

what, with reasonable certainty, would cover the actual expenses incurred by a board of education in permitting a Grange or other organization to use the building.

In an opinion rendered by this office under date of October 5, 1928, being Opinion No. 2675 wherein was discussed the right of a board of trustees of a county memorial building to make a charge for the use of the building for a public purpose, it was said:

“Built with public funds, and dedicated to the use of the general public, it would seem that it was not the intention of the legislature that a board of trustees in charge thereof, might exact a ‘rental’ when such a building is being used for a public purpose. By this I do not mean that a board of trustees, which has the sole control, management and supervision of such a memorial building, may not, when such building is being used by a military organization, charge a reasonable fee in order to cover the cost of the heating, lighting, janitor services, etc. The amount of such charges, however, must be reasonably commensurate with the cost of such items. Obviously, such a charge is in no sense a rental charge, but is in the nature of a reimbursement for the necessary heating, lighting, janitor services, etc., incident to such use.”

In specific answer to your questions, I am of the opinion:

First, the board of education of Oxford Township School District in Delaware County, has no authority to expend school funds for the purpose of extending relief to the family spoken of in your letter of inquiry, other than to provide textbooks for the children attending school and to extend such relief as may be necessary to provide personal necessities for any of the children or their dependents when such children are able to, and are absolutely required to work to support themselves or those dependent upon them, if in fact there are any children in the family who answer that description, and then only to the extent that may be necessary to relieve such child or children from the necessity of work, so that they may attend school, in compliance with the compulsory school laws of the State.

Second, the Grange at Sunbury has a right to the use of the school building in Sunbury village for the purpose of holding meetings of the Grange and the Board of Education of Sunbury Village School District is required by law to permit the use of the buildings for that purpose, provided the actual expenses incident to such use which the board of education incurs on account thereof, are paid. This, by agreement, may take the form of a stipulated charge, providing the amount of such charge is based on what would reasonably amount to the actual expenses incident to the use of the building by the Grange.

Respectfully,
GILBERT BETTMAN,
Attorney General.

202.

DELINQUENT LANDS—PUBLICATION OF LIST BY AUDITOR—MAY BE
MADE ONLY BETWEEN DATES SPECIFIED BY STATUTE.

SYLLABUS:

The publication of the list of delinquent lands for any year, must be made “between the twentieth day of December and the second Thursday in February, next ensuing” as provided in Section 5704 of the General Code, and where said list is not published between said dates, there is no authority for the publication of said list at a later date.

COLUMBUS, OHIO, March 18, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“Our Section 5704, G. C., provides that each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks between the 20th day of December and the second Thursday in February. Inasmuch as the time for paying taxes was extended to January 30th this year, it was impossible to get a list ready in time to publish same in accordance with Section 5704.

In your opinion, should the auditor publish said list as soon as it can be made up even though the time fixed has passed? I would appreciate your advice concerning this.”

The term “delinquent lands” is defined in Section 5705, General Code, which reads as follows:

“Delinquent lands as defined in this act (G. C. Secs. 5704 to 5727) shall mean all lands upon which the taxes, assessments and penalties have not been paid for two consecutive semi-annual tax paying periods.”

Provision for the publication by the county auditor of a list of delinquent lands is made in Section 5704, General Code, which reads as follows:

“Each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the twentieth day of December and the second Thursday in February, next ensuing, in one daily newspaper in the English language of the political party casting the largest vote in the state at the last general election, and in one daily English newspaper of the political party casting the next largest vote in the state at the same election, both published in the county and of general circulation therein. If there be no such daily newspaper published in the county then in two weekly English newspapers published and circulated therein, if there are two such papers published; if not then in one such weekly English newspaper will be sufficient. If there be no such weekly English newspapers published and circulated therein, then in two tri-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such tri-weekly English newspaper will be sufficient. If there be no such tri-weekly English newspaper published and circulated therein, then in two semi-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such semi-weekly English newspaper will be sufficient. There shall be attached to the list a notice that the delinquent lands will be certified to the Auditor of State as delinquent, as provided by law.”

The publication shall be made once a week for two consecutive weeks, and shall be made between the twentieth day of December and the second Thursday in February, next ensuing. It is also provided that the delinquent lists will be certified to the Auditor of the State as delinquent, as provided by law. This section formerly provided that a notice should be attached to the delinquent list that the lands would be sold by the county treasurer, as provided by law.

Former Section 5705, General Code, provided that said sale would be by the county treasurer at the court house on the last day named in said former Section 5704, General Code. It is noted that the notice now attached to the list is that the delinquent lands will be certified to the Auditor of State as delinquent.

Section 5704 of the General Code expressly provides that the said list "shall be published between the twentieth day of December and the second Thursday in February next ensuing". It is not provided in said section, nor in any other section of the General Code, that I have found, that should the list not be published between the dates named in Section 5704, General Code, publication may be made at some other time.

Provision is made, however, in Section 5710, General Code, as to what action the county auditor shall take if, through inadvertence or mistake, he omits to publish said delinquent list. Said section reads as follows:

"If a county auditor, by inadvertence or mistake, omits to publish the delinquent list of the county, as required by law, he shall charge the lands and town lots with the taxes, assessments and penalty, if such taxes, assessments and penalty with which the lands and town lots therein stand charged have not been paid before the tenth day of August of the next succeeding year. He shall also charge them with the taxes and assessments of the current year, and record, certify and publish them as part of the delinquent list."

It is clear from this section that the county auditor is not to publish said delinquent list, if said publication has been omitted through inadvertence or mistake, but if the taxes, assessments and penalties on the delinquent lands have not been paid before the tenth day of the next succeeding August, he shall also charge the same with the taxes and assessments of the current year and then publish them as part of the delinquent list.

In the case of *Magruder vs. Esmay*, 35 O. S. 221, it is stated in the second paragraph of the syllabus:

"A record of a certificate by the county auditor, under the act of March 23, 1840 (1 Curwen, 630), that the delinquent tax list was published for four consecutive weeks prior to December first, does not show a compliance with the provisions of said act requiring the delinquent list and notice of sale to be published for four weeks, between the first day of October and the first day of December."

At page 233, the opinion states:

"The statute then in force (1 Curwen, 630), and under which the proceedings were had, required the county auditor to publish the delinquent list, with notice of sale, at least four weeks, between the first day of October and the first day of December. The only proof given at the trial tending to show compliance with this requirement, was the record of the certificate of the auditor that the list was published for four consecutive weeks *prior* to December first. This evidence was not admissible. From aught appearing, the publication may have been in September. The law required it to be *between* October first and December first. In *Lessee of Kellogg vs. McLaughlin*, 8 Ohio, 114, the record of the certificate of the auditor, that the list was published for four consecutive weeks, between the first Monday in October and the first Monday of December, was held inadmissible, as the last publication may have been made after December first."

At page 116, said Kellogg Opinion states :

“The evidence offered in the present case and rejected, showed that the delinquent list had been published four weeks in succession in a newspaper printed in the county of Richland, after the first day of October, 1832; but it did not show that the last of these publications was before the *first day* of December in that year. It was before the *first Monday* in December, but the first Monday was not the first day of the month. It did not then conduce to prove the fact, that publication had been made within the time, and in the manner required by the statute, and it was therefore properly rejected.”

It appears in the foregoing statutes and authorities cited, that the publication of the list of delinquent lands for any year, must be made “between the twentieth day of December and the second Thursday in February, next ensuing” as provided in Section 5704 of the General Code, and where said list is not published between said dates, there is no authority for the publication of said list at a later date.

Respectfully,

GILBERT BETTMAN,
Attorney General.

203.

BANK—VOLUNTARY LIQUIDATION—PROVISION FOR TRUST ESTATES—WHEN CLAIMS PRESENTED AND ASSETS DISTRIBUTED—ENFORCEMENT OF STOCKHOLDERS LIABILITY.

SYLLABUS:

1. *A bank with trust powers, having voted to go into voluntary liquidation, may continue to transact the business of the trust estates until such time as the trust is released, discharged or transferred to a new trustee.*

2. *It is within the discretion of the Superintendent of Banks, in the case of voluntary liquidation, to fix a time when claims shall be presented and no part of the fund realized from the sale of assets of an existing bank or surplus of the bank should be permitted to be distributed until after the time fixed for presenting claims.*

3. *A creditor of a banking corporation may enforce, by proper action, the individual liability of stockholders as provided in Section 710-75 of the General Code of Ohio.*

COLUMBUS, OHIO, March 18, 1929.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication which reads as follows :

“A bank incorporated under the laws of this state, having trust powers, with a capital of one million dollars and a surplus of five hundred thousand dollars has received and accepted a proposal from individuals desiring to organize a new bank, by the terms of which proposal the new bank will be capitalized at three million dollars and its shares of stock will carry by endorsement an equal number of shares of a securities company to be organized with a capital of one million five hundred thousand dollars. Of the total