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SYLLABUS:

1. Township land used as a free township public park is subject to lawfully levied assessments made by other political subdivisions for improvements in such other political subdivisions.

2. Where a municipal corporation has, pursuant to Chapter 727., Revised Code, and a board of county commissioners has, pursuant to Sections 6117.33, 6103.16, and 5555.46, Revised Code, certified special assessments to the county auditor and the county auditor has placed such special assessments on the tax lists for collection by the county treasurer, neither the municipality nor the board of county commissioners may cause such assessments to be stricken from such tax lists.

Columbus, Ohio, January 4, 1963

Hon. Robert Webb
Prosecuting Attorney
Ashtabula County
Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This letter is addressed to you on behalf of the Ashtabula Township Park Board.

"The City of Ashtabula, within which a portion of the land owned by the Ashtabula Township Park Board is located, has levied special assessments on property owned by the Park Board for the payment of the cost of a sewer line, and for paving, and also, sewer rentals. None of the amounts so levied has ever been paid.

"The County Commissioners of Ashtabula County, Ohio, have also levied special assessments upon that portion of the Park Board property located outside of the Ashtabula City limits, for the construction of a sewer, sewer rental, the construction of a water line and for the construction of a highway.

"We would like your advice on the following questions:

"(1) May one political subdivision levy special assessments for the laying down of such improvements upon property owned by another political subdivision; and

"(2) Is it legally possible for the subdivision levying such assessments to have them stricken from the Records of the County Auditor and Treasurer, when they have not been paid."

Section 511.18 et seq., Revised Code, pertains to the organization of a park district and the establishment of a free public park. Referring to the board of park commissioners created under the authority, Section 511.23, Revised Code, reads in pertinent part:

"* * * It may locate, establish, improve, and maintain a free public park within and without the township * * *

"* * * * * * * * *"

The first question concerns a township park located partly within the corporation limits of a city, and whether the city could validity levy certain assessments against park property located in the city. In turn, this requires a determination of whether one political subdivision may assess property owned by another political subdivision.

In 49 Ohio Jurisprudence 2d, 262, Section 18, it is stated:

> "It has been held in a number of cases in which it did not appear that any provision was made for the levying or payment of an assessment upon public property, or property devoted to a public use, for the cost of a public improvement, that such property is not subject to an assessment for such purpose. However, it appears to be established in Ohio, as a general rule, that an assessment may be levied against public property; other than state or federal property, where the payment or collection of such assessment may be enforced by means or remedies other than the sale of the property. * * *"

The leading Ohio case on the subject is *Jackson* v. *Board of Education,* 115 Ohio St., 368, in which the syllabus reads:

> "1. Section 3812, General Code confers upon a municipality general authority to levy assessments for street improvements against property within such corporation belonging to a board of education and being used for school purposes, *and no provision exists in the General Code of Ohio exempting such property from that general authority.*
>
> "2. In the event of failure of such board of education to pay an assessment so levied, an action may be brought by the municipal corporation against such board of education to recover the amount of such assessment."
>
> (Emphasis Added)

In Opinion No. 684, Opinions of the Attorney General for 1927, page 1162, the conclusion of the *Jackson* case was applied to an assessment against property owned by a county, the third paragraph of the syllabus of that opinion reading as follows:

> "Where a county or county commissioners own property within the limits of a municipal corporation, such property may be assessed for street improvements under Section 3812, General Code."

I see no reason why township park property should not be treated the same as property of school districts and of counties, and here I might note the conclusion of Opinion No. 6378, Opinions of the Attorney General for 1956, page 230, reading:

> "Section 6103.13, Revised Code, gives a county the authority to levy an assesment for a portion of the cost of construction of a water supply system upon property belonging to a township and abutting on such improvement, in accordance with the special benefits conferred on such property by said improvement."

If in the instant case the statute permitting the assessment definitely excluded township park property from its terms, the property would, of course, be excluded; but such does not appear to be the case. Section 727.01, Revised Code, authorizes a city to assess benefited property where the city has constructed a sewer or paved a road. Section 729.49, Revised Code, authorizes the collection of sewer rentals in the manner in which assessments are collected. As to county assessments, Section 6117.30, Revised Code, authorizes the assessment of benefited property for the costs of construction of a sewer, and Section 6117.38, Revised Code, authorizes the collection of sewer rentals by assessment. Under Section 6103.13, Revised Code, the costs of the construction of a water line may be assessed against benefited property, and Section 5555.41, Revised Code, provides for the assessment of benefited property in a county road improvement. None of the above noted sections of law authorizing the assessment of property exempts township park property from assessment, and in accord with the *Jackson* case, *supra*, I thus conclude that the assessments here in question were properly levied by the city and by the county.

Your second question deals with the power of the subdivision making the assessments in question to have them stricken from the records of the county auditor and county treasurer before payment of the same. As has been pointed out earlier herein, such assessments were lawfully made and, based upon the facts considered in this opinion, lawfully appear upon the county tax records.

The authority of the municipality in question to certify assessments for collection is found in Chapter 727., Revised Code. Said chapter was amended by the One Hundred and Fourth General

Assembly (Amended Substitute House Bill No. 262 (129, Ohio Laws, 1227) effective January 1, 1962). Prior to said amendment, the provisions of Chapter 727., Revised Code, pertinent to this question were found in Section 727.51, Revised Code, which then, in part, read substantially the same as the former Section 3892, General Code. As a result of the latest amendment of Chapter 727., Revised Code, said pertinent language is now found in Section 727.30, Revised Code; however, the language has remained relatively unchanged and must bear the same construction as the prior language. Section 727.30, Revised Code, reads in pertinent part as follows:

> "* * * The auditor shall place the assessment upon the tax list in accordance therewith. The county treasurer shall collect the assessment in the same manner and at the time as other taxes are collected, and shall pay the amounts collected together with interest and penalty, to the treasurer of the municipal corporation, to be applied by him to the payment of such bonds or notes and interest thereon, and for no other purpose.
>
> "For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. Each installment of such assessments remaining unpaid after becoming due and collectable shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the authorized legal representative of any such municipal corporation may act as attorney for the county treasurer in actions brought for the enforcement of the lien of such delinquent assesments."

One of my predecessors, in considering a similar question to that raised herein, said in Opinion No. 3718, Opinions of the Attorney General for 1948, page 432, beginning at page 436:

> "The matter next to be considered is whether the terms of Section 3892, General Code, are mandatory in so far as the same deal with the services to be rendered by the treasurer. And as to that the first branch of the syllabus in State, ex rel., Brown v. Cooper, supra, states:
>
> > " '1. The duty enjoined upon county treasurer by Section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory.'

"It should be readily apparent from the foregoing that Section 3892, General Code, cannot possibly be regarded as conferring upon any city officer the power or authority to adjust, modify or cancel assessments after the same have been certified to the county auditor. Moreover, there is no other section of the General Code that purports to confer any such power. If such right were to exist then it would be difficult to conceive how, as stated by our Supreme Court, the duty on the part of the treasurer is mandatory. This same reasoning is applicable in respect of the authority of a city auditor or any other municipal officer to collect special assessments. The fact that the duty to make collection of assessments is imposed upon the county treasurer completely negatives the thought that any other person is also entitled to perform that same duty.

"Thus far the discussion has centered around the duty of a county treasurer under the terms of Section 3892, General Code. Your third question concerns the duty of the county auditor under that same section. Before discussing this phase of your inquiry a few preliminary observations should be made.

"It is stated in your inquiry that the assesments in question 'were properly made and levied.' This fact is not regarded of particular significance since the general rule is to the effect that an assessment will be regarded as valid until the contrary has been made to appear to a court vested with authority to determine the matter. Bolton v. Cleveland, 35 O.S. 319.

"If a county auditor has no authority in law to correct an illegal assessment unless such illegality results from a clerical error then the imagination is not severely taxed when the view is arrived at that a valid assessment may not be cancelled or removed from the tax duplicate at the instance of a city auditor. Much in point as to this matter is Opinion No. 4276, Opinions of the Attorney General for 1941, wherein paragraphs two and three of the syllabus respectively provide:

> " '2. An illegal special assessment for municipal improvements appearing on the general tax list and duplicate cannot be remitted by the municipal authorities and *can only be corrected by the county auditor*, if the illegality is the result of a clerical error. If the illegality is the result of a fundamental error, the remedy of the taxpayer is an action to enjoin the collection of

the assessment under authority of Section 12075, General Code.

"'3. When a special assessment has been certified to the county auditor and placed upon the tax list and duplicate as provided by Section 3892, General Code, it becomes the duty of the treasurer to collect the assessment installments at the same time other taxes and assessments are collected, even though a taxpayer may claim the special assessment against his property is invalid because notice of the assessment was not served upon him. The treasurer, when collecting taxes against such property, is only authorized to omit the collection of the special assessment when he has been legally enjoined.'

(Emphasis added.)

"I have been unable to find any language in Section 3892, General Code, that even remotely suggests a county auditor may cancel or remove special assessments from the tax list merely because the city auditor, or some other officer of the municipality for whose benefit said assessments are to be collected, has requested that the above mentioned action be taken.

"* * * * * * * * *"

Attention is also directed to *State ex rel., Jones* v. *Brenner,* 31 Ohio App., 465, wherein the court considered a question dealing with municipal assessments and the headnote states:

"It is the duty of a county treasurer in his official capacity to collect installments of special assessments in the same manner and at the same time as other taxes are collected."

In *Central Ohio R. R. Co. and Baltimore and Ohio R. R. Co.* v. *The City of Bellaire,* 67 Ohio St., 297, the syllabus reads as follows:

"After an assessment for a street improvement has been certified to the county auditor and placed upon the tax list as provided in Section 2295, Revised Statutes, the right of action for the collection of such assessments rests alone in the county treasurer."

See also *Bernhard et al.* v. *O'Brien et al.,* Ohio App. 359, and *Scherler et al.* v. *Village of Maple Heights,* 40 Ohio App. 389, which add further to the requirement that the county treasurer must collect an assessment once it has been placed upon the tax lists.

From the foregoing it seems perfectly clear that, once the assessments were certified to the county auditor and by him placed upon the tax lists delivered to the county treasurer for collection, the municipality lost all control of said assessments, and cannot thereafter cause the same to be stricken from the tax lists.

As to those assessments referred to in your request which were placed upon the tax lists as a result of the action of the county commissioners, the same rule must apply. Sewer assessments, including sewer rental charges, are placed on the tax lists by the county auditor for collection pursuant to Section 6117.33, Revised Code, as are water lines assessments under Section 6103.16, Revised Code, and county highway assessments under Section 5555.46, Revised Code.

I find nothing in said statutes which would cause said county assessments to differ from municipal assessments. The responsibility for the collection of the same lies with the county auditor and county treasurer and, accordingly, I must conclude that the county commissioners, whose action caused said assessments to be made in the first instance, have no authority to cause them to be stricken from the tax lists once such assessments have been duly certified to the county auditor for collection.

In accordance with the foregoing, I am of the opinion and you are advised:

1. Township land used as a free township public park is subject to lawfully levied assessments made by other political subdivisions for improvements in such other political subdivisions.

2. Where a municipal corporation has, pursuant to Chapter 727., Revised Code, and a board of county commissioners has, pursuant to Sections 6117.33, 6103.16 and 5555.46, Revised Code, certified special assessments to the county auditor and the county auditor has placed such special assessments on the tax lists for collection by the county treasurer, neither the municipality nor the board of county commissioners may cause such assessments to be stricken from such tax lists.

Respectfully,
MARK MCELROY