

the construction and completion of Contract for Electrical Work to be installed in a cottage at the Massillon State Hospital as set forth in Item No. 4 of the Form of Proposal submitted March 29, 1930. Said contract calls for an expenditure of two thousand four hundred and sixty dollars (\$2,460.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the President thereof, that in accordance with Section 11 of House Bill No. 510, 88th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 88th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Southern Surety Company of New York appears as surety sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1929.

COUNTY TREASURER—MAY ACCEPT CURRENT TAXES WITHOUT
PAYMENT OF DELINQUENT TAXES AND PENALTIES.

SYLLABUS:

A county treasurer is authorized to accept the payment of current taxes upon property where such taxes are tendered unaccompanied by the amount of the delinquent taxes and penalties upon such property, but such acceptance by the treasurer does not in any way affect the obligation of the treasurer to proceed to collect such delinquent taxes in the manner provided by law.

COLUMBUS, OHIO, May 31, 1930.

HON. EMERSON C. WAGNER, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—In your communication you present the following inquiry:

“Can the Treasurer of Perry County, Ohio, legally accept the current taxes on real estate, which real estate has charged against it delinquent taxes and penalties from former years, the same having been advertised and certified to the Auditor of State as delinquent without the redeeming of same and the payment in full of all the delinquent taxes, interest and advertising fees?

The real estate in question has recently changed ownership and the present owners desire to pay the current and not pay any of the delinquent taxes.”

A careful examination of the General Code reveals no specific authority for the acceptance of current taxes without the payment also of the delinquent taxes, and,

on the other hand, there appears to be no specific inhibition against such course. In fact, it may be said that the statutes throw very little light upon the subject.

Section 2653 of the General Code provides authority for the payment of current taxes in two installments, namely, the December installment and the June installment. Sections 2654 and 2655 are as follows:

Sec. 2654. "When taxes charged against the property of a person are so paid by installments, each such payment, exclusive of road taxes, shall be apportioned among the several funds for which taxes have been assessed."

Sec. 2655. "If a person desires to pay only a portion of a tax charged on real estate otherwise than in such installments, such person shall pay a like proportion of all the taxes charged thereon for state, county, township or other purposes, exclusive of road taxes. No person shall be permitted to pay one or more of such taxes without paying the others in like proportion, except only when the collection of a particular tax is legally enjoined."

There is here clear indication of the right of a taxpayer to pay less than the full amount of current taxes, and, consequently, a corresponding obligation upon the treasurer to accept such payment. The inhibition of Section 2655 is against the payment of any particular tax to the exclusion of taxes for other purposes upon the same duplicate, and the section requires that such portion of the tax as may be paid shall be distributed proportionately among the various levies upon the duplicate. *The Wheeling & Lake Erie Railway Co. vs. Stewart*, 13 O. C. C. 359.

While these sections and the case cited do not deal with the payment of anything other than current taxes, yet there is evidenced thereby the legislative intent that the aggregate of taxes due upon a particular property need not be all paid at once.

A somewhat similar question will soon be before the Supreme Court for disposition. The Court of Appeals of Summit County in the case of *State ex rel. Brown vs. Cooper*, Ohio Law Abstract for May 10, 1930, at page 278, held that it is the duty of the county treasurer to receive general taxes tendered without receiving special assessments due upon the property if the taxpayer elects so to pay. Since the conclusion of the Court of Appeals in this case was at variance with that reached by the Court of Appeals of the seventh district in a similar case, the case has been certified to the Supreme Court for final determination. While the question presented is not precisely the same as that here under consideration, it is possible that the conclusion of the Supreme Court will be such as to be at least persuasive with respect to, if not entirely dispositive of, your present inquiry.

From what has been said, the conclusion may be drawn that the question is one which is not free from doubt. There is no question but that the treasurer has the duty to collect all taxes due, delinquent or otherwise. If delinquent taxes are not paid, then the further duty rests upon the treasurer to institute appropriate proceedings under authority of law to subject the property to the payment of the taxes. I do not feel, however, that the acceptance of the current taxes without the payment of delinquent taxes is unauthorized. Certainly there is no express statutory prohibition which controls and, in the absence thereof, it would seem that ordinary business principles would apply, and that it is better that the taxing subdivisions obtain some portion of the sum due them than that none at all be paid. The acceptance of the current taxes could in nowise prejudice the collection of the delinquent taxes, nor would it postpone or affect in any way the duty of the treasurer to take proper steps to collect such delinquencies by the proper means made available by law.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the county treasurer is authorized to accept the payment of current taxes upon property where such taxes are tendered unaccompanied by the amount of the delinquent taxes and penalties upon such property, but such acceptance by the treasurer does

not in any way affect the obligation of the treasurer to proceed to collect such delinquent taxes in the manner provided by law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1930.

APPROVAL, BOND OF GOSHEN TOWNSHIP RURAL SCHOOL DISTRICT,
TUSCARAWAS COUNTY—\$40,000.00.

COLUMBUS, OHIO, May 31, 1930.

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

1931.

APPROVAL, BONDS OF BOWLING GREEN TOWNSHIP, MARION
COUNTY—\$7,600.00.

COLUMBUS, OHIO, May 31, 1930.

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

1932.

COUNTY COMMISSIONERS—TAX LEVY UNDER SECTION 1222, GENERAL
CODE OUTSIDE FIFTEEN MILL LIMITATION AFTER JANUARY 1,
1930, UNAUTHORIZED—EXCEPTION NOTED.

SYLLABUS:

After January 1, 1931, the effective date of the amendment of Section 2, Article XII of the Constitution of Ohio, a levy may not be made under the provisions of Section 1222, General Code, outside of the fifteen mill limitation provided in such constitutional amendment; provided that, in the event bonds are authorized or issued under the provisions of Section 1223, General Code, in anticipation of the collection of taxes levied under Section 1222, General Code, outside the fifteen mill limitation, prior to January 1, 1931, such levy should continue to be made outside the fifteen mill limitation as long as any such bonds remain outstanding.