

"This conveyance is made with this reservation, to wit; that no building is to be constructed on said premises by said Grantee or assigns within thirty feet of the south line thereof; further, this Grantee is to make and maintain a driveway on the east side thereof, the length of the adjoining Lot No. 17, where Grantor now resides, and the same to be used as a means of ingress and egress for the said Grantor, heirs and assigns and Grantee also agrees not to close the present drain running across said tract."

Enclosed please find all of the papers whose receipt I acknowledged above.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4177.

CONVEYANCE OF LAND FOR HIGHWAY PURPOSES—DIRECTOR OF HIGHWAYS SHOULD INFORM COUNTY AUDITOR AS TO VALUE OF LAND CONVEYED FOR TAX LISTING PURPOSES.

SYLLABUS:

When a parcel of land is conveyed to the state for highway purposes, the director of highways, representing the state in the transaction, should furnish to the county auditor such information and proof as to the value of the parcel of land conveyed as compared with the value of the parcel or tract of land from which the conveyance is made as will enable the county auditor to make a proper division and apportionment of the entry on the tax list of the county.

COLUMBUS, OHIO, March 25, 1932.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you which reads as follows:

"Representatives of the State Highway Department and certain land holders who have transferred rights of way to the State Highway Department for purposes of a public highway and the County Auditor do not seem to be able to get together on the matter of the valuation of the land so transferred so that the proper change can be made in the records of the County Auditor's office.

Representatives of the Highway Department and land owners have both asked the County Auditor to deduct from the value of the tracts of land involved the value of the tracts of land occupied or deeded to the State of Ohio for highway purposes. It seems as though both representatives of the State Highway Department and the land owners have asked the County Auditor to fix the value on the property deducted. This he refuses to do but has asked the representatives of the State Highway Department and the land owners to sign up an agreement as to the apportionment of valuation to be placed upon the real estate so transferred to the State of Ohio for highway purposes. In

other words, the Auditor asks that the Highway Department and the land owners sign up a Division of Land Transferred on a form, a copy of which form is herewith enclosed.

I would like to have your advices as to whether the Highway Department and the land owners must determine the valuation of the property affected or whether the County Auditor must determine the value of the property affected. Section 5561 of the General Code is the section involved."

In the consideration of the question presented in your communication, the provisions of Section 2573, General Code, should be noted. This section, so far as the same is pertinent to the facts stated in your communication, provides that on application and presentation of title, with the affidavits required by law, or the proper order of a court, the county auditor shall transfer any land or town lot on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. This section further provides that if by reason of the conveyance or otherwise, a part only of a tract or lot of land as charged on the tax list is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made; and that the auditor shall endorse on the deed or other evidences of title presented to him that proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto.

Construing this section of the General Code, it was held in the case of *Dye, Auditor, vs. State, ex rel.*, 73 O. S. 231, that where the vendee of a part of a tract of land appearing as an entry on the tax list of the county, desires to have the part of the premises conveyed to him transferred into his name on the tax list, it is incumbent upon such vendee, under the provisions of said section, to present to the county auditor proper evidence of his title and to make satisfactory proof to the county auditor of the value of the part of the tract of land conveyed to him as compared with the valuation of the whole tract of land from which the conveyance was made as the same appears upon the tax list.

I assume from the facts stated in your communication that certain parcels of land have been purchased by the director of highways for state highway purposes, and that title to said property has been taken in the name of the state by deed, as provided for in Section 1202, General Code.

It is a recognized rule that in conducting transactions with respect to its lands the state acts in a proprietary and not in a sovereign capacity, and is amenable to the rules which it prescribes for the conduct of its citizens in like situations. *The Cleveland Terminal and Valley Railroad Company vs. The State, ex rel.*, 85 O. S. 251. It follows from this that the director of highways, upon presenting to the county auditor a deed or deeds for the conveyance of the parcels of land here in question, should present to such official satisfactory proof of the value of the parcels of land thus conveyed to the state as compared to the valuation of the whole of the tract or tracts from which such parcels were conveyed, as such valuation appears on the tax list. For, although such parcels of land when conveyed to the state for state highway purposes and so used will be exempt from taxation, the county auditor in carrying such parcels of land into the tax exempt list of real property in his county is required in such list to show the value of the property exempted. Section 5570-1, General Code. For

this reason and because Section 2573, General Code, provides therefor, the county auditor is entitled to proof as to the valuation of the parcel or parcels of land conveyed to the state for highway purposes. And although agreements entered into by and between the director of highways and the land owners conveying to the state the parcels of land here in question would not be binding upon the county auditor as to the valuation of the parcel or parcels conveyed (*Dye, Auditor, vs. The State, ex rel., supra*), I see no reason, if the parties can come to an agreement with respect to this matter and the same will be satisfactory proof to the county auditor with respect to the valuation of the parcels of land conveyed, why the same shall not be made upon forms prescribed by the county auditor.

Section 5561, General Code, referred to in your communication, is a part of the chapter (secs. 5548 to 5577, G. C.) providing for the assessing of real property for purposes of taxation, and this section has no relation to the division of the valuation of an entry of a tract of land on the tax duplicate when a part of such tract of land has been transferred by conveyance or otherwise to a person other than that named in the tax list as the owner of the property. Section 5548, General Code, provides generally for the assessing of all real property in the county for purposes of taxation at intervals of six years from the year 1925, when the first appraisal and assessment of real property in the counties were made under said section as amended. By Section 5548-1, General Code, it is provided that in any year after the year in which an assessment has been made of all of the real estate in any subdivision, it shall be the duty of the county auditor, upon notice to the owners thereof, to revalue and assess particular parcels of real estate so as to put such parcels on the tax list at their true value in money. Section 5560, General Code, provides that each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon; and that the price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of its true value. Section 5561, General Code, referred to by you, reads as follows:

“The county auditor shall deduct from the value of such tracts of land, as provided in the next preceding section, lying outside of municipal corporations, the amount of land occupied and used by a canal or used as a public highway, at the time of such assessment.”

Outside of municipalities, the owners of property abutting a public highway own the fee to the middle of the public highway, subject to the easement of the public in said property for highway purposes. This section, as will be noted, expends its force in providing that the county auditor, in appraising such land, shall deduct from the value thereof the amount represented by land used for public highway purposes.

This section does not, therefore, control the question presented in your communication. This question, as above noted, is controlled by the provisions of Section 2573, General Code; and, responsive to your communication, I am of the opinion that the county auditor, before making a transfer requested, is entitled to have presented to him proof as to the value of the parcels of land conveyed as compared to the value of the tract from which said parcels were taken.

Respectfully,
GILBERT BETTMAN,
Attorney General.