issued in anticipation of the collection thereof, and the county auditor shall annually place upon the tax duplicate the *penalty* and interest as therein provided."

You will note that that section refers specifically to the collection of a penalty, which provision is not found in Section 1216, supra, or any of the related sections in connection therewith.

In the case of *State, ex rel. Acklin* vs. *Charles Sanzenbacher, Auditor,* 13 O. C. C. (N. S.), 356, the headnote reads:

"There is no statutory provision for imposing a penalty upon unpaid assessments against real property for public improvements, and mandamus will lie to compel a county treasurer to accept such assessments without the penalty added."

The opinion in that case is very short and is as follows:

"This is an action in mandamus brought in this court to require the county treasurer to accept the assessments that are due without collecting the penalty on the assessment. There is no occasion to review all the statutes that were mentioned by counsel here in argument. We have gone over the situation very thoroughly, and we are satisfied there is no authority in the statutes of Ohio for affixing the fifteen per cent on the assessments the same as it is fixed upon taxes. The statute, General Code, 2608 (Revised Statutes, 1053), provides that such penalty must be placed upon delinquent taxes; must be audited, I should say, on delinquent taxes. We find no statute so directing as to assessments, and for that reason we think the placing of it there is not warranted, and the relief prayed for here must be granted. We do not find any authority, I should have said, for the placing of any penalties on assessments such as are placed for taxes."

I am of the opinion that as a general proposition the opinion of the Circuit Court is a little too broad, as it does seem that some of the statutes relative to collecting special assessments do provide for imposing a penalty for the non-payment of the same. It is, however, direct authority for the proposition that no penalty can be assessed unless the statute relative to the assessment specifically provides therefor. This seems to be in accord with the opinion of the Attorney General, 1915, supra.

As stated above, I find no authority in Section 1216 of the General Code or the associated sections for the collection of a penalty for nonpayment thereof.

It is therefore my opinion that a penalty may not be collected upon delinquent road assessments made for the purpose of paying the property owners' share of a road improvement being constructed by the state.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2424.

BANKS—HYPOTHECATION OF FIRST MORTGAGES FOR DEPOSITS OF COUNTY, MUNICIPAL AND SCHOOL DISTRICT FUNDS—PUBLIC AUTHORITIES CANNOT REJECT.

SYLLABUS:

Banks are authorized to pledge as security for the deposit of county, municipal and school district funds first mortgages of the character described in Section 2288-1 of the Code and, if such securities be offered, the public authorities cannot reject the sale.

COLUMBUS, OHIO, August 6, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"We respectfully request you to furnish this department your written opinion upon the following question:

Under the provisions of Section 2288-1 of the Code, may a bank acting as depository for certain funds hypothecate first mortgages as security for such funds?"

Section 2288-1 of the General Code is as follows:

"In addition to the undertakings or security provided for in Sections 2732, 4295, 7605 and 7607, it shall be lawful to accept first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent per annum, upon unencumbered real estate located in Ohio, the value of which is at least double the amount loaned thereon. If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of the structures thereon, such structures must be insured in an authorized fire insurance company, or companies, in an amount not less than the difference between one-half the value of the land exclusive of structures, and the amount loaned, and the policy or policies shall be assigned to the mortgagee. The value of such real estate, shall be determined by valuation made under oath by two resident free-holders of the county where the real estate is located, who are conversant with real estate values. There shall be deposited with said mortgage, an abstract of title made by some competent person or persons or company, accompanied by the opinion of a competent attorney, which opinion shall certify that the mortgage is a first lien upon the premises mortgaged, or said title shall be guaranteed by a company organized under, and which has complied with the provisions of Section 9850 of the General Code."

Section 2732 of the Code provides for the security to be taken for the deposit of county funds; Section 4295 provides similarly with respect to the funds of a municipality; and Sections 7605 and 7607 are of like effect with relation to the funds of school districts. Accordingly I assume that your inquiry is whether it is lawful, under the provisions of Section 2288-1, supra, for the various public authorities to receive and a bank to hypothecate first mortgages coming within the description of the section as security for county, municipal and school district funds.

When this section was first enacted by the Legislature, it also referred to Section 330-3 of the Code, providing for the deposit of state funds, and, in response to a request from the Treasurer of State, I rendered an opinion, found in Opinions of the Attorney General for 1915, at page 246, in which it is pointed out that this section of the Code then specifically authorized the bank to secure state deposits with first mortgages of the character therein described. In that opinion I criticized the theory of the law, pointing out that, since the state moneys so deposited were necessary for current operating expenses, the receipt of mortgages as security therefor might be disastrous in that such securities could not readily be liquidated and, in the case of the failure of a bank, the state funds might accordingly be tied up for a considerable length of time. In view of the express language of the section, however, no other conclusion could be reached than that the bank might offer such securities and the treasurer could not reject them. The Legislature subsequently eliminated the reference to Section 330-3, General Code, so that mortgages are no longer accepted for the security of the deposit of state funds. The statute still refers specifically to county,

municipal and school district deposits and, although my objection to the policy o law is equally applicable with respect to these funds, in view of the clear language of the Legislature the only conclusion to be reached is that a bank is authorized to offer first mortgages of the character described in Section 2288-1, supra, as security for such funds.

While all of the sections referred to in Section 2288-1, supra, were amended by the last Legislature, there is nothing in such amendments which in any way affects the question here presented and I do not feel that such amendments can be said to vitiate the additional authority contained in the section under discussion.

I may point out that no reference is made to the security for the deposit of township funds which is covered by Section 3322 of the Code. Accordingly there is no authority for the receipt of mortgages as security for township funds.

By way of specific answer to your inquiry, I am of the opinion that banks are authorized to pledge as security for the deposit of county, municipal and school district funds first mortgages of the character described in Section 2288-1 of the Code and, if such securities be offered, the public authorities cannot reject the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2425.

TAX AND TAXATION—ELECTRIC LIGHT COMPANY, DEFINED—EXCISE TAX NOT DEPENDENT ON PUBLIC SERVICE.

SYLLABUS:

A corporation which habitually and customarily furnishes electric current to consumers and charges separately therefor is an electric light company within the meaning of Section 5416 of the General Code, and hence is subject to the excise tax provided by the succeeding sections of the Code, it being immaterial that such business is incidental to the main purpose of the corporation or that the class of consumers to whom such current is furnished is restricted so that there is no holding out of such service to the general public.

COLUMBUS, OHIO, August 6, 1928.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"The Commission desires to submit for your consideration and opinion the following question:

'Is the Seton Realty Company, and similar companies, public utilities within the meaning of the Tax Laws of Ohio?'

As an explanation, there was operating in the City of Cincinnati, a small corporation known as The Lion Light, Heat and Power Company, which company was organized for the sole purpose of handling the distribution of electric current to the tenants of the Lion Building.

The Lion Light, Heat and Power Company owned no property whatever and according to its books leased the electric light distribution property and purchased wholesale surplus energy from the Lion Building Company, in turn making sale and distribution to the tenants of the building and collecting therefor in the regular manner.