

OPINION NO. 76-081**Syllabus:**

An entry issued by the Commissioner of Tax Equalization pursuant to R.C. 323.17 extending the time for payment of real property taxes must be journalized prior to the expiration of time for payment of real property taxes as extended by a board of county commissioners pursuant to law.

To: Robert Kinney, Commissioner, Dept. of Tax Equalization, Columbus, Ohio
By: William J. Brown, Attorney General, December 16, 1976

Your letter of December 3, 1976, requesting my opinion reads as follows:

"Section 323.17 of the Revised Code allows the extension of time for collection of real property taxes by the county commissioners for 30 days. Thereafter, an additional extension may be granted by the Commissioner of Tax Equalization upon application by the auditor and treasurer of the county involved. The statute is not clear in regard to the question of when this request for additional time must be made to the Commissioner of Tax Equalization. It would seem that if the request was not made before the expiration of the original time extension granted by the county commissioners, the tax books would be closed and the 10% penalty would apply.

"Does the Commissioner of Tax Equalization have the authority under the statute to reopen the tax books regardless of when the request for a time extension is made, or must the application for time extension to the Commissioner of Tax Equalization be made before the expiration of the original extension granted by the county commissioners?"

The time for payment on real property taxes is governed by statute. R.C. 323.12 reads in pertinent part:

"Each person charged with real property taxes and assessments or public utility property taxes on a tax duplicate in the hands of a county treasurer may pay the full amount of such taxes on or before the twentieth day of December, or one-half of such taxes before such date, and the remaining half on or before the twentieth day of June next ensuing."

The General Assembly has authorized the board of county commissioners to extend the time for payment of real property taxes for an additional thirty days. R.C. 323.17 states in pertinent part that:

"The board of county commissioners, by resolution spread upon its journal, may extend the time of payment of taxes for not more than thirty

days after the time fixed by sections . . . 323.12 of the Revised Code. . . ."

R.C. 323.17 further provides in part that:

". . . .The commissioner of tax equalization may, by journal entry, further extend the time of payment of taxes in any county, in case of an emergency as defined in this section, to such time as the commissioner fixes in his order, . . ."

You have essentially asked whether the Commissioner of Tax Equalization can exercise the authority granted in R.C. 323.17 and further extend the time for payment of real property taxes in a county after the time for payment, as extended by a board of county commissioners pursuant to law, has expired.

R.C. 323.17 makes no provision for the time in which the Commissioner of Tax Equalization can exercise the authority granted therein. Because R.C. 323.17 is ambiguous on this point it is appropriate in determining the intent of the legislature to consider other statutory provisions on this subject. (R.C. 1.49). When R.C. 323.17 is read in para materia with other statutes relating to the collection of taxes, it is evident that an application for an extension of time pursuant to R.C. 323.17 cannot be considered by the Commissioner of Tax Equalization after the time for payment of the taxes has once passed.

R.C. 5719.17 reads as follows:

"If one half the taxes, assessments, and recoupment charges charged against an entry of real estate is not paid on or before the twentieth day of December in that year, a penalty of ten per cent shall be added to such half of said taxes, assessments, and charges on the duplicate. If the total amount of such taxes, assessments, charges and penalty is not paid on or before the twentieth day of June, next thereafter, a like penalty shall be charged on the balance of the amount of such unpaid taxes, assessments, and charges. The total of such amounts shall constitute the delinquent taxes, assessments, and recoupment charges on such real estate, to be collected in the manner prescribed by law." (Emphasis added.)

In 1974 Op. Att'y Gen. No. 74-068, I had occasion to consider the operation of R.C. 323.17 and R.C. 5719.17. Based on the current language of those sections, as well as their legislative histories, I concluded that:

". . . .[W]hen the Board of Tax Appeals, pursuant to the provisions of R.C. 323.17 [132 Laws of Ohio 296], extends the time for payment of real estate taxes to a day certain, the county treasurer is not authorized to accept payment of taxes without the payment noted in R.C. 5719.17 after the expiration of the day certain. . . ."

(Emphasis and bracketed matter added.)

R.C. 323.17 was amended by House Bill No. 920 (eff. 10-11-76), whereby the powers of the Board of Tax Appeals stated therein were transferred to the Commissioner of Tax Equalization. The General Assembly has, however, expressly provided in R.C. 1.54 that:

"A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute."

Am. Sub. H.B. No. 920 in transferring the powers and duties of the Board of Tax Appeals under R.C. 323.17 to the commissioner of Tax Equalization reenacted without substantive change the language defining those powers and duties. Therefore the rationale and conclusions reached in 1974 Op. Att'y Gen. No. 74-068 are still valid. Consequently, where a board of county commissioners, pursuant to R.C. 323.17, extends the time for payment of real property taxes for an additional thirty days and no further extension of time has been granted by the Commissioner of Tax Equalization, the penalty provided for in R.C. 5719.17, which is mandatory and self-executing, must be charged against the unpaid taxes on the duplicate at the time the first extension expires.

R.C. 5719.01 states in part that:

"The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid. . . ."

When the penalty provided for in R.C. 5719.17 attached to real property, it becomes a lien on the property by virtue of R.C. 5719.01 along with the unpaid taxes, and it may be discharged from the proceeds of a judicial sale pursuant to R.C. 5719.25. The Southern Ohio Savings Bank and Trust Co. v. Bolce et al., 165 Ohio St. 201 (1956); Boyle v. The Public Adjustment and Construction Co. et al., 148 Ohio St. 559 (1947). Although a penalty may be remitted pursuant to R.C. 5715.39, the Commissioner of Tax Equalization is given no authority under R.C. 323.17 to take any action to remove or suspend the penalty once it has become a lien on the property pursuant to R.C. 5719.01. If a journal entry extending the time for payment of real property taxes were to be issued after the expiration of time for the payment of taxes as extended by a board of county commissioners, it would have the effect of removing a lien which had previously attached to the property by operation of law.

The position of Commissioner of Tax Equalization is one which is created by statute. It is well settled that officers which are creatures of statute are limited to the exercise of powers, which are expressly provided or necessarily implied. Steward v. Evatt, 143 Ohio St. 23 (1921); New Bremen v. Public Utilities Commission, 103 Ohio St. 23 (1921). Since R.C. 323.17 neither specifically grants nor implies authority for the Com-

missioner of Tax Equalization to remove a lien, which has already attached to real property by operation of law, I must conclude that he is without such authority under that section. R.C. 323.17 must, therefore, be construed strictly in determining the time during which the Commissioner may extend the period of payment of taxes.

In specific answer to your question, it is, therefore, my opinion and you are hereby advised that an entry issued by the Commissioner of Tax Equalization pursuant to R.C. 323.17 extending the time for payment of real property taxes must be journalized prior to the expiration of time for payment of real property taxes as extended by a board of county commissioners pursuant to law.