution above copied is based upon a finding by the auditor that the real property in "each township, village, ward and assessment district in the county is assessed for taxation at its true value in money." This finding of the auditor, says the resolution, is "hereby rejected." The resolution then goes on to order the auditor to make certain decreases, not only in the duplicate to be made up but apparently also in the "assessed land valuations for the year 1920." This part of the resolution is wholly void and of no effect; it must be treated as mere surplusage. The commissioners have no jurisdiction in acting under section 5548 G. C. over valuations on the current duplicate. The only jurisdiction they have over future valuations on the duplicate to be made up in the year in which they act is to find that the old duplicate valuations are not correct. When they have done this, the law itself says what the auditor shall do, namely, proceed to reassess. The commissioners can not tell him what he is to do in reassessing.

It is accordingly the opinion of this department that all of the resolution after the word "rejected" is void and of no effect.

This conclusion makes it necessary to consider whether the resolution as a whole is to have any effect whatever, for if the part which has been declared to be void is to be treated as mere surplusage, then the remainder can stand as an order setting aside the findings of the auditor as to each subdivision in the county, in which event a general reappraisal of all the property in the county will automatically follow. However, it may be that the commissioners would not have adopted the resolution at all had they understood that they were without power to order the flat reductions which they attempted to order, and had they been advised that the effect of a rejection by them of the auditor's findings as a whole would be to make necessary a reappraisal throughout the county. On the whole, it is the advice of this department that the auditor be informed that the commissioners' resolution is to be regarded either as a total failure to act or as requiring a general reappraisal, in the hope that on receipt of such advice and its communication to the commissioners they will reconsider the resolution in the light of this opinion, and determine whether or not they wish to have a reappraisal in the entire county—a consequence which doubtless they may not have intended.

If the commissioners decline to take any such further action, this department upon being informed of such non-action on their part will consider further the question as to whether the resolution as it stands requires a reappraisal or is void as a whole. It is to be remarked that if the resolution is void as a whole, the necessity of further action by the commissioners would follow as a matter of law, and the remedy for their refusal to act would be a mandamus on the relation of the county auditor.

Respectfully,
JOHN G. PRICE,
Attorney-General.