

1399.

AUDITOR'S DUTY TO APPRAISE COUNTY REAL ESTATE
MANDATORY—TAX ASSESSMENTS.

SYLLABUS:

Although under the provisions of Section 5548, General Code, the duty of the county auditor to make an appraisal of all the real estate in the county in the year 1937 for purposes of taxation, was and is mandatory, yet if no such appraisal in that year was made by the county auditor in a particular county, and thereafter during the year the county auditor of such county, acting under the provisions of Section 5612, General Code, transmits to the Tax Commission of Ohio an abstract of real property of each taxing district in the county setting forth the aggregate amount and valuation of each class of real property in such county, and in each taxing district therein, as it appears on the county tax list, it is the duty of the Tax Commission to consider such abstract so submitted to it, and as provided for by Sections 5613 and 5614, General Code, approve such abstract as submitted if it appears from said abstract that the real property and each class thereof in said county and each taxing district therein are on the tax list at their true value in money. If from the abstract submitted it does not appear that the real property in the county and each class thereof in such county and the several taxing districts therein are on the tax list at their true value in money, the Tax Commission is authorized and empowered to increase or decrease by proper percentage rate the aggregate valuation of the real property and the different classes thereof shown by the abstract in any or all of the taxing districts of the county so that such real property and the different classes thereof will in the aggregate as to each class of property and as to each taxing district appear on the tax list at its true value in money.

COLUMBUS, OHIO, October 28, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This is to acknowledge the receipt of your recent communication which reads as follows:

“The 86th General Assembly enacted the McDonald Act, effective July 21, 1925, now known as Section 5548 of the General Code, providing for the assessment of all real estate in the several counties every sixth year.

This section reads in part as follows:

‘In the year 1925, and in every sixth year there-

after, it shall be the duty of the county auditor to assess all the real estate situate in the county.'

In Opinion No. 584, released May 12, 1937, you held that the provisions of Section 5548, General Code, requiring an appraisal of real estate, in the several counties of the state, in the year 1925 and every six years thereafter, are mandatory.

The Tax Commission has received an abstract of the real property in Summit County. The county auditor admits that no appraisal was made in the year 1937 in compliance with the provisions of Section 5548.

At a hearing held before the commission on September 21, 1937, representatives of several organizations requested the commission to order the county auditor to increase the value of all real property by a percentage increase on the aggregate value of all property in the county. Representatives of property owners' organizations objected to this procedure.

We respectfully request your opinion on the following questions:

Question No. 1. Since it is the mandatory duty of the county auditor to make an appraisal of real property in the year 1937 and he fails, neglects, or refuses to do so, can the Tax Commission approve the *aggregate* value of each class of real property in the various townships, villages, and cities when submitted to the commission, in accordance with the provisions of Section 5613?

Question No. 2. If the Tax Commission has no authority to approve such abstract, what action should be taken by the commission?

Question No. 3. What action, if any, should be taken, and by whom, to compel the county auditor to make an appraisal of real property, as required by Section 5548?

Question No. 4. If the county auditor is ordered to make an appraisal of real property, and the work cannot be completed until some time in the year 1938, can the old values be used in making up the tax list and duplicate for the tax year 1937 and the new values used for the 1938 tax list and duplicate?"

The questions presented in your communication arise by reason of the fact that the county auditor of Summit County did not in the year 1937 make an appraisal of all of the real estate situated in said county and in the several taxing districts therein as required by Section 5548, General Code, and by reason of the further fact that the

county auditor of this county, not having made this appraisal, has now submitted to the Tax Commission of Ohio for appropriate action on its part, an abstract of the real property and the aggregate valuations thereof in the taxing districts of said county as provided for by Section 5612, General Code.

By the provisions of Section 5579, General Code, the authority and duty of directing and supervising the assessment of real property for purposes of taxation are imposed upon the Tax Commission. This section provides that in addition to all other powers and duties vested in or imposed upon it by law, the Tax Commission of Ohio shall direct and supervise the assessment for taxation of all real property in the state; and that county auditors shall, under the direction and supervision of the Tax Commission of Ohio, be the chief assessing officers of their respective counties, and shall list and value real property for taxation within and for their respective counties, except as may be otherwise provided by law. By reason of the power and authority conferred upon the Tax Commission by Section 5579, General Code, if not otherwise, the Tax Commission was invested with such interest in the matter of the appraisal of real property in Summit County and the several taxing districts therein in the year 1937 as required by the provisions of Section 5548, General Code, as would have authorized the Tax Commission to maintain an action in mandamus to compel the county auditor to perform his duties with respect to the appraisal of the real property in the county as required by the provisions of Section 5548, General Code, above noted. However, no action of this kind was filed and no appraisal of the real property in the county was made in the year 1937 and the first question presented in your communication is with respect to your authority to act upon the abstract of the real property and of the several classes thereof which has been filed with you under the authority of Section 5612, General Code. Touching this question, Sections 5612 and 5613, General Code, provide as follows:

Sec. 5612.

“Annually on or before the first day of September, each county auditor shall make out and transmit to the tax commission of Ohio an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of each class of real property in such county, and in each taxing district therein, as it appears on his tax list, or on the statements and returns on file in his office.”

Sec. 5613.

"The tax commission of Ohio annually, at a meeting to be held at its office in Columbus, on the second Monday in September, or on such date thereafter to which such meeting may be adjourned, shall determine whether the real property, and the various classes thereof, in the several counties, cities, villages and taxing districts in the state, have been assessed at the true value thereof in money, and if it finds that the real property, or any class of real property, in any county, city, village or taxing district in the state as reported by the several county auditors to it, is not listed at its true value in money, it may increase or decrease the aggregate value of the real property, or any class of real property, in any such county, township, city, village, or taxing district, or in any ward or division of a municipal corporation, by such rate per cent., or by such amount as will place such property on the tax list at its true value in money, to the end that each and every class of real property shall be listed and valued for taxation by an equal and uniform rule at its true value in money."

By Section 5614, General Code, it is provided that when the Tax Commission of Ohio has increased or decreased the aggregate value of the real property or any class thereof, in any taxing district or subdivision therein, it shall transmit to each county auditor a statement of the amount or rate per cent. to be added to or deducted from the valuation of such property, or class thereof, in each taxing district or subdivision thereof, in his county, specifying the amount or rate per cent. to be added to or deducted from the valuation of the real property or class thereof in such district or subdivision thereof. By Section 5615, General Code, it is provided that the county auditor shall forthwith add to or deduct from each tract, lot or parcel of real property, or class of real property, the required per cent. or amount of the valuation thereof, adding or deducting, in each case, any sum less than five dollars so that the value of any separate tract, lot or parcel of real property shall be ten dollars or some multiple thereof.

It is quite clear from a consideration of the provisions of Sections 5613 and 5614, General Code, that the Tax Commission in exercising its power and authority under these sections is not acting with respect to any particular piece or parcel of property of any particular owner in any taxing district of the county, but is acting only on the different classes of taxable real property in the county and in the several taxing districts therein to the end that each of such different classes of real property may in the aggregate be placed on

the tax list at its true value in money. *Hammond, Treas., vs. Winder*, 100 O. S., 433.

It is equally clear that the power and authority of the Tax Commission to act upon the abstract of real property transmitted to it in any particular year by the county auditor under Section 5612, General Code, do not in any wise depend upon the question whether the county auditor has in that year made a general appraisal of the real property in the county or not. In the particular case here presented if it appears that any of the different classes of real property in Summit County or in any of the taxing districts therein are, as a class, not on the tax list at their true value in money, the Tax Commission is authorized to increase or decrease by proper percentage rate the valuation of such class or classes of real property in any one or more of the taxing districts of the county so that such class or classes of property will appear upon the tax duplicate at their true value in money. If after such flat rate increase or decrease in the valuation of any particular class or classes of property has been made by the Tax Commission, it appears that any particular parcel or entry of real property in any of the taxing districts of the county, the valuation of which has been affected by such flat rate increase or decrease, is not on the tax list at its true value in money, the county auditor may increase or decrease the valuation of this particular parcel of property on notice to the property owner as provided for in Section 5548-1, General Code.

What has been said above constitutes a sufficient answer to your first and second questions. As to your third question, it may be observed that an action in mandamus is always available for the purpose of compelling the county auditor to perform the duties imposed upon him by law. This is no less true with respect to his duty to appraise for purposes of taxation the real property in his county as enjoined by Section 5548, General Code. And the case of *State, ex rel. Tax Commission of Ohio, vs. Faust, Auditor of Mahoning County, Ohio*, 113 O. S., 365, is sufficient authority for the proposition that the Tax Commission is authorized to file and maintain an action in mandamus for this purpose and doubtless the county itself as represented by the county commissioners or any taxpayer in the county interested in having all of the real property therein appear on the tax list and duplicate at its true value in money, would be authorized to file and maintain an action of this kind. Obviously, however, the Tax Commission may not by mandamus or otherwise require the county auditor of Summit County to take any action which the Tax Commission itself is authorized and required to take under the provisions of Sections 5613 and 5614, General Code, above referred to; although,

as to this, it may be observed that after the Tax Commission acts on the abstract of real property submitted to it by the county auditor, the county auditor may be required to make the additions and deductions to or from each tract, lot or parcel of real property in the taxing district or districts affected by the order made by the Tax Commission.

By way of answer to your fourth question, it may be said that if the county auditor is not able to make an appraisal of real property in his county for the year 1937, the tax list and duplicate of this particular county for the year 1937 will necessarily carry the taxable real property in the county and in the several taxing districts therein at the present valuation thereof, subject to such changes only as may be effected by any action now taken by the Tax Commission on the abstract of real property submitted to it, and subject to such further changes in the valuation of particular parcels as may thereafter be made by the county auditor acting under the authority conferred upon him by Section 5548-1, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1400.

APPROVAL—GRANTS OF EASEMENT EXECUTED TO THE
STATE OF OHIO BY SEVERAL PROPERTY OWNERS IN
ALLEN, DELAWARE AND CLERMONT COUNTIES,
OHIO.

COLUMBUS, OHIO, October 28, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certain grants of easement executed to the State of Ohio, by several property owners in Allen, Delaware and Clermont Counties, Ohio, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in said counties.

The grants of easement here in question, designated with respect to the number of the instrument, the location of the land by township and county, and the name of the grantor, are as follows: