

889.

TAX—COUNTY AUDITOR—DUTY TO CERTIFY LIST DELINQUENT LANDS—WHERE AFTER AUGUST SETTLEMENT LIST NOT COMPLETED UNTIL FOLLOWING JULY—LIST MUST BE CERTIFIED IMMEDIATELY UPON COMPLETION—SECTION 5704, G. C.

SYLLABUS:

Where after the August settlement of taxes the County Auditor is engaged in making and certifying a list of all the delinquent lands in his county, which list is not completed until the following July, it is his duty to certify such list immediately upon its completion and to cause such list to be published as provided in Section 5704, General Code.

COLUMBUS, OHIO, July 14, 1939.

HON. ROSS MICHENER, *Prosecuting Attorney, St. Clairsville, Ohio.*

DEAR SIR: I have your letter of July 12, requesting my opinion, which reads as follows:

“On November 5, 1938, our County Auditor made what is generally known as the August, 1938, settlement of taxes. Since that time he has been preparing a list of delinquent lots and lands for certification to the County Treasurer in accordance with Section 5704 of the General Code of Ohio. He now has this list completed and proposes to certify same to the Treasurer and cause to be advertised the delinquent list, as provided in said section.

Now, the question arises as to whether or not the filing of said list at this date, to-wit, in the month of July, 1939, complies with Section 5704, inasmuch as said section provides that said list shall be immediately certified. In other words, we need to know the interpretation of the word ‘immediately’ as used in this section.

You will observe that this is highly important for the reason that the title to the lots and lands in the delinquent list may be at issue by whatever action is taken, and I would like your opinion on this question.”

Section 5704, General Code, to which you refer, reads in part as follows:

“Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all the

delinquent lands in his county. * * * The original land list shall be kept in the office of the county auditor and the duplicate shall be delivered to the county treasurer. * * *

It shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein; provided, however, that, before such publication, it shall also be mandatory upon the county auditor to cause a display notice of the forthcoming publication of the delinquent land list and duplicate to be inserted once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein. * * *

In answer to your inquiry, I have no difficulty whatever in deciding that the word "immediately" as used in that part of the section above quoted means at the earliest possible date on which the county auditor is able to make and certify a list and duplicate of the delinquent lands. But even if the auditor had been able to make and certify the list in question a few days after the August settlement, but did not publish the same as required by the section under consideration, it would continue to be his duty to publish the list until he had complied with the mandatory requirements of the statute by proper publication. The reasoning of Chief Justice Marshall in the case of *State, ex rel. v. Mittendorf, et al., Commissioners*, 102 O. S., 229 (1921), is here applicable. In that case it was said at page 231 of the opinion :

"It was of course the commissioners' duty to read the list during the September session, and having failed to read it during that session there is still a duty unperformed which must be performed. * * * We are of the opinion that while the act itself, that is to say the act of reading the list, is mandatory and imperative, the time of the performance of the act is directory merely. While it was their duty to read it at the time prescribed by the statute, having failed in that it is still their duty to read it at the earliest moment thereafter, when their attention is called to it. * * * There are a very great many statutes commanding public officials to perform acts at certain fixed times where time is not of the essence of the matter, and in such instances the provisions are directory merely."

The same conclusion was reached by my immediate predecessor in an

opinion reported in O. A. G., 1937, Vol. II, Page 1441, in which it was said :

“It is, of course, recognized that Section 5704, General Code, placed a mandatory duty upon the auditor to publish the delinquent list last December when it was ready and publication not having been made, as a matter of law that mandatory duty still exists. * * *”

Specifically answering your question, it is my opinion, for the reasons above stated :

Where after the August settlement of taxes the county auditor is engaged in making and certifying a list of all the delinquent lands in his county, which list is not completed until the following July, it is his duty to certify such list immediately upon its completion and to cause such list to be published as provided in Section 5704, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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BONDS — CHAGRIN FALLS VILLAGE SCHOOL DISTRICT,
CUYAHOGA COUNTY, \$90,000.00.

COLUMBUS, OHIO, July 17, 1939.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Chagrin Falls Village School District,
Cuyahoga Count, Ohio, \$90,000.00.

The above purchase of bonds appears to be part of a \$190,000 issue of building and equipment bonds of the above school district dated November 1, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to the Board under date of December 1, 1938, being Opinion No. 3315.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said village school district.

Respectfully,

THOMAS J. HERBERT,
Attorney General.