## OPINION NO. 66-090

**Syllabus:**

1. The fact that buildings on land belong to the lessee is of no concern to the taxing authorities when it comes to the compilation of the general tax list and duplicate of real and public utility property (Opinion No. 3453, Opinions of the Attorney General for 1938, Volume III, page 2349, and Opinion No. 66-089, Opinions of the Attorney General for 1966, approved and followed).

2. When sewer rents and charges fixed by the board of county commissioners pursuant to Section 6117.02, Revised Code, are not paid and are certified to the county auditor for collection, the county auditor must place them on the real property tax list and duplicate against the real property served by the sewer connection and proceed to collect the unpaid rents or charges in the same manner as other taxes.

3. If the county auditor makes a clerical mistake in placing the unpaid, and certified as such, sewer rents or charges upon the real property tax list and duplicate against the real property served by the sewer connection, the county auditor, upon discovery of the mistake must, pursuant to Section 319.35, Revised Code, now correct the clerical mistake and add all such rents and charges upon the current tax list and duplicate against the real property served and proceed to collect them in the same manner as other taxes.

---

**To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio**
**By: William B. Saxbe, Attorney General, May 11, 1966**

Your request for my opinion reads as follows:

> "Your opinion is requested relative to a tax problem which exists in Licking County as to the Buckeye Lake Sanitary Sewer District. The Sewer District came into existence as to the construction of the sewers in the aforesaid district on or about

November 2, 1956. The bonding of the project for approximately one and one-half million dollars was supervised by the law firm of Squire, Sanders & Dempsey. The resolutions and agreements provided, among other things, that the rents or charges for the service, if the same were not paid, would be certified to the County Auditor, together with any penalties, and would be placed upon the real property tax list duplicate against the properties served by such connection in accordance with Section 6117.02 of the Revised Code of the State of Ohio.

"To give further history as to the problem existing, it must be brought to your attention that in this sewer district there are a number of platted and recorded subdivisions where the owners of said subdivisions have in turn leased the various lots for periods of time from ten to fifteen years. Lessees have in turn built cottages upon these lots and in accordance with the terms of their various lease agreements that if the lease is terminated, the lessee has the right to remove the cottage. This situation has existed for over 50 years as to the leasing of the various lots in these subdivisions. The bonds for the improvement were duly sold and the improvement was duly made. Thereafter, without any official record being found the delinquencies for the services rendered, which were certified to the County Auditor, have been placed upon a separate tax duplicate against the various lessees who have failed to pay the service charges. These delinquencies, in the approximate amount of $11,000.00, have caused the trustee to insist that these delinquencies be collected through the cooperation of this office, together with the Treasurer and Auditor of Licking County so as not to jeopardize the outstanding bonds.

"* * * * * * * * *

"Therefore, your official opinion is requested as to what the County Auditor and this office may do to collect these delinquencies, and as to whether the County Auditor is obligated by law to certify such delinquencies as against the owners of said real estate regardless of whether there are outstanding leases."

Section 6117.02, Revised Code, provides in pertinent part:

"The board of county commissioners shall fix reasonable rates to be charged for the use of the sewers or sewerage treatment or disposal works referred to in section 6117.01 of the Revised Code by every person, firm or corporation whose premises are served by a connection to such sewers or sewerage treatment or disposal works when such sewers or sewerage treatment or disposal works are owned or operated by the county, and may change such rates as it deems advisable. * * * When any rents or

> charges are not paid, the board shall certify the same together with any penalties to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes. * * *"

You state in your letter of request that the delinquent rents and charges were placed on a separate tax list against the various lessees. In this respect, your attention is directed to Section 319.28, Revised Code, which provides in part:

> "On or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county * * * Such lists shall be prepared in duplicate. * * * The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year."

The fact that the buildings on the land belong to the lessee is of no concern to the taxing authorities when it comes to the compilation of the general tax list and duplicate. See Opinion No. 66-089, Opinions of the Attorney General for 1966, and Opinion No. 3453, Opinions of the Attorney General for 1938, Volume III, page 2349. The Court of Appeals for Hamilton County in the case of Dernhard et al. v. O'Brien, Treas., et al., 97 Ohio App., 359, at 363 stated:

> "It requires the application of no technical rules of interpretation to determine the legislative intent in this enactment [Section 319.28, Revised Code]. The law authorizes two general county-wide tax lists and no more. One is retained by the auditor and one is delivered to the treasurer. The one retained by the auditor is given the name of 'general tax list' and the one delivered to the treasurer the name of 'general duplicate' of real and public utility property."

At this point, the inescapable conclusion is that the county auditor did not place the unpaid, and certified as such, sewer rents and charges upon the real property tax list and duplicate against the real property served by the connection. Consequently, the charges or rents certified as unpaid have not become liens upon the property served by the connection and cannot be collected in the same manner as other taxes.

Section 319.35, Revised Code, provides:

> "From time to time the county auditor shall

> correct all clerical errors which he discovers in the tax lists and duplicates in the name of the person charged with taxes or assessments, the description of lands or other property, the valuation or assessment of property or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessment, and shall correct the valuations or assessments on the tax lists and duplicates agreeably to amended, supplementary, or final assessment certificates. If the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other."

The factual situation presented by your letter of request falls within the statutory language of an error "* * * in the tax lists and duplicates in the name of the person charged with taxes or assessments * * * or in the amount of such taxes or assessment * * *" The remaining question is whether this error is a clerical error or a fundamental error. If it is the former, the auditor may correct it upon discovery pursuant to the authority granted in Section 319.35, supra.

The term "clerical error" as used in Section 319.35, supra, was partially defined in Opinion No. 1876, Opinions of the Attorney General for 1960, pages 718, 720, by my predecessor as follows:

> "* * * A 'clerical error' has been defined as a mistake which naturally excludes any idea that its insertion was made in the exercise of any judgment or discretion. School Dist. No. 95 v. Marion County Reorg. Comm., 167 Kan. 665, 208 P., 2d, 226 (1949)."

An examination of this definition of a clerical error, with which I am in accord, in light of Section 6117.02, supra, results in the observation that once the county commissioners certified as unpaid the sewer rents and charges to the county auditor, the said county auditor had no alternative but to place them upon the real property tax list and duplicate against the name of the owner of the real property served. In this respect, the county auditor's function was ministerial only; he had no judgment or discretion to exercise. And as the syllabus of Opinion No. 1876, supra, points out, this duty of correction exists:

> "* * * notwithstanding that considerable time may have elapsed from the time the error was committed until it was discovered."

Inasmuch as I can find no specific statute of limitations which would prevent the county auditor from now performing his ministerial duty in regard to entering the unpaid sewer rents and charges upon the current real property tax list and duplicate, it is my opinion that the county auditor must, assuming

that he is in possession of the necessary documents, now correct the clerical mistakes and add all of the certified as unpaid sewer rents and charges upon the current tax list and duplicate against the property served and proceed to collect them in the same manner as other taxes.