3013.

TAXES AND TAXATION—WHERE COUNTY AUDITOR DISCOVERS REAL ESTATE OMITTED FROM TAX DUPLICATE OF PREVIOUS YEARS—MANDATORY DUTY TO ADD TO TAXES OF CURRENT YEAR FOR PRECEDING YEARS NOT EXCEEDING FIVE—AN EXCEPTION—AUTHORITY OF COUNTY AUDITOR WHEN IMPROVEMENT ON REAL ESTATE OMITTED FROM DUPLICATE—MAY CORRECT VALUE—WITHOUT POWER TO ASSESS BACK TAXES ON SUCH BEHALF.

If the county auditor discovers that any tract of land or lot has been omitted from the tax duplicates of previous years it is his mandatory duty to add to the taxes of the current year the simple taxes of each preceding year in which the property has escaped taxation, not exceeding five years unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership are to be added.

If the auditor discovers that improvements on real estate are omitted from the duplicate, it is his duty to return the corrected value thereof; but he is without power to assess back taxes on such behalf.

COLUMBUS, OHIO, April 21, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission requests the opinion of this department upon certain inquiries submitted by the auditor of Cuyahoga county, as follows:

> "1st. Is 5573 mandatory so that the auditor is compelled to impose the tax for a period of five years where the present taxpayer was the owner of the property for a period longer than that time?
>
> 2nd. If the lot upon which the building is situated has, at all times, been taxed, but the building has not, has the auditor power to add this omitted building for said period of time?"

Section 5573 of the General Code provides as follows:

> "If the county auditor discovers that any tract of land or any lot or part of either, has been omitted, he shall add it to the list of real property, with the name of the owner, and ascertain the value thereof and place it opposite such property.
>
> In such case he shall add to the taxes of the current year the simple taxes of each and every preceding year in which the property has escaped taxation, not exceeding, however, five years, unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership shall be added; or the owner thereof, if he desires, may pay the amount of such taxes into the county treasury, on the order of the auditor."

The form of this section is mandatory, and no reason is observed why the positive words in it should be given any limited application or interpreted as reposing in the auditor any discretion in the matter. The first question submitted by the county auditor is therefore answered in the affirmative.

As to the second question above stated, it might seem to involve the inquiry as

to whether the phrase "any tract of land or any lot or part of either" embraces the improvements on a tract or lot required by other sections of the General Code to be separately valued for taxation purposes (see section 5554 of the General Code).

But the setting in which this section is found, and particularly its history, furnishes an answer to this question and forecloses any further inquiry into it. Section 5576 immediately succeeding, provides as follows:

> "Such county auditor, if he ascertains that a mistake was made in the value of an improvement or betterment of real property, or that the true value thereof was omitted, shall return the correct value, having first given notice to the owner or agent thereof, of his intention so to do."

This section does not authorize placing the omitted or corrected value of the improvement or betterment on the duplicate for any preceding years; but it does provide a separate method of placing omitted or corrected valuations of such improvements or betterments on the duplicate for the current and subsequent years. This of itself might furnish a sufficient answer to the second question submitted by the auditor.

But when we take into account that section 5574 of the General Code, now repealed, provided expressly for placing omitted buildings, etc., on the duplicate for preceding years, this conclusion becomes inescapable. Said section 5574 formerly covered both subjects in the following language:

> "When a county auditor discovers or has his attention called to the fact, that an assessor in any previous year had omitted to return, or, in any years omits to return lands, town lots, or improvements, structures or fixtures thereon, subject to taxation, situated within the county; or if such property has escaped taxation by reason of an error of the auditor, he shall ascertain the value thereof for taxation, as near as may be, and enter said lands, town lots, or improvements upon the duplicate of the county, then in the hands of the county treasurer, and add to the taxes of the current year the simple taxes of each and every preceding year in which the property has escaped taxation, as far back as the next preceding appraisement and equalization of real estate in his county, unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership shall be added; or the owner thereof, if he desires, may pay the amount of such taxes into the county treasury, on the order of the auditor."

The repeal of this section came about in the enactment of the act found in 107 O. L. 29 revising the assessment laws of the state after the so-called Parrett-Whittemore law had been held to be unconstitutional. This act, passed as an emergency measure, abolished the functions of the personal property assessors with respect to the taxing of improvements on real estate, and made the county auditor the assessor of all real estate, including buildings. Consistently with this policy, original sections 5573 and 5576, relating to the duties respectively of the real property assessor and the personal property assessor, were done away with, and the two sections which have been quoted in this opinion as being now in force were substituted for them. Old section 5574, being in part covered by new section 5573, was repealed, as was section 5575 relating to the duties of the personal property assessor in valuing new buildings. All these sections in their previous form had been a part of the scheme of quadrennial appraisement, and their revision was imperatively called for by the adoption of the new policy. Nevertheless, the omission from the new sections of

the language of the old, dealing specifically with the assessment of back taxes on account of omitted improvements, taken in connection with the form in which the sections appear as revised, establishes beyond doubt the conclusion that there is now no authority to do this.

Accordingly, the second question submitted by the auditor is answered in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3014.

BOARD OF EDUCATION—NO AUTHORITY TO EXPEND FUNDS FOR RENT OF HOUSE TO BE USED AS TEACHERS' HOME—WHEN BOARD MAY PURCHASE REAL ESTATE FOR PURPOSE OF ERECTING SUCH HOME—COST OF BUILDING CONTRIBUTED BY PRIVATE DONATIONS.

A board of education is without authority to expend its funds or advance money for the rent and the furnishing of a house to be used as a teachers' home; but a board of education may, under the provisions of section 7624 G. C., purchase real estate as a site for the purpose of erecting such a home for school teachers employed in the district, when the cost of the erecting of the building has been contributed by private donations.

COLUMBUS, OHIO, April 21, 1922.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of a letter from your office signed by Hon. E. J. Thobaben, assistant prosecuting attorney, requesting the opinion of this department upon the following statement of facts:

> "The board of education of Dover township rural school district desires to know whether they would have the right to expend or rather advance money for the rent of and for furnishing a house to be used as a teachers' home. They are having great trouble in keeping teachers because of insufficient housing facilities. It is their intention merely to advance this money and get it back by having the teachers pay the equivalent of the rent plus a proportion of the cost of the furnishing so that this will eventually be paid for."

In reply to your inquiry you are advised that all that appears in the statutes upon the question of "teacherages" or buildings to be used as homes or houses for public school teachers, occurs in section 7624 G. C., which reads as follows:

> "When it is necessary to procure or enlarge a school site, or to purchase real estate to be used for agricultural purposes, athletic field or playground for children, or for the purpose of erecting and maintaining buildings to be used as homes or houses for public school teachers, when the cost of such erection has been contributed by private donations or for the purpose of providing an outlet to dispose of sewage from a school building or grounds, and **the board of education and the owner of the property needed for such purposes, are unable to agree upon the sale and purchase thereof, the board shall**