

Such assessment being a personal obligation of the railroad company the question remains as to whether the fact that certain of the installments are not yet payable renders such unmaturred installments an unprovable claim against the estate.

In 8, Fletcher's Cyclopaedia of Corporations, Section 5068, the claims provable against a receivership estate are classified as follows:

"Claims which are provable may be divided into three classes: (1) Claims which at the commencement of proceedings furnish a present cause of action; (2) Claims which at that time are certain but not matured; (3) Claims which are contingent."

To similar effect is 53 C. J., 230.

It is evident that the claim at issue falls in neither class one nor three, but it is certain, that is, the amounts of the remaining installments are known, and the contention of the objectors to the claim is that it is not matured. However, since such assessments are a personal obligation of the railroad company and are certain, as distinguished from unliquidated or contingent, I am of the opinion that such assessments constitute a provable claim against the property and funds in the hands of the receiver.

Specifically answering your inquiry, I am of the opinion that when a railroad company has elected to pay that portion of a special assessment assessed against it in installments, and thereafter, before all of such installments have been paid, such corporation is placed in receivership for the purpose of liquidation, such remaining installments are a personal obligation of such corporation, and a provable claim against the receivership estate.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4110.

TOLEDO METROPOLITAN PARK BOARD—TAXING DISTRICT UNDER SECTION 14178-8, G. C.

*SYLLABUS:*

*A park district organized under the provisions of sections 2976-1, et seq., General Code, is a taxing district within the meaning of section 14178-8, General Code.*

COLUMBUS, OHIO, February 27, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

"Both the Department of Public Works and the State Highway Department are anxious to have you construe the fourth paragraph of Amended Senate Bill No. 112 as passed by the 89th General Assembly, (O. L. 114, pages 19 and 20.)

The question involved is whether or not the Toledo Metropolitan

Park Board, organized under Section 2976-1 of the General Code, is a taxing district within the meaning of the law as found at the bottom of page 19 and the top of page 20 of the above act.

Under the provisions of Section 2976-9 and Section 2976-10 it would seem that this Park Board is a taxing district, but it will depend on whether it is in fact, a taxing district. If it is not, the lease for park and recreational purposes would have to be granted for the term of 15 years, with the privilege of renewal for a like term.

It is the desire of the Park Board to acquire a ninety-nine year lease, renewable forever.

As they are anxious to have this matter determined with the least possible delay, I respectfully request that you give it your attention at your earliest convenience."

Sections 2976-1, et seq., of the General Code provide for the creation of park districts and the appointment of commissioners for each district who shall constitute the board of park commissioners. Section 2976-6 provides that such board shall be a body politic and corporate and shall be capable of suing and being sued as in the act provided. Section 2976-7 gives the board the power to appropriate lands, streams, etc. Sections 2976-9 and 2976-9a give it the power to assess lands specially benefited. Under section 2976-10b, it is to have its own depository of funds, though the county treasurer is to be the custodian of them. It is also vested with police powers under the provision of section 2976-10g.

Section 2976-10, General Code, which is particularly pertinent, provides as follows:

"Such board shall have power to levy taxes upon all the taxable property within such district in an amount not in excess of one-tenth of one mill upon each dollar of the assessed value of the property in the district in any one year, subject, however, to the combined maximum levy for all purposes otherwise provided by law. After the budget commission of the county in which said district is located shall certify such levy, or such modification thereof as they deem advisable to the county auditor, it shall be by him placed upon the tax duplicate, and the board may then borrow money in anticipation of the collection of such tax, and issue the negotiable notes of such board therefor in an amount not in excess of seventy-five per cent of the proceeds of such tax, based upon the amount of the current tax duplicate. Such notes shall not be issued for a period longer than one year, and shall be payable out of the proceeds of such levy, and to the extent of such notes and the interest which may accrue thereon, such levy shall be exclusively appropriated to the payment of such notes, and shall be used for no other purpose whatsoever. Any portion of such notes remaining unpaid through any deficiency in such levy, shall be payable out of the next ensuing levy, which shall be made by said board in the next ensuing year in an amount at least sufficient to provide for the payment of said notes, not, however, in excess of one-tenth of one mill."

Section 2976-10i, General Code, provides for the levy of a tax in addition to the levy authorized in the above quoted section, when approved by the electors of such district.

Considering the provisions of these statutes, there can be no doubt that a park district, organized as provided therein, is a taxing district. Opinions of the Attorney General for 1922, Vol. I, page 192.

Section 14178-8, General Code, as amended in 114 O. L. 19, which provides for the leasing for a period not exceeding fifteen years, with right of renewal, of lands in the abandoned portion of the Miami and Erie Canal not needed for highway purposes, says in part:

“Provided, however, that if any municipal corporation, Lucas county, township, or other taxing district desires to lease any portion of said lands not required for said highway purposes, to be used for park or recreational purposes and open to public use, the same shall be leased to such taxing district upon a nominal rental and for a period of ninety-nine years, renewable forever.

Said application shall be made in writing, upon forms provided for that purpose, and shall clearly describe the lands covered in said application, and shall state the term of years for which such lease is desired, and shall be signed by a public officer, duly authorized by the public authorities of the city, village, or other political subdivision making said application, and when the same shall be desired by any political subdivision.”

This statute refers to “any municipal corporation, Lucas County, township, or other taxing district”, and also provides that the application shall be signed by “a public officer, duly authorized by the public authorities of the city, village, or other political subdivision making said application”. The language used indicates no intention to limit the provisions of this statute to subdivisions that are recognized or specially authorized by the Constitution but is broad enough to include as well any taxing district lawfully created by the legislature.

I am of the opinion, therefore, that a park district organized under the provisions of sections 2976-1, et seq., General Code, is a taxing district within the meaning of Section 14178-8, General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4111.

HIGH SCHOOL PUPIL—ATTENDING SCHOOL OUTSIDE DISTRICT OF RESIDENCE — BOARD OF EDUCATION REQUIRED TO PAY TUITION FOR ONLY FOUR YEARS.

*SYLLABUS:*

*The clause “no board of education is required to pay the tuition of any pupil to high school for more than four school years,” appearing in Section 7748, General Code, should be construed as being a limitation on the right of a pupil to have his tuition paid when attending a high school outside the district of his residence, for*