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TAXES, REAL PROPERTY—COLLECTION—COUNTY TREASURER MUST KEEP BOOKS OPEN FROM TIME DUPLICATE DELIVERED TO HIM BY COUNTY AUDITOR UNTIL SEPTEMBER 11—EXCEPTION—TIME OFFICE MAY BE CLOSED FOR FEBRUARY SETTLEMENT OF SUCH TAXES.

SYLLABUS:

The county treasurer must keep his books open for the collection of real property taxes from the time the duplicate is delivered to him by the county auditor until the eleventh day of September, excepting during such time for which it may be necessary to close his office for the purpose of the February settlement of such taxes.

Columbus, Ohio, April 30, 1943.

Hon. Ralph Finley, Prosecuting Attorney,
New Philadelphia, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“Your opinion is respectfully requested relative to the construction to be placed upon Sections 2649 and 2653 of the General Code relative to the time which the County Treasurer may close his books for the collection of real property taxes. Specifically the question is may the County Treasurer legally close his books to the collection of real property taxes at the close of business on December 20, and at the close of business on the 20th day of June, next, where no person has elected to pay his taxes on the ten installment plan as set forth under Section 2653 of the General Code of Ohio?”

Section 2653, General Code, to which you have referred, provides the taxpayer with optional plans for the payment of his taxes. In its present form this section reads:

“Each person charged with real property taxes and assessments or public utility property taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December or one-half thereof before such date and the remaining half thereof on or before the twentieth day of June next ensuing; or, any person so charged may, prior to such twentieth day of December, elect to pay the

full amount thereof in ten equal installments, payable on or before the twentieth day of December and on or before the tenth day of each succeeding month to and including the tenth day of September next hereafter, as provided by law."

The only duty imposed upon the county treasurer by this section is the implied duty to receive taxes under whatever plan the taxpayer selects. The dates included in the section appear to be primarily for the guidance of the taxpayer. In *State, ex rel. Riegel v. Ross*, 109 O. S., 461, the construction of Section 7595-1, General Code, was involved. This section provided that local boards of education seeking state aid should make their requests prior to the thirty-first day of July. It was contended that the entire proceedings must fail when the request was made after that date. Discussing this contention, Judge Marshall said:

"* * * That statute is clearly not one where time is of the essence of the matter, or where the rights of any person or class of persons would be prejudiced by delay, and it is apparent that the only difficulty which arises out of the failure to make the application before July 31 is that it causes a considerable volume of additional labor on the part of the county auditor. * * *"

The same comment might well be made with respect to Section 2653, General Code. Essentially it is authority for the taxpayers to pay taxes under one of three plans. The time for payment does not appear in mandatory language and it might be impossible to comply therewith in instances where extensions have been granted and the books closed late due to emergencies unavoidably delaying the delivery of the duplicates to the county treasurer for the collection of taxes. That the treasurer is not necessarily bound by the dates found in Section 2653, General Code, is indicated by the provisions of Section 2657, General Code, authorizing the county commissioners to extend the time for the payment of taxes for not more than thirty days after the time fixed by law and authorizing the Tax Commission, now the Board of Tax Appeals, to further extend the time of payment in case of an emergency unavoidably delaying the delivery of the duplicates for the collection of taxes. Furthermore, as suggested in your inquiry, the books could not possibly be closed on the twentieth day of December if any taxpayer had elected to pay in monthly or semi-annual installments, and it would be equally impossible to close the books on the twentieth day of June if any taxpayer had elected to pay in monthly installments.

Sections 2653 and 2649, General Code, in their present form were enacted by the Ninety-first General Assembly as a part of Amended Senate Bill No. 221. The latter section now reads:

“The office of the county treasurer shall be kept open for the collection of real property taxes and assessments and public utility property taxes from the time of delivery of the duplicate to the treasurer until the eleventh day of September, excepting during such time for which it may be necessary to close such office for the purpose of the February settlement of such taxes.”

In *Hoffman v. Pounds*, 36 O. App., 492, it was said in the seventh branch of the syllabus that:

“Sections of the Code effective on same date are presumed to have been intended to be harmoniously construed.”

There would be no harmony in holding that Section 2649, General Code, required the treasurer to keep his books open until the eleventh day of September if Section 2653, General Code, which is the following section of the same Act, permitted him to close his books on the twentieth day of June. The language of Section 2649, General Code, is that the treasurer’s office “shall be kept open” for the collection of taxes and assessments from the time of the delivery of the duplicate to the treasurer until the eleventh day of September, excepting during such time as it might be necessary to close his office for the purpose of the February settlement. The use of the word “shall” is usually interpreted to make the provision in which it is contained mandatory. 37 O. Jur., 326.

The dates for settlements between the county treasurer and auditor are found in Sections 2683 and 2596, General Code. The former section, so far as it applies to real estate taxes, is as follows:

“On or before the fifteenth day of February, in each year, the county treasurer shall settle with the county auditor for all taxes and assessments that he has collected on the general duplicate of real and public utility property at the time of making the settlement. * * * On or before the tenth day of August in each year, he shall settle with the auditor for all taxes and assessments that he has collected on the general duplicates of real and public utility property at the time of making such settlement, not included in the preceding February settlement. * * *”

Section 2596, General Code, reads:

“On or before the fifteenth day of February and on or before the fifteenth day of September of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of real property taxes and assessments and public utility property taxes with which such treasurer is to stand charged. At each September settlement, the auditor shall take from the duplicate previously put into the

hands of the treasurer for collection a list of all such taxes and assessments as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes and assessments are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes and assessments should not be collected. Such last-mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor."

This section formerly provided for settlements to be made on the fifteenth day of February and on or before the tenth day of August of each year. It was enacted in its present form in 1935 and, being of later enactment than Section 2683, General Code, its terms must be regarded as having superseded those of Section 2683, General Code, wherever discrepancies occur; hence, the settlement dates are now on or before the fifteenth day of February and on or before the fifteenth day of September. The use of mandatory language in Sections 2649, 2596 and 2683, General Code, and directory language in Section 2653, General Code, permits the statutes to be harmoniously construed. This, I think, must have been the intent of the legislature.

In specific answer to your inquiry, it is my opinion that the county treasurer must keep his books open for the collection of real property taxes from the time the duplicate is delivered to him by the county auditor until the eleventh day of September, excepting during such time for which it may be necessary to close his office for the purpose of the February settlement of such taxes.

Respectfully,

THOMAS J. HERBERT,
Attorney General.