

Again, in Opinions of the Attorney General for 1917, Vol. I, page 687, the then Attorney General at page 688 said:

“The fees fixed by Section 5706, General Code, are for advertising the delinquent and forfeited list of the several counties and the notice of sale. This means that the fees enumerated in that section are to be paid the newspaper when it has published the list according to law, viz., weekly for two weeks. The law in fixing the rate assumes that the entire list as first published will be published a second time and the fees allowed a newspaper are for publishing the list twice.”

I concur in the foregoing opinions, for it is obvious that the amounts fixed by Section 5706 are for the publishing of the delinquent and forfeited list of the several counties according to law which requires two publications of such lists.

In specific answer to your question, it is my opinion that the publishers of newspaper having a circulation of less than twenty-five thousand are entitled to receive no more than thirty cents for each tract of land, city or town lot, or part of lot, contained in the forfeited list for the entire publication.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

712.

PENALTIES AND INTEREST ON DELINQUENT LANDS—
ABATEMENT AND REMITTANCE NOT AUTHORIZED—
COUNTY TREASURER.

SYLLABUS:

Penalties and interest are not authorized to be abated or remitted to taxpayers, by the county auditor or the county treasurer, on delinquent taxes paid between December 30, 1936, and February 24, 1937.

COLUMBUS, OHIO, June 20, 1937.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, in which you inquire as follows:

"The question has arisen whether penalties and interest may be abated on delinquent taxes which have been paid between the dates of December 30, 1936, and February 24, 1937, the effective day of the reenacted Whittemore Law.

I shall appreciate your opinion on this matter as we have a number of cases wherein taxes have been paid and abated in spite of the fact that the Whittemore Law during that period of time was not in effect."

Senate Bill No. 359, enacted by the 91st General Assembly at its first Special Session, 1935, effective October 1, 1935, was an Act providing for the collection of delinquent real estate taxes and assessments, personal property and classified property taxes for years prior to 1935, by installments, and for a discount for prompt payment of such taxes, and declaring an emergency. This is known as one of a series of "Whittemore" Acts authorizing collection of delinquent taxes in installments.

Section 1, of Senate Bill No. 359, provided as follows:

"Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in the year 1935, or any person, firm or corporation holding a lien upon such real property *may at any time prior to the thirty-first day of December in the year 1936*, elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1935 then due and payable have been paid, or elected to be paid in accordance with the provisions of Section 2653 of the General Code. Provided that in case a penalty and interest has been paid on account of delinquent taxes and/or assessments, for the first or second half of the year 1934, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the thirty-first day of December, 1936." (Italics the writer's.)

It is easy to see that the temporary legislation enacted above, definitely expired *in toto*, on December 30, 1936. However, on December 22, 1936, the General Assembly passed Amended Senate Bill No. 474, to extend the terms of the Whittemore Act to September 10, 1937. This bill was signed by the Governor on December 30, 1936, and filed in the office of the Secretary of State on January 4, 1937. It was not passed as an emergency measure and could not, therefore, go into effect under the Ohio Constitution, until April 5, 1937.

When the 92nd General Assembly convened in January, 1937, they decided that some immediate, effective legislation was needed to take care of the delinquent tax collection situation and so, on February 18, 1937, they passed Amended Substitute Senate Bill No. 87, which was another and the most recent of the "Whittemore" Acts. This Act extended to December 10, 1937, the time for the collection of delinquent real estate taxes and assessments, personal property and classified property taxes for years prior to 1936, by installments, and for a discount for prompt payment of such taxes.

The Governor signed Amended Substitute Senate Bill No. 87, on February 24, 1937, and, it being an emergency measure, went into immediate effect. It specifically repealed Amended Senate Bill No. 474, filed in the office of the Secretary of State as of January 4, 1937.

The question now arises "whether penalties and interest may be abated on delinquent taxes which have been paid between the dates of December 30, 1936, and February 24, 1937, the effective day of the reenacted Whittemore Law."

It is conceded, of course, that no Whittemore Act (so called), was in effect during the period from December 30, 1936, to February 24, 1937. The former Act expired as of December 30, 1936, and the new Act was not effective until it was signed by the Governor on February 24, 1937.

By what authority could penalties and interest be abated by taxing officials during the above period? There was no law in effect authorizing such procedure. Does Amended Substitute Senate Bill No. 87 permit or authorize abatement? Section 16 of Amended Substitute Senate Bill No. 87 provides in part:

"In the case of a taxpayer who, under the provisions of either Amended Senate Bill No. 42, passed March 30, 1933, approved April 5, 1933, and filed in the office of the Secretary of State April 16, 1934, or Amended Senate Bill No. 105, passed December 7, 1934, approved December 13, 1934, and filed in the office of the Secretary of State December 14, 1934, or Senate Bill No. 359, passed September 26, 1935, approved October 1, 1935, and filed in the office of the Secretary of State

October 3, 1935, elected to enter into an agreement to pay delinquent taxes and assessments in six annual installments, as provided in said acts, and who, pursuant to said agreement, *has during the perior prior to the effective date of this act paid any of said installments plus interest at the rate of four per centum, shall be entitled to have such interest so paid, refunded or credited to his account at the time of making payment of the next installment due under said agreement; * * ** (Italics the writers.)

This section specifically provides that no interest can be refunded except when paid by a taxpayer under an agreement entered into under one of the prior Whittemore Acts. All prior Whittemore Acts expired December 30, 1936. After that date, and until February 24, 1937, there was no Whittemore Act in effect. Therefore, any payment of taxes, penalties or interest made during the period from December 30, 1936, to February 24, 1937, was at the risk of the taxpayer, and without protection of law, in so far as his being entitled to a refund or abatement of penalties and interest on such taxes so paid was concerned.

Section 2663, of the General Code, provides:

“Each person charged with 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, but all road taxes so charged shall be paid prior to the twentieth day of December.”

Section 2657, of the General Code, provides :

“The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes for not more than thirty days after the time fixed by law. The tax commission of Ohio may further extend the time of payment of taxes in any county in case of an emergency unavoidably delaying the delivery of duplicates for the collection of taxes. Such extension shall be for such time as the commission may fix in its order. In all cases where an installment of taxes other than taxes and assessments charged on real estate, has not been paid on the last day prescribed by this chapter or within the time so prescribed as extended pursuant to this section a penalty of ten per cent of the amount due and un-

paid shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.”

From the foregoing, it will be noted that the 10 per cent penalty “shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.”

There is no authority for the waiving of any penalty or interest by the county auditor or the county treasurer, in making collection of delinquent taxes, except under the various Whittemore Acts. From December 30, 1936, to February 24, 1937, no Whittemore Act was in effect, so there is no authority for the abatement or remittance of penalties or interest on delinquent taxes paid during the above period.

Therefore, in specific answer to your inquiry it is my opinion that, penalties and interest are not authorized to be abated or remitted to taxpayers by the county auditor or the county treasurer, on delinquent taxes paid between December 30, 1936, and February 24, 1937, for the reason that no law existed then or exists now authorizing such abatement or remittitur.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

713.

BETWEEN SECTIONS 3056 AND 1181-5, GENERAL CODE, SECTION 1181-5, GENERAL CODE CONTROLS—HIGHWAY PATROL ARRESTS—FINES AND BOND FORFEITURE, DISPOSITION.

SYLLABUS:

1. *As to any inconsistency or incompatibility existing between the provisions of Sections 3056 and 1181-5 of the General Code, Section 1181-5 controls, inasmuch as it is later in time and deals with a special matter.*

2. *All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be*